consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Elf Atochem North America, Inc.* versus *United States, et al.*, Civil Action No. 92–7458 and *United States* versus *Witco Corporation*, Civil Action No. 94–0662 (E.D. Pa.), DOJ Ref. Number 90–11–2–662A.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106; the Region Ii Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10278; and the Consent Decree' Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–5034 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that on February 20, 1996, a Consent Decree was lodged in *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, with the United States District Court for the District of Delaware.

The Complaint in this case, as amended, was filed under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. §§ 9606 and 9607, with respect to the Delaware Sand & Gravel Superfund Site (''DS&G Site'') located in New Castle County, Delaware, against numerous defendants, many of whom have agreed to settlement terms under prior consent decrees. Pursuant to the terms of the Consent Decree with Harvey & Harvey, Inc., the United States will receive a payment of $1.3 million over four years for costs incurred in connection with the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, Ref. No. 90–11–2–298. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Delaware, Chemical Bank Plaza, 1201 Market Street, Suite 100, Wilmington, Delaware 19899. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. When requesting a copy by mail, please enclose a check in the amount of $11.00 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–5035 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR § 50.7, notice is hereby given that on February 21, 1996, a proposed consent decree in *United States* v. *Reliance Battery Mfg. Co.*, Civil Action No. 1–94–CV–80018, was lodged with the United States District Court for the Southern District of Iowa. This consent decree represents a settlement of claims against Reliance Battery Mfg. Co., William S. Grant, and Rosemary V. Grant (''Defendants'') under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9601 *et seq.*

On April 25, 1994, the United States filed a Complaint pursuant to Sections 107(a) and (c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9607(a) and (c)(3) for response costs and punitive damages against Defendants. Subsequently, the United States and Defendants reached a settlement which resolves the issues set forth in the Complaint. Under this settlement between the United States and Defendants, Defendants will pay the United States $20,000 towards response costs incurred by the United States in connection with the release of hazardous substances from the Reliance Battery Mfg. Co. facility in Council Bluffs, Iowa. The consent decree also provides that Defendants will clean up existing contamination at the Reliance Battery Mfg. Co. site and will reimburse the United States for all costs it incurs in connection with this cleanup. In addition, the consent decree contains measures designed to prevent future releases of hazardous substances to the environment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Reliance Battery Mfg. Co.*, D.J. ref. 90–11–2–961.

The proposed consent decree may be examined at the following locations: (1) Office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, East 1st and Walnut Streets, Des Moines, Iowa; (2) Office of the Environmental Protection Agency, Region VII, 726 Minnesota Ave, Kansas City, Kansas; and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–5036 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Browning-Ferris, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), that a proposed Final Consent Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in the above-captioned case.

On February 15, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Browning-Ferris Industries, Inc. (''BFI''), Browning-Ferris Industries of Iowa, Inc. (''BFII''), and Browning-Ferris Industries of Tennessee, Inc. (''BFIT'') from maintaining and enhancing their market power by using contracts that have restrictive and anticompetitive effects, in violation of Section 2 of the Sherman Act, 156 U.S.C. 2.

The Complaint alleges that: (1) Defendant BFIT has market power in small containerized hauling service in the Memphis, TN market and Defendant BFII has market power in small containerized hauling service in the Dubuque, IA market; (2) Defendants, acting with specific intent, used and enforced contracts containing restrictive provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized hauling service in those markets; (3) in the context of their large market shares and market power, and Dubuque markets has had anticompetitive and exclusionary effects by significantly increasing barriers to entry facing new entrants and barriers to expansion faced by small incumbents; (4) Defendants' market power is maintained and enhanced by their use and enforcement of those contracts; and, (5) as a result, there is a dangerous probability that Defendants will achieve monopoly power in the Memphis and Dubuque markets.

The proposed Final Judgment would require that in dealing with small-container customers in the Memphis and Dubuque markets, Defendants only enter into contract containing significantly less restrictive terms than the contracts they now use in those markets. Specifically, the Defendants will be prohibited from using any contract with small-container customers in the Memphis and Dubuque markets that:

(1) Has an initial term longer than two years (unless a longer term is requested by the customer and other conditions are met);

(2) Has any renewal term longer than one year;

(3) Requires the customer give notice of termination more than 30 days prior to the end of a term;

(4) Requires the customer to pay liquidated damages over 3 times the greater of its prior monthly charge or its average monthly charge during the first year of the initial term of the customer's contract, or over 2 times the greater of its prior monthly charge or its average monthly charge thereafter;

(5) Is not labeled ''Contract for Solid Waste Services'' and is not easily readable; or

(6) Requires a customer to give BFI the right or opportunity to provide hauling services for all solid wastes and recyclables, unless the customer affirmatively indicates that is its desire.

The proposed Consent Final Judgment also requires that the Defendants notify customers in the two relevant markets of these changes and prohibits the Defendants from enforcing terms in existing contracts that are inconsistent with the settlement in those markets. Furthermore, Defendants would be prohibited from enforcing provisions in existing contracts that are inconsistent with the Final Judgment.

Public comment is invited within the statutory 60-day period. Such comments will be published in the Federal Register and filed with the Court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 4000, Washington, DC 20530. (phone 202/307–6576).

Rebecca P. Dick,

Deputy Director of Operations.

United States District Court for the District of Columbia

In the matter of *United States of America,* Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.,* Defendants.

[Civil Action No.: 1–96–V00297]

Filed: February 15, 1996.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for the purposes of this proceeding. Defendant Browning-Ferris Industries, Inc. transacts business and is found within the district. Defendants Browning-Ferris Industries of Tennessee, Inc. and Browning-Ferris Industries of Iowa, Inc. consent to personal jurisdiction in this proceeding. Defendants waive any objections as to venue and stipulate that venue for this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)–(h)), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated this 15th day of February, 1996.

