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

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| UNITED STATES OF AMERICA<br>and<br>STATE OF ALABAMA,<br>*Plaintiffs*,<br>v.<br>REPUBLIC SERVICES, INC.<br>and<br>SANTEK WASTE SERVICES, LLC<br>*Defendants*. | Civil Action No.: 1:21-cv-00883-RDM |

**COMPETITIVE IMPACT STATEMENT**

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (the "APPA" or "Tunney Act"), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

## I. NATURE AND PURPOSE OF THE PROCEEDING

On February, 18, 2020, Republic Services, Inc. ("Republic") agreed to acquire Santek Waste Services, LLC ("Santek"). The United States and the State of Alabama filed a civil antitrust Complaint on March 31, 2021, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for small container commercial waste ("SCCW") collection and municipal solid waste ("MSW") disposal in six geographic markets in the southeastern United States in violation

of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and an Asset Preservation Stipulation and Order ("Stipulation and Order"), which are designed to remedy the loss of competition alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest specified SCCW collection and MSW disposal assets in six local markets in five states. The assets to be divested are grouped into two packages – the Southeast Divestiture Assets and the Texas Divestiture Assets (capitalized terms are defined in the proposed Final Judgment). The Southeast Divestiture Assets includes assets in Alabama, Georgia, Mississippi, and Tennessee. The Texas Divestiture Assets includes assets in Texas.

Under the terms of the Stipulation and Order, Defendants must take certain steps to ensure that the assets that must be divested are operated as ongoing, economically viable, competitive assets for the provision of SCCW collection and MSW disposal and must take all other actions to preserve and maintain the full economic viability, marketability, and competitiveness of the assets to be divested.

The Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. 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 proposed Final Judgment and to punish violations thereof.

## II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

### A. The Defendants and the Proposed Transaction

Pursuant to a purchase agreement dated February 18, 2020, and amended on May 19, 2020, July 10, 2020, October 6, 2020, and March 8, 2021, Republic proposes to acquire all of the outstanding membership interest in Santek.

Republic, a Delaware corporation headquartered in Phoenix, Arizona, is the second largest non-hazardous solid waste collection and disposal company in the United States. It provides waste collection, recycling, and disposal (including transfer) services. Republic operates in 41 states and Puerto Rico. For 2020 Republic reported revenues of approximately $10.2 billion.

Santek, a Tennessee limited liability company headquartered in Cleveland, Tennessee, is a vertically integrated solid waste management company with waste collection and disposal (including transfer) operations in nine southeastern states. In 2019, the most recent year for which information is publicly available, Santek generated approximately $140 million in revenue.

### B. Relevant Product Markets

#### 1. Small Container Commercial Waste Collection

As alleged in the Complaint, SCCW (small container commercial waste collection) is a relevant product market. Waste collection firms—also called haulers—collect MSW (municipal solid waste) from residential, commercial, and industrial establishments, and transport that waste to a disposal site, such as a transfer station, landfill, or incinerator, for processing and disposal.

SCCW collection is the business of collecting MSW from commercial and industrial accounts, usually in small containers (*i.e.*, dumpsters with one to ten cubic yards capacity), and

transporting such waste to a disposal site. Typical SCCW collection customers include office and apartment buildings and retail establishments like stores and restaurants.

SCCW collection is distinct from other types of waste collection such as residential and roll-off collection. An individual commercial customer typically generates substantially more MSW than a residential customer. To handle this high volume of MSW efficiently, SCCW haulers often provide commercial customers with small containers for storing the waste. SCCW haulers organize their commercial accounts into routes and collect and transport the MSW generated by these accounts in front-end load ("FEL") trucks that are uniquely well suited for commercial waste collection.

On a typical SCCW 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. Depending on the number of locations and amount of waste collected on the route, the operator may make one or more trips to the disposal facility in servicing the route.

In contrast to a SCCW collection route, a residential waste collection route is highly labor intensive. A residential customer's MSW is typically stored in much smaller containers such as trash cans, and instead of using a FEL truck manned by a single operator, residential haulers routinely use rear-end load or side-load trucks typically manned by two- or three-person teams who may need to hand-load the customer's MSW. In light of these differences, haulers typically organize commercial customers into separate routes from residential customers.

Roll-off container collection also is not a substitute for SCCW collection. Roll-off container collection is commonly used to serve construction and demolition customers. A roll-off container is much larger than a SCCW container and is serviced by a truck capable of carrying a single roll-off container. Unlike SCCW customers, multiple roll-off customers are not served between trips to the disposal site, as each roll-off truck is typically only capable of carrying one roll-off container at a time.

