



Institute of Public Administration

Research in respect of the remunicipalisation of  
waste services in Dublin City Council

Research on behalf of the Strategic Policy Committee of  
Dublin City Council (Climate Change, Environment and  
Energy)

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## 1. Introduction

In July 2019, Dublin City Council (DCC) passed a cross-party composite motion calling for the remunicipalisation of household waste services. A cross-party working group was established by the Council to consider how this might be advanced. The group reported back to the full Council in November 2019. Among the group's recommendations was a suggestion that DCC's Executive would provide funding to conduct research that would support the development of a new roadmap for waste management in the city.

A sub-committee of the Climate Change, Environment and Energy Strategic Policy Committee (SPC) was established in order to commission and oversee this research. The terms of reference drawn-up by the sub-committee indicated that the research would cover two areas:

- 1) To review the approach to waste collection in Dublin through a comparative analysis with the waste collection approaches pertaining in four other European cities. The cities were selected by the sub-committee on the basis of comparable size to Dublin and because they have progressive approaches to waste management. A number of performance criteria were also specified by the sub-committee including the coverage, cost of service, quality of service, employment terms and conditions and environmental impact.
- 2) The second phase of the research, to commence only on completion of the first phase, would consider the evidence and findings to emerge in Phase One in the context of waste management arrangements pertaining in both Dublin City and Ireland. This would include a description of the legal and regulatory context and would draw attention to the legislative and other changes that would be required in considering the re-municipalisation of domestic waste collection services in Dublin City Council.

In September 2021, the SPC sub-committee appointed the Research Division of the Institute of Public Administration (IPA) to carry out the research. It was agreed that, as requested by the committee, a first phase of the research would provide information on domestic waste collection services in Dublin and a number of comparable European cities. This would be followed by and would inform a further report analysing the legal considerations involved in any new approach to domestic waste collection services in the DCC administrative area.

## 2. Context

Environmental protection and sustainable development are central to current government policy, with climate and biodiversity challenges given particular emphasis in the Programme for Government (Government of Ireland, 2020). At a European level, the European Green Deal sets out a roadmap for transition to a new economy where climate and environmental challenges are turned into opportunities. Circularity is central to evolving EU and Irish policy. The concept aims not only to help deliver on environmental commitments but to ensure that resources are kept within the local economy as long as possible.

The approach to household waste collection in Ireland is atypical compared to other European cities. Waste collection is carried out by private companies who contract with individual households and thereafter own the waste in terms of subsequent treatment. Any company who is granted a waste collection permit by the National Waste Collection Permit Office (NWCPO), a local authority shared service run by Offaly County Council, may compete in any waste market and any local authority administrative area authorised in that permit.

The Government's *Waste Action Plan for a Circular Economy* (Department of Communications, Climate Action and Environment, 2020) sets out a range of commitments in respect of the circular economy. The policy identifies a range of measures across different waste streams and puts an emphasis on increased regulation to ensure EU targets in respect of waste are achieved. In order to deliver on these objectives, it is proposed that the National Waste Collection Permit Office (NWCPO) be given increased powers as a waste 'collection market oversight body' (page 21). In addition, the role, capacity and responsibilities of the Waste Enforcement Regional Lead Authorities (WERLAs) will be enhanced to position the local authority sector better to respond to emerging and priority enforcement challenges (page 60).

## 3. Key findings from Phase One

The objective of Phase One was to identify information and data on waste collection arrangements in both Dublin City and a number of comparable cities in order to inform Phase Two of the research. In general terms it was challenging to identify directly comparable data. Within each jurisdiction there are varying administrative structures. There are also differences in how and why data is collected and in this regard it was difficult to get uniformity across the criteria agreed in respect of the comparative

analysis. There are also important historical, cultural, political and economic reasons why waste management has evolved the way it has in the various jurisdictions.

