

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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|---------------------------|---|-----------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. SA88CA0911 |
| |) | |
| WASTE MANAGEMENT, INC., |) | Filed: September 1, 1988 |
| INDUSTRIAL DISPOSAL |) | |
| SERVICE COMPANY, INC., |) | |
| RICHARD R. CLARK and |) | |
| ANDREW A. CLARK, |) | |
| |) | |
| Defendants. |) | |

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief as is appropriate against the defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25,

to prevent and to restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, with respect to each of the corporate defendants, since each of the corporate defendants named herein transacts business and is found within the Western District of Texas. Venue is proper under 28 U.S.C. § 1391 with respect to each of the individual defendants, since each resides and is found within the Western District of Texas.

II

DEFINITIONS

3. "Bexar County market" means Bexar County, Texas, including the City of San Antonio and all other municipalities located in whole or in part in Bexar County.

4. "HHI" means the Herfindahl-Hirschman Index, 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 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). 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 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.

III

DEFENDANTS

5. Industrial Disposal Service Company, Inc. ("IDS") is made a defendant. IDS is a corporation organized and existing under the laws of Texas. It maintains its principal offices in San Antonio, Texas. IDS had total revenues of over \$17.5 million at the end of its 1987 fiscal year.

6. Richard R. Clark and Andrew A. Clark ("the Clarks") are made defendants. The Clarks are the owners of IDS. At all times pertinent hereto, the Clarks have resided within the Western District of Texas and have had an office in San Antonio, Texas.

7. Waste Management, Inc. ("WMI") is made a defendant. WMI is a corporation organized and existing under the laws of the State of Delaware, with its principal offices in Oak Brook, Illinois, and local offices in numerous cities, including San Antonio, Texas. WMI is the world's largest company engaged in the solid waste hauling and disposal business, with operations

in 45 states. It had total revenues of over \$2 billion from solid waste hauling and disposal in 1986, and approximately \$5 million in 1987 revenues in the San Antonio area.

IV

TRADE AND COMMERCE

8. Solid waste hauling involves the collection of paper, food, construction material and other solid wastes from residential, commercial and industrial customers, and the transporting of that waste to a landfill or other disposal site. Solid waste hauling services may be provided by private haulers directly to their customers, or indirectly through municipal contracts or franchises. The most common method of solid waste disposal is burial in a sanitary landfill. Landfills may be owned and operated by a municipality or county, but many are owned and operated by private waste hauling firms.

9. Service to commercial customers accounts for more hauling revenues than service to any other type of customer in Bexar County. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings and industrial parks. These customers typically generate far more waste than residential customers, and generally place their trash in metal containers of various volumes (one to ten cubic yards) provided by their hauling firm. Commercial customers are served primarily by front-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.

Automated side-loaders can also be used to service some commercial customers, but these trucks cannot physically handle any container larger than four cubic yards. The trucks used to service commercial customers 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. Containers are not interchangeable among truck types. Service to these customers is called "commercial containerized hauling service."

10. Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers are households and small apartments that generate small amounts of waste, normally disposed of at curbside in plastic bags or trash cans. Rear and manual side-load vehicles generally serve these customers (and business establishments that generate relatively small quantities of solid waste, similar in amount to that generated by residential customers). They use a one or two person crew which manually loads the waste into the rear or side of the vehicle. Industrial or roll-off customers include factories and construction sites; these customers generate the largest

amount of waste, much of which is non-compactible, such as concrete or building debris. These customers deposit their waste in very large containers (30-40 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.

11. Commercial containerized hauling service has no reasonable substitutes. Commercial customers will not generally use residential service because, except at very small volumes, it is too impractical and costly for commercial customers to bag and carry their trash to the curb for hand pick-up. Commercial customers also value the cleanliness and relative freedom from scavengers afforded by commercial containerized service, attributes that residential-type service does not provide to nearly the same degree. Similarly, roll-off service is much too costly and takes up too much space for most commercial containerized service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate very large volumes of waste, roll-off service is the only viable option.

12. There is no reasonable substitute to which a significant number of customers would turn in response to a small but significant and nontransitory price increase in

commercial containerized hauling service. Commercial containerized hauling service constitutes a line of commerce and a relevant product market for antitrust purposes. Commercial containerized service by trash hauling firms in Bexar County generated revenues of over \$15 million in 1987, which represented most of the solid waste hauling revenues in the county.

13. The geographic markets within which solid waste hauling services are provided are generally local because it is not economically efficient for heavy trash hauling equipment to travel long distances to landfills or between customers. For the same reason, it is not efficient for a hauler to serve a major metropolitan area like San Antonio from a distant base. Haulers, therefore, must establish garages and related facilities within each major local area served. The geographic boundaries of solid waste hauling markets are generally limited to a single city and surrounding suburbs. Over 90 percent of the commercial containerized customers of the defendants are in Bexar County. Bexar County, Texas, constitutes a section of the country and a relevant geographic market for antitrust purposes.

