costs), payable to the Consent Decree Library.

**Richard W. Sponseller,**

*Assistant United States Attorney, Eastern District of Virginia.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Allied Waste Industries, Inc. and Superior Services, Inc.; 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) through (h), that a Complaint, Hold Separate Stipulation and Order, and proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States* v. *Allied Waste Industries, Inc., and Superior Services, Inc.,* Civil No. 1:00CV 01067 on May 12, 2000. A Competitive Impact Statement was filed on June 22, 2000. The Complaint sought to enjoin the following transactions: Allied Waste Industries, Inc.'s (''Allied'') proposed acquisition of Superior Services, Inc.'s (''Superior'') waste hauling assets in Mansfield. Ohio; Superior's proposed acquisition of Allied's waste hauling assets in Milwaukee, Wisconsin; and Superior's proposed acquisition of a landfill owned by Allied in Leeper, Pennsylvania. The Complaint alleged that these three transactions between Allied and Superior would lessen competition substantially in waste collection and municipal solid waste disposal services in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires, among other things, that (1) Allied divest certain commercial waste collection operations and a transfer station in the Milwaukee area, (2) Superior divest certain commercial waste collection operations and a transfer station in the Mansfield area, and (3) Superior abandon its purchase of an Allied Landfill in the Leeper area.

A Competitive Impact statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and remedies to be implemented by Allied and Superior. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any 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 response thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

**Constance K. Robinson,**

*Director of Operations and Merger Enforcement.*

### United States District Court for the District of Columbia

*United States of America, Plaintiff,* v. *Allied Waste Industries, Inc., and Superior Services, Inc., Defendants.*

### Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

### I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Allied'' means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Superior'' means defendant Superior Services, Inc., a Wisconsin corporation with its headquarters in Milwaukee, Wisconsin, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Relevant Milwaukee Asssets'' means:

(1) Allied's two front-end loader and three rear-end loader small container commercial routes 6, 14, 21, 89, and 95 and recycling routes 73, 75, 705 and 708 that serve Milwaukee and the eastern half of Waukesha (east of route 83) counties, WI; and

(2) Allied's BFI Town & Country Transfer Station, located at W143 S. 6400 College Court, Muskego, WI 53150.

Relevant Milwaukee Assets includes, with respect to each of Allied's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits and supplies); and all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route). Relevant Milwaukee Assets also includes, with respect to the BFI Town & Country Transfer Station described above, all of Allied's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

D. ''Relevant Mansfield Assets'' means:

(1) Superior's small container commercial routs 1, 2, 3 and 4 that serve Richland and Ashland counties, OH; and

(2) Superior's Transfer Station, located at 621 Newman Street, Mansfield, OH 44905.

Relevant Mansfield Assets includes, with respect to each of Superior's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route); and, if requested by the purchaser, real property and improvements to real property (*i.e.,* buildings and garages). Relevant Mansfield Assets also includes, with respect to the Superior Transfer Station described above, all of Superior's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

### II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Relevant Milwaukee Assets and Relevant Mansfield Assets for the purpose of establishing viable competitors in the waste disposal

business or the commercial waste hauling business, or both, to remedy the effects that the United States alleges would otherwise result from the exchange of assets between Allied and Superior. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Relevant Milwaukee Assets and Relevant Mansfield Assets are independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Allied, in the case of the Relevant Mansfield Assets, and Superior, in the case of the Relevant Milwaukee Assets; and that competition is maintained during the pendency of the ordered divestitures.

**III. Jurisdiction and Venue**

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

**IV. Compliance With and Entry of Final Judgment**

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transactions sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

