



**Reclay Group**

Umwelt- und Entsorgungsmanagement

## **Packaging Waste Management in Europe in a state of flux – the transition into competition**

2013 RCBC Zero Waste Conference  
Dr. Fritz Flanderka, Reclay Group



# Content

- I. Introduction
- II. Evolution of Packaging Recycling Systems in Europe
- III. Transition from monopolies into competition – Experience from Practical Examples
- IV. Case Study – Germany
- V. Case Study – Austria
- VI. Evaluation of the Effects of Competition
- VI. Summary

## Introduction

### Personal Background of Dr. Fritz Flanderka

- Accredited German attorney-at-law
- 1993-2005 Chief representative of Der Grüne Punkt - Duales System Deutschland AG (DSD), the former monopoly scheme for packaging waste recovery
- 1995-2005 Co-founder and managing director of Packaging Recovery Organization Europe (Pro Europe)
- Since 2005 Managing Director of Reclay Holding GmbH
- Various publications on Extended Producer Responsibility
- Author of the standard legal commentary on the German Packaging Ordinance



# Introduction

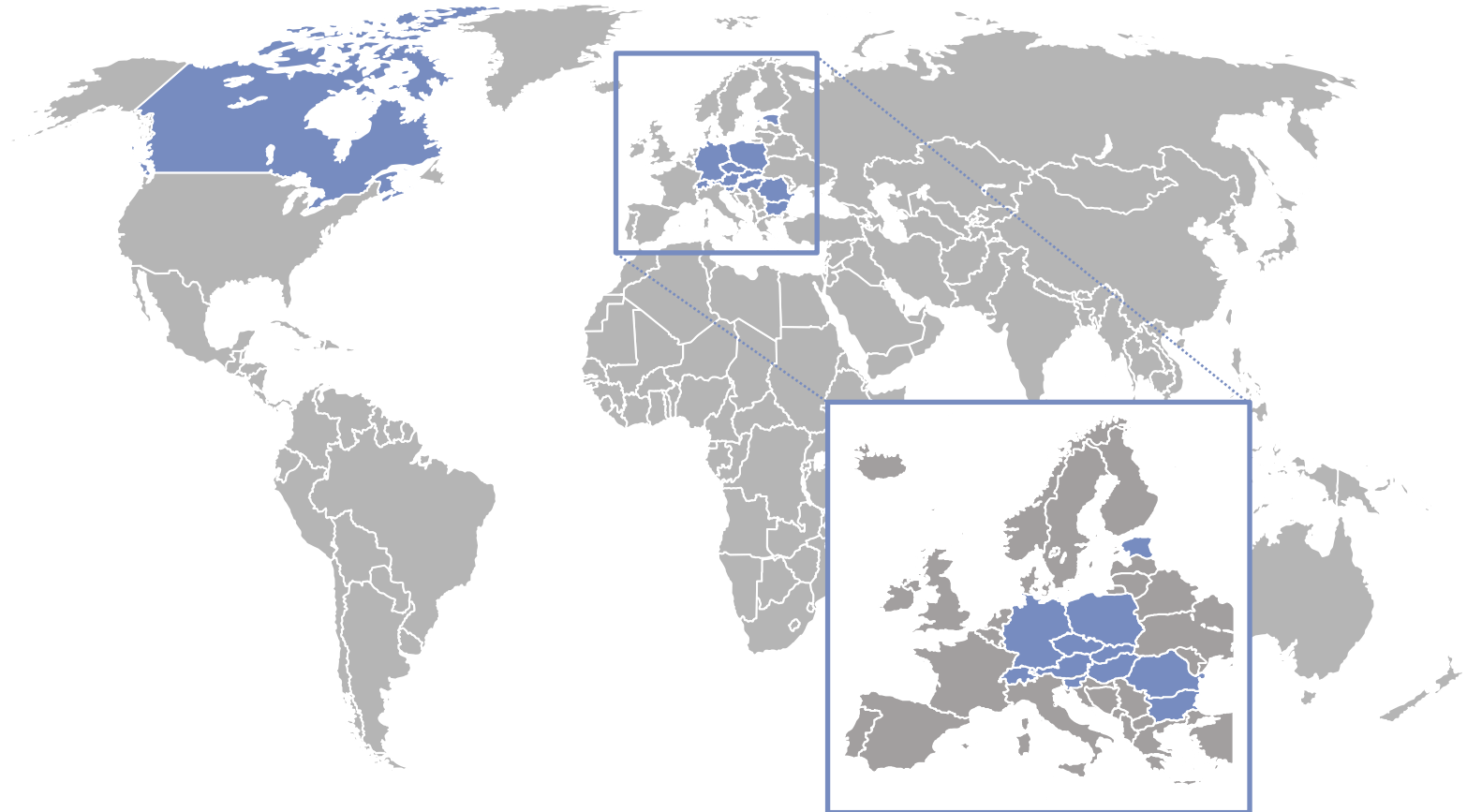
## About Reclay Group

- Founded in 2002
- Headquartered in Cologne, Germany
