

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
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Washington, D.C. 20530,

STATE OF CALIFORNIA,
Office of Attorney General
455 Golden Gate Avenue
San Francisco, CA 94102,

COMMONWEALTH OF KENTUCKY
Consumer Protection Division
1024 Capital Center Drive
Frankfort, KY 40601,

STATE OF MICHIGAN
Consumer Protection Division
Antitrust Section
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STATE OF NORTH CAROLINA
Department of Justice
9001 Mail Service Center
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STATE OF OHIO
Attorney General's Office
150 East Gay Street, 23rd Floor
Columbus, OH 43215,

CIVIL ACTION NO. :

Case: 1:08-cv-02076
Assigned To : Roberts, Richard W.
Assign. Date : 12/3/2008
Description: Antitrust

DATE STAMP:

COMMONWEALTH OF PENNSYLVANIA
Office of the Attorney General
Strawberry Square
16th Floor
Harrisburg, PA 17120,

and

STATE OF TEXAS
Antitrust Division
Office of the Attorney General
PO Box 12548
Austin, TX 78711-2548,

Plaintiffs,

v.

REPUBLIC SERVICES, INC.
110 S.E. 6th Street, 28th Floor
Fort Lauderdale, FL 33301,

and

ALLIED WASTE INDUSTRIES, INC.
18500 North Allied Way
Phoenix, AZ 85054,

Defendants.

COMPLAINT

Plaintiff United States of America (“United States”), acting under the direction of the Attorney General of the United States, and plaintiffs State of California, Commonwealth of Kentucky, State of Michigan, State of North Carolina, State of Ohio, Commonwealth of Pennsylvania, and State of Texas (the “States”), acting under the direction of their respective Attorneys General, bring this civil antitrust action to enjoin the acquisition by defendant

Republic Services, Inc. (“Republic”) of the voting securities of defendant Allied Waste Industries, Inc. (“Allied”) and to obtain equitable and other relief as is appropriate. Plaintiffs complain and allege as follows:

I. Nature of the Action

1. Pursuant to a stock purchase agreement dated June 22, 2008, Republic plans to acquire all of the issued and outstanding voting securities of Allied, in a transaction valued at \$4.5 billion. Defendants Republic and Allied currently compete to provide small container commercial waste collection and municipal solid waste (“MSW”) disposal in areas across the United States. The proposed transaction would substantially lessen competition for small container commercial waste collection service as a result of Republic’s acquisition of Allied small container commercial waste collection assets in the following areas: (a) Atlanta, Georgia; (b) Cape Girardeau, Missouri; (c) Charlotte, North Carolina; (d) Fort Worth, Texas; (e) Greenville-Spartanburg, South Carolina; (f) Houston, Texas; (g) Lexington, Kentucky; (h) Lubbock, Texas; and (i) Northwest Indiana. The proposed transaction also would substantially lessen competition for MSW disposal service as a result of Republic’s acquisition of Allied’s MSW disposal assets in the following areas: (a) Atlanta, Georgia; (b) Cape Girardeau, Missouri; (c) Charlotte, North Carolina; (d) Cleveland, Ohio; (e) Denver, Colorado; (f) Flint, Michigan; (g) Fort Worth, Texas; (h) Greenville-Spartanburg, South Carolina; (i) Houston, Texas; (j) Los Angeles, California; (k) Northwest Indiana; (l) Philadelphia, Pennsylvania; and (m) San Francisco, California,

2. Defendants Republic and Allied are two of only a few significant providers of small container commercial waste collection or MSW disposal services in each of the identified

areas. Unless the acquisition is enjoined, consumers of small container commercial waste collection or MSW disposal services in these areas likely will pay higher prices and receive fewer services as a consequence of the elimination of the vigorous competition between Republic and Allied. Accordingly, Republic's acquisition of Allied would violate Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. Jurisdiction and Venue

3. This action is filed by the United States 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. Each of the States brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18. The States, by and through their respective Attorneys General, or other authorized officials, bring this action in their sovereign capacities and as *parens patriae* on behalf of the citizens, general welfare and economy of each of their states.

