



22 March 2017 Stroud, Gloucestershire, UK

For immediate release

## **INCINERATOR CONTRACT ILLEGAL AND BREAKS COMPETITION LAW**

Community R4C [1] yesterday submitted a complaint to the Competition and Markets Authority stating that Gloucestershire County Council's contract with incinerator company UBB breaks competition law. If the complaint is upheld, the consequences for the council could be very serious. The contract with UBB could be declared void, and GCC could face severe financial penalties.

With the help of a barrister provided through the Environmental Law Foundation, CR4C have found that the contract:

- stops (forecloses) all competition
- prevents technological innovation

The culprit is the very high price paid by the council, well above the market price, which effectively means that GCC is subsidising UBB to then charge below-market price for the remaining plant capacity, stifling competition. (2)

In addition, the punitive termination costs prevent competitors from having a look-in (3).

And the 25-year contract stops newer, better and cheaper alternatives from developing.

*"This could be the death-blow to the unwanted incinerator,"* said Community R4C board member, Sue Oppenheimer. *"GCC should stop UBB from carrying out further work on site immediately, in order to limit liabilities. In addition, our analysis of the contract shows that, instead of providing value for money, as claimed by the council's cabinet, this contract will be a huge financial burden for years to come. The council would save millions by terminating the contract right now".*(4)

Community R4C has commissioned an independent analysis of the Javelin Park incinerator contract and will launch a report showing that it does not offer value for money on **31<sup>st</sup> March at 10.30 am at the Guildhall, Gloucester.**

Ends

For more information, please contact:

Sue Oppenheimer - Mobile: 07855 098870

### **NOTES**

#### **1 About CommunityR4C**

CommunityR4C is a Community Benefit Society registered in 2016. Its objectives are:

*The protection and preservation of the environment for the public benefit by: (a) the promotion of waste reduction, re-use reclamation, recycling, use of recycled products and the use of surplus; (b) advancing the education of the public about all aspects of waste generation, waste*

*management, waste recycling and the resource circular economy; and (c) the promotion of such other activities and initiatives that contribute to and stimulate the development of a local resource circular economy.*

Watch our animation here:

<https://www.youtube.com/embed/kf3ljfYKZg4>

2 The first tranche of 108,000 tonnes of council waste will be charged at well over the market price, at £146.36 per tonne. This ensures that most of UBB's costs are met. It is **10 times the price** of the second tranche - any further waste supplied by the county council is then charged at only £15 a tonne, well below market price, undermining recycling and undercutting any competition in the market. The Council is basically subsidising costs so that UBB can then out-compete any competitors. *"In short, the pricing structure combines with the assured 'base tonnage' to ensure de facto exclusivity (now and during the life of the contract)"* See attached CMA complaint para 8.

3 The Council has consistently claimed that it would cost £100m to cancel the contract. The Judge in the Fol Tribunal case commented that:

**"27. During the hearing in September 2016 the Tribunal expressed some incredulity that it could possibly cost £100 million to cancel a contract worth some £500 million over 25 years at a stage when construction had not even started"** See First-Tier Tribunal Judgement by HH Shanks, Appeal no EA/2015/0254-6

4. The following questions will be put by CR4C to today's Council meeting:

1. Community R4C has undertaken a thorough assessment, using independent experts, of the Incinerator Contract to see whether it provides value for money - sadly it does not. The small print shows that for the first 10 years or more, the incinerator is substantially more expensive than any other alternative, including continuing to landfill. All the supposed savings from the contract only accrue in the final years, and no amount of crystal ball gazing now can predict what will happen to prices and waste arisings by then. Will the Cabinet Member ask his officers to plot the costs over the 25-years so that he can see for himself that his predictions, in answer to Cllr Hodgkinson's question, of savings in the first 5 years of the contract, are 'alternative facts'? And will he accept our invitation to our report and press launch on Friday 31<sup>st</sup> at 10.30am at the Guildhall in Gloucester?

2. Yesterday, Community R4C's barrister submitted a complaint to the Competition and Markets Authority, copied to the Chief Executive of the Council, showing that the Javelin Park Incinerator Contract breaks competition law. The charging structure creates an abuse of dominance that forecloses competition and prevents technological innovation. This has left the council exposed to massive risk. Did the council undertake a risk assessment in relation to competition law, and if not, why not?

3. In the Tribunal ruling regarding GCC's appeal against the Information Commissioner, Judge Shanks states that "The Cabinet system tends to concentrate decision making in the hands of a small number of people, and individual elected Councillors do not always have the capability to ask for or act on the information that others might. In the end it is the electorate which must hold the Council as a whole to account and the electorate are more able to do that properly if relevant information is available to all." Would the Cabinet agree with this comment?