- 230 employees
- Turnover: 180 Million EUR (237 Million C\$) in 2012
- Offices/subsidiaries in Austria, Slovakia, Czech Republic, Slovenia, Hungary and Poland
- Since 2012 majority shareholder of Reclay StewardEdge, Toronto, Canada

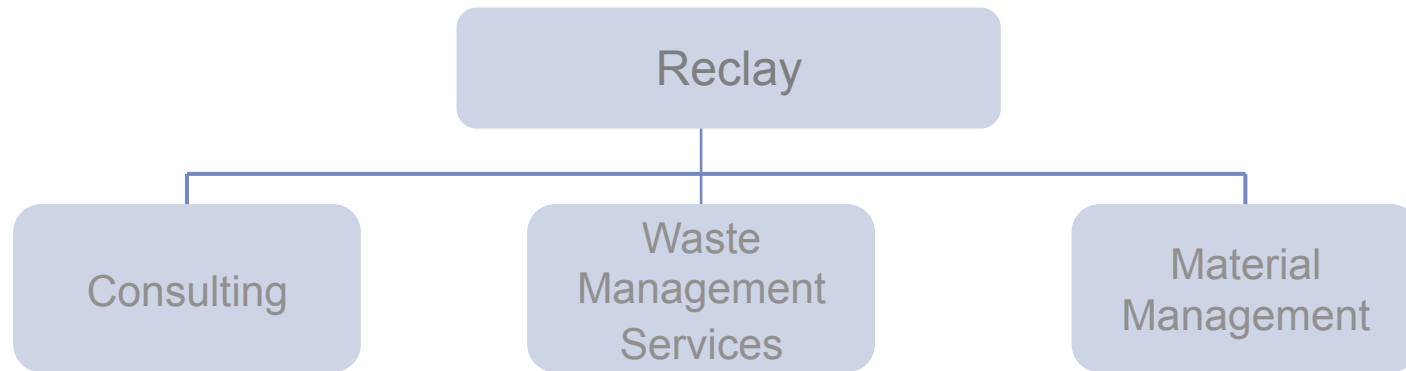




## Global Map of Reclay



## Main Sectors of Reclay





# Evolution of Packaging Recycling Systems in Europe

## Key European Legislation

- Waste Framework Directive (2008) for all European member states had to be transformed into national law by December 12, 2010. Sets the basic concepts and definitions related to waste management
- The European Packaging Directive prescribes recycling rates for packaging waste, which support the objective of re-using existing materials in the materials cycle and thereby saving resources and energy (1994, last revision in February 2013)
- The Packaging Directive as well as the Waste Framework Directive are silent on the issue of competition

## European Countries with monopoly compliance schemes

- France
- Belgium
- Netherlands
- Ireland
- Finland
- Denmark
- Norway
- Sweden
- Spain
- Cyprus
- Greece
- Italy
- Portugal
- Hungary
- Luxemburg
- Czech Republic

