



Waste Action Plan for a Circular Economy 2019

**Department of
Communications, Climate
Action and Environment**

Public Consultation

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1. Introduction

- 1.1 The Competition and Consumer Protection Commission (CCPC) welcomes the opportunity to respond to the Department of Communications, Climate Action and Environment (DCCAE) consultation on the development of a new Waste Action Plan for Ireland as part of the transition to a Circular Economy.
- 1.2 The CCPC notes the legislative context of four European Commission Directives, which are to be transposed into national law by 5 July 2020, all of which contain targets to accelerate this transition. The CCPC welcomes that a consultation is also underway on these Directives, as part of a comprehensive review with stakeholders. It is also noted that a consultation was completed in 2019 on introducing and expanding environmental levies to encourage more sustainable behaviour.
- 1.3 The CCPC has ongoing interaction with the waste sector, which includes the investigation of competition complaints and consumer protection issues and the assessment of mergers. Following a Dáil motion in 2017 the Minister for Communications, Climate Action and Environment requested 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 study was the first in-depth analysis of this market from a competition and consumer protection perspective.
- 1.4 The evidence collected for the study informed recommendations as to how the household waste collection market could deliver better outcomes for the State, consumers and operators. A summary of the findings and recommendations are provided in section 2 of this submission, and are intended to summarise the requirement for a new regulatory framework, which in the CCPC's view would better support the effective transition to a circular economy.

¹ The full report is available here: <https://www.ccpc.ie/business/ccpc-report-recommends-introduction-of-economic-regulation-in-the-household-waste-collection-market/>

1. 5 A recommendation from the study was that the household waste section of ‘*A Resource Opportunity - Waste Management Policy in Ireland*’ should be reviewed and the CCPC welcomes that this is now underway as part of the current consultation process.
1. 6 The CCPC’s role in promoting competition and consumer protection, and the work undertaken in the household waste collection sector, has informed the response to this consultation. Views are not offered on all aspects of the consultation, as many are outside of the CCPC’s remit.

The consultation themes that cover Regulation and Market Structure are addressed in section 3 of the submission and Consumer Protection is reviewed in section 4 of the submission. Both of these responses include further information from the CCPC’s study. Citizen Engagement and Charging Structures are covered in Section 5 of the submission, which the CCPC regards as a key facilitator for a Circular Economy in the State.

1. 7 The CCPC would welcome further engagement with DCCAE on any of the points made in this submission, should that be useful.

2. 'The Operation of the Household Waste Collection Market' - Key Issues and Recommendations

- 2.1 The CCPC's study *'The Operation of the Household Waste Collection Market'* highlighted that while household waste collection may appear to be a straightforward utility service, it is instead a very complex market where State, commercial and consumer interest overlap and often conflict with each other. While the CCPC's study was published in late 2018, a more recent review has been conducted in preparing this consultation response. This has resulted in the CCPC maintaining its views on the sector, or in other words, there have been no notable changes in industry structure or market practice since the publication of the study.
- 2.2 The CCPC therefore believes that the findings published in 2018 are still valid. A range of issues were identified in the study:
- The current market structure of side-by-side competition results in price and service levels being determined by private operators, which is atypical in Europe. This acts as a barrier for potential new entrants and supports the incumbent operators.
 - The market exhibits characteristics of a natural monopoly and side-by-side competition is unlikely to be sustained over the long term. This process is underway whereby operator numbers are falling and expected to reduce further.
 - Operators have considerable market power, where 20 operators service 90% of households with a collection service. Most households do not, or cannot, influence operator behaviour and a sector-specific procedure is not in place to resolve consumer issues. A significant proportion of households have no choice of operator. In addition, for many households no service is available.
 - The current market structure has adversely impacted on the State's ability to implement environmental waste policy where the current regulatory regime is fragmented and incomplete.