However, notwithstanding these limitations, Phase One was still able to identify some key research findings and data to inform discussions in respect of identifying a new roadmap for waste collection services in Dublin City Council. These are summarised below:

- The DCC administrative area has a population of 554,554 and 211,591 households. Further information from the 2016 Census shows that 35% of households live in apartments, including flats and bedsits, with 65% living in houses.<sup>1</sup>
- In 2022, eleven companies were registered as having permits to collect waste in the DCC Administrative Area. Four of these companies - Greyhound Household, Key Waste Management Ltd, Pádraig Thornton Waste Disposal Ltd, and Pandagreen Ltd - between them account for almost three-quarters of the market. Of these, one company, Greyhound Household, which along with Pandagreen Ltd is part of the Beauparc Group, collects 55 per cent of domestic bins. Further evidence of the consolidation of the domestic waste collection market is evident in the proposed merger of Thorntons Ltd. with the City Bin Co (Curran, 2022).
- Residual, recyclable and bio (food/garden) waste are the waste components picked up at the kerbside in separate collections, while householders are required to bring other waste fractions (e.g. electrical goods, textiles, garden waste) either to drop off points located throughout the community or to recycling centres in each local authority area. Some households are also provided with a kerbside glass collection service. In the main, waste collectors use a wheelie bin system and users are charged each time a bin is lifted, in addition to an annual administration charge. However, a proportion of houses also use pre-paid bags for residual waste and recyclables.
- Dublin is the only one of the five cities surveyed with a fully privatised system of waste collection. In all other cities there is a strong element of public involvement, with waste either collected by the municipality directly by publicly owned companies, or with publicly owned companies managing the service but tendering among private operators for kerbside waste collection. To the extent that a trend is observable from the four comparator cities and their respective countries the trend appears to be towards greater municipal involvement.

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<sup>1</sup> These figures are taken from the 2016 Census. The Census due to take place in 2021 was delayed because of Covid-19 and was held in April 2022. The numbers of households and the proportion living in apartments are likely to have increased in the current census, however, data at local authority level will not be available till later in 2023. [www.data.cso.ie](http://www.data.cso.ie) - <https://data.cso.ie/table/E1005>

- The proportion of households living in apartments rather than houses in the comparator cities is very high, as much as 90 per cent of households, compared with 35 per cent (2016 Census) in Dublin City. This has a significant impact on waste collection.
- The NWCPO/EPA (2021) indicate that waste is collected from 82% of households in the Dublin City Council area. This proportion would appear to include households using pre-paid bag tags but not those who share a bin with a relative or friend as the collection companies and the NWCPO would be unaware that this is happening. Data from the CSO Quarterly National Household Survey whereby a sample of households were questioned (CSO, 2021) indicates that for Dublin county as a whole, 92% of residual waste is collected kerbside via wheelie bin collection, bin sharing and pre-paid bag tags. The comparable figure for the other cities in this report is 100%.
- Data from two operators suggests that householders in Dublin City in 2022 paid on average €243 per annum in waste collection costs. In Copenhagen households paid on average €284 per annum, in Oslo €258 per annum and in Salzburg €232. In Stockholm average annual waste costs are significantly lower (€88) though for the 10 per cent of households living in houses, comparable at €205 to the costs applying in other cities.
- Dublin is the only city that in the main applies a pay-by-weight system. In the other cities, costs for residual waste depend on the size of the residual bin (with the cost of collecting and treating recyclable and bio waste factored into this charge).
- The quality of service measured by the frequency of collection would appear to be similar across all cities. In general, in the comparator cities a greater range of waste fractions are collected kerbside, or if citizens are required to dispose of the waste themselves at bring centres the cost is considered to be factored into the annual charge.
- From an environmental perspective transitioning to alternative fuels and low carbon fleets would appear to be an important objective for the comparator cities assessed.
- Illegal dumping, as opposed to littering, is not perceived to be a problem in the comparator cities. Waste is collected from all households or can be brought to civic amenity points. DCC indicate that 3,400 tonnes of illegally dumped waste was collected in Dublin City in 2020.
- Data we obtained from two waste collection companies suggests that salary figures in Dublin for drivers of waste collection vehicles are broadly similar with the other cities. However, operators in Dublin would appear to be on somewhat lower salaries comparatively. Other cities do not appear to distinguish to the same degree between drivers and operators with waste collection personnel appearing to do both tasks, whereas in Dublin drivers do not empty the bins. The cost of living in Stockholm and Dublin is very similar, with Copenhagen somewhat higher and Oslo

