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 United States* v. *Microsoft,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[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).[5] Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–I Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, 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. *Bachtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Case law requires 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).[6]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[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. Telephone & Telegraph Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette,* 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the Tunney Act 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 might have but did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the Tunney Act that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 13, 2003.

Respectfully submitted,

Anthony E. Harris,
Illinois Bar No. 1133713, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone: (202) 307–6583.

Certificate of Service

I, Anthony E. Harris, hereby certify that on November 14, 2003, I caused the foregoing Competitive Impact Statement to be served on defendants by sending a facsimile and by mailing a copy first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

Counsel for Defendants Alcan Inc. and Alcan Aluminum Corp.

D. Stuart Meiklejohn, Esquire, Michael B. Miller, Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004–2498

Counsel for Defendants Pechiney, S.A., and Pechiney Rolled Products, LLC

W. Dale Collins, Esquire, Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022–6069

Anthony E. Harris, Esquire,
Illinois Bar #1133713, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone No.: (202) 307–6583.

[FR Doc. 03–31055 Filed 12–16–03; 8:45 am]

BILLING CODE 4410–11–M

[5] *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715–16 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Tunney Act authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.N. 6535, 6538.

[6] Cf. BNS, 858 F.2d at 463 (holding that the court's ''ultimate authority under the [Tunney Act] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F. 3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''').

DEPARTMENT OF JUSTICE

Antitrust Division

United States and the State of Florida v. *Waste Management, Inc.*, and *Allied Waste Industries, Inc.;* Complaint, 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 Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement were filed with the U.S. District Court for the District of Columbia in *United States and State of Florida* v. *Waste Management, Inc., and Allied Waste Industries, Inc., Civ. Action No. 1:03CV02076.* On October 14, 2003, the United States and the State of Florida filed a Complaint, which sought to enjoin Waste Management, Inc. (''Waste Management'') from acquiring certain small container commercial hauling assets in Broward County, Florida from Allied Waste Industries, Inc. (''Allied''). The Complaint alleged that Waste Management's acquisition of these small container commercial hauling assets from Allied would substantially lessen competition resulting in higher prices for small container commercial hauling services in Broward County, Florida in violation of the Clayton Act, as amended, 15 U.S.C. 18. The proposed Final Judgment, also filed on October 14, 2003, requires defendants to divest contracts and accounts on selected Allied small container commercial hauling routes, to preserve competition in the provision of small container commercial hauling services. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to

private litigants who may have been injured by the alleged violations.

Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 215, Washington, DC 20530 (telephone: 202–514–2481), and at the Clerk's Office of the United States District Court for the District of Columbia, Washington, DC. Copies of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. 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).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In the matter of: UNITED STATES OF AMERICA, Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, and STATE OF FLORIDA, Office of the Attorney General, Plaza 1—The Capitol, Tallahassee, Florida 32399–1050, Plaintiffs, v. WASTE MANAGEMENT, INC., 1001 Fannin Street, Suite 4000 Houston, Texas 7702, and ALLIED WASTE INDUSTRIES, INC., 15880 Greenway-Hayden Loop, Suite 100, Scottsdale, Arizona 85260, Defendants.

Case No. 1:03CV02076
JUDGE: James Robertson
DECK TYPE: ANTITRUST
DATE STAMP: October 14, 2003

Complaint for Injunctive Relief

Plaintiff United States of America (''United States''), acting under the direction of the Attorney General of the United States, and Plaintiff State of Florida (''Florida''), acting under the direction of its Attorney General, bring this civil antitrust action to enjoin the acquisition by Defendant Waste Management, Inc. (''Waste Management'') of certain commercial waste collection and hauling assets (hereinafter referred to as ''small container commercial hauling assets'') from Defendant Allied Waste Industries, Inc. (''Allied'') and to obtain equitable and other relief as is appropriate. Plaintiffs complain and allege as follows:

1. Pursuant to an asset purchase agreement and a stock agreement, both dated August 15, 2003, Waste Management plans to acquire from Allied certain small container commercial hauling assets. The proposed transaction would lessen competition substantially as a result of Waste Management's acquisition of small container commercial hauling assets in Broward County, Florida.

