



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

**Recycling waste and competition law (or the need for a clean market for
a dirty business)**

Commission(s) in charge of the Session/Workshop:

Energy and Environmental Law Commission

and

Antitrust Commission

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National Report of Spain

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Introduction

Environmental law on waste is a very complex area of law. Waste represents a hazard for the environment and households, but it often also has value as a resource. The waste sector is heavily regulated to achieve specific environmental objectives. Environmental law aims to contribute to sustainable production and consumption by preventing waste generation and by promoting the re-use, recycling and other forms of waste recovery, to reduce waste disposal, contribute to the efficient use of resources and retrieve valuable secondary raw materials.

Environmental law on waste is novel and evolves rapidly. Technologies for re-using and recycling waste also change rapidly. This means there are many different markets within the waste sector and these markets and the economics within these markets evolve quickly. The useless part of some waste today may become a priceless raw material for certain industries in the future. What represents an expense today may be a valuable asset tomorrow. This also means that shaping the boundaries of the markets to apply competition policy might not be an easy task. It is difficult to specifically define the product and geographic markets in the waste sector.

Some countries have established the “extended producer responsibility,” which should work as a mechanism to make producers support the design and production of goods, taking into account and facilitating the efficient use of resources during their whole life-cycle. It often obliges producers and importers of products to finance, in proportion to their products on the market, the collection and treatment of waste in line with the predefined waste hierarchy established in that country (i.e., prevention, preparing for re-use, recycling, other recovery methods and disposal). Producers and importers may fulfill obligations embraced by the “extended producer responsibility” individually or collectively with other producers through an entity often called a “producers responsibility scheme.”

Applying competition law to waste to allow for effective competition is very important, but it is also very complex. Competition law should help to achieve the waste hierarchy, specifically by helping producers meet their extended producer responsibility at a lower cost for households.

Producers’ responsibility schemes involve cooperation between product market competitors and exclusive agreements with service providers, and these may restrict competition. How do these competitors interact in those schemes, what sort of information do they exchange, what sort of agreements do they reach, how do they hire waste managers, how do they define prices and focus on one market or another, and how do they compete with other schemes? How do they prevent anti-competitive practices (i.e., market sharing, price fixing and exchange of sensitive information) and avoid exclusive clauses?

Several international organizations deal with the relationship between competition law and waste production and management. The OECD and the EU have issued studies and analyses during the last 10 years. More recently, some competition authorities have carried out or initiated investigations into companies in the waste sector in different countries (such as Austria, France, Romania and Spain).

As this is a questionnaire and not a national report, we do not want to take too much of your time. **You are welcome to respond with brief answers, such as bullet points**, to avoid having to write lengthy texts. If you are uncomfortable answering any question, please skip it, but please answer as many questions as possible to allow us to draw

representative conclusions. Please feel free to provide us with any marketing materials, or examples that you feel are appropriate or interesting.

1. About your country/jurisdiction's institutional framework

1.1. Is there an antitrust agency in your country/jurisdiction? If so, what is its name?

Yes. The relevant antitrust authority in Spain is the Markets and Competition National Commission (CNMC), which is an autonomous authority organically and functionally independent from the Government but ascribed within the Ministry for Economy and Competitiveness. The CNMC replaced the previous National Competition Commission (CNC) and merged the Spanish Competition Authority with six Spanish supervisory sector regulators: the Energy National Commission; the Telecommunication Market Commission; the Postal Sector National Commission; the Airport Economic Regulatory Commission; the Audio-visual Media Council; and the Railway Regulatory Committee into one single entity – the Markets and Competition National Commission or CNMC. <http://www.cnmc.es/>

Spain has also and the following regional antitrust agencies:

- 1) “Agencia de Defensa de la Competencia de Andalucía” (Andalusia)
<http://www.juntadeandalucia.es/defensacompetencia/>
- 2) “Tribunal de Defensa de la Competencia de Aragón” (Aragón)
<http://www.tdca.es/>
- 3) “Tribunal para la Defensa de la Competencia de Castilla y León” (Castilla y León)
http://www.jcyl.es/web/jcyl/Gobierno/es/Plantilla66y33/1246989994133/_/_/_
- 4) “Servicio de defensa de la Competencia de Castilla la Mancha” (Castilla la Mancha)
- 5) “Autoritat Catalana de la competencia” (Catalonia)
<http://acco.gencat.cat/ca/>
- 6) “Jurado de Defensa de la Competencia de Extremadura” (Extremadura) <http://www.gobex.es/defensacompetencia/>