Which is 46.38 % of the population in Europe

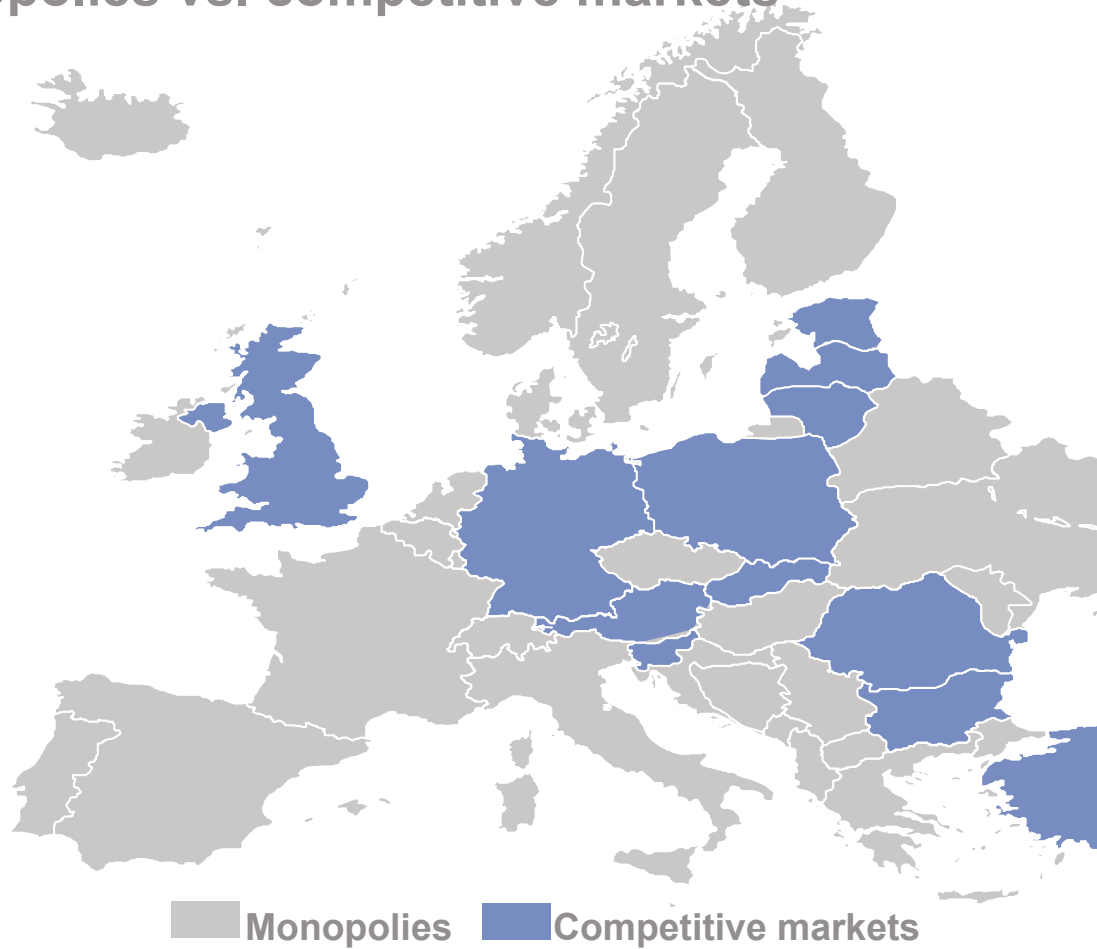
## European Countries with competitive markets

- Germany
- Great Britain
- Poland
- Turkey
- Estonia
- Romania
- Lithuania
- Latvia
- Slovakia
- Slovenia
- Bulgaria
- Malta
- Austria (expected for 2014)

Which is 53.62 % of the population in Europe

# European compliance schemes

Monopolies vs. competitive markets



## **Most common arguments for a monopoly compliance scheme**

- Natural monopoly as part of waste management
- It is an organization working in the general public interest (not a business)
- All obligated producers chose to work together
- Guarantee of equal treatment and therefore prevention of individual competitive disadvantages
- Prevention of free-riders
- Fair cost sharing
- Not-for-profit structure lowers costs
- High performance when bench-marked against other countries
- Country is too small for competition



