

**COMPETITION IN LOCAL SERVICES:
SOLID WASTE MANAGEMENT
HUNGARY
04-AUG-2000**

Introduction

The organisation of solid waste management as a local service and, in particular, the promotion of competition in this field has recently become a focal point in Hungary. Accordingly, Parliament will discuss the Bill on Waste Management in October, and it will probably be made law before the end of the year.

Experience with the intergovernmental circulation of the draft bill indicates that environmental considerations (reducing pollution, elimination of illegal waste deposit sites, tightening of control) are frequently in conflict with the public interest in competition in various parts of the market (providing choice for consumers, improving efficiency of service). It is difficult to convince environmental and municipal officials that these considerations are reconcilable as at first glance administration under competitive conditions seems to require technically more demanding, more sophisticated work.

To ensure uniform understanding, hereinafter “municipality” shall mean the public entity in which local public administration is exercised, pursuant to law, through independent, free self-governance; in other words, it means local authorities. According to statistics as of January 1, 1999, there are 3154 local authorities in Hungary.

The Act No. LXV of 1990 on Municipalities (MA) – and its amendments – regulates the tasks of municipalities in a uniform manner, irrespective of the size of settlement. The MA also provides additional rules in respect of the municipality of Budapest – in view of the special role and peculiar position of the capital in the country – and for the county self-governments. Municipalities have discretionary powers in regard of the manner public services within the solid waste management category are implemented as well as in the available tools and possibilities.

In view of the fact that the practices of solid waste management are largely uniform across municipalities of various sizes, neither the size nor the number of municipalities is relevant for assessing the position of solid waste management.

In Hungary there is no regulatory distinction between the market for household waste collection and commercial or business waste collection, as long as non-household waste can be handled together with communal waste.

The joint or separate handling of these two categories of waste depends on the regulation of municipal solid waste management related public services by the municipality and on the definition of the types of waste categorised under the scope of public services.

For instance, in Budapest and some other cities, with the exception of solid waste not generated on a regular basis, the municipality, acting in its competency provided by law and based on legal powers, ensures in a local by-law the mandatory use of public services related to (non-hazardous) household (communal) waste and other regularly generated waste (generated in the course of industrial or commercial activities, service provision or other economic activities).

In another model the municipality includes in its public services only the household (communal) solid waste, while in the case of industrial waste the owner of such waste is obliged to ensure its management; for this latter category the municipality provides no further detailed regulations such as the agent or manner of disposing of such waste.

The services in this latter area, as well as the exceptions mentioned in the first category – i.e., non-hazardous waste not regularly generated, thus not falling into the scope of local public services – operate on a market basis.

Rules governing hazardous waste (control, transportation, treatment) are provided in a separate legal regulation, the Government Decree No. 102/1996. (VII.16.) Korm.

1. The role of local authorities in regulation and procurement

1.1 Economic role of local government

The operation of municipalities is regulated by the MA; their tasks are listed in Article 8 of the Act. Some of these tasks are mandatory, while others are discretionary.

Municipalities may act independently in local public matters. Such public matters involve the provision of public services to residents, the exercise of local public power as well as the creation of the organisational, personnel and material conditions thereof.

In such municipal affairs the representative bodies (municipal councils) act independently in their regulatory and administrative capacities.

The MA declares that the tasks of municipalities include ensuring the provision of the basic public services to local residents.

In respect of some of these services municipalities themselves may decide, based on the demand from residents and depending on their financial resources, which of the services not specifically listed in the law they would provide, to what extent and in what manner.

In the field of local public services the tasks of municipalities include in particular: urban development, urban planning, protection of the man-made and natural environment, housing management, flood control and drainage of rain water, canalisation, maintenance of the public cemetery, maintenance of local public roads and public areas, local public transport, public sanitation and provision of cleanliness of the settlement, provision for local fire protection and for local duties of public security, participation in the local supply of energy and in providing employment, provision of kindergartens, primary education, health care and welfare services as well as other tasks related to children and the youth; provision of community facilities; promotion of public education, scientific and artistic activities and sports; ensuring the rights of national and ethnic minorities; promotion of the community conditions of a healthy way of life.

