UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
U.S. Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 8700
Washington, DC 20530

and

STATE OF ALABAMA
Office of the Attorney General
Consumer Interest Division
501 Washington Avenue
Montgomery, AL 36130,

Plaintiffs,

v.

REPUBLIC SERVICES, INC.
18500 North Allied Way
Phoenix, AZ 85054

and

SANTEK WASTE SERVICES, LLC
650 25th Street NW, Suite 100
Cleveland, TN 37311,

Defendants.

Civil Action No.:

Judge:

COMPLAINT

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, and the State of Alabama, bring this civil antitrust action against Defendants Republic Services, Inc. ("Republic") and Santek Waste Services, LLC

("Santek") to enjoin Republic's proposed acquisition of Santek. The United States and the State of Alabama complain and allege as follows:

I. NATURE OF THE ACTION

1. Republic's proposed acquisition of its rival, Santek, would combine two of the largest waste management companies in numerous markets across the southeastern United States. Republic and Santek compete daily to provide essential waste collection and disposal services to keep neighborhoods sanitary. If the transaction proceeds unremedied, customers likely will pay higher prices and receive lower quality waste collection and disposal services.

2. In a number of markets in the southeastern United States, Defendants Republic and Santek are two of only a few significant providers of small container commercial waste ("SCCW") collection and municipal solid waste ("MSW") disposal, which are necessary for businesses, municipalities, and towns.

3. If the transaction proceeds to close in its current form, consumers would likely pay higher prices and receive lower quality service. Competition between Republic and Santek has resulted in lower prices and improved service to numerous customers, including towns and cities, restaurants, offices, apartment buildings, and other businesses. SCCW collection customers depend on Republic and Santek to collect their waste reliably and on a regular basis. In the absence of competition between Republic and Santek, these customers would likely pay more for waste collection and receive lower quality service. Disposal customers, such as independent and municipally-owned waste haulers, rely on Republic and Santek for affordable and accessible waste disposal options, including landfills and transfer stations, to dispose of the waste they collect from towns, cities, and other municipalities. If the transaction is consummated

as proposed by Defendants, these disposal customers would likely face higher fees and less favorable access to Republic's and Santek's disposal facilities.

4. In addition, the merger would also substantially lessen competition in waste collection in one geographic market (Chattanooga, Tennessee and North Georgia), as a result of the vertical integration of these firms, both of which enjoy strong positions in collection and disposal. Specifically, the combination of these two vertically-integrated firms that are both strong in collection and disposal would give the merged firm an increased incentive and ability to weaken its collection competitors by raising the price of disposal, a key input for collection services. With limited alternative disposal options left in the market, collection rivals would have to incur these higher costs or cease their operations, thereby limiting the ability of these rivals to compete with the merged firm's collection operations.

5. By eliminating competition between Republic and Santek and combining their businesses, the proposed acquisition would result in higher prices, fewer choices, and lower-quality service for waste collection and disposal customers in certain markets in the southeastern United States. Accordingly, Republic's acquisition of Santek would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and therefore should be enjoined.

II. THE PARTIES AND THE TRANSACTION

6. 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.

7. 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.

8. 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 last year for which information is publicly available, Santek generated approximately $140 million in revenue.

III. JURISDICTION AND VENUE

9. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

10. The State of Alabama brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The State of Alabama, by and through the Attorney General of Alabama, brings this action as *parens patriae* on behalf of and to protect the health and welfare of its citizens and the general economy of the State of Alabama.

11. Defendants' activities substantially affect interstate commerce. They provide collection and disposal services throughout the southeastern United States. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

12. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391(b) and (c).

IV. RELEVANT MARKETS

A. Product Markets

i. Small Container Commercial Waste Collection

13. Small container commercial waste ("SCCW") collection is a relevant product market. Waste collection firms—also called haulers—collect municipal solid waste ("MSW") 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 price increase 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.

ii. Municipal Solid Waste Disposal

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 price increase 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.

B. Relevant Geographic Markets

i. Small Container Commercial Waste Collection Geographic Markets

26. 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.

