

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No.:
)
 v.) Filed:
)
 BROWNING-FERRIS INDUSTRIES OF)
 IOWA, INC.,)
 BROWNING-FERRIS INDUSTRIES OF)
 TENNESSEE, INC., and)
 BROWNING-FERRIS INDUSTRIES,)
 INC.,)
)
)
 Defendants.)
 _____)

FINAL JUDGMENT

WHEREAS Plaintiff, United States of America, having filed its Complaint in this action on February 15, 1996, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

NOW, THEREFORE, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of the persons of the Defendants, Browning-Ferris Industries, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries of Iowa, Inc. The Complaint states a claim upon which relief may be granted against the Defendants under Section 2 of the Sherman Act, 15 U.S.C. § 2.

II.

DEFINITIONS

As used in this Final Judgment:

(A) "Memphis market" means the counties of Shelby, TN; Fayette, TN; Crittenden, AK; DeSoto, MS; Marshall, MS; Tate, MS; and Tunica, MS.

(B) "Dubuque market" means the counties of Dubuque and Jackson, IA.

(C) "Solid waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not construction and demolition debris; medical waste; hazardous waste; organic waste; or special waste, such as contaminated soil, or sludge; or recyclable materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up, and roll-off service.

(D) "Defendants" means defendant Browning-Ferris

Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, defendant Browning-Ferris Industries of Tennessee, Inc., a Tennessee corporation with offices in Memphis, TN, and defendant Browning-Ferris Industries of Iowa, Inc., an Iowa corporation with offices in Des Moines, IA, and includes their officers, directors, managers, agents, employees, successors, assigns, parents and subsidiaries.

(E) "Small Container" means a 1 to 10 cubic yard container.

(F) "Small Containerized Solid Waste Hauling Service" means providing solid waste hauling service to customers by providing the customer with a Small Container that is picked up mechanically using a frontload, rearload, or sideload truck, and expressly excludes hand pick-up service, and service using stationary compactors.

(G) "Customer" means a Small Containerized Solid Waste Hauling Service customer.

III.

APPLICABILITY

This Final Judgment applies to Defendants and to their officers, directors, managers, agents, employees, successors, assigns, parents and subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third

party.

IV.

PROHIBITED CONDUCT

Defendants are enjoined and restrained as follows:

(A) Except as set forth in paragraph IV(B) and (G), Defendants shall not enter into any contract with a Customer for a service location in the Memphis or Dubuque markets that:

(1) has an initial term longer than two (2) years;
(2) has any renewal term longer than one (1) year;
(3) requires that the Customer give Defendants notice of termination more than thirty (30) days prior to the end of any initial term or renewal term;

(4) requires that the Customer pay liquidated damages in excess of three times the greater of its prior monthly charge or its average monthly charge over the most recent six months during the first year it is a Customer of Defendants;

(5) requires that the Customer pay liquidated damages in excess of two times the greater of its prior monthly charge or its average monthly charge over the most recent six months after the Customer has been a Customer of Defendants for a continuous period in excess of one (1) year;

(6) is not easily readable (e.g., formatting and type-face) and is not labeled, in large letters, CONTRACT FOR SOLID WASTE SERVICES; or

(7) requires a Customer to give Defendants the right or opportunity to provide hauling service for recyclables or more

than one type of solid waste hauling service for a Customer unless the Customer affirmatively indicates its desire for all such services on the front of the contract.

(B) Notwithstanding the provisions of paragraph IV(A) of this Final Judgment, Defendants may enter into a contract with a Customer for a service location in the Memphis or Dubuque markets with an initial term in excess of two years provided that:

(1) Defendants have not implemented any organized, management-authorized sales or marketing plan designed, through pricing or other incentives, to induce Customers to use other than the form contracts Defendants are required herein to offer generally to Customers;

(2) the Customer has the right to terminate the contract after 2 years by giving notice to Defendants thirty (30) days or more prior to the end of that 2 year period; and,

(3) the contract otherwise complies with the provisions of paragraph IV(A)(2)-(7).

(C) From the date of filing of an executed Stipulation in the form attached hereto as Exhibit A, Defendants shall offer to new Customers with service locations in the Memphis and Dubuque markets only contracts that conform to the requirements of paragraphs IV(A) or (B) of this Final Judgment, except as provided in IV(G).

(D) Except as provided in IV(G), Defendants shall send to all existing Customers with service locations in the Memphis and Dubuque markets with contracts having an initial term longer than

2 years and which otherwise do not conform with paragraph IV(B) a notice in the form attached hereto as Exhibit B (for Memphis customers) and as Exhibit C (for Dubuque customers) in accordance with the following schedule:

(1) Defendants shall send notices to Customers with service locations in the Memphis market within ninety (90) days following entry of this Final Judgment; and

(2) Defendants shall send notices to Customers with service locations in the Dubuque market within thirty (30) days following the entry of this Final Judgment.

(E) Except as provided in IV(G), for each Customer with a contract having an initial term longer than 2 years and which otherwise does not conform to paragraph IV(B) that enters a renewal term 120 days after entry of this Final Judgment, Defendants shall send a reminder to that Customer in the form attached hereto as Exhibit D ninety (90) days or more prior to the effective date of the renewal term. This reminder may be sent to the customer as part of a monthly bill, but if it is, it must be displayed on a separate page and in large print.

(F) Upon entry of this Final Judgment, Defendants may enforce existing contract provisions only to an extent consistent with this Final Judgment. (For example, if an existing service agreement provides for six months' liquidated damages, Defendants may only seek three months' worth of such damages, consistent with IV(A)(4)).

(G) Notwithstanding the provisions of this Final Judgment,

Defendants may enter into contracts with municipal or governmental entities that are not in compliance with paragraphs IV(A)-(F) provided that those contracts are awarded to Defendants on the basis of a formal request for bids or a formal request for proposals issued by the Customer.

(H) Notwithstanding the provisions of this Final Judgment, Defendants shall not be required to do business with any Customer.

V.

REPORTING

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, be permitted:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendants, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview officers, employees, or agents of Defendants, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, Defendants shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States government, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days notice shall be given by Plaintiff to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

VI.

FURTHER ELEMENTS OF JUDGMENT

(A) This Final Judgment shall expire on the tenth anniversary of the date of its entry.

(B) Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Entered: _____

UNITED STATES DISTRICT JUDGE
