

Correspondence between the Scottish Government and Businesses regarding concerns and objections about the potential impact on competition in the collection services market arising from the deposit return scheme:

From: [Redacted] <[Redacted]@brc.org.uk>

Sent: 17 March 2022 12:57

To: [Redacted] <[Redacted]@gov.scot>

Cc: [Redacted] <[Redacted]@gov.scot>; [Redacted]@sepa.org.uk; [Redacted]@sepa.org.uk; [Redacted] <[Redacted]@brc.org.uk>; [Redacted] <[Redacted]@gov.scot>

Subject: RE: Scottish DRS | Third party partnership | Competition considerations

Hello [Redacted],

Thank you for your email and apologies for the delay in getting back to you. We would greatly appreciate if you could raise with the CMA the points below. You've rightfully identified that:

1) there is a concern that an agreement between multiple retailers to contract someone (ex: a waste management business) to carry out the third-party solution could be anticompetitive, for example [Redacted] other waste management businesses in Scotland who are not the scheme administrator's logistics provider. The intention to work with the same provider(s) that CSL is based on the idea that it would be more efficient and optimised to work with only one provider, keeping the third-party takeback solution simple. I am asking this because there is a limited amount of time left to design a solution and that the industry would not want to go through a dedicated procurement/bid exercise to appoint their own third-party partner – but equally relying de facto on CSL's choice could be seen as anti-competitive.

2) there is a concern that a group of retailers – actually motivated in finding a solution that works for online takeback, could be seen as adopting a cartel behaviour, in the sense that they would need to set up a Group/Coalition to discuss amongst themselves how to design a solution. As a collective, they would need to invest money, time and make common decisions on such an online takeback option, which could be seen as undertaking 'concerted practices' between competitive companies. We'd really appreciate some clearance on whether there is a risk here. We might be overly cautious but BRC/SRC does not want to facilitate or be associated with any behaviours that would put at risk our reputation.

3) We would welcome CMA's view on whether a trade association is the best place to facilitate such a coalition to take place – and whether we can ask members on whether they are willing or not to join such a coalition. If not, who would be the better placed?

4) In instance that a trade association could host such discussions, would we be infringing competition law if we gather information on (deliver schedules, volumes, frequency of deliveries, locations...)?

I hope it all makes sense, any clarity from CMA colleagues would be very much appreciated, and as always [Redacted] and I are more than happy to have a quick call if it would be easier to chat over the phone.

Many thanks,

[Redacted]



[Redacted]
Sustainability Policy Advisor

T: [Redacted]
22 Tower Street, London WC2H 9NS
brc.org.uk

Our core hours are 10am to 4pm, and whilst it may be convenient for me to send emails outside of this time, I do not expect you to answer straight away.

CSR COMMUNITY

SUPPORTING RETAILERS TO COLLECTIVELY INFLUENCE
AND DRIVE POSITIVE CHANGE

LATEST INSIGHT >>

From: [Redacted] <[Redacted]@gov.scot>
Sent: 09 March 2022 12:02
To: [Redacted] <[Redacted]@brc.org.uk>
Cc: [Redacted]@gov.scot; [Redacted]@sepa.org.uk; [Redacted]@sepa.org.uk; [Redacted] <[Redacted]@brc.org.uk>; [Redacted]@gov.scot
Subject: RE: Scottish DRS | Third party partnership | Competition considerations

Hi [Redacted]

We have had a speedy reply from the CMA asking for some more details. I will go back to them and explain a bit more about the background but I have to confess relative ignorance around the exact source of your worry about competition law. Is the concern that an agreement between multiple retailers to contract someone to carry out the third-party solution could be anticompetitive? Is it about certain information you might share with one another as you discuss (e.g. about your delivery schedules etc.)? Or something else entirely?

Grateful for a brief summary which I can pass on to CMA as part of my reply.

Best wishes

[Redacted]

[Redacted] | Circular Economy Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate | Scottish Government | M: [Redacted]

From: [Redacted] <[Redacted]@brc.org.uk>
Sent: 08 March 2022 16:27
To: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>
Cc: [Redacted] <[Redacted]@gov.scot>; [Redacted]@sepa.org.uk; [Redacted]@sepa.org.uk; [Redacted] <[Redacted]@brc.org.uk>
Subject: RE: Scottish DRS | Third party partnership | Competition considerations

Hi [Redacted],

Many thanks for getting back and letting us know, looking forward to hearing back from the CMA

Best wishes,

[Redacted]



[Redacted]
Sustainability Policy Advisor

T: [Redacted]
22 Tower Street, London WC2H 9NS
brc.org.uk

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From: [Redacted]@gov.scot <[Redacted]@gov.scot>
Sent: 08 March 2022 15:57
To: [Redacted] <[Redacted]@brc.org.uk>; [Redacted]@gov.scot
Cc: [Redacted]@gov.scot; [Redacted]@sepa.org.uk; [Redacted]@sepa.org.uk; [Redacted] <[Redacted]@brc.org.uk>
Subject: RE: Scottish DRS | Third party partnership | Competition considerations

Hi [Redacted]

Thanks for getting in touch and sorry for the slow reply—we have had a few people in the team off on leave in the last week.