4. Defendant Allied transacts business in the District of Columbia, and Republic and Allied have consented to venue and personal jurisdiction, 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 MSW from residential, commercial, and industrial customers, and they own and operate transfer stations and landfills that process and dispose of MSW. In their small container commercial waste collection and MSW disposal businesses, Republic and Allied make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce, and engage in activities substantially affecting interstate

commerce, as well as commerce in each of the states. 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.

III. Defendants and the Transaction

6. Republic is a Delaware corporation with its principal office in Fort Lauderdale, Florida. Republic is the nation's third largest waste hauling and disposal company. It provides small container commercial waste collection and MSW disposal services throughout the United States. In 2007, Republic reported total revenues of approximately \$3.2 billion.

7. Allied is a Delaware corporation with its principal office in Phoenix, Arizona. Allied is the nation's second largest waste hauling and disposal company. It also provides small container commercial waste collection and MSW disposal services throughout the United States. In 2007, Allied reported total revenues of approximately \$6.1 billion.

8. On January 22, 2008, defendants Republic and Allied entered into a stock purchase agreement pursuant to which Republic will acquire all of the issued and outstanding voting securities of Allied in a transaction valued at \$4.5 billion.

IV. Trade and Commerce

A. The Relevant Service Markets

Small Container Commercial Waste Collection

9. 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, 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, often is collected either by local

governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

10. “Small container commercial waste collection” 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-end or rear-end load truck. Typical small container commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants). As used herein, “small container commercial waste collection” does not include small container commercial waste collection of franchised routes, the collection of roll-off containers, or residential collection service.

11. 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 often provide commercial customers with small containers, also called dumpsters, for storing the waste. Haulers organize their commercial accounts into routes, and collect and transport the MSW generated by these accounts in front-end load (“FEL”) trucks uniquely well suited for commercial waste collection. Less frequently, haulers may use more maneuverable, but less efficient, rear-end load (“REL”) trucks, especially in those areas in which a collection route includes narrow alleyways or streets. FEL trucks are unable to navigate narrow passageways easily and cannot efficiently collect the waste located in them.

12. On a typical small container commercial waste collection route, an operator drives a FEL vehicle 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 the servicing of the route.

13. In contrast to a small container commercial waste 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-person or three-person teams). On residential routes, 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 processes, residential customers and commercial customers usually are organized into separate routes.

14. Likewise, other types of collection activities, such as the use of roll-off containers (typically used for construction debris) and the collection of liquid or hazardous waste, are rarely combined with small container commercial waste collection. This separation of routes is due to differences in the hauling equipment required, the volume of waste collected, health and safety concerns, and the ultimate disposal option used.

15. The differences in the types and volume of MSW collected and in the equipment used in collection services distinguish small container commercial waste collection from all other

types of waste collection activities. Absent competition from other small container commercial waste collection firms, a small container commercial waste collection provider could profitably increase its charges 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 is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

Disposal of Municipal Solid Waste

16. “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. MSW has physical characteristics that readily distinguish it from other liquid or solid waste.

17. In order to be disposed of lawfully, MSW must be disposed in a landfill or an incinerator, and 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 each market. In less densely populated areas of the country, MSW often is disposed of directly into landfills that are permitted and regulated by the state. Landfill permit restrictions often impose limitations on the type and amount of waste that can be deposited. In many urban and suburban areas, because landfills are scarce due to high population density and

the limited availability of suitable land. Accordingly, MSW generated in such areas often is burned in an incinerator or taken to a transfer station. A transfer station is an intermediate disposal site for the processing and temporary storage of MSW before transfer, in bulk, to more distant landfills or incinerators for final disposal. Anyone who fails to dispose of MSW in a lawful manner can be subject to severe civil and criminal penalties.

18. Because of the strict laws and regulations that govern the disposal of MSW, there are no good substitutes for MSW disposal in landfills or incinerators, or at transfer stations located near the source of the waste. Firms that compete in the disposal of MSW can profitably increase their charges to haulers of MSW without losing significant sales to any other firms. Thus, disposal of MSW is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

The Relevant Geographic Markets

Small Container Commercial Waste Collection

19. Small container commercial waste collection is generally provided in highly localized areas because, to operate efficiently and profitably, a hauler must have sufficient density (*i.e.*, a large number of commercial accounts that are reasonably close together) in its small container commercial waste collection operations. If a hauler has to drive significant distances between customers, it earns less money for the time the truck is operating. For the same reason, the accounts must be near the operator's base of operations. It is economically impractical for a small container commercial waste collection firm to service metropolitan areas from a distant base, which requires that the FEL truck travel long distances just to arrive at its route. Haulers, therefore, generally establish garages and related facilities within each major

local area served.