- 7) “Consello Galego da Competencia”(Galicia)
<http://www.consellogalegodacompetencia.es/>
- 8) “Tribunal de Defensa de la Competencia de la Comunidad de Madrid” (Madrid)
<http://www.madrid.org/cs/Satellite?c=Page&cid=1109266101058&idConsejeria=1109266187242&idListConsj=1109265444710&idOrganismo=1109266228977&pagename=ComunidadMadrid%2FEstructura&sm=1109266101058>
- 9) “Servicio Regional de Defensa de la Competencia de Murcia” (Murcia)

[https://www.carm.es/web/pagina?IDCONTENIDO=67&IDTIP O=200& PLANT PERSONALIZADA=/JSP/CARM/plantillas Portal/organigramas/plantillaDetalleOrganigrama.jsp&IDESTRUC TURAJERARQUICA=310&RASTRO=c\\$m120,121](https://www.carm.es/web/pagina?IDCONTENIDO=67&IDTIP O=200& PLANT PERSONALIZADA=/JSP/CARM/plantillas Portal/organigramas/plantillaDetalleOrganigrama.jsp&IDESTRUC TURAJERARQUICA=310&RASTRO=c$m120,121)
- 10) “Tribunal de Defensa de la Competencia de la Comunitat Valenciana” (Valencia)
<http://www.indi.gva.es/web/defensa-de-la-competencia>
- 11) “Tribunal Vasco de defensa de la Competencia”(Vasc Country)
<http://www.competencia.euskadi.eus/z02-home/es/>

1.2. Is there an environmental agency in your country/jurisdiction? If so, what is its name?

Yes. The relevant environmental authority is the “Ministerio de Agricultura, Alimentación y Medio Ambiente”. Also at a national level the Ministry of Industry, Energy and Tourism and the Ministry of Health, Social Services and Equality have power to enforce environmental legislation. At a national level these Ministries transpose the EU Directives, prepare the basic legislation (the one that is common to the whole Country and sets forth the minimum levels of compliance to be met by all regions) and regulate and coordinate matters that have an impact in more than one Autonomous Region.

At a regional level Spain has the following environmental agencies, which are entitled to implement the environmental plans, to develop the basic legislation passed by the State, to enforce most environmental legislation, and to grant most of the environmental permits:

- 1) Consejería de Medio Ambiente y Ordenación del Territorio (Andalusia)
<http://www.juntadeandalucia.es/medioambiente/site/rediam>

- 2) Departamento de Agricultura Ganadería y Medio Ambiente (Aragón)
<http://www.aragon.es/Temas/MedioAmbiente>
- 3) Consejería de Fomento, Ordenación del Territorio y Medio Ambiente (Asturias) <http://www.asturias.es/portal/site/medioambiente/>
- 4) Consejería de Agricultura, Medio Ambiente y Territorio (Balears)
<http://www.caib.es/govern/organigrama/area.do?lang=es&coduo=138143>
- 5) Consejería de Educación, Universidades y Sostenibilidad (Canary Islands)
<http://www.gobiernodecanarias.org/ccus/>
- 6) Consejería de Medio Ambiente, Ordenación del Territorio y Urbanismo (Cantabria) <http://www.medioambientecantabria.es/>
- 7) Consejería de Agricultura (Castilla la Mancha)
<http://www.castillalamancha.es/gobierno/agrimedambydesrur>
- 8) Consejería de Fomento y Medio Ambiente (Castilla y León)
<http://www.jcyl.es/web/jcyl/MedioAmbiente/es/Plantilla66y33/1246988359553/ / />
- 9) Departamento de Territorio y Sostenibilidad (Catalonia)
<http://mediambient.gencat.cat/ca>
- 10) Consejería de Medio Ambiente, Servicios Comunitarios y Barriadas (Ceuta)
<http://www.ceuta.es/ceuta/por-consejerias/medio-ambiente>
- 11) Consejería de Agricultura, Desarrollo Rural, Medio Ambiente y Energía (Extremadura) <http://www.gobex.es/cons002/>
- 12) Consejería de Medio Ambiente, Territorio e Infraestructuras (Galicia)
<http://www.xunta.es/cmati>
- 13) Consejería de Agricultura, Ganadería y Medio Ambiente (La Rioja)
<http://www.larioja.org/npRioja/default/defaultpage.jsp?idtab=24844>
- 14) Consejería de Medio Ambiente y Ordenación del Territorio (Madrid)
<http://www.madrid.org/cs/Satellite?c=Page&cid=1273687122273&cidTem a=1142598739468&language=es&pagename=ComunidadMadrid%2FEstru ctura&pid=1273078188154>
- 15) Consejería de Medio Ambiente Plaza(melilla)

