

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,)	
)	
v.)	Civil Action No. 94-2588
)	
)	
BROWNING-FERRIS INDUSTRIES,)	
INC.)	
)	
Defendant.)	

MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, ("APPA"), 15 U.S.C. § 16 (b)-(h), the United States of America moves for entry of the proposed Final Judgment 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. A Certificate of Compliance, certifying that the parties have complied with all applicable provisions of the APPA and that the waiting period has expired, has been filed simultaneously with this Court.

Background

This action was commenced on December 1, 1994, when the United States, the State of Maryland ("Maryland") and the State of Florida ("Florida") filed a Complaint alleging that the acquisition by Browning-Ferris Industries, Inc. ("BFI") of the ordinary voting shares of Attwoods plc ("Attwoods") violated Section 7 of the Clayton Act because the effects of the acquisition may be substantially to lessen competition in interstate trade and commerce for small containerized hauling services in the following relevant markets: the greater Baltimore, MD metropolitan area; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland.

At the same time, the United States, Maryland, and Florida filed a proposed Final Judgment, a Stipulation signed by the parties stipulating to entry of the Final Judgment, and a Hold Separate Stipulation and Order. Shortly thereafter, the United States filed a Competitive Impact Statement. The proposed Final Judgment requires BFI to divest certain Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. It also requires BFI to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area. The Hold Separate Stipulation and Order requires BFI to preserve, hold, and continue to operate the assets that may be divested under the Final Judgment as separate ongoing businesses. 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.

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 sixty-day comment period commenced on December 15, 1994, and terminated on February 13, 1995. During this period, the United States received comments from two companies, Eastern Trans-Waste of Maryland, Inc. and Coastal Carting Limited, Inc., on the proposed Final Judgment. The United States filed Comments on the Proposed Final Judgment and the United States' Response to the Comments on March 2, 1995. Upon publication of the comments and the Response in the Federal Register on March 13, 1995, the procedures required by the APPA prior to entry of the proposed Final Judgment were completed. The Certificate of Compliance filed by the United States with this Court simultaneously with this motion demonstrates that the requirements of the APPA have been met. 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. The Court will retain jurisdiction to construe, modify or enforce the Final Judgment.

III.

Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine that the Judgment "is in the public interest." 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, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment 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) (emphasis added). In its Competitive Impact Statement and its response to public comments previously filed with the Court, the United States has explained the meaning and proper application of the public interest standard under the APPA, and incorporates those statements here by reference.

The public, including affected competitors and customers, has had opportunity to comment on the proposed Final Judgment as required by law, and no one has contended that entry of the proposed Final Judgment would as a whole be contrary to the public interest. The only public comments filed, by Eastern Trans-Waste of Maryland, Inc. and Coastal Carting Limited, Inc., indeed recognized the value of the proposed Final Judgment in protecting competition, and were directed to relatively minor issues concerning the implementation of the Proposed Final Judgment. There has been no showing that the proposed settlement constitutes an abuse of the Department's 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, in the Competitive Impact Statement and in the Comments on the proposed Final Judgment and the United States' Response to the Comments, 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 is authorized by counsel for the State of Maryland, the State of Florida and the defendant to state that the State

of Maryland, the State of Florida and the defendant join in this motion. The United States, the State of Maryland, the State of Florida, and the defendant request that the proposed Final Judgment be entered expeditiously.

Dated:

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served by first class mail, postage prepaid, or by hand, if so indicated, a copy of the foregoing Motion for Entry of Final Judgment upon the following person, counsel for defendant in the matter of United States of America v. Browning-Ferris Industries, Inc.:

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