

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

**STATE OF FLORIDA by and through its
Attorney General Robert A. Butterworth,
and**

**STATE OF MARYLAND by and through its
Attorney General J. Joseph Curran, Jr.,**

Plaintiffs,

vs.

BROWNING-FERRIS INDUSTRIES, INC.,

Defendant.

Case Number: 1:94CV02588

Judge: Charles R. Richey

UNITED STATES' PROPOSED FINDINGS THAT ENTRY
OF THE FINAL JUDGMENT IS IN THE PUBLIC INTEREST

I. Relevant Markets

a. The relevant product market is small containerized hauling service. Small containerized hauling service is the collection of solid waste from customers using metal containers ranging in size from 1 to 10 cubic yards. These containers are generally collected by a hauling company using a frontend load vehicle. These vehicles 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 it is compacted and taken to a disposal site.

b. Neither residential service nor roll-off service are practical substitutes for small containerized hauling service. Residential service is the collection of waste from residential

customers, typically households, in plastic bags or trash cans at curbside. It would be impractical and costly for small containerized hauling service customers to bag and carry trash for hand pickup. Roll-off customers deposit their waste in very large containers (usually 20 to 40 cubic yards) that are loaded on a truck and carried individually to a disposal site. Roll-off service is much too costly and takes up too much space for most small containerized hauling service customers.

c. Solid waste hauling service is generally provided in very localized areas. Route density (a large number of customers close together) is necessary for small containerized hauling firms to be profitable. Furthermore, it is not economically efficient for heavy trash hauling equipment to serve major metropolitan areas from a distant base. The relevant geographic markets in this case are: (1) greater metropolitan Baltimore, MD; (2) Broward County, FL; (3) Chester County, PA; (4) Clay County, FL; (5) Duval County, FL; (6) Polk County, FL; (7) the Southern Eastern Shore of Maryland; (8) Sussex County, Delaware, and (9) the Western Maryland market (Frederick and Washington Counties, MD).

II. Competitive Harm

a. Browning-Ferris Industries, Inc. ("BFI") and Attwoods plc ("Attwoods") both offered small containerized hauling service in the relevant markets. BFI and Attwoods competed on price, quality of service and otherwise.

b. The acquisition of Attwoods by BFI would eliminate competition between BFI and Attwoods in the relevant markets.

c. Concentration would substantially increase in the relevant markets following the acquisition. The acquisition would increase the Herfindahl-Hirschman Index ("HHI"), a measure of market concentration, by the following amounts in the relevant markets: (1) Baltimore market,

by about 1350, to about 3300; (2) Broward County, FL, by about 260 to 2870; (3) Chester County, PA, by about 1500 to about 3750; (4) Clay County, FL by about 1200 to about 4000; (6) Polk County, FL by about 1190 to about 4020; (7) the Southern Eastern Shore of Maryland by about 1450 to about 3650; (8) Sussex County, Delaware by about 1010 to about 2970; and (9) Western Maryland by about 1725 to about 3950.

d. The elimination of one of a small number of significant competitors, such as would occur in the relevant markets as a result of the acquisition, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service.

III. Barriers to Entry

a. A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating efficiencies comparable to incumbent firms.

b. In small containerized hauling service, achieving comparable operating efficiencies requires achieving route density comparable to existing firms.

c. A substantial barrier to entry is the use of long-term contracts coupled with selective pricing practices by incumbent firms to deter new entrants into small containerized hauling service.

IV. Jurisdiction and Interstate Commerce

a. As the parties have stipulated, this Court has jurisdiction over the subject matter and over each of the parties hereto, and venue in this action is proper in the District of Columbia. December 1, 1994 Stipulation ¶ 1.

b. BFI is engaged in interstate commerce and in activities affecting interstate commerce.

V. The Proposed Relief is in the Public Interest

a. The plaintiffs have sought and BFI has agreed to the divestiture of BFI's assets, as described in the proposed Final Judgment, in Duval and Clay counties, Florida; Chester County, Pennsylvania; the Southern Eastern Shore, Maryland market; Sussex County, Delaware; and the Western Maryland market.

b. The plaintiffs have sought and BFI has agreed to the modification, as contained in Appendices A and B of the proposed Final Judgment, of BFI's small container solid waste hauling contracts to its customers in the Baltimore, Maryland market and the following neighboring counties: Carroll County, Howard County, Harford County, Calvert County, Prince George's County and Montgomery County; and also in Polk and Broward counties, Florida.

c. The BFI assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Florida and Maryland) that the operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant markets.

d. The divestiture of the BFI assets will ensure that Attwoods', as a competitor in small containerized hauling service, will be replaced by a viable entity that can provide the same service and will eliminate the substantial lessening of competition that would take place if BFI were allowed to purchase the named Attwoods' assets.

e. In the Baltimore market and in the Broward County, FL and Polk County, FL markets, modification of BFI's existing contracts is sufficient to preserve competition. The modifications of BFI's contracts, as provided in the proposed Final Judgment, involve substantially shortening the term of the contracts BFI uses and substantially reducing the amount of liquidated damages.

f. Contract modifications are sufficient to preserve competition in the Baltimore market because concentration will not be as great as in other markets and because of the number of existing

competitors, the density of commercial establishments and the number of haulers that could, absent long-term contracts, enter the market. The modifications to the BFI contracts will allow new entrants to more easily win enough customers to build efficient routes. Haulers that are already serving the Baltimore area or that are nearby will be able more easily to expand their current routes or build new routes with these contract modifications.

g. Contract modifications in Broward County, FL adequately address the competitive concerns in that market given the number and relative size of other competitors and the fact that the merged firm would have a market share of only 23 percent, among other factors.

h. Contract modifications in Polk County, FL, identical to those in Broward County, FL will adequately address the competitive concerns given the limited amount of small containerized business open to private haulers, and the fact that there are at least one or two strong haulers that could easily and quickly enter with these less restrictive contracts if prices for small containerized hauling service in Polk County were to rise.

Based on all of the above, the statements in the Competitive Impact Statement, and in the Comments on the Proposed Final Judgment and the United States' Responses to the Comments, the Court finds that the proposed Final Judgment is in the public interest and hereby enters it.

Dated: March 30, 1995

CHARLES R. RICHEY
U.S. DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing letter and UNITED STATES' PROPOSED FINDINGS THAT ENTRY OF THE FINAL JUDGMENT IS IN THE PUBLIC INTEREST have been served upon Browning-Ferris Industries, Inc. by hand delivery, the Office of the Attorney General of the State of Florida by fax, and the Office of the Attorney General of the State of Maryland by hand delivery, this 30th day of March 1995.

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