20. In each of the following areas encompassing the listed counties, local small container commercial waste collection firms, absent competition from other small container commercial waste collection firms, could profitably increase charges to local customers without losing significant sales to more distant competitors: Atlanta, Georgia (Cherokee, Forsyth, Hall, Jackson, Barrow, Gwinnett, Walton, DeKalb, Rockdale, Fulton, Clayton, Cobb and Paulding Counties); Cape Girardeau, Missouri (Cape Girardeau County); Charlotte, North Carolina (Mecklenburg County); Fort Worth, Texas (Tarrant County); Greenville-Spartanburg, South Carolina (Greenville and Spartanburg Counties); Houston, Texas (Harris County); Lexington, Kentucky (Fayette, Jessamine, Woodford, Scott and Franklin Counties); Lubbock, Texas (Lubbock County); and Northwest Indiana (Lake, Porter and LaPorte Counties). Accordingly, each of these areas is 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, 15 U.S.C. 18.

Disposal of Municipal Solid Waste

21. MSW generally is transported by collection trucks to landfills and transfer stations, and the availability of disposal sites close to a hauler's routes is a major factor that determines a hauler's competitiveness and profitability. The cost of transporting MSW to a disposal site often is a substantial component of the cost of disposal. The cost advantage of local disposal sites limits the areas where MSW can be economically transported and disposed of by haulers and creates localized markets for MSW disposal services.

22. In each of the following areas encompassing the listed counties, the high costs of

transporting MSW and the substantial travel time to other disposal facilities based on distance, natural barriers and congested roadways, limit the distance that haulers of MSW generated in those areas can travel economically to dispose of their waste: Atlanta, Georgia (Cherokee, Forsyth, Hall, Jackson, Barrow, Gwinnett, Walton, DeKalb, Rockdale, Fulton, Clayton, Cobb and Paulding Counties); Cape Girardeau, Missouri (Cape Girardeau County); Charlotte, North Carolina (Mecklenburg County); Cleveland, Ohio (Cuyahoga County); Denver, Colorado (Denver and Arapahoe Counties); Flint, Michigan (Saginaw and Genesee Counties) ; Fort Worth, Texas (Tarrant County); Greenville-Spartanburg, South Carolina (Greenville and Spartanburg Counties); Houston, Texas (Harris County); Los Angeles, California (Los Angeles County); Northwest Indiana (Lake, Porter and LaPorte Counties); Philadelphia, Pennsylvania (Philadelphia County); and San Francisco, California (Contra Costa, Solano and Alameda Counties). The firms that compete in disposal of MSW generated in each of these areas generally own landfills, transfer stations or incinerators located within the area or no farther than roughly 25 to 35 miles outside the area's border. In the event that all the owners of those local disposal facilities imposed a small but significant increase in the price of the disposal of MSW, haulers of MSW generated in each area could not profitably turn to more distant disposal facilities. Firms that compete for the disposal of MSW generated in each area, absent competition from other local MSW disposal operators, could profitably increase their charges for disposal of MSW generated in the area without losing significant sales to more distant disposal sites. Accordingly, disposal of MSW generated in each of the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Cleveland, Ohio; Denver, Colorado; Flint, Michigan; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Los Angeles, California; Northwest

Indiana; Philadelphia, Pennsylvania; and San Francisco, California is a section of the country, or relevant geographic market, for purposes of analyzing the competitive effects of the acquisition under Section 7 of the Clayton Act, 18 U.S.C. 15.

C. Competitive Effects of the Acquisition

23. Defendants Republic and Allied directly compete in small container commercial waste collection service in each of the relevant geographic markets for small container commercial waste collection, defined in paragraph 20. In these markets, Republic and Allied each account for a substantial share of total revenues from small container commercial waste collection services.

