Crook, Acting Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (Telephone: (415) 556–6300).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–6050 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–01–M

United States, State of Florida and State of Maryland, v. Browning Ferris Industries, Inc.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(c)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States, State of Florida and State of Maryland* v. *Browning Ferris Industries, Inc.,* Civil Action No. 94–2588, filed in the United States District Court for the District of Columbia, together with the United States' responses to those comments.

Copies of the comments and responses are available for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. and for inspection and copying at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C.

Constance K. Robinson,

Director of Operations.

Comments on the Proposed Final Judgment and the United States' Responses to the Comments

United States of America, State of Florida, by and through its Attorney General Robert A. Butterworth, and State of Maryland, by and through its Attorney General J. Joseph Curran, Jr., Plaintiffs vs. Browning-Ferris Industries, Inc., Defendant. Civil Action No.: 1:94CV02588.

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), the United States hereby files the attached comments on the proposed Final Judgment in the above-captioned civil antitrust proceeding, together with the United States' responses to those comments.

This action was commenced on December 1, 1994, when the United States, the State of Maryland (''Maryland'') and the State of Florida (''Florida'') filed a Complaint that the acquisition by Browning-Ferris Industries, Inc. (''BFI'') of the ordinary voting shares of Attwoods plc (''Attwoods'') violated Section 7 of the Clayton Act because the effects of the acquisition may be substantially to lessen competition in interstate trade and commerce for small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland.

At the same time the United States, Maryland, and Florida filed a proposed Final Judgment, a Stipulation signed by the parties stipulating to entry of the Final Judgment, and a Hold Separate Stipulation and Order. Shortly thereafter the United States filed a Competitive Impact Statement. The proposed Final Judgment requires BFI to divest certain Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. It also requires BFI to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area. The Hold Separate Stipulation and Order requires BFI to preserve, hold, and continue to operate the assets that may be divested under the Final Judgment as separate ongoing businesses. The Stipulation provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA.

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. 16(b). In this case, the sixty-day comment period commenced on December 15, 1994 and terminated on February 13, 1995. During this period, the United States received two comments on the proposed Final Judgment. The United States considered the comments and sent written responses to the commenting parties.[1]

Pursuant to 15 U.S.C. 16(e), the proposed Final Judgment can be entered only after the Court determines that the Judgment is in the public interest. The focus of this determination is whether the relief provided by the proposal Final Judgment is adequate to remedy the antitrust violation alleged in the Complaint.[2]

Both comments expressed concern about the contracts used by BFI with its small containerized hauling customers. One of the comments expressed concern that the contract currently in use by BFI in the greater Baltimore metropolitan area is one-sided. The other comment stated that the new contracts required to be used by BFI in Broward County, FL under the proposed Final Judgment were being used by BFI as marketing tools to the disadvantage of small haulers. That comment suggested that BFI should be required to cancel all its existing contracts immediately and implement the new contracts all at one time. The comment went on to suggest that the combination of BFI and Attwoods' municipal franchises would permit BFI to subsidize cheaper prices in the small containerized hauling service market to the detriment of other haulers.

[1] The Comments and Responses are attached as Exhibit A.

[2] United States v. Bechtel Corp., 1979–1 Trade Cases (CCH) ¶ 62,430 (N.D. Cal. 1979), *aff'd,* 648 F.2d 660, 665 (9th Cir. 1981), *cert. denied,* 454 U.S. 1083 (1982).

The United States explained in its responses to these comments that, in the greater Baltimore area, the concern about BFI's use of restrictive customer contracts has been expressly rectified by the proposed Final Judgment. BFI is required to use less restrictive customer contracts that do not have the effects complained of in the comment. The Department also explained that, in Broward County, FL, BFI was being required to phase in the new contracts rapidly—within one year. The proposed Final Judgment requires that the new contracts be made available immediately to all new customers and all customers signing new contracts. A one year period to convert all other customers seemed reasonable in order to avoid unnecessary confusion and the probable higher cost of immediately converting all customers to the new contract. Finally, the Department explained that using franchised business, in which municipal entities solicit bids and award contracts to serve consumers within their boundaries, to subsidize the small containerized hauling market would likely occur only if bidding for franchises is not competitive. The Department was not persuaded, given the number of actual and potential bidders for municipal franchises in the Florida markets, that the acquisition raised any concerns in the market for bidding on municipal franchises.

