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# Reforming the Regulation of Household Waste Collection Services in Ireland: the Competition and Consumer Protection Commission Study

By

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## Abstract

In 2019 the Department with responsibility for household waste (HHW) policy in Ireland will commence a review of its 2012 Policy. That review – as anticipated in the 2012 Policy – will rely on the research and analysis of the Competition and Consumer Protection Commission (CCPC) on the state of competition in the HHW sector and on its policy guidance/recommendations. The CCPC's 2018 study draws attention to a number of shortcomings in the HHW sector's performance. It recommends a national economic regulator, not the appropriate market design (i.e. the status quo, side-by-side competition, which is evolving into a series of geographic unregulated monopolies; competitive tendering; and/or price control). Market design is delegated to the regulator. The description and analysis of the CCPC concerning the HHW sector should be relied upon by the Department in its review. There is, however, no need for a national economic regulator and all the associated costs, which no doubt will be passed onto households. Competitive tendering administered by local authorities with advice from the Office of Government Procurement, the CCPC and others, is the preferred market design and regulatory structure.

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## I INTRODUCTION<sup>1</sup>

The collection of household waste (HHW) in Ireland is a private sector activity. Individual households contract with private operators for the provision of the service.<sup>2</sup> Subject to fulfilling certain regulatory requirements any private operator can enter the HHW collection market and by offering better terms and conditions – competing on the merits - persuade households to switch their HHW provider from an existing operator (i.e. side-by-side competition). The State provides the environmental and economic regulatory framework within which HHW operators compete. On 27 June 2017 statutory measures requiring a form of pay by weight pricing were announced to provide incentives for households to generate less HHW and segregate more of it for recycling. This pricing structure was intended to replace flat rate pricing used by most operators under which households had little or no incentive to reduce HHW.<sup>3</sup> There was, however, a potential drawback with the new pay by weight pricing structure. It could lead to an increase in HHW bills. Indeed, the spectre of ‘price gouging’ was raised.<sup>4</sup>

A Price Monitoring Group was set up in July 2017 to report on HHW charges as the new pricing structure was introduced.<sup>5</sup> The Competition and Consumer Protection Commission (CCPC) was requested in September 2017 to conduct a market study on the HHW sector to,

*assess the nature and scale of consumer and operator issues in the household waste collection market and consider if the introduction of an enhanced regulatory regime could efficiently address these issues, in the short and long term.*<sup>6</sup>

The CCPC study recommended the establishment of a national economic regulator. The regulator would issue economic licenses for HHW operators, have the power to control prices, levy fines and determine the appropriate market design for each separate geographic market it identified. The CCPC study did not recommend a particular market design: side-by-side competition; price regulation; and/or competitive tendering.

The Minister for Communications, Climate Action and Environment (the Minister), whose remit includes HHW, welcomed the publication of the CCPC’s study on 28 September 2018.<sup>7</sup> However, the Minister did not endorse the CCPC’s idea of a national economic regulator, but he did agree with the CCPC’s rejection of the view that one market design was appropriate for all geographic markets: “*different competition*

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<sup>1</sup> Unless otherwise stated the Introduction relies on CCPC (2018, pp. 3-7).

<sup>2</sup> In other words, in contrast to other jurisdictions HHW collection is not funded in Ireland through local authority property taxes.

<sup>3</sup> The pay by weight system introduced has, it appears, created limited incentives to reduce HHW, since charging by weight only comes into effect after a pre-defined allowance or threshold has been reached. The threshold has been set at a high level. For details see CCPC (2018, para. 3.34) and CCMA (2018, p. 18).

<sup>4</sup> Price gouging, which may also be referred to as excessive pricing, might already have happened given the presence of geographic monopolies in some markets.

<sup>5</sup> For details see <https://www.dcae.gov.ie/en-ie/environment/topics/waste/the-householder-and-waste/household-waste-collection/price-monitoring-group/Pages/Price-Monitoring-Group.aspx>.

<sup>6</sup> The full terms of reference are set out in CCPC (2018, Appendix A). The more detailed terms of reference were divided into four parts: research on current HHW issues; an economic assessment of the HHW market; an overview of HHW collection in other countries; and, recommendations.

<sup>7</sup> DCCA&E (2018).

*models can be introduced for different geographic areas.*<sup>8</sup> The purpose of this paper is to critically examine the findings of the CCPC study and the key recommendation as to market design.

Section II provides a brief summary of the CCPC study, together with a short commentary. The current waste management policy of the Department of Communications, Climate Action and Environment's (DCCA&E) is set out in *A Resource Opportunity* (2012 Policy). In Section III it is argued that it is inappropriate for the CCPC (2018, para. 5.21) to uncritically accept as a binding constraint the 2012 Policy position which rules out competitive tendering as the appropriate market design.

The consensus view, including the CCPC, is that the HHW sector is evolving towards a series of unregulated monopoly operators. This, it is argued in Section IV, will rule out side-by-side competition, leaving competitive tendering as the preferred market design.

Context matters in framing future policy. The CCPC recommends *ex ante* regulation of HHW collection based on an application of a cumulative threefold test to the current side-by-side market structure. However, Section V finds that this conclusion is critically dependent on the assumed market structure: if the threefold test is applied to a market structure characterised by competitive tendering then none of the three tests is satisfied. In short, there is no justification for *ex ante* regulation with respect to competitive tendering.

Section VI reflects on the implications of the analysis contained in this paper for the forthcoming review of HHW policy by the DCCA&E. Competitive tendering, with the tendering administered by local authorities with advice from the Office of Government Procurement, the CCPC and others is the preferred market design and regulatory structure. Such tendering is a much better alternative than the current side-by-side model, which is in any event, moving towards a series of monopoly providers. HHW collection charges should be more attractive as monopoly rents are eliminated. CO<sub>2</sub> emissions and congestion costs will be reduced as there will be no inefficient duplication of services. Finally, mechanisms can be introduced that complement competitive tendering so as to ensure that HHW collection charges do not get too high in low density areas, thereby protecting positive externalities of broader take-up of HHW collection services.

## II THE CCPC'S HHW STUDY

### 2.1 The Study

The CCPC study is divided into five chapters, plus a series of appendices. **Chapter 1** briefly outlines the **motivation, the remit, the methodology and existing HHW policy**. The CCPC conducted a public consultation (summarised in Appendix C), and, *inter alia*, commissioned an econometric report that examined the competitive pressure that the current structure exerts on HHW collectors (Appendix B), market research on the consumer experience with HHW collection (Appendix E) and a survey of ten national competition authorities in other European Union Member States on the operation of HHW collection in those jurisdictions.<sup>9</sup>

**Chapter 2** is concerned with **market structure**. Evidence of economies of scale (i.e. average cost falls as volume increases) and density (i.e. the greater the density of households in a given geographic area the

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<sup>8</sup> DCCA&E (2018).

