

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
Department of Justice, Antitrust Division
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530,

and

STATE OF NEW YORK,
Office of the Attorney General
Antitrust Bureau
120 Broadway
New York, New York 10271,

Plaintiffs,

v.

STERICYCLE, INC.
28161 North Keith Drive
Lake Forest, Illinois 60045,

SAMW ACQUISITION CORPORATION
28161 North Keith Drive
Lake Forest, Illinois 60045,

and

HEALTHCARE WASTE SOLUTIONS, INC.
4357 Ferguson Drive, Suite 100
Cincinnati, Ohio 45245,

Defendants.

CASE NO.:

JUDGE:

DECK TYPE: Antitrust

Case: 1:11-cv-00689

Assigned To : Howell, Beryl A.

Assign. Date : 4/8/2011

Description: Antitrust

COMPLAINT

Plaintiffs, the United States of America ("United States"), acting under the direction of the Attorney General of the United States, and the State of New York, acting under the direction of its Attorney General, bring this civil antitrust action against defendants, Stericycle, Inc.,

SAMW Acquisition Corporation, and Healthcare Waste Services, Inc. (“HWS”), to enjoin Stericycle’s proposed acquisition of HWS and to obtain other equitable relief. Plaintiffs complain and allege as follows:

I. NATURE OF THE ACTION

1. Pursuant to an agreement and plan of merger dated September 24, 2010, Stericycle intends to acquire all of HWS, except for an incinerator in Matthews, North Carolina, for \$245 million. Defendants Stericycle and HWS currently compete in the treatment of infectious waste.

2. The United States and the State of New York bring this action to prevent the proposed acquisition because it would substantially lessen competition in the provision of infectious waste treatment services in the New York City Metropolitan Area, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. JURISDICTION AND VENUE

3. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. §§ 4 and 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The State of New York brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The State of New York, by and through its Attorney General, brings this action on behalf of the citizens, general welfare, and economy of the State of New York.

4. Defendants treat infectious waste in the flow of interstate commerce. Defendants’ activities in treating infectious waste substantially affect interstate commerce. The

Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

5. Defendants have consented to venue and personal jurisdiction in this District. 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).

III. THE DEFENDANTS

6. Defendant Stericycle, Inc. is a Delaware corporation with its principal place of business in Lake Forest, Illinois. Stericycle, a multi-national company, is the largest provider of infectious waste treatment services in the United States, with operations in all 50 states, including 54 treatment facilities. In 2009, Stericycle had U.S. revenues of \$913 million. SAMW Acquisition Corporation is a corporation formed by Stericycle to facilitate its acquisition of HWS. Stericycle and SAMW hereinafter are collectively referred to as “Stericycle”.

7. Defendant Healthcare Waste Solutions (“HWS”) is a Delaware corporation with its principal place of business in Cincinnati, Ohio. HWS is the second-largest provider of infectious waste treatment services in the United States, with operations in 15 states that include six treatment facilities. In 2009, HWS had total revenue of about \$31 million.

IV. TRADE AND COMMERCE

A. Background

8. Regulated medical waste is waste generated in the diagnosis, treatment, or immunization of human beings or animals. There are generally three types of regulated medical waste: (1) infectious waste; (2) pathological waste; and (3) trace chemotherapy waste.

Infectious waste is waste that has come into contact with bodily fluids and “sharps” waste, such

as syringes and scalpels. Pathological waste is anatomical parts, and trace chemotherapy waste is small amounts of chemical compounds used to treat cancer patients and the equipment used to administer the compounds. Infectious waste comprises approximately 90 percent of the regulated medical waste generated in the United States.

9. State and federal governments heavily regulate the treatment of regulated medical waste. They prescribe how each type of regulated medical waste must be stored, collected, and treated. Providers of infectious waste treatment services are required to be licensed by various state and federal regulatory agencies before they can offer such services.

10. Regulated medical waste must be stored separately from other types of waste, and each type of regulated medical waste must be stored separately from the other types in specially marked and sealed containers.

11. State-approved treatment facilities must be used to render infectious waste non-infectious. Failure to use state-approved treatment facilities subjects both the generator of the infectious waste and the infectious waste treatment service provider to criminal prosecution, fines, damage actions, and potentially high clean-up costs.

