

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3000
Washington, DC 20530

STATE OF ILLINOIS,
Antitrust Bureau
Office of the Attorney General
State of Illinois
100 W. Randolph
Chicago, Il 60601

and

STATE OF MISSOURI,
Office of the Attorney General
State of Missouri
1530 Rax Court
Jefferson City, Missouri 65109

Plaintiffs,

v.

ALLIED WASTE INDUSTRIES, INC.
15880 Greenway-Hayden Loop, Suite 100
Scottsdale, AZ 85260

and

BROWNING-FERRIS INDUSTRIES, INC.,
757 North Eldridge at Memorial Drive
Houston, Texas 77079

Defendants.

Civil No.: 1:99CV00894

Filed: April 8, 1999

COMPLAINT FOR INJUNCTIVE RELIEF

The United States of America, acting under the direction of the Attorney General of the United States, and the states of Illinois and Missouri, acting under the direction of their

respective Attorneys General, bring this civil antitrust action to enjoin the acquisition of certain assets of Browning-Ferris Industries, Inc. ("BFI") by Allied Waste Industries, Inc. ("Allied") and to obtain equitable relief and other relief as is appropriate. Plaintiffs complain and allege as follows:

1. Plaintiffs bring this antitrust suit to prevent the proposed sale of small container commercial waste hauling assets of BFI to Allied pursuant to an agreement entered into by defendants dated February 11, 1999 valued at \$210 million. The sale threatens to raise prices and reduce service, harming commercial customers, such as retail stores and restaurants, in the St. Louis market.

2. BFI and Allied are two of the three largest hauling and disposal companies in the United States and are vigorous competitors for the collection of commercial waste in the St. Louis market. The acquisition will eliminate the head-to-head price competition between Allied and BFI in the St. Louis market, and will consolidate over 50 percent of the commercial waste collection in the St. Louis market into Allied's operations.

I.

JURISDICTION AND VENUE

3. This action is filed by the United States of America under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18. The states of Illinois and Missouri bring this action under Section 16 of the Clayton Act, 15 U.S.C. §26, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. BFI is located in and transacts business in the District of Columbia, and Allied submits to personal jurisdiction of the District of Columbia in this proceeding. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

5. Allied and BFI collect solid waste from both residential and commercial customers in the St. Louis market and in many states throughout the United States. In their waste collection business, Allied and BFI make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce and engage in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and U.S.C. §§ 1331 and 1337.

II.

DEFINITIONS

6. "Commercial waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from commercial and industrial customers. Commercial waste hauling means using frontend load and rearend load trucks to service small containers in the St. Louis market. Typical customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

7. "Small container" means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

8. "St. Louis market" means the city of St. Louis and St. Louis County in Missouri, and the Illinois Counties of St. Clair, Madison and Monroe.

III.

DEFENDANTS

9. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is engaged in providing waste collection and disposal services throughout the United States. In 1998, Allied reported domestic revenues of nearly \$1.6 billion. Allied operates 34 commercial hauling routes in the St. Louis market from which it reported \$12 million in revenue in 1998.

10. BFI is a Delaware corporation with its principal office in Houston, Texas. BFI is engaged in providing waste collection and disposal services throughout the United States, including the District of Columbia. In 1998, BFI reported domestic revenues of nearly \$4.7 billion. BFI operates 23 commercial hauling routes in the St. Louis market from which it reported \$11.1 million in revenue in 1998.

IV.

TRADE AND COMMERCE

A. Small Containers Commercial Service

11. Small container commercial waste hauling firms, or "haulers," collect waste from residential, commercial and industrial establishments, and transport the waste to a disposal site, such as a transfer station, sanitary landfill or incinerator, for processing and disposal. Private waste haulers typically contract directly with customers for the collection of waste generated by commercial accounts. Waste generated by residential customers, on the other hand, is often collected by either local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

12. Small container commercial waste hauling differs in many important respects from collection of residential or other types of waste. An individual commercial customer typically generates substantially more commercial waste than a residential customer. To efficiently handle this high volume of commercial waste, haulers provide commercial customers with dumpsters -- small containers (1-10 cubic yards) for the storage of waste. In the St. Louis market, haulers organize commercial accounts into routes, and collect and generally transport commercial waste using vehicles uniquely well suited for commercial waste collection, such as front-end load ("FEL") trucks. Rear-end load ("REL") trucks are occasionally used for commercial waste hauling in the St. Louis market, but this method is not as efficient as FEL collection.

13. On a typical small container commercial waste collection route, an FEL truck collects waste from several businesses' dumpsters. At each stop, the waste is compacted and stored inside the FEL truck. The driver continues along the route, collecting waste until the truck is full. The FEL truck driver then deposits the truck's contents at a disposal facility, usually a transfer station, landfill or incinerator.

14. Residential waste collection is significantly more labor intensive than small container commercial waste hauling. Residential waste is stored in much smaller containers (e.g., garbage bags or trash cans) and instead of FEL trucks, haulers generally use rear-end load or side-load trucks, typically manned by two-to-three-man crews. On residential routes, the crews must hand load the waste, tossing garbage bags and emptying trash cans into the truck's storage section. The different collection methods and equipment cause haulers to organize residential and commercial waste customers into separate routes.

15. Although most commercial waste customers use small container waste collection service, customers that generate the largest volumes of solid waste generally require “roll-off service.” Roll-off service for commercial waste is too costly and the large roll-off containers (usually 30-40 cubic yards) take up significant space. For example, collection of construction and demolition debris (“C&D” waste) is done with roll-off trucks. Collection of C&D waste cannot be combined with a small container commercial waste route. In addition, C&D waste must be taken to different disposal sites than commercial waste. Similarly, liquid waste and hazardous waste require different collection equipment and different disposal sites than commercial waste.

