

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

STATE OF TEXAS,
by and through its Attorney
General, Dan Morales and

COMMONWEALTH OF PENNSYLVANIA,
by and through its Attorney
General, Thomas W. Corbett,
Jr.

Plaintiffs,

v.

USA WASTE SERVICES, INC., and

SANIFILL, INC.

Defendants.

CASE NUMBER: 1:96CV02031

JUDGE: Kessler

DECK TYPE: Antitrust

DATE STAMP: August 30, 1996

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, the State of Texas acting under the direction of the Attorney General of the State of Texas, and the Commonwealth of Pennsylvania acting under the direction of the Attorney General of the Commonwealth of Pennsylvania, plaintiffs, bring this civil action to obtain equitable and other relief as is appropriate against the defendants named herein and complain and allege as follows:

1. The United States, the State of Texas, and the Commonwealth of Pennsylvania bring this antitrust case to prevent the proposed merger between USA Waste Services, Inc. ("USA

Waste") and Sanifill, Inc. ("Sanifill"). The merger threatens to raise prices and harm commercial consumers in the Houston, Texas metropolitan area and in the area of Johnstown, Pennsylvania, which includes a five-county area in the southwestern part of the state. The anticompetitive effect would occur in hauling of waste in small containers and disposal of waste in the Houston area and in the hauling of waste in the Johnstown area.

2. USA Waste is the third largest hauling and disposal company in North America with operations in 24 states. Sanifill is among the top ten companies in the industry and has operations in 23 states. Waste collection from commercial consumers is generally done by utilizing small containers between one and 10 cubic yards in size that are collected by a hauling company that takes the trash to a landfill disposal site. This service is typically used by commercial establishments such as restaurants, retail and wholesale stores, and office buildings.

I.

JURISDICTION AND VENUE

3. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. § 25, and 15 U.S.C. § 26, to prevent and to restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Both USA Waste and Sanifill are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties, and venue is appropriate in this District pursuant

to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337, since both defendants consent to personal jurisdiction in this proceeding.

II.

DEFINITIONS

5. "Houston area" means the metropolitan Houston area, which includes Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Montgomery County, Texas; Walker County, Texas; Ft. Bend County, Texas and Galveston County, Texas, including the municipalities located, in whole or in part, in those counties.

6. "Johnstown area" means Cambria County, Pennsylvania; Blair County, Pennsylvania; Indiana County, Pennsylvania; Somerset County, Pennsylvania; and northeast Westmoreland County, Pennsylvania, including the municipalities located, in whole or in part, in those counties.

III.

THE DEFENDANTS

7. USA Waste Services, Inc. ("USA Waste") is a Delaware corporation with its principal offices in Dallas, Texas. USA Waste is engaged in providing solid waste hauling services throughout the United States. In 1995, USA Waste had total operating revenues of over \$730,000,000.

8. Sanifill, Inc. ("Sanifill") is a Delaware corporation with its principal offices in Houston, Texas. Sanifill is engaged in providing solid waste hauling services throughout the United States. In 1995, Sanifill had total operating revenues of

over \$256,705,000.

IV.

TRADE AND COMMERCE

A. Small Containers

9. Solid waste hauling involves the collection of paper, food, construction material and other solid waste from residential, commercial and industrial customers, and the transporting of that waste to a landfill or other disposal site. Solid waste hauling services may be provided by private haulers directly to their customers, or indirectly through municipal contracts or franchises.

10. Commercial customers typically generate a substantially larger volume of waste than that generated by residential customers. The types of containers used by commercial customers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rearend load trucks can also be used to service some commercial customers, but these trucks are not as efficient as frontend loaders and are limited in the sizes of containers they can safely handle. Service to customers using 1 to 10 cubic yard containers is called "small containerized hauling service."

11. Residential customers, typically households and small apartments that generate small amounts of waste, use noncontainerized solid waste hauling service, normally by placing

plastic bags or trash cans at curbside. Rear-end load or side-load vehicles are generally used to collect the plastic bags or to empty the trash cans of residential customers and of those commercial customers that generate relatively small quantities of solid waste, similar in amount to that generated by residential customers. Generally, rear-end loaders use a two or three person crew that manually loads the waste into the rear of the vehicle.

12. There are no practical substitutes for small containerized hauling service. Small containerized hauling customers will not generally switch to noncontainerized service in the event of a price increase because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly, and roll-off containers take up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider such roll-off service, and for such customers, roll-off service is usually the only viable option.

