OPENING THE MARKET FOR MUNICIPAL PAPER WASTE IN ITALY: THE AKRON CASE

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1 INTRODUCTION

Recovery and recycling of urban waste constitute a huge opportunity for innovation and growth. However, their full exploitation requires the development of competitive markets where differentiated municipal waste (paper, glass, etc.) can be bought by firms which transform it into inputs for recyclers. To enable this development, it is necessary for municipal waste collectors to sell waste (e.g. paper waste) to the best purchaser, as long as it is economically convenient. This can also positively affect consumers as taxpayers, since the higher revenue from the sale of waste on the market would help cover collection costs and reduce the residual amount to be financed by taxing citizens. For instance, in the case of the paper productive chain, fair and undistorted competition in the upstream markets is particularly important for the Italian paper mills, since more than 60% of the input for their global production is made of recovered paper.

The Italian Competition Authority (“ICA”) dealt with these issues in proceedings carried out against three undertakings of the HERA group (Hera S.p.A., Herambiente S.p.A. and Akron S.p.A.): an Akron’s competitor complained that Hera – the monopolist waste collector in most municipalities of central and eastern Emilia-Romagna – had handed over the waste paper collected to its own downstream branch (Akron S.p.A.) at a price below market level, without making any fair comparison with other offers received.

In its resolution\textsuperscript{3} of 27 February 2014, the ICA found that the conducts carried out by Hera and Herambiente (that heads the Environment division of HERA Group and handles all the waste collected by Hera) consisting in selling the paper waste directly to Akron, instead of awarding it to the

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\textsuperscript{3} A444 – Akron - Gestione rifiuti urbani a base cellulosica, decision of 27 Feb. 2014, in Bollettino 11/2014 (in Italian).
best bidder(s), infringed art. 3 of the Italian Competition law (law No. 287/90), for the following reasons:

(i) it was an exclusionary abuse of dominant position. In fact, by hampering the development of a market for municipal waste paper in the Region of Emilia-Romagna, it foreclosed downstream competitors from accessing an essential input for recycled paperboard – the main product of Italian paper mills – and therefore reduced competition in the market for used paper;

(ii) it was an exploitative abuse. In fact, the sale at a price below market level produced an extra-profit for the HERA Group that was kept within the group and that should have been transferred to Emilia-Romagna consumers in the form of lower taxes for the municipal waste collection service.

The ICA ordered Hera and Herambiente to cease their abusive conducts and required to auction the paper waste, as explained in the following paragraphs.

2 THE MUNICIPAL PAPER WASTE RECYCLING AND THE REGULATORY FRAMEWORK

Paper waste is composed by several types of used paper and board, produced (i.e. disposed of) by households and firms. After collection, used paper and board is cleaned and sorted in specially devoted facilities (sorting platforms) and pressed in bales. The output of the sorting platforms is “recovered paper,” which is the raw material for the production of recycled paper and board.

There are several “grades” of recovered paper, produced with different types of used paper. The various qualities of recycled board produced in Italian mills are obtained by mixing several grades of recovered paper. To keep costs down, recycled board recipes include a variable proportion of grade 1.02 (sorted mixed used paper, with no more than 40% of used newspaper). Grade 1.02 is made from municipal paper waste from “mixed collection”.

Municipal paper waste - as well as other recoverable municipal waste (glass, aluminium, plastics) - is collected through specially devoted bins (“differentiated collection”) in almost all Italian municipalities. Municipal paper waste produced mainly by households is collected without separating used packaging board from other types of paper waste (“mixed collection”), while used packaging board produced by shops is usually collected separately (“selective collection”).

Municipal differentiated and undifferentiated waste collection in a given municipality is a legal monopoly, often granted without any competitive procedure to a municipality-owned or participated firm.
Legal monopoly covers the collection of waste produced by households and “small”4 non-household producers. It does not extend neither to waste produced by larger non-household producers nor to recovery and recycling.

The monopolist waste collector (“MWC”) can choose to manage the waste on its own, or it can adhere to the ANCI-CONAI agreement.5 In the latter case, the paper Consortium, COMIECO, pays the MWC (i) a fixed sum for each ton of used packaging board from selective collection and (ii) a sum based on a market benchmark6 for each ton of paper waste from mixed collection. According to Italian laws, the sum received by COMIECO must be deducted from the costs to be covered by waste collection taxes. Every year the MWC decides the amount of waste paper to give to COMIECO and the amount of waste paper to manage on its own. Since April 2011, Hera manages on its own, through Herambiente, used paper from mixed collection. COMIECO distributes paper waste among paper mills7 on the basis of their historical production shares; then, paper mills buy sorting and cleaning services from platforms.