27. As currently contemplated, 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.

ii. Municipal Solid Waste Disposal Geographic Markets

28. 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.

29. 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 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.

V. ANTICOMPETITIVE EFFECTS

30. 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.

31. 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.

32. Concentration in relevant markets is typically defined by the Herfindahl-Hirschman Index (or "HHI," defined in Appendix A). 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.

33. 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.

34. In addition, 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 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.

A. Elimination of Horizontal Competition in SCCW Collection

35. 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.

36. 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

37. 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

38. 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

39. 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

40. 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.

B. Elimination of Horizontal Competition in MSW Disposal

41. 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

42. 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

43. MSW in the Estill Springs and Fayetteville, Tennessee area, is hauled to municipally-owned transfer stations before it is transferred to a landfill. 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.

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

44. 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.

45. 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.

46. 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.

47. 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.

VI. ENTRY

A. Difficulty of Entry into Small Container Commercial Waste Collection

48. 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.

49. 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.

B. Difficulty of Entry into Municipal Solid Waste Disposal

50. 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.

51. 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.

52. 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.

53. Entry by constructing and permitting a new MSW disposal facility would thus be

costly and 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.

VII. VIOLATIONS ALLEGED

54. Republic's proposed acquisition of Santek is likely to substantially lessen competition in each of the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

55. The acquisition will likely have the following anticompetitive effects, among others, in the relevant markets:

a. actual and potential competition between Republic and Santek will be eliminated;

b. competition generally will be substantially lessened; and

c. prices will likely increase and quality and the level of service will likely decrease.

VIII. REQUEST FOR RELIEF

56. The United States and the State of Alabama request that this Court:

a. adjudge and decree Republic's acquisition of Santek to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. preliminarily and permanently enjoin Defendants and all persons acting on their behalf from consummating the proposed acquisition by Republic of Santek or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Republic

with Santek;

c. award the United States and the State of Alabama the costs for this action; and

d. grant the United States and the State of Alabama such other relief as the Court deems just and proper.

Dated: March 31, 2021

Respectfully submitted,

COUNSEL FOR PLAINTIFF UNITED STATES:

/s/ Richard Powers
RICHARD POWERS
Acting Assistant Attorney General
Antitrust Division

/s/ Katrina Rouse
KATRINA ROUSE (D.C. Bar #1013035)
Chief
Defense, Industrials, and Aerospace Section
Antitrust Division

/s/ Kathleen S. O'Neil
KATHLEEN S. O'NEIL
Senior Director of Investigations and Litigation
Antitrust Division

/s/ Jay D. Owen
JAY D. OWEN
Assistant Chief
Defense, Industrials, and Aerospace Section
Antitrust Division

/s/ Gabriella R. Moskowitz
GABRIELLA R. MOSKOWITZ*
(D.C. Bar #1044309)
STEPHEN HARRIS
KEVIN QUIN (D.C. Bar #415268)
Trial Attorneys
Defense, Industrials, and Aerospace Section
Antitrust Division
450 Fifth Street N.W., Suite 8700
Washington, DC 20530
Telephone: (202) 598-2294
Facsimile: (202) 514-9033
Email: gabriella.moskowitz@usdoj.gov

*LEAD ATTORNEY TO BE NOTICED

FOR PLAINTIFF STATE OF ALABAMA

STEVE MARSHALL
Attorney General

/s/ John A. Selden
JOHN A. SELDEN
(AL Bar #5608C63A)
(D.C. Bar #1022301)
Assistant Attorney General

Office of the Attorney General
Consumer Interest Division
501 Washington Avenue
Montgomery, AL 36130
Telephone: (334) 353-0065
Facsimile: (334) 353-8400
Email: John.Selden@AlabamaAG.gov

APPENDIX A

DEFINITION OF THE HERFINDAHL-HIRSCHMAN INDEX

"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 30 percent, 30 percent, 20 percent, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. 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 above 2,500 are considered to be highly concentrated. *See* Horizontal Merger Guidelines § 5.3. Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed to be likely to enhance market power under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id*.