http://www.melilla.es/melillaPortal/contenedor_tema.jsp?seccion=distribuidor_servicios_tema.jsp&language=es&codResi=1&codMenuPN=601&codMenu=8&layout=contenedor_tema.jsp&ca=8&layout=contenedor_tema.jsp

16) Consejería de Agricultura y Agua (Murcia)
[http://www.carm.es/web/pagina?IDCONTENIDO=64&IDTIPO=140&RASTRO=c\\$m](http://www.carm.es/web/pagina?IDCONTENIDO=64&IDTIPO=140&RASTRO=c$m)

17) Departamento de Desarrollo Rural, Medio Ambiente y Administración Local (Navarra)
http://www.navarra.es/home_es/Temas/Medio+Ambiente/

18) Departamento de Medio Ambiente y Política Territorial (País Vasco)
<https://www.euskadi.eus/r49-579/es>

19) Consejería de Infraestructuras, Territorio y Medio Ambiente (Valencia)
<http://www.citma.gva.es/web/evaluacion-ambiental-y-territorial>

The municipalities also have the corresponding Environmental departments which mainly deal with matters such as air and noise pollution and grant licenses that authorize the operation of industrial and economical activities.

- 1.3. **Have there been any cooperation agreements between the antitrust and the environmental agencies?** No.
- 1.4. **Is it possible for either agency to provide opinions, etc, on activities/subjects of the other authority?** Each agency can provide opinions in their corresponding field of competence.
- 1.5. **If so, please provide details.**
- 1.6. **Is there room for the interface between antitrust and environmental policy to take place in antitrust cases? If so, please explain briefly why you believe this is the case.**

In principle, there is no room for environmental considerations in the framework of antitrust policy under Spanish competition law, as the law stands today.

2. Objectives of antitrust and environmentalism

2.1. Does any legislation define environmental protection as one of the objectives of the public policies? If so, name the rule(s) briefly.

Spanish environmental policy has its basis in the Section 45 of the Spanish Constitution. This section sets forth the right to enjoy an appropriate environment and imposes on everyone a duty to preserve it and it obliges:

- a. the Spanish authorities to ensure a rational use of natural resources, with the aim of protecting and repairing the environment, and determines that criminal or administrative sanctions shall be imposed in the case of breach of environmental law:
- b. the offenders to repair the damage caused.

Section 149.23 recognizes exclusive competence to the Spanish Government over basic legislation on environmental protection, without prejudice to powers of the Self-governing Communities to take additional protective measures and section 148.9 recognizes to the Self-governing Communities the possibility to assume competences over Management of environmental protection.

Act 22/2011 on waste and contaminated soil lays down measures and obligations to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.

Environmental Spanish legislation is also based on section 191.2 of the Treaty on the Functioning of the European Union¹ and on the EU Directives which have been transposed to the Spanish legislation.

2.2. Does the antitrust policy clearly state its objective?

The Competition Act does not mention expressly its objective. However, the Act states the importance of having a system with the appropriate tools and resources in order to guarantee the right functioning of the market processes (Preamble).

¹ Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. In this context, harmonization measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

On the other hand, the principles which inspire the Competition policy are clearly mentioned: (i) ensuring legal certainty of the economic operators; (ii) independent decision making process; (iii) transparency and responsibility to society of the governing bodies which are entitled to apply the Act; (iv) effectiveness of the fight against restrictive competition practices and the search for coherence in the whole system and, (v) implementing an appropriate relation between the different institutional agents who interact in this field (Preamble).