<sup>9</sup> The ten are: Estonia, France, Finland, Italy, Latvia, Lithuania, Poland, Slovakia, Sweden and the UK.

lower the cost of collection per household) are cited. The minimum efficient size for a HHW collector is estimated at 5,000 households. The CCPC (2018, para. 2.20) concludes that HHW collection at the local level “*is a natural monopoly.*” Local authority HHW markets are highly concentrated. There are high barriers to entry due to economies of scale and density. Incumbents can selectively price cut should a new operator enter the market. Furthermore operators in adjacent geographic markets are unlikely to enter each other’s market due to the fear of retaliation. A tacit no poaching understanding is reached.<sup>10</sup> New entry is thus unlikely, given the difficulty and uncertainty of getting households to switch providers.<sup>11</sup> On the other hand, exit and consolidation is the norm: the number of HHW operators in Ireland declined from 82 to 63 between 2012 and 2016. This trend is expected to continue.

In discussing market structure the CCPC notes that internationally competitive tendering rather than side-by-side competition is the norm for HHW market design. It is also observed that side-by-side competition exacerbates the impact of barriers to entry compared to competitive tendering. The cost of entry is much lower when the market design is competitive tendering. All HHW collectors are placed on the same footing when making a bid for the market. An international waste operator informed the CCPC that it was deterred from entering the Irish HHW market due to the current side-by-side market design.<sup>12</sup>

The **regulatory and enforcement environment** is the subject of **Chapter 3**. The 2010 Programme for Government stated that the Government,

*will introduce competitive tendering for local waste collection services whereby local authority and private sector collection firms would bid to provide waste collection services in an entire local authority area, for a given period and to a guaranteed level of service, including a public service obligation in respect of a waiver scheme for low income households.*<sup>13</sup>

A Regulatory Impact Analysis (RIA) was subsequently undertaken in 2012 by the DCCA&E which involved, for example, a careful comparison of the costs of HHW collection in Cork (side-by-side competition) and Belfast (competitive tendering).<sup>14</sup> The RIA results are summarised in some detail in the CCPC study.

The RIA compared three market design options: do nothing (i.e. side-by-side competition); restructure the market via competitive tendering; and, retain current market structure, enhance regulation (e.g. customer charter). Using eight criteria, including minimising price, market stability and competitive sustainable industry, the RIA scored these three options, respectively, as follows: 40; 81.5; and 76.<sup>15</sup> The

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<sup>10</sup> For a discussion of tacit collusion and how it can lead to supra competitive prices (i.e. rents) being earned while at the same time being immune from the remit of competition policy see Ezrachi & Stucke (2016, pp. 56-60).

<sup>11</sup> This may be exacerbated if households are subject to annual contracts.

<sup>12</sup> It is not at all clear that a careful evaluation was undertaken by the DCCA&E of the different market designs as local authorities withdrew from HHW collection and the private sector stepped in to provide such services.

<sup>13</sup> CCPC (2018, p. 30). Note that local authority HHW operators were in the process of exiting the market.

<sup>14</sup> For details see DEC&LG (2012a). It should be noted that the DCCA&E has undergone a number of name changes but the current name is used to cover all earlier incarnations.

<sup>15</sup> Restructuring the market via competitive tendering scored more highly than retain current market structure, enhanced regulation on five of the eight criteria, the same on two and lower on one (i.e. “Market stability, regulatory certainty”). It should be noted the results reported in the text refer to the “Weighted Score.” For details see CCPC (2018, pp. 29-31) and on the weighting, the next footnote.

maximum score is 95.<sup>16</sup> However, the RIA then introduced a “Problematic Implementation Scenario,” which changed the scoring: 40; 72; and 76, respectively. Hence the RIA recommended the third option, due to problems of moving from the current side-by-side model to the optimal market design of competitive tendering. This conclusion was subsequently endorsed in the 2012 Policy.

The CCPC also reviews in Chapter 3 its own involvement in the HHW sector. It notes that despite a number of allegations concerning anticompetitive behaviour that there was insufficient evidence to commence enforcement proceedings. Mergers in the HHW sector have, nevertheless, been subject to the CCPC’s remit. However, the CCPC argue that given the combination of natural monopoly and high barriers to entry there is little that *ex post* intervention can accomplish and that the alternative *ex ante* approach is more appropriate.

The **consumer perspective** is presented in **Chapter 4**. The econometric report commissioned for the CCPC (2018, para 4.5) found “*monopolistic tendencies.*” Reference is again made by the CCPC (2018, para. 4.7) to the ongoing exit of HHW operators, increasing concentration “*which will allow monopoly providers to increase their charges.*” A significant number of households have no access to a HHW collection service, which the CCPC suggests is due low route density resulting in higher collection costs. However, the vast majority of these households transport their waste to collection points. Switching HHW operator was not an option for 18 per cent of households nationally and 25 per cent in the Dublin region. Switching rates for HHW operators were slightly lower than other utilities. Consumer complaints spike when policy changes occur such as the 2017 introduction of the pay by weight pricing mandate.

**Conclusions and recommendations** constitute **Chapter 5**. The CCPC lists eleven characteristics of the HHW collection market. Many have been identified above, ranging from the fact that the HHW collection market is a natural monopoly to no service being available to many households. These characteristics signal a market that is not performing well for consumers. Furthermore matters are not expected to get better. The CCPC (2018, para. 5.14) sees the HHW “*market ... moving towards a service provision of unregulated monopoly operators.*” So much for the problem; what about the solution?

The CCPC considers that the HHW side-by-side model in Ireland meets the criteria set out in the methodology employed to analyse certain telecommunications markets to determine whether or not they should be subject to *ex ante* regulation: high barriers to entry; a market which does not tend towards effective competition; and, insufficiency of competition law alone to address the market failures. Having decided that *ex ante* regulation is the correct approach the CCPC (2108, para. 5.21) eliminates the option of competitive tendering as the preferred market design on the following grounds,

*This study shows that internationally, the prevailing approach to private provision of household waste collection services is through competition for the market. However, decisions to date in Ireland have not chosen this route. Therefore, this study’s recommendations are made in the context of previous Government decisions and the range of prevailing market conditions, including markets with side-by-side competition, monopoly providers and areas of no service.*

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<sup>16</sup> The unweighted maximum score is 80 (i.e. a maximum of 10 per each of the eight criteria). However, the RIA considered that three criteria were especially important (environmental objectives; price; and, system stability) and instead of a weight of 1 they were given a weight of 1.5, resulting in a maximum of 95. For details see DEC&LG (2012a, pp. 95-96).

