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MERGERMANIA APPROACHES ENDGAME

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A recent Waste News editorial asked whether the Justice Department's required divestiture of certain overlapping assets involved in the Waste Management Inc. and Browning-Ferris Industries Inc. megamergers will protect competition in the waste industry. Overarching all other issues, the key point remains unaffected by the Justice Department's orders. Significant anticompetitive forces loom regardless of the mergers and any regulatory actions taken to counteract their adverse impacts.

Based on numerous statements that officials of the merging waste companies have made to analysts and reporters, long before the mergers took place, the national consolidators, along with most of the regional wannabes, made a pledge to their Wall Street backers. They committed to hike fees to improve shareholder returns, rather than compete on price for market share. With their asset swaps and volume exchanges that followed, they went on to become blood brothers.

Once the majors complete their impending lockdown of disposal capacity -- assuming Wall Street doesn't spook before they reach the finish line -- their ability to price-squeeze independents and new entrants will give them dominant pricing power to do so. (Exceptions will be those markets that have a "relief valve" of publicly owned or merchant landfills, or one of the handful of privately held vertically integrated businesses.)

As for the megamergers, those deals went down because the management of WMI and BFI had foundered. Wall Street opted to resuscitate instead of abandon those companies' valuable assets by bringing on a new generation of more aggressive consolidators through takeovers rather than executive search firms. But that decision by the financial managers to bring in a relief pitcher rather than sell the team has little to do with the deeper movements in the industry's tectonic plates.

The disgorgement of all of the merged firms' overlapping assets -- even if that were done -- would have significance for the underlying structure of the industry only if the decreed assets were sold to companies that are both (1) independent of those taking the pledge and (2) not slated to be snatched up later.

Originally, the Justice Department's order did not address whether the merging firms could directly negate the intended effect of divestitures by selling the overlapping assets to other consolidators that had pledged. Waste Management's attempt to sell its divested assets to Allied Waste Industries Inc. when it had gone on to merge with **Eastern** Environmental Services Inc. was halted by the agency in response to complaints that this amounted to little more than shuffling a deck of cards among the same small circle of friends. Though that was a good move by the agency, several codicils fatally blunted its reach.

For one thing, it turns out that the Justice Department's intervention barred sales only to other consolidators that were already in the particular market where the assets were being sold. It did not impede sales to consolidators not operating in those markets - even if they had taken the pledge.

For another, as the party that made the Justice Department filing to protest WM I's sale to Allied, we're not convinced that even a flat-out bar of any other complicit consolidators could succeed based on what we have found digging through the record. Finding purchasers that are truly

independent and have the wherewithal to finance buys of integrated properties is going to be frustratingly hard. Landfills are too pricey to finance with small bank loans.

The new generation of firms that have attracted investor backing and have thus become capable of financing these sizable purchases typically have had to explicitly advertise themselves to Wall Street as likely acquisition conduits for the larger companies instead of as threats. Why, after all, would Wall Street investors want to finance a firm that is going to turn around and sabotage their stakes in the rest of the waste business by driving down prices?

Beyond the fact that the remaining independents are at risk of being squeezed when the integrated consolidators secure control of the landfills lies the other fallacy in the Justice Department's response. If the **Eastern** Environmental story is symptomatic of what is going on, no true independents with the cash to pick up the divested castoffs from the mergers ordered by the agency will exist. Only severing landfills -- the critical bottleneck in this business - from hauling can really save competition.

Unfortunately, unless there is an outcry from the independents and customers in the hinterland, that is not going to clamber onto the regulators' radar screen. Although the megamergers are unnecessary to reach endgame, they do provide the legal hook to break up vertical integration in the industry.

Anderson is president of RecycleWorlds Consulting, Madison, Wis. This column is excerpted from a lengthier analysis by Anderson entitled "Consolidation and Competition: The **Eastern Merger** Story." The full text appears on the Waste News Web site, www.wastenews.com, on the Opinion page under Columns.