Fulton County

Hotel Broadalbin, 59 W. Main St., Broadalbin, 11000252

Rensselaer County

Dickinson Hill Fire Tower, Fire Tower Rd., Grafton, 11000253

NORTH CAROLINA

McDowell County

Old Fort Commercial Historic District, Roughly bounded by E. Main, Spring, Commerce & W. Main Sts., Old Fort, 11000257

VIRGINIA

Albemarle County

Greenwood—Afton Rural Historic District, Roughly 5 to 7 mi. N. & S. of I–64, Greenwood—Afton, 11000258

WASHINGTON

Clallam County

Port Angeles Civic Historic District, 205, 215, 217 & 319 S. Lincoln St., Port Angeles, 11000259

WEST VIRGINIA

Hampshire County

Hook's Tavern, Jct. of US 50 & Smokey Hollow Rd., Capon Bridge, 11000260

North River Mills Historic District, Jct. Cnty. Rds. 45/20 & 4/2, North River Mills, 11000261

[FR Doc. 2011–9038 Filed 4–13–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–009]

Government in the Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

ORIGINAL DATE AND TIME: April 12, 2011 at 11 a.m.

NEW DATE AND TIME: April 14, 2011 at 1:30 p.m.

PLACE: 500 E Street, SW., Washington, DC 20436, *Telephone:* (202) 205–2000.

STATUS: Open to the public.

In accordance with 19 CFR 201.35(d)(1), the Commission has determined to reschedule the meeting of 11 a.m., April 12, 2011 to 1:30 p.m., April 14, 2010. Earlier announcement of this rescheduling was not possible.

By order of the Commission.

Issued: April 11, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–9140 Filed 4–12–11; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

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

Under 28 CFR 50.7, notice is hereby given that on April 8, 2011, four proposed consent decrees signed by defendants Arch Coal, Inc., K&M Investors, Inc., Momentive Specialty Chemicals, Inc., and SWEPI LP were lodged in the civil action *United States* v. *Arch Coal, Inc., et al.,* Civil Action No. 1:11–cv–00055, in the United States District Court for the Eastern District of Missouri, Southeastern Division.

In this action the United States is seeking response costs pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, for costs incurred in response to releases of hazardous substances at the Missouri Electric Works Superfund Site ("the Site"), in Cape Girardieu, Missouri. The proposed consent decrees will resolve the United States' claims against the four defendants under Section 107 of CERCLA, 42 U.S.C. 9607, at the Site. Under the terms of the proposed consent decree, the defendants will make the following cash payments to the United States:

Arch Coal, $21,850.58; K&M Investors, $89,569.12; Momentive Specialty Chemicals, $2,441.70; and SWEPI, $31,167.05. In return, the United States will grant all four defendants covenants not to sue under CERCLA with respect to the Site. The Department of Justice will receive for a period of thirty (30) days after the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the proposed consent decrees with defendants Arch Coal, K&M Investors, Momentive Specialty Chemicals, and SWEPI in *United States* v. *Arch Coal, Inc., et al.,* D.J. Ref. 90–11–2–614/3.

The proposed consent decrees may be examined at the office of the United States Attorney, 111 S. 10th Street, 20th Floor, St. Louis, Missouri 63102. During the public comment period, the Consent Decrees may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html* and at the Consent Decree Library, P. O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $18.00 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Public comments may be submitted by email to the following e-mail address: *pubcomment-ees.enrd@usdoj.gov.*

Robert E. Maher, Jr.,

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

[FR Doc. 2011–8967 Filed 4–13–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States and State of New York v. Stericycle, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America and State of New York* v. *Stericycle, Inc., et al.,* Civil Action No. 1:11–cv–00689. On April 8, 2011, the United States and the attorney general for the State of New York filed a Complaint alleging that the proposed acquisition by Stericycle, Inc. of Healthcare Waste Solutions ("HWS") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Stericycle and HWS to divest HWS's Bronx, New York transfer station, which is used in the provision of infectious waste treatment services for customers in the New York City metropolitan area.

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

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (*telephone:* 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, and *State of New York, Office of the Attorney General, Antitrust Bureau, 120 Broadway, New York, New York 10271,* Plaintiffs, v. *Stericycle, Inc., 28161 North Keith Drive, Lake Forest, Illinois 60045, SAMW Acquisition Corporation, 28161 North Keith Drive, Lake Forest, Illinois 60045,* and *Healthcare Waste Solutions, Inc., 4357 Ferguson Drive, Suite 100, Cincinnati, Ohio 45245,* Defendants.