As of 2012, COMIECO distributes about 60% of the municipal paper waste which it receives. The remaining 40% is sorted and cleaned at COMIECO’s expense and then auctioned. As a matter of fact, the platform that sorts and cleans the used paper is chosen by the MWC.

3 RELEVANT MARKETS AND DOMINANT POSITION

In the case brought against the Hera group, the ICA distinguished three relevant markets: the market for waste paper collection, the market for used paper from mixed collection and the market for recovered paper of grade 1.02.

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4 The “quantitative” and qualitative limits of the monopoly are set by the municipality and usually are quite wide. Non-household producers can however use private collectors, as long as they show that the waste is being recovered; in this case, producers get a waste tax rebate.

5 ANCI is the Association of Italian Municipalities. CONAI is the National Packaging Consortium set up by the Italian law to achieve the EU recycling and recovery targets; it coordinates the activities of Material Consortia, that pay a contribution to municipalities as regards the costs of differentiated collection (based on the amount collected and material quality) and manage the recovery and recycling of materials. There are six Material Consortia (for paper, plastics, wood, steel, glass, aluminium); COMIECO is the one for paper.

6 The Chamber of Commerce of Milan publishes monthly quotes for all main recovered paper grades, on which industry prices are based. COMIECO’s price is based on the quote of the Chamber of Commerce of Milan for “unsorted mixed used paper and board”.

7 Paper mills are COMIECO’s main members. The other members are importers of paper and board packaging and paper recovery companies.
Waste paper collection is operated on a municipal basis by the legal monopolist of the service in the municipality. Hera is monopolist in most of the municipalities of the Central and Eastern areas of the Region of Emilia Romagna.\(^8\)

The market for used paper from mixed collection\(^9\) is local in scope, due to transportation costs from collection places to sorting platforms; the paper waste rarely travels more than 60 km. On the supply side, there are MWC that decide to sell on their own used paper from mixed collection and possibly COMIECO for the auctioned portion of its used paper from mixed collection. On the demand side, there are sorting platforms and wholesalers, that buy it to produce mainly grade 1.02 recovered paper.

At provincial level, in areas where Hera collects waste, Herambiente (that handles waste collected by Hera) holds a dominant position, with a market share of more than 80% in the provinces of Bologna and Modena and a monopoly in the provinces of Ferrara, Forlì-Cesena, Ravenna and Rimini.

In the market for recovered paper of grade 1.02, there are the sorting platforms, which produce recovered paper, on the supply side, and on the demand side there are the paper mills. It is distinct from the markets for other grades because of the complementarity\(^10\) among different grades of recovered paper and the lack of economic convenience to substitute grade 1.02 with more costly and valued grades. Paper mills are geographically concentrated in a few regions, which import recovered paper from other regions. Data collected during the investigation showed that about half of the recovered paper bought on the free market comes from the region where the paper mill is located and almost 100% is bought within a 200 km radius from the paper mill, while Akron shipped no less than 2/3 of its recovered paper to paper mills located within a 200 km distance from the sorting platform. Therefore, this market has a sub-national extension, including one or more administrative regions,\(^11\) given that Akron platforms sell mostly in Emilia-Romagna (an exporting region) and in the neighboring Region of Marche (an importing region, mostly from Emilia-Romagna) and to a lesser extent in two other importing regions (Tuscany and Veneto), the relevant markets were identified as the Emilia-Romagna region, the Emilia-Romagna and Marche macro-regions and two other macro-regions including respectively Tuscany and Veneto.

\(^8\) In particular, Hera is monopolist in Ferrara, in Modena and most of its province, in Bologna and most of its province, in the whole provinces of Ravenna and Forlì-Cesena and in Rimini and most of its province.

\(^9\) This market is distinct from the market for used packaging board because of the different composition of the waste, making it suitable for the production of different and more valuable grades of recovered paper. Price differences are also large and stable. This market does not include paper waste privately collected from non-household producers, as sorting of this kind of used paper produces recovered paper of more valued grades than grade 1.02.

\(^10\) Recipes to make recycled paper require the use of variable proportions of different grades and sometimes technical substitutability is excluded.

\(^11\) Available data on trade flows of recovered paper are disaggregated mostly at regional level.
Owing to Hera’s decision to confer to Akron all the paper waste from mixed collection, Akron moved from a marginal position in 2010 to a dominant position in Emilia-Romagna and Emilia-Romagna and Marche markets in 2011-2012, where it was able to increase the spread charged as regards the benchmark market price\(^\text{12}\) and to quote prices 10%-20% higher than average winning bids in COMIECO auctions for 1.02 grade.