13. Small containerized hauling service is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act. A small but significant and non-transitory increase in the price of small containerized hauling services would not cause a significant number of customers to turn to other types of hauling services.

B. Landfills

14. Most commercial solid waste is taken by haulers to sanitary landfills for disposal. Access to a suitable all-purpose municipal solid waste ("MSW") landfill at a competitive price is essential to a hauling company performing commercial containerized hauling service, because disposal costs account for approximately 30-50 percent of revenues for this service. Suitable sanitary landfills are difficult and time consuming to obtain because of the scarcity of suitable land, local resident opposition, and government regulation. Several years are required to process an application, with no guarantee of success.

15. In Texas, dry waste can be taken to what are referred to as a MSW (Type 1) landfill or to a dry waste (Type 4) landfill. Access to a suitable landfill at a competitive price is essential to a hauling company collecting dry waste because disposal costs can account for over 60% of the revenues for this service. Dry waste landfills are difficult and time consuming to obtain because to permit and built a type 4 landfill in Texas, one must go through a process similar to that for permitting a type 1 landfill. Several years are required to process an application, with no guarantee of success.

C. Relevant Geographic Market

16. Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is

not economically efficient for heavy trash hauling equipment to travel long distances without collecting significant amounts of waste, making it impractical for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

17. Local laws or regulations may further localize markets. For example, flow control regulations in Pennsylvania can designate the facilities where trash picked up within a geographic area must be disposed. Other local regulations may prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. By designating certain disposal facilities, these laws and regulations can dictate which disposal facilities can compete for waste from these local jurisdictions.

18. Each of the following constitutes an affected relevant geographic market or section of the country for small containerized hauling services: (1) Houston area; (2) Johnstown area.

D. Competition Between the Defendants

19. USA Waste and Sanifill compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Houston area market. As measured by total trucks used to collect small containers, the Herfindahl-Hirschman Index ("HHI") in the market is approximately 1900 (See Appendix for description of the HHI).

USA Waste and Sanifill are the second and fourth largest small containerized hauling firms, accounting for approximately 24% and 7% respectively of total trucks used to collect small containers. The acquisition of Sanifill by USA Waste would substantially increase concentration among the small containerized firms in the market; the HHI in that market would increase by about 325 points, to about 2225.

20. USA Waste and Sanifill compete with each other and with other solid waste hauling companies to provide small containerized hauling service in the highly concentrated Johnstown area market. As measured by trucks used to collect small containers, the HHI in this market is over 1700. USA Waste and Sanifill are the first and second largest small containerized haulers in the Johnstown area market, accounting for approximately 31% and 14%, respectively, of total small containerized hauling service trucks. The acquisition of Sanifill by USA Waste would substantially increase concentration among the small containerized hauling firms in the Johnstown area market; the HHI in that market would increase by about 850 points, to about 2550.

21. USA Waste and Sanifill compete with each other and with other landfills in the Houston area. Both USA Waste and Sanifill own one MSW (Type 1) landfill in the Houston area. Based on remaining capacity the HHI in the market is 3325. An acquisition of Sanifill by USA Waste would substantially increase concentration in the market; the HHI would increase by 225 points

to 3550.

22. In the Houston area, USA Waste owns one dry waste (Type 4) landfill and Sanifill owns 11 dry waste landfills. In the Houston area, haulers generally bring dry waste to Type 4 landfills because prices at MSW landfills are significantly higher than at Type 4 landfills. Based on remaining capacity, the HHI in the market is 3350. An acquisition of Sanifill by USA Waste would substantially increase concentration in the market; the HHI would increase by 650 points to 4000.

E. Other Anticompetitive Effects

23. A new entrant into trash hauling cannot constrain the prices of larger existing firms until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In small containerized hauling service, achieving comparable operating efficiency requires achieving route density comparable to existing firms, which typically takes a substantial period of time. Entry to this market is not easy; the use of price discrimination and long-term contracts prevents new entrants from winning a large enough base of customers from incumbents to achieve efficient routes in a short time period or at pre-entry prices.

24. Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price

fixing, and, where it has occurred, has been shown to persist for many years.

25. Landfills are fewer in number than hauling companies. Entry is difficult and time consuming to this product market because of the high capital costs required, the problem in finding sites available, and the approval needed from governmental authorities. If there is not adequate competition among landfill operators in a geographic market, the hauling companies can be subjected to higher disposal prices. Independent hauling companies that do not own a landfill but must compete against integrated companies such as USA Waste and Sanifill, which have both hauling operations and landfills, are at a competitive disadvantage.

