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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE STATE OF UTAH,

Plaintiff,

vs.

ALLIED WASTE INDUSTRIES, INC.,

Defendant.

**COMPLAINT FOR
INJUNCTIVE RELIEF**

2:99CV 0303J
Civil No.

Filed:

The State of Utah brings this civil antitrust action to enjoin the acquisition by Allied Waste Industries, Inc. (Allied) of certain assets of Browning-Ferris Industries, Inc. (BFI) and to obtain equitable relief and other relief as appropriate. Plaintiff complains and alleges as follows:

1. Allied and BFI are vigorous competitors for commercial waste collection and

disposal services in numerous markets throughout the United States, including Washington County Utah.

2. In Washington County, Utah, the combination of Allied and BFI would eliminate one of only a few significant competitors or would result in near monopoly. Unless this acquisition is enjoined, the loss of that competition as a consequence of this combination will likely result in consumers paying higher prices and receiving fewer services for waste collection and disposal services.

3. Plaintiff seeks to prevent Allied from acquiring waste collection and disposal assets of BFI in Washington County, Utah, pursuant to a Letter of Intent entered into by defendants on November 10, 1998.

4. Subsequent to the Letter of Intent, Allied entered into an agreement with BFI in March of this year for Allied to acquire all the assets and operations of BFI, including those assets and operations in Washington County, Utah.

I. JURISDICTION AND VENUE

5. This action is filed by the State of Utah under Section 16 of the Clayton Act, 15 U.S.C. § 26 to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

6. Defendants Allied and BFI transact business in the District of Utah, Central Division. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15

U.S.C. § 22. and 28 U.S.C. § 1391(c).

7. Defendants Allied and BFI collect and dispose of waste from commercial, residential, and industrial customers in Utah and Allied operates landfills which process and dispose of solid waste. In their waste collection and waste disposal businesses, 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. BACKGROUND

8. Solid waste collection is generally categorized by residential, commercial, and industrial sources. Waste is collected in a variety of containers which may include residential containers, front-load containers, roll-off containers, or compacted containers.

9. Commercial waste collection is generally accomplished through the use of front-end loaders from small containers with 1-10 cubic yards of waste storage capacity. Typical customers are commercial businesses such as office and apartment buildings and retail establishments (e.g. stores and restaurants). Defendants also collect construction and demolition debris as part of their commercial waste collection in Washington County, Utah.

10. In addition to commercial waste collection in Washington County, BFI has contracts to collect residential waste elsewhere in Utah. BFI also collects commercial waste in Iron County, adjacent to Washington County. The Iron County waste is taken to a landfill in

Iron County.

11. Allied, in addition to its commercial waste collection business in Washington County, has a contract to be the exclusive provider of residential waste collection services for all of Washington County. In addition, Allied recently was awarded a ten year contract to operate the only landfill in Washington County.

12. The landfill in Washington County is operated by the Washington County Special Service District No. 1 ("Waste District"). The landfill will accept waste only from within Washington County. No waste from outside the county is accepted.

13. Allied and BFI provide other waste collection services besides commercial and residential collection. They provide compaction equipment for the use of certain customers, provide large capacity roll-off containers for commercial/industrial customers, engage in collection of cardboard for recycling, and offer portable toilets (primarily for use at construction sites).

III. DEFENDANTS

14. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is engaged in providing waste collection and disposal services and the operation of landfills through the United States, including Utah. Allied does business in Utah as Allied Waste Transportation, Inc. and as Red Rock Waste Services.

15. BFI is a Delaware corporation with its principal office in Houston, Texas. BFI is

engaged in providing waste collection and disposal services throughout the United States, including Utah. BFI does business in Utah as BFI Waste Systems of North America, Inc. and Browning-Ferris Industries of Utah, Inc.

IV. TRADE AND COMMERCE

A. The Relevant Service Market - Commercial Waste Collection

16. Waste collection firms, or "haulers," collect waste from residential, commercial, and industrial establishments and transport the waste to a disposal site, in the case of Washington County - a landfill, for processing and disposal. Private waste haulers typically contract directly with customers for the collection of waste generated by commercial accounts. Waste generated by residential customers, by contrast, is often collected by either local governments or by private haulers pursuant to contracts bid by municipal authorities. In Washington County, the residential waste is collected by Allied under contract from the Waste District.

17. Commercial waste collection differs in many important respects from collection of residential or other types of waste. An individual commercial customer typically generates substantially more waste than a residential customer. To handle this high volume of waste efficiently, haulers provide commercial customers with small containers (1-10 cubic yards) for the storage of waste. Haulers organize commercial accounts into routes, and collect and generally transport waste using vehicles (front-end loader, "FEL" trucks) uniquely well suited for commercial waste collection.