Respectfully submitted,

For the plaintiff the United States of America:

Anne K. Bingaman,

Assistant Attorney General, Antitrust Division, U.S. Department of Justice.

Lawrence R. Fullerton,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Anthony V. Nanni,

Chief, Litigation I Section.

Willie L. Hudgins, Jr.,

DC Bar #37127.

Nancy H. McMillen.

Peter H. Goldberg,

DC Bar #055608.

Evangelina Almirantearena,

Attorneys, U.S. Department of Justice, Antitrust Division, City Center Building, Suite 4000, 1401 H Street, NW., Washington, DC 20530, 202/307–5777.

For Defendants Browning-Ferri Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.:

David Foster,

Esquire, DC Bar #358247, Fulbright & Jaworski L.L.P., 801 Pennsylvania Ave., NW, Market Square, Washington, DC 20004–2604, 202/662–0200.

Richard N. Carrell,

Esquire, Fulbright & Jaworski L.L.P., 1301 McKinney, Suite 5100, Houston, Texas 77010–3095, 713/651–5151.

Rufus Wallingford,

Esquire, Senior Vice President & General Counsel, Browning-Ferris Industries, Inc., 757 N. Eldridge at Memorial Drive, Houston, Texas 77079, 713/870–8100.

Lee J. Keller,

Esquire, Senior Attorney, Browning-Ferris Industries, Inc., 757 N. Eldridge at memorial Drive, Houston, Texas 77079, 713/870–8100.

Attorneys for Defendants.

United States District Court for the District of Columbia

In the matter of *United States of America,* Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.,* Defendants.

[Civil Action No.: 1–96–V00297]

Filed: Feb. 15, 1996.

Final Judgment

Whereas Plaintiff, United States of America, having filed its Complaint in this action on February 15, 1996, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the persons of the Defendants, Browning-Ferris Industries, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries of Iowa, Inc. The Complaint states a claim upon which relief may be granted against the Defendants under Section 2 of the Sherman Act, 15 U.S.C. 2.

II. Definitions

As used in this Final Judgment:

(A) ''Memphis market'' means the counties of Shelby, TN; Fayette, TN; Crittenden, AK; DeSoto, MS; Marshall, MS; Tate, MS; and Tunica, MS.

(B) ''Dubuque market'' means the counties of Dubuque and Jackson, IA.

(C) ''Solid waste hauling'' means the collection and transportation to a disposal site of trash and garbage (but not construction and demolition debris; medical waste; hazardous waste; organic waste; or special waste, such as contaminated soil, or sludge; or recyclable materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up, and roll-off service.

(D) ''Defendants'' means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, defendant Browning-Ferris Industries of Tennessee, Inc., a Tennessee corporation with offices in Memphis, TN, and defendant Browning-Ferris Industries of Iowa, Inc., an Iowa corporation with offices in Des Moines, IA, and includes their officers, directors, managers, agents, employees, successors, assigns, parents and subsidiaries.

(E) ''Small Container'' means a 1 to 10 cubic yard container.

(F) ''Small Containerized Solid Waste Hauling Service'' means providing solid waste hauling service to customers by providing the customer with a Small Container that is picked up mechanically using a frontload, rearload, or sideload truck, and expressly excludes hand pick-up service, and service using stationary compactors.

(G) ''Customer'' means a Small Containerized Solid Waste Hauling Service customer.

III. Applicability

This Final Judgment applies to Defendants and to their officers, directors, managers, agents, and employees, successors, assigns, parents and subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. Prohibited Conduct

Defendants are enjoined and restrained as follows:

(A) Except as set forth in paragraph IV (B) and (G), Defendants shall not enter into any contract with a Customer for a service location in the Memphis or Dubuque markets that:

(1) Has an initial term longer than two (2) years;

(2) Has any renewal term longer than one (1) year;

(3) Requires that the Customer give Defendants notice of termination more than thirty (3) days prior to the end of any initial term or renewal term;

(4) Requires that the Customer pay liquidated damages in excess of three times the greater of its prior monthly charge or its average monthly charge over the most recent six months during the first year it is a Customer of Defendants;

(5) Requires that the Customer pay liquidated damages in excess of two times the greater of its prior monthly charge or its average monthly charge over the most recent six months after the Customer has been a Customer of Defendants for a continuous period in excess of one (1) year;

(6) Is not easily readable (e.g., formatting and type-face) and is not labeled, in large letters, CONTRACT FOR SOLID WASTE SERVICES; or

(7) Requires a Customer to give Defendants the right or opportunity to provide hauling service for recyclable or more than one type of solid waste hauling service for a Customer unless the Customer affirmatively indicates its desire for all such services on the front of the contract.

(B) Notwithstanding the provisions of paragraph IV(A) of this Final Judgment. Defendants may enter into a contract with a Customer for a service location in the Memphis or Dubuque markets with an initial term in excess of two years provided that:

(1) Defendants have not implemented any organized, management—authorized sales or marketing plan designed, through pricing or other incentives, to induce Customers to use other than the form contracts Defendants are required herein to offer generally to Customers;

(2) The Customer has the right to terminate the contract after 2 years by giving notice to Defendants thirty (30) days or more prior to the end of that 2 year period; and,

(3) The contract otherwise complies with the provisions of paragraph IV(A)(2)–(7).

(C) From the date of filing of an executed Stipulation in the form attached hereto as Exhibit A, Defendants shall offer to new Customers with service locations in the Memphis and Dubuque markets only contracts that conform to the requirements of paragraphs IV(A) or (B) of this Final Judgment, except as provided in IV(G).

