UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF MISSOURI, and STATE OF NEBRASKA, *Plaintiffs*, v. STERICYCLE, INC., ATMW ACQUISITION CORP., MEDSERVE, INC., and AVISTA CAPITAL PARTNERS L.P., *Defendants*.	CASE NO.: 1:09-cv-02268 JUDGE: Hon. John D. Bates DECK TYPE: Antitrust DATE STAMP:

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Defendant Stericycle, Inc., through ATMW Acquisition Corp., and defendant MedServe, Inc., through Avista Capital Partners, L.P., entered into a stock purchase agreement dated May 9, 2009, pursuant to which Stericycle would acquire all of the voting shares of MedServe, valued at $185 million. The United States, and the State of Missouri and the State of Nebraska ("States"), filed a civil antitrust Complaint on November 30, 2009, seeking to enjoin the proposed acquisition. The Complaint alleged that the likely effect of the acquisition would be to substantially lessen competition in the provision of infectious waste collection and treatment

services for large quantity generator ("LQG") customers in the states of Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would result in higher prices and reduced service for these customers of infectious waste collection and treatment services.

With the filing of the Complaint in this case, the United States and the States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, explained more fully below, Stericycle and MedServe are required within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable business, all of the MedServe infectious waste collection and treatment assets in Kansas, Missouri, Nebraska, and Oklahoma. Under the terms of the Hold Separate Stipulation and Order, Stericycle and MedServe are required to take certain steps to ensure that the assets to be divested will be preserved and held separate from their other assets and businesses.

The United States, the States, and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

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

A. The Defendants and the Proposed Transaction

Stericycle is a Delaware corporation with its principal place of business in Lake Forest, Illinois. Stericycle, a multi-national company, is the largest provider of infectious waste collection and treatment services in the United States, with operations in nearly all of the contiguous 48 states, including 46 treatment facilities and 80 transfer and collection sites. In 2008, Stericycle reported total worldwide sales of approximately $1.1 billion, of which approximately 78 percent were generated in the United States. ATMW Acquisition Corp. is a corporation formed by Stericycle to facilitate its acquisition of MedServe.

MedServe is a Delaware corporation with its principal place of business in Bellaire, Texas. MedServe is the second-largest provider of infectious waste collection and treatment services in the United States, with operations in 25 states that include eight treatment facilities and 18 transfer and collection sites. In 2008, MedServe had total revenues of about $35 million. Avista Capital Partners, L.P. is an entity formed by MedServe to facilitate the acquisition of MedServe by Stericycle.

The proposed transaction, as agreed to by defendants on May 9, 2009, would substantially lessen competition in the provision of infectious waste collection and treatment services for LQG customers in the states of Missouri, Nebraska, Oklahoma, and Kansas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States and the States on November 30, 2009.

B. The Competitive Effects of the Transaction

1. Relevant Service Market: Infectious Waste Collection and Treatment Services for LQG Customers

Regulated medical waste is waste generated in the diagnosis, treatment, or immunization of human beings or animals. There are three types of regulated medical waste: (1) infectious waste; (2) pathological waste; and (3) trace chemotherapy waste. Infectious waste is waste that comes into contact with bodily fluids and "sharps" waste, such as syringes and scalpels. Pathological waste is anatomical parts, and trace chemotherapy waste is small amounts of chemical compounds used to treat cancer patients and the equipment used to administer the compounds. Infectious waste comprises approximately 90 percent of all regulated medical waste generated in the United States.

State and federal governments heavily regulate the collection and treatment of regulated medical waste. They prescribe how each type of regulated medical waste must be stored, collected, and treated. Providers of infectious waste collection and treatment services are required to be licensed by the various state and federal regulatory agencies before they can offer such services.

Regulated medical waste must be stored separately from other types of waste, and each type of regulated medical waste must be stored separately from the other types in specially marked and sealed containers. Collection and transport to treatment facilities must be performed by a state-approved company.

State-approved treatment facilities must be used to render regulated medical waste non-infectious. Failure to use state-approved treatment facilities subjects both the generator of the

infectious waste and the infectious waste collection and treatment service provider to criminal prosecution, fines, damage actions, and potentially high clean-up costs.

Autoclaves are the most prevalent treatment technology for infectious waste. An autoclave uses steam sterilization combined with pressure to render infectious waste non-infectious. Because autoclaving is a reliable and long-proven technology for treating infectious waste, it has become the preferred choice for treating infectious waste.

The infectious waste collection and treatment services industry categorizes customers according to the amount of infectious waste that they generate. LQG customers typically are hospitals, large laboratories, and other large medical facilities that generate large amounts of infectious waste. LQG customers often need collection to occur on a daily basis, or at least several times a week, and must receive continuous supplies of containers with sizeable storage capacity from their service providers.