2.3. Is environmental protection listed as one of the antitrust policy's objectives?

No, is not.

2.4. Can the competition authority consider environmental protection objectives when assessing the efficiencies of a potentially unlawful behavior?

As already stated, in principle, there is no room for environmental considerations in the framework of antitrust policy under Spanish competition law, as the law stands today.

2.5. Can any other authority or the government approve restrictive behavior based on the public interest (including environmental protection)?

Spanish law does not provide for this possibility. Nevertheless, Antitrust law is not applicable to conducts of enterprises resulting from an express provision in a law (ex Section. 4 of the Spanish Competition Act)

2.6. Have there been cases in which there was a collision between the objectives of antitrust and environmental policy? If so, name them, explaining whether it was a merger control or a conduct case.

In principle, there are no precedents in Spain (in the Decisions of the Spanish Competition Authorities) of collision between the objectives of antitrust and environmental policy.

3. Merger controls and environmental protection

3.1. Is environmental protection considered in the merger control analysis? If so, please provide details.

In principle, there is no room for environmental considerations in the framework of antitrust policy under Spanish competition law, as the law stands today.

The only exception is when the Spanish Government is called to decide on a merger that might be blocked. (under section 60 of Act 15/2007 on the protection of competition). In such a case section 10.4 provides for the possibility of taking into account principles related to the general goods such as the protection of the environment.

3.2. **Have there been cases in which the merger was cleared because of the need to protect the environment? If so, please explain briefly.**

There have been no cases in Spain (in the Decisions of the Spanish Competition Authorities) in which a merger was cleared because of the need to protect the environment. At EU level, Environmental considerations were taken into account, to some extent, in Case M.2314 *Basf / Pantochim / Eurodiol*. However, there are no similar cases in Spain.

3.3. **Have there been cases in which the merger was blocked because of the need to protect the environment? If so, please explain briefly.**

In principle, no merger has been blocked on grounds of protecting the environment.

4. Antitrust enforcement and environmental protection

4.1. **Is environmental protection considered in a conduct case? If so, please provide details.**

No, is not².

4.2. **Have there been cases in which the merger was cleared because of the need to protect the environment? If so, please explain briefly.**

In principle, there have been no cases in Spain (in the Decisions of the Spanish Competition Authorities) in which a merger was cleared because of the need to protect the environment. At EU level, Environmental considerations were taken into account, to some extent, in Case M.2314 *Basf / Pantochim / Eurodiol*. However, there are no similar cases in Spain.

4.3. **Have there been cases in which the merger was blocked because of the need to protect the environment? If so, please explain briefly.**

² It will depend on the answers of questions 4.2 and 4.3

In principle, no merger has been blocked on grounds of protecting the environment.

5. Questions concerning antitrust in the waste management sector

A. General questions

5.1. Which specific legal obligations are imposed on companies relating to waste management of their products under the national law of your jurisdiction (the “obliged companies”)?

As a general rule, according to Act 22/2011 on waste and contaminated soil, any original waste producer or other holder has the following obligations:

1) Obligations regarding waste management

- a. To carry out the treatment of waste (i) himself or (ii) handled by a dealer or an establishment or undertaking which carries out waste treatment operations or (iii) arranged by a private or public waste collector. The obliged companies have to prove the accomplishment of this obligation by Documentary evidence.
- b. To provide to the authorized companies to manage waste with all the information needed to treat and eliminate waste.
- c. To provide to the Local authorities all the information of waste with special characteristics that may influence in its transport, collection, treatment and disposal.
- d. Specific regulation may impose obligations regarding waste collection.
- e. Producers of hazardous waste are also obliged:
 - i. To immediately inform the Environmental competent authority when hazardous waste disappears, gets lost or leaks.
 - ii. To provide the Regional Environmental competent authority with a proposal to minimize the waste production.
 - iii. When requested to provide with a financial warranty to cover their liability.