about 20 per cent higher. When the cost of housing is factored in, the cost of living in Dublin is above Salzburg and Stockholm, on a par with Copenhagen and much closer to Oslo.

#### 4. Methodology and approach for Phase Two

Building on the work from Phase One, the scope of this second phase of the research is to review the legal and policy implications of the remunicipalisation of Dublin city's waste collection service. DCC is one of 31 local authorities, albeit the largest, and any changes in services need to take into consideration the wider local government sector and also relevant Irish and European policy and legislation. There is no indication that other local authorities want to change their waste collection arrangements.

This report presents a number of possible courses of action in respect of domestic waste collection services in DCC and reviews their respective strengths and constraints and the extent to which they would deliver on the essential objectives of the cross-party motion of 2019 in respect to the remunicipalisation of waste collection services. Three scenarios are analysed in detail:

- DCC recommencing domestic waste collection either on the basis of excluding the private operators or in competition with them
- DCC tendering for waste collection services (i.e. competition for the market)
- Continuing with the status quo but encompassing current government policy, that is, expanding the role of the NWCPO to safeguard the interests of consumers and ensure environmental benefits.

In addition to drawing on the findings of Phase One, the analysis in this report draws on interviews with a small number of stakeholders in the area of waste collection in Ireland. Also very relevant is existing research in respect of the legal implications of any change in domestic waste collection arrangements. We have reviewed and incorporated in this report the findings in a Senior Counsel opinion commissioned by SIPTU in 2020 on the legal issues posed by the potential re-municipalisation of waste collection services in the State, and also, analysis carried out by DCC's own legal division in respect of possible obstacles to its re-entry into the domestic waste collection market in competition with the private operators. SIPTU also commissioned, in 2019, a review by the Centre for Law and the Environment at the School of Law, University College Cork (UCC) on the remunicipalisation of the household waste collection sector in Ireland. This analysis has been further updated in autumn 2022 to inform the particular research questions in this study. The analysis considers competition law, much of which is grounded in the EU Treaty on the Functioning of the European Union, procurement law

and constitutional law. Case law precedent is also deemed to be significant, in particular the judgment in the case of *Nurendale v. Dublin City Council* (2009).

It is important to emphasise that this report is not in any way a definitive legal opinion. It is a research report encompassing a description of the legal and regulatory context in respect of domestic waste collection in Ireland and also summarises the legislative and other changes that would most likely be required in considering the re-municipalisation of domestic waste collection services in Dublin City Council.

## 5. The evolution of domestic waste collection in Ireland

In parallel with changes in national waste policy, the role of local authorities in the waste market has also evolved. Traditionally, waste management in Ireland was within the remit of local authorities and funded by local and central government. Lack of infrastructure and investment in waste management limited the role to the provision of collection, landfill and some recycling facilities. However, this was no longer tenable under EU legislation. In response, new responsibilities were assigned to local authorities under the Waste Management Act, 1996, to ensure better waste management, planning and regulation, while confirming that ‘each local authority shall collect, or arrange for the collection of, household waste within its functional area’ (Section 33). Provision of waste services by private enterprise under license was also permitted.

