

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
and	)	
	)	CIVIL ACTION NO.: 1:95CV01982
STATE OF FLORIDA,	)	
by and through	)	
its Attorney General,	)	
	)	Filed: October 20, 1995
Plaintiffs,	)	
	)	
v.	)	
	)	
REUTER RECYCLING OF	)	
FLORIDA, INC., and	)	
WASTE MANAGEMENT INC. OF	)	
FLORIDA,	)	
	)	
Defendants.	)	

COMPLAINT

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

1. The United States and the State of Florida bring this antitrust case to prevent the proposed acquisition by Waste Management Inc. of Florida ("WMF") of Reuter Recycling of Florida, Inc. ("Reuter"). The acquisition will reduce the entities competing for municipal solid waste disposal service in the relevant geographic market from three to two and will substantially increase concentration among municipal solid waste

disposal entities in that market.

2. If this transaction is not blocked, consumers will be harmed by having to pay significant and immediate price increases for municipal solid waste disposal service, as the history in the market indicates. After Chambers Waste Systems of Florida, Inc. ("Chambers") entered the relevant geographic market by using a transfer station owned by Reuter, prices for municipal solid waste disposal service dropped substantially. Consequently, this transaction must be enjoined to protect consumers.

I.

JURISDICTION AND VENUE

3. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. § 25, and 15 U.S.C. § 26, to prevent and to restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Reuter and WMF are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action, over the parties, and venue is appropriate in this District, pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1391 and 1337, since both defendants consent to personal jurisdiction in this proceeding.

II.

DEFENDANTS

5. WMF is a Florida corporation with its principal offices in Pompano Beach, Florida. WMF provides municipal solid waste disposal service within the State of Florida. In 1994, WMF

reported total revenues of over \$245 million.

6. Reuter is a Florida corporation with its principal offices in Pembroke Pines, Florida. Reuter provides municipal solid waste disposal service within the State of Florida through the Transfer Station Agreement with Chambers. In 1994, Reuter reported total revenues in excess of \$13 million.

IV.

TRADE AND COMMERCE

7. Municipal solid waste is nonhazardous waste collected from households, and commercial and industrial establishments. It includes waste that is putrescible (such as garbage) and compactible, but does not include construction and demolition debris. The waste is generally collected by municipalities or private haulers with collection trucks. When the collection truck is full, it must leave its collection route and travel to a municipal solid waste disposal site where the truck is emptied.

8. Municipal solid waste disposal service is the final disposal of municipal solid waste in a landfill or a facility that incinerates that waste. Municipal solid waste can be transported to a relatively distant final disposal site by using a transfer station. At a transfer station, municipal solid waste is received from municipal and private haulers. Generally, the waste is combined, further compacted, and then loaded into large tractor trailer trucks. These tractor trailer trucks can economically transport that waste a considerably longer distance to a final disposal site than can collection trucks.

9. The provision of municipal solid waste disposal service is a relevant product market for purposes of analyzing this acquisition under the Clayton Act. There is no practical substitute for municipal solid waste disposal service to which a significant number of customers would switch in response to a small but significant, nontransitory increase in price imposed by all providers of municipal solid waste disposal service.

10. State and federal laws restrict the facilities that may accept municipal solid waste for final disposal. Municipal solid waste disposal service is provided to consumers in Dade and Broward Counties through facilities owned or operated by Defendant WMF, directly or through its affiliates, in Broward County, Florida and in Dade County, Florida; owned or operated by Dade County, Florida in Dade; and, owned by Chambers in Okeechobee County, Florida, about 100 miles north of Dade. Chambers transports municipal solid waste to its Okeechobee landfill from the Reuter transfer station in southern Broward pursuant to an agreement between Reuter and Chambers dated July 14, 1993 ("Transfer Station Agreement"). The Reuter transfer station is currently the only means by which Chambers can transport municipal solid waste from consumers in Dade and Broward Counties to its landfill in Okeechobee County.