2) Obligations regarding of storage, packaging and labelling waste:

- a. To storage waste in conditions providing protection for hygiene and security. Hazardous waste can be storage for a maximum 6 months period. Non-hazardous waste can be storage for a maximum period of two years when waste will be recovered and for a maximum period of a year when waste will be eliminated.
- b. Not mixing nor diluting hazardous waste with other waste.
- c. To storage, to package and to label waste according to the applicable regulation before its collection and transport.

The aforementioned obligations apply to domestic hazardous waste when accepted by an authorized company to collect and treat them.

In order to promote prevention and to improve reuse, recycling and waste valorization, section 31 of Act 22/2011 on Wastes establishes the extended producer responsibility principle and allows the Government to establish the following obligations to the producers:

- a) To design products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance to the law.
- b) To develop, to produce and to market products that are suitable for multiple use, that are technically durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.
- c) To accept returned products and the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities. These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable.
- d) To establish deposit systems which guarantee the return of the deposit products for its re-use, treatment or elimination.
- e) To organize the waste management, being able to share the responsibility with the producers
- f) To use waste materials when manufacturing products.

g) To order economic studies and audit controls.

h) To provide information about the economic impact of the accomplishment of the obligations of the extended producer responsibility.

RD 110/2015 on Wees has crystallized those obligations to producers of EEEs in section 38.

1. Will design and produce EEE to facilitate its reuse, reparation and recycling. Producers will draft plans for preventing Wees.
2. Will place in the market EEE in compliance with the requirements established in RD 110/2015.
3. Will satisfy the minimum targets of Wees collection that the Ministry will approve. They will be able to develop their own collection network.
4. Will organize and finance the collection of their market share of Wees.
5. Will satisfy all information obligations.
6. Will secure that the extended producer responsibility scheme that may be created satisfy with the legal regime established by RD 110/2015 and have enough financial means to meet their obligations.
7. Will respect the principles of protecting the environment, consumers and the environment. Will apply the waste hierarchy and the defense of competition.

5.2. If so, can obliged companies meet their obligations by associating with other obliged companies?

When the Government establishes the obligations mentioned in art. 31, producers will be able to satisfy the obligations the Government may have imposed in three different manners:

1. Joining a “public management system”.
2. Creating an “individual scheme”.
3. Joining or creating a “collective scheme”.

5.3. Do companies obliged to recycle their waste opt to be part of a collective system or opt for an individual solution and organize the collection and recovery of waste for their own products?

The Government has recently regulated in depth the extended producer responsibility of producers of waste for electronic and electric devices in Royal Decree 110/2015 of February 20, which derogates the first and previous Royal Decree 208/2005 of February 25 (hereinafter “**RD 110/2015 on Wees**”).

Most of producers have opted for joining a collective scheme.

5.4. **What is the exact legal nature of “collective systems” (previously known as “SIGs – Special Interest Groups” and now “Extended Producer Responsibility Collective Systems”)? Which form of incorporation can these collective systems take? What are their internal operating rules or bylaws?**

Collective systems shall be incorporated as an association provided for in the Organic Law 1/2002 of 22 March 2002, governing the Right of Association or other non-profit organization with legal personality. For instance, a non-for-profit foundation or a non-profit corporation. The internal functioning of these collective systems shall be governed by the same rules of the legal form adopted (article 32.3 Act 22/2011).

The internal functioning of the collective systems shall guarantee that every producer participates in the decision making process in terms of objectivity (article 40 RAEES).

Collective schemes may create or hire a “managing entity”. Collective schemes and, where applicable, the “managing entities” should abide to the following principles in order to preserve free competition: (i) publicity; (ii) competition; (iii) equal treatment; as well as (iv) the principles of protection of human health, protection of consumers, protection of the environment and waste hierarchy.

- 5.5. **What are these collective systems entitled to?**
5.6. **What are their governing bodies and how are their operations monitored?**
5.7. **Which specific legal obligations are imposed on them?**

Responses to questions 5.5, 5.6 and 5.7

Collective and individual schemes will be obliged to:

1. Fulfill the relevant regulations that may apply for a given waste stream.
2. Organize the collection in all the State of all the wastes produced by the products they have placed in the market. For that purpose, they will be entitled to (i) join to a public waste collection entity; and (ii) enter into

agreements with other extended producer responsibility schemes to coordinate the organization of the waste management.