The CCPC then makes the specific recommendations concerning the creation of a national economic regulator with the remit set out in Section I. It is also important for the regulator to collect data and conduct analysis including at the level of individual collection routes. In areas where there is a monopoly provider the CCPC (2018, para. 5.25, iii) suggests that one option would be “*targeted competitive tendering for certain areas*,” while in order to increase the availability of HHW collection a cross-subsidy is proposed.<sup>17</sup>

## 2.2 Commentary

### 2.2.1 Introduction

The CCPC’s description and analysis of the HHW market in Ireland is consistent with the results of the earlier analysis of the Competition Authority (2005),<sup>18</sup> Ireland’s development agencies (Forfas, 2007), the OECD’s (2008) examination of public services in Ireland and the international review on waste policy commissioned by the DCCA&E (Hogg, et al, 2009). The CCPC usefully updates and extends the earlier analysis by highlighting, for example, the continuing exit of collectors from the HHW sector as it undergoes further consolidation and evolution towards a series of unregulated local monopolies. There is one area where, however, the CCPC departs strongly from these earlier studies which favoured competitive tendering: <sup>19</sup> the CCPC specifically rejects that as the preferred market design, instead leaving questions of market design to the proposed national economic regulator.

While the main focus of this paper is on the question of appropriate market design and the associated issue of regulatory structures, the CCPC study raises a number of other issues that merit comment.

### 2.2.2 Competitive Constraints?

The CCPC is undoubtedly correct that HHW collectors in adjacent geographic areas are unlikely to compete vigorously with each other. They are likely to reach some kind of tacit arrangement. However, given that HHW collectors can easily expand into adjacent geographic areas at quite low – perhaps even zero - marginal cost, if a HHW waste collector provides particularly poor unsatisfactory service then neighbouring HHW collectors may consider independently entering the poorly performing collector’s market. The fact that this collector has suffered reputational damage will make it more difficult for it to retaliate against the collectors with the better reputation. Hence there might be some, albeit limited, mechanisms that limit poor performance.

### 2.2.3 Regulatory Costs

In terms of the creation of a national economic regulator the CCPC does not provide any costing. This is an important issue. Typically sector regulators in Ireland are funded through a levy on the regulated entities. Some or all of this is passed on to consumers. The proposed national economic regulator will have, as noted above, an extensive programme of work delimiting appropriate geographic markets, selecting the operators and so on. HHW operators will make representations during this process, the

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<sup>17</sup> The CCPC (2018, para. 5.25, iii) wording is somewhat different: “*Creating markets by combining less commercially viable areas with more commercially viable areas, thereby increasing the provision of household waste collection service.*”

<sup>18</sup> The Competition Authority was merged with National Consumer Agency in October 2014 to form the CCPC.

<sup>19</sup> For details see Competition Authority (2005, para. 3.21), Forfas (2007, p. 16), OECD (2008, pp. 335-6) and, Hogg et al (2009, pp. 58-9).

costs of which will no doubt be reflected in HHW charges. Furthermore if a license is taken away from an incumbent legal action may follow.

#### 2.2.4 Universal HHW Collection & Cross-Subsidy

In raising the issue of a cross subsidy via the combining of a geographic area with a commercially viable HHW collection service with an area where collection service is a less or not viable, the CCPC study identifies the important issue of securing access for all households to a HHW collection service at reasonable cost. Such universal service is likely to result in broader environmental benefits in that there is assurance that all households dispose of HHW waste in an appropriate manner and have the correct incentives to minimise waste. The incidence of households that illegally burns their waste or dispose of the waste in some other unregulated manner (e.g. fly tipping) is likely to be reduced.<sup>20</sup>

At the present time there is considerable variation in the degree to which HHW collection services are used by households. Table 1 for 2015/16 presents, by local authority and waste region, the percentage of occupied households that avail of the services of a HHW collector (collection or participation rates). In several instances the data suggest something close to universal use of a HHW collector: DLR, Fingal, South Dublin, Louth, Galway City and Cork City all have collection rates between 90 and 100 per cent. At the other end of the spectrum Donegal has a collection rate of only 28 per cent. In between are local authorities such as Kerry, Kilkenny, Offaly and Cavan which have collection rates around 50 per cent. Overall the collection rate for Ireland, according to the CCMA (2018, p. 7), is 72 per cent.

The CCPC (2018, para. 4.9) argues, not unreasonably, that population density is an important factor in determining collection rates. In low density local authorities HHW collection charges may be prohibitive and hence there is limited HHW collection services compared to the much more densely populated local authorities that can realise economies of density. In order to investigate the matter further we present, in Table 2, collection rates for the six most urban (i.e. high density) and six most rural (i.e. low density) local authorities in Ireland. Apart from Dublin City Council all the urban local authorities have collection rates between 92 and 99 per cent suggesting universal service provision.<sup>21</sup> In contrast, although the rural local authorities have on average lower collection rates – 59 per cent vs. 93 per cent – what is striking is the variance of collection rates. The most rural local authority, Leitrim, has a collection rate of 83 per cent, while the sixth, Monaghan comes in at 72 per cent, while Donegal is 28 per cent.<sup>22</sup>

This suggests that there are factors at work in determining household collection rates that are independent of household density.<sup>23</sup> In the case of Leitrim, for example, the CCMA (2018, p. 8)

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<sup>20</sup> CCPC (2018, para. 4.12) estimates 3 per cent of households dispose of their waste in an unregulated way. For further discussion see DEC&LG (2012a, pp. 42-45).

<sup>21</sup> The data in Table 2 refer to occupied households that have a HHW kerbside collection service. In some instances households may use bags especially in the inner city where streets are narrow, houses front on to the street with have no rear access and/or there are other limitations on storage. According to the EMWR (2015, p. 87), “[H]ouseholders availing of a bag collection service are not currently registered with a service provider as bags are purchased at retail outlets. This makes it difficult to estimate how many of these households avail of a paid service.” It appears that this is one of the reasons for the much lower collection rate reported in Table 2 for Dublin City compared with the other local authorities in the left hand column in the table.