It's good to hear that your members are keen to take forward the discussion around a third-party solution and I'm keen to see what we can do to provide reassurance on the competition-law point. I've emailed my contact in the CMA to start the discussion with them and will chase if I don't hear from her by the end of the week. I'll let you know when I have a response and we can discuss next steps.

Best wishes

[Redacted]

[Redacted] | Circular Economy Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate | Scottish Government | M: [Redacted]

From: [Redacted] <[Redacted]@brc.org.uk>
Sent: 02 March 2022 11:02
To: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>

Cc: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@sepa.org.uk>;
[Redacted] <[Redacted]@sepa.org.uk>; [Redacted] <[Redacted]@brc.org.uk>
Subject: Scottish DRS | Third party partnership | Competition considerations

Dear [Redacted], Dear [Redacted],

I hope you're well, I thought to get in touch following the online workshop on 17th Feb. in relation to the third-party partnership solution and competition-related considerations. We were wondering if by any chance Scot. Gov has had the chance to raise this with the CMA. Our members are keen on moving forward the industry discussions however BRC/SRC would prefer to have full clearance as to whether such discussion would be competition compliant and can be hosted by trade body.

Any insights or feedback would be greatly appreciated,

Kind regards,
[Redacted]

[Redacted]
Sustainability Policy Advisor

T: [Redacted]
22 Tower Street, London WC2H 9NS
brc.org.uk

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From: [Redacted] <[Redacted]@ [Redacted].co.uk>
Sent: 16 March 2023 13:26
To: Permanent Secretary <PermanentSecretary@gov.scot>
Cc: [Redacted] <[Redacted] @[Redacted].com>
Subject: RMAS Request to participate in the Gateway Review Subject: DRS - the Recycling Sector.

Dear Permanent Secretary,

Deposit Return Scheme : Request to Participate in the Gateway Review

The Resource Management Association Scotland (RMAS) is the representative organisation for micro, small and medium sized resource management companies operating in Scotland, and yet we have not been invited to participate in the Gateway Review and would formally request the opportunity for the RMAS to be included within this process. As of March 2019, the Waste and Resource Management Sector in Scotland comprised of four hundred registered companies employing 6,690 people, with a £1.263 billion turnover. Ninety-five percent (380) of these registered companies were SMEs, who account for 55.4% of private sector turnover equating to a turnover of £738 million.

Attached is a short briefing paper which summarises the RMAS Position re DRS.

We look forward to hearing from you, with best wishes [Redacted]

([Redacted] on behalf of the RMAS)

RMAS Position - Scotland's Deposit Return Scheme

March 2023

- RMAS supportive of DRS but not in its current form.
- Missed opportunity to engage with a sector who have a more advanced understanding and who could have helped to design a more appropriate scheme for Scotland.
- Appointment of a large conglomerate, Bifa a major collector, is anti-competitive.
- Impacts on commercial collections as a result of the loss of both in-scope (PET plastic, glass, steel or aluminium sized containers between 50ml and 3 litres) and out-of-scope materials (potential targeting by the conglomerate for other waste streams).
- Current scheme will have a decimating impact on the existing SME resource and waste management sector in Scotland resulting in significant job losses, carbon impacts due to increased vehicle numbers and movements, and a reduction in the quality and flexibility of service provision, especially for remote, rural and island communities.
- Current scheme will make local authority DMR collections less viable.
- Exclusion of glass should be considered - Scotland and Wales are including glass in their schemes whereas England and Northern Ireland are not.
- Existing resource and waste management companies' recycling infrastructure, and their logistics and collections networks, should be used to reduce costs and carbon impacts.
- Current approach appears at odds with National Economic Transformation Strategy. Using existing providers at the local and regional levels across Scotland could build resilience and make a significant contribution to help derisk exposure to global impacts of climate change, and future market volatility and shocks.
- Consideration for a digital DRS scheme - would have enabled the use of existing recycling infrastructure and collection networks, reducing costs and carbon impacts significantly.

Background to Waste and Resource Management Sector in Scotland

As of March 2019, the Waste and Resource Management Sector in Scotland comprised of four hundred registered companies employing 6,690 people, with a £1.263 billion turnover. Ninety-five percent (380) of these registered companies were SMEs, who account for 55.4% of private sector turnover equating to a turnover of £738 million

The sector is ideally positioned to provide services and support, identify new economic, technical and system innovations and opportunities, support the development of strong supply chains and cluster development at the local and regional levels for all key sectors in Scotland. By decentralising services and building resilience at the local and regional levels across Scotland, these activities could make a significant contribution to help derisk exposure to global impacts of climate change, and future market volatility and shocks.

These activities directly contribute to Scotland's net-zero carbon target of net-zero emissions of all greenhouse gases by 2045; the Circular Economy Bill; and to the policy programmes of action within Scotland's National Strategy for Economic Transformation: Delivering Economic Prosperity (2022).

Background to RMAS

The RMAS is a not-for-profit, non-political membership organisation for micro, small and medium sized resource management companies operating in Scotland. Our membership is growing, and we are actively representing and supporting companies who are operating across the length and breadth of Scotland. We aim to ensure our members are well informed and that priority issues, risks, and opportunities are communicated, and represented effectively to Government, its various agencies, the commercial sector, and the public. Andrew Murdoch, Director of J and M Murdoch and Son Ltd., is the current Chair of the RMAS.