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: 12/2/94 Judge Richey

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, on December 1, 1994, alleging that the proposed acquisition of the ordinary shares of Attwoods plc ("Attwoods") by Browning-Ferris Industries, Inc. ("BFI") would constitute a violation of Section 7 of the Clayton

Act, 15 U.S.C. § 18. The State of Florida and the State of Maryland, by and through their respective Attorneys General, are co-plaintiffs with the United States in this action.[1]

The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in small containerized waste hauling services in Chester County, Pennsylvania; Clay, Duval, Polk, and Broward counties, Florida; Baltimore City, Baltimore County, and Anne Arundel County, Maryland ("Baltimore market"); Wicomico, Dorchester, Worcester, and Somerset counties, Maryland ("Southern Eastern Shore market"); Sussex County, Delaware; and Frederick County and Washington County, Maryland ("Western Maryland market").

Plaintiffs seek, among other relief, a permanent injunction preventing the defendant from, in any manner, combining its assets with those of Attwoods in Duval and Clay counties, Florida; Chester County, Pennsylvania; the Southern Eastern Shore market; Sussex County, Delaware; and the Western Maryland market. By the terms of a Hold Separate Stipulation and Order, which was filed simultaneously with the proposed Final Judgment, defendant BFI must take certain steps to ensure that, until the required divestiture has been accomplished, the Attwoods' assets as outlined in the proposed Final Judgment will be held separate and apart from

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[1]The APPA obligates only the United States to file a Competitive Impact Statement.

defendant's other assets and businesses. BFI must, until the required divestiture is accomplished, preserve and maintain the specified Attwoods assets as saleable and economically viable ongoing concerns.

The United States, its co-plaintiffs, and the defendant also have filed a stipulation by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, as explained more fully below, BFI would be required, within 90 days following the date a majority of the Attwoods Board of Directors is elected or appointed by BFI, but in no event later than March 30, 1995, to divest, as viable business operations, Attwoods' small container businesses serving the Western Maryland market; Duval and Clay counties, Florida; Chester County, Pennsylvania; and the areas where Attwoods provides small container service from its Salisbury, Maryland Division (the Southern Eastern Shore market and Sussex County, Delaware). If BFI were not to do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it shall deem appropriate to carry out the purpose of the trust, which may, if necessary, include extending the trust and the trustee's appointment by a period requested by the United States,

after consultation with its co-plaintiffs.

Additionally, under the proposed Final Judgment, as explained more fully below, defendant BFI would be required to offer less restrictive contracts to its small container solid waste hauling customers in the Baltimore market, and the following neighboring counties: Carroll County, Howard County, Harford County, Calvert County, Prince George's County, and Montgomery County, Maryland; and in Polk and Broward counties, Florida.

The United States, its co-plaintiffs, and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II.

DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

BFI is the world's second largest company engaged in the solid waste hauling and disposal business, with operations throughout the United States and in several foreign countries. BFI had total revenues of over $3 billion from solid waste hauling and disposal in its 1993 fiscal year.

Attwoods plc is a United Kingdom company with solid waste

hauling operations in Florida and in the mid-Atlantic region of the United States. Attwoods' U.S. revenues in 1993 were $327.9 million.

On September 20, 1994, BFI announced an unsolicited tender offer for the ordinary shares of Attwoods plc, seeking to acquire enough ordinary shares to give BFI control. If BFI were to acquire more than 50 percent of the ordinary shares of Attwoods plc, BFI's and Attwoods' solid waste hauling service operations, in particular in the U.S., effectively would be merged.

A. The Solid Waste Hauling Industry

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. 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 generally placed in metal containers of one to ten

cubic yards provided by their hauling company. One to ten cubic yard containers are called "small containers." Small containers 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 vehicles can also be used to service some small container customers, but these trucks generally are not as efficient as frontend load vehicles and are limited in the sizes of containers they can safely handle. Frontend load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet; the containers do not need to be manually rolled into position by a truck crew as with a rearend load vehicle. Service to commercial customers that use small containers is called "small containerized hauling service."

Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rearend load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in amount and kind to those generated by residential

customers. Generally, rearend loaders use a one or two person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and 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 type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

B. Small Containerized Hauling Service

There are no practical substitutes for small containerized hauling service. Small containerized hauling service customers will not generally switch to noncontainerized service 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 takes up too much space for most

small containerized hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option. Accordingly, small containerized hauling service is a line of commerce and a relevant product market.

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 from customers without collecting significant amounts of waste. Thus, it is not efficient 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. Local laws or regulations that restrict where waste can be disposed of may further localize markets. Flow control regulations designate the disposal facilities where trash picked up within a geographic area must be disposed. Other local regulations may also prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. These laws and regulations dictate that haulers operate only in these local jurisdictions so that they may use the designated disposal facilities. Thus, the Complaint alleges that

small containerized hauling services in certain specific geographic areas constitute a line of commerce and a relevant market for antitrust purposes.