Other types of waste collection, such as hazardous or medical waste collection, also are not substitutes for SCCW collection. These forms of collection differ from SCCW collection in the equipment required, the volume of waste collected, and the facilities where the waste is disposed.

The Complaint alleges that, because no other waste collection service can substitute for SCCW collection, other waste collection services do not constrain pricing for SCCW collection. Absent competition, SCCW collection providers could profitably increase their prices without losing significant sales to firms engaged in the provision of other types of waste collection services. In other words, in the event of a small but significant non-transitory increase in price for SCCW collection, customers would not substitute to other forms of collection in sufficient numbers so as to render the price increase unprofitable. SCCW collection is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

**2. Municipal Solid Waste Disposal**

As alleged in the Complaint, MSW disposal is a relevant product market. MSW is solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and industrial facilities. MSW has physical characteristics that

readily distinguish it from other liquid or solid waste, such as waste from manufacturing processes, regulated medical waste, sewage, sludge, hazardous waste, or waste generated by construction or demolition sites.

Haulers must dispose of all MSW at a permitted disposal facility. There are intermediary disposal facilities—transfer stations—and ultimate disposal facilities—landfills and incinerators. All such facilities must be located on approved types of land and operated under prescribed procedures. Federal, state, and local safety, environmental, zoning, and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing, and disposal of MSW. In less densely populated areas, MSW often is disposed of directly into landfills that are permitted and regulated by a state and the federal government. Landfill permit restrictions often impose limitations on the type and amount of waste that can be deposited. In many urban and suburban areas, landfills are scarce due to high population density and the limited availability of suitable land. As a result, MSW generated in such areas often is burned in an incinerator or taken to a transfer station. Transfer stations briefly hold MSW until it is reloaded from collection vehicles onto larger tractor-trailers for transport, in bulk, to more distant landfills or incinerators for final disposal.

Some haulers—including Republic and Santek—are vertically integrated and operate their own disposal facilities. Vertically integrated haulers often prefer to dispose of waste at their own disposal facilities. Vertically integrated haulers may also sell a portion of their disposal capacity to disposal customers in need of access to a disposal facility.

Disposal customers include private waste haulers without their own disposal assets (referred to in the industry as "independent haulers") as well as local governments that own their own equipment and collect their citizens' waste themselves. Disposal customers also include

independent and municipally-owned transfer stations that serve as temporary disposal sites for haulers in areas where landfills and incinerators are not easily accessible. Disposal customers that are not vertically integrated lack their own ultimate disposal facilities and rely on cost-competitive landfills.

As alleged in the Complaint, due to strict laws and regulations that govern the disposal of MSW, there are no reasonable substitutes for MSW disposal, which must occur at landfills, incinerators, or transfer stations. Thus, in the event of a small but significant non-transitory increase in price from MSW disposal firms, customers would not substitute to other forms of disposal in sufficient numbers so as to render the price increase unprofitable. MSW disposal is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

### C. Relevant Geographic Markets

#### 1. Small Container Commercial Waste Collection Geographic Markets

As alleged in the Complaint, the relevant geographic markets for SCCW collection are local. This is because SCCW haulers need a large number of closely located customer pick-up locations to operate efficiently and profitably. If there is significant travel time between customers, then the SCCW hauler earns less money for the time that the truck operates. SCCW haulers, therefore, try to minimize the "dead time" in which the truck is operating and incurring costs from fuel, wear and tear, and labor, but not generating revenue from collecting waste. Likewise, customers must be near the SCCW hauler's base of operations as it would be unprofitable for a truck to travel a long distance to the start of a route. SCCW haulers, therefore, generally establish garages and related facilities to serve as bases within each area served.

As alleged in the Complaint, the transaction would likely cause harm in four relevant geographic markets for SCCW collection: (1) the Birmingham, Alabama area (Jefferson and Shelby Counties); (2) the Chattanooga, Tennessee and North Georgia area (Hamilton, Marion, Rhea, and Sequatchie Counties in Tennessee; and Catoosa, Chattooga, Dade, Gordon, Murray, and Walker Counties in Georgia); (3) the Eastern Montgomery County, Texas area (the area east of the City of Conroe defined as zip codes 77357, 77365, and 77372); and (4) the Hattiesburg, Mississippi area (Forrest and Jones Counties). In each of these markets, a hypothetical monopolist of SCCW collection could profitably impose a small but significant non-transitory increase in price for SCCW collection without losing significant sales to more distant competitors. Accordingly, each of these areas constitutes a relevant geographic market and section of the country for purposes of analyzing the effects of the acquisition on SCCW collection under Section 7 of the Clayton Act.