26. The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the alleged markets, significantly increases the likelihood that consumers in these markets are likely to face higher prices and poorer quality service.

V.

VIOLATION ALLEGED

27. USA Waste and Sanifill have agreed to a Plan of Merger dated June 22, 1996. The transaction has an anticipated closing date of August 31, 1996 and would make Sanifill a wholly-owned subsidiary of USA Waste.

28. The effect of the merger may be substantially to lessen competition in the aforesaid trade and commerce in violation of

Section 7 of the Clayton Act in the following ways, among others:

(a) Actual competition and potential competition between USA Waste and Sanifill in small containerized hauling services in the Houston area and the Johnstown area and landfills in the Houston area will be eliminated; and

(b) Actual and potential competition generally in small containerized hauling services and landfills in those geographic areas may be substantially lessened.

PRAYER

WHEREFORE, plaintiffs pray,

1. That the proposed merger between USA Waste and Sanifill be adjudged to be in violation of Section 7 of the Clayton Act;

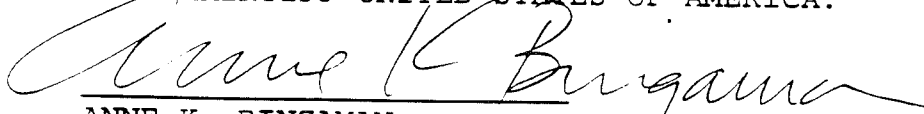
2. That the defendants and all persons acting on their behalf be permanently enjoined from carrying out the merger of USA Waste and Sanifill or any similar agreement, understanding, or plan.

3. That the plaintiffs have such other and further relief as the Court may deem just and proper; and

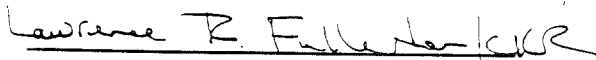
4. That plaintiffs recover the costs of this action.

Dated: August 30, 1996

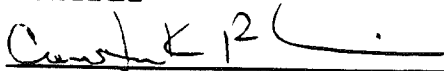
FOR PLAINTIFF UNITED STATES OF AMERICA:



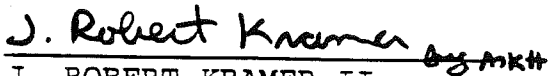
ANNE K. BINGAMAN
Assistant Attorney General



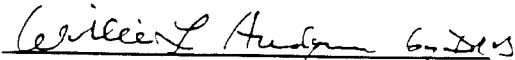
LAWRENCE R. FULLERTON
Deputy Assistant Attorney
General



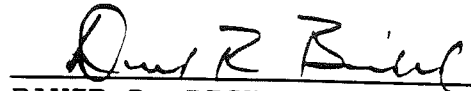
CONSTANCE K. ROBINSON
Director of Operations



J. ROBERT KRAMER II
PA Bar # 23963



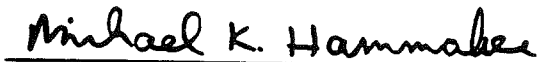
WILLIE L. HUDGINS
DC Bar #37127



DAVID R. BICKEL
DC Bar # 393409



JOEL A. CHRISTIE
WI Bar # 1019438



MICHAEL K. HAMMAKER
DC Bar # 233684

Attorneys
U.S. Department of Justice
Antitrust Division
1401 H St., N.W., Suite 3000
Washington, D.C. 20530
(202) 307-1168

FOR PLAINTIFF STATE OF TEXAS:

Dan Morales
Attorney General of Texas

Jorge Vega
First Assistant Attorney General

Laquita A. Hamilton
Deputy Attorney General for Litigation

Thomas P. Perkins, Jr.
Chief, Consumer Protection Division

Mark Tobey
Assistant Attorney General
Deputy Chief for Antitrust



Amy R. Krasner
Assistant Attorney General
TX Bar No. 00791050

Office of the Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548
512) 463-2185

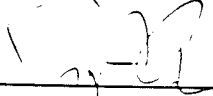
FOR PLAINTIFF COMMONWEALTH OF PENNSYLVANIA:

Thomas W. Corbett, Jr.
Attorney General of Pennsylvania

Carl S. Hisiro
Chief Deputy Attorney General

James A. Donahue, III
Senior Deputy Attorney General

Carron M. Trainer
Deputy Attorney General



Garrett S. Gallia
Deputy Attorney General

Office of the Attorney General of Pennsylvania
Antitrust Section
14th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-4530

APPENDIX

"HHI" means the Herfindahl-Hirschman Index, a measure of market concentration 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 30, 30, 20, and 20 percent, respectively, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.