

Market Status 2008

By Tom Rickerby



***“One small step for WEEE trading,
One giant leap for the development of the t2e WEEE market.”***

The compliance period from May to June saw the first trading on the t2e WEN market. This break through came after the final obligations were confirmed and PCSs began the procedure of acquiring and offloading the necessary evidence to meet compliance.

In total there were 13 trades in the 2008 compliance period across 6 of the 13 categories.

Out of the 7 non traded categories, all but one category, CAT 13 received either bids or offers but did not trade. 8 PCSs traded on t2e with a further 3 PCSs posting untransacted orders in the market. A total of 166,397 tonnes of evidence were traded across all Categories.

	High price (£)	Low Price (£)	Volume traded (tonnes)	Average Traded Price (£)
CAT 2	125	122	37.000	122.57
CAT 4	145	145	9.786	145.00
CAT 6	165	165	2.140	165.00
CAT 8	150	150	3.022	150.00
CAT 9	160	125	7.231	145.43
CAT 11	275	240	7.128	257.50

Mixed WEEE categories traded between £122 and £165. There was particularly strong demand for CAT 3, 4 and 6, although CAT 3 remained untraded for the period. A swap trade occurred for equal amounts of Category 4 and 9; proof that this popular form of trade for mixed WEEE can easily be transacted and settled through the t2e market. Offers for CAT 1 (£14 - £15) and 12 (£175 - £240) were also posted but failed to trade.

These figures are small but not entirely insignificant and there is sufficient evidence and positive feedback to suggest that the WEEE system does benefit from having a transparent, real-time trading platform to complement the current settlement centre notice boards.

One telling statistic is that 5 out of the 8 PCSs that traded on t2e all used the buying and selling available in the market to close out their yearly positions quickly, efficiently and with minimum fuss. One of the most common complaints thrown at the settlements centre is that the information shown is often out of date and a huge amount of time is wasted on chasing prices on evidence that is no longer available. This issue is clearly addressed by having a managed platform where all bids and offers are available for immediate transaction and prices are transparent.

Thanks to all PCSs that supported last year's market. In the coming months, we will be working hard to increase the liquidity in this year's spot market. We are also investigating the introduction of forward markets. This would allow trading across a series of delivery points throughout the compliance year, in line with current regulation guidelines for improved contractual arrangements. We would welcome any feedback on this potential addition to the service.

**Regardless of your turnover, if you import into the UK, or make, Electrical or Electronic Equipment (EEE)
then WEEE Evidence Notes apply to you.**

To trade dial 0844 800 9943 (calls charged at up to 5p a minute from a BT line)

A WEEE WAR

(The Judicial Review result and its implications for the future of WEEE recycling in the UK)

By Barry Van Danzig, Chief Executive (Electrolink)



When Justice Wyn Williams handed down his judgement on REPIC's complaint against BERR and the Environment Agency he hammered home the final nail in the coffin of REPIC's ambition to control or dominate the WEEE recycling business.

Background

Since its inception REPIC led by Phillip Morton have tried to interpret the regulations in order to give them control of WEEE. What they wanted was an allocation system of DCFs whereby those with the most obligation, (*REPIC have 52% of the obligation*) would be allocated the most DCF sites. They would then be able to impose upon Local Authorities their own operating methods and could also take from the DCF operator the income derived from the sale of scrap and keep it for the benefit of REPIC and their members. Once REPIC controlled the flow of WEEE to the reprocessor they could restrict the flow to those AATFs who did not recycle the WEEE at the lowest possible cost, or even lower than cost price.

Electrolink saw this coming and put forward plans to allow Local Authorities to appoint Electrolink as their preferred compliance scheme whereby the operational methods would be seamless (*as we would use the existing operators and recyclers*) with Electrolink imposing the highest environmental standards by monitoring sites to ensure compliance. The evidence note generated by this activity would then be sold to REPIC and others to cover the costs.

As this strategy effectively thwarted REPIC's ambition to control WEEE they naturally wanted to do everything in their power to prevent Electrolink from being successful. REPIC refused to trade with Electrolink, failed to comply with the regulations in 2007 compliance period and received an official warning from the EA for this failure. Reluctantly they did comply both in 2007 and 2008 but only at the last minute and in 2008 at Electrolink's full prices.

