materials management practices at Encycle's facility in Corpus Christi, Texas and ASARCO's facilities in: East Helena, Montana; El Paso; Texas; and Amarillo, Texas. The consent decree also resolves civil penalty and injunctive relief claims of the United States against ASARCO under the CWA for alleged unpermitted discharges and permit violations at ASARCO's Tennessee mines.

The decree requires Encycle and ASARCO Inc. to: revise Encycle/Texas, Inc.'s hazardous waste management procedures; perform appropriate RCRA corrective action at Encycle and ASARCO's El Paso facility; develop and use innovative metals recycling technology at Encycle; perform an auto and truck tire recycling project at El Paso; implement an enhanced corporate-wide environmental management and compliance auditing system at ASARCO's operating domestic facilities. The settlement also includes payment of civil penalties for alleged past violations totaling $5.5 million ($2 million to be paid to the State of Texas), and performance of the following supplemental environmental projects: a permanent 30 acre environmental conservation area for public use to be maintained by ASARCO in Corpus Christi; an air quality project to reduce particulate pollution in the El Paso area; and, a wetlands restoration project at ASARCO's Coy Mine in Tennessee.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States and State of Texas* v. *Encycle, Texas, Inc. and ASARCO Inc.* (S.D. Tx.), DJ Ref. #s: 90–7–1–910, 90–7–1–910/1, and 90–7–1–890.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, 910 Travis Street, Houston, Texas 77002; at the U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–8892. A copy of the consent decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. When requesting a copy of the decree by mail, please enclose a check in the amount of $72.25 for a copy including exhibits, or $31.50 for a copy excluding exhibits (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 99–11074 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 18, 1999 a proposed consent decree in *United States* v. *National Wood Preservers, Inc., et al.,* Civil Action No. 96–CV–5269, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action, the United States sought recovery of approximately $7 million in response costs incurred as well as costs to be incurred by the United States in response to the release or threatened release of hazardous substances at the Havertown PCP Superfund Site (''Site''), located in Havertown Township, Delaware County, Pennsylvania. The Consent Decree will resolve the claims against one of the defendants, the Estate of Clifford Rogers, by providing for the sale of the portion of the Site currently owned by the Estate, which is its only remaining asset, and pay to the United States 80% of the proceeds.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Wood Preservers, Inc., et al.,* DOJ reference #90–11–3–1680.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11073 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States, State of Illinois, and State of Missouri v. Allied Waste Industries, Inc. and Browning-Ferris Industries, 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)–(h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States, State of Illinois and State of Missouri* v. *Allied Waste Industries, Inc., and Browning-Ferris Industries, Inc.,* Civil No. 1:99CV 00894 on April 8, 1999. A Competitive Impact Statement was filed on April 21, 1999. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The Complaint alleged that the proposed acquisition by Allied Waste Industries, Inc. (''Allied'') of certain small container waste hauling assets from Browning-Ferris Industries, Inc. (''BFI'') in the St. Louis market would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The St. Louis market was defined as the City of St. Louis and St. Louis County in Missouri, and the Illinois counties of St. Clair, Madison, and Monroe. The proposed Final Judgment, filed at the same time as the Complaint, required Allied, among other things (1) to divest 12 of BFI's small container waste hauling routes serving the St. Louis market and related assets; (2) to offer less restrictive contracts to small container commercial waste hauling customers, and (3) not to acquire any commercial waste hauling assets in the St. Louis market for five years.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies to be implemented by Allied. Copies of the Complaint, Hold Separate

Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are available for inspection in Room 215 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, 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 Antitrust Division.

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 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, directors, officers, managers, agents, and employees.

