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U.S. DIST. COURT
SAVANNAH DIV

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ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WASTE MANAGEMENT OF GEORGIA, INC., d/b/a WASTE MANAGEMENT OF SAVANNAH, WASTE MANAGEMENT OF LOUISIANA, INC., d/b/a WASTE MANAGEMENT OF CENTRAL LOUISIANA, and WASTE MANAGEMENT, INC.,

Defendants.

Civil Action No.:

Filed: CV496-35

Entered: May 20, 1996

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, Waste Management, Inc., Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, and Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana. 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) "Savannah market" means Chatham, Effingham, and Bryan Counties, Georgia.

(B) "Central Louisiana market" means Rapides, Natchitoches, Avoyelles, Red River, Winn, and Sabine Parishes, Louisiana.

(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 Waste Management, Inc., a Delaware corporation with its headquarters in Oak Brook, Illinois, defendant Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, a Georgia corporation with offices in Savannah, Georgia, and defendant Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana, a Louisiana corporation with offices in Alexandria, Louisiana, and includes their officers, directors, managers, agents, employees, successors, assigns, parents, and subsidiaries.

(E) "Small Container" means a 2 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 a compactor attached to or part of a small container.

(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 Savannah or Central Louisiana 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 of the initial term of the Customer's contract;

(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 a Defendant for a continuous period in excess of one (1) year;

(6) requires the Customer to give Defendants notice of any offer by or to another solid waste hauling firm or requires the Customer to give Defendants a reasonable opportunity to respond to such an offer for any period not covered by the contract (sometimes referred to as a "right to compete" clause);

(7) is not easily readable (e.g., formatting and type-face) and is not labeled, in large letters, SERVICE CONTRACT; or

(8) requires a Customer to give Defendants the right or opportunity to provide hauling service for recyclables or more than one solid waste hauling service for a Customer unless the Customer affirmatively chooses to have Defendant do so by so stating 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 Savannah or Central Louisiana markets with an initial term in excess of two years provided that:

(1) The Customer has acknowledged in writing that the Defendants have offered to the Customer 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;

(3) the contract otherwise complies with the provisions of paragraph IV(A)(2)-(8); and

(4) the number of service locations subject to contracts permitted under subparagraph (B) in either the Savannah or Central Louisiana markets does not exceed 25% of the total number of service locations for small containerized solid waste hauling service in each such market in any year.

(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 Savannah and Central Louisiana 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), within thirty (30) days following the entry of this Final Judgment, Defendants shall send to all existing Customers with service locations in the Savannah and Central Louisiana 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.

(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 C 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 not enforce those contract provisions that are inconsistent with this Final Judgment.

(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: 5/20/96

UNITED STATES DISTRICT JUDGE