(D) Except as provided in IV(G), Defendants shall send to all existing Customers with service locations in the Memphis and Dubuque markets with contracts having an initial term longer than 2 years and which otherwise do not conform with paragraph IV(B) a notice in the form attached hereto as Exhibit B (for Memphis customers) and as Exhibit C (for Dubuque customers) in accordance with the following schedule:

(1) Defendants shall send notices to Customers with service locations in the Memphis market within ninety (90) days following entry of this Final Judgment; and

(2) Defendants shall send notices to Customers with service locations in the Dubuque market within thirty (30) days following the entry of this Final Judgment.

(E) Except as provided in IV(G), for each Customer with a contract having

an initial term longer than 2 years and which otherwise does not conform to paragraph IV(B) that enters a renewal term 120 days after entry of this Final Judgment, Defendants shall send a reminder to that Customer in the form attached hereto as Exhibit D ninety (90) days or more prior to the effective date of the renewal term. This reminder may be sent to the customer as part of a monthly bill, but if it is, it must be displayed on a separate page and in large print.

(F) Upon entry of this Final Judgment, Defendants may enforce existing contract provisions only to an extent consistent with this Final Judgment. (For example, if an existing service agreement provides for six months' liquidated damages, Defendants may only seek three months' worth of such damages, consistent with IV(A)(4)).

(G) Notwithstanding the provisions of this Final Judgment, Defendants may enter into contracts with municipal or governmental entities that are not in compliance with paragraphs IV(A)–(F) provided that those contracts are awarded to Defendants on the basis of a formal request for bids or a formal request for proposals issued by the Customer.

(H) Notwithstanding the provisions of this Final Judgment, Defendants shall not be required to do business with any Customer.

V. Reporting

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at this principal offices, subject to any lawful privilege, be promised:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendants, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview officers, employees, or agents of Defendants, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at this principal offices, subject to any lawful privilege, Defendants shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States government, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or document to which a claim or protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten days notice shall be given by Plaintiff to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

VI. Further Elements of Judgment

(A) This Final Judgment shall expire on the tenth anniversary of the date of its entry.

(B) Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provision, to enforce compliance, and to punish violations of its provisions.

VII. Public Interest

Entry of this Final Judgment is in the public interest.

Entered: _____

UNITED STATES DISTRICT JUDGE

_____

EXHIBIT A

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.*, Defendants.

[Civil Action No.: 1–96–V00297]

Filed: February 15, 1996.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for the purposes of this proceeding. Defendant Browning-Ferris Industries, Inc. transacts business and is found within the district. Defendants Browning-Ferris Industries of Tennessee, Inc. and Browning-Ferris Industries of Iowa, Inc. consent to personal jurisdiction in this proceeding. Defendants waive any objections as to venue and stipulate that venue for this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16 (b)–(h)), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated this _____th day of _____, 1996.

Respectfully submitted,

For the Plaintiff the United States of America.

Anne K. Bingaman,

Assistant Attorney General, Antitrust Division, U.S. Department of Justice.

Lawrence R. Fullerton,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Anthony V. Nanni,

Chief, Litigation I Section.

Willie L. Hudgins, Jr.,

DD Bar #37127.

Nancy H. McMillen,

Peter H. Goldberg,

DC Bar #055608.

Evangelina Almirantearena,

Attorneys, U.S. Department of Justice, Antitrust Division, City Center Building, Suite 4000, 1401 H Street, NW., Washington, D.C. 20530, 202/307–5777.

For defendants Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.:

David Foster, Esquire,

DC Bar #358247, Fulbright & Jaworski, 801 Pennsylvania Ave., NW., Market Square, Washington, D.C. 20004–2604, 202/662–0200.

EXHIBIT B

Notice to Customers

Dear Customer:

BFI is offering a new two year contract to its small containerized solid waste hauling customers with service locations in [insert market here]. In most cases, this new contract will have terms that are more advantageous to customers than their current contracts. This new contract has the following features:

- an initial term of no longer than 2 years (unless you request a longer term);
- a renewal term of 1 year;
- at the end of your initial term, you may take no action and your contract will renew *or* you may choose not to renew by giving us notice at any time up to 30 days prior to the end of the initial term;
- if you request a contract with a term longer than 2 years, you can cancel that contract by giving us notice at any time up to 30 days prior to the end of the first 2 years;
- you can choose to terminate the contract at any other time, but you will be required to pay, as liquidated damages, no more than 3 times the greater of your prior monthly or average monthly charge, but if you have been a customer continuously for more than 1 year, the liquidated damages would be reduced to 2 times the greater of your prior monthly or average monthly charge;
- you will be able to choose on the contract which specific types of waste hauling services you would like us to perform.

On or before the termination date of your existing service contract, BFI will offer you continued service under the new contract. BUT AS AN EXISTING CUSTOMER, YOU WILL IMMEDIATELY GAIN THE ADVANTAGES OF THE REVISED CONTRACT SINCE BFI WILL NOT ENFORCE ANY PROVISION IN YOUR CONTRACT IN ANY MANNER INCONSISTENT WITH ONE OF THE NEW TERMS OFFERED ABOVE. THERE IS, THEREFORE, NO NEED TO SIGN A REVISED CONTRACT AT THIS TIME. HOWEVER, IF YOU WOULD LIKE TO ENTER A NEW CONTRACT IN THE MEANTIME, PLEASE SEND A LETTER TO [insert name and address] AND WE WILL CONTACT YOU.

Thank you for your attention.

EXHIBIT C

Notice to Customers

Dear Valued Customer:

BFI is offering a new two year contract to all small containerized solid waste hauling customers with service locations in the countries of Dubuque and Jackson, IA. We would like to take this opportunity to offer this contract to you. Of course, if you prefer, you can continue with your existing contract.