### 4 The abuse

Documents collected in “dawn raids” showed that in 2010 Hera decided to stop delivering to COMIECO its paper waste from mixed collection, feeling it could get better prices on the market. In fall 2010, Hera asked informally for used paper quotes to three paper recovery firms and was seriously considering to sell its paper waste to one of them, CONAPI, at least for 2011. Herambiente asked and obtained from Hera that mixed collection paper waste be sold to its branch Akron, at a better price compared to the one offered by CONAPI.\(^\text{13}\) CONAPI was given no chance to improve its offer.

In the following years, Hera confirmed its decision not to give paper waste from mixed collection to COMIECO, but did not ask for quotes outside the Hera group. Hera, Herambiente and Akron contracted a new price scheme, granting Hera a slightly higher revenue than COMIECO\(^\text{14}\) and a more advantageous scheme than the 2011 one for Akron, which paid less for used paper waste.

In 2012 and 2013 the complainant sent Hera offers (limited to waste paper from mixed collection in the Bologna area) that were clearly better\(^\text{15}\) than Akron’s. The 2012 bid was completely ignored, while the 2013 offer was rejected with flimsy arguments.

Smaller MWC in Modena and Bologna provinces auctioned waste paper from mixed collection for 2012 and 2013 requiring a minimum price and got better bids than Akron’s offer accepted by Hera.

On the basis of this evidence, the ICA argued that Akron’s offers were below what Hera could have got by auctioning its paper waste.

Exclusive sale to Akron constituted a non-replicable advantage in the market for 1.02 recovered paper grade, because competitors located in areas where Hera and Herambiente held a dominant position could not effectively substitute other used paper for Hera’s paper waste from mixed collection.

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\(^\text{12}\) The price charged by Akron and other paper recovery firms to paper mills is a spread over the appropriate quotation of the Chamber of Commerce of Milan.

\(^\text{13}\) Akron had access to CONAPI’s offer.

\(^\text{14}\) For likely expected quotes of the Chamber of Commerce of Milan

\(^\text{15}\) Except for very low quotes of the Chamber of Commerce of Milan.
Therefore, they could not effectively compete in the supply of grade 1.02 to paper mills located in Emilia Romagna and Marche. The exclusion of local competitors reflected not only in the huge increase of Akron’s market share between 2010 and subsequent years, but in particular in Akron’s ability to increase the spread charged\(^{16}\) and to maintain it.

The fact that Akron paid a price “below market level” to buy waste paper from mixed collection and could sell recovered paper at a price incorporating its market power enabled the HERA group to create and keep within the group a profit that would have been otherwise passed to citizens: if waste paper had been auctioned, Akron would have bid its expected profit on the grade 1.02 and Hera would have used its higher revenues to reduce the cost to be paid by citizens – taxpayers.

The ICA found that Hera’s and Herambiente’s conducts were an abuse of dominant position as they hindered the development of a competitive market for waste paper from mixed collection, foreclosed the market for grade 1.02 recovered paper by foreclosing access to an indispensable input, reduced the benefits citizens/taxpayers could get from Hera’s decision not to consign waste paper from mixed collection to COMIECO.

Therefore, Hera and Herambiente were sanctioned for more than 1.8 million euros.

Since in the final hearing Hera Spa expressed its intention to sell in the future waste paper from mixed collection through tenders, in its final decision the ICA ordered the Hera group to submit, within three months from notification, the invitation to tender before the taking place of the tender in order to be scrutinized by the ICA and, for the following 5 years, the Hera group must submit an annual report describing the measures adopted to comply with the decision.

These measures are aimed at ensuring that tenders help the development of a competitive paper waste market, avoiding that a poor auction design may confirm Akron’s position or maintain inefficient competitors.

5 \textbf{CONCLUSION}

The importance of this case ultimately rests in the boundaries of exclusivity. Through its final decision, the ICA had the opportunity to stress the importance of confining the economic activity of a legal monopolist strictly within the borders set by the law, in order to promote the development of competitive markets upstream and downstream the said monopoly. In the Akron case, development required that any output produced by the monopolist which could be used as an input downstream, had to be made available on equal terms to all potential competitors.

\(^{16}\) It increased by 70% from 2010 to 2012.
By selling paper waste from mixed collection to Akron without any competitive comparison, Hera Spa (together with its subsidiary Herambiente Spa) foreclosed Akron’s competitors from accessing an indispensable input for the production of grade 1.02 recovered paper. This conduct led to an undue extension of Hera’s monopoly over waste collection to recovery activities, which are not subject to any exclusive rights but are open to free competition. In this specific case, this extension, at a price below market level, also had a direct effect on citizens since the latter had to pay a higher price for the waste collection service.17

17 Tesi V., Esposito F.M., Opening the market for municipal paper waste in Italy: the Akron case. DOI: 10.12870/iar-10201