Prior to 1996, local authorities could and in some cases did charge for waste collection services under the Local Government (Financial Provisions) (No. 2) Act, 1983 (Quinn and Feeney, 2020). However, in urban areas, including Dublin, charges for waste collection were only introduced by local authorities in the early 2000s following the Protection of the Environment Act (2003). Consistent with the polluter pays principle prominent in EU policy and legislation, the new legislation allowed local authorities to ‘make a charge in respect of the provision of any waste service, by or on behalf of, that authority’ (Section 52). However, charges were waived for low-income households and in other cases remained unpaid by some householders who resisted the charge on the basis that it should be paid for out of general taxation.

In line with government policy, private operators began collecting waste alongside local authorities across the country. In many cases they offered lower charges to attract customers. This left local authorities with a range of challenges including, a reduced share of paying customers, high levels of

debt<sup>2</sup>, and finding it difficult to compete in respect of charges. In Dublin, the four local authorities came together and through an amendment to the Waste Management Plan for the Dublin Region sought to ensure that waste could only be collected by the councils or contractors appointed by them. Two of the private companies involved took legal action and, in the *Nurendale Ltd. (trading as Panda Waste Services) v Dublin City Council and Others* case,<sup>3</sup> it was determined that the action of the local authorities represented a breach of the dominant position enjoyed by the local authorities in this market and was contrary to the 1996 Waste Management Act and the 2002 Competition Act.

Following on from this decision, local authorities around the country began the process of exiting domestic waste collection entirely, leaving it to operators in the private sector to compete for customers previously serviced by the local authorities. This scenario is described as ‘competition in the market’ and continues to pertain in Ireland, with State involvement in the waste market at both central and local level mainly focused on waste policy, enforcement, and the regulation of private sector operators.

The roll-out nationally in 2017 of ‘pay-by-weight’ charges brought about further changes to the market and for customers. Different charges were set according to the type and volume of waste. Incentivised pricing structures are regarded as driving behaviours to protect the environment under the polluter pays principle. However, during the Dáil debates on the proposal to bring in these charges, concerns were expressed that the new approach would lead to increased charges for most households. As a result, a motion was passed in the Dáil calling for research to be commissioned by the Competition and Consumer Protection Commission (CCPC) to review the operation of the waste collection market in Ireland.

This research, commissioned by the then Department of Communications, Climate Action and the Environment was published in 2018 (CCPC, 2018). The report is critical of the manner in which the waste market in Ireland has evolved. In particular it suggests that the current market is not supporting the interests of consumers or Government environmental objectives. The conclusions of the report particularly highlight the point that the market is highly concentrated in places, giving some operators considerable power and that the regulatory regime is ‘fragmented and incomplete’ and that this is impacting on the achievement of environmental objectives (CCPC, 2018: 59). In response to these

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<sup>2</sup> Dublin City Council’s unpaid waste charges were estimated to be around €7 million, Irish Times, 22-11-2016 <https://www.irishtimes.com/news/environment/over-40-000-people-to-have-bin-charge-debts-wiped-out-1.2875792>

<sup>3</sup> [2009] IEHC 588

wide-ranging challenges within the waste market, the CCPC recommended the establishment of an economic regulator to develop over time ‘an efficient, sustainable and commercial model of domestic waste collection in Ireland, in a manner that protects the interests of consumers and adheres to the principles of better regulation’ (CCPC, 2018: 64). The CCPC further comment (CCPC, 2018: 24/25) that regulation for market failures in household waste collection is typical in Europe and that this is done either by State-run monopolies or through competitive tendering. A benefit of the latter approach is that it ‘allows a municipality to stipulate its requirements in relation to many relevant factors, including the level and type of service to be provided to households and the adherence to environmental standards’. The Phase One report of this research project concurs with this finding.

