

DEPARTMENT OF JUSTICE

Antitrust Division

United States and New Jersey v. Waste Management, Inc. and Allied Waste Industries, Inc.; Public Comments and Plaintiff's Response

Notice is hereby given pursuant to section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), that the Public Comments and Plaintiff's Response thereto have been filed with the United States District Court for the District of Columbia in *United States and New Jersey v. Waste Management, Inc. and Allied Waste Industries, Inc.*, Civil No. 1:03CV01409 (GK).

On June 27, 2003, the United States and the State of New Jersey filed a civil antitrust Complaint alleging that Waste Management's acquisition of certain voting securities and waste-hauling and disposal assets of Allied would lessen competition substantially in the provision of small container commercial waste collection services in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey, and in the provision of municipal solid waste disposal services in the Bergen and Passaic Counties, New Jersey and Tulsa and Muskogee, Oklahoma disposal areas, in violation of section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires, among other things, that defendant Waste Management (1) divest small container commercial waste collection assets in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey; (2) alter the contracts it uses with its existing and new small container commercial waste customers in the areas of Augusta, Georgia and Myrtle Beach, South Carolina; (3) divest transfer station facilities serving Bergen and Passaic Counties, New Jersey; and (4) sell throughput disposal rights at a facility serving Bergen and Passaic Counties, New Jersey.

Public comment was invited within the statutory 60-day comment period. The two comments received, and the response thereto, are hereby published in the **Federal Register** and filed with the Court. Copies of these are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20530 (telephone: 202-514-2481)

and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

In the matter of: United States of America, and State of New Jersey, Plaintiffs, v. Waste Management, Inc., and Allied Waste Industries, Inc., Defendants.

Case No: 1:03CV01409; Judge: Gladys Kessler, Deck Type: Antitrust.

Response of the United States to Public Comments on the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) ("APPA" or "Tunney Act"), Plaintiffs United States of America ("United States") hereby files comments received from members of the public concerning the proposed Final Judgment in this civil antitrust suit and the Response of the United States to those comments.

I. Background

On January 29, 2003, Defendants Waste Management, Inc. ("Waste Management") and Allied Waste Industries, Inc. ("Allied") entered into stock and asset purchase agreements pursuant to which Waste Management would acquire certain voting securities and waste-hauling and disposal assets of Allied in a number of areas throughout the United States. The United States and the State of New Jersey ("New Jersey") filed a civil antitrust Complaint on June 27, 2003, seeking to enjoin the proposed acquisition. The Complaint alleged that the likely effect of the acquisition would be to lessen competition substantially for waste collection and disposal services in several markets 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 and disposal of waste.

At the same time the Complaint was filed, the parties also filed a Hold Separate Stipulation and Order and a proposed Final Judgment. Under the proposed Final Judgment, Waste Management is required within 90 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as viable business operations, specified waste-hauling and disposal assets. The proposed Final Judgment also requires Defendants, within 90 days after approval by the New Jersey Department of Environmental Protection of Waste Management's request to acquire assets in New Jersey, to divest, as viable business operations, certain waste-hauling and disposal assets located in New Jersey and New York. In addition to the divestitures, the proposed Final Judgment also requires Waste Management to comply with certain conditions relating to its customer contracts in two identified areas. 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 will be preserved and held separate from its other assets and businesses pending their divestiture.

The United States, New Jersey, and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. In compliance with the APPA, the United States filed a Competitive Impact Statement ("CIS") on July 22, 2003. Waste Management and Allied filed statements pursuant to 15 U.S.C. 16(g) on August 4, 2003. A summary of the terms of the proposed Final Judgment and CIS were published in the *Washington Post*, a newspaper of general circulation in the District of Columbia, for seven days during the period of August 9, 2003, through August 15, 2003. The Hold Separate Stipulation and Order, proposed Final Judgment, and CIS were published in the **Federal Register** on August 12, 2003, 68 FR 47930 (2003). The 60-day comment period commenced on August 15, 2003, and terminated on October 14, 2003. During the 60-day comment period, the United States received two public comments (attached as Appendix A).

II. Response to Public Comments**A. Legal Standard Governing the Court's Public Interest Determination**

Upon the publication of the public comments and this Response, the United States will have fully complied with the Tunney Act. After receiving the motion of the United States for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e). In making that determination, the "court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States v. Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), cert. denied, 510 U.S. 984 (1993). The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's "rather broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); accord *United States v. Associated Milk Producers*, 534 F.2d 113, 117-18 (8th Cir.), cert. denied, 429 U.S. 940 (1976). The Court should review the proposed Final Judgment "in light of the violations charged in the complaint and * * * withhold approval only (a) if any of the terms appear ambiguous, (b) if the enforcement mechanism is inadequate, (c) if third parties will be positively injured, or (d) if the decree otherwise makes a 'mockery of judicial power.'" *Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *Microsoft*, 56 F.3d at 1462). The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that "other remedies were preferable." *Microsoft*, 56 F.3d at 1460, nor does it give the Court authority to impose different terms on the parties. See, e.g., *United States v.*