BERR, the EA and SEPA were in the middle of this all out war trying their best to ensure that neither Electrolink nor REPIC caused the UK WEEE system to fail or falter. They did a truly splendid job.

REPIC latched onto one fairly minor point in the Regulations, which is Schedule 7 part 4 paragraph 4. What this paragraph said was that a scheme must have viable plans to collect an amount of WEEE equivalent to their obligation. Therefore REPIC argued that over collection by Electrolink was unlawful. BERR, the EA and SEPA replied, in a judgement of Solomon, that actually both over and under collection was unlawful and proposed a solution whereby under collectors appointed over collectors to collect the WEEE for them. The Government also said, in effect, that if you did not want to contract then as an over collector you should reduce the number of sites they collect from or an under collector must reduce the obligation the scheme has.

At first REPIC saw this as a victory but then it dawned on them that if Electrolink agreed to collect the WEEE but retained control of the operational matters for the Local Authority then REPIC were no better off than if they had to buy the evidence notes from Electrolink.

Hence the Judicial Review

The Judicial Review (JR) was bought by REPIC against BERR and the EA with SEPA as an interested party (*as SEPA is subject to Scottish Law not English Law*). Electrolink and City Compliance were invited by BERR, the EA and SEPA to join in as interested parties.

The complaint against BERR and the EA was that they had failed to take enforcement action against Electrolink and City Compliance for a breach of Schedule 7 Part 4 Paragraph 4 and that by not enforcing the Regulations they were acting unlawfully themselves.

They also complained that the Regulations themselves were unlawful in that they did not impose a ceiling on price which was fundamentally unfair and irrational as REPIC was subject to 'Ransom Prices' which it had no choice but to pay as otherwise they would be deregistered.

A second JR is currently 'stayed' in Scotland. It is important to note that the conclusions of the English Court judgement do not apply to SEPA.

BERR and the EA argued in defence that they were perfectly entitled to operate the enforcement of the regulations with an even hand and that they had discretionary powers in this regard. Their view was (*and is*) that both under and over collection are unlawful and the solution was for schemes to work and trade together for the good of the Regulations and the environment.

REPIC abandoned all claims to 'Ransom Prices' on day one of the JR, this was probably because the Government published in their defence figures that showed that Electrolink's prices were lower than anywhere else in Europe.

The judge ruled that in every aspect of the case BERR and the EA were right and REPIC was wrong – REPIC lost the case totally.

Phillip Morton made the extraordinary decision to send out a press release that claimed a victory. What he argued was that they had said all along that over collection was unlawful and that the judgement gave the EA and SEPA the clarity so that they could take enforcement action against over collecting schemes.

The EA and SEPA have already made their position clear in this regard and the judge upheld their right to do exactly as they have said they would, i.e. Schemes must work together or if you don't want to co operate then reduce your membership so that you do not have to.

What happens now?

All Schemes including REPIC have to apply for registration for 2010 onwards by the 31st August 2009. The registration of Scheme members will take place on 15th October 2009.

The EA have made it very clear in their guidance notes for the application that under collectors such as REPIC must have in place by 31st August a viable plan to collect an amount of WEEE that is equivalent to their obligation for which they are responsible for financing. They must either collect the WEEE themselves or have the WEEE collected on their behalf. The plans must be supported by documentation and not simply 'good intentions'. Reliance solely on speculative or spot trading large amounts of evidence will not be allowed.

Therefore the obligation a scheme registers has to be equal to the amount of WEEE they collect, either by themselves or by another scheme appointed by them to collect the WEEE on their behalf.

It is very telling that in the JR the EA pointed out that they were reluctant to interfere with Local Authority contracts as this could disrupt the flow of WEEE. Judge Wyn Williams supported this view in the JR judgement that agrees that they should not interfere lightly in this arrangement. The easier and more sensible course is to limit the registration of members and their obligation to equal the capability of the scheme to collect the equivalent amount of WEEE.

The judgement has 'hoisted REPIC with their own Petard'. They went to court to force the EA and BERR to enforce the regulations against over collectors so that Electrolink and others would be prevented from collecting more than they needed for their own membership but they have ended up by being enforced against so that they have to have a membership that is no greater than they themselves can collect either on their own or with Electrolink's help!