The Complaint alleges each of the following as a relevant geographic market for small containerized hauling services: (1) the Baltimore market; (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 market; (8) Sussex County, Delaware; and (9) the Western Maryland market.

BFI and Attwoods compete with each other in small containerized hauling services in each of the relevant geographic markets named, all of which are highly concentrated and become substantially more concentrated as a result of the proposed acquisition. In the markets of concern, BFI and Attwoods have the following approximate shares of the small containerized hauling business: (1) Baltimore market, BFI 31 percent, Attwoods 22 percent; (2) Broward County, Florida, BFI 11 percent, Attwoods 12 percent;[2] (3) Chester County, Pennsylvania, BFI 38 percent, Attwoods 20 percent; (4) Clay County, Florida, BFI 27 percent, Attwoods 22 percent; (5) Duval County, Florida, BFI 38 percent, Attwoods 14 percent; (6) Polk County, Florida, BFI 33 percent,

[2]The market share data and HHI calculations in Broward County and Polk County, Florida are based on open commercial areas not subject to municipal or county franchises.

Attwoods 18 percent; (7) the Southern Eastern Shore, BFI 31, Attwoods 24; (8) Sussex County, Delaware, BFI 19 percent, Attwoods 27 percent; and (9) Western Maryland, BFI 38 percent, Attwoods 23 percent.

The acquisition would increase the Herfindahl-Hirschmann Index ("HHI"),[3] a measure of market concentration, by the following amounts in the following areas: (1) Baltimore market, by about 1350, to about 3300; (2) Broward County, Florida, by about 260 to about 2870; (3) Chester County, Pennsylvania, by about 1500, to about 3750; (4) Clay County, Florida, by about 1200, to about 4000; (5) Duval County, Florida, by about 1025, to about 3475; (6) Polk County, Florida, by about 1190, to about 4020; (7) the Southern Easter Shore, by about 1450, to about 3650; (8) Sussex County, Delaware, by 1010, to about 2970; and (9) Western Maryland, by about 1725, to about 3950.

A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating

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[3]The Herfindahl-Hirschmann Index ("HHI") is 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, the HHI is 2600 (30 squared (900) plus 30 squared (900) plus 20 squared (400) plus 20 squared (400) = 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.

efficiencies comparable to the incumbent firms. In small containerized hauling service, achieving comparable operating efficiencies 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 long-term contracts coupled with selective pricing practices by incumbent firms to deter new entrants into small containerized hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

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.

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.

Based on the foregoing and other facts, the Complaint alleges that the effect of the proposed acquisition may be substantially to

lessen competition in the above-described geographic areas in the small containerized hauling service market in violation of Section 7 of the Clayton Act.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized hauling services in certain geographic markets by establishing a new, independent and economically viable competitor in those markets. The proposed Final Judgment requires BFI, within 90 days following the date a majority of the Attwoods Board of Directors is elected or appointed by BFI, but in no event later than March 30, 1995, to divest, as viable ongoing businesses, the small container business of Attwoods serving Chester County, Pennsylvania, Duval and Clay counties, Florida, the Western Maryland market, Sussex County, Delaware, and the Southern Eastern Shore market. The divestiture would include both the small containerized hauling service assets and such other assets as may be necessary to insure the viability of the small container business. If BFI cannot accomplish these divestitures within the above-described period, the Final Judgment provides that, upon application (after consultation with the states of Florida and Maryland) by the United States as plaintiff, the Court will appoint

a trustee to effect divestiture.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Florida and Maryland) that the operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant markets. Similarly, if the divestiture is accomplished by the trustee, the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Florida and Maryland) that the businesses can and will be operated as viable, independent competitors by the purchaser or purchasers. The defendant must take all reasonable steps necessary to accomplish the divestiture and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that BFI will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter

such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment also requires BFI to offer less restrictive contracts (attached to the proposed Final Judgment as Exhibit A) to small containerized hauling customers in the Baltimore market, and in the following neighboring counties: Howard, Carroll, Harford, Prince George's, Calvert, and Montgomery.

These changes to the contracts involve substantially shortening the term of contracts BFI uses from three years to one year and substantially reducing the amount of liquidated damages. The proposed Final Judgment requires that these revised contracts shall be offered to all new small containerized hauling customers or to existing customers that sign new contracts for small containerized hauling service, effective beginning the date BFI acquires a majority of Attwoods' ordinary shares. By December 1, 1995, BFI must offer the revised contract attached as Exhibit A to the proposed Final Judgment to all of its (and former Attwoods') small containerized hauling service customers in the area described in the preceding paragraph.