**2. Municipal Solid Waste Disposal Geographic Markets**

As alleged in the Complaint, the relevant geographic markets for MSW disposal are local as the cost of transporting MSW to a disposal site—including fuel, regular truck maintenance, and hourly labor—is a substantial component of the total cost of MSW disposal. Haulers also prefer nearby MSW disposal sites to minimize the FEL truck dead time. Due to the costs associated with travel time and customers' preference to have MSW disposal sites close by, an MSW disposal provider must have local facilities to be competitive.

As alleged in the Complaint, the proposed transaction would likely cause harm in two relevant geographic markets for MSW disposal: (1) the Chattanooga, Tennessee area (Hamilton County); and (2) the Estill Springs and Fayetteville, Tennessee area (Franklin and Lincoln Counties). In each of these local markets, a hypothetical monopolist of MSW disposal could

profitably impose a small but significant non-transitory increase in price for MSW disposal without losing significant sales to more distant MSW disposal sites.

Accordingly, the Complaint alleges that the Chattanooga, Tennessee area, and the Estill Springs and Fayetteville, Tennessee area constitute relevant geographic markets for the purposes of analyzing the effects of the acquisition on MSW disposal under Section 7 of the Clayton Act.

**D. Anticompetitive Effects of the Proposed Transaction**

As alleged in the Complaint, the proposed transaction would increase concentration, significantly and substantially lessen competition, and harm consumers in each relevant market by eliminating the substantial head-to-head competition that currently exists between Republic and Santek.

Market concentration can be a useful indicator of the level of competitive vigor in a market and likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that the transaction would result in harm to consumers by meaningfully reducing competition.

Concentration in relevant markets is typically defined by the Herfindahl-Hirschman Index ("HHI"). Markets in which the HHI is above 2,500 are considered to be highly concentrated. Mergers that increase the HHI by more than 200 points and result in a highly concentrated market are presumed to likely enhance market power. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.3 (revised Aug. 19, 2010) ("Horizontal Merger Guidelines"), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.

As alleged in the Complaint, Republic's acquisition of Santek would result in a highly concentrated market in every relevant SCCW collection market and relevant MSW disposal market. Moreover, as a result of the acquisition, the HHI would increase by more than 400 points

in each of these markets, suggesting an increased likelihood of significant anticompetitive effects. Therefore, Republic's proposed acquisition of Santek is presumptively likely to enhance Republic's market power. *See* Horizontal Merger Guidelines § 5.3.

As alleged in the Complaint, the merger would also substantially lessen competition through the vertical integration of the two companies. Specifically, by combining Republic's strong position in both SCCW collection and MSW disposal with Santek's strong position in both SCCW collection and MSW disposal, the proposed transaction would increase Republic's incentive and ability to harm its SCCW collection rivals by raising the costs of MSW disposal in the Chattanooga, Tennessee and North Georgia area. With SCCW collection rivals facing higher operational costs, they would have to raise their SCCW collection prices to offset these costs and would be less able to apply competitive pressure on Republic's SCCW collection operations. As a result, businesses, municipalities, and other customers likely would pay higher prices for SCCW collection. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Vertical Merger Guidelines § 4(a) (June 30, 2020), https://www.justice.gov/atr/page/file/1290686/download.

**1. Elimination of Horizontal Competition in SCCW Collection**

As alleged in the Complaint, Republic's acquisition of Santek would eliminate a significant competitor for SCCW collection in markets that are already highly concentrated and difficult to enter. Republic and Santek compete head-to-head for SCCW collection customers in the relevant SCCW collection markets. In these four geographic markets, Republic and Santek each account for a substantial share of total revenue generated from SCCW collection and, in each relevant market, are two of no more than five significant competitors.

In each relevant SCCW collection market, collection customers including offices, apartment buildings, and retail establishments have been able to secure better collection rates and

improved collection service by threatening to switch from Republic to Santek or vice versa. In each of the relevant markets, the elimination of this head-to-head competition would allow Republic to exercise market power unilaterally to increase prices and reduce the quality of service for SCCW collection customers.

**i. Birmingham, Alabama Area SCCW Collection**

As alleged in the Complaint, in the Birmingham, Alabama area, the proposed acquisition would reduce from five to four the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 61 percent of the SCCW collection customers in the market. The post-merger HHI for SCCW collection in this market would be approximately 4,157, an increase of 445 points from the current HHI.

**ii. Chattanooga, Tennessee and North Georgia Area SCCW Collection**

As alleged in the Complaint, in the Chattanooga, Tennessee and North Georgia area, the proposed acquisition would reduce from five to four the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 73 percent of the SCCW collection customers in the market. The post-merger HHI for SCCW collection in this market would be approximately 5,551, an increase of 2,660 points from the current HHI.