<sup>22</sup> But Donegal has, according to CCMA (2018, p. 8), “a very high distribution of Civic Amenity sites.”

<sup>23</sup> The CCMA (2018, p. 9), for example, gives the following examples: no go estates; and, operational considerations, such as roads not suitable for collection vehicles.



comment the local County Council introduced bye-laws “making it mandatory to join a collection service and they did reach 83% participation from a low of just over 50%.” More recently bye-laws have been introduced across the State by local authorities,

*obliging consumers to participate in an authorized waste collection service or provide documentary proof on what alternative means they use to dispose of their waste and encouraging greater segregation of waste to reduce volumes of residual waste collected. This means that from now on, every household must be able to prove that they have a contract in place with an authorized waste collector or that they regularly use a civic amenity site or recycling center.*<sup>24</sup>

This is likely to lead to a further boost in the levels of households availing of HHW collection as compared to those in Table 1.

**Table 1**  
**Households Using a HHW Collection Service, by Waste Region and Local Authority, 2015/16**

Area	% households served by HHW collector	Area	% households served by HHW collector	Area	% households served by HHW collector
<b>Southern Region</b>	<b>65</b>	<b>Connacht/ Ulster Region</b>	<b>58</b>	<b>Eastern-Midlands Region</b>	<b>82</b>
Carlow	64	Cavan	54	Dublin City	74
Clare	61	Donegal	28	Dun Laoghaire Rathdown (DLR)	99
Cork City	98	Galway City	92	Fingal	98
Cork Co	57	Galway Co	62	South Dublin	97
Kerry	51	Leitrim	83	Kildare	84
Kilkenny	50	Mayo	59	Laois	59
Limerick	65	Monaghan	72	Longford	79
Tipperary	66	Roscommon	48	Louth	96
Waterford	78	Sligo	71	Meath	72
Wexford	76	-	-	Offaly	55
-	-	-	-	Westmeath	74
-	-	-	-	Wicklow	53

Note: the number of occupied houses is based on CSO data is for 2016; the total number of houses using kerbside collection using National Waste Collection Permit Office annual returns is for 2015. There are 31 local authorities (i.e. 26 County Councils; three City Councils - Cork, Dublin & Galway; and two City and County Councils – Limerick and Waterford).

Source: CCMA (2018, pp. 7-8).

Delivering universal service with uniform prices in the face of a variation in costs can be achieved through the CCPC’s suggested cross-subsidy between households in one geographic area. An argument against such a cross subsidy is that it raises the price of collection in the commercially viable area and lowers the price in the area where service is less viable. Thus some households in the former area may be priced out of the market, while more of those in the latter area will avail of HHW collection. However, it is not clear how much weight should be attached to such an argument in the context of HHW collection. After all even in local authority areas which can be characterised as rural collection rates reach 83 per cent.

<sup>24</sup> <https://www.mywaste.ie/my-household-waste-bye-laws/>.

**Table 2****Households Served With a HHW Collection Service, by Urban & Rural Local Authorities, 2015/16**

Local Authority Ranked by Urban Area	% of population in town areas	% households served by HHW collector (collection rate)	Local Authority, Ranked by Rural Area	% of population in rural areas	% households served by HHW collector (collection rate)
Cork City	100	98	Leitrim	89.3	83
Dublin City	100	74	Galway Co.	77.8	62
Galway City	100	92	Roscommon	73.2	48
Dun Laoghaire Rathdown (DLR)	98.8	99	Donegal	72.7	28
South Dublin	98.0	97	Mayo	71.4	59
Fingal	92.7	98	Monaghan	70.7	72
Average		93	Average		59

Note: collection rates are derived from Table 1; the per cent of the population in town areas refers to towns with a population of more than 1,500, while rural areas refers to the per cent of the population not in towns (i.e. population of town areas less than 1,500 persons). The town/rural split is for 2016 and is based on the Census of Population for that year.

Source: CCMA (2018, pp. 7-8) and Central Statistics Office, *Census of Population*.

Any adverse impact of the cross subsidy could be offset by the introduction of waivers for poorer households.<sup>25</sup> Such households are most likely to be sensitive to any HHW collection price increase. Waiver systems existed prior to the withdrawal of local authorities from HHW collection. If linked to an existing benefit that targeted low income households then this is likely to minimise administrative costs and could be applied on a State-wide basis.<sup>26</sup> Any waiver system should incorporate pay by weight incentives so as to incentivize households to minimise waste.<sup>27</sup>

Furthermore, as argued in Sections III to VI, competitive tendering is a better market design than the current side-by-side model. By eliminating rents and needless duplication of services, HHW charges are likely to lower than they otherwise would be: using the comparison between Cork (side-by-side competition) Belfast (competitive tendering) as an example would see a 30 per cent reduction in HHW charges. Such a reduction would go a considerable way to offset the impact of any cross subsidy on HHW charges.

Increased utilisation of HHW collection can and is being achieved by a variety of methods. Obliging households to verify that their waste is being disposed of in an appropriate manner is likely to increase HHW collection rates. Universal service provision – by making HHW collection available in areas where hitherto this has not been the case – is also likely to increase collection rates. However, the universal service provision needs to be complemented by waivers for low income households which are likely to be particular sensitive to any increase in price implied by the cross-subsidy occasioned by a universal

<sup>25</sup> According to CCMA (2018, p. 10-11) only Limerick City and County Council operate such a scheme at the present time. In 2017 the DCCA&E (2017) an annual support of €75 was announced for persons with lifelong/long-term medical incontinence. The importance of waivers was reduced as the local authorities withdrew from HHW collection (DEC&LG (2012a, p. 56).

<sup>26</sup> A starting point might include those qualifying for the General Medical Services scheme.

<sup>27</sup> HHW collector's charges are often a two part tariff: a fixed and variable charge with the latter reflecting pay by weight. Hence a waiver system could reduce if not abolish the fixed part of the tariff (since that does not incentivized waste reduction/recycling) and retain either in whole or in part the variable charge, which is the pay by weight component.

service obligation. The introduction of competitive tendering by lowering HHW charges below what they would otherwise be also encourages greater use of HHW collection by moderating the impact of any cross subsidy on HHW charges.<sup>28</sup>

### III IMPLEMENTATION RISKS AND THE CCPC'S DEFERENCE TO THE 2012 POLICY

#### 3.1 Introduction

The CCPC defers to the 2012 Policy in rejecting competitive tendering as the preferred market design, instead recommending a national economic regulator. It is, of course, important in making policy recommendations to take into account existing policy. However, it is not at all clear why the CCPC should regard the 2012 Policy as a binding constraint. It begs the obvious question: why request the independent agency to address issues in the HHW sector if it is going to unquestioningly accept current policy? There is nothing, for example, in the CCPC's (2018, Appendix A) broad terms of reference which would explain such a limitation. An examination of the 2012 Policy is thus merited to determine whether or not the underlying rationale that it puts forward for rejecting competitive tendering was and is still valid. If the answer is in the affirmative then the CCPC's deference is appropriate.