**V. Hold Separate Provisions**

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and operate the Relevant Milwaukee Assets and Relevant Mansfield Assets as independent competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from the operations of Superior, in the case of the Relevant Milwaukee Assets, and from Allied, in the case of the Relevant Mansfield Assets. Superior shall not coordinate the marketing of, or negotiation of sales by, any Relevant Milwaukee Asset with its other operations. Allied shall not coordinate the marketing of, or negotiation of sales by, any Relevant Mansfield Asset with its other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this Order, whichever is later, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) The Relevant Milwaukee Assets and Relevant Mansfield Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the commercial waste hauling business; (2) the management of the Relevant Milwaukee Assets will not be influenced by Superior, and the management of the Relevant Mansfield Assets will not be influenced by Allied; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Milwaukee Assets will be kept separate and apart from Superior's other operations, and the books, records, competitively sensitive sales marketing, and pricing information, and decision-making concerning the Relevant Mansfield Assets will be kept separate and apart from Allied's other operations. Superior's influence over the Relevant Milwaukee Assets and Allied's influence over Relevant Mansfield Assets shall be limited to that necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Milwaukee Assets and Relevant Mansfield Assets, and shall maintain at 1999 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Milwaukee Assets and Relevant Mansfield Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Milwaukee Assets and Relevant Mansfield Assets as economically viable and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Milwaukee Assets and Relevant Mansfield Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Milwaukee Assets and Relevant Mansfield Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and

Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Allied or Superior employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) Works with a Relevant Milwaukee Asset or a Relevant Mansfield Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Milwaukee Assets and Relevant Mansfield Assets are divested pursuant to the terms of the Final Judgment, the Relevant Milwaukee Assets shall be managed by Ray Bruckert and the Relevant Mansfield Assets shall be managed by Richard J. Wojahn. Messrs. Bruckert and Wojahn shall have complete managerial responsibility for the Relevant Milwaukee Assets and Relevant Mansfield Assets, subject to the provisions of this Order and the proposed Final Judgment. In the event that either Mr. Bruckert or Mr. Wojahn is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

**For Plaintiff United States of America**

David R. Bickel,

*DC Bar #393409, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20005, (202) 307–1168.*

**For Defendant Allied Waste Industries, Inc.**

Tom D. Smith,

*Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971.*

**For Defendant Superior Services, Inc.**

James T. McKeown,

*Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202–5367, (414) 271–2400.*

Joseph D. Edmondson, Jr.,

*Foley & Lardner, Washington Harbour, 3000 K Street, NW, Washington, DC 20007, 202–672–5354.*

**Order**

It is so ordered on this ____ day of _____, 2000.

United States District Judge

**Parties Entitled to Notice of Entry of Order:**

*Counsel for Plaintiff United States of America,*

David R. Bickel,

*U.S. Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW, Washington, DC 20037.*

*Counsel for Defendant Allied Waste Industries, Inc.,*

Tom D. Smith,

*Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113.*

*Counsel for Superior Services, Inc.,*

James T. McKeown,

*Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202–5367,*

and

Joseph D. Edmondson, Jr.,

*Foley & Lardner, Washington Harbour, 3000 K Street, NW, Washington, DC 20007.*

**United States District Court for the District of Columbia**

*United States of America, Plaintiff,* v. *Allied Waste Industries, Inc., and Superior Services, Inc., Defendants.*

**Final Judgment**

Whereas, Plaintiff, the United States of America, having filed its Complaint in this action on May 12, 2000, and plaintiff and defendants, Allied Waste Services, Inc. (''Allied'') and Superior Services, Inc. (''Superior''), by their respective attorneys, having consented to the entry of this Final Judgment without trial and adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, Defendants have agreed 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 relevant assets to assure that competition is not substantially lessened;

And Whereas, Defendants Allied and Superior shall make certain divestitures for the purpose of establishing one or more viable competitors in the commercial waste hauling business, in the specified areas of Milwaukee, Wisconsin and Mansfield, Ohio; and

And Whereas, Defendant Superior shall be enjoined from acquiring the County Environmental Landfill in Leeper, Pennsylvania except as provided in this Final Judgment;

And Whereas, Defendants have represented to the United States that the divestitures ordered herein 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 injunctive provisions contained below;

Now, Therefore, Before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed:

**I. Jurisdiction**

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

**II. Definitions**

As used in this Final Judgment:

A. ''Allied'' means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Superior'' means defendant Superior Services, Inc., a Wisconsin corporation with its headquarters in Milwaukee, Wisconsin, and includes its successors and assigns, and its

subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Relevant Milwaukee Assets'' means:

(1) Allied's two front-end loader and three rear-end loader small container commercial routes 6, 14, 21, 89, and 95 and recycling routes 73, 75, 705 and 708 that serve Milwaukee and the eastern half of Waukesha (east of route 83) Counties, WI; and

(2) Allied's BFI Town & Country Transfer Station, located at W143 S. 6400 College Court, Muskego, WI 53150.