LQG customers require that their service providers perform both infectious waste collection and treatment. They also require their providers to meet strict standards to ensure they have sufficient technical capability, knowledge, and financial resources. For example, LQG customers typically require an infectious waste collection and treatment service provider to have: (a) an adequate infrastructure to serve the customer's needs, including trucks, storage containers, transfer stations, electronic equipment capable of monitoring and tracking each type of waste, and personnel with a variety of expertise to support the infrastructure; (b) an established reputation for providing reliable and timely collection and treatment for LQG customers; (c) its own infectious waste treatment facility to minimize the number of companies that handle the

waste, thereby reducing the possibility that the waste is mishandled; and (d) substantial liability insurance that meets all federal and state regulatory requirements governing infectious waste.

Collection and treatment service providers bid for each LQG customer's business separately, and an infectious waste collection and treatment service provider can identify the specific competitive conditions that apply to each LQG customer, including which potential competitors can serve that LQG customer. Infectious waste collection and treatment service providers for LQG customers can and do price discriminate based on an LQG customer's requirements and the number of competitors available to provide such services.

A small but significant increase in the price of infectious waste collection and treatment services for LQG customers would not cause LQG customers to move sufficient volumes of infectious waste to another type of collection and treatment service so as to make such a price increase unprofitable. Accordingly, the provision of infectious waste collection and treatment services for LQG customers is a line of commerce and a relevant price discrimination service market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Market

The geographic market for the provision of infectious waste collection and treatment services for LQG customers is largely defined by transportation costs. Infectious waste collection and treatment service companies rely on trucks to transport waste from customer sites to their treatment facilities. Transfer stations enable service providers to transfer their waste into tractor-trailers and more cost-effectively transport their waste to treatment facilities. Typically, the greater the distance between an LQG customer's operations and the service provider's treatment or transfer facility, the less price competitive the provider is.

For LQG customers served by MedServe in Kansas, Missouri, Nebraska, and Oklahoma, the only competitive alternative is Stericycle. In these states, no other infectious waste collection and treatment service provider has a facility located within approximately 300 miles of Stericycle's or MedServe's facilities.

In the states of Kansas, Missouri, Nebraska, and Oklahoma, LQG customers would not switch to a more distant infectious waste collection and treatment service provider in sufficient numbers so as to make a small but significant increase in price unprofitable. Accordingly, the states of Kansas, Missouri, Nebraska, and Oklahoma are a relevant geographic market within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects of the Acquisition

In the states of Kansas, Missouri, Nebraska, and Oklahoma, the market for the provision of infectious waste collection and treatment services for LQG customers is highly concentrated. Following the acquisition, Stericycle would become the monopoly provider of infectious waste collection and treatment services for LQG customers in these states.

Vigorous price competition between Stericycle and MedServe in the provision of infectious waste collection and treatment services has benefited LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. Stericycle and MedServe are each other's only rival, directly competing on price and quality of service in the provision of infectious waste collection and treatment services for LQG customers.

Therefore, the proposed acquisition will eliminate the competition between Stericycle and MedServe; reduce the number of providers of infectious waste collection and treatment services for LQG customers from two to one; and enable Stericycle to establish a monopoly in the

provision of such services, leading to higher prices and lower quality of service for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act.

Successful entry into the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would be difficult, time-consuming, and costly. A prospective provider of infectious waste collection and treatment services for LQG customers faces substantial financial and permitting requirements to build a facility and the infrastructure needed to serve LQG customers. It also must have an established reputation for handling large amounts of infectious waste produced by LQG customers. A provider of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma must establish a treatment facility that contains a treatment technology, such as an autoclave, with sufficient capacity for treating large volumes of infectious waste. In addition to the capital costs of the treatment unit, local zoning and state permits are required.

A provider of infectious waste collection and treatment services for LQG customers also must have an infrastructure of trucks, transfer stations, and electronic equipment capable of collecting, transporting, treating and disposing, and monitoring and tracking the infectious waste. A provider of infectious waste collection and treatment services for LQG customers also must develop a reputation and record of reliably collecting and treating large volumes of infectious waste in compliance with state and federal regulations. In addition, a provider of infectious waste collection and treatment services for LQG customers must have the financial capability to

indemnify LQG customers for any environmental fines or accidents resulting from the collection, transportation, and treatment of the infectious waste.