# Transition from Monopolies into Competition

## Experience from Practical Examples

- No existing national or European coherent strategy to introduce competition into packaging waste market
- Introduction of competition by single decisions of the European Commission and the national competition law authorities based on general European and national competition laws (Art. 101 and 102 AEUV (Treaty on the Functioning of the European Union), §§ 1, 2, 19 and subsequent paragraphs of GWB (Restriction of Competition Act))
- Basis of these decisions are mainly
  - Prohibition of restrictive practices
  - Prevent abuse of market control
- Packaging waste legislation and competition law are not always coordinated at the national level

## Case Study Germany

### Key Facts

- 82 Million inhabitants
- 230.5 inhabitants/sq km
- 16 federal states
- 500 districts/municipalities responsible for waste management
- Packaging in the market: 16 Million tons/year; 13.97 Million of these tons household packaging
- Recovery rate: 87 %





# Case Study Germany

## Key Facts

- Separate collection of lightweight packaging (yellow bin/sack), glass (depot container) and paper (packaging and printed paper together)



# Case Study Germany

## Collected packaging materials

- Glass



# Case Study Germany

## Collected packaging materials

- Lightweight Packaging





# Case Study Germany

## Collected packaging materials

- Paper



## Case Study Germany

### History 1990 - 2000

- Producer responsibility scheme founded by industry in 1990 under the company „DSD”, Cologne
- Non-profit structure, monopoly - 100 % financed by producers and retailers
- Participation of obligated parties in system by license agreements for the use of the trademark “Green Dot”
- Long term contracts for sorting and collection (10 years), mostly with private waste management companies
- Total system cost per year: 2 billion EUR (C\$ 2.6 Billion)
- EUR 100/household (C\$130/household)

# Case Study Germany

## Milestones of Transition

- 1990: cartel authorities tolerate the foundation of DSD by a “letter of sufferance” as long as no alternative is available
- Until 2000: several minor proceedings for contract provisions in the license agreements of DSD
- 2001: Decision of the EU-Commission in regard to the term of waste management contracts – limitation of 3 years and access for competitors to common facilities such as the household collection system without any noticeable change in services provided to households
- 2002: Federal cartel authorities cancel the “ letter of sufferance”

# Case Study Germany

## Milestones of Transition

- 2003: admission of the first competitor in one Federal State
- 2004: separate tendering for collection and sorting
- 2004: extensive reorganization activities of DSD to prevent additional cartel proceedings including change of shareholder and supervisory board structure
- 2005: Sale of DSD to the US private equity company KKR therefore closure of the cartel proceedings
- 2006: admission of competing dual systems throughout Germany
- End of 2008: Establishment of a “clearing house” to ensure a level playing field for competing systems

## Case Study Germany

### Situation Today

- Since the market liberalization and several legal changes, 9 additional dual systems came into the market
- Coordination of necessary joint activities within Clearing House
- E.g. Data collection, cost allocation, coordination of tendering process
- The market share of the former monopoly DSD decreased to 44 % in 2011
- Cost-reduction of more than 50 % from 2 Billion EUR to 824 Million EUR (1.09 Billion C\$) per year (in 2011)
- The collected quantities of packaging remained stable while the sorting quantities increased and the recycling quality improved significantly



## Case Study Germany

### Market Shares of Dual Systems 4<sup>th</sup> Quarter 2012

|                              | Paper/<br>Cardboard | Glass   | Lightweight<br>Packaging |
|------------------------------|---------------------|---------|--------------------------|
| DSD                          | 44.79 %             | 58.07 % | 46.86 %                  |
| BellandVision                | 14.70 %             | 12.76 % | 20.63 %                  |
| Reclay Vfw<br>(Redual + Vfw) | 11.87 %             | 8.84 %  | 14.06 %                  |
| Interseroh                   | 10.99 %             | 5.80 %  | 6.96 %                   |
| Landbell                     | 7.97 %              | 9.36 %  | 5.76 %                   |
| Zentek                       | 5.83 %              | 2.99 %  | 4.59 %                   |
| Eko-Punkt                    | 1.86 %              | 0.61 %  | 0.71 %                   |
| Veolia Dual                  | 1.99 %              | 0.52 %  | 0.43 %                   |