**iii. Eastern Montgomery County, Texas Area SCCW Collection**

As alleged in the Complaint, in the Eastern Montgomery County, Texas area, the proposed acquisition would reduce from three to two the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 58 percent of the SCCW collection customers in the market. The post-merger HHI for SCCW

collection in this market would be approximately 4,064, an increase of 1,703 points from the current HHI.

**iv. Hattiesburg, Mississippi Area SCCW Collection**

As alleged in the Complaint, in the Hattiesburg, Mississippi area, the proposed acquisition would reduce from five to four the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 55 percent of SCCW collection customers in the market. The post-merger HHI for SCCW collection would be approximately 3,853, an increase of 1,420 points from the current HHI.

**2. Elimination of Horizontal Competition in MSW Disposal**

As alleged in the Complaint, Republic's acquisition of Santek would also eliminate a significant competitor for MSW disposal in markets that are already highly concentrated and difficult to enter. Republic and Santek compete head-to-head for MSW disposal customers in the relevant MSW disposal markets. In these geographic markets, Republic and Santek each account for a substantial share of total revenue generated from MSW disposal and, in each relevant MSW disposal market, are two of no more than three significant competitors. In each relevant MSW disposal market, independent haulers and municipalities have been able to negotiate more favorable MSW disposal rates by threatening to move MSW from Republic's facilities to Santek's facilities and vice versa. In each of the relevant MSW disposal markets, the elimination of this head-to-head competition would allow Republic to exercise market power unilaterally to increase prices and reduce the quality of service for MSW disposal customers.

**i. Chattanooga, Tennessee Area MSW Disposal**

As alleged in the Complaint, in the Chattanooga, Tennessee area, the proposed acquisition would reduce from three to two the number of significant competitors in the MSW

disposal market. After the acquisition, approximately 82 percent of the waste generated in the Chattanooga, Tennessee area would either be disposed of directly in the Defendants' landfills or pass through the Defendants' transfer stations in Chattanooga before ultimately being disposed of in the Defendants' landfills. The post-merger HHI for MSW disposal would be approximately 6,980, an increase of 3,018 points from the current HHI.

**ii. Estill Springs and Fayetteville, Tennessee Area MSW Disposal**

MSW in the Estill Springs and Fayetteville, Tennessee area, is hauled to municipally-owned transfer stations before it is transferred to a landfill. As alleged in the Complaint, the proposed acquisition would reduce from three to two the number of significant landfill competitors available to bid to dispose of the MSW from these transfer stations. Since Santek was awarded the most recent contracts for the exclusive right to dispose of the waste from the Estill Springs and Fayetteville, Tennessee area's municipally-owned transfer stations, the transaction will not have an impact on the market's HHI. Still, the loss of competition between Republic and Santek for the area's contracts will result in higher prices and lower quality service for these municipalities in the upcoming years when the current contracts expire.

**3. Raising Rivals' Costs of MSW Disposal in the Chattanooga, Tennessee and North Georgia Area**

As alleged in the Complaint, in the Chattanooga, Tennessee and North Georgia area, the proposed transaction also would substantially lessen competition in the SCCW collection market by raising the MSW disposal costs of independent haulers. As noted above, Republic and Santek collectively serve approximately 73 percent of the SCCW collection customers in the Chattanooga, Tennessee and North Georgia area. In addition, the vast majority of the waste generated in this area is disposed of in landfills operated by Republic and Santek. Thus, not only are Defendants each other's largest competitor in the SCCW collection market, they also

compete with each other to supply MSW disposal services to independent haulers, including those that compete with them in the SCCW collection market.

By combining the two firms' SCCW collection and MSW disposal businesses, the merger would increase Republic's incentive and ability to raise its MSW disposal price for independent haulers. Having acquired its largest MSW disposal competitor, Santek, Republic would be able to raise its MSW disposal prices without fear of losing significant sales to remaining disposal competitors. With few alternative MSW disposal facilities available, independent haulers would be forced to incur these increased MSW disposal costs or shutter their operations. Those independent haulers that remained in business would need to raise their SCCW collection prices in order to offset higher MSW disposal costs, rendering them less competitive in SCCW collection. The merger would also increase Republic's incentive to raise the MSW disposal costs of independent haulers because Republic—no longer confronting competition from Santek in SCCW collection—would capture more of the business lost by independent haulers in the SCCW collection market.

