

Department for Natural Resources (DNR):

1. A 1.76 mile long × 12 foot wide road designated USFS road FSR 1669 exists on the land to which the VER determination request pertains.

2. The land upon which the road is located was in Federal ownership as part of the Daniel Boone National Forest on August 3, 1977, the date of enactment of SMCRA.

3. A letter from USFS District Ranger, John Kinney, indicating that William Gilbert has applied for a special use permit for the use of Forest Service Road 1669 to access his property in Bear Branch, Ky.

4. An affidavit from John Hollen, a resident of Bear Branch in Leslie County, Ky indicating that the proposed haul road contained in Jag Energy LLC application #866-0264 crossing the USFS property was used prior to 1977 as a coal haul road.

5. A coal lease between William T. Gilbert *et al.* Lessors, and Kenneth C. Smith, Lessee, for the Number four coal seam on lands described in Deed Book 34, page 464 and an Affidavit of Descent of John and Sally B. Gilbert in the records of the Leslie County, Ky. Court Clerk's office.

6. A copy of the deed and Affidavit of Descent referenced in the coal lease.

IV. How Will We Process the Request?

We received the request on October 21, 2008, and determined that it was administratively complete on October 30, 2008. That review did not include an assessment of the technical or legal adequacy of the materials submitted with the request.

The process by which we will further review the request is set out in 30 CFR 761.16(d) and (e). As required by 30 CFR 761.16(d)(1), we are publishing this notice to seek public comment on the merits of the request. A similar notice will also be published in a newspaper of general circulation in Leslie County, Kentucky.

After the close of the comment period, we will review the materials submitted with the request, all comments received in response to this and other notices, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, we will notify the requester, in writing, explaining the inadequacy of the record and requesting submittal, within a specified time, of any material needed to remedy the deficiency.

Once the record is complete and adequate, we will determine whether the requester has demonstrated VER for

the proposed access and haul road. Our decision document will contain findings of fact and conclusions, along with an explanation of the reasons for our conclusions. We will publish a notice of the decision in the **Federal Register** and a newspaper of general circulation in Leslie County, Kentucky.

However, as provided in 30 CFR 761.16(d)(1)(iv), we will not make a decision on the merits of the request, if, by the close of the comment period under this notice or the notice required by 30 CFR 761.16(d)(3), a person with a legal interest in the land to which the request pertains initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the request. This provision applies only if our decision is based upon the standard in paragraph (c)(1) of the definition of VER in 30 CFR 761.5. It will not apply if we base our decision on the standard in paragraph (c)(3) of the definition.

V. How Do I Submit Comments on the Request?

We will make the VER determination request and associated materials available to you for review as prescribed in 30 CFR 842.16, except to the extent that the confidentiality provisions of 30 CFR 773.6(d) apply. Subject to those restrictions, you may review a copy of the request for the VER determination and all comments received in response to this request at the Lexington Field Office (see **ADDRESSES**). Documents contained in the administrative record are available for public review at the Field Office during normal business hours, Monday through Friday, excluding holidays.

Electronic or Written Comments

If you wish to comment on the merits of the request for a VER determination, please send electronic or written comments to us at the addresses above (see **ADDRESSES**) by the close of the comment period (see **DATES**). Under 30 CFR 761.16(d)(1)(vii), you may request a 30-day extension of the comment period. Requests for extension of the public comment period must be submitted to the same addresses by the date indicated.

If you submit comments by e-mail, please include your name and return address in your message. You may contact the Lexington Field Office at (859) 260-8402 if you wish to confirm receipt of your message.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 18, 2008.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

[FR Doc. E8-29758 Filed 12-15-08; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Republic Services, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States v. Republic Services, Inc. & Allied Waste Industries, Inc.*, Civil Action No. 1:08-cv-02076. On December 3, 2008, the United States filed a Complaint alleging that the proposed acquisition by Republic Services, Inc. of Allied Waste Industries, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the provision of non-franchised small container commercial waste collection services 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; and in the provision of municipal solid waste disposal services 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. The proposed Final Judgment, filed the same day as the Complaint, requires Republic to divest certain non-franchised small container

commercial waste collection assets in the small container collection areas of concern and certain municipal solid waste disposal assets in the municipal solid waste disposal services areas of concern. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202-307-0924).

Patricia A. Brink,
Deputy Director of Operations.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 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, 525 W. Ottawa Street, 6th Floor, Lansing, Michigan 48913; State of North Carolina, Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001; State of Ohio, Attorney General's Office, 150 East Gay Street, 23rd Floor, Columbus, OH 43215; 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.

Civil Action No.: 1:08-Cv-02076.
Description: Antitrust.
Judge: Roberts, Richard W.
Date Stamp: 12/3/2008.

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.

B. 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, 15 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 of 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.

Dated: December 3, 2008
Respectfully submitted,
For Plaintiff United States of America

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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 $30^2 + 30^2 + 20^2 + 20^2 = 2,600$. 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.

United States District Court for the District of Columbia

United States of America, State of California, Commonwealth of Kentucky, State of Michigan, State of North Carolina, State of Ohio, Commonwealth of Pennsylvania, and State of Texas, Plaintiffs, v. Republic Services, Inc., and Allied Waste Industries, Inc., Defendants.

Civil Action No.:

Description: Antitrust

Judge:

Date Stamp:

Proposed Final Judgment

Whereas, plaintiffs, the United States of America, the State of California, the Commonwealth of Kentucky, the State of Michigan, the State of North Carolina, the State of Ohio, the Commonwealth of Pennsylvania, and the State of Texas, filed their Complaint on December 3, 2008; the plaintiffs and defendants, Republic Services, Inc. and Allied Waste Industries, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of law or fact;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Divestiture Assets to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of

remediating the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ordered, adjudged, and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. “Acquirer” or “Acquirers” means the entity or entities to whom defendants divest the Divestiture Assets.

B. “Allied” means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Phoenix, Arizona, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

C. “Republic” means defendant Republic Services, Inc., a Delaware corporation headquartered in Ft. Lauderdale, Florida, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

D. “Disposal” means the business of disposing of waste into approved disposal sites, including the use of transfer stations to facilitate shipment of waste to other disposal sites.

E. “Divestiture Assets” means the Relevant Disposal Assets and the Relevant Hauling Assets.

F. “Hauling” means small container commercial waste collection from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

G. “Route” means a group of customers receiving regularly scheduled small container commercial waste collection service and all tangible and intangible assets relating to the route, as of October 31, 2008 (except for *de*

minimis changes, such as customers lost and gained in the ordinary course of business), including capital equipment, trucks and other vehicles (those assigned to routes and a pro-rata share of spare vehicles); containers (at the customer location and a pro-rata share of spares); supplies (pro-rata share); and if requested by the Acquirer, the real property and improvements to real property (e.g., garages and buildings that support the route) as specified in Section II, paragraph I below; customer lists; customer and other contracts; leasehold interests; permits/licenses and accounts receivable, excluding franchise customers.