In respect of the listed public services not made mandatory by law, the municipality has discretionary powers to decide in what manner they would be provided. They may even decide not to provide such services.

The other large category of public services consists of the tasks where the municipality has no discretionary powers; it must ensure that they are provided.

The municipality must provide for the supply of healthy drinking water, kindergarten education, elementary school education and instruction, basic health care and welfare services, street lighting, maintenance of local public roads and the public cemetery, and it must ensure the rights of national and ethnic minorities.

Even though the MA classifies the provision for public sanitation and cleanliness of public areas under voluntary public services, the Act of 1997 on health care reclassified it into the scope of mandatory local services.

1.2 *Revenue sources of municipalities*

The MA gives a detailed account of the responsibilities and competencies it prescribes. As a financial safeguard, the Parliament ensures the financial resources necessary for their provision and decides about the amount of budgetary transfers allocated to the various tasks. The financial management of municipalities must be within legal constraints, the main elements of which are the following:

- they may freely dispose of their property,
- they may allocate their revenues independently,
- they provide for the carrying out of voluntary and mandatory municipal tasks from their unified budgets.

Sources of revenue:

- own revenues (local taxes specified and imposed in the manner described in law, proceeds from their own activities, businesses or the yield of municipal property, dividends, interest income, rent, assumed funds, other revenues),
- shared central taxes (the legally specified percentage of the personal income tax),
- normative grants from the central government budget.

For tasks specified by Parliament as social priorities, municipalities may request targeted subsidies, while for high-cost investment projects they are eligible for earmarked subsidies. The Act on the 1999 Budget of the Republic of Hungary allocates a facility of 2 000 million HUF for earmarked subsidies related to the priority investment projects of municipalities launched in 1999. In respect of new projects starting in 1999-2000 in waste management, the appropriation amounts to 973 million HUF.

If a municipality runs a deficit through no fault of its own, it is eligible for additional government subsidies. Municipalities may have remaining revenues mostly as a result of favourable financial conditions in the previous period or revenues from the utilisation of their property.

The system of election of municipal officials and mayors is based on the Constitution of the country. The mayor of the municipality and the members of the representative body (council) are elected by citizens in a direct and secret ballot, pursuant to the universal and equal suffrage.

1.3 Control of municipalities by the central government

Procurements of municipalities above a value threshold specified in law are conducted according to the Public Procurement Act (Act No. XL of 1995). This format is only applicable to the municipal procurements financed from their own budget. "Procurements" financed by households – i.e. where the municipality acts in their interest and on their behalf – do not belong to the scope of the Public Procurement Act.

The Act No. XLII of 1995 (the Act on the Mandatory Use of Certain Local Public Services – hereinafter: Mandatory Services Act) separately regulates the specific technical rules governing the mandatory use of certain local services which constitute the most important tasks of municipalities; such tasks include the municipal responsibility related to communal solid waste.

The collection, removal and disposal of communal solid waste is a special public service that is mandatory for municipalities and that consumers are obliged to make use of.

Pursuant to the Mandatory Services Act, the public service provider is selected in a public tender. The winner of the tender must proceed in accordance with the Public Procurement Act when conducting its public service related procurements. The establishment of capital projects financed from central transfers, such as of waste treatment facilities (deposit sites, incinerators) is also governed by the rules of public procurement.

The ex post audit of municipalities is the duty of the State Audit Office. The ministry funding such projects is also entitled to conduct investigations; if the use of funds was not in line with regulations, the ministry may oblige the municipality to repay such transfers together with interest.