2. Defendants Waste Management and Allied are two of only three significant providers of small container commercial hauling services in Broward County. Unless the acquisition is enjoined, consumers of small container commercial hauling services in Broward County will likely pay higher prices and receive fewer services as a consequence of the elimination of the vigorous competition between Waste Management and Allied.

I. Jurisdiction and Venue

3. The United State brings this action 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. Florida 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.

4. Defendants Waste Management and Allied are located in and transact business 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 Waste Management and Allied collect municipal solid waste from residential, commercial, and industrial customers. In their waste collection businesses, Waste Management and Allied make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce, and engage in activities that substantially affect interstate commerce. 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.

II. Definitions

6. ''Broward County'' means Broward County, Florida.

7. ''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.

8. ''Small container hauling'' means the business of collection 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 commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants). Small container commercial hauling, as used herein, does not include collection of roll-off containers.

III. Defendants and the Transaction

9. Waste Management is a Delaware corporation with its principal office in Houston, Texas. Waste Management is the nation's largest waste hauling company. It is engaged in providing waste collection and disposal services throughout the United States. In 2002, Waste Management reported total revenues of approximately $11.1 billion.

10. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is the nation's second largest waste hauling company. It is engaged in providing waste collection and disposal services throughout the United States. In 2002, Allied reported total revenues of approximately $5.5 billion.

11. On August 15, 2003, Defendants Waste Management and Allied entered into an asset purchase agreement and a stock purchase agreement purchase to which Waste Management would acquire from Allied, *inter alia,* small container commercial hauling assets in Broward County, Florida.

IV. Trade and Commerce

A. The Relevant Service Market

12. 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, is often collected either by local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

13. Small container commercial hauling 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 provide commercial customers with dumpsters for storing the waste. Haulers organize their commercial accounts into routes, and collect and transport the MSW generated by these accounts in vehicles uniquely well suited for commercial waste collection—primarily front-end load trucks. Less frequently, haulers may use more maneuverable, but less efficient, rear-end load trucks, especially in those areas in which a collection route includes narrow alleyways or streets. Front-end load trucks are unable to navigate narrow passageways easily and cannot efficiently collect the waste located in them.

14. On a typical small container commercial hauling route, an operator drives a front-end load truck to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts, until the vehicle is full. The operator then drives the front-end load truck to a disposal facility, such as a transfer station, landfill, or incinerator, and empties the contents of the vehicle. Often, the operator returns to the route and repeats the process.

15. In contrast to a commercial 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 front-end load trucks, waste collection firms routinely use rear-end load or side-load trucks manned by larger crews (usually, two-person or three-person teams). On residential routes, crew 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. 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 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.

16. The differences in the types and volume of MSW collected and in the equipment used in collection services distinguish small container commercial hauling from all other types of waste collection activities. These differences mean that small container commercial building firms can profitably increase their charges for small container commercial hauling services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, small container commercial hauling is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

B. The Relevant Geographic Market

17. Small container commercial hauling services are generally provided in highly localized areas because to operate efficiently and profitably, a hauler must have sufficient density in its commercial waste collection operations (*i.e.,* a large number of commercial accounts that are reasonably close together). In addition, a front-end load or rear-end load vehicle cannot be efficiently driven long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial hauling firm to service metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

18. Generally, haulers compete for small container commercial hauling customers in ''open'' competition or through competition for municipal franchises. In open competition work, a hauler competes for individual customers, whereas in franchise work, the hauler is awarded a municipal contract that permits the hauler to provide service to all of the small container commercial customers in that municipality. The municipality decides whether it will grant a franchise or allow haulers to compete for customers in open competition.

