

Comments on Stakeholder Criticisms of Individual Producer Responsibility

Assertion #1: "Take article 8.2 (Individual Producer Responsibility) out of the WEEE Directive"

Response: If this proposal would be followed, one of the main objectives of the WEEE Directive could not be achieved: establishing an incentive for producers to design products to be easier to recycle.

Assertion #2: "Moving Design requirements from WEEE to EUP will achieve the objectives of the WEEE directive"

Response: The aim of the EuP Directive is to consider all relevant ecodesign parameters across the life cycle of the product including end of life (EuP Annex I, Part I & Annex II) and set legal requirements where appropriate. This holistic approach considering the range of environmental impacts across the lifecycle of the product is welcomed. However, additional incentives for design-for-recycling can be achieved through an IPR system under the WEEE Directive.

The application of IPR is a necessary and complementary, not alternative, eco-design driver. While the aim of EuP is to set eco-design standards with which products must comply, IPR is a market-based tool that can create added incentives for design for durability, recycling and, in the long-term, the phase out of hazardous substances e.g. within a closed loop recycling system. Thus, manufacturers can realise financial benefits from creating products that have a longer life-span or are easier to recycle. WEEE via IPR will encourage Best Practice and potentially help to create the market conditions in which design for recycling and upgradeability become 'good business sense'.

Assertion #3: "IPR requires sorting of products in a way that is not feasible, and would lead to unnecessary environmental impact"

Response: There are several ways to identify own brand products in the waste stream which demonstrate that IPR is practical and feasible. Brand sampling, as adopted in Washington (US) enables reliable return share percentages to be constructed through quarterly sampling. Alternatively products can be identified through a full brand count, as utilised in Maine (US) and until 2003 in the Netherlands¹.

Where identification is required to enable segregation of the producers branded products there are further options available. One option is by brand recognition at the point of collection or treatment. Another option could be using RFID tags which can be programmed at the point of product manufacture or shipment to identify the producer or importer for whom the product is destined. Radio Frequency Identification (RFID) is a developing technology and over time the chip size, range

¹ A detailed discussion of these case studied is available in INSEAD IPR Network (2008) *Individual Producer Responsibility: Developing a Practical Solution to the Implementation of Individual Producer Responsibility for the WEEE Directive*

and data storage capacity will improve rendering it an option for this purpose².

Okopol, in its report to the European Commission stated: 'The alternatives are, in light of on-going efforts of producers, highly feasible.'³

Assertion #4: "IPR would be an incentive to minimise collection, in order to reduce cost"

Response: There is no evidence that IPR leads to lower collection levels than Collective Producer Responsibility (CPR). Japan achieved 2.58 kg/inhabitant of category 1 products despite a narrower scope than the WEEE Directive. This matches or exceeds Austria, Czech Republic, Estonia, Hungary, Netherlands, and Slovakia. In category 4 Japan achieved 0.82 kg/inhabitant, again despite narrower scope. This matches or exceeds Austria, Czech Republic, Estonia, Hungary, Ireland, Slovakia and closely matches the EU average (0.88 kg/capita)⁴.

In Maine collection levels of 1.41 kg per capita have been reported for 2007. The scope of the Maine legislation compares most closely to categories 3 and 4 of the WEEE Directive. Despite a much narrower scope the IPR system in Maine has achieved collection levels that exceed or compare with Estonia, Czech Republic, Slovakia, Austria, Hungary, Ireland, Netherlands and the European average⁵.

This suggests that IPR and CPR can achieve comparable levels of collection rate.

In Europe and Japan producers are not directly responsible for the collection of WEEE from households. Currently producers take responsibility for all separately collected WEEE. This would continue regardless of whether 'market share' or IPR is the predominant compliance mechanism. In this context other factors, such as the extent of the collection infrastructure and consumer behaviour are the key determinants of collection rate.

Therefore, so long as consumers can hand in any producers WEEE anywhere it is difficult to see how a producer could deliberately limit its own return share, particularly if there is proper information sharing through an umbrella structure that oversees the different recycling systems – i.e. a clearing system that ensures producers are responsible for their share and/or their products in all the channels of WEEE returning. A clearing system is something that is necessary for the smooth and fair functioning of the overall recycling system and to prevent free-riding competing

² For more information on RFID see INSEAD IPR Network (2008) *Individual Producer Responsibility: Developing a Practical Solution to the Implementation of Individual Producer Responsibility for the WEEE Directive*

³ Sander, K., Schilling, S., Tojo, N., van Rossem, C., Verson, J. and George, C. (2007) *The Producer Responsibility Principle of the WEEE Directive Final Report* (Okopol, Germany)

⁴ Data from INSEAD IPR Network (2008) *Individual Producer Responsibility: Developing a Practical Solution to the Implementation of Individual Producer Responsibility for the WEEE Directive*, and Huisman, J., Kuehr, R., Magalini F., Ogilvie, S., Maurer, C., Artim, E., Delgado, C., and Stevels, A (2007) *2008 Review of Directive 2002/96 on Waste Electrical and Electronic Equipment (WEEE) – Final Report* (United Nations University, Germany)