B. ''BFI'' means Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. ''Commercial waste hauling'' means the collection and transportation to a disposal site of trash and garbage (but not medical waste: organic waste; special waste, such as contaminated soil; sludge; or recycled, materials) from commercial and industrial customers. Commercial waste hauling means using front-end load and rear-end load trucks to service small containers in the St. Louis area. Typical customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

D. ''Relevant Hauling Assets'' means (1) BFI Illinois commercial waste hauling routes 906, 909, 916 and 940 (as described in Exhibit A attached to the proposed Final Judgment) and BFI Missouri commercial waste hauling routes 902, 904, 906, 907, 908, 921, 926 and 940 (as described in Exhibit B attached to the proposed Final Judgment) including Saturday service in connection with the customers serviced on those routes; (2) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies [except real property nd improvements to real property (i.e., buildings)] used in connection with those routes; and (3) all intangible assets, including hauling-related customer lists, contracts and accounts used in connection with those routes.

E. ''Small container'' means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

F. ''St. Louis market'' means the City of St. Louis and St. Louis County, Missouri; and the Illinois counties of St. Clair, Madison and Monroe.

G. ''Relevant State'' means the state in which the Relevant Hauling assets are located.

II

Objectives

The Final Judgment filed in this case is meant to ensure Allied's prompt divestitures of the Relevant Hauling Assets for the purpose of establishing a viable competitor in the commercial waste hauling business in the St. Louis market, to remedy the effects that plaintiffs allege would otherwise result from Allied's acquisition of certain BFI assets. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Hauling Assets are an independent, economically viable, and ongoing business concern; 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 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 Allied and by filing that notice with the Court.

B. Allied 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. Allied shall not consummate the transaction 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 rule 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. Allied represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that Allied will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V

Hold Separate Provisions

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

A. Allied shall preserve, maintain, and operate the Relevant Hauling Assets, as independent competitive

businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Allied's other operations. Allied shall not coordinate the marketing of, or negotiation or sales by, any Relevant Hauling Asset with Allied's 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, Allied will inform plaintiffs of the steps Allied has taken to comply with this Hold Separate Stipulation and Order.

B. Allied shall take steps necessary to ensure that (1) the Relevant Hauling Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the waste hauling business in the St. Louis market; (2) management of the Relevant Hauling 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 Hauling Assets, will be kept separate and apart from Allied's other operations. Allied's influence over the Relevant Hauling Assets shall be limited to that necessary to carry out Allied's obligations under this Hold Separate Stipulation and Order and the Final Judgment.

C. Allied shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Hauling Assets, and shall maintain at 1998 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Hauling Assets.

D. Allied shall provide sufficient working capital to maintain the Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

E. Allied shall take all steps necessary to ensure that the Relevant Hauling 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 Hauling Assets.

F. Allied shall not, except as part of a divestiture approved by plaintiffs in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Hauling Assets.

G. Allied shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records and 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 Hauling Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, Allied shall not hire, transfer, terminate, or otherwise alter the salary agreements for the Allied or BFI employee who, on the date of Allied's signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Hauling 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 Hauling Assets are divested pursuant to the terms of the final Judgment, the Relevant Hauling Assets shall be managed by Stephen Zykan. Mr. Zykan shall have complete managerial responsibility for the Relevant Hauling Assets of Allied and BFI, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Zykan is unable to perform his duties, Allied shall appoint, subject to the approval of the United States, after consultation with the Relevant States, a replacement within ten (10) working days. Should Allied fail to appoint a replacement acceptable to the United States, after consultation with the Relevant States, within (10) working days, the United States shall appoint a replacement.

J. Allied 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, after consultation with the Relevant State.

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

FOR PLAINTIFF UNITED STATES OF AMERICA:

Arthur A. Feiveson, Illinois Bar No. 3125793

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, #3000, Washington, DC 20530, (202) 307–0901.

FOR DEFENDANT: ALLIED WASTE INDUSTRIES, INC.

Tom D. Smith,

Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, DC 20005.

FOR DEFENDANT BROWNING-FERRIS INDUSTRIES, INC.:

David M. Foster,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW., Washington, DC 20004–2615.

FOR PLAINTIFF STATE OF ILLINOIS

James E. Ryan,

Attorney General.

By:

Christine H. Rosso,

Assistant Attorney General, Antitrust Bureau, Office of the Attorney General, State of Illinois, 100 W. Randolph, Chicago, Illinois 60601, (312) 814–5610.