For certain public tasks, such as the obligations related to solid waste (establishment of solid waste disposal facilities) municipalities may also be eligible for normative investment purpose targeted subsidies (specified in terms of physical parameters) within the system of government transfers. The disbursement of such central funds is subject to very tight conditions; failure to comply with these results in the withdrawal of subsidies.

In the case of projects funded from the central budget and appraised and approved within the public procurement procedures no savings may be achieved at the municipality level due to the nature of performance based financing.

There are no central subsidies available for operating the services related to solid waste (collection, disposal, treatment). Costs related to the services are borne by the producers of waste; the polluter pays.

Incentives for the efficient procurement of local services include publicity as well as personal interest (involvement) because inefficient, expensive public services payable by local voters undermines the chances of local officials to be re-elected.

However, there is a disincentive in that municipalities, in order to economise on their revenues, have a vested interest in the profitability of the enterprises owned by themselves, therefore their own interests often prevail over the interests of voters/consumers.

2. Regulation and procurement of solid waste

2.1 *General information about waste management*

In Hungary almost 104 million tons of waste is generated each year. Of this, approximately 4 million tons/year is communal solid waste and approx. 20 million tons/year is treated liquid communal waste. The remaining approximately 80 million tons/year of waste is generated by industrial, agricultural or other business activities. Within commercial waste approximately 4.2 million tons/year is hazardous waste; within this, the volume of industrial waste is declining, that of communal waste is slightly increasing.

Depending on their nature and composition the treatment of solid wastes requires various technologies. Solid waste that cannot be directly recycled may be treated in several ways. The most frequent technique is depositing solid wastes in dumps, or their utilisation in incinerators. More than half of the solid waste in Budapest is used/disposed of in incinerators, while a smaller portion is deposited.

Almost 80 percent of solid communal waste are collected in some organised manner. 85 percent of the solid communal waste is disposed of by depositing. There are 2 700 communal deposit sites.

2.2 *Sources of revenue for solid waste service providers*

Services related to solid waste are paid for almost exclusively by the users of the service, i.e., the emitter; the producer of the waste, based on the polluter pays principle. The rates payable for the service are primarily dependent on the type of service used.

Pursuant to the authorisation in the Mandatory Services Act, municipalities specify the rates of public services the use of which is mandatory (related to the solid municipals waste – communal waste or waste that can be disposed of together with communal waste –) as well as the terms of application of such rates in local by-laws. The rates payable for services cover the costs of the complex public service – collection, removal, disposal (depositing or incineration). The various municipal by-laws regulate the level and terms of application of rates payable for the public services of mandatory use in highly different manners, several of which have been overruled by the Constitutional Court because of their unconstitutionality.

Municipalities have the responsibility to provide for the technical conditions of the service as well as for the related expenditure.

Waste management services outside the mandatory local public service provision obligation are provided on a market basis, where the price payable for the service is determined by the price formation mechanisms of the market, taking into consideration local conditions and circumstances.

2.3 *Competition for the market – contracting out, tendering*

The local public services subject to mandatory utilisation in the field of municipal household solid waste is generally not subsidised by municipalities. In Budapest this service is not subsidised, i.e., property owners of Budapest pay the full price for the disposal of solid waste. There are municipalities that provide some subsidies depending on the resources available.

Another possibility for the disposal of communal solid waste is for the municipality to provide for the organised collection of waste and to participate in that system, but not to require mandatory use of

such system. Municipalities would typically provide the service within their own organisation, and the costs would be financed from their communal tax revenues.

A third, combined version of disposing of solid communal waste is where households pay for the service a price that is lower than the cost of the service, and the difference is paid to the service provider by the municipality, i.e., rates for households are subsidised from other municipal revenues.

Municipalities have the right to choose from among the above options.

In one of the competition supervision proceedings of the Competition Office we encountered the inappropriate use of municipal subsidies, which had an adverse effect on competition. In view of the extent of such effect and the other facts revealed by the examination the Competition Council terminated the proceedings but called on the municipality to operate the system of subsidies in conformity with the requirement of competitively neutral conditions. (For the brief description of the case see the Attachment.)