Obtaining the necessary permits and building an autoclave facility, establishing the infrastructure to serve LQG customers, and developing a reputation and record of service and compliance would require in excess of two years. Entry into the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would not be timely, likely, or sufficient to counter anticompetitive price increases or diminished quality of service that Stericycle could impose after the proposed acquisition.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The terms of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition alleged in the Complaint. Section IV of the proposed Final Judgment requires defendants, within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the assets currently used by MedServe in the provision of infectious waste collection and treatment services to LQG customers in Kansas, Missouri, Nebraska, and Oklahoma to an acquirer acceptable to the United States, in its sole discretion. The assets to be divested, along with associated tangible and intangible assets, are MedServe's Newton, Kansas autoclave facility and MedServe's transfer stations in Kansas City, Kansas; Oklahoma City, Oklahoma; Omaha, Nebraska; and Booneville, Missouri. These assets comprise all of the assets used by MedServe in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. The divestiture of these assets according to the terms of the proposed Final Judgment will establish a new, independent, and economically viable competitor, thereby

preserving competition in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma.

In the event that defendants do not accomplish the divestiture within the time prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court, United States, and the States as appropriate, setting forth his or her efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee, the United States, and the States, will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Section VII of the proposed Final Judgment requires that defendants provide advance notification of certain future proposed acquisitions not otherwise subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 , 15 U.S.C. § 18a. That provision requires 30 days' advance written notice to the United States and the States before defendants acquire, directly or indirectly, (1) any interest in any business located in Kansas, Missouri, Nebraska, and Oklahoma that is engaged in the collection and treatment of infectious waste; (2) other than in the ordinary course of business, any assets located in Kansas, Missouri, Nebraska, and Oklahoma that are used in the collection and treatment of infectious waste; or

(3) capital stock or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the collection and treatment of infectious waste in Kansas, Missouri, Nebraska, and Oklahoma, where that person's annual revenues in these states from the collection and treatment of infectious waste were in excess of $500,000. With this provision, the United States and the States will have knowledge in advance of acquisitions that may impact competition in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

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 will neither impair nor assist 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 the defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States, the States, and the 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 sixty (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 sixty (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 United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 8700
Washington, D.C. 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

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have commenced litigation and sought a judicial order enjoining the acquisition of MedServe by Stericycle. The United States is satisfied that the divestiture and other relief described in the proposed Final Judgment will preserve competition in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. The relief contained in the proposed Final Judgment would achieve all or substantially all of the relief that the United States would have obtained through litigation, while avoiding the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, in accordance with the statute, the court 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); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.* 2009-2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent 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 United States Court of Appeals for the District of Columbia has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [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. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a proposed settlement is in the public interest, the court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States*

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[1] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

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 InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the '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. As this Court confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: "[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). The language wrote into the statute is what Congress intended when it 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 Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[3]

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[2] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1)(2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review.).

[3] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

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: January 20, 2010

Respectfully submitted,

Frederick H. Parmenter
U.S. Department of Justice
Antitrust Division, Lit II Section
450 Fifth Street, N.W., Suite 8700
Washington, DC 20530
202-307-0620

CERTIFICATE OF SERVICE

I, Frederick H. Parmenter, hereby certify that on January 20, 2010, caused a copy of the foregoing Competitive Impact Statement to be served upon defendants Stericycle, Inc., ATMW Acquisition Corp., MedServe, Inc., and Avista Capital Partners, L.P., and plaintiffs the State of Missouri and State of Nebraska by mailing the document electronically to the duly authorized legal representatives as follows:

Counsel for Defendants Stericycle, Inc., and ATMW Acquisition Corp.:

David A. Clanton, D.C. Bar # 376880
Baker & McKenzie LLP
815 Connecticut Avenue, NW
Washington, DC 20006-4078
Tel: (202) 452-7014
Fax: (202) 416-6929
Email: david.a.clanton@bakernet.com

Counsel for Defendants MedServe, Inc. and Avista Capital Partners, L.P.:

Sean F.X. Boland, D.C. Bar # 249318
Howrey LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402
Tel: (202) 383-7122
Fax: (202) 318-8649
Email: BolandS@howrey.com

Counsel for Plaintiff State of Missouri:

Anne E. Schneider
Assistant Attorney General
State of Missouri
P.O. Box 899
Jefferson City, MO 65102
Tel: (573) 751-8455
Fax: (573) 751-2041
Email: Anne.Schneider@ago.mo.gov

Counsel for Plaintiff State of Nebraska:

Leslie C. Levy
Assistant Attorney General, Nebraska Attorney General's Office
2115 State Capital Building
Lincoln, NE 68509
Tel.: (402) 471-2683
Fax: (402) 471-4725
Email: leslie.levy@nebraska.gov

Frederick H. Parmenter
United States Department of Justice
Antitrust Division, Litigation II Section
450 Fifth Street, NW, Suite 8700
Washington, DC 20530
Tel.: (202) 307-0620
Fax: (202) 307-6583
Email: frederick.parmenter@usdoj.gov