Proposed WEEE Directive
A Step-by-Step Analysis

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Outline

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Section Two   Step-by-Step Analysis
Section Three Four Implementation Options
Section Four   Financial Responsibility
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Section One
Background and Overview

Proposal for a European Directive on Waste from Electrical and Electronic Equipment - WEEE

Background to WEEE Directive

- Fifth Environmental Action Program (1993)
- Draft Directive
  - 3 actors
    - European Commission
    - European Council
    - European Parliament
  - Expected Entry into Force: Mar. 2003
WEEE Directive Big Picture

- Recycling and Recovery Program
  - Applicable EU-wide
  - Producer pays principle: cradle-to-grave
- Not Unprecedented in Europe
  - Several similar programs set up domestically
  - Belgium’s RECUPEL program
  - Packaging Directive

New Product

Company X

Component

Sale / Export to EU

Waste Non-Household

Collection Center

Collection

Distribution (Retail)

Waste Household

, Inc.

Environmentally Sound Disposal

Treatment

Recovery
2,500+ Attorneys Worldwide
40+ Environmental Attorneys
26 Offices Worldwide
- Brussels Office: EU product take-back regulations
- New York Office: US and EU environmental law
One Law Firm = consistent advice across jurisdictions
The Corporate Client Base

- 20 of the Global 100 companies
- 24 of the top 100 Fortune 500 companies
- 262 of the Fortune 500 companies

Sectoral breakdown of Allen & Overy deal activity - 2001

Section Two
Step-by-Step Analysis

Proposed WEEE Directive
What are EEE and WEEE?

- EEE is “equipment dependent on electric currents or electromagnetic field and equipment for generation, transfer, and measurement”
- WEEE includes “components, sub-assemblies, and consumables, which are part of the product and time of discarding"
What is Covered?

- Listed Categories of EEE
  - IT and telecom equipment
  - Consumer equipment
  - Electrical and electronic tools
- Non-exhaustive List of Covered EEE
  - Computers
  - Printers
  - Telephones
  - Calculators

Exemptions

- Military Purposes
- Large-scale Stationary Industrial Tools
- Medical Devices
- [Small Independent Manufacturers]
US Companies Subject to WEEE

- Producers = All Companies that Sell in EU
  - Irrespective of selling technique (incl. internet)
  - Manufacturers selling EEE under their own brand
  - Companies reselling under their brand EEE produced by others
  - Persons importing or exporting on a professional basis to any member state (“first holder”)
  - But excludes reseller if producer’s name appears on equipment

Collection Targets

- Household WEEE Only
- 4Kg or 6Kg/person/year
- Then, New Collection Targets will be Established by December 31, 2007
First Option for Private Individuals

- "Collection Facilities"
  - Obligation of Member States
  - "at least free of charge"
  - Belgium’s “RECUPEL” example: applies to WEEE
Second Option for Private Individuals

- **Distributor**
  - Person who provides EEE to users on a commercial basis
  - “at least free of charge”
Collection of Non-Household WEEE

- Non-Household WEEE
  - Producers are to provide for collection
  - May hire third party contractor
  - No requirement that it be free of charge

Collection Obligations of Producers

- Household WEEE
  - From “collection facilities”
  - Distributor brings WEEE to collection facilities?

- Non-Household WEEE
  - Producers finance the collection of non-household WEEE
  - No requirement that it be for free

- Following Collection, “re-use as a whole” or Transportation to Treatment Facility

- Individual or Collective
Treatment and Recovery Obligations

- Treatment is “depollution,” disassembly, shredding, recovery or preparation for disposal of WEEE
- Recovery includes recycling and incineration
- Individual or collective basis
- May hire third parties
- Treatment outside Member State is possible (contravene international trade law?)
- Environmentally sound disposal
Recovery Deadlines and Targets

- Recovery Targets - “per appliance” : 70-90%
- Recycling Targets: 50-80%

Section Three
Four Implementation Options

Proposed WEEE Directive
Implementation Guidelines

- Individual or Collective Basis
  - Collection (from collection points)
  - Treatment
  - Recovery
- Member States Implementation Spectrum
Option 1 - Mandatory Public

- Collective Only
- Ministry establishes a Mandatory QUANGO (Quasi-autonomous Non Governmental Organization)
  - State does everything - producers pay
  - No possible opt-out
  - Worst-case scenario?
- In practice: Belgium’s RECUPEL and other programs

Option 2 - Public with Opt-out

- Collective with Possibility of Individual
- Ministry establishes a Mandatory QUANGO (Quasi-autonomous Non Governmental Organization)
- Producers May Opt-out and Establish Parallel Programs
- In practice: Belgium’s VAL-I-PAC Program
Option 3 - Private Sector with Schemes

- Individual with Possibility of Collective
- No QUANGO
  - Government assigns targets - industry goes on its own
- May Establish Schemes
  - Registered: legal obligation passes to Scheme - Must be open
  - Unregistered: retain individual obligation
- UK Packaging Program

Option 4 - Private Sector Only

- Individual Only
- No QUANGO
- No Registered Collective Scheme
- Worst-case scenario?
Section Four
Financial Responsibility

The Best Way to Go
Individual or Collective?

Financial Obligations

- Producers must finance
  - collection
  - treatment
  - recovery
  - environmentally sound disposal
- Deadline is September 2005
- Disagreement over individual or collective
Individual v. Collective

- **Individual**
  - Each producer is responsible for the treatment of its WEEE that finds its way to the treatment system
  - Internalizes costs, encourages better design
  - High administrative costs: tracing WEEE

- **Collective**
  - Market share
  - Presumption that all WEEE costs the same to treat
  - Cheaper overall

4 Implementation Options: (1) Mandatory Public, (2) Public with Opt-out, (3) Private with Schemes, (4) Only Private
Historical and Orphan WEEE

- Independent of individual and collective because specific provisions on the issue in Directive
- “Historical WEEE” for household
- “Orphan WEEE” for household and non-household

Impacts of Financing on Implementation

- Collective Financing
  - Fine with implementation options
  - Penalize good design
- Individual Financing
  - Option 1 mandatory public: fine but costly?
  - Option 2 public with opt-out: fine and flexible?
  - Option 3 private with schemes: difficult?
  - Option 4 private only: impracticable or prohibitive?
Section Five
Discussion Points

Recap on Producer Obligations

(1) Collection
(2) Treatment
(3) Recovery
(4) Environmentally Sound Disposal
(5) Information (not discussed here)
(6) Design (not discussed here)
Potential Risks and Liabilities

(1) Is your company covered by WEEE?
   • Penalties and liabilities

(2) Compliance Program

(3) Competitiveness Issues

(4) Domestic Implementation
   • Follow regulatory developments
   • Exclusion risks

(5) Centralized European waste facilities

Thank You