REPIC tried to impose their will on the recycling industry by forcing Electrolink out of business by cash starvation and finally using the courts to get control of WEEE. Every tactic failed and REPIC have neither the time nor the room to manoeuvre themselves out of the hole they have placed themselves in.

The Government won the JR in every respect. BERR, the EA and SEPA acted with consummate skill and patience in the face of a very difficult legal and commercial dispute between schemes, lawyers and barristers.

The last word however has to be that of the Minister for Business Ian Lucas who said:

"It is now time for all producers and their respective organisations including REPIC and its members to operate in partnership to ensure that the UK WEEE system works to the advantage of all involved".

We fully endorse this statement and as they now have no other choice so must REPIC!

WEEE Quarterly report - Managing Directors comments



I closed my comments in the last quarterly by saying that a lot would happen in the next few months. This has turned out to be partially correct. While it is true that the consultation on European targets was completed, the first quarter figures have been published, trading of WENs took place and unexpectedly compliance was achieved by all on time, little if anything has moved forward. There has been no feedback from the consultations and the compliance market now awaits the outcome of the Judicial Review (JR) which has just been published.

In brief the JR identifies that the primary role of a PCS is to finance the collection of WEEE (*not to collect or deal in it*) and have a viable plan to ensure that the requisite collection takes place to meet the PCS's obligation. At no stage has it identified that it is illegal if the operation of that plan causes under or over collection of WEEE. It also highlights that the trading of WEEE Evidence Notes (WENs) does not offend the underlying principles or objects of the WEEE Directive. The Judge accepts that the Regulations, *if properly interpreted*, are entirely consistent with these same principles. He could not find any basis for concluding that BERR or the EA (or by implication SEPA) had failed to be consistent or rational or had been unfair.

Meanwhile business carries on 'as usual' in the collection, treatment and subsequent disposal of WEEE. Debate continues as to whether 'as usual' is acceptable. European aspirations for the changes to the WEEE directive not only see collection targets potentially changing to 65% of EEE put on the market but also recovery and recycling rates increasing by 5% across the board. While there is at least relatively accurate data available on the former, and in Q1 thanks to a 15% drop of EEE placed on the market and 10% growth in collected tonnage we for the moment appear to be heading in the right direction, there is currently no consistent or reliable data about recovery and recycling rates and indeed until the treatment of B2B is included within this data and the accurate recording of reuse is addressed, it is unlikely that anything robust will be achieved. Nevertheless it is an area of legitimate interest for producers and distributors. Therefore please can you assist Dianne by returning the WEEE survey completed to the best of your ability as swiftly as possible.

While at face value the explosion of recorded reuse is to be welcomed as a shift up the waste hierarchy, the expansion of WEEE sent for treatment or reuse outside of the approved system causes concern with widely suspected and reported examples of abuse occurring in Africa and the Far East. The solution to these problems is not simple but a significant degree of responsibility must lie within the regulatory bodies including HMRC despite their cry that their responsibility extends solely to anything coming into the country rather than leaving it, as well as industry. It is therefore good to learn that a committee of MPs has now re-opened an inquiry into this area. The development of a robust structure for independent auditing is also crucial.

Some compliance schemes have used this as an opportunity to suggest that they should have a more direct involvement in the physical WEEE that they are responsible for but while this might solve one problem it will probably just displace it elsewhere and in a competitive world a more holistic solution is required since this is a problem that applies to all waste and not just WEEE.

Thank you for your support and Barry van Danzig for his contribution. In response to your requests we are looking into the development of forward contracts to provide both more certainty and flexibility for all involved in WEEE. t2e looks forward to an interesting quarter, meeting you at RWM in September and continuing to be of service.

Angus Macpherson
Managing Director

**Come and visit us at Stand I732 at RWM '09
in Hall 17 at NEC Birmingham
between 15 and 17 September 2009**

The Environment Exchange Ltd
Hudson House, 8 Albany Street, Edinburgh, EH1 3QB
Tel: +44 131 473 2330 Fax: +44 131 473 2326