12. Autoclave sterilization is the most common treatment for infectious waste. An autoclave uses steam sterilization combined with pressure to render infectious waste non-infectious. Autoclave sterilization is not approved for pathological or trace chemotherapy waste, which instead must be incinerated in a specially licensed medical waste incinerator.

13. Infectious waste is typically collected from generator sites (e.g., hospitals and physician offices) on daily route trucks and then transported to treatment facilities. Route trucks

are vans and, more typically, 16- to 24-foot straight trucks. A daily route truck typically travels a route within a 75- to 100-mile radius of its garage.

14. Obtaining approval for an infectious waste treatment facility in and around large urban areas, such as New York City, is difficult. Only one such commercial facility operates in the New York City Metropolitan area. Transporting large volumes of infectious waste to distant treatment facilities using daily route trucks is not cost-effective. Therefore, service providers serve such areas by using local transfer stations.

15. Once the daily route truck has delivered the infectious waste to a local transfer station, the collection function is completed. At a transfer station, containers of infectious waste are unloaded from the daily route trucks and loaded onto tractor trailers for efficient shipment to more distant treatment facilities.

16. The size of the market for the provision of infectious waste treatment services is largely influenced by transportation costs because such costs represent a large share of the total cost of providing treatment services.

17. Defendants Stericycle and HWS own and operate numerous autoclave facilities for the treatment of infectious waste. Stericycle's and HWS's closest facilities to New York City are located in Sheridan and Oneonta, New York; Woonsocket, Rhode Island; and Morgantown and Marcus Hook, Pennsylvania. The closest of these is about 180 miles from New York City. It is not cost-effective to transport large volumes of infectious waste to these distant facilities using daily route trucks.

18. Stericycle and HWS operate local transfer stations in and around New York City and compete to provide infectious waste treatment services by serving customers through these local transfer stations.

19. In and around New York City, Stericycle owns and operates local transfer stations in the Bronx, Staten Island, West Babylon, and Farmingdale, New York. Stericycle also owns local transfer stations in Piscataway and Bloomfield, New Jersey. HWS owns and operates a local transfer station in the Bronx, New York.

20. In the New York City Metropolitan Area, encompassing the City of New York, and the counties of Westchester, Rockland, Nassau, and Suffolk in New York, the counties of Hudson, Bergen, Passaic, Essex, Union, and Middlesex in New Jersey, and the county of Fairfield in Connecticut, apart from one small competitor, no other infectious waste treatment service provider has a local transfer station located within approximately 100 miles of Stericycle's or HWS's local transfer stations.

B. Relevant Market

21. The provision of infectious waste treatment services to customers in the New York City Metropolitan Area is a line of commerce and relevant price discrimination service market within the meaning of Section 7 of the Clayton Act.

22. Infectious waste treatment differs from treatment for other types of waste, including other types of regulated medical waste. There are no legal alternatives to treating infectious waste other than using an approved treatment technology, such as autoclave sterilization.

23. Defendants provide infectious waste treatment services to New York City Metropolitan Area customers using local transfer stations. Other infectious waste treatment service providers that operate treatment facilities more than 100 miles from the New York City Metropolitan Area cannot cost-effectively compete to provide infectious waste treatment services without a local transfer station located in the New York City Metropolitan Area.

24. A small but significant increase in the price of infectious waste treatment services would not cause New York City Metropolitan Area customers to move sufficient volumes of infectious waste to another type of treatment service or to switch to an infectious waste treatment service provider that does not operate a local transfer station in sufficient numbers so as to make such a price increase unprofitable. Therefore, the relevant market is the provision of infectious waste treatment services to customers in the New York Metropolitan Area.

C. Anticompetitive Effect of the Acquisition

25. In the New York City Metropolitan Area, the acquisition would remove a significant competitor in the treatment of infectious waste in an already highly concentrated market. The proposed acquisition would reduce from three to two the number of competitors with local transfer stations, and Stericycle and HWS would have approximately 90 percent of the infectious waste treatment market in the New York City Metropolitan Area. The third competitor is a small firm that opened an autoclave treatment facility in Mount Vernon, New York in 2010; it is unlikely to replace the competition lost as a result of the merger. The substantial increase in concentration and loss of competition likely will result in higher prices for infectious waste treatment services.