Municipalities typically meet their specified obligation in respect of public sanitation, and in particular the disposal of solid waste, through their former specialised corporations or the legal successors of these, mostly municipality owned. Though pursuant to the Mandatory Services Act municipalities invite a tender for such public services, i.e., several enterprises may compete for the provisions of such public services, in the vast majority of cases these contracts have been awarded to the former municipal corporations. The winner of the tender is awarded exclusive rights for a certain period of time.

The effective regulations do not allow for the selection of the service provider through agreement with the consumers.

Bids may be submitted not only by independent companies but also by groups thereof. Thus in Budapest, for instance, the consortium of the former service provider, the Metropolitan Public Sanitation Corp. and nine other undertakings won the right of exclusive public service provision for a period of ten years. After the date of the municipal by-law entering into force the losers of the tender may operate in Budapest only in the market of non-regularly generated solid waste, where prices are formed by market competition.

Depending on the terms specified in the calls for tender, the length of time between new tenders is generally five or even ten years, and the provision of exclusivity for 15-20 years is not uncommon. This procedure raises competitive concerns because it forecloses the market for a long period.

The obligation to invite tenders is prescribed in the Mandatory Services Act.

The scope of the Act No. LXXXVII of 1990 on Pricing (Pricing Act) does not cover the setting of the consideration payable for services subject to mandatory utilisation. According to the explanation to the Pricing Act, in such cases the consideration should be determined in a separate legal rule.

Pursuant to the Mandatory Services Act municipalities determine in local by-laws the terms and conditions of the services, such as technical requirements, rights and obligations as well as the rate paying obligation of the waste producer (the owners of property in our case), the level of rates, the payment schedule and other criteria.

As the Mandatory Services Act contained no other provisions concerning pricing, the municipalities that invited tenders typically requested, after the description of the terms of reference, the bidders to submit offers for the rates or sometimes even propose techniques for the provision of the service. As a result, a rather diverse picture has emerged in the market of solid waste related public services, which gave rise to several constitutional concerns and resulted in infringements.

In certain areas the basis for the price of the public service is defined as a function of the number of persons generating waste (based on a theoretical waste normative depending on a specified volume of receptacle and number of times it is emptied), while other municipalities took the number of residential units as their basis, still others imposed identical fees on permanent residents and on owners who used their property on a temporary or seasonal basis.

Tenders are mostly invited for the complex provision of the public service (collection, removal, disposal), but there are cases where the municipality invites separate bids for the operation of the deposit site. In this case the public service would only cover collection and removal.

As a national practice, local municipalities generally regulate the full chain of municipal solid waste management in a uniform manner. In this case additional concerns were raised by the practice that the winner of the tender was authorised/commissioned to operate the waste deposit site (waste dump) as well. This duplicity gave rise to more problems because the rate for the complex public service – collection, removal, disposal (depositing) – was specified by the municipality in light of the rates offered by the bidders, while the fee payable for depositing waste at the dump was always determined by the operator of the dump, i.e., a competitor of the collectors.

From a competition policy perspective the desirable practice would be for the municipality to also determine the dumping fee payable by external collectors so that entrepreneurial interests cannot be enforced in the price of the service. In this area highly diverse pricing techniques are used, which raises a number of concerns. The uniform and comprehensive regulation of mandatory public service rates was introduced because of the absence of safeguards for the pricing in the municipal by-laws adopted pursuant to the Mandatory Services Act, i.e., the absence of the regulation of the pricing principle, of legal remedy and of the equivalence of service and consideration. The Constitutional Court found this unconstitutional and ordered the infringement to be terminated.

The gravity of the absence of safeguards and the concomitant necessity of its resolution is primarily due to the fact that most municipalities provide the solid waste related public services subject to mandatory utilisation through their own corporations, i.e., the price of the service is set by the entity of public power that has an indirect economic interest in the pricing.