H. "Relevant Disposal Assets" means, unless otherwise noted, with respect to each transfer station and landfill listed and described herein, all of defendants' rights, titles, and interests in any tangible asset related to each transfer station and landfill listed, including all fee simple or ownership rights to offices, garages, related facilities, capital equipment, trucks and other vehicles, scales, power supply equipment, and supplies; and all of defendants' rights, titles, and interests in any related intangible assets, including all leasehold interests and renewal rights thereto, permits, customer lists, contracts, and accounts, or options to purchase any adjoining property. Relevant Disposal Assets, as used herein, includes each of the following:

1. *Landfills and Landfill Disposal Agreements*

a. Charlotte, North Carolina

Allied's Anson County Landfill, located at 375 Allied Road, Polkton, North Carolina 28135;

b. Cleveland, Ohio

Allied's Superior Oakland Marsh Landfill, located at 170 Noble Road East, Shiloh, Ohio 44878;

c. Denver, Colorado

Republic's Front Range Landfill, located at 1830 Weld Company Road 5, Erie, Colorado 80516;

d. Flint, Michigan

Republic's Brent Run Landfill, located at 8247 Vienna Road, Montrose, Michigan 48457;

e. Fort Worth, Texas

At the Acquirer's option, (i) Allied's Turkey Creek Landfill, located at 9100 South I-35 West Exit 21, Alvarado, Texas 76009, or (ii) all of Allied's rights, titles, and interests in the Fort Worth Southeast Landfill, located at 6900 Dick Price Road, Kennedale, Texas 76060, provided that the City of Fort Worth,

owner of the Fort Worth Southeast Landfill, approves in advance the sale or assignment of Allied's rights, titles, and interests in the landfill to the Acquirer. If an Acquirer opts to purchase all of Allied's rights, titles, and interests in the Fort Worth Southeast Landfill, defendants will use their best efforts to secure the City of Fort Worth's approval.

f. Greenville-Spartanburg, South Carolina

Allied's Anderson Regional Landfill, located at 203 Landfill Road, Anderson, South Carolina 29627;

g. Houston, Texas

(1) Republic's Seabreeze Environmental Landfill, located at 10310 FM-523, Angleton, Texas 77515; and

(2) Rights to landfill disposal, at rates to be negotiated, at Allied's Blue Ridge Landfill, located at 2200 FM-521 Road, Fresno, Texas 77545, pursuant to which defendants will reserve capacity for an Acquirer for MSW disposal under the following minimum terms and conditions:

a. A term of ten (10) years from the date of sale of the Relevant Hauling Assets for the Houston, Texas area;

b. The Acquirer may dispose of 600 tons per day of MSW ("Minimum Disposal Amount") and no more than 1,000 tons per day of direct-haul MSW ("Maximum Disposal Amount") at the Blue Ridge Landfill ("Maximum Disposal Amount"), during each six (6) calendar month period during the term of the agreement, to be pro rated for any partial periods at the beginning and end of the agreement. The agreement may also provide that if the Acquirer disposes of less than the prevailing Minimum Disposal Amount during any such six (6) month period, then the Minimum Disposal Amount and the Maximum Disposal Amount may be reduced for the remainder of the disposal agreement term by a tonnage amount equal to the shortfall amount.

c. For the Acquirer of the landfill disposal agreement, defendants must commit to operate the Blue Ridge Landfill gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in the metropolitan Houston area, except as to price and credit terms; and

d. At any time during the life of the agreement, the Acquirer has the right to terminate the agreement upon ninety (90) days' written notice to defendants.

h. Los Angeles, California

Republic's Chiquita Canyon Sanitary Landfill, 29201 Henry Mayo Drive, Valencia, California 91355;

i. Northwest Indiana

At the option of the Acquirer of the Valparaiso Transfer Station, landfill disposal rights, at rates to be negotiated, at Allied's Newton County Development Corporation Landfill ("Newton County Landfill"), located at 2266 East 500 South Road, Brook, Indiana 47922, pursuant to which defendants will offer to reserve 350 tons per day of capacity for an Acquirer for MSW disposal at Newton County Landfill, under the following minimum terms and conditions:

(1) A term of two (2) years from the date of sale of the Valparaiso Transfer Station;

(2) The Acquirer may dispose of up to 350 tons per day of MSW at Newton County Landfill;

(3) For the Acquirer of the landfill disposal agreement, defendants must commit to operate the Newton County Landfill gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in the Northwest Indiana area, except as to price and credit terms; and

(4) At any time during the life of the agreement, the Acquirer has the right to terminate the agreement upon thirty (30) days' written notice to defendants.

j. Philadelphia, Pennsylvania

At the option of the Acquirer of the Girard Point Transfer Station and the Philadelphia Recycling and Transfer Station, rights to landfill disposal, at rates to be negotiated, at Republic's Modern Landfill, located at 4400 Mount Pisgah Road, York, Pennsylvania 17402, pursuant to which defendants will reserve capacity for an Acquirer for MSW disposal at Modern Landfill, under the following minimum terms and conditions:

(1) A term of eighteen (18) months from the date of sale of the Girard Point Transfer Station and the Philadelphia Recycling and Transfer Station;

(2) The Acquirer may dispose of up to 1300 tons per day of MSW at the Modern Landfill;

(3) For the Acquirer of the landfill disposal agreement, defendants must commit to operate the Modern Landfill gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in the

Philadelphia, Pennsylvania area, except as to price and credit terms; and

(4) At any time during the life of the agreement, the Acquirer has the right to terminate the agreement upon thirty (30) days' written notice to defendants.

k. San Francisco, California

Republic's Potrero Hills Sanitary Landfill, located at 3675 Potrero Hills Lane, Suisun, California 94585, except that Republic need not convey (i) the right to control the location of disposal for waste volumes that Republic has disposed of at Potrero Hills Sanitary Landfill via transfer through the Golden Bear Transfer Station or contracts covering the disposal of such waste, or (ii) contracts between the Republic subsidiary that owns Potrero Hills Sanitary Landfill and Alameda County Industries to the extent those contracts govern disposal of waste at Vasco Road Landfill.

2. *Transfer Stations*

a. Atlanta, Georgia

(i) Republic's Central Gwinnett Transfer Station, located at 535 Seaboard Industrial Drive, Lawrenceville, Georgia 30045; and

(ii) Allied's BFI Smyrna Transfer Station, located at 4696 South Cobb Drive, Smyrna, Georgia 30080;

b. Cape Girardeau, Missouri

Allied's Jackson Solid Waste Transfer Station, located at 2004 Lee Avenue, Hwy 25 N, Jackson, Missouri 63755;

c. Charlotte, North Carolina

Republic's Queen City Transfer Station, located at 3130 Jeff Adams Drive, Charlotte, North Carolina 28206;

d. Cleveland, Ohio

Republic's Harvard Road Transfer Station, located at 3227 Harvard Road, Newburgh Heights, Ohio 44105;

e. Greenville-Spartanburg, South Carolina

Allied's Greer Transfer Station, located at 590 Gilliam Road, Greer, South Carolina 29651;

f. Houston, Texas

Republic's Hardy Road Transfer Station, located at 18784 Hardy Road, Houston, Texas 77073;

g. Northwest Indiana

Allied's Valparaiso Transfer Station, located at 3101 Bertholet Boulevard, Valparaiso, Indiana 46383; and

h. Philadelphia, Pennsylvania

(i) Republic's Girard Point Transfer Station, located at 3600 South 26th

Street, Philadelphia, Pennsylvania 19145; and

(ii) Allied's Philadelphia Recycling and Transfer Station, located at 2209 South 58th Street, Philadelphia, Pennsylvania 19143.