3. Supply to the relevant Autonomous Communities on an annual basis (i) the information that the Government may establish for a given stream of wastes; (ii) the particulars of the entities that manage the wastes they have place in the market; and (iii) a report of the payments made to those entities.
4. Deliver the relevant securities, bonds of financial guarantees whatsoever that the relevant regulations for a given waste stream may require.
5. Enter into agreements with public administrations when these administrations intervene in the organization of waste management.
6. Enter into agreements with waste managers.
7. When producers collect any amount from consumers to cover expenses derived from the extended producer responsibility obligations that amount may not exceed the cost of those obligations.
8. Contribution from producers to collective schemes should always cover the cost derived from the satisfaction of extended producer responsibility obligations.
9. Collective schemes may inform in advance all its producers as well as the “commission of coordination” of its intention to modify the costs of managing wastes.
10. Collective schemes should present on an annual basis to the “commission of coordination” its approved and audited annual accounts and budget for the incoming year. Said accounts should reflect the contribution of producers to the collective scheme and evidence of the fact that such contributions were destined to satisfy the extended producer responsibility obligations.
11. Keep confidential the information that producers may have supplied to the collective scheme and that might be relevant for its productive or commercial activity.

The relevant sectorial regulations that the Government may approve for a given waste stream may allow for the participation of distributors and other players in collective schemes and in the satisfaction of the extended producer responsibility obligations.

The commission of coordination is a body formed by representatives of the various public administrations involved: State, Autonomous Communities and Municipalities.

Such commission is in charge of coordinating the actions of the various public entities in the sector of waste. It should promote cooperation of the various administrations involved and the exchange of information. Such commission may create working groups to provide support in certain waste streams and may allow representatives of the private sector to participate.

- 5.8. **Are any administrative authorities responsible for allocating market shares of waste to be collected? How is this share calculated? How are exact amounts to be collected, treated, evaluated or eliminated assigned?**
- 5.9. **What is the consequence of failure, i.e., not collecting, treating, recovering or disposing of the market share assigned to a certain obliged company?**

Responses to questions 5.8 and 5.9

RD 110/2015 on Wees has established a very detailed and profound regulation. Producers of electric and electronic equipment (hereinafter, “EEE”) should register in the Integrated Industrial Registry.

Producers should supply every trimester by electronic means to the Integrated Industrial Registry all the EEE they have placed in the market including the type of EEE, weight, use (domestic or professional) and some more information.

The Integrated Industrial Registry will calculate and allocate the relevant market share of waste from EEE on an annual basis that correspond to each individual and collective scheme and to each producer in accordance with various criteria including, among others, weight, units, category, use, etc.

If individual or collective schemes breach the obligations established by the relevant regulation applicable to a given waste stream or breaches any of the conditions that may subject its administrative authorization, the scheme may be subject to a fine and the financial security delivered for being authorized may be executed.

The commission of coordination will establish the targets that producers should achieve in terms of wastes collected per year. Lack of achieve of these targets may end up in the commission suggesting measure against that scheme. Depending on the reasons motivating lack of achievement of the targets, the commission may, in the worst-case scenario, initiate an administrative file to execute the financial security of the scheme.

- 5.10. **In line with the previous question, if one of the collective systems credits collecting a higher market share in terms of volume or weight, can it claim financial compensation from any collective systems not complying with theirs?**

In the event proposed and in accordance with article 56.6 of the RD 110/2015, the excesses cannot be financially compensated with other systems.

- 5.11. **Are the administrative authorities that monitor and enforce producers' compliance with their respective objectives and the proper functioning of their collective systems coordinated in any way with antitrust agencies or national competition authorities?**

RD 110/2015 on Wees provides that the commission of coordination should establish consultation mechanism with the Markets and Competition National Commission ("CNMC") about administrative decisions and other matters that may have an impact on effective competition and on the efficient economic regulation of the WEEEs sector.

B. Relevant product and geographic markets

- 5.12. **How have the competition authorities in your jurisdiction defined the relevant product markets in the waste management industry?**

The approach of the Spanish competition authorities has not always been consistent. In some cases it has been considered that the management of paper waste is a different product market than other market for waste management services (Case S/0430/12). In other cases it was considered that there was a separate market for industrial waste management that it could be further divided in hazardous and non-hazardous industrial waste management services. However, in a more recent decision it was considered that there was a sole market for waste management (Case S/0429/12), regardless whether it concerns paper waste, urban waste, industrial waste, etc.