#### 3.2 The Regulatory Impact Analysis: Implementation Risks<sup>29</sup>

The DCCA&E's commissioned RIA into HHW concluded that competitive tendering "*scores highest under optimal implementation conditions, however should implementation be problematic, side by side competition provides a superior mix of outcomes.*" This would be a particular problem "*during this difficult phase of the economy's development* (p. 105)." In each case the RIA outlines the risk and then assesses it.

The RIA raises two sets of implementation risks. The first set is confined to implications of tendering for smaller and medium sized enterprises (SMEs). Here the RIA argues that SMEs,

*may be disadvantaged, relative to their larger counterparts, due to the difficulties they may have in assembling the managerial and corporate expertise required to effectively engage with a somewhat complex [competitive] tendering process* (p. 100).

Furthermore, although the RIA acknowledges that the purpose of HHW regulation "*is not to support employment amongst inefficient service providers* (p. 101)," it is nevertheless the case if the existing SMEs are unsuccessful in competitive tendering then "*the simultaneous collapse of several household waste collection companies [will] result in a strong negative impact on the local economy* (p. 102)."

The second implementation risk was summarised as follows: "*[T]he current industry may be unwilling to engage in an altered market structure and may take actions to obstruct change* (p. 102)." The RIA pointed out that the HHW sector was against the introduction of competitive tendering and that since local authorities had withdrawn from HHW, local authorities were not in a position to be providers of last resort. A number of possible tactics by HHW collectors to thwart the successful operation of competitive tendering were outlined including a boycott (i.e. a service provision strike). The RIA did, however, point out that such a collective boycott would require considerable trust amongst the HHW

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<sup>28</sup> It might also be easier to administer any waiver programme under competitive tendering where there is only one HHW collector per franchise area.

<sup>29</sup> Unless specified otherwise all page references in this section are drawn from DEC&LG (2012a).

collectors, and “*may, in practice, be unachievable, as the benefits to an individual firm of clandestinely breaking ranks could be massive* (p. 102).” Also, as the RIA points out, if non-indigenous firms engaged in the bidding for tenders then it would self defeating for indigenous firms to boycott the tendering process.

In terms of future policy options the RIA stated that there should be a review of HHW policy in 2016. Furthermore the RIA stated that should “*it be deemed necessary, Government may then opt to alter the regulatory regime, including by introducing [competitive tendering] or by otherwise monopolising household waste collection services* (p. 107).”

### 3.3 2012 Policy

The 2012 Policy echoes the RIA. It notes that HHW is a critical service and that interruptions in HHW collection can have an adverse impact of public health. Reference is made to SMEs “*may be disadvantaged by the introduction of [competitive tendering], relative to their larger counterparts, particularly during the current economic climate which may also undermine future levels of competition.*”<sup>30</sup> Enhanced regulatory measures included making it compulsory for all households to demonstrate they are either availing of a HHW collection service or otherwise disposing of the waste in an acceptable manner. The CCPC was requested to monitor the new regulatory regime and report by 2016 when a formal HHW policy review would be taken.

### 3.4 The CCPC Study

The CCPC (2018, para. 3.23) did not report in 2016 due to lack of data, but did report in 2018. On 8 May 2019 the Minister, in response to a Parliamentary question on whether or not he would adopt the recommendations in the CCPC’s study, stated that later in 2019 a review of the 2012 Policy would be initiated in which account would be taken of the CCPC study in developing waste policy on issues such as market structure.<sup>31</sup>

### 3.5 Commentary

#### 3.5.1 Introduction

The commentary on the RIA and 2012 Policy can be divided into two parts: whether or not the implementation risks are sufficiently grave to overturn the RIA’s initial conclusion that competitive tendering is the optimal market design; and, whether or not there are good reasons for the CCPC to take as a given the RIA and 2012 Policy. They are, of course, related to each other.

#### 3.5.2 Competitive Tendering: Implementation Risks?

There are several cogent reasons for arguing that the weight accorded to implementation risks by the RIA and the 2012 Policy is unwarranted.

First, the nature of the implementation risk is highly conditional. The RIA, as noted above, poses the issue in terms of “*should implementation be problematic,*” not that it will. Second, in evaluating the risks themselves the RIA presents no supporting data or evidence, in contrast to much of the rest of the RIA. For example, reference is made in the RIA to the impact on local unemployment of the simultaneous

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<sup>30</sup> DEC&LG (2012b, p. 30).

<sup>31</sup> For details of the PQ see [https://www.oireachtas.ie/en/debates/question/2019-05-08/1207/#pg\\_1207](https://www.oireachtas.ie/en/debates/question/2019-05-08/1207/#pg_1207).

collapse of several HHW operators. However, no evidence is provided on: the likely simultaneously failure of multiple HHW operators in the same local area; the likely size of any employment loss; the re-employment rates of those unemployed; the local and national labour market unemployment rates; and, the loss of employment in HHW compared to the total employment in the local employment area. Attention would also need to be paid to any offsetting increase in the demand for local goods and services, given that competitive tendering will likely lower HHW collection charges. Households can then spend the resulting increase in their real income on other local goods and services.

Third, the RIA and the 2012 Policy were developed against the backdrop of the Great Recession. Economic conditions were grim: the unemployment rate in July 2012, the month the RIA was published, was 15.6 per cent, while GNP remained unchanged between 2011 and 2012.<sup>32</sup> Hence it is perhaps understandable that in framing policy there was a concern over economic conditions and, in particular, unemployment. However, when the CCPC was requested to conduct its study in September 2017 unemployment had fallen to 6.6 per cent, a year later to 5.6 per cent, while the 2017/2018 GNP growth rate was 6 per cent. Hence it would appear that fears concerning unemployment and local labour markets are of much less if any relevance to-day in framing HHW policy.<sup>33</sup>

Fourth, the RIA argued that SME's might be disadvantaged in bidding for tenders under a competitive tendering system. However, if it can be demonstrated that this is the case and that having such firms participate in competitive tendering would substantially increase the degree of competition and thus lead to lower HHW collection charges, there is nothing to prevent measures being introduced to facilitate SME participation. In the awarding of the 3G telecom licenses in the UK, for example, great attention was paid in the auction design to ensure that new entry could spur competition in the bidding (Binmore & Klemperer, 2002).