In most cases, this new contract will have terms that are more advantageous to customers than their current contracts. This new contract has the following features:

- an initial term of no longer than 2 years (unless you request a longer term);
- a renewal term of 1 year;
- you can choose not to renew the contract by simply giving us notice at any time up to 30 days prior to the end of your term;
- if you request a contract with a term longer than 2 years, you can cancel that contract by giving us notice at any time up to 30 days prior to the end of the first 2 years;
- you can choose to terminate the contract at any other time, but you will be required to pay, as liquidated damages, no more than 3 times the greater of your prior monthly or average monthly charge. If you've been a customer continuously for more than 1 year, the liquidated damages would be reduced to 2 times the greater of your prior monthly or average monthly charge;
- you will be able to choose on the contract which specific types of waste hauling services you would like us to perform.

You may obtain a new contract containing these terms by calling [insert BFI contact and number].

If you prefer, you may continue with your existing contract. If you retain your existing contract, we will not enforce any terms that are inconsistent with the new form contract terms.

If you have any questions, please call [BFI contact person and phone number.]

EXHIBIT D

REMINDER: Your contract will automatically renew 90 days from the date of this notice unless we receive your cancellation within 60 days from the date of this notice.

You may also obtain a new form contract for solid waste hauling services with some terms more advantageous to you than your current contract. We will send you a copy on request.

Existing contract terms inconsistent with the new form will not be enforced against you.

United States District Court for the District of Columbia

In the matter of *United States of America,* Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries Inc.,* Defendants.

[Case Number: 1–96–V00297]

JUDGE: Thomas Pennfield Jackson.
DATE STAMP: February 15, 1996.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

I. Nature and Purpose of the Proceeding

On February 15, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Browning-Ferris Industries, Inc. (''BFI''), Browning-Ferris Industries of Iowa, Inc. (''BFII''), and Browning-Ferris Industries of Tennessee, Inc. (''BFIT'') from using contracts that have restrictive and anticompetitive effects on small containerized hauling service markets in Memphis and Dubuque, in violation of Section 2 of the Sherman Act, 15 U.S.C. 2. As alleged in the Complaint, Defendants have attempted to monopolize small containerized hauling service in the Memphis and Dubuque geographic markets by using and enforcing contracts containing restrictive provisions to maintain and enhance their existing market power there.

The Complaint alleges that: (1) Defendant BFIT has market power in small containerized hauling service in the Memphis, TN market and Defendant BFII has market power in small containerized hauling service in the Dubuque, IA market; (2) Defendants, acting with specific intent, used and enforced contracts containing restrictive provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized hauling service in those markets; (3) in the context of their large market shares and market power, Defendants' use and enforcement of those contracts in the Memphis and Dubuque markets has had anticompetitive and exclusionary effects by significantly increasing barriers to entry facing new entrants and barriers to expansion faced by small incumbents; (4) Defendants' market power is maintained and enhanced by their use and enforcement of those contracts; and, (5) as a result, there is a dangerous probability that Defendants will achieve

monopoly power in the Memphis and Dubuque markets.

In its Complaint, Plaintiffs seeks, among other relief, a permanent injunction preventing Defendants from continuing any of the anticompetitive practices alleged to violate the Sherman Act, and thus affording fair opportunities for other firms to compete in small containerized hauling service in the Memphis and Dubuque markets.

The United States and Defendants also have filed a Stipulation by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of Defendants' actions in the Memphis and Dubuque markets. Under the proposed Final Judgment, as explained more fully below, in dealing with small-container customers in the Memphis and Dubuque markets, Defendants would only be permitted to enter into contracts containing significantly less restrictive terms than the contracts they now use in those markets. Furthermore, Defendants would be prohibited from enforcing provisions in existing contracts that are inconsistent with the Final Judgment.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

Browning-Ferris Industries, Inc. (''BFI''), is the world's second-largest company engaged in the solid waste hauling and disposal business, with operations throughout the United States. Browning-Ferris Industries, Inc. had revenues of approximately $4 billion in its 1994 fiscal year.

Browning-Ferris Industries of Iowa, Inc. (''BFII'') is a subsidiary of BFI with its principal offices in Des Moines, IA. It is the largest solid waste hauling and disposal company in the Dubuque, IA market. BFII had revenues of over $2.6 million in its 1994 fiscal year.

Browning-Ferris Industries of Tennessee, Inc., (''BFIT'') is also a subsidiary of BFI. It has its principal offices in Memphis, TN. It is the largest solid waste hauling and disposal company in the Memphis, TN market. BFIT had revenues over $40.9 million in its 1994 fiscal year.

A. The Solid Waste Hauling Industry

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

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than do residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yards containers are called ''small containers.'' Small containers 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. Service to commercial customers that use small containers is called ''small containerized hauling service.''

Solid waste hauling firms also provide service to residential and industrial (or ''roll-off'') customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags, trash cans, or small plastic containers at curbside.

Industrial or roll-off customers include factories and construction sites. These customers either generate noncompactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customers' premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash similar to the waste of commercial customers, but in much greater quantities; it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

B. Relevant Product Market

The relevant product market is a small containerized hauling service. There are no practical substitutes for this service. Small containerized hauling service customers will not generally switch to noncontainerized service in the event of a price increase, because it is too impractical and more costly for those customers to bag and carry their volume of trash to the curb for hand pick-up. Similarly, roll-off service is much too costly and the container takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of compactible solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

C. Relevant Geographic Markets

The relevant geographic markets are the Memphis market and the Dubuque market. Small containerized 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 from customers without collecting significant amounts of waste. Thus, it is not efficient 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.

D. Defendants' Attempt to Monopolize

Defendant BFIT has market power in small containerized hauling service in the Memphis market. BFIT has maintained a very high market share for over 10 years—consistently in excess of 60 percent.

Defendant BFII has market power in small containerized hauling service in the Dubuque market. BFII entered that market in 1979. It maintains a very high market share—in excess of 60 percent.

