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[Green Tech And Antitrust Intersect: One Recycler Sues Another Over Alleged Anti-Competitive Behavior](#)

In addition to antitrust, Constantine Cannon has an environmental and sustainability practice and represents green technology companies profiting from wise resource use. These different disciplines that we work in are reflected in a recent filing we noticed in the federal district court for Connecticut, [Environmental Products Corp. \(“Envipco”\). v. Tomra of North America, Inc.](#) (D. Conn. filed Nov. 4, 2010).

In *Envipco*, both plaintiffs and defendants are in the business of manufacturing and operating Reverse Vending Machines (RVMs), which collect deposit bottles and cans and refund the deposit. The RVM company must then sort the containers of each manufacturer and return each one’s bottles and cans to it. The suit alleges that a good pick-up service for the cans to return them to their manufacturers requires that each firm have a concentrated customer base and collection route, requiring a contract with at least one major supermarket chain in which the RVM company operates. Envipco says that Tomra has entered into exclusive RVM contracts with 12 of 20 major supermarket chains that account for the majority of RVM use, foreclosing Envipco from a substantial portion of business in the bottle bill states that constitute the relevant market or markets. Moreover, Tomra is alleged to have entered into equity-based partnerships with beverage manufacturers, precluding Envipco from a substantial portion of the can and bottle pickup business, forcing Envipco to turn to Tomra for that function in those places, and causing Envipco to lose underlying RVM business. Envipco also alleges that Tomra engaged in deceptive billing practices to lure in customers and forged joint ventures with key players in the market, “denying competitors the ability to compete on a level playing field.”

The complaint also claims that Tomra is negotiating to buy another reverse vending company, Can & Bottle Systems Inc., that has monopoly power in Oregon. Tomra and Envipco are alleged to be the only significant competitors in the U.S. in this particular market, with Tomra enjoying a 70 percent market share — or 77 percent, if the company is successful in its plans to acquire Can & Bottle.

Asserting claims under the Clayton Act and the Sherman Act, the complaint, citing to Tomra’s alleged monopoly power and market manipulation, seeks compensatory, punitive and treble damages and an order blocking Tomra from entering into long-term exclusive contracts with customers.

Businesses such as these that promote the effective use of bottle bills that recycle cans and bottles are a positive in the environmental marketplace. The suit raises important antitrust concerns and we will monitor its progress.



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