As alleged in the Complaint, as a result, the merged firm would likely find it profitable to raise the cost of MSW disposal or to deny service altogether to the merged firm's SCCW collection rivals, thereby reducing competition in the SCCW collection market.

### E. Difficulty of Entry

#### 1. Difficulty of Entry into SCCW Collection

As alleged in the Complaint, entry of new competitors into the relevant SCCW collection markets would be difficult and time-consuming and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

A new entrant in SCCW collection could not provide a significant competitive constraint

on the prices that market incumbents charge until achieving a minimum efficient scale and operating efficiency comparable to existing competitors. In order to obtain a comparable operating efficiency, a new competitor would have to achieve route densities similar to those of firms already in the market. Incumbents in a geographic market, however, can prevent new entrants from winning a large enough base of customers by selectively lowering prices and entering into longer term contracts with collection customers.

**2. Difficulty of Entry into MSW Disposal**

As alleged in the Complaint, entry of new competitors into the relevant MSW disposal markets would be difficult and time-consuming and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

A new entrant in MSW disposal would need to obtain a permit to construct an MSW disposal facility or to expand an existing one, and this process is costly and time-consuming, typically taking many years. Land suitable for MSW disposal is scarce, as a landfill must be constructed away from environmentally-sensitive areas, including fault zones, wetlands, flood plains, and other restricted areas. Even when suitable land is available, local public opposition frequently increases the time and uncertainty of the permitting process.

Construction of a new transfer station or incinerator also is difficult and time consuming and faces many of the same challenges as new landfill construction, including local public opposition.

Thus, entry by constructing and permitting a new MSW disposal facility would be costly, time-consuming, and unlikely to prevent market incumbents from significantly raising prices for MSW disposal in each of the relevant MSW disposal markets following the acquisition.

## III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The relief required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by maintaining competition in each of the SCCW collection and MSW disposal markets alleged in the Complaint. The assets to be divested are grouped into two packages – the Southeast Divestiture Assets and the Texas Divestiture Assets (capitalized terms are defined in the proposed Final Judgment).

The Southeast Divestiture Assets include all of the assets necessary for the Acquirer of the Southeast Divestiture Assets to operate an economically viable business that will remedy the harm that the United States and the State of Alabama allege would otherwise result from the transaction in (1) the SCCW collection markets in the Birmingham, Alabama area; the `Chattanooga, Tennessee and North Georgia area; and the Hattiesburg, Mississippi area and (2) the MSW disposal markets in the Chattanooga, Tennessee area and the Estill Springs and Fayetteville, Tennessee area.[1]

The Texas Divestiture Assets include all of the assets necessary for the Acquirer of the Texas Divestiture Assets to operate an economically viable business that will remedy the harm that the United States and the State of Alabama allege would otherwise result from the transaction in the SCCW collection market in the Eastern Montgomery County, Texas area.

### A. Southeast Divestiture Assets

Paragraph IV(A) of the proposed Final Judgment requires Defendants, within 30 days

[1] The landfill and transfer station assets to be divested in Tennessee and Georgia, as defined in Paragraphs II(K)(1) and (2) of the proposed Final Judgment, address not only the potential elimination of horizontal competition in MSW disposal as alleged in Paragraphs 41-43 of the Complaint, but along with the SCCW collection assets to be divested in Tennessee and Georgia, as defined in Paragraphs II(K)(3) and (4) of the proposed Final Judgment, they address the potential for Defendants to raise rivals' costs of MSW disposal as alleged in Paragraphs 44-47 of the Complaint.

after the entry of the Stipulation and Order by the Court, to divest the Southeast Divestiture Assets to Kinderhook Industries LLC (through its portfolio companies Capital Waste Services, LLC, EcoSouth Services of Birmingham, LLC, and EcoSouth Services of Mobile, LLC), or an alternative acquirer acceptable to the United States, in its sole discretion, after consultation with the State of Alabama. The assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with the State of Alabama, that the Southeast Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing SCCW collection business and a viable, ongoing MSW disposal business that can compete effectively in each of the markets in Alabama, Georgia, Mississippi, and Tennessee alleged in the Complaint. Defendants must take all reasonable steps necessary to accomplish the divestiture of the Southeast Divestiture Assets quickly and must cooperate with the Acquirer.