The terms and conditions of pricing and of reviewing the prices are typically set forth in the service contract; the price of the public service is set by the municipality annually, and in most case in view of the terms of reference and the contents of the bid.

The system of service and consideration is typically defined by the parties in such a manner that if cost savings are achieved, the benefits can be kept by the undertaking, but only if they satisfy the other conditions set in the contract. Failing this, the contract may be terminated.

We are not aware of any increase in the price of service during the year at the initiative of the service provider or of any organisation or institution responsible for carrying out the tenders or enforcing the terms and conditions of the tenders.

Communal solid waste management activities and the provisions concerning local public services related to communal solid waste are regulated by ministerial decrees¹.

There are no restrictions concerning the identity or nationality of bidders; preconditions for bidding include compliance with technical and other conditions (related to possession of licences for the activity concerned) as well as compliance with requirements set by the entity inviting the tender which are applicable uniformly to all bidders. As a result, foreign enterprises may submit bids on their own or as stakeholders in jointly owned domestic companies.

In Hungary the collection of communal solid waste within the framework of public services is performed by companies. The ownership structure of such economic associations varies in a broad spectrum. The companies may be:

- 100 percent municipality owned (e.g. Budapest);
- with varying proportions of foreign investors due to the insufficient capital available to rural municipalities;
- with municipal majority ownership, and domestic or foreign partners (e.g. Pécs);
- with minority municipal ownership, and domestic or foreign partners (e.g. Debrecen), finally;
- 100 percent foreign owned (e.g. Vác).

There is no control over ownership or the terms of business, or rather controls exist only to the extent that is justified by conditions specified in the merger control provisions of the Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (Competition Act) and its amendments.

We are not aware of any other controls over foreign ownership in the scope of authority and competence of the Competition Office.

2.4 Competition in the market – Controls on entry and prices

The answer to the question about the choice open to customers of complex solid waste management services between service providers depends on the type of waste concerned.

In case of mandatory public services, consumers have no choice because the winner of the tender is awarded exclusivity for the term of the contract. Here the consumer may turn exclusively to the selected service provider. In this area no other entity may legally provide services.

In the case of the collection and removal of communal solid waste generated on a non-regular basis and not falling into the public service category, there is a competitive market, where consumers have discretionary powers to select the identity of the provider and are free to agree on the consideration for the service. There is no separate legal regulation for service providers in the latter category; in these areas the general legal system is applicable. Thus in Budapest, for instance, the firms satisfying the relevant legal conditions are free to compete for the management of non-regularly generated waste, which amounts to almost one fifth of the total volume of solid waste.

In respect of depositing at dump sites there is typically no competition because in the vast majority of cases solid waste can only be disposed of at the dumpsite designated by the municipality.

As for the service structure in the market segment, competition has become fairly intense as a result of the extension of the subjective scope of the public service to regularly generated waste; competition is most keen in the case of producers of large volumes of waste.

Municipalities in their by-laws specify the price of public services performed within waste management as well as the consideration and the related pricing conditions.

In the first stage the prices of public services subject to mandatory utilisation are outlined by the terms of reference because the issuer of the tender also request potential providers to submit bids for

prices. The final price of the service is set following the finalisation of the terms of the service contract, taking into consideration the bid price and the municipal subsidy, if any.

In Budapest the price is set in the complex system of the by-laws regulating the legal relationship of the municipality, the service provider and the consumers and of the service contract. Essentially the municipality responsible for the provision of the service and the service provider determine the price of the service, generally on an annual basis, based on the formula set forth in the contract.

Maintenance of quality of service is ensured through a system of safeguards with several pillars. On the one hand, the price set by the municipality is determined together with related price application criteria; it is the duty of the relevant organisational unit of the municipality to monitor compliance with these; furthermore, other regulators (environmental authorities, public health authority) also perform inspections on a regular basis.