There are substantial barriers to entry and to expansion into the small containerized hauling markets in Memphis and in Dubuque. A new entrant or small incumbent hauler must be able to achieve minimum efficient scale to be competitive. First, it must be able to generate enough revenues to cover significant fixed costs and overhead.

Second, a new entrant or small incumbent hauler must be able to obtain enough customers to use its trucks efficiently. For example, it is not efficient to use a truck half a day because the firm doesn't have enough customers to fill up the truck.

Third, a new entrant or small incumbent hauler needs to obtain customers that are close together on its routes (called ''route density''). Having customers close together enables a company to pick up more waste in less time (and generate more revenues in less time). The better a firm's route density, the lower its operating costs.

Until a firm overcomes these barriers, the new entrant or small incumbent will have higher operating costs than Defendants in the relevant geographic markets, may not operate at a profit, and will be unable effectively to constrain pricing by Defendants in those markets.

Defendant BFIT in the Memphis market and Defendant BFII in the Dubuque market have entered into written contracts with the vast majority of their small containerized hauling customers. Many of these contracts contain terms that, when taken together in the relevant markets where Defendants have market power, make it more difficult and costly for customers to switch to a competitor of Defendants and allows Defendants to bid to retain customers approached by a competitor.

The contracts enhance and maintain Defendants' market power in the Memphis and Dubuque markets by significantly raising the cost and time required by a new entrant or small incumbent firm to build its customer base and obtain efficient scale and route density. Therefore, Defendants' use and enforcement of these contracts in the Memphis and Dubuque markets raise barriers to entry and expansion in those markets. Those contract terms are:

a. A provision giving Defendants the exclusive right or opportunity to collect and dispose of all the customers' solid waste and recyclables;

b. An initial term of three years;

c. A renewal term of three years that automatically renews unless the customer sends Defendants a written notice of cancellation by certified mail more than 60 days from the end of the initial or renewal term; and

d. A term that requires a customer that terminates the contract at any other time to pay Defendants, as liquidated damages, its most recent monthly charge times six (if the remaining term is six or more months) or its most recent monthly charge times the number of months remaining under the contract (if the remaining term is less than six months).

The appearance and format of the contracts also enhances Defendants' ability to use the contracts to maintain their market power in these markets. The provisions that make it difficult for a customer to switch to a competing hauler are not obvious to customers in the relevant markets. The document is not labeled ''Contract'' so its legally binding nature is not always apparent to the customer. Also, all the restrictive provisions mentioned above are in small print and the provision described in (d) is on the back of the document.

Defendants' use and enforcement of the contracts described above in the Memphis and Dubuque markets have raised the barriers already faced by new entrants and small existing firms in those markets. Defendants' use and enforcement of the contracts has reduced the likelihood that customers will switch to a Defendant's competitor. Given Defendants' market power, this has made it more difficult for competitors to achieve efficient scale, obtain sufficient customers to use their trucks efficiently, and develop sufficient route density to be profitable and to constrain Defendants' pricing in those markets.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will end the unlawful practices currently used by Defendants to perpetuate and enhance their market power in the Memphis and Dubuque markets. It requires Defendants to offer less restrictive contracts to small containerized hauling customers in the Memphis and Dubuque markets.[1]

In particular, Paragraphs IV (A) and (B) prohibit Defendants from entering into contracts containing the type of restrictive terms described above. Paragraphs IV (C), (D), (E), and (F) are designed to bring existing contracts into compliance with the proposed Final Judgment on an expeditious basis.

A. Prohibition of Contract Terms and Formats

The contracts used most frequently by Defendants in the relevant markets have an initial term of three years and renew automatically and perpetually for additional three-year terms unless cancelled by the customer. In these markets, given that the Defendants have market power and a vast majority of their existing customers are subject to such contracts, the long initial term and long renewal terms prevent new entrants and small incumbents, no matter how competitive, from quickly obtaining enough customers that are close together to be profitable. Shortening the initial term and the renewal term will allow competitors to compete for more of the customer base each year and, if they compete effectively, to obtain efficient scale and route density more quickly. This, in turn, will enhance competition in the relevant markets and will help offset Defendants' market power.

Paragraph IV(A)(1) prohibits Defendants from using contracts for service locations in the Memphis and Dubuque markets that have an initial term longer than two years, except under certain very limited circumstances.

A contract with an initial term in excess of two years in the relevant markets is permitted, under limited circumstances, pursuant to Paragraph IV(B) of the proposed Final Judgment, but the contracts must otherwise conform to the Final Judgment. The United States is aware that some customers, for valid business reasons such as long-term price assurance, want contracts with an initial term longer than two years. Paragraph IV(B) is intended to permit customers who want them to have such contracts, while ensuring that customers who have not made such a choice do not, nevertheless, find themselves with long contracts. Under Paragraph IV(B)(1), Defendants may sign a contract of longer than two years with a customer, but only if the Defendants have not implemented any organized, management-authorized sales or marketing plan designed, through pricing or other incentives to induce customers to use other than the form contracts Defendants are required to offer by the proposed Final Judgment. Even if the customer signs a contract with an initial term longer than two years, the customer retains the right to terminate that contract at the end of the first 2 years without payment of any liquidated damages, pursuant to Paragraph IV(B)(2). Paragraph IV(B) was included to give Defendants the ability to contract with customers who truly want a longer term, for the United States anticipates that contracts with initial terms longer than two years will be the exception, not the rule.

[1] The proposed Final Judgment applies to all contracts entered into by Defendants with customers for service locations in the relevant markets except contracts described in Paragraph IV(G). Contracts awarded to Defendants by municipal or government entities as a result of a formal request for bids or a formal request for proposals need not contain the provisions dictated by the proposed Final Judgment. These contracts were excluded from the decree to assure that competition for such bids would not be adversely affected by preventing Defendants from bidding.

Paragraph IV(A)(2) prohibits Defendants from signing a contract with a renewal term longer than one year in length, down from the three-year renewal term used as a standard in the Memphis and Dubuque markets.