After careful consideration of the comments, the United States continues to believe that, for the reasons stated in the responses to the comments and in the Competitive Impact Statement, the proposed Final Judgment would be adequate to remedy the risks to competition presented by the proposed acquisition and, therefore, the proposed Final Judgment is in the public interest.

After the comments and responses have been published in the Federal Register, pursuant to 15 U.S.C. 16(d) of the APPA, the United States will move this Court for entry of the proposed Final Judgment.

Dated: March 2, 1995.

Respectfully submitted,

Nancy H. McMillen,

Peter H. Goldberg,

Eva Almirantearena,

Attorneys, Antitrust Division, Department of Justice.

Eastern Trans-Waste of Maryland, Inc.

December 15, 1994.

Anthony V. Nanni,
Chief, Litigation I Section, Antitrust Division,
U.S. Dept. of Justice, 1401 H Street NW.,
Suite 4000, Washington, DC 20530

Re: BFI's Settlement

Dear Mr. Nanni: As I am sure you are well aware the matter of EWI's takeover by BFI is of grave concern. I am an owner of a small women-owned refuse business and I am writing this letter to voice my awareness regarding various unethical procedures being practiced by big business. Small business concerns are being gobbled up by big business. This development should alert all interested in economic fairplay, because these unfair and illegal practices can lead to

monopoly control and higher prices for the consumer.

Two such deceitful practices that I would like to bring to your attention are BFI's attempts to restrain trade with their one-sided contracts and their new attempt to gain control by backing a small-disadvantaged refuse company.

Specifically, Browning-Ferris regularly restrains trade by having their customers sign one-sided refuse service agreements. Once the customer gets into these deceptive agreements it seems impossible to get out.

Exhibit A

December 6, 1994.

Basically, the contract states that in order to terminate service you have to give them sixty day written notice (Certified Mail) before end of contract date. However, if you do not give this notice before the sixty day period the contract means the agreement is automatically renewed for three years. Being that most customers do not anticipate a formidable increase, the notification period usually passes unnoticed.

So, consequently BFI waits for the sixty days to pass and then proceeds to inform the customer the service price will increase. The increase is usually substantially higher than the original contract price and when the customer tries to seek a more competitive price BFI threatens to sue for the remainder of the contract. Although there is a contract, it is unfair and deceptive not allowing the customer any recourse action once the price increase is established. Under these circumstances the customer is able to void the contract due to deceitful terms, but the majority of the customers are ignorant to this fact. To illustrate this matter Fleet Maintenance, a small business located in Clinton, Maryland, was engaged in a contract with BFI and the price was considerably raised. Fleet proceeded to search for a more competitive price, so they contacted my company, Eastern Trans-Waste (ETW). ETW quoted a price that was fifty percent lower than BFI's price. Consequently, Fleet informed BFI that they would be cancelling service and if they didn't like it they would have to sue them. However, BFI didn't attempt to sue, instead they lowered the price of service, but only to drive out the competitor. In the majority of similar cases customers are intimidated by the contract and feel caught in a legal trap, which results lead to accepting the higher price. This depicts how trade is restrained by not allowing customers to shop for preferable prices, which seriously demeans our beliefs that we life in a fair and competitive society.

The other method that reflects the current situation would be BFI's attempt to gain control by backing a small-disadvantaged refuse business. Bethesda Naval Hospital recently put out to bid a recycling job which was offered only to small disadvantaged concerns. Due to this fact only one company submitted a bid. Consequently the contract was awarded to Heritage Recyclers; at an exorbitant price for the scope of the contract. Needless to say BFI has furnished all the equipment on this job with their name on said equipment and is performing the services.

As a result BFI has been gaining a larger market share by utilizing a variety of unfair and unethical tactics. All of the methods they employ undermine the long-term interests of small business in the refuse field. Therefore, you must see how this takeover of EWI is of crucial importance to the small business owner.

Although I have been concentrating on BFI and their unethical practices, I would like to point out that Waste Management also participates in these same methods that undermine the long-term interests of small business. Whereas, ETW is only one small business voicing this complaint there are others who have had business taken from them by big business and would be willing to reveal the scandalous procedures that were utilized.

Knowing that you are a busy person I would like to thank you for this opportunity to express my feelings on this matter and I look forward to a response.

Sincerely,

Kimberly A. Robb,

President, Eastern Trans-Waste of Maryland, Inc.

Department of Justice, Antitrust Division

City Center Building, 1401 H Street, NW., Washington, DC 20530

March 1, 1995.