I. "Relevant Hauling Assets," unless otherwise noted, means the small container commercial waste collection routes and other assets listed below:

1. *Atlanta, Georgia*

(a) Allied's small container commercial waste collection routes 123, 130, 131, 132, 133, 136, 137, 138, 141, 142, 144, 146, and 147; and (b) at the Acquirer's option, the hauling facility located at 1581 Fulenwider Road, Gainesville, Georgia;

2. *Cape Girardeau, Missouri*

(a) Allied's small container commercial waste collection routes 790 and 791; and (b) at the Acquirer's option, the hauling facility located at 281 Rambler Road, Jackson, Missouri;

3. *Charlotte, North Carolina*

(a) Republic's small container commercial waste collection routes A001, A002, A003, A004, A005, A007, A008, A009, A010, and A012; and (b) at the Acquirer's option, the hauling facility located at 5516 Rozzelles Ferry Road, Charlotte, North Carolina;

4. *Fort Worth, Texas*

(a) Republic's small container commercial waste collection routes VA, VB, VC, VD, and VE; and (b) notwithstanding any other provision of this Final Judgment, in the event an Acquirer purchases Allied's rights, titles and interests in the Fort Worth Southeast Landfill, the Acquirer shall have the option to lease a sufficient portion of the Republic yard located at 1212 Harrison Avenue, Arlington, Texas for a period of six (6) months with an option to renew for one additional six (6) month period, under a lease to permit the Acquirer to support fully the operation of the divested small container commercial waste collection routes and the potential growth of the divested hauling business to include additional routes;

5. *Greenville-Spartanburg, South Carolina*

(a) Allied's small container commercial waste collection routes 701, 704, 705, 708, 714, 718, 719, and 720; and (b) at the Acquirer's option, the hauling facility located at 101 Rogers Bridge Road, Duncan, South Carolina;

6. *Houston, Texas*

(a) Republic's small container commercial waste collection routes

A002, A004, A005, A006, A008, A009, A010, A011, A012, A017, A024, A027, A028, A029, A031, A034, A035, A038, A040, A042, A043, A044, A045, A046, A049, A052, A053, A054, A055, A058, A059, and A060; and (b) at the Acquirer's option, the hauling facility located at 2010 Wilson Road, Houston, Texas;

7. *Lexington, Kentucky*

(a) Republic's small container commercial waste collection routes 31, 32, 34, 36, and 37; and (b) at the Acquirer's option, the hauling facility located at 4000 Park Central Court, Nicholasville, Kentucky;

8. *Lubbock, Texas*

(a) Allied's small container commercial waste collection routes 1711, 1713, 1714, 1911, 1912, 1913, and 1914; and (b) at the Acquirer's option, the hauling facility located at 1812 CR-60, Lubbock, Texas; and

9. *Northwest Indiana*

(a) Allied's small container commercial waste collection routes 150, 751, 754, 756, and 757; and (b) at the Acquirer's option, the hauling facility located at 3101 Bertholet Boulevard, Valparaiso, Indiana.

J. "Relevant State" means the state or commonwealth in which the Divestiture Assets are located, provided, however, that state or commonwealth is a party to this Final Judgment.

K. "Small container commercial waste collection" means the business of collecting municipal solid waste 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.

L. "MSW" means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments. Municipal solid waste 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.

III. Applicability

A. This Final Judgment applies to Republic and Allied, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the defendants' Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 90 calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest all Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer(s) acceptable to the United States in its sole discretion, after consultation with the Relevant State. With respect to the Atlanta, Georgia; Cleveland, Ohio; Philadelphia, Pennsylvania; and Ft. Worth, Texas areas, the Divestiture Assets in each area must be offered for sale to prospective Acquirers separately from Divestiture Assets in other areas. All of the Divestiture Assets serving any single relevant area shall be sold to the same Acquirer, unless defendants receive the prior written consent of the United States. The United States, in its sole discretion, after consultation with the Relevant State, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances,

all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer(s) and the United States information relating to all personnel involved in the operation and management of the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer(s) to employ or contract with any defendant employee whose primary responsibility is the operation or management of the Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer(s) that each asset will be operational on the date of sale.

F. In the event that the Turkey Creek Landfill is not, for any reason, fully operational and capable of disposing of at least 675,000 tons of MSW annually at the time of its divestiture, defendants shall be required to divest alternative disposal assets in the Fort Worth, Texas area that are sufficient to achieve the purposes of this Final Judgment to the satisfaction of the United States, in its sole discretion, after consultation with the State of Texas.

G. Defendants shall not take any action that will impede in any way the permitting, operation or divestiture of the Divestiture Assets.

H. Defendants shall warrant to each Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of the Divestiture Assets, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States, after consultation with the Relevant State, otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to

Section V, of this Final Judgment, shall include all the Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Relevant State, that the divestiture will achieve the purposes of this Final Judgment and that the Divestiture Assets can and will be used by an Acquirer(s) as part of a viable, ongoing disposal or hauling business in each relevant area. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) Shall be made to an Acquirer(s) that, in the United States's sole judgment, after consultation with the Relevant State, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the disposal or hauling business; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the Relevant State, that none of the terms of any agreement between an Acquirer(s) and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV, Paragraph A, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestitures to an Acquirer(s) acceptable to the United States, after consultation with the Relevant State, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V, Paragraph D of this Final Judgment, the trustee may hire at the defendants' cost and expense any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any objection by defendants on the ground of the trustee's malfeasance must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States, the Relevant State, and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture

Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and the Relevant State of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States and the Relevant State of such notice, the United States, in its sole discretion, after consultation with the Relevant State, may request from defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States, in its sole discretion, after consultation with the Relevant State, shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V, Paragraph C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V, Paragraph C, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Notice of Future Acquisitions

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendants, without providing advance notification to United States and the Relevant State, shall not directly or indirectly acquire, any (1) interest in any business engaged in a relevant service in a relevant area, (2) assets (other than in the ordinary course of business) used in a relevant service in a relevant area, (3) capital stock, or (4) voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in MSW disposal or small container commercial waste collection in any relevant area, where that person's annual revenues in the relevant area from MSW disposal and/or small container commercial waste collection service were in excess of \$500,000 annually. For clarity, this provision also applies to an acquisition of disposal facilities that serve a relevant area but are located outside the relevant area, whether or not they are physically located in the relevant area.

Such notification shall be provided to the United States in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information

requested in Items 5 through 8 of the instructions must be provided only about the relevant service. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or

strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may

be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

AREAS FOR WHICH NOTICE PROVISION APPLIES

Relevant area	Counties	Relevant service
Atlanta, GA	Cherokee, Forsyth, Hall, Jackson, Barrow, Gwinnett, Walton, DeKalb, Rockdale, Fulton, Clayton, Cobb and Paulding Counties.	hauling and transfer station disposal.
Cape Girardeau, MO	Cape Girardeau County	hauling and transfer station disposal.
Charlotte, NC	Mecklenburg County	hauling and transfer station and landfill disposal.
Cleveland, OH	Cuyahoga County	transfer station and landfill disposal.
Denver, CO	Denver and Arapahoe Counties	landfill disposal.
Flint, MI	Saginaw and Genesee Counties	landfill disposal.
Fort Worth, TX	Tarrant County	hauling and landfill disposal.
Greenville-Spartanburg, SC	Greenville and Spartanburg Counties	hauling and transfer station and landfill disposal.
Houston, TX	Harris County	hauling and transfer station and landfill disposal.
Lexington, KY	Fayette, Jessamine, Woodford, Scott and Franklin Counties	hauling.
Los Angeles, CA	Los Angeles County	landfill disposal.
Lubbock, TX	Lubbock County	hauling.
Northwest Indiana	Lake, Porter and LaPorte Counties	hauling and transfer station disposal.
Philadelphia, PA	Philadelphia County	transfer station disposal.
San Francisco, CA	Contra Costa, Solano and Alameda Counties	landfill disposal.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

IX. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V, defendants shall deliver to the United States and the Relevant State an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30)

calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the Relevant State, to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX

of this Final Judgment. Defendants shall deliver to the plaintiffs an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division ("DOJ"), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, or the Attorney General's Office of any other plaintiff, except in the course of legal proceedings to which the United States or any other plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

During the term of this Final Judgment, defendants may not reacquire any part of the Divestiture Assets, nor may any defendant participate in any other transaction that would result in a combination, merger, or other joining together of any part of the Divestiture Assets with assets of the divesting company.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____
Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16
United States District Judge

United States District Court for the District of Columbia

United States of America, State of California, Commonwealth of Kentucky, State of Michigan, State of North Carolina, State of Ohio, Commonwealth of Pennsylvania, and State of Texas, Plaintiffs, v. Republic Services, Inc., and Allied Waste Industries, Inc., Defendants.

