

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
-NORFOLK DIVISION-**

|                             |   |                         |
|-----------------------------|---|-------------------------|
| UNITED STATES OF AMERICA,   | ) |                         |
|                             | ) |                         |
| Plaintiff,                  | ) | Civil No. 2:05 CV 468   |
|                             | ) |                         |
| v.                          | ) |                         |
|                             | ) | Filed: November 2, 2005 |
| WASTE INDUSTRIES USA, INC., | ) |                         |
|                             | ) |                         |
| Defendant.                  | ) | Judge: Friedman         |
|                             | ) |                         |

**PLAINTIFF’S MOTION AND MEMORANDUM FOR ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), plaintiff, the United States of America (“United States”) moves for entry of the proposed Final Judgment filed 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. The Competitive Impact Statement, filed in this matter on August 8, 2005, explains why entry of the proposed Final Judgment would be in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

**I. Background**

On August 8, 2005, the United States filed a civil antitrust Complaint alleging that the August 1, 2003 acquisition of certain assets of Allied Waste Industries, Inc. (“Allied”) by Waste Industries USA, Inc. (“Waste Industries”) substantially lessened competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that Waste

Industries and Allied were two of only a few providers of small container commercial waste collection services in the independent cities of Norfolk, Chesapeake, Virginia Beach, Portsmouth, Suffolk, and Franklin, Virginia and the county of Southampton, Virginia (hereinafter the “Southside”). As alleged in the Complaint, the transaction removed a significant competitor in an already highly concentrated and difficult-to-enter Southside small container commercial waste collection market which substantially lessened competition in the Southside market, thereby harming consumers. Accordingly, the Complaint seeks to undo the anticompetitive effects of the acquisition by requesting, among other things: (1) a judgment that the acquisition violates Section 7 of the Clayton Act, (2) relief that compels Waste Industries to divest waste hauling assets sufficient to restore the competition that was lost as a result of the acquisition, and (3) relief that enjoins Waste Industries from continuing certain anticompetitive contracting practices.

At the same time the Complaint was filed, the United States filed a Stipulation and proposed Final Judgment which are designed to eliminate the anticompetitive effects of the acquisition, and a Competitive Impact Statement. Waste Industries is required within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable business operation, the Relevant Hauling Assets. If defendant does not complete the divestiture within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the Relevant Hauling Assets. The Stipulation and the proposed Final Judgment require defendant to preserve, maintain and continue to operate the Relevant Hauling Assets in the ordinary course of business, including reasonable efforts to maintain and increase sales and revenues. 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. Entry of the proposed Final Judgment would terminate this 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. Compliance with the APPA**

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. § 16(b). In this case, the comment period terminated on October 17, 2005, and the United States received no public comments. The United States has filed a Certificate of Compliance simultaneously with this Motion and Memorandum that states all the requirements of the APPA have been satisfied. 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.

## **III. Standard of Judicial Review**

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” 15 U.S.C. § 16(e). 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, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

2) the impact of entry of such judgment upon competition in the relevant market or markets, 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).

In its Competitive Impact Statement previously filed with the Court on August 8, 2005, the United States has explained the meaning and proper application of the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. There has been no showing that the proposed settlement constitutes an abuse of the United States' 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 and Memorandum and in the Competitive Impact Statement, 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 respectfully requests that the proposed Final Judgment annexed hereto be entered as soon as possible.

Dated: October 31, 2005

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon Waste Industries USA, Inc. by placing a copy of this Motion and Memorandum for Entry of Final Judgment in the U.S. Mail, first class and postage prepaid, directed to the addresses given below, this 1st day of November, 2005:

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