### 3.5.3 CCPC Deference Merited?

There are several reasons why the CCPC should not have accepted the 2012 Policy's position based on the underlying research in the RIA, in addition to those set out above, as a binding constraint with regard to competitive tendering as the preferred market design.

First, the RIA in recommending side-by-side competition together with enhanced regulation specifically mentioned the possibility of competitive tendering being introduced as a result of any future policy review. At that time it was anticipated this would occur in 2016, instead the review will be initiated in 2019. Hence the option of competitive tendering as the preferred market design was considered to be a credible option in any future policy review.

Second, the objective of competition and consumer protection policy should provide the guiding principle for the CCPC in making recommendations. According to the CCPC's 2015-2018 strategic statement, *"Our vision is for open and competitive markets where consumers are protected and*

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<sup>32</sup> See: <https://www.cso.ie/multiquicktables/quickTables.aspx?id=mum01> for seasonally adjusted monthly unemployment rates. Annual GNP in constant markets prices was kindly supplied by Kieran McQuinn of the Economic and Social Research Institute.

<sup>33</sup> It is not entirely clear that this risk should be addressed through HHW policy. Labour market demand is best dealt with aggregate demand policy, while supply side issues through training, wage subsidies and so on. Trying to use one policy instrument to address several different objectives is often a recipe for failing to attain any of the objectives.

*businesses actively compete.*"<sup>34</sup> In the Irish League of Credit Unions case the Supreme Court also set out the goal of competition policy:

*106. The entire aim and object of competition law is consumer welfare. Competitive markets must serve the consumer. That is their sole purpose. Competition law, as is often said, is about protecting competition, not competitors, even if it is competitors who most frequently invoke it. Its guiding principle is that open and fair competition between producers of goods and services will favour the most efficient producers, who will thereby be encouraged to satisfy consumer demand for better quality products, wider choice and lower prices. Their reward is a greater market share.*<sup>35</sup>

This suggests that unless there is some express instruction to the contrary that the CCPC should be concerned with consumer welfare rather than issues related to local unemployment or the alleged difficulties SME's may have competing due to lack of size.

Third, apart from the unlikelihood of incumbent HHW collectors successfully boycotting any competitive tender process for reasons set out in the RIA, there is another important for discounting this risk: collective action by incumbent HHW collectors is likely to be a *prima facie* breach of the Competition Act 2002. The CCPC, for example, in providing guidance to what trade associations may and may do under competition law, stated:

*A collective boycott, organised between competing undertakings in order to place pressure on ... a buyer, is a form of output limitation, and thus, a restriction of competition by object. In its enforcement work, the [CCPC] has encountered many circumstances in which competitors are alleged to have colluded in a collective boycott. Where such allegations are proven, the [CCPC] takes the view that significant consumer harm is likely to result, and therefore, prevention and/or punishment of collective boycotts is a key enforcement priority of the [CCPC].*<sup>36</sup>

For a restriction by object case to be successful in Court only requires demonstrating that the boycott took place; there is thus no requirement to show that consumers are worse off as a result, it is presumed because of the inherently anti-competitive nature of the agreement.<sup>37</sup>

#### 3.5.4 Conclusion

In sum, the implementation risks identified in the RIA and endorsed by the 2012 Policy do not stand up to critical scrutiny. The RIA's initial finding that competitive tendering is the optimal market design stands. Furthermore, there are additional reasons for the CCPC not to accept the 2012 Policy and the accompanying RIA as a binding constraint in making policy recommendations.

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<sup>34</sup> CCPC (2015, p.4). This strategy statement was in place when the CCPC prepared its study. However, there was no change in the CCPC's vision in its 2018-2020 strategy statement.

<sup>35</sup> *Competition Authority –v- O'Regan & Ors* [2007] IESC 22.

<sup>36</sup> Competition Authority (2009, para. 4.20), footnotes omitted.

<sup>37</sup> For further discussion see Andrews, Gorecki & McFadden (2015, pp. 94-97) and Whish & Bailey (2018, pp. 119-126).

## IV HIDING IN PLAIN SIGHT: UNREGULATED MONOPOLIES

Policy should be forward looking. It should to the maximum extent possible take into account reasonably anticipated developments. The terms of reference for the CCPC's study specifically refer to the long term. In the case of HHW collection one important future consideration is the evolution of market structure. A consistent theme of both the RIA and the CCPC study is ongoing reduction in the number of HHW collectors and the resultant consolidation.<sup>38</sup> This reflects, in part, economies of scale and density. These are structural characteristics that are enduring features of the market. The upshot is, as the CCPC correctly states, that the market is moving towards "*unregulated monopoly operators.*"

The corollary of this is the side-by-side competition will no longer exist, except at the boundaries between the unregulated monopoly providers. No longer will it be the case – as occurs on the street I live on in Dublin City – that two or more HHW collectors provide service along the same street.<sup>39</sup> This suggests that the national economic regulator favoured by the CCPC will either have to regulate the price charged by the monopoly operator or introduce some form of competitive tendering. In earlier research the Competition Authority (2005, paras. 3.9-3.14) considered the merits of both and rejected the former option. That discussion need not be rehearsed here.

## V CONTEXT MATTERS: FRAMING THE REGULATORY DEBATE

### 5.1 Introduction

The findings of the analysis in this paper to date are twofold that:

- the RIAs initial finding that competitive tendering is the optimal market design stands, the implementation risks should be discounted; and,
- the market structure of the HHW sector is evolving towards a series of unregulated monopolies, which as the CCPC (2018, para. 4.7) states, "*will allow monopoly providers to increase their charges.*"

This raises the question of whether, if the market structure were competitive tendering, the application of the three criteria used to the CCPC to determine whether or not *ex ante* regulation was required when the market structure was side-by-side competition, would also result in recommending *ex ante* regulation. It should be noted that all three conditions need to be satisfied in order to justify *ex ante* regulation; the conditions are thus cumulative.<sup>40</sup>

### 5.2 Competitive Tendering: Definition

It is first, of course, necessary to specify what is meant by competitive tendering. The RIA defined competitive tendering as follows:

*In a franchise bidding system, a local authority ... issues a tender the winner of which will be the sole provider of household waste collection services, under contract, in accordance with a given service level, for a given period of time, and for a given geographic area, i.e. a local market. In simple terms, an auction is held for the right to deliver a service on a monopoly basis. It is during this auction when competition occurs, as the bidding firms compete to win the tender by offering*

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<sup>38</sup> See, for example, DEC&LG (2012a, p. 12).