FOR PLAINTIFF STATE OF MISSOURI

Jeremiah W. (Jay) Nixon,

Attorney General.

By:

J. Robert Sears,

Assistant Attorney General, Office of the Attorney General, State of Missouri, 1530 Rax Court, Jefferson City, Missouri 65109, (573) 751–3321.

Order

It is so ordered by the Court, this _____ day of _____.

_____

United States District Judge

FINAL JUDGMENT

Whereas, plaintiffs, the United States of America, the State of Illinois, and the State of Missouri, and defendants Allied Waste Industries, Inc., (''Allied''), and Browning-Ferris Industries, Inc. (''BFI''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, 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 that this Final Judgment shall settle all claims made by plaintiffs in their Complaint filed on April 8, 1999;

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, in the event of the acquisition of certain BFI assets by Allied, the prompt and certain

divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require Allied to make certain divestitures for the purpose of establishing a viable competitor in the commercial waste hauling business in the St. Louis area;

And whereas, Allied has represented to plaintiffs that the divestitures ordered herein can and will be made and that Allied will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States, the states of Illinois and Missouri currently believe that entry of this Final Judgment is in the public interest;

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* as follows:

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, directors, officers, managers, agents, and employees.

B. ''BFI'' means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. ''Commercial waste hauling'' means the collection and transportation to a disposal site of trash and garbage (but not medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from commercial and industrial customers. Commercial waste hauling means using frontend load and rearend load trucks to service small containers in the St. Louis market. Typical customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

D. ''Small container'' means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

E. ''Relevant Hauling Assets'' means (1) BFI Illinois commercial waste hauling routes 906, 909, 916 and 940 (as described in Exhibit A) and BFI Missouri commercial waste hauling routes 902, 904, 906, 907, 908, 921, 926 and 940 (as described in Exhibit B) including Saturday service in connection with the customers serviced on those routes; (2) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies [except real property and improvements to real property (i.e., buildings)] used in connection with those routes; and (3) all intangible assets, including hauling-related customer lists, contracts and accounts used in connection with those routes.

F. ''St. Louis market'' means the City of St. Louis and St. Louis County, Missouri; and the Illinois counties of St. Clair, Madison and Monroe.

G. ''Relevant State'' means the state in which the Relevant Hauling Assets are located.

III

Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, 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. Allied shall require, as a condition of the sale or other disposition of all or substantially all of its relevant hauling assets, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

Divestitures

A. Allied is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Relevant Hauling Assets as a viable, ongoing business to a purchaser acceptable to the United States in its sole discretion, after consultation with the Relevant State.

B. Allied shall use its best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, after consultation with the Relevant State, 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, Allied promptly shall make known, by usual and customary means, the availability of the Relevant Hauling Assets. Allied 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. Allied shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurance, all information regarding the Relevant Hauling Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Allied shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

D. Allied shall not interfere with any negotiations by any purchaser to employ any Allied (or former BFI employee) who works at, or whose principal responsibility concerns, any hauling business that is part of the Relevant Hauling Assets.

E. As customarily provided as part of a due diligence process, Allied shall permit prospective purchasers of the Relevant Hauling Assets to have access to personnel and to make such inspection of such 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.

F. Allied shall warrant to any and all purchasers of the Relevant Hauling Assets that each asset will be operational on the date of sale.

G. Allied shall not take any action, direct or indirect, that will impede in any way the operation of the Relevant Hauling Assets.

H. Allied shall warrant to the purchaser 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 with respect to all Relevant Hauling assets, Allied will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental,

zoning, or other permits pertaining to the operation of the asset.

I. Unless the United States, after consultation with the Relevant State, otherwise consents in writing, the divestitures pursuant to Section IV, whether by Allied or by trustee appointed pursuant to Section V of this Final Judgment, shall include all Relevant Hauling Assets, and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Relevant State, that the Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste hauling. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States's sole satisfaction, after consultation with the Relevant State, that the purchaser: (1) Has the capability and intent of competing effectively in the waste hauling business in the Relevant Area; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the commercial waste hauling business in the St. Louis market; and (3) is not hindered by the terms of any agreement between the purchaser and Allied which gives Allied the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in the St. Louis market.