16. The differences in the volume of waste collected and in equipment used in their collection activities distinguish small container commercial hauling from all other types of waste collection. Small container commercial waste customers faced with a price increase could not switch to a firm that collects a different type of waste or start using roll-off services. The availability of residential collection service and roll-off service would not constrain increases in price to commercial customers using small containers. Thus, small container commercial waste hauling is a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

B. Relevant Geographic Market

17. Small container commercial waste hauling services are generally provided in very localized areas because to operate efficiently and profitably, a hauler must have sufficient density in its commercial waste collection operations; i.e., a large number of commercial accounts that are reasonably close together. In addition, it is not efficient economically for

frontend load vehicles to travel long distances without collecting significant amounts of commercial waste, making it impractical for a hauler to serve major metropolitan areas from a distant base.

18. Because more distant waste haulers could not profitably collect their waste, customers of small container commercial waste hauling firms in the St. Louis market have no alternatives if the commercial waste haulers in this market raised prices. The St. Louis market is a relevant geographic market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Competition Between Defendants

19. In the St. Louis market, the proposed merger would reduce from three to two the number of significant firms that compete in small container commercial waste hauling. If Allied were to acquire BFI in the St. Louis market, it would control in excess of 50 percent of total market revenues of over \$45 million annually. The post-merger HHI would be over 3900, an increase in excess of 1400 points over the pre-merger HHI of 2500. (See Appendix A for description of the HHI).

20. Allied's acquisition of BFI would remove a significant competitor in small container commercial waste hauling in an already highly concentrated and difficult-to-enter market. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospects for significant new entry make it likely that consumers will pay substantially higher prices for collection of commercial waste following the acquisition.

21. Commercial 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.

22. Significant new entry into small container commercial waste hauling is difficult and time-consuming in the St. Louis market. A new entrant into small container commercial waste hauling cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In order to obtain comparable operating efficiency, a new firm must achieve route density comparable to existing firms. However, the incumbents' use of price discrimination and long-term contracts can prevent new entrants from winning a large enough base of customers to achieve efficient routes in a short period of time or at pre-entry prices. Therefore, new entry is unlikely to occur and unlikely to be timely or sufficient to defeat a post-acquisition small container commercial hauling price increase.

23. The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the St. Louis market, significantly increases the likelihood that consumers in this market are likely to face higher prices and poorer quality service.

V.

VIOLATION ALLEGED

24. Allied and BFI agreed to a sale to Allied of BFI's small container commercial

waste hauling assets in the St. Louis market, as part of an asset swap agreement dated February 11, 1999, to exchange assets valued at \$210 million in numerous geographic markets in the United States. The transaction has an anticipated closing date of April 9, 1999.

25. The effect of the sale of the small container commercial waste hauling assets 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 Allied and BFI in small container commercial waste hauling in the St. Louis market will be eliminated; and

(b) Actual and potential competition generally in small container waste hauling in the St. Louis market may be substantially lessened.

VI.

REQUESTED RELIEF

WHEREFORE, plaintiffs request,

1. That the proposed agreement dated February 11, 1999 between the parties, which includes the acquisition by Allied of BFI's small container commercial waste hauling assets in the St. Louis market, be adjudged to be in violation of Section 7 of the Clayton Act;

2. That the defendants and all persons acting on their behalf be permanently enjoined from carrying out the sale of BFI's small container commercial waste hauling assets to Allied, or from entering into or carrying out any similar agreement, understanding, or plan, the effect of which would be to combine the small container commercial waste hauling assets in the St. Louis market.

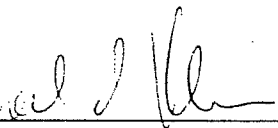
3. That plaintiffs have such other and further relief as the case requires and the Court deems proper; and

4. That plaintiffs recover the costs of their action.

Dated: April __, 1999

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

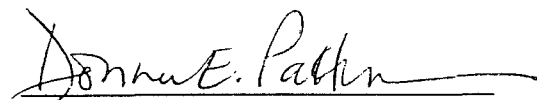


Joel I. Klein
Assistant Attorney General

Arthur A. Feiveson
IL Bar # 3125793

Wilma A. Lewis
United States Attorney

David R. Bickel
DC Bar # 393409



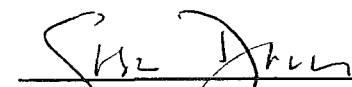
Donna E. Patterson
Deputy Assistant Attorney General

Thomas J. Horton



Constance K. Robinson
Director of Operations and
Merger Enforcement

Denise Cheung



Susan M. Davies
Senior Counsel

U.S. Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, N.W., Suite 3000
Washington, D.C. 20530
(202) 307-0924

J. Robert Kramer II
Chief, Litigation II Section
PA. Bar # 23963

Willie L. Hudgins
Assistant Chief, Litigation II Section
DC Bar # 37127

FOR PLAINTIFF STATE OF ILLINOIS

James E. Ryan
Attorney General

By: _____
Christine H. Rosso
Assistant Attorney General

Antitrust Bureau
Office of the Attorney General
State of Illinois
100 W. Randolph
Chicago, Illinois 60601
(312) 814-5610

FOR PLAINTIFF STATE OF MISSOURI

Jeremiah Nixon
Attorney General

By: _____
J. Robert Sears
Assistant Attorney General

Office of the Attorney General
State of Missouri
1530 Rax Court
Jefferson City, Missouri 65109
(573)751-3321