

1. Pursuant to a Put/Call Agreement dated December 6, 1999 and a Letter Agreement dated August 1, 2000, Republic will acquire from Allied certain waste-hauling and disposal assets. The proposed transaction, identified below, would lessen competition substantially in waste collection and/or disposal services in Akron and Canton, Ohio.

2. Republic and Allied are two of only a few providers of waste collection services in the Akron/Canton area. Unless the acquisition is enjoined, consumers of waste collection services will likely pay higher prices and receive fewer services as a consequence of the elimination of the vigorous competition between defendants Republic and Allied.

I.

JURISDICTION AND VENUE

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

4. Republic submits to the personal jurisdiction of the District of Columbia, and Allied is located in and transacts business in the District of Columbia. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

5. Defendants Republic and Allied collect municipal solid waste from residential, commercial, and industrial customers. In their waste collection business, defendants make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce, and engage in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

II.

DEFINITIONS

6. "MSW" means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

7. "Small container commercial waste collection service" means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use of a front-or rear-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants).

8. "Akron/Canton, Ohio area" means the Cities of Akron and Canton, Ohio; and Summit, Stark, and Portage counties, Ohio.

III.

DEFENDANTS AND THE TRANSACTION

9. Republic is a Delaware corporation with its principal office in Ft. Lauderdale, Florida. Republic is engaged in providing waste collection and disposal services throughout the United States. In its 1998 fiscal year, Republic reported total revenues of approximately \$1.8 billion.

10. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is the nation's second largest waste hauling and disposal company. It is engaged in providing waste collection and disposal services throughout the United States. In 1999, Allied reported total revenues of approximately \$6 billion.

11. Pursuant to a Put/Call Agreement dated December 6, 1999 and a Letter Agreement dated August 1, 2000, Republic agreed to acquire from Allied certain waste hauling and disposal assets ("the acquisitions"). Pursuant to the Put/Call and Letter Agreements, Republic would acquire from Allied hauling and disposal assets in the Akron/Canton, Ohio area.

IV.

TRADE AND COMMERCE

A. The Relevant Service Market

Small Container Commercial Waste Collection Service

12. Waste collection firms, or "haulers," collect MSW from residential, commercial, and industrial establishments, and transport the waste to a disposal site, such as a transfer station, sanitary landfill, or incinerator, for processing and disposal. Private waste haulers typically contract directly with customers for the collection of waste generated by commercial accounts. MSW generated by residential customers, on the other hand, is often collected by either local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

13. Small container commercial waste collection differs in many important respects from the collection of residential or other types of waste. An individual commercial customer typically generates substantially more MSW than a residential customer. To handle this high

volume of MSW efficiently, haulers provide commercial customers with dumpsters for storing the waste. Haulers organize their commercial accounts into routes, and collect and transport the MSW generated by these accounts in vehicles uniquely well suited for commercial waste collection -- primarily front-end loader ("FEL") trucks. Less frequently, haulers may use more maneuverable, but less efficient, rear-end loader ("REL") trucks, especially in those areas in which a collection route includes narrow alleyways or streets.

14. On a typical small container commercial waste collection route, an operator drives a FEL truck to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section, where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts until the vehicle is full. The operator then drives the FEL truck to a disposal facility, such as a transfer station, landfill, or incinerator, and empties the contents of the vehicle. Often, the operator returns to the route and repeats the process.

15. In contrast to a commercial collection route, a residential waste collection route is significantly more labor intensive. The customer's MSW is stored in much smaller containers (*e.g.*, garbage bags or trash cans) and instead of FEL trucks, waste collection firms routinely use REL or side-load trucks, manned by larger crews (usually, two-or three-person teams). On residential routes, the crews generally hand-load the customer's MSW, typically by tossing garbage bags and emptying trash cans into the vehicle's storage section. Because of the differences in the collection process, residential customers and commercial customers usually are organized into separate routes. For a variety of reasons, other types of collection activities, such as roll-off containers (typically used for construction debris) and collection of liquid or hazardous

waste, are also rarely combined with commercial waste collection activities.

16. The differences in the types and volume of MSW collected and in the equipment used in collection distinguish small container commercial waste collection from all other types of waste collection activities. These differences mean that small container commercial waste collection firms can profitably increase their charges for small container commercial waste collection services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, small container commercial waste collection service is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisitions under Section 7 of the Clayton Act.

B. The Relevant Geographic Market

Small Container Commercial Waste Collection Service

17. Small container commercial waste collection services are generally provided in highly localized areas because to operate efficiently and profitably, a hauler must have sufficient density in its commercial waste collection operations; *i.e.*, a large number of commercial accounts that are reasonably close together. In addition, a FEL or REL truck cannot be efficiently driven long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial waste collection firm to serve metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

18. Local small container commercial waste collection firms in the Akron/Canton, Ohio area can profitably increase charges to local customers without losing significant sales to more distant competitors. The Akron/Canton, Ohio area is therefore a section of the country, or

relevant geographic market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition As a Consequence of the Acquisition

19. Republic and Allied directly compete in small container commercial waste collection service in a number of markets nationwide, including the Akron/Canton, Ohio area. In this market, Republic and Allied each account for a substantial share of total revenues from commercial waste collection services.

20. In the Akron/Canton, Ohio area, the proposed acquisition would reduce from four to three the number of significant competitors in the collection of small container commercial waste. After the acquisition, Republic would control approximately 35 percent of total market revenue, which exceeds \$25 million annually.

D. Entry Into Commercial Waste Collection of MSW

21. Significant new entry into small container commercial waste collection service is difficult and time-consuming in the Akron/Canton, Ohio area. A new entrant into small container commercial waste collection service cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In order to obtain comparable operating efficiency, a new firm must achieve route density comparable to existing firms. However, the incumbents' use of price discrimination and long-term contracts prevents new entrants from winning a large enough base of customers to achieve efficient routes in sufficient time to constrain the post-acquisition firm from significantly raising prices after the transaction.

E. Harm to Competition

22. The acquisition of Allied assets by Republic would remove a significant competitor in small container commercial waste collection service in an already highly concentrated and difficult-to-enter market. In this market, the resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents ensure that consumers will pay substantially higher prices for collection of small container commercial waste.

V.

VIOLATION ALLEGED

23. Pursuant to a Put/Call Agreement dated December 6, 1999 and a Letter Agreement dated August 1, 2000, Republic would acquire from Allied certain waste hauling assets in the Akron/Canton, Ohio area. The likely effect of this acquisition is to substantially lessen competition and to tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

24. The transactions likely will have the following effects, among others:
- a. competition generally in small container commercial waste collection service in the Akron/Canton, Ohio area market will be lessened substantially;
 - b. actual and potential competition between Allied and Republic in small container commercial waste collection service in the Akron/Canton, Ohio area market will be eliminated; and
 - c. prices charged by small container commercial waste collection firms in the Akron/Canton, Ohio area market will likely increase.

VI.

REQUESTED RELIEF

Plaintiff requests:

1. That Republic's proposed acquisition of Allied's hauling assets in the Akron/Canton, Ohio area market be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;
2. That defendants be permanently enjoined from carrying out the acquisitions of those assets in the Put/Call Agreement dated December 6, 1999 and Letter Agreement dated August 1, 2000, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to exchange those assets between the defendants;
3. That plaintiff receive such other and further relief as the case requires and the court deems proper; and
4. That plaintiff recover the costs of this action.

Dated: September 27, 2000.

Respectfully submitted,

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