

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

STATE OF FLORIDA,  
by and through its Attorney  
General Robert A. Butterworth,  
and

STATE OF MARYLAND, by and  
through its Attorney General,  
J. Joseph Curran, Jr.,

*Plaintiffs.*

v.

BROWNING-FERRIS INDUSTRIES,  
INC.,

*Defendant.*

Civil Action No.: 1:94CV02588

Filed: December 1, 1994

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, the State of Florida acting under the direction of the Attorney General of the State of Florida, and the State of Maryland acting under the direction of the Attorney General of the State of Maryland, plaintiffs, bring this civil action to obtain equitable and other relief as is appropriate against the defendant named herein and complain and allege as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted by the United States under Section 15 of the Clayton Act, as amended,

15 U.S.C. § 25, and by Florida and Maryland under 15 U.S.C. § 26, to prevent and to restrain the violation by the defendant, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(c), with respect to the defendant, since the defendant named herein transacts business and is found within the District of Columbia.

## II.

### DEFINITIONS

3. "Attwoods" means Attwoods plc, a corporation organized and existing under the laws of the United Kingdom that is engaged in solid waste hauling services in the United States and elsewhere.

4. "Baltimore" means Baltimore City, Baltimore County, and Anne Arundel County, Maryland, including the municipalities located, in whole or in part, within Baltimore and Anne Arundel counties.

5. "Southern Eastern Shore" means Wicomico County, Somerset County, Worcester County, and Dorchester County, Maryland, including the municipalities located, in whole or in part, in those counties.

6. "Western Maryland" means Frederick County and Washington County, Maryland, including the cities of Frederick, Maryland, Hagerstown, Maryland, and all other municipalities located, in whole or in part, in those counties.

7. "HHI" means the Herfindahl-Hirschman Index, a measure of

market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, respectively, the HHI is 2600 ( $30^2 + 30^2 + 20^2 + 20^2 = 2600$ ). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

### III.

#### DEFENDANT

8. Browning-Ferris Industries, Inc. ("BFI") is a corporation organized and existing under the laws of the state of Delaware with its principal offices in Houston, Texas. BFI is engaged in providing solid waste hauling services throughout the United States. BFI had total revenues of over \$3 billion in its 1993 fiscal year. BFI is engaged in interstate commerce and in activities substantially affecting interstate commerce.

### IV.

#### TRADE AND COMMERCE

9. Solid waste hauling involves the collection of paper, food, construction material and other solid waste from residential, commercial and industrial customers, and the transporting of that waste to a landfill or other disposal site. Solid waste hauling

services may be provided by private haulers directly to their customers, or indirectly through municipal contracts or franchises.

10. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is usually collected in metal containers provided by their hauling firm. The containers vary in size from 1 to 10 cubic yards. The types of containers used by commercial customers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rearend load trucks can be used to service some commercial customers, but these trucks are not as efficient as frontend loaders and are limited in the sizes of containers they can safely handle. Service to customers using 1 to 10 cubic yard containers is called "small containerized hauling service."

11. Residential customers, typically households and small apartments that generate small amounts of waste, use noncontainerized solid waste hauling service, normally by placing plastic bags or trash cans at curbside. Rarend load vehicles are generally used to collect the plastic bags or to empty the trash cans of residential customers and of those commercial customers that generate relatively small quantities of solid waste, similar

in amount to that generated by residential customers. Generally, rear-end loaders use a one or two person crew that manually loads the waste into the rear of the vehicle.

12. Industrial or roll-off customers include factories, construction sites, and shopping malls; these customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste in very large containers (20-40 cubic yards) that are loaded onto a roll-off truck and are transported individually to the disposal site where they are emptied before being returned to the customer's premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities; it is more economical for this customer type to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

13. There are no practical substitutes for small containerized hauling service. Small containerized hauling customers will not generally switch to noncontainerized service in the event of a price increase because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly and roll-off containers take up too much space for most small containerized hauling service customers. Only customers that

generate the largest volumes of solid waste can economically consider such roll-off service, and for such customers, roll-off service is usually the only viable option.

14. Small containerized hauling service is a line of commerce and a relevant product market for antitrust purposes.

15. Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances without collecting significant amounts of waste, making it impractical for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

16. Local laws or regulations may further localize markets. For example, flow control regulations designate the facilities where trash picked up within a geographic area must be disposed. Other local regulations may prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. By designating disposal facilities, these laws and regulations dictate that haulers operate routes only within these local jurisdictions.

17. Each of the following constitutes an affected relevant geographic market or section of the country for small containerized hauling services: (1) Baltimore; (2) Broward County, Florida; (3) Chester County, Pennsylvania; (4) Clay County, Florida; (5)

Duval County, Florida; (6) Polk County, Florida; (7) the Southern Eastern Shore of Maryland; (8) Sussex County, Delaware; and, (9) Western Maryland.

18. BFI and Attwoods compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Baltimore market. As measured by total revenues, the HHI in this market is approximately 1950. BFI and Attwoods are the first and second largest small containerized haulers in the Baltimore market, accounting for approximately 31 and 22 percent, respectively, of total small containerized hauling service revenues. The acquisition of Attwoods by BFI would substantially increase concentration among the small containerized hauling firms in the Baltimore market; the HHI in that market would increase by about 1350 points, to about 3300.