The Southeast Divestiture Assets are defined as all tangible and intangible assets relating to or used in connection with the MSW disposal assets identified in Paragraphs II(K)(1) and II(K)(2) of the proposed Final Judgment and the SCCW collection assets identified in Paragraphs II(K)(3) and II(K)(4) of the proposed Final Judgment. The Southeast Divestiture Assets include two landfills, two transfer stations, four collection facilities, and 24 Routes in Alabama, Georgia, Mississippi, and Tennessee. The Southeast Divestiture Assets also include, in each MSW disposal market alleged: all tangible and intangible property and assets related to or used in connection with the transfer stations and landfills except for the Excluded Disposal Agreements, which are explained below. In each SCCW collection market alleged, the Southeast Divestiture Assets include: all intangible and tangible assets related to or used in connection with the Routes except for what the proposed Final Judgment defines as Hybrid Contracts, which are explained below, and a collection facility located at 101 Barber Boulevard, Gardendale, Alabama 35071. In

the Chattanooga, Tennessee and North Georgia market, the Southeast Divestiture Assets include not only SCCW collection assets, but also commercial recycling collection assets which should enhance the viability of the Southeast Divestiture Assets.

Paragraph IV(K) of the proposed Final Judgment facilitates the transfer of customers and other contractual relationships, except for Hybrid Contracts and the Excluded Disposal Agreements, to the Acquirer of the Southeast Divestiture Assets. Defendants must transfer all contracts, agreements, and relationships to the Acquirer of the Southeast Divestiture Assets and must make best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting, or other transfer.

Hybrid Contracts, which are defined in Paragraph II(S) as customer waste or recycling contracts that include a combination of services and/or collection stops included in the Southeast Divestiture Assets and services and/or collection stops not included in the Southeast Divestiture Assets, and that make up a small portion of the SCCW collection contracts included in the divestiture package, are required under Paragraph IV(L) to be divested at the option of the Acquirer of the Southeast Divestiture Assets. This will enable the Acquirer of the Southeast Divestiture Assets to have the option to acquire the customer contracts which it determines it can efficiently and profitably serve.

The Excluded Disposal Agreements are not required to be divested because they are not necessary for the Acquirer of the Southeast Divestiture Assets to operate the Southeast Divestiture Assets as part of a viable, ongoing MSW disposal business that can compete effectively in the Chattanooga, Tennessee area and the Fayetteville and Estill Springs, Tennessee area. The Excluded Disposal Agreements are defined in Paragraph II(R) as (1) the Landfill Disposal Services Agreement, dated December 1, 2012, between Putnam County, Tennessee and

Santek Environmental, Inc., as amended by First Amendment to Landfill Disposal Services Agreement, dated October 16, 2020, and (2) the Waste Disposal Agreement, dated November 16, 2018, between Santek Environmental, LLC and Clean Harbors Environmental Services, Inc., as amended by First Amendment to Waste Disposal Agreement, dated January 26, 2021. They are not related to MSW disposal services provided in any market alleged in the Complaint, and, therefore, are excluded from the assets to be divested.

The collection facility located at 101 Barber Boulevard, Gardendale, Alabama 35071 is not part of the Southeast Divestiture Assets because the Acquirer of the Southeast Divestiture Assets will acquire a collection facility located 140 Goodrich Drive, Birmingham, Alabama 35217 from which it can competitively run the acquired Routes in the Birmingham, Alabama area.

The proposed Final Judgment contains several provisions to facilitate the transition of the Southeast Divestiture Assets to the Acquirer of the Southeast Divestiture Assets. First, Paragraph IV(P) of the proposed Final Judgement requires Defendants, at the option of the Acquirer of the Southeast Divestiture Assets, to enter into an agreement to provide a maintenance bay, outdoor parking for six trucks and empty container storage, and an interior office at Republic's collection facility in Birmingham, Alabama. This provision is intended to give the Acquirer of the Southeast Divestiture Assets a location from which it can temporarily run the acquired Routes in the Birmingham, Alabama area while it sets up its own maintenance bay and interior offices at the collection facility it is acquiring.

Second, Paragraph IV(N) of the proposed Final Judgment requires Defendants to provide certain transition services to maintain the viability and competitiveness of the Southeast Divestiture Assets during the transition to the Acquirer of the Southeast Divestiture Assets.

Paragraph IV(N) of the proposed Final Judgment requires Defendants, at the option of the Acquirer of the Southeast Divestiture Assets, to enter into a transition services agreement for back office, human resources, accounting, employee health and safety, telephone, and information technology services and support for the Southeast Divestiture Assets for a period of up to three months. The Acquirer of the Southeast Divestiture Assets may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon 30 days' written notice to Republic. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional three months and that any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States in its sole discretion. Paragraph IV(N) also provides that employees of Defendants tasked with supporting this agreement must not share any competitively sensitive information of the Acquirer of the Southeast Divestiture Assets with any other employee of Defendants.