As general rule, the market for waste management was considered to be national in scope.

5.13. How is the waste market segmented?

The waste market in Spain is segmented according to the criteria followed to classify the different type of waste. For example the waste market can be segmented according to:

1. The origin of the waste:

- Municipal waste is that generated in private homes, shops, offices and services. It is also all waste that is not considered hazardous when, due to its characteristics and composition, it can be added to the waste produced in the aforementioned places and activities. The following are also considered municipal waste: waste from cleaning public roads, green areas, recreational areas and beaches; dead domestic animals; furniture, utensils and abandoned vehicles; waste and rubble from minor building works and household repairs, glass, paper and cardboard
- Commercial waste it can be considered as a subgroup of municipal waste. It is defined as the waste generated by retail and wholesale commercial activity, the hotel and catering trade, bars, markets, offices and services.
- Industrial waste is defined as solid, gas or liquid materials that result from a process of manufacture, transformation, use, consumption or cleaning by the producer or owner who wishes to get rid of these substances. This cannot and be considered municipal waste. Only waste producers who are considered to be industries can generate this kind of waste.
- Construction waste is considered that which is generated during construction or demolition work. This definition does not include soil from excavation that is to be reused on the construction site or on another authorised site
- Sanitary waste is considered that which is generated in health centres, services and establishments (which could be involved in health promotion, health care, social health care, biomedical research or veterinary care).
- Cattle manure is the excrement and waste excreted by animals alone or mixed, even though it might have been transformed. Normally, different types of cattle manure are distinguished (solid manure, liquid manure, hen droppings) depending on the origin and dry matter content

- Animal by-products not intended for human consumption (ABPs) are defined as the whole bodies or parts of animals, products of animal origin or other products obtained from animals that are not intended for human consumption, either for health reasons or due to a decision by the operator.
- Organic matter
- Waste from electric and electronic equipment (WEEE)
- End-of-life vehicles
- Packaging: Any product manufactured with materials of any type and used to contain, protect, handle, distribute and present merchandise, from raw materials to finished articles, at any stage of production, distribution or consumption. All disposable articles used for the same purpose are also considered packaging. This concept includes only sales or primary packaging, collective or secondary packaging and transport or tertiary packaging. Also considered packaging are articles that comply with the abovementioned definition without detriment to other functions that the packaging may fulfil, except when the article forms part of a product for the whole of its useful life, and all its elements are to be used, consumed or disposed of together.
- The PCB (polychlorobiphenyls) and PCT (polychloroterphenyls) are polychlorated organic compounds that were used as coolants in electrical equipment. Their use was forbidden in 1985. The regulation to eliminate apparatuses containing such compounds was determined by Council Directive 96/59/EC, transposed by RD 1378/1999, modified by RD 228/2006.
- Refrigerator and other apparatuses containing CFCs
- End-of-life tyres
- Olive oil process wastewater and Winery process wastewater
- Mineral Oils: This definition includes the following in particular: mineral oils used in combustion engines and transmission systems; mineral oils used as lubricants; those used in turbines and hydraulic systems; as well as mixtures and emulsions that contain these oils. This definition includes the waste oil that corresponds to those in the European Waste List (EWL)
- Batteries and other accumulators

- Fluorescent Gas discharge lamps are lighting appliances in which light is obtained by sending an electrical discharge through a gas.
- Plastic

2. The impact for the environment

- Hazardous waste is that defined by legislation and by the European Waste Catalogue (EWC), established by Regulation 1357/2014 of the European Union and Decision of December 18th 2014, which modifies the Decision 2000/352/CE.
- Non hazardous

5.14. **Which geographic scope has been considered for each of those product markets?**

As general rule, the market for waste management was considered to be national in scope.

5.15. **Are the producers of electrical and electronic equipment, the so-called WEEEs, obliged to finance the collection, treatment, recovery and disposal of waste from their products in any specific way?**

In accordance with article 4.d) of the RD 110/2015, producers of EEE are obliged to finance separate collection, transport and treatment of waste from their products.