Civil Action No.: 1:08-cv-02076.
Description: Antitrust.
Judge: Roberts, Richard W.
Date Stamp: 12/3/2008.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 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

Pursuant to a stock purchase agreement dated June 22, 2008, defendant Republic Services, Inc. ("Republic") plans to acquire all of the issued and outstanding voting securities

of defendant Allied Waste Industries, Inc. ("Allied"). If consummated, the agreement would give Republic ownership of all the waste hauling and disposal assets held by Allied throughout the United States. The United States and the 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") filed a civil antitrust Complaint on December 3, 2008, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for small container commercial waste collection and municipal solid waste ("MSW") disposal services in several markets in violation of Section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection and disposal of MSW.

At the same time the Complaint was filed, the United 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, which is explained more fully below, Republic is required within 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 viable business operations, specified small container commercial waste collection and MSW disposal assets. Under the terms of the Hold Separate Stipulation and Order, Republic and Allied 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

1. The Defendants and the Proposed Transaction

Republic, with revenues in 2007 of approximately \$3.2 billion, is the nation's third largest waste hauling and disposal company. Allied, with 2007

revenues of approximately \$6.1 billion, is the nation's second largest waste hauling and disposal company. The proposed transaction, as initially agreed to by defendants on June 22, 2008, would lessen competition substantially in the provision of non-franchised small container commercial waste collection services 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. In addition, the transaction as initially proposed would lessen competition substantially in the provision of MSW disposal services 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. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States and the States on December 3, 2008.

B. The Competitive Effects of the Transaction

MSW is solid, putrescible waste generated by households and commercial establishments. Waste collection firms, or haulers, contract to collect MSW from residential and commercial customers and transport the waste to private and public MSW disposal facilities (e.g., transfer stations, incinerators, and landfills), which, for a fee, process and legally dispose of the waste. Small container commercial waste collection is one component of MSW collection, which also includes residential and other waste collection. Private waste haulers typically contract with customers for the collection of waste generated by commercial accounts. MSW generated by residential customers, on the other hand, often is collected by local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities. Republic and Allied compete in the collection of small container commercial waste and the disposal of MSW.

1. The Effects of the Transaction on Competition in Small Container Commercial Waste Collection

a. Small Container Commercial Waste Collection

Small container commercial waste collection service is the collection of

MSW from commercial businesses such as office and apartment buildings and retail establishments (e.g., stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into routes, and generally use specialized equipment to store, collect, and transport MSW from these accounts to approved MSW disposal sites. This equipment (e.g., one- to ten-cubic-yard containers for MSW storage, and front-end load vehicles commonly used for collection and transportation of MSW) is uniquely well suited for providing small container commercial waste collection service. Providers of other types of waste collection services (e.g., residential, hazardous waste, and roll-off services) are not good substitutes for small container commercial waste collection firms. In these types of waste collection efforts, firms use different waste storage equipment (e.g., garbage cans or semi-stationary roll-off containers) and different vehicles (e.g., rear-load, side-load, or roll-off trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect, or transport MSW generated by commercial accounts and, hence, rarely are used on small container commercial waste collection routes. In the event of a small but significant increase in price for small container commercial waste collection services, customers would not switch to any other alternative. Thus, the Complaint alleges that the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service, for purposes of analyzing the effects of the transaction.

The Complaint alleges that the provision of small container commercial waste collection service takes place in compact, highly localized geographic markets. It is expensive to transport MSW long distances between collection customers or to disposal sites. To minimize transportation costs and maximize the scale, density, and efficiency of their MSW collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Distance may significantly limit a remote firm's ability to provide small container commercial waste collection service as frequently or conveniently as

that offered by local firms with nearby routes. Also, local small container commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local small container commercial waste customers without losing significant sales to firms outside the area.

Applying this analysis, the Complaint alleges that local small container waste collection firms, absent competition from other small container waste collection firms, could profitably increase charges to local customers without losing significant sales to more distant competitors in each of the following areas: Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Lexington, Kentucky; Lubbock, Texas; and Northwest Indiana. Accordingly, the Complaint alleges that each of these areas constitutes a section of the country, or a relevant geographic market, for the purpose of assessing the competitive effects of a combination of Republic and Allied in the provision of small container commercial waste collection services.

There are significant entry barriers into small container commercial waste collection. A new entrant into small container commercial waste collection services must achieve a minimum efficient scale and operating efficiencies comparable to those of existing firms in order to provide a significant competitive constraint on the prices charged by market incumbents. In order to obtain comparable operating efficiencies, a new firm must achieve route density similar to existing firms. An efficient route usually handles 80 or more customers or containers each day. Because most customers have their MSW collected once or twice a week, a new entrant must have several hundred small container commercial waste customers in close proximity to construct an efficient route. However, the incumbent's ability to engage in price discrimination and enter into long-term contracts with small container commercial waste collection customers can leave too few customers available for the entrant in a sufficiently confined geographic area to create an efficient route. The incumbent firm can selectively and temporarily charge an unbeatably low price to specified customers targeted by new entrants. Long-term contracts often run for three to five years and may automatically renew or contain large liquidated damage provisions for contract termination. Such terms make it more costly or difficult for a customer to

switch to a new small container commercial waste hauler and obtain lower prices for its collection service. Because of these factors, a new entrant may find it difficult to compete by offering its small container commercial waste services at pre-entry price levels comparable to the incumbent and may find an increase in the cost and time required to form an efficient route, thereby limiting a new entrant's ability to build an efficient route and reducing the likelihood that the entrant will ultimately be successful.

The need for route density, the use of long-term contracts with restrictive terms, and the ability of existing firms to price discriminate raise significant barriers to entry by new firms, which likely will be forced to compete at lower than pre-entry price levels. Such barriers in the market for small container commercial waste collection have allowed incumbent firms to raise prices successfully.

b. Anticompetitive Effects in Small Container Commercial Waste Collection Markets

(1) Atlanta, Georgia Area

Republic is acquiring the hauling assets of Allied in Atlanta, Georgia. These assets serve small container commercial waste collection customers in Cherokee, Forsyth, Hall, Jackson, Barrow, Gwinnett, Walton, DeKalb, Rockdale, Fulton, Clayton, Cobb, and Paulding Counties, Georgia. In this 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 waste collection routes in the market.

(2) Cape Girardeau, Missouri Area

Republic is acquiring the hauling assets of Allied in Cape Girardeau, Missouri. These assets serve small container commercial waste collection customers in Cape Girardeau County, Missouri. In this 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 waste collection routes in the market.

(3) Charlotte, North Carolina Area

Republic is acquiring the hauling assets of Allied in Charlotte, North Carolina. These assets serve small container commercial waste collection customers in Mecklenburg County, North Carolina. In this 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 waste collection routes in the market.

(4) Fort Worth, Texas Area

Republic is acquiring the hauling assets of Allied in Fort Worth, Texas. These assets serve small container commercial waste collection customers in Tarrant County, Texas. In this 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 waste collection routes in the market, and the two largest competitors would have approximately 70 percent of the market.

(5) Greenville-Spartanburg, South Carolina Area

Republic is acquiring the hauling assets of Allied in Greenville-Spartanburg, South Carolina. These assets serve small container commercial waste collection customers in Greenville and Spartanburg Counties, South Carolina. In this 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, South Carolina area is approximately \$41 million. After the acquisition, defendants would have approximately 69 percent of the total number of small container commercial waste collection routes in the market.

(6) Houston, Texas Area

Republic is acquiring the hauling assets of Allied in Houston, Texas.

These assets serve small container commercial waste collection customers in Harris County, Texas. In this 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 waste collection routes in the market.

(7) Lexington, Kentucky Area

Republic is acquiring the hauling assets of Allied in Lexington, Kentucky. These assets serve small container commercial waste collection customers in Fayette, Jessamine, Woodford, Scott and Franklin Counties, Kentucky. In this 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 waste collection routes in the market.

