

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
STATE OF FLORIDA,
STATE OF ILLINOIS,
STATE OF MINNESOTA,
COMMONWEALTH OF PENNSYLVANIA, and
STATE OF WISCONSIN,

Plaintiffs,

v.

WASTE MANAGEMENT, INC.,

and

ADVANCED DISPOSAL SERVICES, INC.,

Defendants.

Case No. 1:20-cv-03063 (JDB)

**UNITED STATES' MOTION AND MEMORANDUM
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), the United States of America (“United States”) moves the Court to enter the proposed Final Judgment filed in this civil antitrust proceeding on October 23, 2020 (Dkt. No. 2-1) (attached as Exhibit A). As set forth in the Asset Preservation Stipulation and Order (“Stipulation and Order”) dated October 27, 2020 (Dkt. No. 8), Defendants stipulated that the Final Judgment could be filed with and entered by the Court, upon the motion of the United States or upon the Court’s own motion, at any time after compliance with the requirements of the APPA and without further notice to any party or other proceedings.

The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) and Response of the United States to Public Comments on the Proposed Final Judgment (“Response to Public Comments”) filed in this matter on October 23, 2020, and March 19, 2021, respectively, (Dkt. No. 3 and Dkt. No. 14) explain why entry of the proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance (attached as Exhibit B) showing that the parties have complied with all applicable provisions of the APPA and certifying that the 60-day statutory public comment period has expired.

I. BACKGROUND

On October 23, 2020, the United States and the State of Florida, State of Illinois, State of Minnesota, Commonwealth of Pennsylvania, and State of Wisconsin (the “Plaintiff States”) filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of Advanced Disposal Services, Inc. (“ADS”) by Waste Management, Inc. (“WMI”). The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for small container commercial waste collection or municipal solid waste disposal in 57 local markets in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in higher prices and lower quality and level of service.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, a Stipulation and Order, and a CIS describing the events giving rise to the alleged violation and the proposed Final Judgment. The Stipulation and Order, which was agreed to by the parties and which was entered by the Court on October 27, 2020 (Dkt. No. 8), provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA

have been met. The proposed Final Judgment requires Defendants to divest 15 landfills, 37 transfer stations, 29 hauling locations, and over 200 waste and recycling collection routes, together with ancillary assets. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a 60-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and the CIS with the Court on October 23, 2020, published the proposed Final Judgment and CIS in the *Federal Register* on November 3, 2020 (*see* 85 Fed. Reg. 70,004), and caused a summary of the terms of the proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* for seven days during the period November 2, 2020, to November 8, 2020. The public comment period concluded on January 7, 2021, and the United States received two comments. Pursuant to 15 U.S.C. § 16(d), the United States filed a Response of Plaintiff United States to Public Comments on the Proposed Final Judgment (“Response to Public Comments”) on March 19, 2021 (Dkt. No. 14) and published it and the public comments in the *Federal Register* on March 25, 2021, 86 Fed. Reg. 15,962 (March 25, 2021).

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making

that determination, the Court, in accordance with the statute as amended in 2004, “shall consider”:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- (B) the impact of entry of such judgment upon competition in the relevant market or markets, 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)(1)(A), (B). Section 16(e)(2) of the APPA states that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2). In its CIS and Response to Public Comments, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference.

IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST

The United States and Plaintiff States alleged in the Complaint that the acquisition of ADS by WMI would substantially lessen competition for small container commercial waste collection or municipal solid waste disposal in 57 local markets in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. As explained in the CIS and the Response to Public Comments, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of the acquisition alleged by the United States by requiring the divestiture of 15 landfills, 37 transfer stations, 29 hauling locations, and over 200 waste and recycling collection routes, together with ancillary assets. The public, including affected competitors and

customers, has had the opportunity to comment on the proposed Final Judgment. As explained in the CIS and the Response to Public Comments, entry of the proposed Final Judgment is in the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Public Comments, the United States respectfully requests that the Court find that the proposed Final Judgment is in the public interest and enter the proposed Final Judgment.

Dated: March 29, 2021

Respectfully submitted,

/s/ Gabriella Moskowitz
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CERTIFICATE OF SERVICE

I, Gabriella Moskowitz, hereby certify that on March 29, 2021, I caused a copy of the foregoing document to be served upon Defendants Waste Management, Inc. and Advanced Disposal Services, Inc. via the Court's CM/ECF system.

/s/

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