24. Defendants Republic and Allied directly compete in the disposal of MSW in each of the relevant geographic markets for MSW disposal, defined in paragraph 22. In these markets, Republic and Allied each account for a substantial share of MSW disposal revenue and capacity.

25. The acquisition of Allied voting securities by Republic would remove a significant competitor in small container commercial waste collection and the disposal of MSW in already highly concentrated and difficult-to-enter markets. In each of these markets, the resulting substantial increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely will result in higher prices for collection of small container commercial waste or the disposal of MSW.

Atlanta, Georgia Area

26. In the Atlanta, Georgia area, the proposed acquisition would reduce from four to three the number of significant competitors in the collection of small container commercial waste. Annual revenue from small container commercial waste collection in the Atlanta, Georgia

area is approximately \$60 million. After the acquisition, defendants would have approximately 50 percent of the total number of small container commercial collection routes in the market. Using a standard measure of market concentration called the “HHI” (defined and explained in Appendix A), the post-merger HHI for small container commercial waste collection would be approximately 4064, an increase of 1225 points over the pre-merger HHI of 2839.

27. The proposed acquisition also would reduce from four to three the number of significant competitors for the disposal of MSW in the Atlanta, Georgia area. Annual revenue from MSW disposal in this market is approximately \$89 million. After the acquisition, defendants would have approximately 46 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 3864, an increase of 953 points over the pre-merger HHI of 2911.

Cape Girardeau, Missouri Area

28. In the Cape Girardeau, Missouri area, the proposed acquisition would reduce from four to three the number of significant competitors in the collection of small container commercial waste. Annual revenue from small container commercial waste collection in the Cape Girardeau, Missouri area is approximately \$5 million. After the acquisition, defendants would have approximately 64 percent of the total number of small container commercial collection routes in the market. The post-merger HHI for small container commercial waste collection would be approximately 4552, an increase of 2034 points over the pre-merger HHI of 2518.

29. The proposed acquisition also would reduce from three to two the number of significant competitors for the disposal of MSW in the Cape Girardeau, Missouri area. Annual

revenue from MSW disposal in this market is approximately \$3 million. After the acquisition, defendants would have approximately 70 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 5800, an increase of 2442 points over the pre-merger HHI of 3358.

Charlotte, North Carolina Area

30. In the Charlotte, North Carolina area, the proposed acquisition would reduce from three to two the number of significant competitors in the collection of small container commercial waste. Annual revenue from small container commercial waste collection in the Charlotte, North Carolina area is approximately \$40 million. After the acquisition, defendants would have approximately 70 percent of the total number of small container commercial collection routes in the market. The post-merger HHI for small container commercial waste collection would approximate 5456, an increase of 2340 points over the pre-merger HHI of 3116.

31. The proposed acquisition also would reduce from three to two the number of significant competitors for the disposal of MSW in the Charlotte, North Carolina area. Annual revenue from MSW disposal in this market is approximately \$69 million. After the acquisition, defendants would have approximately 80 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 8652; an increase of 3794 points over the pre-merger HHI of 4918.

Cleveland, Ohio Area

32. In the Cleveland, Ohio area, the proposed acquisition would reduce from four to three the number significant competitors for the disposal of MSW. Annual revenue from MSW disposal in this market is approximately \$68 million. After the acquisition, defendants would

have approximately 56 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 3837, an increase of 1570 points over the pre-merger HHI of 2267.

Denver, Colorado Area

33. In the Denver, Colorado area, the proposed acquisition would reduce from three to two the number of significant competitors for the disposal of MSW. Annual revenue from MSW disposal in this market is approximately \$56 million. After the acquisition, defendants would have approximately 37 percent of the MSW disposal market, and the two largest competitors would have roughly 87 percent. The post-merger HHI for MSW disposal would be approximately 4104, an increase of 551 points over the pre-merger HHI of 3353.

Flint, Michigan Area

34. In the Flint, Michigan area, the proposed acquisition would reduce from four to three the number of competitors for the disposal of MSW. Annual revenue from MSW disposal in this market is approximately \$29 million. After the acquisition, defendants would have over 51 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 4311, an increase in excess of 827 points over the pre-merger HHI of 3483.