In 2020 the Department of Communications, Climate Action and the Environment published Ireland’s updated national waste policy, *A Waste Action Plan for a Circular Economy*. Instead of an economic regulator, the policy indicates that the NWCPO will be asked to take on a broader role that will encompass a number of initiatives to protect the interests of consumers. Given the orientation of government policy in this regard, the research was able to focus on the three scenarios identified. A further commitment made in the Waste Action Plan is to expand the role of the Price Monitoring Group at the Department of Environment, Climate and Communications, to monitor more of the market and to examine pricing. This information would be shared with the NWCPO. Lastly, the plan commits to more robust enforcement of waste regulations by local authorities, with an expanded role, capacity and responsibilities for the Waste Enforcement Regional Lead Authorities (WERLAs).

## 6. Analysis of scenarios in respect of domestic waste collection in Dublin City Council

As per Section 4, the three scenarios we analyse in respect of domestic waste collection in the Dublin City administrative area are:

- DCC recommencing domestic waste collection either on the basis of excluding the private operators or in competition with them
- DCC tendering for waste collection services (i.e. competition for the market)
- Continuing with the status quo but encompassing current government policy that is, expanding the role of the NWCPO and WERLAs to safeguard the interests of consumers and ensure environmental benefits.

## 6.1 DCC recommencing waste collection

This section initially reviews the legal implications of a return by DCC to waste collection activities (remunicipalisation) and the exclusion from the market of the private operators. A key consideration in analysing the possibility of DCC re-entering waste collection and excluding the private operators is the extent to which the Council would be deemed to be an ‘undertaking’ for the purposes of competition law in engaging in waste collection. This issue was tested in the case taken by *Nurendale Ltd* against Dublin City Council. The case was taken by two private operators (Panda Waste and Greenstar) in 2009 in response to changes made by the four Dublin local authorities intended to give these authorities exclusive waste collection rights. The judgment in the case concludes that any direct engagement by a local authority in waste collection would amount to engagement in economic activity. This would render the local authority an undertaking and thus subject to the general requirements of competition law,<sup>4</sup> and thereby restricted from taking any action that would hinder competitors’ engagement in such economic activity. More specifically, the actions of the Dublin local authorities in amending the Dublin Waste Management Plan contravened Section 4, and Section 5 of the Competition Act which govern agreements between undertakings that seek to restrict competition and/or abuse a dominant position.

The judgement also comments on the potential for a conflict of interests between local government’s role in respect of waste regulation and the provision of a waste collection service. In particular, where a local authority might provide a service and exercise administrative regulatory authority over other operators engaged in that service sector, there is a significant risk of the local authority abusing its dominant position in breach of the Competition Act and also the Treaty on the Functioning of the European Union.<sup>5</sup> In the words of the judgment ‘were this not the case, the State or other public bodies would be free to engage in all forms of regulatory abuses for commercial gain’.<sup>6</sup>

A further question tested in the *Nurendale* case was the extent to which the implied right to earn a livelihood protected by the Constitution would be breached by any actions to exclude the private waste collectors. While the judgement deems the right to earn a living to be ‘a narrow one’ and advises that the ‘right is not an absolute one...and it may be subject to legitimate legal restraints’<sup>7</sup>, full municipalisation of household waste collection services could give rise to some risk of infringement of

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<sup>4</sup> *Nurendale Ltd t/a Panda Waste Services v Dublin City Council* [2013] 3 IR 417, Paragraph 68.

<sup>5</sup> Section 5(1) of the Competition Act, 2022 and Article 102 of the Treaty on the Functioning of the European Union.

<sup>6</sup> *Nurendale Ltd*, Paragraph 62.

<sup>7</sup> *Nurendale*, Paragraph 193.

constitutional rights. In particular, the fact that no private operator would be in a position to compete for a share of the household waste collection market would appear to present a risk of a breach of the unenumerated constitutional right to earn a livelihood.

Procurement law would not be relevant in this scenario, unless the local authority was to deliver the waste collection service by means of the award of a contract for such services to a publicly owned company, or in the case of cooperative arrangements between local authorities for local authority delivery of such services.