Case No.: 1:11-cv-00689
Assigned To: Howell, Beryl A.
Assign. Date: 4/8/2011
Description: Antitrust

Complaint

Plaintiffs, the United States of America ("United States"), acting under the direction of the Attorney General of the United States, and the State of New York, acting under the direction of its Attorney General, bring this civil antitrust action against defendants, Stericycle, Inc., SAMW Acquisition Corporation, and Healthcare Waste Services, Inc. ("HWS"), to enjoin Stericycle's proposed acquisition of HWS and to obtain other equitable relief. Plaintiffs complain and allege as follows:

I. Nature of the Action

1. Pursuant to an agreement and plan of merger dated September 24, 2010, Stericycle intends to acquire all of HWS, except for an incinerator in Matthews, North Carolina, for $245 million. Defendants Stericycle and HWS currently compete in the treatment of infectious waste.

2. The United States and the State of New York bring this action to prevent the proposed acquisition because it would substantially lessen competition in the provision of infectious waste treatment services in the New York City Metropolitan Area, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Jurisdiction and Venue

3. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 4 and 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The State of New York brings this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The State of New York, by and through its Attorney General, brings this action on behalf of the citizens, general welfare, and economy of the State of New York.

4. Defendants treat infectious waste in the flow of interstate commerce. Defendants' activities in treating infectious waste substantially affect interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. 22 and 28 U.S.C. 1331 and 1337.

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

III. The Defendants

6. Defendant Stericycle, Inc. is a Delaware corporation with its principal place of business in Lake Forest, Illinois. Stericycle, a multi-national company, is the largest provider of infectious waste treatment services in the United States, with operations in all 50 states, including 54 treatment facilities. In 2009, Stericycle had U.S. revenues of $913 million. SAMW Acquisition Corporation is a corporation formed by Stericycle to facilitate its acquisition of HWS. Stericycle and SAMW hereinafter are collectively referred to as "Stericycle".

7. Defendant Healthcare Waste Solutions ("HWS") is a Delaware corporation with its principal place of business in Cincinnati, Ohio. HWS is the second-largest provider of infectious waste treatment services in the United States, with operations in 15 states that include six treatment facilities. In 2009, HWS had total revenue of about $31 million.

IV. Trade and Commerce

A. Background

8. Regulated medical waste is waste generated in the diagnosis, treatment, or immunization of human beings or animals. There are generally three types of regulated medical waste: (1) Infectious waste; (2) pathological waste; and (3) trace chemotherapy waste. Infectious waste is waste that has come into contact with bodily fluids and "sharps" waste, such as syringes and scalpels. Pathological waste is anatomical parts, and trace chemotherapy waste is small amounts of chemical compounds used to treat cancer patients and the equipment used to administer the compounds. Infectious waste comprises approximately 90 percent of the regulated medical waste generated in the United States.

9. State and federal governments heavily regulate the treatment of regulated medical waste. They prescribe how each type of regulated medical waste must be stored, collected, and treated. Providers of infectious waste treatment services are required to be licensed by various state and federal regulatory agencies before they can offer such services.

10. Regulated medical waste must be stored separately from other types of waste, and each type of regulated medical waste must be stored separately from the other types in specially marked and sealed containers.

11. State-approved treatment facilities must be used to render infectious waste non-infectious. Failure to use state-approved treatment facilities subjects both the generator of the infectious waste and the infectious waste treatment service provider to criminal prosecution, fines, damage actions, and potentially high clean-up costs.

12. Autoclave sterilization is the most common treatment for infectious waste. An autoclave uses steam sterilization combined with pressure to render infectious waste non-infectious. Autoclave sterilization is not approved for pathological or trace chemotherapy waste, which instead must be incinerated in a specially licensed medical waste incinerator.

13. Infectious waste is typically collected from generator sites (e.g., hospitals and physician offices) on daily route trucks and then transported to treatment facilities. Route trucks are vans and, more typically, 16- to 24-foot straight trucks. A daily route truck typically travels a route within a 75- to 100-mile radius of its garage.

14. Obtaining approval for an infectious waste treatment facility in and around large urban areas, such as New York City, is difficult. Only one such commercial facility operates in the New York City Metropolitan area. Transporting large volumes of infectious waste to distant treatment facilities using daily route trucks is not cost-effective. Therefore, service providers serve such areas by using local transfer stations.