Paragraph IV(A)(3) increases the period of time that a customer may notify Defendants of its intention not to renew the contract from a period ending 60 days before the end of any initial or renewal term to a period ending 30 days before the end of any such term. This allows the customer to make a decision concerning renewal closer to the end of the contract term. A customer is more likely to consider whether or not it wants its existing contract renewed the closer that customer is to the end of the contract term. Paragraph IV(A)(3) assures that a customer will be able to choose not to renew its contract up to 30 days from the end of the contract term. Paragraph IV(A)(3) also eliminates the requirement that a customer give its nonrenewal notice in writing and send it to Defendants by certified mail. A telephone call or letter is sufficient under the proposed Final Judgment. These changes in the notification provisions make it easier for the customer not to renew within the terms of the contract. This, in turn, enhances customer choice and enables small incumbents to compete for more customers.

A liquidated damages provision is intended to allow a seller to recover otherwise unrecoverable costs where the amount of the damage resulting from a breach of contract is difficult to determine. Defendants do incur some unrecoverable costs, including sales costs, in contracting with customers for small containerized solid waste hauling services. The contract currently most widely used by Defendants in the relevant markets contains the following liquidated damages provision for early termination: the customer must pay six times its most recent monthly charge unless the contract has a remaining term of less than six months, in which case the customer pays its most recent monthly charge times the number of months remaining in its contract term. If this case went to trial, the United States believes it could prove that these liquidated damages far surpass the contracting costs the Defendants incur, and that, in the relevant markets where Defendants have market power, Defendants have threatened to enforce such liquidated damages provisions with the effect that customers did not switch to new entrants and small incumbents when they desired to do so. In the presence of market power, the threat of enforcing large liquidated damages provisions can deter sufficient customers from switching to a competitor and harm competition.

Paragraphs IV(A) (4) and (5) reduce the amount of liquidated damages Defendants can collect from a customer. The liquidated damages Defendants may collect from a customer in the relevant markets during the first year of the initial term of a customer's contract are reduced to the greater of three times the customer's prior monthly charge or average monthly charge over the prior six months. A firm that has been a customer of a Defendant for a continuous period in excess of one year can be required to pay Defendants no more than two times the greater of the customer's prior monthly charge or average monthly charge over the prior six months. The changes made in the liquidated damages provisions make it less expensive (and therefore more likely) that a customer can switch to a competing hauler should it choose to do so during the contract term. Defendants have incurred costs to sign small containerized solid waste hauling customers to contracts. However, as customers pay their monthly bills over time, the unrecovered amount of those costs decreases. That fact is reflected in the proposed Final Judgment by the reduction of the liquidated damages Defendants may collect once a firm has been Defendants' customer for more than one year.

The contracts predominantly used by Defendants in the relevant markets currently give Defendants the exclusive right to perform all of a customer's solid waste hauling services and recycling, just because the customer has signed a contract for small containerized solid waste hauling service. Those contracts also contain a provision requiring the customer to give BFI the opportunity to provide the customer's need for additional services during the contract term.[2] Paragraph IV(A)(7) of the proposed Final Judgment prohibits these provisions in the relevant markets. Instead, it provides that Defendants may perform only those services a customer selects. Defendants may perform all types of solid waste hauling services and recycling for a customer, but only if the customer chooses to have Defendants do so by affirmatively indicating its desire for such additional services on the front of the contract.[3] The United States does not intend this provision to prohibit Defendants from requiring that it be the exclusive supplier of any one type of service for which it contracts with a customer. For example, if a customer contracts with Defendants to perform small containerized solid waste hauling service at a specific service location, Defendants may require that it be the exclusive supplier for that service at the location.

Paragraph IV(A)(6) of the proposed Final Judgment requires Defendant to change the appearance and format of its contracts in the relevant markets. If this case went to trial, evidence from customers in those markets would show that some of them were not aware they had signed legally binding documents. Therefore, the proposed Final Judgment requires that the document be labeled ''CONTRACT FOR SOLID WASTE SERVICES'' in large letters. Furthermore, evidence from customers in the relevant markets would show that the contractual provisions that enable a firm with market power to restrict customers from switching to a competitor are in small print and not readily noticed by all customers. The proposed Final Judgment requires that the contracts used in the relevant markets be easily readable in formatting and type-face.

B. Transition Rules

In the Stipulation consenting to the entry of the proposed Final Judgment, Defendants agreed to abide by the provisions of the proposed Final Judgment immediately upon the filing of the Complaint, *i.e.*, as of February 15, 1996. Among other things, the transition provisions described herein will require Defendants to abide by the foregoing limitations and prohibitions when entering into any contracts with new small containerized hauling customers after February 15, 1996. Certain additional provisions of the proposed Final Judgment also apply to existing customer contracts that are inconsistent with the proposed Final Judgment's requirements for new customer contracts.

Under Paragraph IV(C), Defendants must offer contracts that conform with Paragraphs IV (A) or (B) of the proposed Final Judgment to all new customers with service locations in the Memphis and Dubuque markets beginning today,

[2] That provision reads: ''OPPORTUNITY TO PROVIDE ADDITIONAL SERVICES. BFI values the opportunity to meet all of Customer's nonhazardous waste collection and disposal needs. Customer will provide BFI the opportunity to meet those needs and to provide, on a competitive basis, any additional nonhazardous waste disposal and collection services during the term of this Agreement.''

[3] The United States anticipates that the customer should be able to affirmatively indicate its choice of service types by checking a box, or writing in the type of service it wants on the front of the contract, or by some similar mechanism.

the date of the filing of the executed Stipulation.