AVN: NHM
60–4953–0059

Kimberly A. Robb,
President, Eastern Trans-Waste of Maryland, Inc., 1402 Richie Marlboro Road, Capitol Heights, Maryland 20743

Re: United States V. Browning-Ferris Industries, Inc.; Civ. Action No.: 1:94CV02588 (D.D.C. Dec. 1, 1994)

Dear Ms. Robb: This letter responds to your letter dated December 15, 1994 commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Attwoods plc (''Attwoods'') by Browning-Ferris Industries, Inc. (''BFI''). The Complaint alleges that the acquisition, as originally structured, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, because its effects may be substantially to lessen competition in small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. Under the proposed Final Judgment, BFI would be required to divest Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. BFI would also be required to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area.

You expressed concern that BFI regularly restrains trade by having their customers sign one-sided refuse service agreements. You note that once the customer signs one of these agreements ''it seems impossible to get out.'' Letter at p. 1. You specifically mention a provision requiring the customer to give BFI written notice 60 days or more before the end of the contract and that if this date is missed, the agreement is automatically renewed for three years. You further state that, once the contract is renewed, BFI increases its price to the customer and threatens to sue the customer if the customer tries to seek a more competitive price.

The Department believes the proposed Final Judgment eliminates the concerns expressed in your letter. Specifically, Parts VIII A and B of the proposed Final Judgment require BFI to offer contracts to small containerized hauling customers in your area [1] that make it considerably easier for a customer to benefit from price competition for that customer's business. The initial term of the new contract is only one year (instead of the three year current term). The renewal term is only one year, instead of three. The customer can give notice much later under the new contract (up to 30 days from the end of the contract term rather than prior to 60 days from the end of the term), making it more likely the customer will have time to terminate the contract should it receive an attractive offer from a competitor. Furthermore, the liquidated damages provision of BFI's contract has been substantially decreased from six times the customer's average monthly charges. Under the proposed Final Judgment, customers may terminate the contract during their first 10 months as a BFI customer by paying only two times its prior average monthly charges and, after 10 months, an amount equal to one month's average charges. The Department believes these changes reduce a substantial barrier to entry into small containerized hauling service and will increase the likelihood that the customer will not ''feel caught in a legal trap'' (letter at p. 2).

Your letter expresses a second concern. You appear to describe a situation in which a small business set-aside bid was performed by BFI, rather than the small business that was awarded the bid. The acquisition that is the subject matter of this complaint and proposed Final Judgment has no effect on the alleged conduct you describe. This is not the type of matter that is subject to being remedied as part of a proposed acquisition and does not appear to be a matter within the jurisdiction of the Antitrust Division. The Department does appreciate your interest in enforcing the antitrust laws and any information relevant to that enforcement in the appropriate forum is welcome.

We appreciate you bringing your concerns to our attention, and hope that this information will help to alleviate them. Final Judgment would adequately safeguard competition for small containerized hauling service in the markets alleged in the complaint. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

[1] The area in Maryland affected by this portion of the proposed Final Judgment is Anne Arundel County, Baltimore City, Baltimore County, Calvert County, Carroll County, Harford County, Howard County, Montgomery County and Prince George's County.

Sincerely yours,

Anthony V. Nanni,

Chief, Litigation I Section.

Coastal Carting Limited, Inc.

Garbage and Trash Removal, 2316 S.W. 56th Terrace, West Hollywood, Florida 33021

February 8, 1995.

Anthony V. Nanni,

Chief, Litigation One Section, Anti-Trust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530

Re: Browning-Ferris Industries, Acquisition of Attwoods PLC, Civil action No.: 94–2588, United States of America, State of Florida, and State of Maryland vs. Browning-Ferris Industries, Inc., United States District Court for the District of Columbia

To Whom It May Concern: I am writing because I am very concerned about the acquisition of Attwoods by Browning-Ferris Industries and its effect upon my business.

Finally, BFI has utilized the Contract that as attached Exhibit ''B'' of the proposed Final Judgment as a marketing tool to discredit the smaller haulers. BFI is out in the market place telling the customer if he is not happy with the service provided by BFI, they can terminate the contract with minimum cost to the customer.

My suggestion is to terminate all the existing agreements immediately and then have BFI compete with us with them using the new Contract.

Finally, BFI will be able to subsidize their competitive commercial work by the monies made on the ''combined'' franchises of BFI and Attwoods allowing BFI to subsidize competitive prices, thereby, keeping the small hauler from competing in the market place where they can compete.