V

Appointment of Trustee

A. In the event that Allied has not sold the Relevant Hauling Assets within the time period specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of each such asset not sold.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Hauling Assets. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Allied any investment bankers, attorneys, or agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, upon consultation with the Relevant State, and shall have such other powers as this Court shall deem appropriate. Allied shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Allied must be conveyed in writing to the relevant plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Allied, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset 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 Allied 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 business 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.

D. Allied shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. 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 businesses to be divested, and Allied shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Allied shall permit bona fide prospective acquirers of each Relevant Hauling Asset to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its 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, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) 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, provided, however, that 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 enter thereafter 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.

VI

Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Allied or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify Allied. The notice shall set forth the details of the proposed transaction 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 business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, the United States, in its sole discretion, after consultation with the Relevant State, may request from Allied, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Allied 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. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information request from Allied, the proposed purchaser, and any third party, whichever is later, the United States, after consultation with the Relevant State, shall provide written notice to Allied 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 Allied and the trustee that it does not object, then the divestiture may be consummated, subject only to Allied's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Allied under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Affidavits

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Allied shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV and V 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, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, and interest in the businesses to be divested, and shall describe in detail each contact with any such persons during that period. Each such affidavit shall also include a description of the efforts that Allied has taken to solicit a buyer for any and all Relevant Hauling Assets and to provide requested 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 Untied States, after consultation with the Relevant State, to information provided by Allied, 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 Hold Separate Stipulation and Order in this matter. Allied shall deliver to plaintiffs an affidavit which describes in detail all actions Allied has taken and all steps Allied had implemented on an on-going basis to preserve the Relevant Hauling Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Allied's efforts to maintain and operate each Relevant Hauling Asset as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Allied shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in Allied's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Allied shall preserve all records of all efforts made to preserve the Relevant Hauling Assets and to effect the ordered divestitures.

VIII

Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Allied 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 Hauling Assets.

IX

Financing

Allied is ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

X

Contractual Revisions

A. In accordance with paragraph X B, below, Allied shall alter the contracts it uses with its smaller container solid waste commercial customers in the St. Louis market to the form contained in the attached Exhibit C, except for contracts for terms of less than two years.

B. Except for contracts for terms of less than two years, Allied shall offer contracts in the form attached as Exhibit C to all new small container solid waste commercial customers or customers that sign new contracts for small container solid waste commercial service effective on the date Allied acquires the FBI assets. Allied shall offer such contracts to all other small container solid waste commercial customers in the St. Louis market by December 1, 1999.

XI

Acquisitions

Allied is hereby ordered and directed that for a period of five (5) years after notice of the entry of this Final Judgment, Allied shall not acquire any commercial waste hauling company, any commercial waste hauling route, or any relevant hauling assets located in the City of St. Louis, Missouri; St. Louis County, Missouri; and in the Illinois counties of St. Clair, Madison and Monroe.

XII

Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the antitrust Division, or upon written request of duly authorized representatives of the Attorney General's Office of any Relevant State, and on reasonable notice to Allied made to its principal offices, shall be permitted:

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

(2) Subject to the reasonable convenience of Allied and without restraint or interference from it, to interview, either

informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon the written request of the Attorney General's Office of any Relevant State, Allied shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or XII of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or the Attorney General's Office of any Relevant State, except in the course of legal proceedings to which the United States or any relevant State 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 Allied to plaintiffs, Allied represents and identifies 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 Allied marks 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 plaintiffs to Allied prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Allied is not a party.

XIII

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.

XIV

Termination

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

XV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

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 related to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on April 8, 1999, alleging that the proposed acquisition of Browning-Ferris Industries, Inc.'s (''BFI'') small container commercial waste hauling assets in the St. Louis market by Allied Waste Industries, Inc. (''Allied'') would constitute a violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The States of Illinois and Missouri, by and through their respective Attorneys General, are co-plaintiffs with the United States in this action.[1]

The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in small containerized commercial waste hauling services in the St. Louis market, which includes the City of St. Louis and St. Louis County in Missouri, and the Illinois counties of St. Clair, Madison and Monroe.