15. Once the daily route truck has delivered the infectious waste to a local

transfer station, the collection function is completed. At a transfer station, containers of infectious waste are unloaded from the daily route trucks and loaded onto tractor trailers for efficient shipment to more distant treatment facilities.

16. The size of the market for the provision of infectious waste treatment services is largely influenced by transportation costs because such costs represent a large share of the total cost of providing treatment services.

17. Defendants Stericycle and HWS own and operate numerous autoclave facilities for the treatment of infectious waste. Stericycle's and HWS's closest facilities to New York City are located in Sheridan and Oneonta, New York; Woonsocket, Rhode Island; and Morgantown and Marcus Hook, Pennsylvania. The closest of these is about 180 miles from New York City. It is not cost-effective to transport large volumes of infectious waste to these distant facilities using daily route trucks.

18. Stericycle and HWS operate local transfer stations in and around New York City and compete to provide infectious waste treatment services by serving customers through these local transfer stations.

19. In and around New York City, Stericycle owns and operates local transfer stations in the Bronx, Staten Island, West Babylon, and Farmingdale, New York. Stericycle also owns local transfer stations in Piscataway and Bloomfield, New Jersey. HWS owns and operates a local transfer station in the Bronx, New York.

20. In the New York City Metropolitan Area, encompassing the City of New York, and the counties of Westchester, Rockland, Nassau, and Suffolk in New York, the counties of Hudson, Bergen, Passaic, Essex, Union, and Middlesex in New Jersey, and the county of Fairfield in Connecticut, apart from one small competitor, no other infectious waste treatment service provider has a local transfer station located within approximately 100 miles of Stericycle's or HWS's local transfer stations.

B. Relevant Market

21. The provision of infectious waste treatment services to customers in the New York City Metropolitan Area is a line of commerce and relevant price discrimination service market within the meaning of Section 7 of the Clayton Act.

22. Infectious waste treatment differs from treatment for other types of waste, including other types of regulated medical waste. There are no legal alternatives to treating infectious waste other than using an approved treatment technology, such as autoclave sterilization.

23. Defendants provide infectious waste treatment services to New York City Metropolitan Area customers using local transfer stations. Other infectious waste treatment service providers that operate treatment facilities more than 100 miles from the New York City Metropolitan Area cannot cost-effectively compete to provide infectious waste treatment services without a local transfer station located in the New York City Metropolitan Area.

24. A small but significant increase in the price of infectious waste treatment services would not cause New York City Metropolitan Area customers to move sufficient volumes of infectious waste to another type of treatment service or to switch to an infectious waste treatment service provider that does not operate a local transfer station in sufficient numbers so as to make such a price increase unprofitable. Therefore, the relevant market is the provision of infectious waste treatment services to customers in the New York Metropolitan Area.

C. Anticompetitive Effect of the Acquisition

25. In the New York City Metropolitan Area, the acquisition would remove a significant competitor in the treatment of infectious waste in an already highly concentrated market. The proposed acquisition would reduce from three to two the number of competitors with local transfer stations, and Stericycle and HWS would have approximately 90 percent of the infectious waste treatment market in the New York City Metropolitan Area. The third competitor is a small firm that opened an autoclave treatment facility in Mount Vernon, New York in 2010; it is unlikely to replace the competition lost as a result of the merger. The substantial increase in concentration and loss of competition likely will result in higher prices for infectious waste treatment services.

26. Vigorous price competition between Stericycle and HWS in the provision of infectious waste treatment services has benefited customers in the New York City Metropolitan Area.

27. The proposed acquisition will eliminate the competition between Stericycle and HWS; reduce the number of providers of infectious waste treatment services with local transfer stations from three to two; and enable Stericycle to raise prices and lower quality of service for customers in the New York City Metropolitan Area, in violation of Section 7 of the Clayton Act.

D. Entry Into the Treatment of Infectious Waste

28. Successful entry into the provision of infectious waste treatment services for customers in the New York City Metropolitan Area is unlikely without first obtaining a local transfer station from which waste can be transferred to more distant treatment facilities.

29. A prospective provider of infectious waste treatment services faces substantial barriers to site and build a transfer station. Obtaining the state and local permits and approvals necessary to site a medical waste transfer station would require a substantial investment in time and money, without any guarantee that the permits and approvals would ultimately be granted. In recent years, several infectious waste treatment service providers have attempted without success to obtain the necessary permits to site a local transfer station within New York City.