(8) Lubbock, Texas Area

Republic is acquiring the hauling assets of Allied in Lubbock, Texas. These assets serve small container commercial waste collection customers in Lubbock County, Texas. In this 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 waste collection routes in the market.

(9) Northwest Indiana Area

Republic is acquiring the hauling assets of Allied in the Northwest Indiana area. These assets serve small container commercial waste collection customers in Lake, Porter and LaPorte Counties, Indiana. In this 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 Complaint alleges that a combination of Republic and Allied in each of these areas would remove a significant competitor in small container commercial waste collection services. In each of these markets, the resulting 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 the collection of small container commercial waste.

2. The Effects of the Transaction on Competition in the Disposal of Municipal Solid Waste

a. Municipal Solid Waste Disposal

A number of 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 order to be disposed of lawfully, MSW must be disposed of in a landfill or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in an unlawful manner risks severe civil and criminal penalties. In some areas, landfills are scarce because of significant population density and the limited availability of suitable land. Accordingly, most MSW generated in these areas is burned in an incinerator or brought to transfer stations where it is compacted and transported on tractor trailer trucks to a more distant permanent MSW disposal site. A transfer station is an intermediate disposal site for processing and temporary storage of MSW before transfer in bulk to more distant landfills or incinerators for final disposal.

Because of the strict laws and regulations that govern MSW disposal, 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 MSW disposal can profitably increase their charges to haulers of MSW without losing significant sales to any other firms. Thus, for purposes of antitrust analysis, MSW disposal constitutes a line of commerce, or relevant service, for purposes of analyzing the transaction.

MSW disposal generally occurs in localized markets. Because of transportation costs and travel time to more distant MSW disposal facilities, a substantial percentage of the MSW generated in an area is disposed of in

landfills within roughly 25 to 35 miles of the relevant geographic market. In certain relevant geographic markets, virtually all of the MSW is disposed of in nearby transfer stations due to the high costs of transporting MSW and the substantial travel time to other MSW disposal facilities based on distance, natural barriers, and congested roadways. In the event that all owners of local disposal facilities imposed a small but significant increase in the price of disposal of MSW, haulers of MSW generated in that area could not profitably turn to more distant disposal sites. Firms that compete in MSW disposal in these markets, absent competition from other local MSW disposal operators, can profitably increase their charges for MSW disposal without losing significant sales to more distant MSW disposal sites.

In other relevant geographic markets, because of transportation costs and travel time to more distant MSW disposal facilities, a substantial percentage of the MSW generated in the area is disposed of in landfills often within roughly 25 to 35 miles of the relevant geographic market. Firms that compete to dispose of MSW generated in these markets can profitably increase their charges for MSW disposal without losing significant sales to more distant MSW disposal sites.

Applying this analysis, the Complaint alleges that in each of the following areas, 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 can travel economically to dispose of their waste: 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. Those areas constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Republic and Allied in the provision of MSW disposal services.

There are significant barriers to entry in MSW disposal. Obtaining a permit to construct a new disposal facility or expand an existing one is a costly and time-consuming process that typically takes many years to conclude. 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 government

requirements. In the relevant geographic areas for MSW disposal, entry by a new MSW disposal facility would be costly and time-consuming, and unlikely to prevent market incumbents from significantly raising prices for MSW disposal following the acquisition.

3. Anticompetitive Effects in the Disposal of Municipal Solid Waste

(1) Atlanta, Georgia Area

Republic is acquiring the MSW disposal assets of Allied serving the Atlanta, Georgia area. These assets serve MSW disposal customers in Cherokee, Forsyth, Hall, Jackson, Barrow, Gwinnett, Walton, DeKalb, Rockdale, Fulton, Clayton, Cobb, and Paulding Counties, Georgia. The proposed acquisition would reduce from four to three the number of significant competitors for MSW disposal 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.

(2) Cape Girardeau, Missouri Area

Republic is acquiring the MSW disposal assets of Allied serving the Cape Girardeau, Missouri area. These assets serve MSW disposal customers in Cape Girardeau County, Missouri. The proposed acquisition would reduce from three to two the number of significant competitors for the MSW disposal 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.

(3) Charlotte, North Carolina Area

Republic is acquiring the MSW disposal assets of Allied serving the Charlotte, North Carolina area. These assets serve MSW disposal customers in Mecklenburg County, North Carolina. The proposed acquisition would reduce from three to two the number of significant competitors for the MSW disposal 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.

(4) Cleveland, Ohio Area

Republic is acquiring the MSW disposal assets of Allied serving the Cleveland, Ohio area. These assets serve MSW disposal customers in Cuyahoga County, Ohio. In this area, the proposed acquisition would reduce from four to

three the number of significant competitors for the MSW disposal. 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.

(5) Denver, Colorado Area

Republic is acquiring the MSW disposal assets of Allied serving the Denver, Colorado area. These assets serve MSW disposal customers in Denver and Arapahoe Counties, Colorado. In this area, the proposed acquisition would reduce from four to three the number of significant competitors for MSW disposal. 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.

(6) Flint, Michigan Area

Republic is acquiring the MSW disposal assets of Allied serving the Flint, Michigan area. These assets serve MSW disposal customers in Saginaw and Genesee Counties, Michigan. In this area, the proposed acquisition would reduce from four to three the number of competitors for MSW disposal. 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.

(7) Fort Worth, Texas Area

Republic is acquiring the MSW disposal assets of Allied serving the Fort Worth, Texas area. These assets serve MSW disposal customers in Tarrant County, Texas. In this area, the proposed acquisition would reduce from four to three the number of significant competitors for MSW disposal. 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.

(8) Greenville-Spartanburg, South Carolina Area

Republic is acquiring the MSW disposal assets of Allied serving the Greenville-Spartanburg, South Carolina area. These assets serve MSW disposal customers in Greenville and Spartanburg Counties, South Carolina. In this area, the proposed acquisition would reduce from three to two the number of significant competitors for MSW disposal. 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.

(9) Houston, Texas Area

Republic is acquiring the MSW disposal assets of Allied serving the Houston, Texas area. These assets serve MSW disposal customers in Harris County, Texas. In this area, the proposed acquisition would reduce from three to two the number of significant competitors for MSW disposal 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.

(10) Los Angeles, California Area

Republic is acquiring the MSW disposal assets of Allied serving the Los Angeles, California area. These assets serve MSW disposal customers in Los Angeles County, California. In this area, the proposed acquisition would reduce from four to three the number of significant competitors for MSW disposal. 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.

(11) Northwest Indiana Area

Republic is acquiring the MSW disposal assets of Allied serving the Northwest Indiana area. These assets serve MSW disposal customers in Lake, Porter and LaPorte Counties, Indiana. In this area, the proposed acquisition would also reduce from four to three the number of significant competitors for MSW disposal. 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.

(12) Philadelphia, Pennsylvania Area

Republic is acquiring the MSW disposal assets of Allied serving the Philadelphia, Pennsylvania area. These assets serve MSW disposal customers in Philadelphia County, Pennsylvania. In this area, the proposed acquisition would reduce from three to two the number of competitors for MSW disposal. Annual revenue from MSW disposal in this market is approximately \$126 million. After the acquisition, defendants would have approximately 52 percent of the available MSW disposal capacity.