- 2.3 The CCPC's analysis indicated that the market was moving towards a service provision model of unregulated monopoly operators, where the State in most cases did not have any means of incentivising or controlling the market to ensure that household waste targets set out in '*A Resource Opportunity - Waste Management Policy in Ireland*' could be delivered.
- 2.4 As a result, the CCPC recommended that an economic regulator be set up to deliver proactive and ongoing oversight, in tandem with the co-ordination of all of the State's resources to deliver optimal outcomes for this market. The type of economic regulation being proposed is based on how best to manage the prevailing market conditions, including markets with side-by-side competition, monopoly providers and areas with no service. In common with the regulation of other utilities in Ireland the CCPC highlighted economic licensing, data collection and analysis, market design and consumer protection as potential functions.
- 2.5 The CCPC concluded that an economic regulator should have an overall objective of developing over time, an efficient, sustainable and commercial model of household waste collection, in a manner that also protects the interests of consumers.

3. Regulation and Market Structure

- 3.1 In sections 3.2 to 3.7 the CCPC considers the role of regulatory bodies (Chapter 2 of the consultation). Changes are suggested that focus on establishing an economic regulator (Chapter 19 of the consultation), where data collection is identified as a key function for the regulator (Chapter 17 of the consultation).
- 3.2 The CCPC's study in 2018 highlighted that until a more complete regulatory framework is put in place, which included market structure, it would be very difficult to meet household environmental targets. This view was supported by the following findings:
- Up to 38 State organisations are tasked with some form of regulation and enforcement for household waste collection. This has resulted in a fragmented system with differing approaches to enforcement across the country. A standard State approach to enforcement does not yet exist.
 - Environmental outcomes are the primary focus of the current regulatory regime, whose rollout is dependent on operators adopting appropriate practices. In practice, operators appear to have a high level of autonomy in delivering key environmental targets, such as the roll out of brown bins and pay-by-use charging structures.
 - The regulatory regime has limited enforcement mechanisms, withdrawing a permit is the primary tool to address operator non-compliance, which is usually not a realistic option due to the adverse effect of households losing their service.
 - No regulations are in place to manage the economic operation of the market structure used in Ireland, which is known as side-by-side competition. In this structure individual households are responsible for their collection service, which is provided by private operators who often have considerable market power. A significant number of households do not have a choice of operator and therefore the normal competitive pressures in markets do not exist.

- A significant number of households cannot or do not avail of a waste collection service. The current market structure means that the viability of operators in a given area is influenced by route density and collection costs. The specific characteristics of sparsely populated or rural areas mean they are less economically attractive.
- The side-by-side competition market structure in Ireland is atypical, most EU countries continue to maintain a high level of control by retaining ownership of waste, which the State manages by either collecting the waste directly or by contracting it to the private sector, using a competitive tendering process. Using an approach of competition for the market with the private sector allows EU countries to combine the benefits of competition with the efficiency of having a single operator on a route.

3.3 The recommendations from the CCPC's study which were proposed to address these issues are relevant for future policy consideration:

1. Establish an economic regulator for household waste collection as part of developing a complete regulatory regime. Ensure they have a clear role which is legally robust in terms of its functions and the tools it has to discharge its responsibilities. This would allow them to work proactively with operators and, where required, direct them to the desired outcomes.
2. Co-ordinate the State's resources to deliver optimum outcomes for the household collection market. Consider how the existing structures could be better utilised or extended to create a regulatory regime that is comprehensive, efficient and effective.

3.4 The CCPC welcomes that views are being requested on the current institutional arrangements (Chapter 2 of the consultation) and on establishing an economic regulator (Chapter 19 of the consultation). While the CCPC's position has been comprehensively outlined in the study, it is suggested that the economic regulation models used in other utility markets would be a useful first step in scoping out the most effective approach to manage the current market structure.