Third, Paragraph IV(O) of the proposed Final Judgment requires Defendants, at the option of the Acquirer of the Southeast Divestiture Assets, to enter into a contract to provide rights to landfill disposal at Republic's Pineview Landfill and Santek's Mt. Olive Landfill for a period of up to three years. The proposed Final Judgment also requires Defendants to operate gates, side houses, and disposal areas for the benefit of the Acquirer of the Southeast Divestiture Assets under terms and conditions that are no less favorable than those provided to Defendants' own vehicles. The Acquirer of the Southeast Divestiture Assets may terminate the landfill disposal contract without cost or penalty at any time upon 30 days' written notice to Republic. This provision is intended to give the Acquirer of the Southeast Divestiture Assets an immediate and efficient outlet for the waste that it will collect on the Routes in the Birmingham, Alabama

area. This will allow the Acquirer of the Southeast Divestiture Assets to operate cost competitively as soon as it acquires the Routes rather than face a delay in needing to negotiate with disposal facilities in the region.

The proposed Final Judgment also contains provisions intended to facilitate efforts by the Acquirer of the Southeast Divestiture Assets to hire certain employees. Specifically, Paragraph IV(I) of the proposed Final Judgment requires Defendants to provide the Acquirer of the Southeast Divestiture Assets, the United States, and the State of Alabama with organization charts and information relating to these employees and to make them available for interviews. It also provides that Defendants must not interfere with any negotiations by the Acquirer of the Southeast Divestiture Assets to hire these employees. In addition, for employees who elect employment with the Acquirer of the Southeast Divestiture Assets, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all other compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that those employees otherwise would have been provided had those employees continued employment with Defendants, including but not limited to any retention bonuses or payments. This paragraph further provides that the Defendants may not solicit to hire any employees who elect employment with the Acquirer of the Southeast Divestiture Assets, unless that individual is terminated or laid off by the Acquirer of the Southeast Divestiture Assets or the Acquirer of the Southeast Divestiture Assets agrees in writing that the Defendants may solicit or hire that individual. The non-solicitation period runs for 12 months from the date of the divestiture. This paragraph does not prohibit Defendants from advertising employment openings using general solicitations or advertisements and rehiring employees who apply for a position through a general solicitation or advertisement.

### B. Texas Divestiture Assets

Paragraph V(A) of the proposed Final Judgment requires Defendants, within 30 days after the entry of the Stipulation and Order by the Court, to divest the Texas Divestiture Assets to Waste Connections, Inc. (through its subsidiary Waste Connections of Texas, LLC), or an alternative acquirer acceptable to the United States. The Texas Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that the Texas Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing SCCW collection business that can compete effectively in Eastern Montgomery County, Texas. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the Acquirer.

The Texas Divestiture Assets are defined as all tangible and intangible assets relating to or used in connection with the SCCW collection assets identified in Paragraphs II(L)(1) and II(L)(2) of the proposed Final Judgment. The Texas Divestiture Assets include two Routes and all intangible and tangible assets related to or used in connection with the Routes except for the collection facility located at 701 US Hwy 59 South, Cleveland Texas, 77327. The collection facility located at 701 US Hwy 59 South, Cleveland Texas, 77327 is not part of the Texas Divestiture Assets because, as with Waste Connections, any acquirer should already operate a collection facility in the Eastern Montgomery, County area into which it can efficiently integrate the two Routes and from which it can compete.

Paragraph V(J) of the proposed Final Judgment facilitates the transfer of customers and other contractual relationships to the Acquirer of the Texas Divestiture Assets. Defendants must transfer all contracts, agreements, and relationships to the Acquirer and must make best efforts to

assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting or other transfer.

Paragraph IV(N) of the proposed Final Judgment requires Defendants to provide certain transition services to maintain the viability and competitiveness of the Texas Divestiture Assets during the transition to the Acquirer of the Texas Divestiture Assets. Paragraph V(L) of the proposed Final Judgment requires Defendants, at the Acquirer of the Texas Divestiture Assets' option, to enter into a transition services agreement for back office, human resources, accounting, employee health and safety, telephone, and information technology services and support for the Texas Divestiture Assets for a period of up to six months. The Acquirer of the Texas Divestiture Assets may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon 30 days' written notice to Republic. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional six months and that any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States in its sole discretion. Paragraph IV(N) also provides that employees of Defendants tasked with supporting this agreement must not share any competitively sensitive information of the Acquirer of the Texas Divestiture Assets with any other employee of Defendants.