(13) San Francisco, California Area

Republic is acquiring the MSW disposal assets of Allied serving the San Francisco, California area. These assets serve MSW disposal customers in Contra Costa, Solano and Alameda Counties, California. In this area, the proposed acquisition would reduce from three to two the number of significant competitors for MSW disposal. 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 Complaint alleges that a combination of Republic and Allied in each of these areas would remove a significant competitor in the market for MSW disposal. In each of these markets, the resulting 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 MSW disposal.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial waste collection services and MSW disposal services in the markets identified in the Complaint by removing sufficient collection and disposal assets from the merged firm's control and placing them in the hands of a firm that is independent of the merged firm and capable of preserving the competition that otherwise would have been extinguished by the merger. Specifically, the proposed Final Judgment requires defendants, within 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 ongoing business or businesses, (a) small container commercial waste collection assets (e.g., routes, trucks, containers, and customer lists) 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, and (b) MSW disposal assets (e.g., landfills, transfer stations, airspace disposal rights, leasehold rights, garages and offices, trucks and vehicles, scales, permits and intangible assets such as customer lists and contracts) 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. The assets must be divested to purchasers approved by the United States and in such a way as to satisfy the United States that they can and will be operated by the purchaser or purchasers as part of a viable, ongoing business or businesses that can compete effectively in each relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In the event that defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the 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, United States, and the States as appropriate, 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.

A. Divestiture Provisions

The proposed Final Judgment provides that, for any area in which defendants are required to divest assets, all of the assets serving that area shall be sold to a single purchaser, unless defendants receive the prior written consent of the United States to do otherwise. As described below, the divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in each of the nine markets in which the Complaint alleges harm to competition for small container commercial waste collection services and in each of the 13 markets in which the Complaint alleges harm to competition for MSW disposal. These divestitures will preserve the

competition that otherwise would have been lost as a result of the acquisition.

1. Atlanta, Georgia Area

Defendants must divest 13 of Allied's approximately 35 small container commercial waste collection routes and related assets in the Atlanta, Georgia area. The specific routes to be divested are identified in the proposed Final Judgment and form an efficient network of routes serving the northern and eastern portions of the Atlanta area, where Allied and Republic routes overlap most directly and the firms compete most intensely. The divestiture of these routes to an independent, economically viable acquirer will thus preserve such competition and also position the acquirer to expand its service throughout the Atlanta area.

Defendants must also divest to the same acquirer Republic's Central Gwinnett Transfer Station in Lawrenceville, Georgia and Allied's BFI Smyrna Transfer Station in Smyrna, Georgia to remedy MSW disposal concerns in the Atlanta, Georgia area. In this area, transfer stations are the primary disposal option for haulers of MSW because MSW landfills are generally too far away from collection routes for direct hauling to the landfill to be economical. Republic's Central Gwinnett Transfer Station is located in the northeastern portion of the Atlanta area and provides an efficient MSW disposal option for the acquirer of the 13 small container commercial waste collection routes to be divested in this market. Allied's BFI Smyrna Transfer Station, which is in the western portion of the Atlanta area, is also efficiently located. Together, the two transfer stations will provide efficient access to disposal for collection routes throughout the Atlanta area. The United States' investigation found that there are sufficient independent MSW landfills economically reached via these transfer stations to allow the acquirer to provide effective disposal competition in the Atlanta area, both for its own waste streams as well as those of other independent haulers throughout the Atlanta area.

Paragraph IV(A) of the proposed Final Judgment requires defendants to offer the Atlanta area divestiture assets for sale separately from the other assets required to be divested, so as to expand the pool of potential bidders for the Atlanta area divestiture assets. Local or regional waste firms that might wish to combine the Atlanta area divestiture assets with their own assets serving this market may not be interested in or capable of bidding on the assets to be divested in this market if they were

offered only as part of a significantly larger group of divestiture assets located in multiple markets.

Pursuant to the terms of the Modified Final Judgment entered in *United States v. Allied Waste Industries, Inc. & Browning-Ferris Industries, Inc.*, (D.D.C. 1999) (No. 1:99 CV 01962) [hereinafter *Allied/BFI*], Allied was required to divest its Newnan Transfer Station, located in Newnan, Georgia. Republic acquired the Newnan Transfer Station from Allied and owns it today. Paragraph VIII(A) of the *Allied/BFI* Modified Final Judgment prohibits Allied's reacquisition of assets that it divested without the prior written consent of the United States. Although Republic's acquisition of Allied will recombine this transfer station with Allied's other disposal assets in the Atlanta area, the United States has consented to this recombination because it concluded that the Newnan Transfer Station no longer participates meaningfully in the Atlanta market for MSW disposal, and no competitive issues exist in the rural areas southwest of Atlanta served by the Newnan Transfer Station. Specifically, the United States' investigation found that, although Allied used the Newnan Transfer Station to serve the Atlanta disposal market as of 1999—and that facility competed directly with transfer stations in the Atlanta area that Allied was acquiring in the *Allied/BFI* transaction—the focus of the Newnan Transfer Station has changed under Republic ownership, and other transfer stations in the Atlanta area now accept the waste streams that previously went to the Newnan Transfer Station. Waste flow reports show that the Newnan facility disposes of waste generated in rural areas southwest of Atlanta and competes much less directly with other disposal facilities in the Atlanta area. Accordingly, the United States concluded that the proposed acquisition of Allied by Republic, whereby Allied's MSW disposal assets would be recombined with the Newnan Transfer Station, would not substantially diminish competition for the provision of MSW disposal services in the Atlanta, Georgia area. Instead, the divestiture of Republic's Central Gwinnett Transfer Station and Allied's BFI Smyrna Transfer Station would be an effective remedy for the anticompetitive effects of the proposed acquisition on MSW disposal in this market.

2. Cape Girardeau, Missouri Area

Defendants must divest Allied's two routes and related assets that serve small container commercial waste collection customers in the Cape

Girardeau, Missouri area to an independent, economically viable competitor. This divestiture encompasses all of Allied's existing small container commercial waste collection routes in this market, and the acquirer of these assets will therefore fill the same competitive role previously occupied by Allied.

Defendants must also divest to the same acquirer Allied's only transfer station in the Cape Girardeau, Missouri area—the Jackson Solid Waste Transfer Station in Jackson, Missouri—to remedy MSW disposal concerns in this market. In this area, transfer stations are the primary disposal option for haulers of MSW because MSW landfills are generally too far away from collection routes for direct hauling to the landfill to be economical. Allied's Jackson Solid Waste Transfer Station has historically provided MSW disposal services for the two Allied small container commercial waste collection routes that will be divested in this market, and there is sufficient independent MSW landfill capacity economically reached via the transfer station to enable the acquirer of the divested assets to provide effective collection and disposal competition in the Cape Girardeau area.

3. Charlotte, North Carolina Area

Defendants must divest Republic's ten routes and related assets that serve small container commercial waste collection customers in the Charlotte, North Carolina area to an independent, economically viable competitor. This divestiture encompasses all of Republic's existing small container commercial waste collection routes in this area, and the acquirer of these assets will therefore fill the same competitive role previously occupied by Republic.

Defendants must also divest to the same acquirer Republic's Queen City Transfer Station in Charlotte, North Carolina and Allied's Anson County Landfill in Polkton, North Carolina to remedy MSW disposal concerns in the Charlotte, North Carolina area. Republic's Queen City Transfer Station in Charlotte, North Carolina is the facility Republic uses to serve its ten routes in the Charlotte area, and is an efficient MSW disposal option. Allied's Anson County Landfill is efficiently located relative to the Queen City Transfer Station and possesses ample capacity to preserve disposal competition in the Charlotte area once divested to an independent, economically viable operator. The proposed Final Judgment does not require the divestiture of the landfill used by Republic to serve this area—

Republic's Uwharrie Environmental Landfill in Mount Gilead, North Carolina—because a significant portion of the capacity of that landfill, which is farther from the Queen City Transfer Station than Allied's Anson County facility, is devoted by Republic to serving waste streams from areas to the north of the Charlotte area, where the United States' investigation found that there was no competitive concern.

