

significantly more labor intensive. The customer's MSW is stored in much smaller containers (e.g., garbage bags or trash cans) and instead of front-end load trucks, waste collection firms routinely use rear-end load or side-load trucks manned by larger crews (usually, two-person or three-person teams). On residential routes, crew generally hand-load the customer's MSW, typically by tossing garbage bags and emptying trash cans into the vehicle's storage section. Because of the differences in the collection processes, residential customers and commercial customers usually are organized into separate routes. Likewise, other types of collection activities, such as the use of roll-off containers (typically used for construction debris) and the collection of liquid or hazardous waste, are rarely combined with commercial waste collection. This separation of routes is due to differences in the hauling equipment required, the volume of waste collected, health and safety concerns, and the ultimate disposal option used.

16. The differences in the types and volume of MSW collected and in the equipment used in collection services distinguish small container commercial hauling from all other types of waste collection activities. These differences mean that small container commercial building firms can profitably increase their charges for small container commercial hauling services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, small container commercial hauling is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

B. The Relevant Geographic Market

17. Small container commercial hauling services are generally provided in highly localized areas because to operate efficiently and profitably, a hauler must have sufficient density in its commercial waste collection operations (i.e., a large number of commercial accounts that are reasonably close together). In addition, a front-end load or rear-end load vehicle cannot be efficiently driven long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial hauling firm to service metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

18. Generally, haulers compete for small container commercial hauling customers in "open" competition or through competition for municipal franchises. In open competition work, a hauler competes for individual customers, whereas in franchise work, the hauler is awarded a municipal contract that permits the hauler to provide service to all of the small container commercial customers in that municipality. The municipality decides whether it will grant a franchise or allow haulers to compete for customers in open competition.

19. Local small container commercial hauling firms in Broward County can profitably increase prices to customers in the

open areas of Broward County—that is, those not covered by a municipal franchise—without losing sales to a municipal franchise, or to more distant competitors. The open areas of Broward County is a section of the county, or relevant geographic market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition as a Consequence of the Acquisition

20. Defendants Waste Management and Allied directly compete to provide small container commercial hauling services for open competition in open areas of Broward County, Florida. Waste Management and Allied each account for a substantial share of total revenues from commercial waste collection services in Broward County.

21. The proposed acquisition would reduce from three to two the number of significant firms that compete to provide small container commercial hauling services in open areas of Broward County, Florida. After the acquisition, Waste Management would control over 68 percent of total market revenues, which exceed \$40 million annually. Using a standard measure of market concentration called the "HHI" (defined and explained in Appendix A), the post-merger HHI for small container commercial hauling would be approximately 5490, an increase of 2063 points over the pre-merger HHI of 3428.

D. Entry Into Commercial Waste Collection of MSW

22. Significant new entry into small container commercial hauling business is difficult and time-consuming. A new entrant into small container commercial hauling cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In order to obtain a comparable operating efficiency, a new firm must achieve route density similar to existing firms. However, an incumbent's use of price discrimination and long-term contracts prevents new entrants from winning a large enough base of customers to achieve efficient routes in sufficient time to constrain the post-acquisition firm from significantly raising prices. Differences in the service provided by an incumbent hauler to each customer permit the incumbent to meet competition easily from new entrants by pricing its services lower to any individual customer that wants to switch to the new entrant. An incumbent's use of three-to-five year contracts, which may contain large liquidated damage provisions for contract termination, automatically renew, or permit specified price increases, make it more difficult for a customer to switch to a new hauler and obtain lower prices for its collection service. These contracts increase the cost and time required by an entrant to form an efficient route, reducing the likelihood that the entrant will ultimately be successful.

E. Harm to Competition

23. The acquisition of Allied's small container commercial hauling assets by

Waste Management would remove a significant competitor in the small container commercial hauling business in a market that is already highly concentrated and difficult to enter. In this market, the resulting substantial increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely will result in higher prices for small container commercial hauling services.

V. Violation Alleged

24. Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida will lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

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

a. Competition for small container commercial hauling services in open areas of Broward County, Florida will be lessened substantially; and

b. Prices charged by small container commercial hauling firms in open areas of Broward County, Florida will likely increase.

VI. Requested Relief

Plaintiffs request:

1. That Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;

2. That Defendants be permanently enjoined from carrying out the acquisition of small container commercial hauling assets in the asset purchase and stock purchase agreements dated August 15, 2003, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to exchange those assets between the Defendants;

3. That Plaintiffs receive such other and further relief as the case requires and the Court deems proper; and

4. That Plaintiffs recover the costs of this action.

Dated: October 14, 2003.

Respectfully submitted,
FOR PLAINTIFF UNITED STATES:
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