If DCC were to look to recommence waste collection, to avoid a situation where its activities would be deemed anti-competitive it would be necessary to amend the Waste Management Act 1996 in two key respects:

- introduction of an unqualified mandatory obligation upon local authorities to collect or arrange for the collection of waste within their functional areas; and
- exclusion of other operators from the waste collection market and/or allowing for the possibility of refusing other operators access to the market if this was likely to have an adverse effect on the operation of the public waste collection service.

These changes would need to be made through the Houses of the Oireachtas. Corresponding amendments may also be required to the key statutory instruments relating to waste collection services. However, in re-entering the market DCC would be setting themselves up as an undertaking and the risk of a legal challenge to any legislation that seeks to implement such a change would be very high.

The above analysis relates to a scenario whereby DCC would re-enter domestic waste collection and seek to exclude the already active private collectors. However, much of the analysis would also apply were DCC to re-enter the waste collection market in competition with the private operators. Contravention of competition law would be highly likely, as the conflict of interests arising due to DCC's role as both a regulatory authority and a provider of a commercial service might easily be construed as an abuse of its dominant position in the waste collection market. In addition, the Waste Management Act would require amendment to afford local authorities the certainty they would require to recommence direct involvement with waste collection.

This particular option was also examined by DCC's in-house legal services in late 2019. Their analysis notes that the waste collection service, leading up to DCC's exit from the market in 2012, operated annually at an overall loss in the region of €10 million (including approximately €5 million in waivers to low-income households). The analysis looked at whether, under EU state aid rules, the Council could legally operate a service with considerable losses (even if waivers were not provided) given that financial shortfalls would have to be made up from national funding. It concluded that the provision of a household waste collection service through State resources may constitute State aid, thereby requiring approval from the EU Commission which may not be forthcoming on account of the potential effect on trade. It is therefore considered that there may be grounds – in the state aid area at least - for the private sector operators to challenge any decision by DCC to exercise this option.

A somewhat different variation on this option would be if DCC were to set up a company whole owned by the local authority to compete against private operators in the market for domestic waste collection services. However, it appears that it would still be acting as an undertaking engaged in economic activity for the purposes of competition law, so that the requirements of competition rules would be fully applicable. Furthermore, DCC would be severely restricted in terms of any regulatory action in which it might engage, lest this should amount to 'regulatory abuses for commercial gain'.<sup>8</sup> Thus, DCC might struggle to realise the benefits for which it might decide to re-enter the waste collection market. In addition, there might be issues of state aid to be clarified in respect of the funding process involved in establishing the local authority company.

## **6.2 Exclusive tendering of waste collection services**

Under this scenario, DCC would select the optimal bidder from one or more procurement (tendering) processes awarding them a concession contract to collect domestic waste, a scenario typically described as 'competition for the market'. As our Phase One research shows this scenario is typical in European cities. In Stockholm, for example, the municipality is divided into 11 sanitation districts which are procured separately, thereby facilitating smaller operators to compete. Under this scenario as DCC would not themselves be directly collecting waste, it appears that their role would be that of a contracting authority rather than an undertaking. Further conditions regarding adherence to environmental, social and/or labour standards might also be incorporated into the tendering process. While the potential may still exist for legal challenges on the basis of anti-competitive practices, legal precedence in the *Nurendale* judgment, and also subsequent analysis of the judgment, would seem to suggest that a local authority which uses its statutory powers to enter into an agreement to grant

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<sup>8</sup> Nurendale Ltd, Paragraph 62.

a waste collection concession to an undertaking is not itself acting as an undertaking and does not, therefore, fall within the scope of the prohibition on anti-competitive agreements set out under EU law. While the contractor appointed would be deemed to be an undertaking, the contractual arrangement under which they are appointed could qualify as a grant of ‘special or exclusive rights’ and the waste collection service provided could qualify as a ‘service of general economic interest’.<sup>9</sup> In the case of a service of general economic interest, such as household waste collection, a restriction in competition may be justified where it is necessary in order to create the appropriate economic conditions for the operator to be able to provide the service at a satisfactory level of performance.