Relevant Milwaukee Assets includes, with respect to each of Allied's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); and all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route). Relevant Milwaukee Assets also includes, with respect to the BFI Town & Country Transfer Station described above, all of Allied's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

D. ''Relevant Mansfield Assets'' means:

(1) Superior's small container commercial routes 1, 2, 3 and 4 that serve Richland and Ashland counties, OH; and

(2) Superior's Transfer Station, located at 621 Newman Street, Mansfield, OH 44905.

Relevant Mansfield Assets includes, with respect to each of Superior's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route); and, if requested by the purchaser, real property and improvements to real property (*i.e.,* buildings and garages). Relevant Mansfield Assets also includes, with respect to the Superior Transfer Station described above, all of Superior's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

E. ''Hauling'' means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hayling, as used herein, does not include collection of roll-off containers.

F. ''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.

G. ''Disposal'' means the business of disposing of waste into approved disposal sites.

H. ''Landfill'' means a waste management facility where waste is placed into the land.

I. ''Small container commercial waste collection service'' 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 commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.,* stores and restaurants).

J. ''Milwaukee area'' means the City of Milwaukee, Milwaukee County, and the eastern half of Waukesha (east of route 83) County, Wisconsin.

K. ''Mansfield area'' means the City of Mansfield and Richland and Ashland Counties, Ohio.

L. ''Leeper area'' means the City of Leeper and Clarion, Elk, Forest, and Jefferson Counties, Pennsylvania.

## III. Applicability

A. The provisions of this Final Judgment apply to Allied and Superior, as defined above, and all other persons in active concert or participation with any of them who shall have received 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 a lesser business unit that includes defendants' Relevant Milwaukee Assets or Relevant Mansfield Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

## IV. Divestitures

*Milwaukee and Mansfield Areas*

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within ninety (90) calendar days after the filing of the complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Relevant Milwaukee Assets as a viable, ongoing business to a single purchaser acceptable to the United States, in its sole discretion, and to sell the Relevant Mansfield Assets, as a viable, ongoing business, to a single purchaser acceptable to the United States, in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture an additional period of time, not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Milwaukee Assets and Relevant Mansfield Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Milwaukee Assets and Relevant Mansfield Assets customarily provided in a due diligence process except such information or documents subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall not interfere with any negotiations by any purchaser to employ any Allied or Superior employee who, prior to the entry of the Hold Separate Stipulation and Order, works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the

Relevant Milwaukee Assets and Relevant Mansfield Assets.

E. Defendants shall permit prospective purchasers of the Relevant Milwaukee Assets and Relevant Mansfield Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Relevant Milwaukee Assets and Relevant Mansfield 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.

F. Defendants shall warrant to each purchaser of the Relevant Milwaukee Assets and Relevant Mansfield Assets that each asset will be operational on the date of sale.

G. Defendants shall not take any action, direct or indirect, that will impede in any way the permitting, operation, or divestiture of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

H. Defendants shall warrant to each purchaser of the Relevant Milwaukee Assets and Relevant Mansfield 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 divestiture of each asset, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section VI of this Final Judgment, shall include all Relevant Milwaukee Assets and Relevant Mansfield Assets, and shall be accomplished by selling or otherwise conveying the assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Relevant Milwaukee Assets and Relevant Mansfield Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment, (1) Shall be made to a purchaser that, in the United State's sole judgment, has the capability and intent (including the necessary managerial, operation and financial capability) of competing effectively in the waste disposal or hauling business in the Milwaukee and Mansfield areas; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

**V. Ban on Acquisition**

*Leeper Area*

A. Superior shall abandon the purchase agreement between Superior and Allied, dated August 4, 1999, to acquire the County Environmental Landfill located at 344 Walley Run Drive, Leeper, PA 16233 (''County Landfill''). Superior shall not directly or indirectly acquire or propose to acquire any assets of or any interest, including any financial, security, loan equity or management interest, in the County Landfill except as provided in Paragraph V(B).