⁵ Data from INSEAD IPR Network (2008) *Individual Producer Responsibility: Developing a Practical Solution to the Implementation of Individual Producer Responsibility for the WEEE Directive*, and Huisman, J., Kuehr, R., Magalini F., Ogilvie, S., Maurer, C., Artim, E., Delgado, C., and Stevels, A (2007) *2008 Review of Directive 2002/96 on Waste Electrical and Electronic Equipment (WEEE) – Final Report* (United Nations University, Germany)

schemes⁶.

Assertion #5: "IPR will lead to a higher number of free riders and increase the share of orphan waste due to problems with monitoring compliance"

Response: The level of free riding is influenced by the level of enforcement not by whether the operational systems is based on IPR or based on market share. IPR merely makes the level of free riding and orphan waste transparent. CPR hides the level of free riding and orphan waste.

The ICT Milieu return share system was criticised for generating a high level of orphan waste. Subsequently the system was changed to being based on market share from 2003 onwards. However despite moving to a market share based system, according to recent samples by ICT Milieu, orphan waste remains at 20-25 per cent in the Netherlands⁶.

In Maine, whose return share system is closely comparable to pre 2003 ICT Milieu, orphan waste constitutes 4.8 per cent of the total volume of electronic waste. This lower figure is attributable to stronger enforcement through banning the sale of brands that are not registered to a producer that is compliant with the producer responsibility law.

The exact procedures that are used to identify the producers own costs (be that sampling or individual product tracking) can also be used to distinguish exactly what categories and sources the free riders are arising from. This greater scrutiny supports and motivates more precise enforcement activities. Collective financing does not provide transparency or awareness of free-riding and orphan waste.

Assertion #6: "Illegal imports will increase with IPR"

Response: Enforcement is essential to secure the success of legislation such as WEEE for whatever producer financing model is chosen. The use of unique producer register numbers whereby retailers do not sell products without a registered producer, who has contributed to the recycling costs, can address illegal imports irrelevant of whether the responsibility is collective or individual. This backed up with better enforcement, for example a European enforcement agency can tackle orphan waste resulting from illegal imports.

Assertion #7: "IPR is (too) costly"

Response: With IPR producers have a greater incentive to design their products to be easier and cheaper to recycle. These products will be easier to process resulting in more efficiency for recycling and re-use. Furthermore IPR can enable purer recyclates to be derived increasing the value of recycled materials.

IPR by return share calculated by brand sampling appears to provide the lowest costs route to IPR. According to the National Centre for Electronic Recycling the cost

⁶ A detailed discussion of these case studies is available in INSEAD IPR Network (2008) *Individual Producer Responsibility: Developing a Practical Solution to the Implementation of Individual Producer Responsibility for the WEEE Directive*

of sampling for in Washington is €28,627 per annum (\$44,048)⁷. This cost is shared by the different compliance schemes.

Some stakeholders have been concerned that financial guarantees will place a large financial cost on producers. The option of blocked bank accounts is often erroneously assumed to be the only option for upfront provisioning for a producers own products, but this is not the case. For example a selection of guarantees, based on upfront insurance approaches, are being developed in Sweden for WEEE (see e. g. <http://www.elektronikatervinning.com/> and <http://www3.lansforsakringar.se/NR/exeres/350A41FE-9DEB-4B45-BA3C-985ED07B6D53.htm>, last one only in Swedish). These instruments are continuing to evolve in order to provide the market with affordable solutions. For certain products these financial guarantees are cost comparable or lower cost than the existing collective arrangements.

Assertion #8: "Collective schemes and IPR cannot be combined"

Response: This statement is based on a confusion of individual *financing responsibility* and individual solutions for *physical take-back*. Clearly individual financing responsibility can fit very well with collective take-back solutions.

There is a common misunderstanding that IPR implies that each producer needs to have a separate infrastructure for the collection and treatment of their own brand WEEE. This is not the case. Producers should be individually FINANCIALLY responsible for the recycling of the products produced in the future and have a possibility to work together to PHYSICALLY manage WEEE in collective or individual recycling systems.

The implementation of IPR does not require a major change to the way in which schemes currently operate. Return share forms of IPR could operate through the current compliance scheme structures. Compliance schemes could be required to undertake sampling of the waste stream to construct return share data.

With improved national transposition of the requirements for producers to take individual responsibility we would expect further innovation in the areas of approaches to individual financial producer responsibility guarantees and return share calculations.

⁷ A detailed discussion of return share and the costs of sampling are available in INSEAD IPR Network (2008) *Individual Producer Responsibility: Developing a Practical Solution to the Implementation of Individual Producer Responsibility for the WEEE Directive*