

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
and	)	
	)	
STATE OF FLORIDA by and through its	)	
Attorney General	)	Case No.: 1:95CV01982
Robert A. Butterworth,	)	
	)	Judge: Royce C. Lamberth
	)	
Plaintiffs,	)	Filed: [Jan. 3, 1996]
	)	
v.	)	
	)	
REUTER RECYCLING OF	)	
FLORIDA, INC., and	)	
WASTE MANAGEMENT INC.	)	
OF FLORIDA,	)	
	)	
Defendants.	)	

MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, ("APPA"), 15 U.S.C. § 16 (b)-(h), the United States of America moves for entry of the proposed Final Judgment in this civil antitrust proceeding. The Final Judgment may be entered at this time without further hearing, if the court determines that entry is in the public interest. A Certificate of Compliance, certifying that the parties have complied with all applicable provisions of the APPA and that the waiting period has expired, has been filed simultaneously with this Court.

I.

Background

This action was commenced on October 20, 1995, when the United States and the State of Florida ("Florida") filed a Complaint alleging that the acquisition by Waste Management Inc. of Florida ("WMF") of the stock of Reuter Recycling of Florida, Inc. ("Reuter") violated Section 7 of the Clayton Act because the effects of the acquisition may be substantially to lessen competition in interstate trade and commerce for municipal solid waste disposal service in Broward and Dade Counties, Florida.

At the same time, the United States and Florida filed a proposed Final Judgment, a Stipulation signed by the parties stipulating to entry of the Final Judgment, and the United States filed a Competitive Impact Statement. The proposed Final Judgment requires WMF to enter into two agreements on or before the date WMF purchases the majority of the stock of Reuter. First, Reuter is required to enter into a contract with Chambers Waste Systems of Florida Inc. ("Chambers") entitled "Amendment to Transfer Station Agreement" (hereinafter "Amendment"). The Amendment gives Chambers the right to operate a portion of the Reuter municipal solid waste transfer station to be acquired by WMF in a manner that will allow Chambers to continue to use that facility to compete with WMF for municipal solid waste disposal services in the relevant market. Second, Reuter is required to enter into an Option Agreement, giving Chambers an irrevocable option to purchase certain real estate from Reuter upon which to construct its own municipal solid waste transfer station. The Competitive Impact Statement explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest. The Stipulation provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA.

II.

Compliance with the APPA

The APPA requires defendants to file a description of communications with any officer or employee of the United States concerning the proposed Final Judgment, 15 U.S.C. § 16(g).

The APPA also requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C.

§ § 16(b) and (d). In this case, the sixty-day comment period commenced on November 2, 1995 and terminated on December 31, 1995. Finally, the APPA requires a sixty-day period for the submission of public comments following publication in appropriate newspapers, 15 U.S.C. § 16(c). During these periods, the United States received no comments from the public on the proposed Final Judgment. Upon the expiration of both comment periods on December 31, 1995, the procedures required by the APPA prior to entry of the proposed Final Judgment were completed. The Certificate of Compliance filed by the United States with this Court simultaneously with this motion demonstrates that the requirements of the APPA have been met. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment. The Court will retain jurisdiction to construe, modify or enforce the Final Judgment.

III.

Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine that the 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). In its Competitive Impact Statement, the United States has explained the meaning and proper application of the public interest standard under the APPA, and incorporates those statements here by reference.

The public, including affected competitors and customers, has had opportunity to comment on the proposed Final Judgment as required by law, and no one has contended that entry of the proposed Final Judgment would as a whole be contrary to the public interest. There has been no showing that the proposed settlement constitutes an abuse of the Department's discretion or that it is not within the zone of settlements consistent with the public interest.

IV.

Conclusion

For the reasons set forth in this Motion, in the Competitive Impact Statement and in the Certificate of Compliance, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The

United States is authorized by counsel for the State of Florida and the defendants WMF and Reuter¹ to state that the State of Florida and the defendants join in this motion. The United States, the State of Florida, and the defendants request that the proposed Final Judgment be entered expeditiously.

Dated: January 3, 1996

Respectfully submitted,

/s/ Nancy H. McMillen

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¹Defendant Reuter is now represented by counsel for WMF. See Notice Pursuant to Local Rule 201(b), filed October 27, 1995.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 1996, I have caused to be served by first class mail, postage prepaid, a copy of the foregoing Motion for Entry of Final Judgment upon the following persons:

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