B. If a new landfill opens in the Leeper area which accepts MSW, Superior may propose to acquire assets or an interest in the County Landfill but shall provide advance notification to the Antitrust Division of any such plan. The obligation to provide notice under this Paragraph is met when Superior files a premerger notification pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''). In the event that such a transaction is not subject to the reporting and waiting period prerequirements of the HSR Act, notification under this Paragraph shall be provided to the Antitrust Division in the same format as, and in accordance with, 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 9 of the instructions must be provided only about the Leeper area. Notification shall be provided at least thirty (30) days prior to the acquisition of 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, Superior shall not consummate the proposed transaction or agreement until twenty (20) 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 the rules promulgated thereunder. This Paragraph shall be broadly construed, and any ambiguity or uncertainty regarding the filing of notice under this Paragraph shall be resolved in favor of filing notice.

**VI. Appointment of Trustee**

A. If defendants have not divested the Relevant Milwaukee Assets and Relevant Mansfield Assets within the time period specified in Section IV(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 divestitures.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Milwaukee Assets and Relevant Mansfield Assets. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to the Untied States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Section IV, VI, and VII of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, reasonably necessary in the trustee's judgment to assist in the divestiture and such professionals and agents shall be accountable solely to the trustee.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants 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 VII.

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 such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the

divested 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 the divestitures are accomplished.

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 Relevant Milwaukee Assets and Relevant Mansfield Assets. Defendants shall develop financial and other information relevant to the Relevant Milwaukee Assets and Relevant Mansfield Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development or commercial information.

F. After the trustee's appointment, the trustee shall file monthly reports with the parties 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 included 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 Milwaukee Assets and the Relevant Mansfield Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to sell the Relevant Milwaukee Assets and the Relevant Mansfield Assets.

G. If the trustee has not accomplished such divestitures within six months after its appointment, the trustee thereupon shall file promptly 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 for completing the required divestitures. 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 parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

**VII. Notice of Proposed Divestitures**

A. Within two (2) business days following execution of a definitive agreement to effect, in whole or in part, any proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. 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 to, or expressed an interest in or a desire to, acquire any ownership interest in the assets to be divested that are the subject of the binding contract, together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them 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 purchaser, and any third party, whichever is later, the United States 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 to defendants and the trustee, if applicable that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(C) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or VI of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section VI(C), a divestiture proposed under Section IV shall not be consummated unless approved by the Court.

**VIII. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every twenty (20) calendar days thereafter until the divestitures have been completed pursuant to Section IV or VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, 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 assets to be divested, 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 that defendants have taken to solicit a buyer for the Relevant Milwaukee Assets and Relevant Mansfield Assets and to provide required information to prospective purchasers, 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 to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Compliant in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Relevant Milwaukee Assets and Relevant Mansfield Assets pursuant to Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Milwaukee Assets and Relevant Mansfield Assets that were divested and to effect the ordered divestitures.

**IX. Hold Separate Order**

Until the divestitures required by the 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 sale of the Relevant Milwaukee Assets or the Relevant Mansfield Assets.

**X. Financing**

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

**XI. Compliance Inspection**

A. For purposes of determining or securing compliance with the 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, shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

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

B. Upon the written request of the Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order as may be requested.

C. No information or documents obtained by the means provided in Section XI of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States 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)(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 ten (10) calendar days notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

**XII. Retention of Jurisdiction**

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

**XIII. Termination**

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

**XIV. Public Interest**

Entry of this Final Judgment is in the public interest.

Dated_____, 2000.