19. Local small container commercial hauling firms in Broward County can profitably increase prices to customers in the open areas of Broward County—that is, those not covered by a municipal franchise—without losing sales to a municipal franchise, or to more distant competitors. The open areas of Broward County is a section of the county, or relevant geographic market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition as a Consequence of the Acquisition

20. Defendants Waste Management and Allied directly compete to provide small container commercial hauling services for open competition in open areas of Broward County, Florida. Waste Management and Allied each account for a substantial share of total revenues from commercial waste collection services in Broward County.

21. The proposed acquisition would reduce from three to two the number of significant firms that compete to provide small container commercial hauling services in open areas of Broward County, Florida. After the acquisition, Waste Management would control over 68 percent of total market revenues, which exceed $40 million annually. Using a standard measure of market concentration called the ''HHI'' (defined and explained in Appendix A), the post-merger HHI for small container commercial hauling would be approximately 5490, an increase of 2063 points over the pre-merger HHI of 3428.

D. Entry Into Commercial Waste Collection of MSW

22. Significant new entry into small container commercial hauling business is difficult and time-consuming. A new entrant into small container commercial hauling 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 density similar to existing firms. However, an incumbent's use of price discrimination and long-term contracts prevents 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 to meet competition easily from new entrants by pricing its services lower to any individual customer that wants to switch to the new entrant. An incumbent's use of three-to-five year contracts, which may contain large liquidated damage provisions for contract termination, automatically renew, or permit specified price increases, make it more difficult for a customer to switch to a new hauler and obtain lower prices for its collection service. These contracts increase the cost and time required by an entrant to form an efficient route, reducing the likelihood that the entrant will ultimately be successful.

E. Harm to Competition

23. The acquisition of Allied's small container commercial hauling assets by Waste Management would remove a significant competitor in the small container commercial hauling business in a market that is already highly concentrated and difficult to enter. In this market, 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 small container commercial hauling services.

V. Violation Alleged

24. Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida will lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

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

a. Competition for small container commercial hauling services in open areas of Broward County, Florida will be lessened substantially; and

b. Prices charged by small container commercial hauling firms in open areas of Broward County, Florida will likely increase.

VI. Requested Relief

Plaintiffs request:

1. That Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida 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 small container commercial hauling assets in the asset purchase and stock purchase agreements dated August 15, 2003, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to exchange those assets between 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: October 14, 2003.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/_____

R. Hewitt Pate

Assistant Attorney General.

/s/_____

J. Bruce McDonald

Deputy Assistant Attorney General.

/s/_____

Dorothy B. Fountain

Deputy Director of Operations.

/s/_____

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/s/_____

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Appendix A—Herfindahl-Hirschman Index Calculations

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). 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 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 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 Merger Guidelines* § 1.51.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF FLORIDA, Plaintiffs, v. WASTE MANAGEMENT, INC., and ALLIED WASTE INDUSTRIES, INC., Defendants.

Civil No: 1:03CV02076.

JUDGE: James Robertson.

DECK TYPE: Antitrust.

FILED: October 14, 2003.

Final Judgment

Whereas, Plaintiffs, the United States of America (''United States'') and the State of Florida (''Florida''), filed their Complaint on October 14, 2003, and Plaintiffs and Defendants, Waste Management, Inc. (''Waste Management'') and Allied Waste Industries, Inc. (''Allied''), 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 fact or law;

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 certain assets by Defendant Waste Management to ensure that competition is not substantially lessened;

And whereas, Plaintiffs require Defendant Waste Management to make certain divestitures in order to remedy the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures or other injunctive provisions contained below;

And whereas, Defendant Waste Management shall be enjoined from acquiring the assets to be divested, except as provided in this Final Judgment;

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *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 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* means the entity or entities to whom Waste Management divests the Relevant Hauling Assets.

B. *Allied* means Defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, its successors and assigns, and its subsidiaries, division, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. *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.