In addition, consumers themselves represent another safeguard, who react with increasing sensitivity to changes in the quality of service because of the increasing prices charged; legitimate complaints may result in the fundamental review of the contract.

There are no standards concerning the quality of service.

The prices of other solid waste related services not falling within the scope of the public service system are formed by the market in the framework of bargaining.

No separate institutions have been established for determining the consideration for waste management services.

There are no sectoral regulations concerning the entities entitled to provide waste management services; the law does not differentiate between various enterprise forms (or ownership). Such activities can be pursued, as long as the relevant conditions are satisfied, in possession of an operational licence, which is issued to private enterprises by the professional chamber with competence in the region on the basis of a position statement issued by the professional authority.

Provisions concerning services and services providers are set forth in sectoral regulations or acts of Parliament (see sections 65-67).

2.5 *Related markets – Waste disposal and recycling*

If they undertake municipal solid waste management tasks, municipalities have the right and obligation to provide for the conditions of waste disposal, i.e. treatment (dumping, depositing or utilisation in incinerators).

Depositing sites are typically established for each settlement, but it is increasingly common to create regional depositing sites (primarily for economic considerations). Currently there are approximately 2 700 legal depositing sites in Hungary. Very few of these, however, comply fully with all regulations. Operating costs vary significantly depending on the technical parameters and level of service, and accordingly the service prices also vary considerably.

Regional deposit sites are not distributed evenly; as a result of different conditions (number of sites, restrictions on types of waste allowed to be deposited, level of price, transportation distance etc.) there is increasing competition between sites in some regions.

Household solid waste within the scope of public services may only be deposited in the waste disposal facility (dumpsite or incinerator) designated by the municipality in the terms of reference.

Within the public administration boundaries of Budapest there is only one communal deposit, which will soon be closed down due to its limited capacity. Outside the administrative boundaries there is another deposit site accepting communal waste from Budapest (Dunakeszi), and yet another site is being established (in the Pusztazámor region).

There is only one communal waste incinerator, in the 15th district of Budapest. There are other incinerators elsewhere in the country but they mostly serve to satisfy the needs of their operators, though they undertake more and more incineration on commission.

The waste disposal services are purchased by the entities obliged to use the services, i.e., the producers of waste; this can happen on an individual basis, or in the case of block buildings, by their representatives. The services provided as public services are paid for directly by the residents or users, the municipality does not pay anything directly. Occasionally the municipality would participate in the rate system within a regulated framework, in the form of indirect subsidies, but this only takes the form of crediting the amount on the account of the obligees.

In the case of services subject to compulsory utilisation, the service provider is always selected through tendering.

The regulation of the recycling of solid waste is being designed now. The primary prerequisite for this is the establishment of the system of waste separation. As in Hungary waste separation is not an established practice (there are experiences only from small communities and from a relatively short timeframe), the widespread introduction is possible only upon the concurrent introduction of legal and economic conditions. One safeguard would be the waste management bill under preparation, which Parliament intends to pass before the end of this year.

The Act on Waste Management will define the concept of public service in the context of municipal waste management, which definition has been missing from the regulatory system. This is needed because the municipalities assume responsibility for organising the provision of the public service; it is in this area that they are obliged to invite tenders and contract with the best bidder, and the law may impose obligations on property owners to make use of such services. A controversy has developed about the subjective scope of public service, i.e., whether the collection of continuously versus periodically generated waste constitute two separate markets, and if so, can the latter be performed outside the scope of public services, under free market conditions? The Competition Office has recommended that the collection of periodically generated waste be treated as a separate market and that this operates as a competitive market.

The Competition Office has recommended the incorporation of safeguards into the law concerning the pricing of services within the scope of public services – this is in line with the Constitutional Court ruling on the subject. Such safeguards would include the separation of the costs of collection and transportation services in a vertically integrated undertaking from the costs incurred in operating the disposal facility to prevent cross subsidisation.

