

directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF FLORIDA, Plaintiffs, v. WASTE MANAGEMENT, INC., and ALLIED WASTE INDUSTRIES, INC., Defendants.

Cast No.: 1:03CV02076.

JUDGE: James Robertson.

DECK TYPE: Antitrust.

Competitive Impacts Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Waste Management, Inc. ("Waste Management") and Defendant Allied Waste Industries, Inc. ("Allied") entered into an asset purchase agreement and a stock purchase agreement, both dated August 15, 2003, pursuant to which Waste Management would acquire from Allied, *inter alia*, certain small container commercial hauling assets in Broward County, Florida. The United States and the State of Florida ("Florida") filed a civil antitrust Complaint on October 14, 2003, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for small container commercial hauling services in Broward County, Florida in violation of Section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection of small container commercial waste.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Waste Management is required within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, Whichever is later, to divest, as a viable business operation, specified small

container commercial hauling assets located in Broward County, Florida. Under the terms of the Hold Separate Stipulation and Order, Waste Management is required to take certain steps to ensure that the assets to be divested are fully maintained in operable condition at no less than the state they were in at the time the United States, Florida, and Defendants agreed to the divestitures outlined below and held separate from its other assets and businesses.

The United States, Florida, and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Waste Management, with 2002 revenues of approximately \$11.1 billion, is the nation's largest waste collection and disposal company, operating throughout the United States. Allied, with 2002 revenues of approximately \$5.5 billion, is the nation's second largest waste collection and disposal company. The proposed transaction, as initially agreed to by Defendants on August 15, 2003, would lessen competition substantially as a result of Waste Management's acquisition of Allied's small container commercial hauling assets in Broward County, Florida. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States and Florida on October 14, 2003.

B. The Competitive Effects of the Transaction on Competition in Small Container Commercial Hauling

Municipal solid waste ("MSW") is solid, putrescible waste generated by households and commercial establishments. Waste collection firms, or haulers, contract to collect MSW from residential and commercial customers and transport the waste to private and public disposal facilities (e.g., transfer stations, incinerators, and landfills), which, for a fee, process and legally dispose of the waste. Small container commercial hauling is one component of MSW collection, which also includes residential and other waste collection. Waste Management and Allied compete in the collection of small container commercial waste in Broward County, Florida.

Small container commercial hauling is the collection of MSW in one to ten cubic yard containers, usually from commercial businesses such as office and apartment buildings and retail establishments (e.g., stores and restaurants) for shipments to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize small container commercial accounts into their own special routes, and generally use specialized equipment to store, collect, and transport waste from these

accounts to approved disposal sites. This equipment (e.g., one- to ten-cubic-yard containers for waste storage, and front-end load vehicles commonly used for collection and transportation) is uniquely well-suited for small container commercial hauling. Providers of other types of waste collection services (e.g., residential and roll-off services) are not good substitutes for small container commercial hauling firms. In their waste collection efforts, these firms use different waste storage equipment (e.g., garbage cans or semi-stationary roll-off containers) and different vehicles (e.g., rear-load, side-load, or roll-off trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect, or transport waste generated by commercial customers, and hence, are rarely used on small container commercial hauling routes. In the event of a small but significant and nontransitory increase in price for small container commercial hauling, customers would not switch to any other alternative. Thus the Complaint alleges that the provision of small container commercial hauling constitutes a line of commerce, or relevant service, for purposes of analyzing the effects of the transaction.

The Complaint alleges that the provision of small container commercial hauling service takes place in compact, highly localized geographic markets. The geographic markets are compact and highly localized because it is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial hauling firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Distance may significantly limit a remote firm's ability to provide commercial waste hauling service as frequently or conveniently as that offered by local firms with nearby routes. Also, local small container commercial hauling firms have significant cost advantages over other firms and can profitably increase their charges to local small container commercial hauling customers without losing significant sales to firms outside the area.

Small container commercial haulers in Broward County, Florida compete for customers either in "open" competition or through competition for municipal franchises. In open competition areas, haulers compete to service individual customers. In areas where commercial hauling is controlled by the respective municipality, small container commercial haulers compete to be awarded a municipal contract, or franchise, that permits the hauler to provide service to all of the small container commercial customers in that municipality. The municipality decides whether to grant a franchise or to allow haulers to compete for customers in open competition. 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 customers not covered by a municipal