

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION

UNITED STATES OF AMERICA, and
COMMONWEALTH OF PENNSYLVANIA

Plaintiffs,

v.

USA WASTE SERVICES, INC.,
RIVIERA ACQUISITION CORPORATION, and
UNITED WASTE SYSTEMS, INC.

Defendants.

Civil No.: 97-1524

Filed: August 22, 1997

COMPLAINT

The United States of America and the Commonwealth of Pennsylvania, by their attorneys and acting under the direction of the Attorney General of the United States and the Attorney General of the Commonwealth of Pennsylvania bring this civil antitrust action to obtain equitable relief and other relief as is appropriate against the defendants named herein and complain and allege as follows:

1. The United States and the Commonwealth of Pennsylvania bring this antitrust action to prevent USA Waste Services, Inc. ("USA Waste") from acquiring United Waste Systems, Inc. ("United") through an Agreement and Plan of Merger involving Riviera Acquisition Corporation ("Riviera"), which is a wholly owned subsidiary of USA Waste. The acquisition threatens to harm purchasers of waste disposal services in Allegheny County, Pennsylvania.

2. Unless this acquisition is enjoined, USA Waste will account for approximately 60 percent of disposal services offered to haulers of municipal solid waste ("MSW") generated in Allegheny County, with nearly twice the share of any other firm. With the elimination of United as an important rival, competition will suffer, and consumers likely will pay higher prices for MSW disposal and hauling services.

I.

JURISDICTION AND VENUE

3. This action is filed by under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by the defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Commonwealth of Pennsylvania brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the violation by the defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. The defendants transact business in this District. Venue is proper in this District under 28 U.S.C. § 1391(c).

5. The defendants are engaged in the operation of landfills and municipal waste hauling businesses in Pennsylvania and other states. Defendants make sales and purchases in interstate commerce and engage in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

II.

DEFINITIONS

6. "MSW" means garbage, refuse, industrial lunchroom and office waste and other materials generated by residential, municipal, commercial or industrial establishments. It does not include special handling waste, such as waste from steel production, electrical power generation and sewage sludge, or construction demolition debris.

III.

DEFENDANTS

7. USA Waste is made a defendant herein. USA Waste is a Delaware corporation with its principal office in Houston, Texas. USA Waste is engaged in providing nonhazardous solid waste hauling and/or disposal services in 36 states in the United States, Washington, D.C., and Puerto Rico. In 1996, USA Waste had total operating revenues of \$1.3 billion.

8. United is made a defendant herein. United is a Delaware corporation with its principal office in Greenwich, Connecticut. United is engaged in providing nonhazardous solid waste hauling and/or disposal services in 23 states in the United States. In 1996, United had total operating revenues of \$335,743,000.

9. Riviera is a Delaware corporation. It is a wholly owned subsidiary of USA Waste. USA Waste, Riviera, and United have entered into an Agreement and Plan of Merger through which Riviera will be merged with United and United's common stock will be converted into USA Waste common stock. As a result of the Agreement and Plan of Merger, USA Waste will hold 100 percent of the voting securities of United.

IV.

TRADE AND COMMERCE

Relevant Product Market

10. MSW disposal services in the Commonwealth of Pennsylvania are regulated and the requirements imposed by Pennsylvania law limit the means by which MSW can properly be disposed.

11. The Pennsylvania Solid Waste Management Act ("Solid Waste Act"), 35 P.S. § 6018.101 *et seq.*, is intended to protect the public by setting forth requirements for the proper disposal of solid waste in the Commonwealth of Pennsylvania. The statute authorizes the Pennsylvania Department of Environmental Protection to oversee the storage, collection, transportation, processing, treatment and disposal of non-hazardous solid waste including MSW, through, among other things, a comprehensive system of permits and regulations governing Pennsylvania landfills.

12. Under the Solid Waste Act, MSW is routinely disposed of in landfills permitted under and regulated by the Commonwealth of Pennsylvania. These wastes are hauled to landfill sites containing excavated cells designed, constructed and monitored to avoid damage to the environment. Pennsylvania requires that landfill operators submit detailed operational plans for controlling soil erosion and sedimentation and for covering the landfill on a daily basis. The Solid Waste Act also requires that new landfills and cells be properly lined and further equipped to monitor gas and water quality in the landfill area on a periodic basis. Finally, Pennsylvania landfill operators must meet financial stability criteria, acquire performance bonds and maintain a trust

fund to cover the closure costs applicable to the landfill.

13. In Pennsylvania, MSW is a separate and distinct waste product. The statutes and regulations of the Commonwealth of Pennsylvania which regulate MSW and the physical characteristics of MSW result in MSW being stored, handled, hauled, and disposed of differently from other types of waste. MSW disposal services is thus a line of commerce, or relevant product market, under Section 7 of the Clayton Act.

Relevant Geographic Market

14. MSW generated in Allegheny County is generally transported by collection trucks to landfills, and the availability of landfills close to a hauler's MSW routes is a major element that determines a hauler's competitiveness and profitability. The cost of transporting MSW to a landfill site is a substantial component of the cost of disposal. For haulers of MSW generated in Allegheny County, Pennsylvania, total disposal costs may account for approximately 30 to 40 percent of the actual amount charged by a hauler for its collection services. The cost of transportation limits the areas where MSW can be economically transported and disposed by haulers and creates localized markets for MSW disposal services.