26. Vigorous price competition between Stericycle and HWS in the provision of infectious waste treatment services has benefited customers in the New York City Metropolitan Area.

27. The proposed acquisition will eliminate the competition between Stericycle and HWS; reduce the number of providers of infectious waste treatment services with local transfer stations from three to two; and enable Stericycle to raise prices and lower quality of service for customers in the New York City Metropolitan Area, in violation of Section 7 of the Clayton Act.

D. Entry into the Treatment of Infectious Waste

28. Successful entry into the provision of infectious waste treatment services for customers in the New York City Metropolitan Area is unlikely without first obtaining a local transfer station from which waste can be transferred to more distant treatment facilities.

29. A prospective provider of infectious waste treatment services faces substantial barriers to site and build a transfer station. Obtaining the state and local permits and approvals necessary to site a medical waste transfer station would require a substantial investment in time and money, without any guarantee that the permits and approvals would ultimately be granted. In recent years, several infectious waste treatment service providers have attempted without success to obtain the necessary permits to site a local transfer station within New York City.

30. Entry into the provision of infectious waste treatment services to customers in the New York City Metropolitan Area would not be timely, likely, or sufficient to counter anticompetitive price increases or diminished quality of service that Stericycle could impose after the proposed acquisition.

V. VIOLATION ALLEGED

31. Stericycle's proposed acquisition of HWS's infectious waste treatment assets in the New York City Metropolitan Area likely will substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

32. Unless restrained, the transaction will have the following anticompetitive effects, among others:

- a. actual and potential competition between Stericycle and HWS in the provision of infectious waste treatment services in the New York City Metropolitan Area will be eliminated;
- b. competition generally in the provision of infectious waste treatment services in the New York City Metropolitan Area will be substantially lessened; and
- c. prices for infectious waste treatment services in the New York City Metropolitan Area likely will increase, and service likely will be reduced.

VI. REQUESTED RELIEF

33. Plaintiffs request:

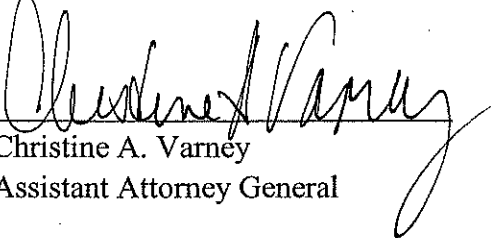
- a. That Stericycle's proposed acquisition of HWS be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;


- b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisition of HWS by Stericycle, or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to merge the voting securities or assets of the defendants;
- c. That plaintiffs receive such other and further relief as the case requires and the Court deems just and proper; and
- d. That plaintiffs recover the costs of this action.

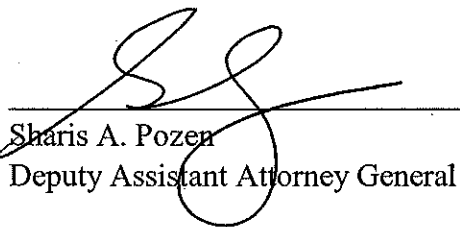
Dated: April 8, 2011

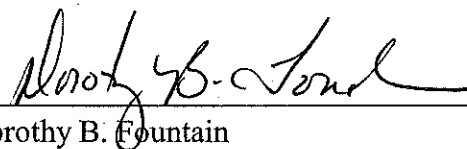
Respectfully submitted,

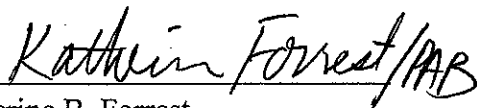
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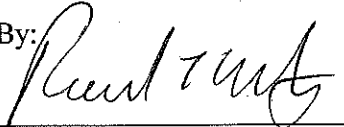
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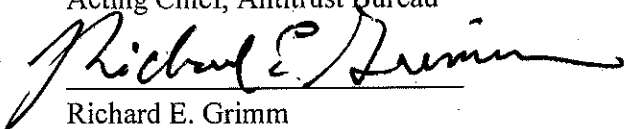
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