The right to earn a livelihood under the Irish Constitution was raised in the *Nurendale* case, but the court decided that it did not confer an absolute right and that such a right was in any event not ‘free from appropriate regulatory interference’. It would appear, therefore, that competitive tendering arrangements for household waste collection services, subject to adherence with relevant contractual practices, would amount to a proportionate regulatory interference justifying any restriction upon operators’ constitutional rights.

Regarding procurement law, if a local authority procures household waste collection services by means of a concession arrangement, then the 2014 Concession Directive may apply. The Concession Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest. Thus, the Concession Directive appears to confirm the consistency with EU law of a competitive tendering process for waste collection services.

On the basis of a detailed examination of broader legal requirements applying to any process of competitive tendering for household waste collection services, and of the Irish legislative framework currently applying, it would appear that any initiative by DCC to re-commence waste collection through a concession type contract will need to be preceded by amendment of the Waste Management Act, 1996 in three key respects:

- introduction of an unqualified obligation on local authorities to provide or arrange for waste-collection services within (and throughout) their functional area;
- inclusion of an express provision that such obligation may be met by the appointment of a waste collection operator for the functional area (or each part thereof); and

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<sup>9</sup> Article 106(1) and (2) of the EU Treaty on the Functioning of the European Union.

- where a waste collection operator has been appointed, inclusion of an express prohibition on operators other than the appointed operator(s) from collecting waste in the functional area.

These changes would need to be made through the Houses of the Oireachtas, with corresponding amendments also likely to be required to the key statutory instruments relating to waste collection services. In addition, further consideration would need to be given to a transition period in moving from the current competitive arrangements to an exclusive tendering arrangement and to review in greater detail the implications (legal, commercial, logistical etc.) of this change.

The question arises of whether these amendments to introduce an unqualified obligation on local authorities to provide or arrange for waste collection services, could also permit some local authorities to choose to continue with competition within the market, in other words the current side-by-side, private sector collection. It would appear possible, if carefully worded, that the legislative amendments could allow for three options, local authority collection, exclusive concession or side-by-side competition. However, such a legislative situation might prove confusing. In addition, it might serve to undermine the arguments made for any return to local authority collection or to provide for concession arrangements.

### **6.3 Maintenance of Current Arrangements with Enhanced Regulation**

This scenario allows the current private sector side-by-side competition to continue but with enhanced regulation to overcome some of the limitations that have been identified (CCPC, 2018) with the manner in which the waste market currently operates.

Current national waste policy as set out in *A Waste Action Plan for a Circular Economy* (Government of Ireland, 2020: 20) notes that ‘current market structures may have advantages in terms of value for money and flexibility’, but emphasises the need to achieve ‘a balancing of powers across regulatory bodies ..., the waste collection industry and their end-users’ and notes that ‘other systems may offer greater control for regulators in terms of achieving guaranteed performance levels’. The policy therefore envisages the:

- introduction of recycling targets (for waste collectors) as conditions of waste collection permits;
- greater waste segregation, including for apartments;
- greater extended producer responsibility;
- introduction of a Waste Recovery Levy to encourage recycling (applicable to waste destined for landfill, energy recovery, incineration or export);

- improved standardisation of items acceptable for (dry) recycling;
- prioritisation of enforcement of household waste management requirements;
- greater responsiveness to emerging trends and best practice in waste collection.

Where relevant, the Circular Economy and Miscellaneous Provisions Act of 2022 provides for the introduction of regulations to give effect to the above objectives. Included among the measures planned for enhancement of regulatory supervision are included:

- expansion of the supervisory role of the National Waste Collection Permitting Office (NWCPO) regarding:
  - data analysis on the operation of the market;
  - oversight of charging structures and penalties;
  - oversight of service provision;
  - management of consumer rights and a complaints escalation mechanism; and
  - data protection.
- expansion of the role of the Price Monitoring Group to ensure fair and transparent pricing;
- review of incentivised charging systems with a view to standardisation;
- easier access for householders to information and waste data.