11. The relevant geographic market for purposes of analyzing this transaction is Broward and Dade Counties, Florida. The above facilities are the only significant disposal sites for Broward and Dade municipal solid waste. County-owned facilities

in St. Lucie, Martin and Palm Beach Counties are not alternative municipal solid waste disposal sites for Dade and Broward Counties, since the distance from Dade and Broward Counties is too great to be economically travelled by collection trucks. In addition, these facilities do not generally take out-of-county waste and are much higher priced alternatives than the Okeechobee landfill for waste from the relevant geographic market. It is not economically efficient for municipal solid waste haulers to transport that waste long distances in collection trucks to a municipal solid waste disposal site. Consequently, haulers generally transport the waste to nearby landfills or incinerators or transfer stations that enable waste economically to be hauled to more distant disposal sites. Therefore, other municipal solid waste disposal sites outside the area are not substitutes for service provided by the facilities described in paragraph 10.

12. Defendant WMF and Chambers compete with each other and with Dade to provide municipal solid waste disposal service to municipalities and private haulers in the relevant geographic market. WMF, Chambers, and Dade bid against one another for the right to dispose of municipal solid waste in that area. The vast majority of this waste is generated in Dade. Chambers is currently able to compete for this waste only because it has access to the transfer station owned by Defendant Reuter in southern Broward County, Florida pursuant to the Transfer Station Agreement.

13. The acquisition of Reuter by WMF will have the effect

of excluding Chambers from its only current means of economically providing municipal solid waste disposal service in Broward and Dade Counties in competition with WMF and Dade and will therefore reduce the firms competing for municipal solid waste disposal service there from three to two. Therefore, the acquisition of Reuter by WMF will substantially increase concentration among municipal solid waste disposal entities in the relevant geographic market. Using a measure of market concentration called the HHI, defined and explained in Appendix A, the acquisition of Reuter by WMF would increase the HHI by about 1,700 to about 5,000.

14. The only significant competitor of WMF that would remain after the acquisition is Dade County. Rivalry between WMF and Dade County alone will not prevent prices from rising, because Chambers provides a substantial competitive check on WMF's and Dade County's individual ability to set prices for their services. This is evidenced by the substantial drop in municipal solid waste disposal service prices that followed Chambers' entry into the market.

15. There are substantial barriers to entry into municipal solid waste disposal service in the relevant geographic market. The siting, permitting and construction of a municipal solid waste landfill or incinerator within or near Dade will take well in excess of two years, if such a facility is permitted to be constructed at all. Furthermore, the zoning, siting, permitting and construction of a municipal solid waste transfer station in a

commercially and economically feasible location to receive municipal solid waste from the relevant geographic market is likely to take more than two years.

V.

VIOLATION ALLEGED

16. On June 1, 1995, defendant WMF and the parent of Reuter signed a purchase agreement providing for the purchase by WMF of all of the outstanding common stock of Reuter.

17. The effect of the acquisition of Reuter by WMF 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 WMF and Chambers in municipal solid waste disposal service in the above-described geographic market will be eliminated; and

(b) Actual and potential competition generally in municipal solid waste disposal service in that geographic market may be substantially lessened.

PRAYER

WHEREFORE, plaintiffs pray,

1. That the proposed acquisition of the common stock of Reuter by WMF 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 acquisition of the common stock of Reuter by WMF or any similar agreement,

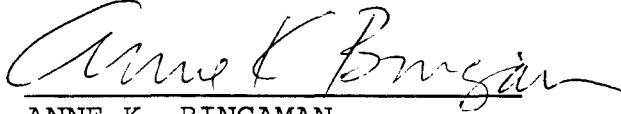
understanding, or plan.

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

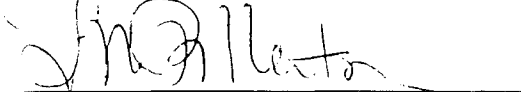
4. That plaintiffs recover the costs of this action.

Dated:

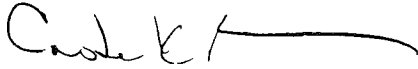
FOR PLAINTIFF UNITED STATES OF AMERICA:



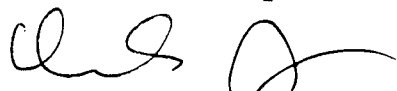
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Appendix A

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted 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 consists of a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and may also increase as the disparity in size between the leading firms and the remaining firms increases. Thus, a market of two firms with shares of 60 and 40 percent would have an HHI of 5200 ($60^2 + 40^2 = 3600 + 1600 = 5200$).

The Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines consider that markets in which the HHI is between 1000 and 1800 are moderately concentrated and those in which the HHI is in excess of 1800 points are concentrated. Transactions that increase the HHI by more than 100 points in moderately concentrated and concentrated markets presumptively raise antitrust concerns under the Merger Guidelines.