United States District Judge_____

**Parties Entitled to Notice of Entry of Final Judgment:**

*Counsel for Plaintiff United States of America,*

David R. Bickel,

*U.S. Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW., Washington, DC 20037.*

*Counsel for Defendant Allied Waste Industries, Inc.,*

Tom D. Smith,

*Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW., Washington, DC 20001–2113.*

*Counsel for Superior Services, Inc.,*

James T. McKeown,

*Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202–5367.*

and

Joseph D. Edmondson, Jr.,

*Foley & Lardner, Washington Harbour, 3000 K Street, NW., Washington, DC 20007.*

**United States District Court for the District of Columbia**

*United States of America, Plaintiff,* v. *Allied Waste Industries, Inc. and Superior Services, Inc., Defendants.*

File No.: 1:00 CV 01067

Judge: Ricardo M. Urbina

Deck Type: Antitrust

**Competitive Impact Statement**

The 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.

**Nature and Purpose of the Proceeding**

The United States filed a civil antitrust Complaint on May 12, 2000, seeking to enjoin the acquisition of certain waste hauling and disposal assets by Allied Waste Industries, Inc. (''Allied'') and Superior Services, Inc. (''Superior''). Allied and Superior had entered into purchase agreements pursuant to which Superior would acquire hauling assets from Allied in Milwaukee, Wisconsin; Allied would acquire hauling assets from Superior in Mansfield, Ohio; and Superior would acquire Allied's County Environmental Landfill in Leeper, Pennsylvania. The Complaint alleges that the likely effects of these acquisitions would be to substantially lessen competition for waste collection and disposal services 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 waste.

At the same time the Complaint was filed, the United States also filed a

proposed Final Judgment and a Hold Separate Stipulation and Order that were designed to eliminate the anticompetitive effects of the acquisitions. Under the proposed Final Judgment, which is explained more fully below, the defendants are required within 90 days after the filing of the Hold Separate Stipulation and Order, or five (5) days after notice of the entry of the Final Judgment by the Court, to divest, as viable business operations, certain waste hauling assets and related transfer stations in the Milwaukee and Mansfield areas. The proposed Final Judgment also requires Superior to abandon its proposed acquisition of Allied's landfill in Leeper. Under the terms of the Hold Separate Stipulation and Order, the defendants are required to take certain steps to ensure that the assets to be divested will be preserved and held separate from the defendants' other assets and businesses.

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

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

### *A. The Defendants and the Proposed Transactions*

Allied, with revenues in 1999 of approximately $6 billion, is the nation's second largest waste hauling and disposal company, operating throughout the United States. Superior, with 1999 revenues of approximately $319.7 million, is a multi-state waste collection and disposal company. On August 4, 1999, Allied and Superior entered into nine separate agreements in which they agreed to exchange certain waste hauling and disposal assets. Three of those nine agreements involve acquisitions of waste hauling and disposal assets in the Milwaukee, Mansfield, and Leeper areas. These acquisitions are the subject of the Complaint and proposed Final Judgment filed by the United States on May 12, 2000.

### *B. The Competitive Effects of the Transaction*

Waste collection firms, or ''haulers,'' contract to collect municipal solid waste (''MSW'') from residential and commercial customers; they 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 waste. Allied and Superior compete in operating waste collection routes and waste disposal facilities.

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

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 special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard container for waste storage, plus front-end and rear-end loader vehicles for collection and transportation—is uniquely well suited for the provision of small container commercial waste collection service. Providers of other types of waste collection services (*e.g.,* residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (*e.g.,* garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.,* side-load trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by commercial accounts, and hence, are rarely used on small container commercial waste collection routes. For purposes of antitrust analysis, the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service., for analyzing the effects of the acquisitions.

The Complaint alleges that the provision of small container commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density, and efficiency of their waste 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. Sheer distance may significantly limit a distant firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that the Milwaukee and Mansfield areas constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Allied and Superior in the provision of small container commercial waste collection services. The Milwaukee area includes the City of Milwaukee. Milwaukee County and the eastern half east of route 83 of Waukesha County, Wisconsin. The Mansfield area includes the city of Mansfield, and Richland and Ashland counties, Ohio.

In the Milwaukee area, Superior's acquisition of Allied's assets would reduce from three to two the number of significant firms competing in small container commercial waste collection service. After the acquisition, Superior would control approximately 40%, and two firms would control over 80%, of total market revenue, which is about $22 million annually. The acquisition would increase the Herfindahl-Hirschmann Index (''HHI''),[1] a measure of market concentration, by about 700 points to about 4700 in the Milwaukee area.