18. On a typical commercial waste collection route, an operator drives an FEL vehicle to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section, where the waste is compacted and stored. The operator continues along the route, collecting waste until the vehicle is full. The FEL truck then is driven to a disposal facility, here a landfill, where the contents of the vehicle are emptied.

19. A residential waste collection route is usually a more labor intensive operation and involves many more collections before the vehicle is filled. Because of the differences in the collection process, as a rule, residential customers and commercial customers are organized into separate routes. Other types of collection activities, such as roll-off containers and collection of liquid or hazardous waste, also are rarely combined with commercial waste collection activities.

20. The differences in the types and volume of waste collected and in equipment used in their collection activities distinguish commercial waste collection from all other types of waste collection activities. For this reason, commercial waste collection firms can profitably increase their charges for commercial waste collection services without losing sales to firms that collect other types of waste. Commercial waste collection 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

21. Commercial waste collection services generally are provided in very localized

areas. 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, it is not economically efficient for front-end loader vehicles to travel long distances without collecting significant amounts of waste, making it impractical for a hauler to serve communities from a distant base.

22. Waste generated in a given area is transported by collection vehicles to landfills for processing and disposal. Because the costs of transporting waste to a disposal site are a substantial component of the overall cost of collection services, the proximity of disposal sites to a hauler's routes is a major determinant of the hauler's competitiveness and profitability. The prohibition of the Washington County landfill on accepting waste collected outside the county also affect the competitiveness and profitability of haulers. Therefore, the area where waste economically can be transported and disposed by haulers is limited.

23. Local commercial waste collection firms in Washington County, Utah can profitably increase charges to local customers without losing significant sales to more distant competitors. This area is a relevant market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition As a Consequence of the Merger or Asset Swap

24. Allied and BFI directly compete in commercial waste collection in Washington County, Utah. In this market, Allied and BFI each account for a substantial share of total

revenues from commercial waste collection services.

25. In Washington County, the combination of Allied and BFI would reduce from three to two the number of firms with a significant presence in the commercial waste hauling market. Currently, there are six firms offering commercial waste hauling services in Washington County, but only three have more than five percent of the market. These three control an estimated 91% of the commercial waste collection market in the county. The merger of Allied and BFI would combine the largest and third largest firms in the market, resulting in Allied controlling over 76% of the market. Using a measure of market concentration called the Herfindahl-Hirschman Index (HHI) (defined and explained in Appendix A) the post-merger HHI would be over 6000, with an increase of over 1300 points over the pre-merger HHI of 4684.

D. Entry Into Commercial Waste Collection

26. Significant new entry into commercial waste collection in Washington County is difficult and time consuming. A new entrant into commercial waste collection 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 comparable operating efficiency, a new firm must achieve route density comparable to existing firms. However, the incumbents' use of price discrimination and long term contracts prevents new entrants from winning a large enough base of customers to achieve efficient routes in a short period of time or at pre-entry prices.

27. Successful new entry into the commercial waste hauling market may be made even more difficult in Washington County due to Allied's economies of scope and scale from having the long term residential waste collection contract for the county, its long term contract giving it control over most functions at the landfill, its ability to offer below-cost or free commercial services to customers in exchange for services provided to Allied in connection with its landfill or residential operations, its practice of tying its cardboard recycling services to its commercial waste hauling services, and its ability, long term, to sustain operations at a loss if there are prospects that small competing haulers might exit the market.

E. Harm to Competition

28. Allied's acquisition of BFI would remove a significant competitor in commercial waste collection in an already concentrated and difficult-to-enter market. In this market, the resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of successful significant new entry or expansion by market incumbents threatens to result in consumers paying substantially higher prices for collection of commercial waste following the acquisition.

V. VIOLATION ALLEGED

29. On or about November 10, 1998, defendants entered into a Letter of Intent pursuant to which Allied would acquire the commercial waste collection routes and other assets of BFI in Washington County, Utah pursuant to an asset swap. Subsequently, in March 1999,

Allied and BFI announced plans for Allied to purchase all of the outstanding securities of BFI, and all of its operations nationwide. The purchase price is approximately \$7.3 billion.

30. The likely effect of the swap and the acquisition may be to lessen competition substantially and to tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act. The transaction likely will have the effects that a) competition in commercial waste collection in Washington County will be lessened substantially, b) actual and potential competition between Allied and BFI in commercial waste collection in Washington County will be eliminated, and c) prices charged by commercial waste collection firms in Washington County likely will increase.

VI. REQUESTED RELIEF

Plaintiff requests:

1. That Allied's proposed acquisition of BFI 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 their Letter of Intent dated November 10, 1998 and their announced acquisition of BFI, 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 defendants;
3. That plaintiff have such other and further relief as the case requires and the Court deems proper; and

4. That plaintiff recover the costs of this action.

DATED This 27th day of April, 1999.

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By: 
R. Wayne Klein

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THE STATE OF UTAH

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.