3. Market Structure and Competition issues in solid waste collection

3.1 Market Structure

Municipalities tender for solid waste management only in the case of tasks within the range of public services. In response to these tenders there are varying numbers of bids received, depending on the local conditions, including the number of enterprises present on the market, their relationship to each other, the size of the assignment, the technical conditions in the area, expectations relating to future development as well as other considerations (e.g., other terms of the tender: whether only individual enterprises may bid or consortia are also acceptable, whether the area to be serviced can be divided or only one provider may be awarded exclusive rights, etc.); but there are always more than one bids.

These bidders are generally incumbent companies capable of performing the tasks concerned, but external, even foreign, companies may also bid.

The market share of bidders also varies depending on the conditions prevailing in the area; generally the former public service provider dominates but we have seen competing bidders realising more business than the public service provider.

The ownership structure of solid waste management companies is rather varied. For information on the ownership structure of enterprises authorised to perform public services, see Sections 66-67.

The ownership structure of enterprises operating in the market-driven waste management fields outside the range of public services is also diverse. On the market of construction and demolition rubble small enterprises predominate, most of which are private companies.

In the field of waste affected by the product fee [environmental surcharge] – packaging materials, tyres, refrigerators, and batteries – regional consortia have been awarded the contracts in tenders. These enterprises would also typically have some foreign ownership. The vast majority of companies have mixed ownership, where foreign participation may be as high as 100 percent. In this area there are no municipal corporations.

The winners of the contracts also receive grants from the ministry to support their economic operations; this may be a one-off grant (to establish the core network system) or operating subsidies.

Enterprises working in the market-based waste management segments mostly work in that single business, though they may provide other services either related to this activity (leasing of machinery, repairs) or unrelated services (property utilisation, specialised construction), but we have no information about the actual situation.

The complex public service subject to mandatory utilisation – collection, removal, disposal (dumping, incineration) – is provided in a vertically integrated corporate structure, which raises a number of concerns. (One of these is illustrated in the Attachment.)

Enterprises working with solid waste operate almost exclusively in one area, with the exception of regional enterprises; waste collection in other settlements is atypical.

3.2 Competitive concerns

Since the establishment of the Competition Office there have been 13 municipal solid waste related competition supervision proceedings altogether, of which only three were concluded with the

establishment of a violation within the competency of the Competition Office – fixing of selling price (two cases), and refusal to deal. Two cases were rejected for lack of competency.

As shown by the information gained in connection with the cases examined by the Competition Office, competition related concerns arising in the field of waste management are mostly rooted in the deficient or even contradictory regulatory system.

Municipalities typically discharge their municipal solid waste related public duties through their former corporations or the legal successors thereof. Public service providers have been selected through tendering since the coming into effect of the Mandatory Services Act. (In the vast majority of cases municipalities have some degree of ownership in corporations providing public services.)

On the market of public services subject to mandatory utilisation, in accordance with the Mandatory Services Act, the winner of the tender obtains exclusive rights to collect, remove and dispose of municipal solid waste as well as to operate the dump sites. While the price of the organised public service is set by the municipality in a by-law, the price for dumping is set by the operator of the dump sites, i.e., the public service provider that is also a competitor to the external enterprises shipping the solid waste to be deposited. To ensure competition-neutral conditions, this duality raises regulatory demands to:

- distinguish, in a transparent manner, between (public) services inside and outside the competitive sector, and to ensure the accounting separation of the costs of these two categories, because this is the only way to eliminate anti-competitive cross-subsidisation;
- ensure non-discriminatory access to the production factor indispensable for the business of public service providers, i.e., of the deposit site; finally;
- eliminate the concentration of the roles of authority, regulator and business in a single organisation i.e., the identity of the owner and regulator should be separated.