4. Cleveland, Ohio Area

Defendants must divest to a single Acquirer Republic's Harvard Road Transfer Station in Newburgh Heights, Ohio and Allied's Superior Oakland Marsh Landfill in Shiloh, Ohio to remedy MSW disposal concerns in the Cleveland, Ohio area. Republic's Harvard Road Transfer Station is a large transfer station that is centrally located in the Cleveland, Ohio market. The Superior Oakland Marsh Landfill is efficiently located to accept MSW from the divested Harvard Road Transfer Station and other transfer stations serving the Cleveland, Ohio area, and it possesses ample capacity to preserve disposal competition in the Cleveland area once it is divested to an independent, economically viable operator. The proposed Final Judgment does not require divestiture of the landfill used by Republic to serve waste delivered via the Harvard Road Transfer Station—Republic's Countywide Recycling and Disposal Landfill in East Sparta, Ohio—because that facility has unresolved environmental issues related to its operation that would make it an unattractive candidate for divestiture.

Paragraph IV(A) of the proposed Final Judgment requires defendants to offer the Cleveland area divestiture assets for sale separately from the other assets required to be divested, so as to expand the pool of potential bidders for the Cleveland area divestiture assets. Local or regional waste firms that might wish to combine the Cleveland area divestiture assets with their own assets serving this market may not be interested in or capable of bidding on the assets to be divested in this market if they were offered only as part of a significantly larger group of divestiture assets located in multiple markets.

5. Denver, Colorado Area

Defendants must divest Republic's only MSW disposal facility serving the Denver, Colorado area—the Front Range Landfill in Erie, Colorado—to remedy MSW disposal concerns in this market.

6. Flint, Michigan Area

Defendants must divest Republic's only actively operating MSW disposal

facility serving the Flint, Michigan area—the Brent Run Landfill in Montrose, Michigan—to remedy MSW disposal concerns in this market. The proposed Final Judgment does not require defendants to divest an inactive landfill owned by Republic that could serve this market—the Tay Mouth Landfill in Birch Run, Michigan—because Republic's Brent Run Landfill possesses ample capacity to preserve competition once divested to an independent, economically viable operator.

7. Fort Worth, Texas Area

Defendants must divest Republic's five routes and related assets that serve small container commercial waste collection customers in the Fort Worth, Texas area to an independent, economically viable competitor. This divestiture encompasses all of Republic's existing small container commercial waste collection routes in this market, and the acquirer of these assets will therefore fill the same competitive role previously occupied by Republic.

Defendants must also divest to the same acquirer one of two landfills in the Fort Worth area: (1) Allied's Turkey Creek Landfill in Alvaredo, Texas, or (2) all of Allied's rights, titles, and interests in the Fort Worth Southeast Landfill in Kennedale, Texas, a disposal site that Allied leases from the City of Fort Worth. The selection of which landfill is to be divested is to be made by the acquirer. The divestiture of either of the two Allied landfills to an independent, economically viable competitor will eliminate the competitive harm caused by the acquisition. Both landfills are located close to Fort Worth, Texas, and are efficiently situated to serve this market as MSW disposal options.

If the acquirer selects Allied's Turkey Creek Landfill, which has been inactive since 2007, the proposed Final Judgment required defendants to warrant to the purchaser that, at the date of sale, the landfill will be operational and ensure that it is capable of disposing of 675,000 tons of MSW annually, which is the approximate volume disposed of during 2005, when the landfill was fully operational. If the landfill is not so capable, defendants shall be required to divest alternative disposal assets in the Fort Worth area acceptable to the United States as sufficient to remedy the competitive harm caused by the acquisition.

If the acquirer selects the Fort Worth Southeast Landfill, which Allied leases pursuant to a long-term contract with the City of Fort Worth, the acquirer would have to obtain the prior approval

of Fort Worth to the sale, and the proposed Final Judgment requires defendants to use their best efforts to obtain such approval.

The proposed Final Judgment does not require divestiture of the garage facilities used by Republic to serve the routes to be divested. Both Republic and Allied own garages that serve the Fort Worth area, but both of these facilities are much larger than necessary to serve the routes to be divested and are used predominantly to serve collection routes (such as residential franchise routes) as to which there is no competitive harm. The defendants intend to continue using both facilities after the acquisition is consummated. If the acquirer selects the Turkey Run Landfill for divestiture, it would be able to make use of space at that facility to service trucks used to operate the collection routes to be divested. If the acquirer selects the Fort Worth Southeast Landfill, the proposed Final Judgment requires the defendants to provide the acquirer with an option to lease for up to one year a sufficient portion of Republic's garage located in Arlington, Texas, to support fully the operation of the five routes to be divested as well as the potential growth of the divested collection business.

Paragraph IV(A) of the proposed Final Judgment requires defendants to offer the Fort Worth area divestiture assets for sale separately from the other assets required to be divested, so as to facilitate bids by local or regional waste firms that might wish to combine the Fort Worth area divestiture assets—which do not encompass all of the collection or disposal assets of either Republic or Allied in this area—with their own assets serving this market in order to create a more efficient, vertically integrated competitor serving the Fort Worth, Texas market. Such firms may not be interested in or capable of bidding on the assets to be divested in this market if they were offered only as part of a significantly larger group of divestiture assets located in multiple markets.

8. Greenville-Spartanburg, South Carolina Area

Defendants must divest Allied's eight routes and related assets that serve small container commercial waste collection customers in the Greenville-Spartanburg, South Carolina area to an independent, economically viable competitor. This divestiture encompasses all of Allied's existing small container commercial waste collection routes in this market, and the acquirer of these assets will therefore fill

the same competitive role previously occupied by Allied.

Defendants must also divest to the same acquirer all of Allied's MSW disposal assets serving the Greenville-Spartanburg, South Carolina area—Allied's Greer Transfer Station in Greer, South Carolina, and its Anderson Regional Landfill in Anderson, South Carolina—to remedy MSW disposal concerns in this market.

9. Houston, Texas Area

Defendants must divest 32 of Republic's 54 small container commercial waste collection routes and related assets in the Houston, Texas area. The specific routes to be divested are identified in the proposed Final Judgment and form an efficient network of routes serving the entire Houston area. The divestiture of these routes to an independent, economically viable acquirer will thus preserve competition and position the acquirer to expand its service.

Defendants must also divest Republic's Hardy Road Transfer Station in Houston, Texas and Seabreeze Landfill in Angleton, Texas to remedy MSW disposal concerns in the Houston, Texas area. Together, these two MSW disposal facilities will preserve competition for MSW disposal in the Houston area. The proposed Final Judgment does not require the divestiture of Republic's interest in two transfer stations owned by the City of Houston and operated by Republic under a long-term disposal contract and lease. The United States' investigation found that competition for that disposal contract would not be adversely affected by the proposed transaction.

In order to provide the acquirer of the divested routes serving the southern portion of the Houston area with an efficient direct-haul disposal option, the proposed Final Judgment requires that the defendants offer the acquirer airspace disposal rights at Republic's Blue Ridge Landfill for the term of the proposed Final Judgment. The United States contemplates that such an agreement, subject to the approval of the United States, would be negotiated between the defendants and the acquirer and contain reasonable commercial terms, consistent with the proposed Final Judgment.

10. Lexington, Kentucky Area

Defendants must divest Republic's five routes and related assets that serve small container commercial waste collection customers in the Lexington, Kentucky area to an independent, economically viable competitor. This divestiture encompasses all of

Republic's existing small container commercial waste collection routes in this market, and the acquirer of these assets will therefore fill the same competitive role previously occupied by Republic.

11. Lubbock, Texas Area

Defendants must divest Allied's seven routes and related assets that serve small container commercial waste collection customers in the Lubbock, Texas area to an independent, economically viable competitor. This divestiture encompasses all of Allied's existing small container commercial waste collection routes in this market, and the acquirer of these assets will therefore fill the same competitive role previously occupied by Allied.

12. Northwest Indiana Area

Defendants must divest five of Allied's nine small container commercial waste collection routes and related assets in the Northwest Indiana area. The specific routes to be divested are identified in the proposed Final Judgment and form an efficient network of routes serving the portions of the Northwestern Indiana area where Allied and Republic routes overlap most directly and the firms compete most intensely. The divestiture of these routes to an independent, economically viable acquirer will thus preserve such competition and also position the acquirer to expand its service throughout the Northwestern Indiana area.