D. *Relevant Hauling Assets* means Allied's small container commercial hauling routes 501, 901, 902, 903, 904, 906, 907, 909, 912, 914, and 915 that operate out of Allied's Broward County, Florida division located at 2380 College Avenue, Davie, Florida 33317 including:

(1) All tangible assets, including capital equipment, trucks and other vehicles, containers, interests, supplies, and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages);

(2) All intangible assets, including hauling-related customer lists, leasehold interests, permits, and contracts and accounts related to each small container commercial hauling route, and any contract or account serviced in whole or in part on any of the routes listed above; and

(3) Relevant Hauling Assets does not include accounts and contracts serviced in unincorporated Broward County, accounts serviced through a franchise agreement, and accounts and contracts serviced in the City of Margate.

E. *Small container commercial hauling* 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- or rear-end loader truck. Typical small container commercial hauling customers include office and apartment buildings and retail establishments (*e.g.,* stores and restaurants). Small container commercial hauling, as used herein, does not include collection of roll-off containers.

F. *Waste Management* means Defendant Waste Management, Inc., a Delaware corporation with its headquarter in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Waste Management 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. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of lesser business units that include the Relevant Hauling Assets, that the Acquirer agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Defendant Waste Management is ordered and directed, within ninety calendar days after the filing of the Complaint in this matter, or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Relevant Hauling Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with Florida. The United States, in its sole discretion, after consultation with Florida, may agree to an extension of this time period of up to sixty calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Relevant Hauling Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendant Waste Management promptly shall make known, by

usual and customary means, the availability of the Relevant Hauling Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Relevant Hauling 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 Relevant Hauling Assets, whichever is then available for sale, customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-produce privileges.

C. Defendants shall provide the United States and Florida, and each prospective Acquirer of the Relevant Hauling Assets, information relating to the personnel involved in the operation and management of the Relevant Hauling Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any of Defendants' employees whose primary responsibility is the operation or management of the Relevant Hauling Assets.

D. Defendants shall permit each prospective Acquirer of the Relevant Hauling Assets to have reasonable access to personnel and to make inspections of the physical facilities; 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 the a due diligence process.

E. Defendant Waste Management shall warrant to the Acquirer of the Relevant Hauling Assets that each asset will be operational on the date of sale.

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

G. Defendant Waste Management shall warrant to the Acquirer of the Relevant Hauling Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Relevant Hauling Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Relevant Hauling Assets.

H. Unless the United States, in its sole discretion, after consultation with Florida, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment shall include the entire Relevant Hauling Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with Florida, that the divested assets will be used by the Acquirer, as part of a viable, ongoing small container commercial hauling business. Divestiture of the Relevant Hauling Assets may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States, after consultation with Florida, that the Relevant Hauling Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment.

1. Shall be made to an Acquirer that, in the United States' sole judgment, after consultation with Florida, has the intent and capability, including managerial, operational, and financial capability, to compete effectively in the small container commercial hauling business; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with Florida, that none of the terms of any agreement between an Acquirer and Defendant Waste Management gives Defendant Waste Management 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 Defendant Waste Management has not divested the Relevant Hauling Assets within the time period specified in Section IV.A., Defendant Waste Management shall notify the United States of that fact in writing. Upon application of the United States, in its sole discretion, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Relevant Hauling Assets.

B. After the appointment of the trustee becomes effective, only the trustee shall have the right to sell the Relevant Hauling Assets.

C. The trustee shall have the power and authority to accomplished the divestiture to an Acquirer acceptable to the United States, in its sole discretion, after consultation with Florida, 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.E. of this Final Judgment, the trustee may hire at the cost and expense of Defendant Waste Management 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 divestiture.

D. Defendant Waste Management shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendant Waste Management must be conveyed in writing to the United States, Florida, and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

E. The trustee shall serve at the cost and expense of Defendant Waste Management, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Relevant Hauling 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 Defendant Waste Management 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 Relevant Hauling Assets, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trust in accomplishing the required divestiture. 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 customary confidentiality 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 divestiture.

G. After its appointment, the trustee shall file monthly reports with the United States, Florida, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that 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 Relevant Hauling Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts of all efforts made to divest the Relevant Hauling Assets.