Plaintiffs seek, among other relief, a permanent injunction preventing the defendants from, in any manner, combining their small container commercial waste hauling assets in the St. Louis market. By the terms of a Hold Separate Stipulation and Order, which was filed simultaneously with the proposed Final Judgment, defendant Allied must take certain steps to ensure that, until the required divestiture has been accomplished, the BFI assets as outlined in the proposed Final Judgment will be held separate and apart from defendant Allied's other assets and businesses. Allied must, until the required divestiture is accomplished, preserve and maintain the specified BFI assets as saleable and economically viable ongoing concerns.

The United States, its co-plaintiffs, and the defendants also have filed a Hold Separate Stipulation and Order by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, as explained more fully below, Allied would be required within 120 days after the filing of the Hold Separate Stipulation and Order, or 5 days after notice of the entry of the Final Judgment by the Court, to divest, as viable business operations, a specified number of BFI's small container commercial waste hauling routes and assets serving the St. Louis market. If Allied did not do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it shall deem appropriate to carry out the purpose of the trust, which may, if necessary, include extending the trust and the trustee's appointment by a period requested by the United States, after consultation with its co-plaintiffs.

Additionally, under the proposed Final Judgment, as explained more fully below, defendant Allied would be required to offer less restrictive contracts to its small container commercial waste hauling customers in the St. Louis market; and be prohibited from acquiring any commercial waste hauling company, any commercial waste hauling route, or any relevant hauling assets in the St. Louis market for 5 years after notice of the entry of proposed Final Judgment.

The United States, its co-plaintiffs, 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

Allied and BFI are two of the three largest companies engaged in the commercial waste hauling and disposal business, with operations throughout the United States. In 1998, Allied reported domestic revenues of nearly $1.6 billion while BFI reported domestic revenues of nearly $4.7 billion.

[1] The APPA obligates only the United States to file a Competitive Impact Statement.

Allied and BFI agreed to a sale to Allied of BFI's small container commercial waste hauling assets in St. Louis market, as part of an asset swap agreement dated February 11, 1999.

A. The Solid Waste Hauling Industry

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called ''small containers.'' Small containers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rearend load vehicles can also be used to service some commercial small container customers, but these trucks generally are not as efficient as frontend load vehicles and are limited in the sizes of containers they can safely handle. Frontend load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet: the containers do not need to be manually rolled into position by a truck crew as with a rearend load vehicle. Service to commercial customers that use small containers is called ''small containerized hauling service.''

Solid waste hauling firms also provide service to residential and industrial (or ''roll-off'') customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rearend load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in the amount and kind to those generated by residential customers. Generally, rearend loaders use a one or two person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities; it is more economical for this type of customer to use roll-off service with compactor than to use a number of small containers picked up multiple times a week.

B. Small Containerized Commercial Waste Hauling Service

There are no practical substitutes for small containerized commercial waste hauling service. Small containerized commercial waste hauling service customers will not generally switch to noncontainerized service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized commercial waste hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly and takes up too much space for most small containerized commercial waste hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option. Accordingly, small container commercial waste hauling service is a line of commerce and a relevant product market.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized commercial waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances from customers without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served. Local laws or regulations that restrict where waste can be disposed of may further localize markets. Flow control regulations designate the disposal facilities where trash picked up within a geographic area must be disposed. Other local regulations may also prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. These laws and regulations dictate that haulers operate only in these local jurisdictions so that they may use the designated disposal facilities.

The Complaint alleges the St. Louis market as a relevant geographic market for small containerized commercial waste hauling services. This market includes the City of St. Louis and St. Louis County in Missouri, and the Illinois counties of St. Clair, Madison and Monroe.

Allied and BFI compete with each other in small containerized commercial waste hauling services in the relevant geographic market, which is highly concentrated and becomes substantially more concentrated as a result of the proposed acquisition. In the St. Louis market, Allied and BFI each have over a 25% share of the small containerized commercial waste hauling business. The acquisition would increase the Herfindahl-Hirschmann Index (''HHI''),[2] a measure of market concentration, by about 1400 to about 3900 in the St. Louis market.