Moreover, each producer should provide a financial guarantee to prevent the management of WEEEs from equipment placed on the market by them. For instance, this financial guarantee could be an insurance policy or a bank guarantee (article 46 RAEs).

C. Possible competition concerns (abuse of dominance)

5.16. **Have the competition authorities in your jurisdiction found any collective systems dominant? If the answer is yes, please specify the reasons.**

We have not found a resolution in the WEEE sector but the Spanish Competition Authority, in its resolution on 10 June 2009, considered that SIGNUS

ECOVALOR S.L. had a national dominant position in the unusable tires market of management and recovery because there are only two agents in this market and SIGNUS ECOVALOR has 70% of the market share.

5.17. **Are the fees the collective systems charge the obliged companies based on the “no service, no fee” principle?**

5.18. **Do collective systems apply an “all or nothing rule” (i.e., requiring participants to transfer all of their obligations to the system; they may either contract for all of their packaging or for none)?**

In accordance with article 38.2 of the RD 110/2015, producers of EEE have the opportunity of determine which obligations they want to transfer to each system. They are allowed to combine different extended responsibility systems if they place on the market products from different categories and subcategories of EEE. So, “all or nothing rule” does not apply.

5.19. **Have the competition authorities in your jurisdiction conducted investigations into anticompetitive practices relating to abusive fees imposed by dominant collective systems? Or have they conducted investigations into anticompetitive practices relating to other abusive conduct, such as rebates designed to attract a substantial amount of the obliged companies, the application of the “all or nothing rule,” and denying competitors access to the dominance system? If so, please explain briefly the main theory of harm and the final decision adopted.**

We have not found a resolution in the WEEE sector but we consider interesting mention other from different waste sectors. For instance, on 12 September 2003, the Competition Court stated that ECOVIDRIO denied the access of REVISA to its collective system. According to the Court, ECOVIDRIO abused its dominant position by ignoring the application of REVISA. As a consequence, the Court considered the article 6 of the Competition Act breached and imposed a €150,000 fine (Resolution 537/02 CNMC).

On 10 June 2009, Competition Court investigated SIGNUS ECOVALOR for alleged anticompetitive practices. In particular, the main issue was related to the selection process of collector agents. The collective system was accused of having a selection process with some restrictions that cause inequality between the potential agents. Finally, the Competition Court estimated that the selection

process was transparent and objective and there was no proof of causing damage to the competition (Resolution 2741/06 CNMC).

D. Possible competition concerns (cooperation between obliged companies)

- 5.20. **Can obliged companies form collective systems to agree contracting prices and conditions with waste managers dealing with certain waste processing, recycling or disposal operations?**

In accordance with article 6.3 of the RD 110/2015, EEE producers could establish cooperation mechanisms or arrangements with agents in charge of repair, reuse and recovery of WEEE. The RD 110/2015 does not mention specific requirements in order to establish these agreements.

- 5.21. **Can collective systems incur in the aforementioned practices? Can they reach other agreements between them? If so, what kind of agreements?**

In accordance with article 41 of the RD 110/2015, collective systems and also the individual ones, can reach agreements with distributors in order to set conditions for financing, collection, storage, WEEE classification and delivery of the WEEE. In addition, the RD 110/2015 allows these systems to reach agreements with waste managements and with other centers in order to finance the collection and recovery of WEEE.

- 5.22. **Have the competition authorities in your jurisdiction conducted investigations relating to cooperation between obliged companies? If so, please refer to the case/s and explain briefly the grounds (such as spill-over effects, and the effects of bundling of demand) and the final decision adopted.**

We have not found a resolution regarding the WEEE sector but, recently, the Competition Court has investigated 39 companies and 3 associations in the Spanish waste management sector. During the process, the CNMC has found that companies had agreed to share the market through non-aggression pacts. Also, some of the companies had reached agreements on price and commercial terms. Moreover, the process has revealed that one association had agreed to influence public tenders boycotting certain public procurement procedures which did not fit their interests. As a consequence, the mentioned practices had

restricted competition in the waste management sector. The Court has imposed fines up to €13 million (Resolution S/0429/12).