H. If the trustee has not accomplished such divestiture 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 divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that 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 and Florida. The United States, in its sole discretion, after consultation with Florida, 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, including 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 business days following execution of a definitive divestiture agreement, Defendant Waste Management or the trustee, whichever is then responsible for

effecting the divestiture required herein, shall notify the United States and Florida of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendant Waste Management. 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 Relevant Hauling Assets together with full details of the same.

B. Within fifteen calendar days of receipt by the United States and Florida of such notice, the United States, in its sole discretion, after consultation with Florida, may request from Defendants, the proposed Acquirer or Acquirers, 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 the United States and Florida any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States and Florida have been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States, after consultation with Florida, 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 Defendant Waste Management's limited right to object to the sale under Section V.D. of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendant Waste Management under Section V.D., a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

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

VIII. Hold Separate

Until the divestiture required by this Final Judgment has 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 divestiture ordered by this Court.

IX. Affidavits

A. Within twenty calendar days of the filing of the Complaint in this matter, and every thirty calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States and to Florida 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 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 Relevant Hauling 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 Relevant Hauling Assets, and to provide required information to each prospective Acquirer, 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, in its sole discretion, after consultation with Florida, to information provided by Defendants, including limitations on information, shall be made within fourteen days of receipt of such affidavit.

B. Within twenty calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States and Florida 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 VIII of this Final Judgment. Defendants shall deliver to the United States and Florida an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve the Relevant Hauling Assets, and to divest the Relevant Hauling Assets, until one year after such divestiture has been completed.

X. Compliance Inspection

A. For 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 duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or a duly authorized representative of the Florida Attorney General's Office, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the United States' or Florida's option, to require Defendants to provide copies of, all books, ledgers, accounts, records 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 a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or a duly authorized representative of the Florida Attorney General's Office, Defendants shall submit such written reports, 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 and sections IV and VI above shall be divulged by the Plaintiffs to any person other than an authorized representative of the executive branch of the United States, or the Florida Attorney General's Office, except in the course of legal proceedings to which the United States or Florida 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 Plaintiffs, 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)(7) 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)(7) of the Federal Rules of Civil Procedure,'' then Plaintiffs shall give Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notice

A. Defendant Waste Management shall provide written advance notification to representatives of the Antitrust Division of the United States Department of Justice and the Florida Attorney General's Office during the period ending four years after the Final Judgment is entered before acquiring, directly or indirectly, any interest in any assets (other than in the ordinary course of business), capital stock, or voting securities of any small container commercial hauling business that, at any time during the twelve months immediately preceding such acquisition, were used to provide small container commercial hauling services in Broward County, Florida, where that business's small container commercial hauling assets generated in excess of $500,000 in revenues per year or where total revenues were in excess of $1 million per year.

B. Such written notification shall be provided to representatives of the Antitrust Division and the Florida Attorney General's Office at least thirty days prior to acquiring any such interest, which period may be shortened by permission of the Antitrust Division and the Florida Attorney General's Office.

XII. No Reacquisition

Defendant Waste Management may not reacquire, lease, or control any part of the Relevant Hauling Assets during the term of this Final Judgment.

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 years form the date of its entry.

XV. Public Interest Determination

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, and STATE OF FLORIDA, Plaintiffs, v. WASTE MANAGEMENT, INC., and ALLIED WASTE INDUSTRIES, INC., Defendants.

Cast No.: 1:03CV02076.

JUDGE: James Robertson.

DECK TYPE: Antitrust.

Competitive Impacts 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

Defendant Waste Management, Inc. (''Waste Management'') and Defendant Allied Waste Industries, Inc. (''Allied'') entered into an asset purchase agreement and a stock purchase agreement, both dated August 15, 2003, pursuant to which Waste Management would acquire from Allied, *inter alia*, certain small container commercial hauling assets in Broward County, Florida. The United States and the State of Florida (''Florida'') filed a civil antitrust Complaint on October 14, 2003, 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 hauling services in Broward County, Florida 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 of small container commercial waste.