<sup>39</sup> Indeed, the number has already declined from three to two.

<sup>40</sup> European Commission (2007, para. 14).

*bids. The successful bidder is the firm which offers the lowest combination of price to the householder and/or meets the service quality standards.*<sup>41</sup>

The RIA recognises local authorities are the most appropriate administrative unit to conduct the tendering, which is consistent with the practice elsewhere.<sup>42</sup> The local authority is likely to have information and knowledge concerning local conditions and preferences that are hard for a national economic regulator in Dublin to replicate.<sup>43</sup> The CCPC (2018, para. 2.30) has concluded in a number of merger cases that local authority areas are the relevant geographic market.

In order to minimise the costs of bidding and so attract the maximum number of bidders to the extent possible the information made available to bidders by local authorities should be in common format, the nature of the contractual terms and conditions should be the same and the service characteristics similar. The contract length should be sufficient that the bidders can recover any sunk costs.

The tender can also be structured to meet various environmental objectives, including waste segregation, pay by weight charging, mandatory reporting of illegal dumping and universal service provision.<sup>44</sup> There are likely to be fewer collection vehicles under competitive tendering resulting in lower CO<sub>2</sub> emissions and less congestion, especially in urban areas. Furthermore, if the geographic area included in the local authorities tenders covers all households then this will constitute a universal service obligation, given that a uniform price. If the tender is structured with penalties for non-compliance then local authority has a higher degree of control over the industry as compared to side-by-side competition.<sup>45</sup>

In some cases it may make sense for local authorities that are contiguous to one another to organise a joint competitive tender.<sup>46</sup> Advice on the tendering process could be provided to local authorities by the Office of Government Procurement (OGP).<sup>47</sup> No doubt the OGP would call upon the expertise of local authorities in Northern Ireland, other parts of the UK which are familiar with HHW tendering<sup>48</sup> and elsewhere. Furthermore the expertise of the CCPC could also be called upon to ensure that tenders are structured in such a way as to reduce the opportunities for successful bid rigging by HHW operators. Thus there would be no need for a national economic regulator.

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<sup>41</sup> DEC&LG (2012a, p. 62). Footnotes omitted.

<sup>42</sup> CCPC (2018, para. 3.14). Furthermore, local authorities in Ireland were responsible for HHW collection before they withdrew in favour of the private sector.

<sup>43</sup> For example, the CCMA (2018, p. 2) point out that “*high density collection would have a one compartment truck collecting one waste type and would collect up to 880 lifts in 5 hours.*” In contrast, “*the rural route collection would be a compartmentalised vehicle collecting several waste streams simultaneously and would only collect up to 260 lifts in 9 hours.*” Hence in combining geographic areas with different household densities the implications of different collection vehicle configurations would need to be taken into account, perhaps leading to somewhat different collection frequencies.

<sup>44</sup> CCPC (2018, para. 3.6).

<sup>45</sup> CCPC (2018, para. 3.17) and CCMA (2018, p. 16).

<sup>46</sup> At one point the four Dublin local authorities combined the tender for the provision of green bin collection services for dry recyclables.

<sup>47</sup> For details see: <https://ogp.gov.ie/>. One of the aims of the OGP is to encourage SMEs, hence mitigating one of the implementation risks.

<sup>48</sup> See, for example, OFT (2006).



### 5.3 Competitive Tendering: High Barriers to Entry?

The first criterion that has to be satisfied for *ex ante* regulation is the “*presence of high and non-transitory barriers to entry*,”<sup>49</sup> is not attained under competitive tendering. Barriers to entry are low to medium as compared to the high barriers to entry under side-by-side competition. But on what basis can such a conclusion be reached when the same non-transitory economies of scale and density are present? The answer revolves around the nature of competition. Under side-by-side competition, for reasons set out above, incumbents likely reach tacit agreements and understandings not to compete with rivals in adjacent geographic markets, while the ability to selective price cut combined with economies of scale and density, discourages new entrants.

Under competitive tendering or what is sometimes referred to as competition for the market, competition takes place for the right or the contract to supply the HHW collection service as specified in the tender documents. The incumbent has few if any advantages over new entrants, provided that enough reliable market information is provided to bidders – and the OGP and the local authority would have a strong interest in ensuring this condition is met. Reaching and enforcing tacit understandings as to which collectors would win particular tenders would be much more difficult for the same reasons outlined above concerning an incumbent boycott of any attempt by the State to introduce competitive tendering.

In effect under competitive tendering the right to service all households in a given geographic area are simultaneously available to the successful bidder. The entry cost is that of preparing the bid and ensuring the infrastructure necessary to deliver the service is available. The corollary for side-by-side competition is the cost acquiring the local authority client list when the local authority withdrew from HHW collection. Although the client list acquisition costs are typically not available due to concerns over business secrets in some cases this is not the case: Country Clean paid Cork City Council between €166 and €180 per household for client lists in 2010/11.<sup>50</sup> In the case of Dublin City Council with 140,000 households it is difficult to image that the tender costs are going to be anywhere near €22.4 million to €25.2 million.<sup>51</sup> Of course, once the HHW collector becomes the incumbent then under side-by-side competition any new HHW collector has to sign up each new customer household by household.

### 5.4 Competitive Tendering: Lack of Effective Competition?

The second criterion that has to be satisfied for *ex ante* regulation is that “*market structure ... does not tend towards effective competition within the relevant time horizon*.”<sup>52</sup> The evidence suggests that this condition is not met. There are three (and maybe more) classes of bidders: collectors that currently serve a series of geographic markets in Ireland; others with a more local or regional focus;<sup>53</sup> and, international bidders which, as noted above, have been reportedly discouraged from entering the Irish

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<sup>49</sup> CCPC (2018, p. 62).

<sup>50</sup> DEC&LG (2012a, p. 99).

<sup>51</sup> i.e. 140,000 x €166 = €22.4 million; 140,000 x €180 = €25.2 million.

<sup>52</sup> CCPC (2018, p. 62).