Defendants must also divest to the same acquirer Allied's Valparaiso Transfer Station in Valparaiso, Indiana to remedy MSW disposal concerns in the Northwest Indiana area. Allied's Valparaiso Transfer Station is centrally located in this area and will allow the acquirer to provide efficient access to disposal for collection routes throughout the Northwestern Indiana area, including those to be divested.

The United States' investigation found that there are sufficient independent MSW landfills economically reached via the Valparaiso Transfer Station to allow the acquirer to provide effective disposal competition in the Northwestern Indiana area. To facilitate the acquirer's transition of waste streams served by this transfer stations to other landfills, the proposed Final Judgment requires that the purchaser of the transfer station be offered the option of entering a disposal agreement providing access to up to 350 tons per day of capacity for up to two years at Allied's Newton County Development Corporation Landfill in Brook, Indiana for the final disposal of

waste received at the transfer station. The United States contemplates that such an agreement, subject to the approval of the United States, would be negotiated between the defendants and the acquirer and contain reasonable commercial terms, consistent with the proposed Final Judgment.

13. Los Angeles, California Area

Defendants must divest Republic's only landfill serving the Los Angeles, California area "the Chiquita Canyon Sanitary Landfill in Valencia, California" to remedy MSW disposal concerns in this market.

14. Philadelphia, Pennsylvania Area

Defendants must divest Republic's Girard Point Transfer Station and Allied's Philadelphia Recycling and Transfer Station, both in Philadelphia, Pennsylvania, to remedy MSW disposal concerns in the Philadelphia, Pennsylvania area. In this area, transfer stations are the primary disposal option for haulers of MSW in this market, because roadways in much of the area are highly congested and MSW landfills are generally too far away from collection routes for direct hauling to the landfill to be economical. Both transfer stations to be divested are easily accessible to MSW haulers in this market, and both are located in densely populated areas of the market where Republic and Allied currently compete to provide MSW disposal services: Republic's Girard Point Transfer Station is south of central Philadelphia and Allied's Philadelphia Recycling and Transfer Station is located to the west of central Philadelphia.

The United States' investigation found that there are sufficient independent MSW landfills economically reached via these transfer stations to allow the acquirer to provide effective disposal competition in the Philadelphia area. To facilitate the acquirer's transition of waste streams served by these transfer stations to other landfills—including compliance with municipal regulations requiring that any landfill accepting MSW generated in the City of Philadelphia, either directly or through a transfer station, be approved in advance—the proposed Final Judgment requires that the purchaser of the transfer stations be offered the option of entering a disposal agreement providing access to up to 1,300 tons per day of capacity for up to 18 months at Republic's Modern Landfill in York, Pennsylvania for the final disposal of MSW received at the transfer stations. The United States contemplates that such an agreement, subject to the approval of the United States, would be

negotiated between the defendants and the acquirer and contain reasonable commercial terms, consistent with the proposed Final Judgment.

Paragraph IV(A) of the proposed Final Judgment requires defendants to offer the Philadelphia area divestiture assets for sale separately from the other assets required to be divested, so as to expand the pool of potential bidders for the Philadelphia area divestiture assets. Local or regional waste firms that might wish to combine the Philadelphia area divestiture assets with their own assets serving this market may not be interested in or capable of bidding on the assets to be divested in this market if they were offered only as part of a significantly larger group of divestiture assets located in multiple markets.

15. San Francisco, California Area

Defendants must divest Republic's Potrero Hills Sanitary Landfill in Suisun, California to remedy MSW disposal concerns in the San Francisco, California area. Republic's Potrero Hills Sanitary Landfill has been a significant disposal competitor for MSW generated in this market. This divestiture will preserve the competition between the Potrero Hills facility and Allied's disposal facilities in this market.

Pursuant to the terms of the Modified Final Judgment entered in *Allied/BFI*, Allied was required to divest the Vasco Road Landfill, located in Livermore, California and serving the San Francisco, California area. Republic acquired the Vasco Road Landfill from Allied and owns it today. Paragraph VIII(A) of the *Allied/BFI* Modified Final Judgment prohibits Allied's reacquisition of assets that it divested without the prior written consent of the United States. Although Republic's acquisition of Allied will recombine the Vasco Road Landfill with Allied's other disposal assets in the San Francisco area, the United States has consented to this recombination. The United States has consented because it concluded that the competitive significance of the Vasco Road Landfill has diminished considerably since 1999. Specifically, Republic's Vasco Road Landfill is not a significant competitor to Allied's Keller Canyon Landfill, located in Pittsburg, California, for the disposal of MSW generated outside Alameda County because of its location and the relatively high taxes levied on each ton of MSW disposed at Vasco Road. For disposal of MSW generated in Alameda County, Vasco Road faces competition from a large landfill located in Alameda County and owned by another firm. Today, the Vasco Road Landfill predominantly competes for the

disposal of special waste (such as contaminated soil), which is not subject to the higher tax rate applied to MSW. Accordingly, the United States concluded that the proposed acquisition of Allied by Republic, whereby Allied's MSW disposal assets would be recombined with the Vasco Road Landfill, would not substantially diminish competition for the provision of MSW disposal services in the San Francisco, California area, and that the divestiture of the Potrero Hills Sanitary Landfill would be an effective remedy for the anticompetitive effects of the proposed acquisition in this MSW disposal market.

B. Notice of Future Acquisitions

Paragraph VII of the proposed Final Judgment requires that defendants provide advance notification of certain 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 relevant state before defendants may acquire, directly or indirectly, any interest in any business engaged in waste collection or disposal in a market as to which the Complaint alleged a violation where the acquired business's annual revenues from the relevant service in the market exceed \$500,000 for the 12 months preceding the proposed acquisition. This provision will enable the United States and the States to investigate prior to consummation the competitive effects of proposed transactions in markets of concern.

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 defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance

with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. 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, 1401 H Street, NW., Suite 3000,
Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

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 continued the litigation and sought preliminary and permanent injunctions against Republic's acquisition of all of Allied's issued and outstanding voting securities. The United States is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for small container commercial waste collection services and MSW disposal in the relevant markets identified by the United States.

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 proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *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).¹

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations 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). 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).² In determining whether a proposed settlement is in the public interest, a district 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 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

¹ The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to 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).

² *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 consonant with the allegations charged as to fall outside of the "reaches of the public interest").

decree even though the court would have imposed a greater remedy). To meet this standard, 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. 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. *Id.* at 1459-60. As this Court recently 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." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute 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

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

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: December 3, 2008

Respectfully submitted,

/s/

Lowell R. Stern,

DC Bar No. 440487, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 307-0924

[FR Doc. E8-29603 Filed 12-15-08; 8:45 am]

BILLING CODE 4410-11-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08-097)]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, January 7, 2009, 8:30 a.m. to 4:30 p.m. and Thursday, January 8, 2009, 8:30 a.m. to 1 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, Room 3H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-4452, fax (202) 358-4118, or mnorris@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up

to the capacity of the room. The agenda for the meeting includes the following topics:

to the capacity of the room. The agenda for the meeting includes the following topics:

- Earth Science Division Update
- NASA's Modeling Program
- Decadal Survey Mission Implementation and Comparative Cost Analysis of Earth and Space Science Missions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 7 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at mnorris@nasa.gov or by telephone at (202) 358-4452.

Dated: December 10, 2008.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E8-29757 Filed 12-15-08; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, December 18, 2008.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Final Rule—Parts 712 and 741 of NCUA Rules and Regulations, Credit Union Service Organizations.

2. Final Rule—Part 706 of NCUA Rules and Regulations, Unfair or Deceptive Acts or Practices.

3. Insurance Fund Report.