Once again, I am concerned about the effect this transaction will have on the market place and my business. Please feel free to contact me at your earliest convenience regarding these issues and I hope you will strongly consider my concerns.

Very truly yours,

Frank D'Agostino,

President, Coastal Carting Ltd., Inc.

Department of Justice Antitrust Division

City Center Building, 1401 H Street, NW., Washington, DC 20530

March 1, 1995.

AVN: NHM
60–4953–0059

Frank D'Agostino,
President,
Coastal Carting Limited, Inc.,
2316 SW. 56th Terrace,
West Hollywood, Florida 33021

Re: United States v. Browning-Ferris Industries, Inc.; Civ. Action No.: 1:94CV02588 (D.D.C. Dec. 1, 1994)

Dear Mr. D'Agostino: This letter responds to your letter dated February 8, 1995 commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Attwoods plc (''Attwoods'') by Browning-Ferris Industries, Inc. (''BFI''). The Complaint alleges that the acquisition, as originally structured, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, because its effects may be substantially to lessen competition in small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. Under the proposed Final Judgment, BFI would be required to divest Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. BFI would also be required to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area.

Your letter expresses concern that BFI is using the less restrictive contracts the proposed Final Judgment requires it to use in Broward County, FL as a marketing tool to discredit the smaller haulers. You suggest that BFI should be required immediately to terminate all of its existing, more restrictive contracts, and compete using only the new contract. The Department considered requiring BFI to terminate all existing contracts immediately and to switch all of its customers to the new contract at once. The Department believed that this would result in much confusion and potentially high cost. Part VIII D of the proposed Final Judgment requires BFI to offer the new contract to all new customers and all customers that sign contracts effective beginning on the date BFI acquires a majority of the Attwoods' ordinary shares. That paragraph also requires that BFI offer the new contract to all other customers by December 1, 1995. As a result, BFI is required to offer the new contract to all of its Broward County customers within one year of the filing of the Complaint and proposed Final Judgment. The Department believes that this rapid phase-in of the contracts will enhance competition by getting the contracts into use quickly, but without the confusion and cost of an immediate switch of all customers to the new contract.

You also state that you are concerned that BFI will be able to subsidize their competitive commercial work through monies obtained from franchises previously controlled by Attwoods. The Department understands you to be referring to franchises for residential (and sometimes residential and commercial) solid waste hauling periodically put up for bid by municipal authorities.

Your concern appears to be that combining Attwoods' franchises with those already controlled by BFI will enable BFI to offer lower prices to its commercial small containerized hauling customers, undercutting your ability to compete with BFI in the commercial small containerized hauling market. This assumes that BFI will be able to obtain supracompetitive profits from the franchises to undercut other firms in the commercial small containerized hauling market. This subsidization could only happen if the bidding for franchises is not competitive. The Department is not aware of any evidence that the market for bidding on franchises in your area is not competitive.

While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for small containerized hauling service in the markets alleged in the Complaint. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Anthony V. Nanni,

Chief, Litigation I Section.

Certificate of Service

I hereby certify that on this date I have caused to be served by first class mail, postage prepaid, a copy of the foregoing Comments on the Proposed Final Judgment and the United States' Responses to the Comments upon the following persons, counsel for defendant in the matter of *United States of America* v. *Browning-Ferris Industries, Inc.*:

Rufus Wallingford, Esquire, Executive Vice President and General Counsel, 757 North Eldridge Street, Houston, Texas 77079, (713) 870–7670

Martha J. Talley, DC Bar No. 246330, Dewey Ballantine, 1775 Pennsylvania Ave. NW., Washington, DC 20006, (202) 862–1014

Dated: March 2, 1995.

Nancy H. McMillen,

Attorney, Litigation I Section, Antitrust Division, Department of Justice.

[FR Doc. 95–6045 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Robert E. Sylvester, D.O.; Denial of Application

On June 23, 1994, the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert E. Sylvester, D.O., (Respondent) of Fairfax, South Carolina, proposing to deny his application for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest based on Respondent's lack of authorization to handle controlled substances in the State of South Carolina; that Respondent issued various controlled substances prescriptions for himself and others and such prescriptions were not in the usual course of his professional practice and not for a legitimate medical reason; that he had previously surrendered a DEA Certificate of Registration for cause; that he materially falsified an application for