14. Most commercial solid waste is taken by haulers to sanitary landfills for disposal. Access to a suitable all-purpose ("Type 1") landfill at a competitive price is

essential to a hauling company performing commercial containerized hauling service, because disposal costs account for approximately 20 percent of revenues for this service. Suitable sanitary landfills are difficult and time consuming to obtain because of the scarcity of suitable land, local resident opposition, and government regulation. Several years are required to process an application, with no guarantee of success. There are currently only two all-purpose sanitary landfills capable of accepting commercial waste in Bexar County. Because IDS and WMI are the only firms with pending Type 1 landfill applications, they are the only hauling companies capable of opening other such landfills in Bexar County within the next few years.

15. IDS and WMI compete with one another and with other solid waste hauling companies to provide commercial containerized service in Bexar County. This market is highly concentrated. As measured by total revenues, the HHI in this commercial containerized hauling market currently exceeds 3500.

16. IDS and WMI are the first and third largest commercial containerized haulers in Bexar County, accounting for approximately 48 percent and 16 percent, respectively, of total 1987 revenues from the provision of commercial containerized hauling services. The acquisition of IDS by WMI would substantially increase concentration among the commercial

containerized firms in the Bexar County market. The acquisition of IDS by WMI would increase the HHI in that market by 1536 points, to more than 5000.

17. A new entrant into trash hauling cannot constrain the prices of larger existing firms until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In commercial containerized hauling, achieving comparable operating efficiency requires achieving route density comparable to existing firms, which typically takes a substantial period of time. Further, by the use of pricing and long-term contracting practices incumbent firms can and do make it difficult for new entrants into waste hauling to win customers from incumbents. In addition, landfill volume discounts are available to hauling firms in Bexar County, and a new entrant must achieve volumes equivalent to those of its established rivals in order to be eligible for comparable discounts.

18. Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in the court records of more than a dozen criminal and civil antitrust cases brought in the last decade. Such collusion typically involves customer allocation and price fixing, and, where it has occurred, has been shown to persist for many years.

19. Collusive behavior in this industry is unlikely to attract effective new entry. In solid waste hauling markets where overt collusion has been detected, it has been maintained for many years without being dissipated by new entry.

20. The elimination of one of a small number of significant competitors and the resulting increase in concentration, such as would occur as a result of the proposed transaction, significantly increase the likelihood of collusion in solid waste hauling markets.

21. IDS regularly receives substantial revenues from customers' offices located outside Texas in payment for solid waste hauling services provided in Bexar County. WMI regularly purchases or otherwise obtains substantial quantities of equipment manufactured outside Texas for use in providing solid waste hauling services in Bexar County. IDS and WMI are each engaged in interstate commerce, and their activities are in the flow of, and substantially affect, interstate commerce.

V

VIOLATION ALLEGED

22. On January 6, 1988, defendants WMI, IDS and the Clarks agreed to a letter of intent providing for the purchase by WMI of all the outstanding shares of voting common stock of IDS.

23. The effect of the acquisition of IDS by WMI 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 the potential for increased competition between IDS and WMI in commercial containerized hauling services in the Bexar County market will be eliminated; and

(b) Competition generally in commercial containerized hauling services in the Bexar County market may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That pending a final adjudication of the merits of this Complaint, a temporary restraining order and a preliminary injunction be issued against the defendants preventing and restraining each of them, and all persons acting on their behalf, from taking any action, either directly or indirectly, in furtherance of the proposed acquisition of the voting common stock of IDS by WMI;

2. That the proposed acquisition of the voting common stock of IDS by WMI be adjudged to be in violation of Section 7 of the Clayton Act;

3. That the defendants and all persons acting on their behalf be permanently enjoined from carrying out the acquisition of the voting common stock of IDS by WMI or any similar agreement, understanding or plan.

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

5. That plaintiff recover the costs of this action.

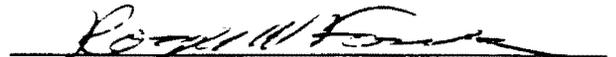
Dated:



MICHAEL BOUDIN
Acting Assistant
Attorney General



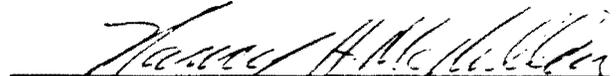
JOHN W. CLARK



ROGER W. FONES



CONSTANCE K. ROBINSON



NANCY H. MCMILLEN

Attorneys
Antitrust Division
U.S. Department of Justice

U.S. Department of Justice
Antitrust Division, Room 9804
555 Fourth Street, N.W.
Washington, D.C. 20001
202/724-6386

HELEN MILBURN EVERSBERG
United States Attorney
Western District of Texas

By:



Raymond A. Nowak
Assistant U.S. Attorney

VERIFICATION

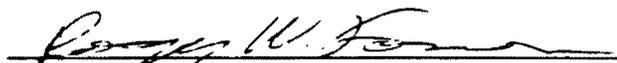
I, Roger W. Fones, declare:

1. I am an attorney with the United States Department of Justice, Antitrust Division.

2. I verify that the foregoing Complaint for and on behalf of the United States of America was duly prepared under the direction of the Attorney General of the United States; that the facts stated therein have been assembled by authorized employees and counsel for the United States of America; and that the allegations therein are true and correct to the best of my knowledge, information, and belief.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Washington, D.C. on Sept 1, 1988.


Roger W. Fones