The United States concluded divestiture was not necessary in the Baltimore market and that a change in the types of contracts used with small containerized hauling service in this market and in the adjoining areas of Calvert, Carroll, Harford, Howard,

Montgomery, and Prince George's counties, Maryland, will adequately address the competitive concerns posed by BFI's acquisition of a majority of Attwoods' ordinary shares. A number of factors led to that decision, including the number of existing competitors in the market; the size of the population and number and density of commercial establishments requiring small containerized hauling service; and the number of haulers that currently do not provide but could, absent the long-term contracts that now exist, easily and quickly provide small containerized hauling service in the market. Due to these factors, requiring BFI to offer less restrictive contracts both within the market and throughout the neighboring counties eliminates a major barrier to entry and expansion. Haulers already serving the market will be able to more easily expand their current or build new routes and nearby haulers will be able to build routes, thus constraining any possible anticompetitive price increase by the post-acquisition firm.

The proposed Final Judgment also requires BFI to offer less restrictive contracts (attached to the proposed Final Judgment as Exhibit B) to small containerized hauling customers in Polk and Broward counties, Florida. The changes to the contracts involve substantially shortening the term of contracts BFI uses from five years to two years and substantially reducing the amount of liquidated damages. The proposed Final Judgment requires that these revised contracts shall be offered to all new small

containerized hauling customers or to existing customers that sign new contracts for small containerized hauling service, effective beginning the date BFI acquires a majority of Attwoods' ordinary shares. By December 1, 1995, BFI must offer the revised contract attached as Exhibit B to the proposed Final Judgment to all of its (and former Attwoods') small containerized hauling service customers in Polk and Broward counties, Florida.

The United States concluded that these contract revisions in Polk and Broward counties will adequately address the competitive concerns posed by BFI's acquisition of the majority of Attwoods' stock in these markets. In Broward County, the number and relative size of other competitors, and the fact that the merged firm would have a market share of 23 percent were all factors in reaching this conclusion. In Polk County, which has only a limited amount of small containerized hauling service that is open to private haulers (a large percentage of the service is provided by municipalities), and is located 30 miles from Tampa, a major metropolitan area, there are at least one or two strong haulers that could easily and quickly enter if prices for small containerized hauling service in Polk County were to rise to constrain possible anticompetitive behavior. With less restrictive contracts being used, these haulers would be able to obtain customers and build sufficient route density to create profitable routes.

The relief sought in the various markets alleged in the

complaint has been tailored to insure that, given the specific conditions in each market, the relief will protect consumers of small containerized hauling service from higher prices and poorer quality service in those markets that might otherwise result from the acquisition.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendant.

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final

Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Anthony V. Nanni
Chief, Litigation I Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the

proposed Final Judgment, litigation against defendant BFI. The United States could have brought suit and sought preliminary and permanent injunctions against BFI's acquisition of the ordinary shares of Attwoods. The United States is satisfied, however, that the divestiture of the assets and the contract relief outlined in the proposed Final Judgment, will establish viable small containerized hauling service competitors in the markets identified by the United States as requiring divestiture and lower entry barriers that would otherwise substantially lessen competition in the markets identified for contractual relief. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in those markets. The divestiture and the proposed contractual relief will restore the markets to the structure that existed prior to the acquisition, will preserve the existence of independent competitors in those areas, and will allow for new entry and expansion by existing firms in those markets where contract relief is sought.

VII.

STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination,

the court may consider--

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). The courts have recognized that the term "public interest" "take[s] meaning from the purposes of the regulatory legislation." NAACP v. Federal Power Comm'n, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to "preserv[e] free and unfettered competition as the rule of trade," Northern Pacific Railway Co. v. United States, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. United States v. American Cyanamid Co., 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984); United States v. Waste Management, Inc., 1985-2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly

settlement through the consent decree process."[4] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public." United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the

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[4] 119 Cong. Rec. 24598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

> reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. Armour & Co., 402 U.S. 673, 681 (1971).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of

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[5]United States v. Bechtel, 648 F.2d at 666 (citations omitted)(emphasis added); see United States v. BNS, Inc., 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); United States v. Gillette Co., 406 F. Supp. at 716. See also United States v. American Cyanamid Co., 719 F.2d at 565.

public interest.' (citations omitted)."[6]

VIII.

DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

[6]United States v. American Tel. and Tel Co., 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) quoting United States v. Gillette Co., supra, 406 F. Supp. at 716; United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky 1985).

Dated: December 2, 1994

Respectfully submitted,

Nancy H. McMillen

Peter H. Goldberg
DC Bar # 055608

Evangelina Almirantearena
Antitrust Division
U.S. Department of Justice
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530
(202) 307-5777

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing has been served upon Browning-Ferris Industries, Inc., the Office of the Attorney General of the State of Florida, and the Office of the Attorney General of the State of Maryland, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this second day of December, 1994.

Browning-Ferris Industries, Inc.:
c/o Rufus Wallingford
Executive Vice President
and General Counsel
757 North Eldridge Street
Houston, Texas 77079

State of Maryland
Office of the Attorney General
Antitrust Division
200 St. Paul Place
Baltimore, Maryland 21202

State of Florida
Office of the Attorney General
Department of Legal Affairs
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