- 3.5 The CCPC notes the range of waste data currently being collected and the proposed data collection measures outlined in Chapter 17 of the consultation. In tandem with the recommendation for an economic regulator, it is suggested that collecting data at route level should be included as a key function for the economic regulator. It would form the basis for all future decisions regarding appropriate intervention in geographical areas where it was identified that competition was not providing the desired outcomes for the State, households and operators.
- 3.6 It is further recommended that this data should also include apartments (which was not in the scope of the CCPC's study) and households who do not currently have a collection service, where the analysis completed for the CCPC's study indicate that non-participation could be as high as 23%.
- 3.7 This information would allow the regulator to consider the market designs that are most appropriate for various market characteristics (e.g. monopoly, areas with no service) in tandem with aligning with the range of policy objectives that apply to this sector, which include the environment, customer service and economic viability.

4. Consumer Protection

4. 1 In sections 4.2 to 4.8 the consumer protection issues identified in the CCPC's study (Chapter 19 of the consultation) are highlighted, where recommendations are made to ensure that the statutory rights of consumers are clearly understood and applied by operators.
4. 2 As evidenced from the market research completed for the CCPC's study, waste collection does not appear to be an issue of concern for most consumers, who seem to be happy with their service. However, the ability of many consumers to switch to an alternative provider, or to obtain satisfaction from their operator when they have difficulties with their service or charges is limited.
4. 3 While a customer charter was introduced in 2015, it has no legal standing in terms of operators adhering to its requirements. There is currently no complaints handling escalation procedure, as with other utilities. For example, should households experience any difficulties with charging arrangements, they are dependent on their operator to resolve them.
4. 4 The CCPC is aware, through contacts from consumers that poor customer service does occur, and it is particularly pronounced when policy initiatives by Government are being rolled out. The Price Monitoring Group has previously identified customer service as a concern in their interaction with operators.
4. 5 The CCPC's study highlights that customer service norms are required to ensure the rights of consumers are clearly understood and applied by operators. The contacts received by the CCPC show that payments, billing and collection are the key issues being experienced by consumers with operators. These issues are currently covered in the operator customer charter², which has the potential to deliver customer protection that is tailored to the household waste collection sector, if it were put on a more robust regulatory footing. The

² Schedule Six of the Waste Management (Collection Permit) (Amendment) Regulations 2015 provides a range of information that an operator has to include for customer service standards; customer communication; householder responsibilities; pricing, charging mechanism and access to account information; complaints procedure/dispute resolution; education and raising awareness; termination of service/refunds/changing service providers; changing equipment and ownership of bins.

CCPC concluded that the current customer charter should also be supported by a sector-specific complaints-escalation mechanism with appropriate penalties for non-compliance.

- 4.6 As detailed in the study, the consumer protection legislation that underpins the CCPC's remit is not designed to address the consumer issues that are prevalent in the household waste sector. The contacts the CCPC receives arise when a consumer is experiencing a problem with their service provider and assistance is provided to help them to understand their rights. The majority of issues experienced by consumers require that they take actions themselves. For instance, if a service is not fit for purpose, the Sale of Goods legislation will apply, which is self-enforcing legislation.
- 4.7 The information received from consumers is hugely valuable as it informs the CCPC's activities across the economy. Systematic practices causing significant detriment to consumers, which fall within the scope of the legalisation applicable to the CCPC, are investigated and addressed. The CCPC does not have an ombudsman-type role in any sector where it is possible to intervene with traders on behalf of consumers. Therefore, the CCPC would not be an appropriate body to provide a complaints mechanism for consumers in the household waste sector. It would further be incompatible with the CCPC mandate as the enforcement authority for competition and consumer protection law in Ireland.
- 4.8 The successful implementation of the customer charter will require that it is carried out by an organisation with an in-depth understanding of household waste collection. The CCPC recommended, given the need for sector specific expertise and focus, that an economic regulator was best placed to ensure that operators adhere to the customer charter. This recommendation also reflects the approach of other utility regulators, who have protocols to resolve complaints that consumers have with their service providers, as part of their consumer protection role.