## Case Study Austria

### Key Facts

- Austria 8.5 Mio. Inhabitants - alpine territory like BC
- 9 provinces and 2450 communities
- Around 100 inhabitants/ sq km
- Recovery rate of packaging waste 85 %
- Separate collection like Germany



# Case Study Austria

## History

- First packaging law in 1993
- 1996: Amendment - introduction of a competitive market for transport packaging
- 2005: WEEE ordinance => generally designed as competitive market
- 2007: start of discussion to liberalize the household recycling market
- End of 2009: discussion stopped without any result
- 2010: market entry of Reclay
- 2011: discussion starts again
- Today: market liberalization foreseen in 2014

## Case Study Austria

### Situation 1993 to 2013 and Anti Trust Proceedings

- 1993: foundation of ARA (green dot system) as a “non profit” monopoly; 100 % financed by producers and retailers
- 1996: amendment of the new packaging ordinance – still a monopoly for household packaging, competitive market for industry packaging
- 1997: three additional collection systems for industry packaging
- 2003: first proceeding of EU Commission against ARA (additional requirements for ARA)

## Case Study Austria

### Situation 1993 to 2013 and Anti Trust Proceedings

- 1997-2010: ARA holds 100 % market shares for household and 95 % market shares for industrial packaging
- 2010: market entry of Reclay
- 2011: Commission approved additional requirements for ARA
- 2012: EU Commission initiates proceedings against ARA
- 2013: Reclay holds 6.4 % market share
- 2014: full market liberalization expected

## Case Study Austria

### Perspective

- 2014: 5 systems for industry packaging expected (currently 4)
- 2014: ARA will lose its monopoly and 2 additional systems are already prepared to enter into the household packaging market
- 2014: Coordination of systems by an “independent institution”
- Direct contracts of competitors with municipalities and waste management companies and therefore access to the collection system

# Evaluation of Effects of Competition

## General Evaluation

- **OECD's Competition Assessment Toolkit** helps governments to eliminate barriers to competition by providing a method for identifying unnecessary restraints on market activities
- First published in 2007 and then updated in 2010
- Version 2.0 provides additional examples of the benefits of competition and an introduction to the Competition Checklist (shipping ports, railways, road transport, book publishing, airlines, telecommunication)
- **OECD Recommendation on Competition Assessment** calls for governments to establish institutional mechanisms for undertaking such reviews

**Specific evaluation of dual systems by the Federal Competition Office of Germany to assess fairness in the marketplace and effectiveness of competition based on § 32 e **GWB** (Restriction of Competition Act)**

- All economic actors legally compelled to provide accurate data and results of the study made public
- Goal of the analysis was to assess the interim results of the opening of the market to competition as well as identifying still existing constraints
- Published December 2012