15. Due to the high costs of transporting MSW, and the substantial travel time to other landfills based on distance, natural barriers and congested roadways, haulers of MSW generated in Allegheny County are limited to landfills located in Allegheny County and in central Washington County, western Westmoreland County and Butler County, (hereinafter the "greater Pittsburgh area"). Virtually all of the MSW generated in Allegheny County is disposed of exclusively in landfills in the greater Pittsburgh area. In addition, landfills in the greater Pittsburgh area price discriminate -- in other words, they charge higher prices to haulers of MSW generated in

Allegheny County than they charge to other haulers outside of Allegheny County where more MSW disposal facilities are available to them. In the event of a small but significant and non-transitory price increase by landfills in the greater Pittsburgh area, haulers of MSW generated in Allegheny County would not turn to disposal facilities outside the greater Pittsburgh area.

16. Allegheny County is thus a section of the country, or relevant geographic market, within the meaning of the Clayton Act because landfills in the greater Pittsburgh area can identify and price differently to haulers of MSW generated in Allegheny County, and these haulers are unable to defeat a price increase by substituting to landfills located outside the greater Pittsburgh area.

Anticompetitive Effects and Entry

17. USA Waste and United compete with each other and with other companies to provide disposal services to haulers of MSW generated in Allegheny County. USA Waste and United are the first and third largest disposers of MSW generated in Allegheny County. During 1996, based on Allegheny County MSW disposal data, USA Waste accounted for over 51 percent of the market and United accounted for approximately 8 percent. The acquisition would give USA Waste almost 60 percent of the market and two firms would control over 90 percent of the market for disposal of MSW generated in Allegheny County. Using a measure of concentration called the Herfindahl-Hirschman Index ("HHI"), which is defined and explained in Appendix A, the post-merger HHI, based on the amount of MSW that was generated in Allegheny County and disposed of in 1996, would be approximately 4600, an increase of approximately 840 over the pre-acquisition HHI. Alternatively, the post merger HHI, based on the daily capacity available for MSW generated in Allegheny County, would be approximately 3480 with a change of about 590.

Thus, the acquisition by USA Waste of the Kelly Run Landfill of United would substantially increase concentration in the market.

18. The substantial increase in concentration in the market for disposal of MSW generated in Allegheny County caused by the acquisition by USA Waste of United's Kelly Run Landfill would likely understate the impact of the acquisition on competition. Downtown Pittsburgh and other heavily populated areas of Allegheny County are located on the southern side of the Ohio and Allegheny Rivers. Travel from north to south in the county is time-consuming because of the need to use bridges and tunnels. These physical constraints on travel result in three firms, USA Waste, United and Browning Ferris Industries, having substantial locational advantages in serving Pittsburgh and its close-in suburbs. After the acquisition, USA Waste will control four of the five landfills that are within 20 miles of downtown Pittsburgh and in the area of highest population in Allegheny County. More distant landfills in the greater Pittsburgh area, such as those located in Butler County, would not be realistic competitive alternatives south of the Allegheny and Ohio Rivers in the event of a small but significant and non-transitory price increase by landfills in that area.

19. Should USA Waste acquire the Kelly Run Landfill from United, the substantial increase in concentration in the greater Pittsburgh area and the elimination of one of only three firms located within 20 miles of Pittsburgh will significantly increase the likelihood that consumers will face higher prices and poorer quality service for the disposal of MSW generated in Allegheny County.

20. Obtaining regulatory approval to open a new landfill in the greater Pittsburgh area is a difficult, risky, time consuming, and costly process that can take years. Commonwealth of

Pennsylvania Executive Order 1996-5, Municipal Waste Facilities Review Program, August 29, 1996, which expands community input into the permitting process, makes it difficult to obtain landfill permits. Entry by a new landfill would not be timely, likely or sufficient to prevent substantial harm to competition.

21. USA Waste is also engaged in the collection and hauling of MSW in southern Allegheny County, where it is the dominant hauler. Post-acquisition, USA Waste would have an increased incentive to raise landfill rates to rival haulers in Allegheny County, to create a substantial barrier for entry to new haulers, or selectively to raise prices to punish or impede independent haulers who attempt to compete with it in Allegheny County.

V.

VIOLATION ALLEGED

22. On or about April 13, 1997, the defendants entered into a letter of intent providing for USA Waste to acquire all of the outstanding voting securities of United. The purchase price is approximately \$1.5 billion. The transaction is set to be approved at a shareholders meeting of United, currently set for August 26, 1997. The likely effect of the acquisition is to substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

23. The transaction will likely have the following effects, among others:

- a. competition generally in providing disposal services to haulers of MSW generated in Allegheny County will be substantially lessened;

- b. actual and potential competition between USA Waste and United in providing disposal services to haulers of MSW generated in Allegheny County will be eliminated;
- c. prices for disposal services to haulers of MSW generated in Allegheny County will likely increase; and
- d. competition generally in providing hauling of MSW generated in Allegheny County will be substantially lessened.

VI.

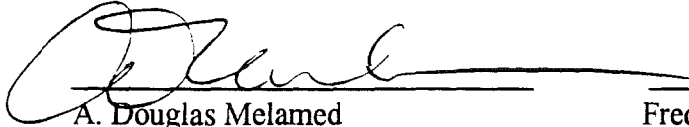
REQUESTED RELIEF

Plaintiffs request:

- 1. That the proposed acquisition of United by USA Waste be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;
- 2. That the defendants be permanently enjoined from carrying out their Agreement and Plan of Merger dated April 13, 1997, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of the defendants;
- 3. That the plaintiffs have such other and further relief as the case requires and the Court deems proper; and

4. That the plaintiffs recover the costs of this action.

Dated: August _____, 1997



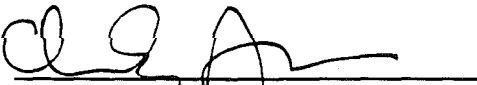
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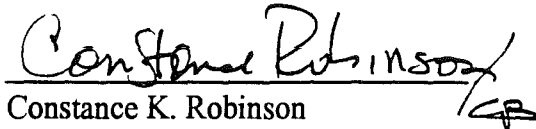
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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is 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 thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.