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer of the Southeast Divestiture Assets' efforts to hire certain employees. Paragraph V(H) of the proposed Final Judgment requires Defendants to provide the Acquirer of the Texas Divestiture Assets and the United States with organization charts and information relating to these employees and to make them available for interviews. It also provides that Defendants must not

interfere with any negotiations by the Acquirer of the Texas Divestiture Assets to hire these employees. In addition, for employees who elect employment with the Acquirer of the Texas Divestiture Assets, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all other compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that those employees otherwise would have been provided had those employees continued employment with Defendants, including but not limited to any retention bonuses or payments. This paragraph further provides that the Defendants may not solicit to hire any employees who elect employment with the Acquirer of the Texas Divestiture Assets, unless that individual is terminated or laid off by the Acquirer of the Texas Divestiture Assets or the Acquirer of the Texas Divestiture Assets agrees in writing that the Defendants may solicit or hire that individual. The non-solicitation period runs for 12 months from the date of the divestiture. This paragraph does not prohibit Defendants from advertising employment openings using general solicitations or advertisements and rehiring employees who apply for a position through a general solicitation or advertisement.

**C. Divestiture Trustee**

If Defendants do not accomplish the divestiture(s) within the periods prescribed in Sections IV and V of the proposed Final Judgment, Section VI of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants must pay all costs and expenses of the trustee. The divestiture trustee's commission must be structured so as to provide an incentive for the trustee based on the price and terms of the divestiture(s) and the speed with which the divestiture is accomplished. After the divestiture

trustee's appointment becomes effective, the trustee must provide monthly reports to the Plaintiffs setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within six months of the divestiture trustee's appointment, the United States may make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment.

**D. Other Provisions**

Section XII of the proposed Final Judgment requires Defendants to notify the United States and, if any of the assets or interests are located in Alabama, to the State of Alabama, in advance of acquiring, directly or indirectly (including through an asset swap agreement), in a transaction that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), any assets of or interest in any business engaged in SCCW collection or MSW disposal in a market where the Complaint alleged a violation, which are listed in Appendix A. Pursuant to the proposed Final Judgment, Defendants must notify the United States of such acquisitions as it would for a required HSR Act filing, as specified in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations. The proposed Final Judgment further provides for waiting periods and opportunities for the United States to obtain additional information analogous to the provisions of the HSR Act before such acquisitions can be consummated. The notification requirement applies when the acquired business's annual revenues from the relevant service in the market exceeded $500,000 for the 12 months preceding the proposed acquisition. It is important for the United States and the State of Alabama to receive notice of even small transactions that have the potential to reduce competition in these markets because the markets alleged in the Complaint

are highly concentrated. Requiring notification of any such acquisition will permit the United States and the State of Alabama, as relevant, to assess the competitive effects of that acquisition before it is consummated and, if necessary, seek to enjoin the transaction.

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XV(A) provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XV(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XV(C) provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for a one-

time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XV(C) provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XV(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XVI of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that continuation of the Final Judgment is no longer necessary or in the public interest.

## IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

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 neither impairs nor assists 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 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the *Federal Register* unless the

Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to:

Katrina Rouse
Chief, Defense, Industrials, and Aerospace Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street, NW, Suite 8700
Washington, DC 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

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Republic's acquisition of Santek. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the provision of SCCW collection and MSW disposal in each of the geographic markets alleged in the Complaint. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

## VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

Under the Clayton Act and APPA, proposed Final Judgments or "consent decrees" in antitrust cases brought by the United States are subject to a 60-day comment period, after which

the Court shall determine whether entry of 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, is required to 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). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of

the relief secured by the proposed Final Judgment, a court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Id.* at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies

for the alleged harms.") (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case."). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co.*, 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement,

Pub. L. 108-237 § 221, and added the unambiguous instruction 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); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he 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." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

## 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: April 2, 2021

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

/s/ Gabriella R. Moskowitz

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**Appendix A: Areas for Which the Notice Provision in Paragraph XII(A) of the Proposed Final Judgment Applies**

| Geographic Market | Counties within Geographic Market | Relevant Service |
|---|---|---|
| Birmingham, Alabama | Jefferson and Shelby Counties | SCCW Collection |
| Chattanooga, Tennessee and North Georgia | Hamilton, Marion, Rhea, and Sequatchie Counties in Tennessee; and Catoosa, Chattooga, Dade, Gordon, Murray, and Walker Counties in Georgia | MSW Disposal and SCCW Collection |
| Eastern Montgomery County, Texas | Montgomery County (limited to zip codes 77357, 77365, and 77372) | SCCW Collection |
| Estill Springs and Fayetteville, Tennessee | Franklin and Lincoln Counties | MSW Disposal |
| Hattiesburg, Mississippi | Forrest and Jones Counties | SCCW Collection |