5. Citizen Engagement and Charging Structures

- 5.1 In sections 5.2 to 5.7 the importance of having an environmentally aware population is considered, which could also support the rollout of incentivised charging structures, if required by the new Waste Action Plan. These areas, which are covered in Chapters 3 and 8 of the consultation, will play an integral part in the transition to a circular economy.
- 5.2 *'Closing the loop - An EU action plan for the Circular Economy'*³ sets out a recycling target of 50% for Ireland by 2020. From 2014 to 2016, Ireland's municipal waste recycling rate has remained at 41%⁴. This is below the overall EU recycling rate of 45%⁵, which is reflected in the amount of waste generated in Ireland annually, in 2016 each person produced 93kg more municipal waste than in other EU-27 countries⁶.
- 5.3 In order for Ireland to reach European waste recycling targets behavioural change will be required by citizens. In this regard, the establishment of the Waste Communications Strategy Group is an important and welcome initiative to support the co-ordination of communications campaigns aimed at citizen engagement.

Based on the CCPC's experience in conducting public awareness campaigns, as well as insights gained on behavioural factors impacting on consumer decision making, it is suggested that the awareness and education campaigns should focus on encouraging behavioural change and include a clear 'call to action' for recycling. It should be noted that such information campaigns, to be successful, need to be high profile and sustained. As a result, they are inevitably expensive and consideration will be required as to how they are most appropriately funded.

- 5.4 The CCPC welcomes the intention to analyse waste related data that is currently collected and to make recommendations to improve waste management behaviours. It is further suggested that a formal approach is put in place to support co-ordination between Government and

³ European Commission: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0614>

⁴ Environmental Protection Agency: <http://www.epa.ie/nationalwastestatistics/irelandswastestory/>

⁵ Environmental Protection Agency: <https://www.eea.europa.eu/airs/2018/resource-efficiency-and-low-carbon-economy/recycling-of-municipal-waste>

⁶ Ibid.

relevant agencies on understanding, informing and supporting consumer behavioural change as part of the transition to a circular economy.

- 5.5 In this regard two studies are a useful reference; firstly, the European Commission report *'Behavioural Study on Consumers' Engagement in the Circular Economy*⁷, which found that a range of factors impact on the degree to which consumer attitudes and awareness can be translated into engagement, and secondly, the Environment Research Programme⁸ which is being undertaken by the Economic and Social Research Institute and the Environmental Protection Agency, and includes *'Designing and testing behaviourally informed regulatory communications'*.
- 5.6 In addition to the above, it is the CCPC's view that an environmentally engaged public will underpin greater acceptance of incentivised waste charging structures, if required by the new Waste Action Plan. The landfill levy⁹ highlights how increasing existing charges can support the adoption of environmentally friendly waste management options, where the amount of waste sent to landfill has reduced by 34%¹⁰ since the levy was increased in 2013.
- 5.7 The CCPC is also aware that under the current market structure household waste operators have a significant amount of discretion in the type of charging plans they provide to consumers. As previously stated (see section 4.4), the approach of operators when implementing policy initiatives of Government has caused issues for consumers. It is important that measures are in place to ensure this does not happen during the roll out of the new Waste Action Plan.

⁷ European Commission: https://ec.europa.eu/info/sites/info/files/ec_circular_economy_final_report_0.pdf

⁸ Economic and Social Research Institute: <https://www.esri.ie/current-research/environment-research-programme>

⁹ From 1 July 2013, the landfill levy increased from €65 to €75 for each tonne of waste disposed at authorised and unauthorised landfill facilities.

¹⁰ Environmental Protection Agency: <http://www.epa.ie/waste/municipal/>

6. Summary

- 6.1 To conclude, the CCPC supports the intention to align the new Waste Action Plan to the EU objective to achieve a climate neutral continent by 2050. This will require that the State sets out a range of ambitious targets from 2020 to reach this goal.
- 6.2 In this submission the CCPC has set out how the State could develop an institutional framework to achieve successful outcomes for the household waste sector. The CCPC remains of the view that an economic regulator in the household waste sector would significantly increase the State's ability to manage the transition to a circular economy. In addition, having more effective co-ordination of all the State's resources will also ensure that the best economic, environmental and societal outcomes are delivered in a manner that balances the interests of the State, private sector and households.