30. Entry into the provision of infectious waste treatment services to customers in the New York City Metropolitan Area would not be timely, likely, or sufficient to counter anticompetitive price increases or diminished quality of service that Stericycle could impose after the proposed acquisition.

V. Violation Alleged

31. Stericycle's proposed acquisition of HWS's infectious waste treatment assets in the New York City Metropolitan Area likely will substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

32. Unless restrained, the transaction will have the following anticompetitive effects, among others:

A. Actual and potential competition between Stericycle and HWS in the provision of infectious waste treatment services in the New York City Metropolitan Area will be eliminated;

b. Competition generally in the provision of infectious waste treatment services in the New York City Metropolitan Area will be substantially lessened; and

c. Prices for infectious waste treatment services in the New York City Metropolitan Area likely will increase, and service likely will be reduced.

VI. Requested Relief

33. Plaintiffs request:

a. That Stericycle's proposed acquisition of HWS be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisition of HWS by Stericycle, or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to merge the voting securities or assets of the defendants;

c. That plaintiffs receive such other and further relief as the case requires and the Court deems just and proper; and

d. That plaintiffs recover the costs of this action.

Dated: April 8, 2011.

Respectfully submitted,

For Plaintiff United States of America

/s/ _____

Christine A. Varney,
Assistant Attorney General.

/s/ _____

Maribeth Petrizzi,
Chief, Litigation II Section, DC Bar # 435204.

/s/ _____

Dorothy B. Fountain,
Assistant Chief, Litigation II Section.

/s/ _____

Sharis A. Pozen,
Deputy Assistant Attorney General, DC Bar # 439469.

/s/ _____

Katherine B. Forrest,
Deputy Assistant Attorney General.

/s/ _____

Patricia A. Brink,
Director of Civil Enforcement.

/s/ _____

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For Plaintiff State of New York,

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By:

/s/ _____

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United States District Court for the District of Columbia

United States of America and State of New York, Plaintiffs, v. *Stericycle, Inc., SAMW Acquisition Corporation,* and *Healthcare Waste Solutions, Inc.,* Defendants.

Case No.: 1:11–cv–00689
Assigned To: Howell, Beryl A.
Assign. Date: 4/8/2011
Description: Antitrust

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Stericycle, Inc., through SAMW Acquisition Corporation, and defendant Healthcare Waste Solutions, Inc. ("HWS"), entered into a merger agreement dated September 24, 2010, pursuant to which Stericycle would acquire all of HWS, except for an incinerator in Matthews, North Carolina, for $245 million.

The United States and the State of New York filed a civil antitrust Complaint on April 8, 2011, seeking to enjoin the proposed acquisition, alleging that it likely would substantially lessen competition in the provision of infectious waste treatment services to customers in the New York City Metropolitan Area, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The loss of competition from the acquisition likely would result in higher prices and reduced service for these customers of infectious waste treatment services.

At the same time the Complaint was filed, the United States and the State of New York also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects that would result from Stericycle's acquisition of HWS. Under the proposed Final Judgment, which is explained more fully below, Stericycle is required to divest HWS's transfer station located in the Bronx, New York. Under the terms of the Hold Separate Stipulation and Order, Stericycle and HWS must take certain steps to ensure that the assets being divested continue to be operated in a competitively independent and economically viable manner and that competition for infectious waste treatment services is maintained during the pendency of the ordered divestiture.

The United States, the State of New York, 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 Final Judgment and to punish violations thereof.

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

A. The Defendants

Stericycle is a Delaware corporation with its principal place of business in Lake Forest, Illinois. Stericycle, a multi-national company, is the largest provider of infectious waste treatment services in the United States, with operations in all 50 states, including 54 treatment facilities. In 2009, Stericycle had U.S. revenues of $913 million. SAMW Acquisition Corporation is a corporation formed by Stericycle to facilitate its acquisition of HWS.

HWS is a Delaware corporation with its principal place of business in Cincinnati, Ohio. HWS is the second-largest provider of infectious waste treatment services in the United States, with operations in 15 states that include six treatment facilities. In 2009, HWS had total revenues of about $31 million.