Under Paragraph IV(D), within ninety (90) days following entry of the Final Judgment Defendants must notify existing customers with service locations in the Memphis market who have an initial term longer than two years and do not otherwise comply with the proposed Final Judgment of their right to sign a new contract complying with the proposed Final Judgment. Defendants must send a similar notice within thirty (30) days following entry of the Final Judgment for customers with service locations in the Dubuque market. These notices must also inform any customers choosing to retain their existing contracts that no provisions inconsistent with the proposed Final Judgment will be enforced against them. The Final Judgment provides more time for Defendants to notify customers in Memphis than in Dubuque because Defendants have vastly more customers in Memphis than in Dubuque; they will need a longer time to provide the required notices and answer consumer inquiries in Memphis than they will need in Dubuque. With regard to municipal and government entities, Defendants are not required to notify those entities with nonconforming contracts that were awarded on the basis of a formal request for bids or a formal request for proposals issued by the customer.

Paragraph IV(E) requires Defendants to give an additional notice in the form of a reminder to any customer subject to a nonconforming contract that enters a renewal term 120 days or more after the entry to the proposed Final Judgment. Defendants must send the reminder to each such customer ninety days or more prior to the effective date of the renewal term. The reminder informs the customer that it must cancel its contract by a certain date or the contract will renew. It also reminds the customer that it may enter into a new contract conforming to the proposed Final Judgment on request and that terms in the customer's existing contract that are inconsistent with the new form will not be enforced against it. Defendants may send this reminder as part of a monthly bill, as long as it appears on a separate page and in large print so that it will be noticeable.

Under Paragraph IV(F), Defendants may enforce existing contract provisions only to the extent consistent with the Final Judgment upon entry of the Final Judgment by the Court.

Finally, under paragraphs IV (G) and (H), the proposed Final Judgment makes clear that contracts awarded by municipal or government entities on the basis of a formal request for bids or proposals issued by the customer need not comply with Paragraphs IV(A)–(F). Moreover, nothing in the proposed Final Judgment requires Defendants to do business with any customer.

Paragraphs IV (C)–(F) further two consistent goals. Opportunities for competition in small containerized hauling service in the relevant markets will be fostered by a rapid end to the provisions that significantly raise entry barriers in the relevant markets. At the same time, the transition rules avoid creating any unnecessary disruption of the customers' trash hauling service that might result from voiding all nonconforming contracts. Existing customers are not required to terminate or amend their existing contracts with Defendants; the choice belongs to the customer. However, Defendants may not enforce against any customer any provision inconsistent with the proposed Final Judgment.

To ensure that existing customers learn of their rights under the proposed Final Judgment, Paragraphs IV (D) and (E) require Defendants to notify customers of their rights under the Final Judgment and remind them annually of their right to terminate their existing contract or to sign a new contract form.

C. Enforcement

Section V of the proposed Final Judgment establishes standards and procedures by which the Department of Justice may obtain access to documents and information from Defendants related to their compliance with the proposed Final Judgment.

D. Duration

Section VI of the proposed Final Judgment provides that the Final Judgment will expire on the tenth year after its entry. Jurisdiction will be retained by the Court to conduct further proceedings relating to the Final Judgment, as specified in Section VI.

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 attorneys' 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 defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States 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 (60) 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 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: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 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.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation against Defendants. The United States could have brought suit and sought preliminary and permanent injunctions against the use and enforcement of these contracts by Defendants in the relevant markets. The United States is satisfied, however, that the relief outlined in the proposed Final Judgment will eliminate Defendants' ability to use restrictive and anticompetitive contracts to maintain and enhance their market power in the relevant markets. The United States believes that these contracts will no longer inhibit the ability of a new entrant to compete with the Defendants. The relief sought will allow new entry

and expansion by existing firms in those markets.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1462 (D.C. Cir. 1995). In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [4]

Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

The Court's inquiry, under the APPA, is whether the settlement is ''within the reaches of the public interest.'' [5] The proposed Final Judgment enjoins the Defendants' continued use of overly restrictive contract terms and opens local markets to increased competition, thus effectively furthering the public interest.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 15, 1996.

Respectfully submitted,

Nancy H. McMillen,

Peter H. Goldberg,

DC Bar #055608,

Evangelina Almirantearena,

Attorneys, Antitrust Division, U.S. Department of Justice, 1401 H. Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–5777.

Certification of Service

I hereby certify that a copy of the foregoing has been served upon Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc., by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this 15th day of February, 1996.

Rufus Wallingfood,

Esquire, Executive Vice President and General Counsel,

Lee Keller,

Esquire, Senior Litigation Counsel, Browning-Ferris Industries, Inc., 757 North Eldridge Street, Houston, TX 77079.

David Foster,

Esquire, Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, NW, Market Square, Washington, D.C. 20004–2604.

Richard N. Carrell,

Esquire, Fulbright & Jaworski, L.L.P., 1301 McKinney, Suite 5100, Houston, Texas 77010–3095.

Nancy H. McMillen,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H. Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–5777.

United States District Court for the District of Columbia

In the matter of *United States of America,* Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.,* Defendants.

[Case number: 1–96–V00297]

Judge: Thomas Penfield Jackson
Deck Type: Antitrust.
Date Stamp: Feb. 15, 1996.

Motion of United States to Exclude Case From all Discovery Requirements and to Follow the Procedures of the Antitrust Procedures and Penalties Act

The United States of America hereby moves the Court for an order to exclude this case from all discovery requirements under the Federal Rules of Civil Procedure given that the disposition of a negotiated civil antitrust case brought and settled by the United States is governed by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h) [hereinafter ''the APPA''].

As set forth below, the parties have consented to the entry of the proposed Final Judgment without trial or adjudication of any issue of fact or law, and without the Final Judgment constituting any evidence against or an admission by any party with respect to any such issue. Pursuant to the procedures of the APPA, discovery between the parties is unnecessary and would be contrary to the intentions of the parties. Therefore, the United States respectfully requests that the Court enter the attached Order which excludes the case from discovery requirements of the Federal Rules of Civil Procedure, and states that the disposition of the case will be consistent with the APPA.