In order to provide a sound statutory basis, such an enhanced regulatory role for the NWCPO would require amendment of current waste legislation regarding the establishment of a formal consumer complaints procedure creating a central role for the NWCPO in investigating individual consumer complaints (*e.g.* in relation to alleged over-charging, *etc.*) Corresponding amendments may also be required to the relevant statutory instruments relating to waste collection services. As of December 2022, the legislative changes to facilitate these initiatives are understood to be in train. It appears that these changes can be implemented through provisions set out under secondary legislation.

## 7. Conclusions

This research project has encompassed two phases. The first phase, completed in April 2022, analysed domestic waste collection in Dublin city compared with a number of appropriate European, comparator cities. This first phase of our research, summarised in Section Three above, highlights that domestic waste collection arrangements in Ireland differ significantly from those pertaining in the other European cities we reviewed. There are important historical, cultural, political and economic reasons why waste management has evolved in the way it has in each jurisdiction. A detailed analysis

of why this is the case is of course far beyond the scope of this report, however, the reality is that Ireland has a domestic waste collection service that is provided by private operators with state involvement focused on waste policy, regulation and enforcement. This situation is supported by legislation which has, at least in some respects, been tested and upheld by the Courts. Any initiative by DCC to re-enter domestic waste collection is done within the context of these political and legal realities. The purpose of this phase two report is to explore the options that are available to DCC through a review of three scenarios:

- The implications of DCC recommencing domestic waste collection either on the basis of excluding the private operators or in competition with them
- The implications of DCC tendering for waste collection services (i.e. competition for the market)
- The implications of continuing with the status quo but encompassing current government policy, that is, expanding the role of the NWCPO to safeguard the interests of consumers and ensure environmental benefits.

In respect of the first of these scenarios, whereby DCC would recommence waste collection either through an effort to exclude the private operators or in competition with them, our analysis suggests that this would firstly require changes through primary legislation to the Waste Management Act, 1996 in order to, among other things, introduce an unqualified obligation on local authorities to provide or arrange for waste-collection services within their functional area. However, even with this legislative change it is very likely, if tested, that DCC's re-entry into domestic waste collection and the exclusion of private operators would be deemed anti-competitive by the Courts. Even if DCC were to re-enter the market in competition with private operators, it is likely that the Courts could view its dual roles as both regulator and market operator as a conflict of interests and therefore anti-competitive.

The second scenario we analyse is one where DCC would not directly engage with waste collection but would select, on the basis of a concession arrangement, one operator to provide the service. Under this scenario private operators would be prohibited from operating within the area allocated to the concessionaire but would not be excluded outside of that area, where they could continue to compete for the market. It would be possible for DCC to indicate the scope of the procurement opportunity, for example detailing certain environmental or human resource conditions that have to be met by any prospective tenderer. It would appear that such a scenario would not be deemed anti-competitive. However, in order to afford DCC with the necessary certainty, amendment to the Waste

Management Act, 1996, through primary legislation would be required and any such change could potentially apply to all local authorities.

The final scenario presented is an analysis of the evolving current context with respect to domestic waste collection. Deficiencies with the current market approach have been acknowledged by Government and current waste policy seeks to better protect consumers and also ensure more pro-environment outcomes. It would seem that the legislative changes necessary in order to ensure more robust regulation and enforcement of domestic waste collection by existing local authority shared services are under way.

The objective of this research is to not to make recommendations, rather it sets out the pathway that could be followed to achieve the primary objective of the DCC cross-party motion - a return to full municipalisation - and the legal and other challenges in this regard. It also looks at alternative scenarios that could deliver some of the main objectives that the cross-party motion seeks to achieve and outlines their inherent challenges in the context of relevant existing and emerging EU and Irish policy and legislation.

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