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, Waste Management is required within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, Whichever is later, to divest, as a viable business operation, specified small container commercial hauling assets located in Broward County, Florida. Under the terms of the Hold Separate Stipulation and Order, Waste Management is required to take certain steps to ensure that the assets to be divested are fully maintained in operable condition at no less than the state they were in at the time the United States, Florida, and Defendants agreed to the divestitures outlined below and held separate from its other assets and businesses.

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

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Waste Management, with 2002 revenues of approximately $11.1 billion, is the nation's largest waste collection and disposal company, operating throughout the United States. Allied, with 2002 revenues of approximately $5.5 billion, is the nation's second largest waste collection and disposal company. The proposed transaction, as initially agreed to by Defendants on August 15, 2003, would lessen competition substantially as a result of Waste Management's acquisition of Allied's small container commercial hauling assets in Broward County, Florida. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States and Florida on October 14, 2003.

B. The Competitive Effects of the Transaction on Competition in Small Container Commercial Hauling

Municipal solid waste (''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 disposal facilities (*e.g.*, transfer stations, incinerators, and landfills), which, for a fee, process and legally dispose of the waste. Small container commercial hauling is one component of MSW collection, which also includes residential and other waste collection. Waste Management and Allied compete in the collection of small container commercial waste in Broward County, Florida.

Small container commercial hauling is the collection of MSW in one to ten cubic yard containers, usually from commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants) for shipments 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 small container commercial accounts into their own special routes, and generally use specialized equipment to store, collect, and transport waste from these accounts to approved disposal sites. This equipment (*e.g.*, one- to ten-cubic-yard containers for waste storage, and front-end load vehicles commonly used for collection and transportation) is uniquely well-suited for small container commercial hauling. Providers of other types of waste collection services (*e.g.*, residential and roll-off services) are not good substitutes for small container commercial hauling firms. In their waste collection efforts, these 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 waste generated by commercial customers, and hence, are rarely used on small container commercial hauling routes. In the event of a small but significant and nontransitory increase in price for small container commercial hauling, customers would not switch to any other alternative. Thus the Complaint alleges that the provision of small container commercial hauling 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 hauling service takes place in compact, highly localized geographic markets. The geographic markets are compact and highly localized because it is expensive to ship waste long distances in either collection or disposal operations. To minimize transportations costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial hauling 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 commercial waste hauling service as frequently or conveniently as that offered by local firms with nearby routes. Also, local small container commercial hauling firms have significant cost advantages over other firms and can profitably increase their charges to local small container commercial hauling customers without losing significant sales to firms outside the area.

Small container commercial haulers in Broward County, Florida compete for customers either in ''open'' competition or through competition for municipal franchises. In open competition areas, haulers compete to service individual customers. In areas where commercial hauling is controlled by the respective municipality, small container commercial haulers compete to be awarded a municipal contract, or franchise, that permits the hauler to provide service to all of the small container commercial customers in that municipality. The municipality decides whether to grant a franchise or to allow haulers to compete for customers in open competition. Local small container commercial hauling firms in Broward County can profitably increase prices to customers in the open areas of Broward County—that is, those customers not covered by a municipal

franchise—without losing sales to a municipal franchise, or to more distant competitors.

Applying this analysis, the Complaint alleges that the open competition areas of Broward County, Florida constitute a section of the country, or relevant geographic market, for the purpose of assessing the competitive effects of a combination of Waste Management and Allied in the provision of small container commercial hauling services.