1. On February 15, 1996, the United States filed a Complaint and a

[4] 119 Cong. Rec. 24598 (1973). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[5] *United States v. Bechtel*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see United States v. BNS, Inc.*, 858 F.2d 456, 463 (9th Cir. 1988); *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. *See also United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) *quoting United States v. Gillette Co.*, supra, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

Stipulation by which the parties agreed to the Court's entry of an attached proposed Final Judgment following compliance with the APPA.

2. The United States also filed on February 15, 1996, a Competitive Impact Statement as required by 15 U.S.C. 16(b).

3. The APPA also requires the United States to publish a copy of the proposed Final Judgment and the Competitive Impact Statement in the Federal Register. It further requires the publication of summaries of the terms of the proposed Final Judgment and the Competitive Impact Statement in at least two newspapers of general circulation. This notice will inform members of the public that they may submit comments about the Final Judgment to the United States Department of Justice, Antitrust Division. 15 U.S.C. 16 (b)–(c).

4. Following such publication in the newspapers and Federal Register, a sixty-day waiting period will begin. During this time, the United States will consider, and at the close of that period respond to, any public comments that it receives. It will publish the comments and its responses in the Federal Register. 15 U.S.C. 16(d).

5. After the expiration of the sixty-day period, the United States will file with the Court the comments, the Government's responses, and a Motion For Entry of the Final Judgment. 15 U.S.C. 16(d).

6. After the filing of the Motion for Entry of the Final Judgment, the Court may enter the Final Judgment without a hearing, if it finds that the Final Judgment is in the public interest. 15 U.S.C. 16 (e)–(f).

7. The parties fully intend to comply with the requirements of the APPA.

As stated above, the Antitrust Procedures and Penalties Act governs the disposition of civil antitrust cases brought and settled by the United States. Discovery between the parties, which have consented to the proposed settlement filed with the Court, is unnecessary. Accordingly, the attached Order is justified and should be entered by the Court.

Respectfully submitted,

Nancy H. McMillen,

Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, Tel: (202) 307–5777.

Certificate of Service

I hereby certify that on February 15, 1996, a true and correct copy of the foregoing has been served on the parties below by placing a copy of this MOTION OF UNITED STATES TO EXCLUDE CASE FROM ALL DISCOVERY REQUIREMENTS AND TO FOLLOW THE PROCEDURES OF THE ANTITRUST PROCEDURES AND PENALTIES ACT in the U.S. Mail, postage prepaid, to the address given below:

For Defendants Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.:

David Foster, *Esquire,*

Fulbright & Jaworski, L.L.P., 801 Pennsylvania Ave., N.W., Market Square, Washington, D.C. 20004–2604.

Rufus Wallingford, *Esquire,*

Executive Vice President and General Counsel,

Lee Keller, Esquire,

Senior Litigation Counsel, Browning-Ferris Industries, Inc., 757 North Eldridge Street, Houston, TX 77079.

Richard N. Carrell, *Esquire,*

Fulbright & Jaworski, L.L.P., 1301 McKinney, Suite 5100, Houston, TX 77010–3095.

Nancy H. McMillen,

Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–5777.

United States District Court for the District of Columbia

In the matter of *United States of America,* Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.,* Defendants.

[Civil Action No.: 1–96–V00297]

Filed: Feb. 15, 1996.

Order Excluding Case From All Discovery Requirements and To Follow the Procedures of the Antitrust Procedures and Penalties Act

Plaintiff, the United States of America, has moved the Court to exclude this case from all discovery requirements under the Federal Rules of Civil Procedure given that the disposition of negotiated civil antitrust consent decrees are governed by the *Antitrust Procedures and Penalties Act,* 15 U.S.C. 16 (b)–(h). The Court is of the opinion that this motion should be granted.

It is therefore ORDERED that this case is excluded from all discovery requirements under the Federal Rules of Civil Procedure.

It is also therefore ORDERED that the procedures to be followed in this case shall be consistent with the *Antitrust Procedures and Penalties Act,* 15 U.S.C. § 16 (b)–(h).

Dated: _____

UNITED STATES DISTRICT JUDGE.

[FR Doc. 96–5033 Filed 3–4–96; 8:45 am]

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United States v. Waste Management, Inc.; Proposal Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Consent Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Georgia in the above-captioned case.

On February 15, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Waste Management, Inc. (''WMI''), Waste Management of Georgia, Inc. (''WMG''), d/b/a Waste Management of Savannah, and Waste Management of Louisiana, Inc. (''WML''), d/b/a Waste Management of Central Louisiana from maintaining and enhancing their market power by using contracts that have restrictive and anticompetitive effects, in violation of Section 2 of the Sherman Act, 15 U.S.C. 2.

The Complaint alleges that: (1) Defendant WMG has market power in small containerized hauling service in the Savannah, GA market and Defendant WML has market power in small containerized hauling service in the Central Louisiana market; (2) Defendants, acting with specific intent, used and enforced contracts containing restrictive provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized hauling service in those markets; (3) in the context of their large market shares and market power, Defendants' use and enforcement of those contracts in the Savannah and Central Louisiana markets has had anticompetitive and exclusionary effects by significantly increasing barriers to entry facing new entrants and barriers to expansion faced by small incumbents; (4) Defendants' market power is maintained and enhanced by their use and enforcement of those contracts; and, (5) as a result, there is a dangerous probability that Defendants will achieve monopoly power in the Savannah and Central Louisiana markets.

The proposed Final Consent Judgment would require that, in dealing with small-container customers in the Savannah and Central Louisiana markets, Defendants only to enter into contracts containing significantly less restrictive terms than the contracts they now have in use in those markets. Specifically, the Defendants will be