19. BFI and Attwoods compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Broward County market. As measured by total revenues, the HHI in the market is about 2610. BFI and Attwoods are the third and second largest small containerized hauling firms, accounting for approximately 11 and 12 percent, respectively, of total small containerized hauling service revenues. The acquisition of Attwoods by BFI would substantially increase concentration among the small containerized firms in the Broward County market; the HHI in that market would increase by about 260 points, to about 2870.

20. BFI and Attwoods compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Chester County market. As measured by total revenues, the HHI in the market is about 2250. BFI and Attwoods are the first and second largest small containerized haulers in the market, accounting for approximately 38 and 20 percent, respectively, of total small containerized hauling service revenues. The acquisition of Attwoods by BFI would substantially increase concentration among the small containerized hauling firms in the market; the HHI in that market would increase by about 1500 points, to about 3750.

21. BFI and Attwoods compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Clay County market. As measured by total revenues, the HHI is about 2800. BFI and Attwoods are the second and third largest small containerized hauling firms in the market, accounting for approximately 27 percent and 22 percent, respectively, of total small containerized hauling service revenues. The acquisition of Attwoods by BFI would substantially increase concentration among the small containerized hauling firms in the market; the HHI would increase by about 1200 points, to about 4000.

22. BFI and Attwoods compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Duval County market. As measured by total revenues, the HHI is about 2450. BFI and



Attwoods are the first and fourth largest small containerized hauling firms in the market, accounting for approximately 38 percent and 14 percent, respectively, of total small containerized hauling service revenues. The acquisition of Attwoods by BFI would substantially increase concentration among the small containerized hauling firms in the market; the HHI would increase by about 1025 points, to about 3475.

23. BFI and Attwoods compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Polk County market. As measured by total revenues, the HHI in the market is about 2829. BFI and Attwoods are the second and third largest small containerized haulers in Polk County, accounting for approximately 33 percent and 18 percent, respectively, of total small containerized hauling service revenues. The acquisition of Attwoods by BFI would substantially increase concentration among the small containerized hauling firms in the market; the HHI in that market would increase by about 1190 points, to about 4020.

24. BFI and Attwoods compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Southern Eastern Shore market. As measured by total revenues, the HHI is about 2200. BFI and Attwoods are the first and third largest small containerized firms in the market, accounting for approximately 31 percent and 24 percent, respectively, of total small containerized hauling service revenues. The acquisition of Attwoods by BFI would substantially

increase concentration among the small containerized hauling firms in the market; the HHI in that market would increase by about 1450 points, to about 3650.

25. BFI and Attwoods compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Sussex County market. As measured by total revenues, the HHI is about 1960. Attwoods and BFI are the first and fourth largest small containerized firms in the market, accounting for approximately 27 percent and 19 percent, respectively, of total small containerized hauling service revenues. The acquisition of Attwoods by BFI would substantially increase concentration among the small containerized firms in the market; the HHI would increase by about 1010 points, to about 2970.

26. BFI and Attwoods compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Western Maryland market. As measured by total revenues, the HHI in this market is about 2225. BFI and Attwoods are the first and second largest small containerized hauling firms in the market, accounting for approximately 38 percent and 23 percent, respectively, of total small containerized hauling service revenues. The acquisition of Attwoods by BFI would substantially increase concentration among the small containerized hauling firms in the market; the HHI in that market would increase by about 1725 points, to about 3950.

27. A new entrant into trash hauling cannot constrain the prices of larger existing firms until it achieves minimum efficient

scale and operating efficiencies comparable to existing firms. In small containerized hauling service, achieving comparable operating efficiency requires achieving route density comparable to existing firms, which typically takes a substantial period of time. A substantial barrier to entry is the use of pricing and long-term contract practices by incumbent firms to deter new entrants into waste hauling from winning customers from incumbents.

28. Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and, where it has occurred, has been shown to persist for many years.

29. The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the alleged markets, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service.

#### V.

##### VIOLATION ALLEGED

30. On September 20, 1994, BFI announced a cash tender offer to purchase the voting ordinary shares of Attwoods.

31. The effect of the acquisition of 50 or more percent of Attwoods' shares by BFI may be substantially to lessen competition in the aforesaid trade and commerce in violation of Section 7 of

the Clayton Act in the following ways, among others:

(a) Actual competition and potential competition between BFI and Attwoods in small containerized hauling services in the above-described geographic markets will be eliminated; and

(b) Actual and potential competition generally in small containerized hauling services in those geographic areas may be substantially lessened.

PRAYER

WHEREFORE, plaintiffs pray,

1. That the proposed acquisition of the voting ordinary shares of Attwoods by BFI be adjudged to be in violation of Section 7 of the Clayton Act;

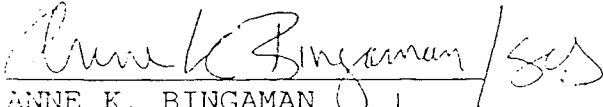
2. That the defendant and all persons acting on its behalf be permanently enjoined from carrying out the acquisition of the voting ordinary shares of Attwoods by BFI or any similar agreement, understanding, or plan.

3. That the plaintiffs have such other and further relief as the Court may deem just and proper; and


4. That plaintiffs recover the costs of this action.

Dated:

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