There are significant entry barriers into the provision of small container commercial hauling services. A new entrant in the small container commercial hauling business 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 eighty or more customers or containers each day. Because most customers have their waste collected once of twice a week, a new entrant must have several hundred customers in close proximity to construct an efficient route. However, the common use of price discrimination and long-term contracts by existing small container commercial hauling firms can leave too few customers available to the entrant in a sufficiently confined geographic area to create an efficient route. The incumbent firm can selectively and temporarily charge an unbeateably 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 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 services at pre-entry price levels comparable to the incumbent's prices. Also, a new entrant may face an increase in the cost and time required to form an efficient route, which may limit the entrant's ability to build an efficient route and reduce the likelihood that the entrant ultimately will 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 will likely be forced to compete at lower than entry price levels. Such barriers in the market for small container commercial hauling services have allowed incumbent firms to raise prices successfully.

In Broward County, Florida, Waste Management's acquisition of Allied's small container commercial hauling assets would reduce from three to two the number of significant firms that compete to provide small container commercial hauling. After the acquisition, Waste Management would control over 68 percent of total market revenues, which exceed $40 million annually. There is only one other significant small container commercial hauling competitor in this market.

The Complaint alleges that a combination of Waste Management and Allied in Broward County would remove a significant competitor in small container commercial hauling. In this market the resulting increase in concentration, loss of competition, loss of competition, and absence of any reasonable prospect of entry or expansion by market incumbents likely will result in higher prices for small container commercial hauling.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposal Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial hauling in Broward County, Florida by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires Waste Management, within ninety days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business, small container commercial hauling assets (*e.g.*, routes, trucks, containers, and customer lists) in Broward County, Florida. The assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with Florida, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that Defendants do not accomplish the divestiture 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 divestiture. If a trustee is appointed, the proposed Final Judgment provides that Waste Management 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 divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court, the United States, and Florida, setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee, the United States, and Florida, 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.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of small container commercial hauling services in Broward County, Florida. Under the proposed Final Judgment, Waste Management is required to divest customers and contracts on eleven of Allied's routes (routes 901, 902, 903, 904, 906, 907, 909, 912, 914, 915, and 501, except for specific portions of these routes that did not raise significant competitive concerns, including accounts and contracts serviced in parts unincorporated Broward County, accounts serviced through franchise agreements, and accounts and contracts serviced in the City of Margate) to a new, independent, and economically viable competitor in Broward County, Florida. In addition, Waste Management agrees that, if an Allied customer has a single contract with accounts and service locations that are on both a route to be divested and a route Waste Management will acquire, Waste Management will divest the entire contract. The divested assets produce annual revenues of over $8 million from small container commercial hauling service in the open competition areas of Broward County, which represents over 80 percent of Allied's revenues generated in the open competition areas.

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 attorney's 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, Florida, 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 commends regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty 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 Waste Management's acquisition of certain assets from Allied. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of small container commercial hauling services in the relevant market identified by the United States and Florida.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

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.'' In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment 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). As the United States Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, 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 United States* v. *Microsoft,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[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).[1] Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, 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. Case law requires 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 requires might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[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 Gillette, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 f. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

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 Compliant, 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 might have but did not pursue. *Id.* at 1459–60.

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: November 19, 2003.

Respectfully submitted,

Paul A. Moore III, Maryland Bar, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 514–8380.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Waste Management, Inc., Allied Waste Industries, Inc., and the State of Florida by placing a copy of this Competitive Impact Statement in the U.S. mail, first class and postage prepaid, directed to each of the above-named parties at the addresses given below, this 19th day of November, 2003.

Counsel for Defendant Waste Management, Inc., Melanie Sabo, Esquire, Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Suite 500, Washington, DC 20006; (202) 628–1700.

Counsel for Defendant Allied Waste Industries, Inc., Mia F. Cohen, Esquire, Jones Day Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971.

Counsel for Plaintiff State of Florida, Lizabeth A. Leeds, Esquire, Senior Assistant Attorney General, Office of the Attorney General, Antitrust Division, PL–01, The Capitol, Tallahassee, Florida 32399–1050, Phone: (850) 414–3600, Fax: (850) 488–9134.

Paul A. Moore III, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0938

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[1] *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved (was) within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *Cf. BNS,* 858 F.2d at 463 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F. 3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').