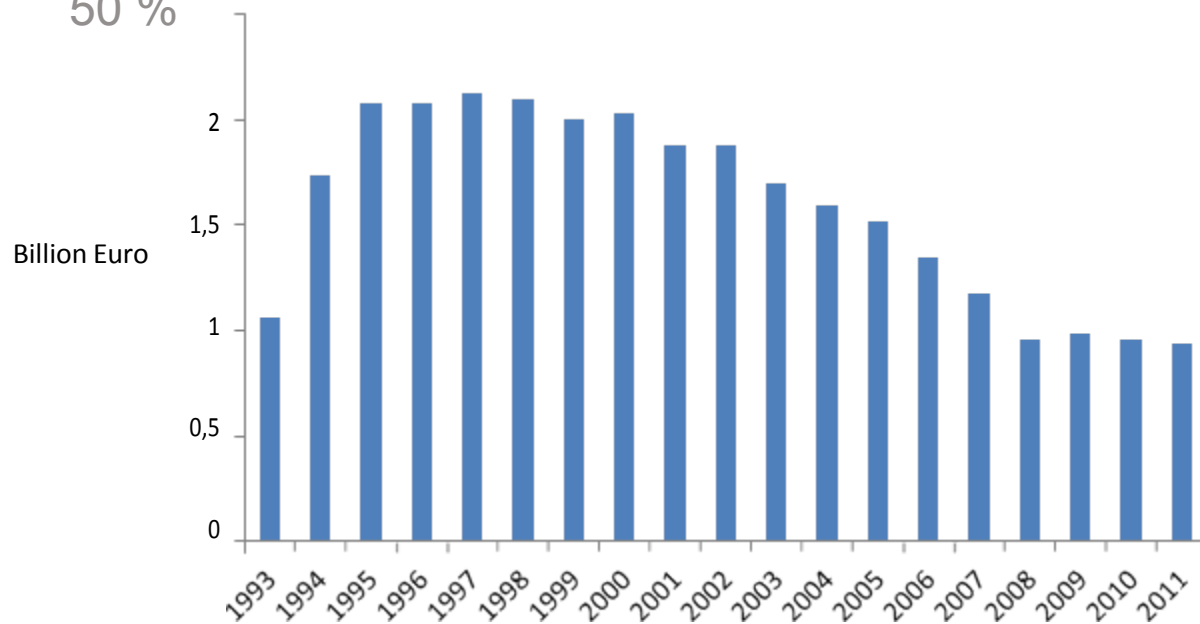


## **Main Results of the Sector Analysis**

- Predicted negative consequences of competition (chaos, lower recycling rates) **did not occur** – moreover several **positive effects** became visible:

## Main Results of the Sector Analysis

- Recycling-cost reduction from 2 Billion EUR (2.66 Billion C\$) per year to less than 1 Billion EUR (1.09 Billion C\$) per year which is more than 50 %

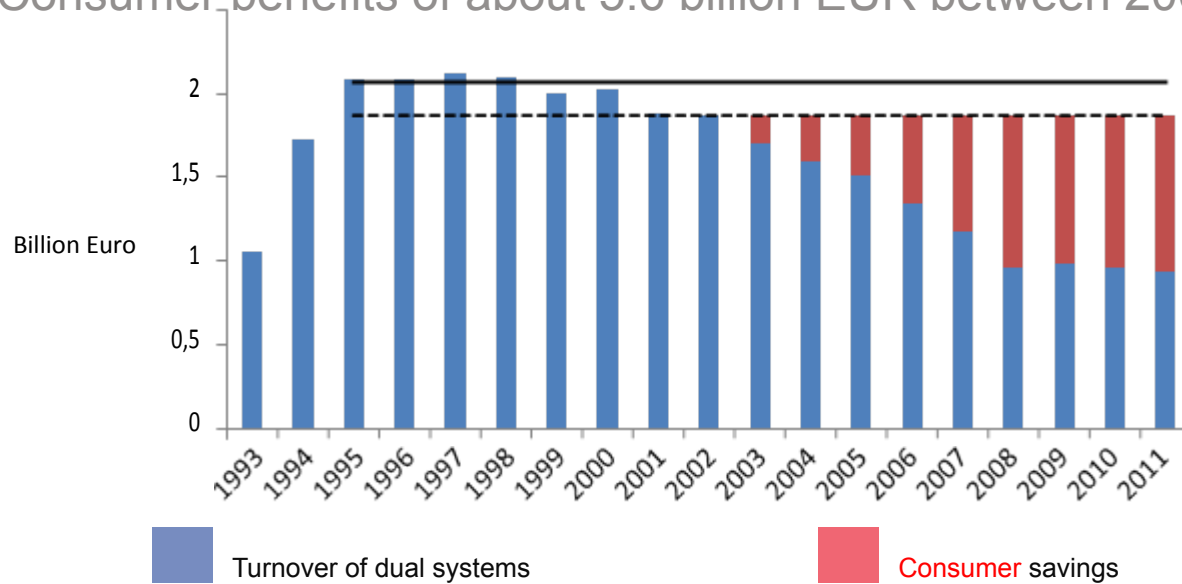


Development of the turnover of dual systems

Source: Sector Analysis of dual systems by the Federal Cartel Office, 2012

## Main Results of the Sector Analysis

- Noticeable cost reduction of at least 50 EUR per household per year
- Consumer benefits of about 5.6 billion EUR between 2003 and 2011