<sup>53</sup> The Irish Waste Management Association, the representative body whose members account for 75 per cent of HHW, present details of HHW operators by geographic location: <http://iwma.ie/household-waste/iwma-members-in-your-area/>.

market due to its side-by-side nature (i.e. the costs, difficulties and uncertainties of ensuring enough existing households switch so as to make entry profitable). Incumbent HHW operators are likely to have developed expertise in competitive bidding or tendering in various commercial waste streams,<sup>54</sup> while international bidders would often also be familiar with HHW tendering.<sup>55</sup> As noted above, the use of common tenders and standard documentation lowers the costs of bidding and hence is likely to encourage more rather than fewer bidders.

The second aspect is the likely impact of competitive tendering in terms of prices compared to side-by-side competition, especially as it evolves into a series of local monopoly providers. Here the evidence is solid. The RIA summarises it as follows:

*Firstly, international experience suggests that contracting out provides best value for money and is generally less costly than in-house provision. Secondly, where competition in the market is compared, it is more expensive than either public or private provision on a monopoly basis. Lastly, municipalities which contract out waste collection have control over the environmental impact of the waste collection provision, a factor which is noted in many of the articles referenced.*<sup>56</sup>

The RIA's comparison of HHW waste charges between Cork – side-by-side competition – and Belfast – competitive tendering, found that for Cork the annual per household charge was €312.45, for Belfast, €219.67.<sup>57</sup> Thus the cost saving is 30 per cent.

## 5.5 Competitive Tendering: Insufficiency of Competition Law?

The third criterion that has to be satisfied for *ex ante* regulation is that the “*insufficiency of competition law alone to adequately address the market failure(s) concerned.*”<sup>58</sup> Again the criterion is not met. There are a number of ways in which firms can thwart the impact of competitive tendering and thus lead to market failure. The most obvious is for potential bidders to agree beforehand to allocate bids amongst themselves, with the resultant risk that price will exceed cost, where cost includes a normal rate of return. In other words, rents are being earned.

As noted above given the diversity of firms bidding for the contracts successful bid-rigging is problematic. However, notwithstanding that, such bid-rigging is a by object prohibition under the Competition Act 2002. Hence collectors run the risk of criminal prosecution resulting in fines and/or jail sentences.<sup>59</sup> Potential bidders should be made aware of these consequences by the OGP and the local

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<sup>54</sup> See, for example, M/09/024 – *Greenstar/Veolia (Ireland)* (paras. 3.36, 3.45-3.49, & 5.18).

<sup>55</sup> This will also apply to some existing HHW collectors in Ireland since some local authorities procured green bin collection through tendering such as Dublin City Council. Currently apartment complexes might, for example, secure waste collection through tendering.

<sup>56</sup> DEC&LG (2012a, p. 40)

<sup>57</sup> DEC&LG (2012a, p. 85). The RIA comparison makes a number of adjustments to ensure that like to being compared to like.

<sup>58</sup> CCPC (2018, p. 63).

<sup>59</sup> This needs to be qualified in view of the recent bid-rigging case involving commercial flooring. The defendants pleaded guilty faced with compelling evidence that the CCPC had assembled. The subsequent Court decisions, at both trial and on appeal, however, employed an inappropriate methodology for determining the sanction lessening the effectiveness of competition enforcement. For further details see Gorecki (2017, 2019). On the

authorities and advice should also be sought from the CCPC as to the optimal timing of bids so as to minimise the opportunity for successful bid-rigging.

On merger control there is always the danger that especially aggressive bidders could be acquired by incumbents to prevent such mavericks from disrupting any tacit or formal market place agreements. Again the Competition Act 2002 prohibits mergers that substantially lessening competition. Ireland has a compulsory notification merger regime, but as the CCPC (2018, para. 3.50) study points out

*the majority of mergers and acquisitions which occur in the household waste collection sector involve small operators whose turnover falls under the CCPC's merger notification thresholds and thus, are not required to be mandatorily notified.*

However, under the Competition Act 2002 the Minister responsible for competition policy may specify a class of mergers that has to be notified to the CCPC irrespective of the turnover. To date the only class of such mergers are media mergers.<sup>60</sup> However, there is no reason in principle why it could not be extended to cover HHW collection.

The CCPC has conducted merger reviews involving leading HHW collectors: M/09/024 – *Greenstar/Veolia(Ireland)*; and, M/16/008 – *PandaGreen/Greenstar*. If there were competitive concerns over below threshold acquisitions by these HHW collectors then it is possible for the merger to be cleared by the CCPC subject to the merged entity voluntarily notifying all such mergers to the CCPC so that a competition assessment can be conducted prior to any such merger being implemented. Such a condition was, for example, included in M/04/051 – *Grafton/Heiton* and M/18/067 – *LN-Gaiety/MCD Productions*.

It should be noted that merger control is *ex ante* not *ex post* while if dominant firms were to abuse their market position by in some way trying to prevent the successful operation of the tendering system, then the CCPC could seek an injunction halting such activity, again very close to *ex ante* intervention.

In sum, there is no justification for *ex ante* regulation using the CCPC's threefold test. This conclusion is strengthened by the CCPC (2018, para. 5.17) study's observation that "*regulation ... is only undertaken as a last resort due to actual or expected market failure.*"

## **VI CONCLUSION**

The DCCA&E is to commence a review of its 2012 Policy in 2019. That review – as anticipated in the 2012 Policy – will rely on the views of the CCPC in terms of the state of competition in the HHW sector and policy guidance based in its recommendations. The CCPC views are set out in its 2018 study on the HHW sector in which it recommends a national economic regulator but not the appropriate market design. The description and analysis of the CCPC concerning the HHW sector should be relied upon by the DCCA&E. There is, however, no need for a national economic regulator and all the associated costs, which no doubt will be passed onto households.

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CCPC's enforcement with respect to the behaviour of the HHW sector to the introduction of pay by weight see Gorecki (2016), which related to the events described in CCPC (2018, paras. 3.29-3.33).

<sup>60</sup> Andrews, Gorecki & McFadden (2015, pp. 272-4).

Competitive tendering administered by local authorities with advice from the Office of Government Procurement, the CCPC and others is the preferred market design and regulatory structure. Such tendering is a much better alternative than the current side-by-side model, which is in any event, moving towards a series of monopoly providers. HHW collection charges should be more attractive as monopoly rents are eliminated. CO<sub>2</sub> emissions and congestion costs will be reduced as there will be no inefficient duplication of services. Finally, mechanisms can be introduced that complement competitive tendering so as to ensure that HHW collection charges do not get too high in low density areas, thereby protecting positive externalities of broader take-up of HHW collection services.

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