A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized commercial waste hauling service, achieving comparable operating efficiencies required achieving route destiny comparable to existing firms, which typically takes a substantial

[2] 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.

period of time. A substantial barrier to entry is the use of long-term contracts coupled with selective pricing practices by incumbent firms to deter new entrants into small containerized commercial waste hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the St. Louis market, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service.

Based on the foregoing and other facts, the Complaint alleges that the effect of the proposed acquisition may be substantially to lessen competition in the above-described geographic area in the small containerized commercial waste hauling service market in violation of Section 7 of the Clayton Act.

III

Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized commercial waste hauling services in the St. Louis market by establishing a new, independent and economically viable competitor in that market. The proposed Final Judgment requires Allied, within 120 days after the filing of the Hold Separate Stipulation and Order, or 5 days after notice of the entry of the Final Judgment by the Court, to divest, as a viable ongoing business or businesses, a specified number of BFI's small container commercial waste hauling routes and assets serving the St. Louis market. The divestiture would include both the small containerized commercial waste hauling service assets and other assets as may be necessary to insure the viability of the small container business. If Allied cannot accomplish this divestiture within the above-described period, the proposed Final Judgment provides that, upon application by the United States as plaintiff, the Court will appoint a trustee to effect the divestiture.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Illinois and Missouri) that the operations can and will be operated by the purchaser or purchasers as a viable, ongoing business or businesses that can compete effectively in the relevant market. Similarly, if the divestiture is accomplished by the trustee, the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Illinois and Missouri) that the business or businesses can and will be operated as viable, independent competitors by the purchaser or purchasers. The defendants must take all reasonable steps necessary to accomplish the divestiture and shall cooperate with prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Allied 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 the trustee's efforts to accomplish divestiture. 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 proposed Final Judgment also requires Allied to offer less restrictive contracts (attached to the proposed Final Judgment as Exhibit C) to small containerized commercial waste hauling customers in the St. Louis market. These contractual changes involve shortening from three years to two years the term of contracts Allied uses, limiting renewals to one year periods, and substantially reducing the amount of liquidated damages. The proposed Final Judgment requires that these revised contracts shall be offered to all new, small, containerized commercial waste hauling customers and to existing customers that sign new contracts for small containerized commercial waste hauling service, effective beginning the date Allied acquires the BFI assets. By December 1, 1999, Allied must offer the revised contract to all other small containerized commercial waste hauling service customers in the St. Louis market.

The United States concluded that a change in the types of contracts used with small containerized commercial waste hauling service customers in the St. Louis market, in conjunction with the required divestiture, will adequately address the competitive concerns posed by Allied's acquisition of the BFI assets. Several factors led to the decision, including the number of existing competitors in the market; the size of the population and number and density of commercial establishments requiring small containerized commercial waste hauling service; and the number of haulers that currently do not provide, but, absent the long-term contracts that now exist, could provide small containerized commercial waste hauling service in the market. Requiring Allied to offer less restrictive contracts within the St. Louis market eliminates a major barrier to entry and expansion. Haulers already serving the market will be able to more easily expand their current or build new routes and nearby haulers will be able to build routes, thus constraining any possible anticompetitive price increase by the post-acquisition firm.

The proposed Final Judgment also prohibits Allied from acquiring any commercial waste hauling company, any commercial waste hauling route, or any relevant hauling assets in the St. Louis market for 5 years after notice of the entry of the proposed Final Judgment. The United States concluded that this restriction would ensure continued competition in the market by preventing Allied from acquiring small containerized commercial waste hauling routes which would have had the effect of undercutting the relief required by the proposed Final Judgment by effecting the entry and expansion of other market participants and stifling competition in small containerized commercial waste hauling.

The relief sought in the St. Louis market alleged in the complaint has been tailored to insure that, given the specific conditions in this market, the relief will protect consumers of small containerized commercial waste hauling services from higher prices and poorer quality service that might otherwise result from the acquisition.