Even though the Mandatory Services Act, effective since 1995, has taken significant steps towards the market transformation of solid waste management services, the absence of its full coverage has raised more concerns, in respect of which Constitutional Court rulings have been issued. According to the Mandatory Services Act, public tendering is compulsory for mandatory public services, but no detailed rules have been designed for this area, that is, the terms and conditions of the tender are always specified by the entity inviting the bids. This is why in the area of Budapest the municipality, through its terms of reference, interfered in the existing market of solid waste management services by giving public service status to the regularly and/or continuously generated (non-household) waste management hitherto performed under market conditions, and also by providing exclusivity to the public service provider for a term of ten years. The complaint concerning the fairness of the exclusive tender was rejected by our Office due to lack of competency as the Competition Act refers procedures concerning the violation of provisions prohibiting unfair competition to the competency of the court. The complainant turned to the court on the grounds that the terms of reference issued by the municipality was anti-competitive; no ruling has been issued on this case yet.

The other main area of concern is related to the prices and conditions of their application as regulated in the local by-laws of municipalities. A number of complaints filed to the Constitutional Court objected to the fact that local by-laws did not set the indicators that serve as the basis for payment as a function of actual waste emission or the amount of waste removed. The Constitutional Court in its ruling found these provisions to be infringing taken into consideration the unconstitutional violation by omission due to the absence of safeguards which the Mandatory Services Act should contain in respect of pricing; as

a result, the Constitutional Court in its ruling obliged the legislators to terminate the unconstitutional status of the Mandatory Services Act.

The Competition Office has had no cases related to bid rigging, market sharing or price fixing; nor did we encounter predatory pricing. We have had no competition supervision proceedings or merger cases related to the concentration of solid waste management undertakings.

ATTACHMENT

**"DISPOSAL OF COMMUNAL WASTE" CASE
VJ-148/94¹**

Pursuant to the legislation in force care for the disposal of communal waste is the responsibility of local governments. In Dunaújváros the local government of the town ensures this by means of the Dunaújváros Town Administration plc (hereinafter called DTA) being its own property to an extent of 99.9 percent.

DTA is working in a competitive environment in respect of collecting/transporting communal waste and on the basis of an exclusive right it enjoys a monopolistic position in handling local waste (disposal of waste). DTA's waste transportation tariffs are approved by the local government; the fee of disposal is fixed by DTA in its own competence.

The Housing Co-operative INTERCISA, running 4 500 flats in Dunaújváros launched a proceeding against DTA's activity. Instead of with DTA the Housing Co-operative concluded an agreement effective from 1 July 1994 concerning waste transportation with another entrepreneur, which offered a more favourable fee than DTA. At the same time DTA raised the fee of waste disposal by 67 percent, and a month later it reduced the fee of waste collection by 17 percent. The tariff reduction was made possible by local government's aid granted to DTA.

The Housing Co-operative complained that the contract that it concluded with the new entrepreneur became unfavourable for it as a consequence of DTA's tariff alterations. The Competition Council acknowledged that the directions and proportions of the tariff alterations had such an effect and, in general, made the waste collecting activity of other entrepreneurs more unfavourable. DTA proved that raising the fee of waste disposal had been caused by objective cost factors and therefore no striking disproportion between performance and counter performance as an evidence of abuse of dominant position could be demonstrated. The reduction of the fee of collection did not indicate circumstances condemnable from the viewpoint of the competition law (the fee remained above the production cost level). Considering the facts, the Competition Council dismissed the request.

Nevertheless, it deemed necessary to draw the attention of the local government to the lesson of the case: the effective local governmental regulation and the existing structure do not promote the progress of competition. It proposed that the local government should put the fee-setting for waste disposal under its competence of supervision as well, further it emphasised the competition distorting character of such local government aid practice.

1. Joint decrees No. 1/1986.(II.21.) EVM-EuM, and No. 16/1996. (VII.15.)BM-KTM