———— 2.068 Million EUR  
Consumer benefit of liberalization

- - - 1.868 Million EURO

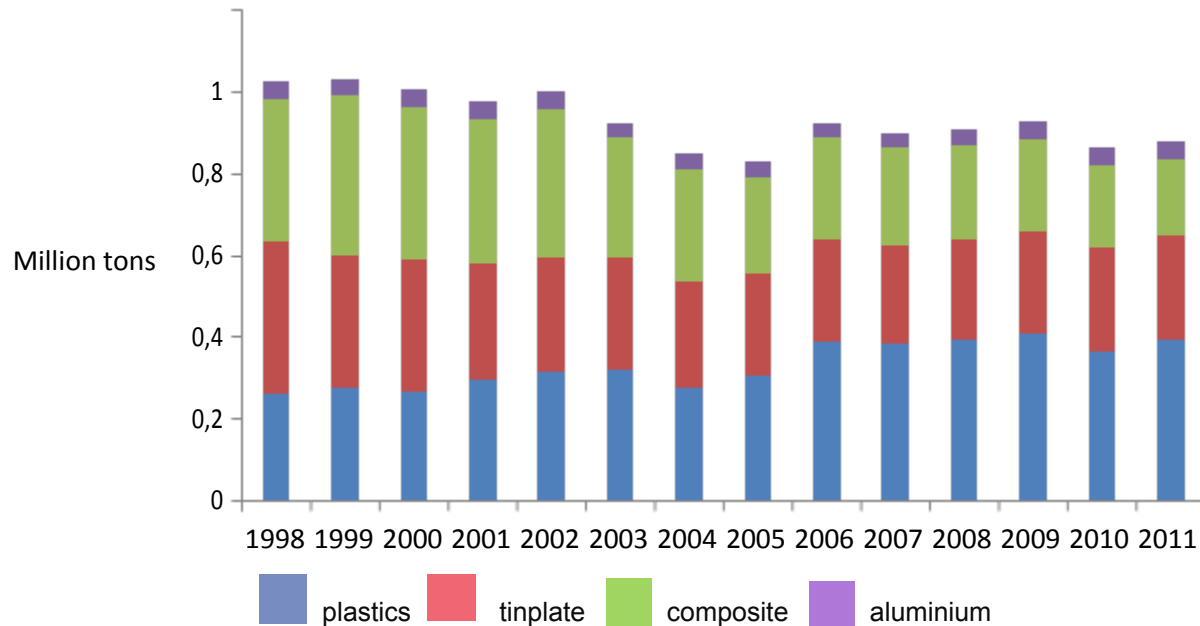
Source: Sector Analysis of dual Systems by the Federal Cartel Office, 2012

## Main Results of the Sector Analysis

- Collected amounts remained stable or even increased slightly
- Innovation push in the field of sorting and collection technology which leads to an improvement of sorting and collection results
- Tender process of collection for light weight packaging (yellow bin/sack) and glass packaging in 2011 led to further cost reductions and standardization of collection systems

## Main Results of the Sector Analysis

- Collected amounts remained stable or even increased slightly



Development of light weight packaging recycling-quantities

Source: Sector Analysis of dual systems by the Federal Cartel Office, 2012

## Main Results of the Sector Analysis

- Innovation push in the field of sorting and collection technology which leads to an improvement of sorting and collection results
- Tender process for collection of light weight packaging (yellow bin/sack) and glass packaging in 2011 led to further cost reductions and standardization of collection systems

## Summary Comments

- I am a reformed monopolist (1993-2005; 2005 – up to now)
- Europe has seen many benefits from competition
  - Lower costs and higher recycling performance for producers
  - Lower costs for consumers
  - Service levels for households maintained or improved
  - All market players treated in a fair manner
  - Innovation in recycling processing and end use markets
  - Brings recycling legislation in line with Competition Law
- I look forward to talking with you about whether the same benefits can be achieved in BC and Canada

**Thank You!!**





## Contact

Dr. Fritz Flanderka  
Managing Director

Reclay Holding GmbH  
Am Zollhafen 2-4  
50678 Cologne  
Germany

Phone +49. (0)221. 58 00 98-15

Fax +49. (0)221. 58 00 98-765

E-Mail [flanderka@reclay-group.com](mailto:flanderka@reclay-group.com)

[www.reclay-group.com](http://www.reclay-group.com)