Fort Worth, Texas Area

35. In the Fort Worth, Texas area, the proposed acquisition would reduce from four to three the number of significant competitors in the collection of small container commercial waste. Annual revenue from small container commercial waste collection in the Fort Worth, Texas area is approximately \$55 million. After the acquisition, defendants would have approximately 42 percent of the total number of small container commercial collection routes in

the market, and the two largest competitors would have approximately 70 percent of the market. The post-merger HHI for small container commercial waste collection would be approximately 2711, an increase of 783 points over the pre-merger HHI of 1928.

36. The proposed acquisition also would reduce from four to three the number of significant competitors for the disposal of MSW in the Fort Worth, Texas area. Annual revenue from MSW disposal in this market is approximately \$84 million. After the acquisition, defendants would have over 55 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 4428, an increase of 1332 points over the pre-merger HHI of 3096.

Greenville-Spartanburg, South Carolina Area

37. In the Greenville-Spartanburg area, the proposed acquisition would reduce from three to two the number of significant competitors in the collection of small container commercial waste. Annual revenue from small container commercial waste collection in the Greenville-Spartanburg area is approximately \$41 million. After the acquisition, defendants would have approximately 69 percent of the total number of small container commercial collection routes in the market. The post-merger HHI for small container commercial waste collection would be approximately 5714, an increase of 2173 points over the pre-merger HHI of 3541.

38. The proposed acquisition also would reduce from three to two the number of significant competitors for the disposal of MSW in the Greenville-Spartanburg area. Annual revenue from MSW disposal in this market is approximately \$40 million. After the acquisition, defendants would have approximately 50 percent of the MSW disposal market. The post-merger

HHI for MSW disposal would be approximately 5000, an increase of 1226 points over the pre-merger HHI of 3774.

Houston, Texas Area

39. In the Houston, Texas area, the proposed acquisition would reduce from three to two the number of significant competitors in the collection of small container commercial waste. Annual revenue from small container commercial waste collection in the Houston, Texas area is approximately \$109 million. After the acquisition, defendants would have approximately 56 percent of the total number of small container commercial collection routes in the market. The post-merger HHI for small container commercial waste collection would be approximately 4060, an increase of 1613 points over the pre-merger HHI of 2447.

40. The proposed acquisition also would reduce from three to two the number of significant competitors for the disposal of MSW in the Houston, Texas area. Annual revenue from MSW disposal in this market is approximately \$75 million. After the acquisition, defendants would have approximately 70 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 5733, an increase of 2408 points over the pre-merger HHI of 3325.

Lexington, Kentucky Area

41. In the Lexington, Kentucky area, the proposed acquisition would reduce from three to two the number of significant competitors in the collection of small container commercial waste. Annual revenue from small container commercial waste collection in the Lexington, Kentucky area is approximately \$9 million. After the acquisition, defendants would have approximately 75 percent of the total number of small container commercial collection routes in

the market. The post-merger HHI for small container commercial waste collection would be approximately 6250, an increase of 2500 points over the pre-merger HHI of 3750.

Los Angeles, California Area

42. In the Los Angeles, California area, the proposed acquisition would reduce from four to three the number of significant competitors for the disposal of MSW. Annual revenue from MSW disposal in this market is approximately \$372 million. After the acquisition, defendants would have approximately 39 percent of the MSW disposal market, and the two largest competitors would have 61 percent. The post-merger HHI for MSW disposal would be approximately 3070, an increase of 865 points over the pre-merger HHI of 2204.

Lubbock, Texas Area

43. In the Lubbock, Texas area, the proposed acquisition would reduce from four to three the number of significant competitors in the collection of small container commercial waste. Annual revenue from small container commercial waste collection in the Lubbock, Texas area is approximately \$18 million. After the acquisition, defendants would have approximately 63 percent of the total number of small container commercial collection routes in the market. The post-merger HHI for small container commercial waste collection would be approximately 4674, an increase of 1944 points over the pre-merger HHI of 2730.