In the Mansfield area, Allied's acquisition of Superior's assets would reduce from two to one the number of significant firms that compete in small container commercial waste collection service. After the acquisition, Allied would control over 80% of the market. The acquisition would increase the HHI by over 3000 points to about 7300 in the

[1] The Herfindahl-Hirschmann Index (''HHI'') is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared (900) plus 30 squared (900) plus 20 squared (400) plus 20 squared (400) = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

Mansfield area, where total revenues exceed $3.5 million annually.

New entry into these markets would be difficult, time consuming, and is unlikely to be sufficient to constrain any post-merger price increase. Many customers of commercial waste collection firms have entered into long-term contracts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, *i.e.,* selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be unprofitable to serve. Taken together, the prevalence of long-term contracts and the ability of market incumbents to price discriminate substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Complaint alleges that a combination of Allied and Superior in Milwaukee and Mansfield would likely lead to an increase in prices charged to consumers of small container commercial waste collection services. The two acquisitions would diminish competition by enabling the few remaining competitors to engage more easily, frequently, and effectively in coordinated pricing interaction that harms consumers.

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

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. MSW can be sent for disposal only to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste risks severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for disposal of MSW without losing significant sales to other firms. For these reasons, there are no good substitutes for disposal of MSW. The disposal of MSW therefore constitutes a line of commerce, or relevant service, for the purposes of analyzing the acquisition.

Disposal of MSW generally tends to occur in localized markets. Disposal costs are a significant component of waste collection services, often comprising 40% or more of overall operating costs. It is expensive to transport waste significant distances for disposal. Consequently, waste collection firms strongly prefer to send waste to local disposal sites. Sending a vehicle to dump waste at a remote landfill increases both the actual and opportunity costs of a hauler's collection service. Natural and man-made obstacles (e.g., mountains and traffic congestion), sheer distance and relative isolation from population centers (and collection operations) substantially limit the ability of a remote disposal site to compete for MSW from closer, more accessible sites. Thus, waste collection firms will pay a premium to dispose of waste at more convenient and accessible sites. Operators of such disposal facilities can—and do—price discriminate, *i.e.,* charge higher prices to customers who have fewer local options for waste disposal.

For these reasons, the Complaint alleges that, for purposes of antitrust analysis, the Leeper area is a relevant geographic market for disposal of MSW. The Leeper area includes the City of Leeper, and Clarion, Elk, Forest, and Jefferson counties, Pennsylvania.

In the Leeper area, Superior's acquisition of Allied's County Environmental Landfill would reduce from two to one the number of significant firms competing in the disposal of MSW, resulting in a monopoly. In 1998, approximately 66,000 tons of MSW were generated from this market. In that same year, these two landfills disposed of about 97% of that MSW. Based on quantity disposed, the post-merger HHIs for disposal of MSW would be about 9500, with an increase of approximately 4500 points.

Obtaining a permit to construct or expand an existing disposal site is an expensive and time consuming task. Local public opposition often makes it more difficult and costly and increases the uncertainty of successfully permitting a facility. Significant new entry in the Leeper area is unlikely to prevent the exercise of market power after the acquisition.

The elimination of one of only two significant competitors, such as would occur as a result of the proposed transaction in the Leeper area, virtually ensures that consumers in this market will face higher prices for the disposal of MSW or the collection of small container commercial waste.

## III. Explanation of the Proposed Final Judgment

### *A. Divestitures in the Milwaukee and Mansfield Areas*

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small containerized commercial waste collection services in the Milwaukee and Mansfield areas by establishing a new, independent and economically viable competitor in each of those markets. 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, small container commercial waste collection assets (*e.g.,* routes, trucks, containers, and customer lists) relating to the Milwaukee and Mansfield markets, as well as a transfer station in each market. The transfer stations must be divested because they are likely to make the buyer of the waste collection assets a more effective competitor.