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 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, 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, litigation against defendants Allied and BFI. The United States could have brought suit and sought preliminary and permanent injunctions against Allied's acquisition of the BFI assets. The United States is satisfied, however, that the divestiture of the assets, the contract relief, and the prohibition on acquisitions, as outlined in the proposed Final Judgment, will promote small containerized commercial waste hauling service competition in the St. Louis market and lower entry barriers that would otherwise substantially lessen competition in this market. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in the St. Louis market, will maintain the structure of the St. Louis market that existed prior to the acquisition, will preserve the existence of independent competitors in this area, and will allow for new entry and expansion by existing firms in this market.

VII

Standard of Review Under the APPA for the Proposed Supplemental Order

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 supplemental Order ''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) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently 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). The courts have recognized that the term '' 'public interest' take[s] meaning from the purposes of the regulatory legislation.'' *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve ''free and unfettered competition as the rule of trade,'' *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F. 2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶66,651, at 63,046 (D.D.C. 1985). 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.'' [3] 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. ¶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:

[3] 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.

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.[4]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

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.' (citations omitted).'' [5]

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: April 22, 1999.

Respectfully submitted,

Arthur A. Feiveson,

IL Bar #3125793.

David R. Bickel,

DC Bar #393409.

Thomas J. Horton

Denise Cheung,

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., Browning-Ferris Industries, Inc., the Office of the Attorney General of the State of Illinois, and the Office of the Attorney General of the State of Missouri, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the address given below, this 22d day of April, 1999.

Allied Waste Industries, Inc., c/o Tom D. Smith, Jones Day Reavis & Pogue, Metropolitan Square, 1450 G Street, NW, Washington, DC 20005–2088

Browning-Ferris Industries, Inc., c/o David M. Foster, Fulbright & Jaworski, 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615

State of Illinois, Christine H. Rosso, Assistant Attorney General, Office of the Attorney General, Antitrust Bureau, 100 W. Randolph, Chicago, IL 60601

State of Missouri, J. Robert Sears, Assistant Atorney General, Office of the Attorney General, 1530 Rax Court, Jefferson City, Missouri 65109

Arthur A. Feiveson,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

[FR Doc. 99–11076 Filed 5–3–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98CV03170]

Public Comments and Response on Proposed Final Judgment United States v. AT&T Corp. and Telecommunications, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *AT&T Corp. and Telecommunications, Inc.* Civil Action No. 98CV03170, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 8000 of the U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, telephone: (202) 514–5621, and at the office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, N.W., Washington, D.C. 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Comment Relating to Proposed Final Judgment and Response of the United States to Comment

Judge Emmet G. Sullivan

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)) (''APPA''), the United States of America hereby files the public comment it has received relating to the proposed Final Judgment in this civil antitrust proceeding, and herein responds to the public comment. The United States has concluded that the change to the proposed Final Judgment that was suggested in the comment would be in the public interest. Accordingly, the United States has secured the consent of the defendants to modify the proposed Final Judgment in this respect. The APPA requires publication of the public comment and the United States' response. When that publication has been completed, the United States will file a Certificate of Compliance with the APPA and a Motion for Entry of the Modified Judgment with the court.

I. Background

This action was commenced on December 30, 1998, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the merger of Tele-Communications, Inc. (''TCI'') with a wholly-owned subsidiary of AT&T Corp. (''AT&T'') and the resultant acquisition by AT&T of a 23.5 percent equity interest in the mobile wireless telephone business of Sprint Corporation (''Sprint PCS'') would substantially lessen competition in the provision of mobile wireless telephone services in many geographic areas throughout the country.

In June 1998, AT&T and TCI executed a Merger Agreement and Plan of Merger pursuant to which TCI would be merged into a wholly-owned subsidiary of AT&T. The proposed transaction would have resulted in the acquisition of a 23.5 percent interest in Sprint's mobile

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[4] *United States* v. *Bechtel*, 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 716. *See also United States* v. *American Cyanamid Co.*, 719 F. 2d at 565.

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