Northwest Indiana Area

44. In the Northwest Indiana area, the proposed acquisition would reduce from four to three the number of significant competitors in the collection of small container commercial waste. Annual revenue from small container commercial waste collection in the Northwest Indiana area is approximately \$2.4 million. After the acquisition, defendants would have approximately 44

percent of the total number of small container commercial collection routes in the market. The post-merger HHI for small container commercial waste collection would be approximately 3586, an increase of 981 points over the pre-merger HHI of 2605.

45. The proposed acquisition also would reduce from four to three the number of significant competitors for the disposal of MSW in the Northwest Indiana area. Annual revenue from MSW disposal in this market is approximately \$28 million. After the acquisition, defendants would have approximately 64 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 4864, an increase of 1718 points over the pre-merger HHI of 4111.

Philadelphia, Pennsylvania Area

46. In the Philadelphia, Pennsylvania area, the proposed acquisition would reduce from three to two the number of significant competitors for the disposal of MSW. Annual revenue from MSW disposal in this market is approximately \$126 million. After the acquisition, defendants would have approximately 52 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 4547, an increase of 1396 points over the pre-merger HHI of 3151.

San Francisco, California Area

47. In the San Francisco, California area, the proposed acquisition would reduce from three to two the number of significant competitors for the disposal of MSW. Annual revenue from MSW disposal in this market is approximately \$101 million. After the acquisition, defendants would have approximately 50 percent of the MSW disposal market. The post-merger HHI for MSW disposal would be approximately 4256, an increase of 1283 points over the pre-

merger HHI of 2973.

D. Entry Into Small Container Commercial Waste Collection

48. Significant new entry into small container commercial waste collection is difficult and time-consuming in the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Lexington, Kentucky; Lubbock, Texas; and Northwest Indiana. A new entrant into small container commercial waste collection 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 a comparable operating efficiency, a new firm must achieve route densities similar to those of firms already competing in the market. However, the incumbent's ability to engage in price discrimination and enter into long-term contracts with collection customers is effective in preventing 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. Differences in the service provided by an incumbent hauler to each customer permit the incumbent easily to meet competition from new entrants by pricing its services lower to any individual customer that wants to switch to the new entrant. Incumbent firms frequently also use three to five year contracts, which may automatically renew or contain large liquidated damage provisions for contract termination. Such contracts make it more difficult for a customer to switch to a new hauler in order to obtain lower prices for its collection service. By making it more difficult for new haulers to obtain customers, these practices increase the cost and time required by an entrant to form an efficient route, reducing the likelihood that the entrant ultimately will be successful.

E. Entry Into MSW Disposal

49. Significant new entry into the disposal of MSW in the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Cleveland, Ohio; Denver, Colorado; Flint, Michigan; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Los Angeles, California; Northwest Indiana; Philadelphia, Pennsylvania; and San Francisco, California would be difficult and time-consuming. Obtaining a permit to construct a new disposal facility or to expand an existing one is a costly and time-consuming process that typically takes many years to conclude. Suitable land is scarce. Even when land is available, local public opposition often increases the time and uncertainty of successfully permitting a facility. It is also difficult to overcome environmental concerns and satisfy other governmental requirements.

50. Where it is not practical to construct and permit a landfill, it is necessary to use an incinerator to dispose of waste, or a transfer station to facilitate the use of more distant disposal options. Many of the problems associated with the permitting and construction of a landfill likewise make it difficult to permit and construct a transfer station or incinerator.

51. In the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Cleveland, Ohio; Denver, Colorado; Flint, Michigan; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Los Angeles, California; Northwest Indiana; Philadelphia, Pennsylvania; and San Francisco, California, entry by constructing and permitting a new MSW disposal facility would be costly and time-consuming, and unlikely to prevent market incumbents from significantly raising prices for the disposal of MSW following the acquisition.

V. Violation Alleged

52. Republic's proposed acquisition of all Allied voting securities and waste hauling or

disposal assets in the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Cleveland, Ohio; Denver, Colorado; Flint, Michigan; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Lexington, Kentucky; Los Angeles, California; Lubbock, Texas; Northwest Indiana; Philadelphia, Pennsylvania; and San Francisco, California likely will lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

53. The transaction likely will have the following effects, among others:

- a. competition in small container commercial waste collection service in the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Lexington, Kentucky; Lubbock, Texas; and Northwest Indiana will be lessened substantially;
- b. prices charged by small container commercial waste collection firms in the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Lexington, Kentucky; Lubbock, Texas; and Northwest Indiana will increase;
- c. competition in the disposal of MSW in the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Cleveland, Ohio; Denver, Colorado; Flint, Michigan; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Los Angeles, California; Northwest Indiana; Philadelphia, Pennsylvania; and San Francisco, California will be

lessened substantially; and

- d. prices for disposal of MSW in the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Cleveland, Ohio; Denver, Colorado; Flint, Michigan; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Los Angeles, California; Northwest Indiana; Philadelphia, Pennsylvania; and San Francisco, California will increase.

