



COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPEAL UNDER SECTION 70 OF THE SUBSIDY CONTROL ACT 2022

Case No: 1577/12/13/23

Pursuant to rule 14 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Tribunal Rules”), the Registrar gives notice of the receipt of an appeal on 3 February 2023, under section 70 of the Subsidy Control Act 2022 (“the Act”), by the Durham Company Limited (trading as Max Recycle) (the “Appellant”) against a decision of Durham County Council (the “Respondent”) to grant a subsidy, as defined in section 2(1) of the Act to its own “Trade Waste Business” by allowing that business to use the employees and assets of the Respondent’s “Household Waste Business”, which is funded through Council taxes and other public funding, for less than a market price (the “Decision”). The Appellant is represented by Till Bailey & Irvine LLP, 12 Evolution Wynyard Park, Wynyard, TS22 5TB (Ref: Alison Leith).

According to the Notice of Appeal (the “NoA”), the Respondent is the local authority for County Durham. By virtue of section 30(3)(a) Environmental Protection Act 1990 (“EPA90”), it is also the waste collection authority (“WCA”) for County Durham. As WCA for County Durham, the Respondent is under, *inter alia*, the following duties:

1. to arrange for the collection of household waste in County Durham, subject to limited exceptions: section 45(1)(a) EPA90. Pursuant to section 45(3) EPA90, the Respondent may not charge for the collection of household waste, save in certain limited cases set out in paragraph 4 of Schedule 1 to the Controlled Waste (England and Wales) Regulations 2012 (the “2012 Regulations”).
2. “*if requested to do so by an occupier of premises*” in County Durham, to arrange for the collection of commercial waste: section 45(1)(b) EPA90. Pursuant to section 45(4) EPA90, the Respondent must recover a “*reasonable charge*” for the collection of commercial waste unless it considers it inappropriate to do so.

The terms “household waste” and “commercial waste” are defined in sections 75(5) and 75(7) EPA90 and in paragraphs 2 and 3 of Schedule 1 to the 2012 Regulations.

The Respondent may elect to perform the waste collection required under section 45(1) EPA90 itself or to outsource one or both types of collection to a third-party provider. The Respondent has elected to perform itself the collection of (i) all household waste collection and (ii) a certain subset of commercial waste referred to as “trade waste”. The term “Trade Waste” is generally used in the waste management industry to refer to common wastes produced by businesses and other commercial premises on a day-to-day basis, and can be distinguished from specialist wastes, such as medical, heavy industrial, construction or hazardous wastes. Trade Waste is generally collected from wheelie bins with a capacity of up to 1100L and is capable of being collected and disposed of using the same infrastructure as household waste.

The NoA refers to the Respondent’s:

- a. “Household Waste Collection Business”, being the Respondent’s activities of collecting household waste from residential premises within County Durham.
- b. “Trade Waste Collection Business” being the Respondent’s activities of collecting trade waste, but not other types of commercial waste, from relevant premises within County Durham.

The Appellant submits that, consistently with its statutory obligations, the Respondent does not charge households for the services provided by its Household Waste Collection Business; instead, the costs of these services are met through a variety of public sector revenues streams such as Council tax revenues and Government grants.

The Respondent does charge businesses for the services provided by its Trade Waste Collection Business, which it provides in competition with other private sector providers, including the Appellant. Further, the Respondent (i) employs a sales team to seek out new customers for its Trade Waste Collection Business and (ii) advertises the services of its Trade Waste Collection Business both within and outside County Durham, including on its website, on its vehicles and by sending out direct mail and advertisements to businesses in its area.

The Respondent is a provider of trade waste collection services in North-East England, North-West England, Southern Lakes & Southern Scotland. The Appellant is active in County Durham, where it competes with, *inter alia*, the Respondent's Trade Waste Collection Business.

According to the NoA, at all relevant times since at least 2013, the Respondent has:

1. delivered its household waste collection services and trade waste collection services using the same assets (e.g. vehicles, premises) and employees (e.g. disposal technicians; back office staff); and
2. disposed of both household and trade waste together using the same long term disposal contracts.

Pending disclosure, the Appellant infers that the substantial volumes of household waste collected by the Respondent enables the Respondent to benefit from economies of scale:

- a. with respect to its total costs of providing waste collection services - for example, in the form of volume discounts from providers of waste disposal services and/or in the form of priority access to conveniently located waste disposal facilities; and/or
- b. with respect to the incremental costs of providing trade waste collection services – for example, (i) the ability pick up trade waste incidentally in the course of a household waste collection, thereby minimising labour and vehicle running costs; and (ii) the ability to purchase supplies such as fuel, vehicles and receptacles in larger volumes thereby minimising overheads.

The Appellant submits that such economies of scale with respect to costs would not be available to the Respondent's Trade Waste Collection Business if it were operated as a wholly separate standalone business handling only 5-10% of the total (household and trade) volumes collected by the Respondent. Were the Trade Waste Collection Business to operate as a wholly standalone business handling the same tonnage of trade waste as is currently collected, the cost per tonne of waste collected by that standalone business would be materially higher than the cost per tonne currently incurred by the Respondent across both its Household and Trade Waste Collection Businesses.

The Appellant submits further that, by seeking to recover its common (fixed and personnel) costs of waste collection from the Trade Waste Collection Business by reference to (i) the total costs incurred by the Respondent for all (household and trade) waste collection activities and (ii) the proportion of total waste collected by the Respondent that is trade waste, the Respondent allows the Trade Waste Collection Business to benefit from the economies of scale with respect to costs that are attributable to the activities of the Household Waste Collection Business. These economies of scale would not be available to the Trade Waste Collection Business as a standalone business.

The Appellant alleges that the unlawful cross-subsidy granted by the Respondent's Household Waste Collection Business to its Trade Waste Collection Business has enabled the latter Business to offer substantially lower rates for trade waste collection than those offered by the Appellant and other private sector providers. This has led to a distortion of the market for trade waste collection services in County Durham and caused the Appellant to lose customers and, ultimately, profit.

In summary, the Appellant submits that, in taking the Decision, the Respondent has erred in law by:

1. Failing to recognise or appreciate that the arrangements by which its Trade Waste Collection Business is funded constitute a “subsidy” within the meaning of the Act.
2. Failing to consider the application to those arrangements of the subsidy control principles set out in Schedule 1 to the Act.

By way of relief, the Appellant requests:

1. A declaration that the Respondent has granted a subsidy to its Trade Waste Collection Business in the form of the provision of relevant assets, employees and access to disposal contracts at below market value.
2. An order prohibiting the Respondent from continuing to provide its Trade Waste Collection Business with relevant assets, employees and access to disposal contracts of the Household Waste Collection Business at below market value.
3. An order mandating that the Respondent engage a duly qualified valuation and/or market expert to assess the market charge for the services provided to the Trade Waste Collection Business by the assets, employees and disposal contracts Household Waste Collection Business - having regard in particular to the volumes of waste collected by the Trade Waste Collection Business.
4. An order mandating that the Respondent charge its Trade Waste Collection Business in accordance with the assessment of the expert appointed pursuant to paragraph (3) above.
5. Costs.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

Please also note that a direction of the President is currently in place as to the electronic filing of documents: see paragraph 2 of the [Practice Direction](#) relating to Covid-19 published on 20 March 2020. Therefore, a request for permission to intervene should be sent to the Registrar electronically, by email to registry@catribunal.org.uk, so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, KC (Hon)
Registrar

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