

franchise—without losing sales to a municipal franchise, or to more distant competitors.

Applying this analysis, the Complaint alleges that the open competition areas of Broward County, Florida constitute a section of the country, or relevant geographic market, for the purpose of assessing the competitive effects of a combination of Waste Management and Allied in the provision of small container commercial hauling services.

There are significant entry barriers into the provision of small container commercial hauling services. A new entrant in the small container commercial hauling business must achieve a minimum efficient scale and operating efficiencies comparable to those of existing firms in order to provide a significant competitive constraint on the prices charged by market incumbents. In order to obtain comparable operating efficiencies, a new firm must achieve route density similar to existing firms. An efficient route usually handles eighty or more customers or containers each day. Because most customers have their waste collected once or twice a week, a new entrant must have several hundred customers in close proximity to construct an efficient route. However, the common use of price discrimination and long-term contracts by existing small container commercial hauling firms can leave too few customers available to the entrant in a sufficiently confined geographic area to create an efficient route. The incumbent firm can selectively and temporarily charge an unbeatable low price to specified customers targeted by new entrants. Long-term contracts often run for three to five years and may automatically renew or contain large liquidated damage provisions for contract termination. Such terms make it more costly or difficult for a customer to switch to a new hauler and obtain lower prices for its collection service. Because of these factors, a new entrant may find it difficult to compete by offering its services at pre-entry price levels comparable to the incumbent's prices. Also, a new entrant may face an increase in the cost and time required to form an efficient route, which may limit the entrant's ability to build an efficient route and reduce the likelihood that the entrant ultimately will be successful.

The need for route density, the use of long-term contracts with restrictive terms, and the ability of existing firms to price discriminate raise significant barriers to entry by new firms, which will likely be forced to compete at lower than entry price levels. Such barriers in the market for small container commercial hauling services have allowed incumbent firms to raise prices successfully.

In Broward County, Florida, Waste Management's acquisition of Allied's small container commercial hauling assets would reduce from three to two the number of significant firms that compete to provide small container commercial hauling. After the acquisition, Waste Management would control over 68 percent of total market revenues, which exceed \$40 million annually. There is only one other significant small container commercial hauling competitor in this market.

The Complaint alleges that a combination of Waste Management and Allied in Broward

County would remove a significant competitor in small container commercial hauling. In this market the resulting increase in concentration, loss of competition, loss of competition, and absence of any reasonable prospect of entry or expansion by market incumbents likely will result in higher prices for small container commercial hauling.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposal Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial hauling in Broward County, Florida by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires Waste Management, within ninety 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 ongoing business, small container commercial hauling assets (e.g., routes, trucks, containers, and customer lists) in Broward County, Florida. The assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with Florida, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Waste Management will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court, the United States, and Florida, setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee, the United States, and Florida, will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of small container commercial hauling services in Broward County, Florida. Under the proposed Final Judgment, Waste Management is required to divest customers and contracts on eleven of Allied's routes (routes 901, 902, 903, 904, 906, 907, 909, 912, 914, 915, and 501, except for specific portions of these routes that did not raise significant competitive concerns, including accounts and contracts serviced in parts unincorporated Broward County, accounts serviced through franchise agreements, and accounts and contracts serviced in the City

of Margate) to a new, independent, and economically viable competitor in Broward County, Florida. In addition, Waste Management agrees that, if an Allied customer has a single contract with accounts and service locations that are on both a route to be divested and a route Waste Management will acquire, Waste Management will divest the entire contract. The divested assets produce annual revenues of over \$8 million from small container commercial hauling service in the open competition areas of Broward County, which represents over 80 percent of Allied's revenues generated in the open competition areas.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, Florida, and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.