VI. Requested Relief

Plaintiffs request:

1. That Republic's proposed acquisition of all Allied's issued and outstanding voting securities 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 acquisition of voting securities described in the stock purchase agreement dated June 22, 2008, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to merge the voting securities or assets of the defendants;
3. That plaintiffs receive such other and further relief as the case requires and the Court deems proper; and
4. That plaintiffs recover the costs of this action.

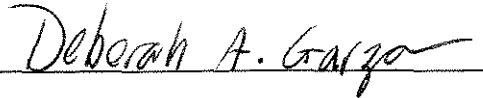
3. That plaintiffs receive such other and further relief as the case requires and the Court deems proper; and

4. That plaintiffs recover the costs of this action.

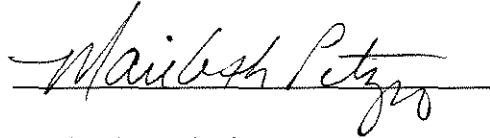
Dated: December 3, 2008

Respectfully submitted,

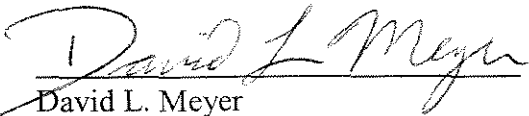
FOR PLAINTIFF UNITED STATES OF AMERICA



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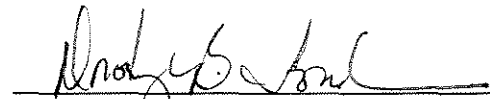
Maribeth Petrizzi
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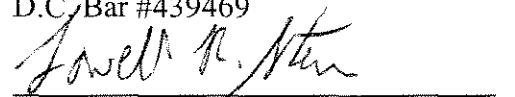
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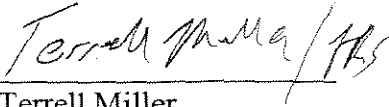
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Handwritten signature of C. Terrell Miller in cursive, followed by a horizontal line.

C. Terrell Miller
Assistant Attorney General

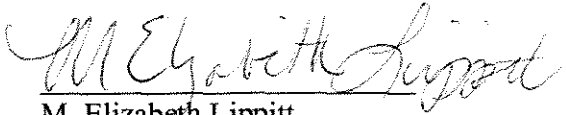
Handwritten signature of Maryellen B. Mynear in cursive, followed by a horizontal line.

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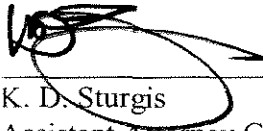
A handwritten signature in cursive script, appearing to read "M. Elizabeth Lippitt", written over a horizontal line.

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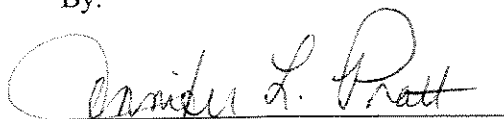
A handwritten signature in black ink, appearing to read "K. D. Sturgis", is written over a horizontal line.

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Chief, Antitrust Section

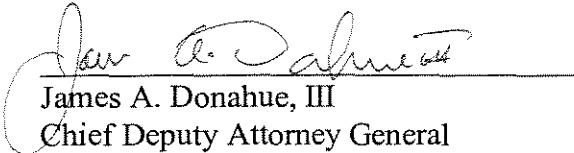
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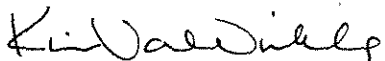
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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

“HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated and those in which the HHI is in excess of 1,800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice and the Federal Trade Commission. See *Horizontal Merger Guidelines* § 1.51.