These assets must be divested in such a way as to satisfy the United States that the operations can and will be operated by the purchaser or purchasers as a viable, ongoing business 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 above-described period, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that the defendant affected 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 divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth its efforts to accomplish divestitures. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties 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 relief sought in the Milwaukee and Mansfield areas will maintain the

pre-acquisition structure of each market and thereby ensure that consumers of small container commercial waste collection services will continue to receive the benefits of competition—lower prices and better service.

*B. Ban on Acquisition of County Environmental Landfill*

The proposed Final Judgment also requires Superior to abandon its purchase agreement with Allied, dated August 4, 1999, to acquire the County Environmental Landfill (''County Landfill'') in Leeper, Pennsylvania. Superior is banned from acquiring the landfill for the ten-year term of the Final Judgment unless a new landfill opens in the Leeper area. If a new landfill opens, Superior may propose to acquire County Landfill, but it must give the Antitrust Division advance notice of any such plan.

Typically, the United States does not require parties who have abandoned an acquisition to enter into a Final Judgment preventing them from engaging in the same or a similar transaction in the future. In this case, however, such a provision was necessary because the acquisition of County landfill, standing alone, probably would not be large enough to trigger the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a. Absent such a provision, Superior could subsequently acquire the landfill without the United States knowing about the acquisition until well after it had taken place.

As noted above, the proposed Final Judgment does not completely bar Superior from acquiring County Landfill, but, rather, it permits superior to propose such an acquisition in the event that another landfill opens in the Leeper area. The United States does not believe entry is likely within the next two years or that foreseeable entry would be sufficient to counteract the anticompetitive effects of Superior's acquisition of County Landfill. The proposed Final Judgment has a term of ten years, however, and it is possible that entry during that period would sufficiently alter the market conditions so as to render competitively harmless an acquisition of County Landfill by Superior. Hence, the proposed Final Judgment requires Superior to provide the Antitrust Division with notice before consummating an acquisition of County Landfill. This will give the Antitrust Division time to evaluate the proposed transaction and take action to block the deal if the situation so warrants.

## 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 and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 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: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

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

## VI. Alternatives to the Proposed final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Allied and Superior. The United States could have continued the litigation and sought preliminary and permanent injunctions against Allied's acquisition of the Superior assets, and Superior's acquisition of the Allied assets. The United States is satisfied, however, that the divestiture of hauling assets and the abandonment of the County Landfill acquisition will preserve competition for small containerized commercial waste collection services in the Milwaukee and Mansfield areas, as well as competition for the disposal of MSW in the Leeper area.

## 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 of 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 individual 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) (emphasis added). As the Court of Appeals for the District of Columbia Circuit has 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 Corp.,* 56F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the 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.'' [2] Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances. *United States.* v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 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) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981)); see also Microsoft, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

> the 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.[3]

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.' '' [4]

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. Since ''[t]he 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.*

**VIII. Determinative Documents**

There are not determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 22, 2000.

Respectfully submitted,

David R. Bickel,

*DC Bar #393409, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.*

**Certificate of Service**

I hereby certify that a copy of the foregoing has been served upon Allied Waste Industries, Inc. and Superior Services, Inc. by placing a copy of this Competitive Impact Statement in the U.S. mail, postage prepaid directed to each of the above-named parties at the addresses given below, this 22nd day of June, 2000.

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and

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[2] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). 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. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[3] *United States* v. *Bechtel Corp.,* 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 746; see also *United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), cert. denied. 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), quoting *United States* v. *Gillette Co.,* supra, 406 F. Supp. at 716 aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Dairy Farmers of America, 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. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States of America* v. *Dairy Farmers of America, et al.,* Civil Action No. 00–1663. On March 31, 2000, the United States filed a Complaint alleging that the proposed acquisition by Dairy Farmers of America, Inc. (''DFA'') of substantially all the assets of SODIAAL North America Corporation (''SODIAAL''), would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on May 18, 2000, allows DFA to complete the proposed acquisition of SODIAAL but prohibits it from entering into any federation with Land O' Lakes, Inc. with respect to the marketing, promotion, sale, or distribution of branded butter. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania.

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 J. Robert Kramer