B. The Competitive Effect of the Acquisition on Infectious Waste Treatment Services

1. Background

Regulated medical waste is waste generated in the diagnosis, treatment, or immunization of human beings or animals. There are generally three types of regulated medical waste: (1) Infectious waste; (2) pathological waste; and (3) trace chemotherapy waste. Infectious waste is waste that has come into contact with bodily fluids and "sharps" waste, such as syringes and scalpels. Pathological waste is anatomical parts, and trace chemotherapy waste is small amounts of chemical compounds used to treat cancer patients and the equipment used to administer the compounds. Infectious waste comprises approximately 90 percent of the regulated medical waste generated in the United States.

State and federal governments heavily regulate the treatment of regulated

medical waste. They prescribe how each type of regulated medical waste must be stored, collected, and treated. Providers of infectious waste treatment services are required to be licensed by various state and federal regulatory agencies before they can offer such services. Regulated medical waste must be stored separately from other types of waste, and each type of regulated medical waste must be stored separately from the other types in specially marked and sealed containers. State-approved treatment facilities must be used to render infectious waste non-infectious. Failure to use state-approved treatment facilities subjects both the generator of the infectious waste and the infectious waste treatment service provider to criminal prosecution, fines, damage actions, and potentially high clean-up costs.

Autoclave sterilization is the most common treatment for infectious waste. An autoclave uses steam sterilization combined with pressure to render infectious waste non-infectious. Autoclave sterilization is not approved for pathological or trace chemotherapy waste, which instead must be incinerated in a specially licensed medical waste incinerator.

Infectious waste is typically collected from generator sites (e.g., hospitals and physician offices) on daily route trucks and then transported to treatment facilities. Route trucks are vans and, more typically, 16- to 24-foot straight trucks. A daily route truck typically travels a route within a 75- to 100-mile radius of its garage.

Obtaining approval for an infectious waste treatment facility in and around large urban areas, such as New York City, is difficult. Only one such commercial facility operates in the New York City Metropolitan Area. Transporting large volumes of infectious waste to distant treatment facilities using daily route trucks is not cost-effective. Therefore, service providers serve such areas by using local transfer stations. Once the daily route truck has delivered the infectious waste to a local transfer station, the collection function is completed. At a transfer station, containers of infectious waste are unloaded from the daily route trucks and loaded onto tractor trailers for efficient shipment to more distant treatment facilities.

The size of the market for the provision of infectious waste treatment services is largely influenced by transportation costs because such costs represent a large share of the total cost of providing treatment services. Defendants Stericycle and HWS own and operate numerous autoclave facilities for the treatment of infectious waste. Stericycle's and HWS's closest facilities to New York City are located in Sheridan and Oneonta, New York; Woonsocket, Rhode Island; and Morgantown and Marcus Hook, Pennsylvania. The closest of these is about 180 miles from New York City. It is not cost-effective to transport large volumes of infectious waste to these distant facilities using daily route trucks.

Stericycle and HWS operate local transfer stations in and around New York City and compete to provide infectious waste treatment services by serving customers through these local transfer stations. In and around New York City, Stericycle owns and operates local transfer stations in the Bronx, Staten Island, West Babylon, and Farmingdale, New York. Stericycle also owns local transfer stations in Piscataway and Bloomfield, New Jersey. HWS owns and operates a local transfer station in the Bronx, New York.

In the New York City Metropolitan Area, encompassing the City of New York, and the counties of Westchester, Rockland, Nassau, and Suffolk in New York, the counties of Hudson, Bergen, Passaic, Essex, Union, and Middlesex in New Jersey, and the county of Fairfield in Connecticut, apart from one small competitor, no other infectious waste treatment service provider has a local transfer station located within approximately 100 miles of Stericycle's or HWS's local transfer stations.

2. Relevant Market

The provision of infectious waste treatment services to customers in the New York City Metropolitan Area is a line of commerce and relevant price discrimination service market within the meaning of Section 7 of the Clayton Act. Infectious waste treatment differs from treatment for other types of waste, including other types of regulated medical waste. There are no legal alternatives to treating infectious waste other than using an approved treatment technology, such as autoclave sterilization.

Defendants provide infectious waste treatment services to New York City Metropolitan Area customers using local transfer stations. Other infectious waste treatment service providers that operate treatment facilities more than 100 miles from the New York City Metropolitan Area cannot cost-effectively compete to provide infectious waste treatment services without a local transfer station located in the New York City Metropolitan Area. A small but significant increase in the price of infectious waste treatment services would not cause New York City Metropolitan Area customers to move sufficient volumes of infectious waste to another type of treatment service, or to switch to an infectious waste treatment service provider that does not operate a local transfer station, in sufficient numbers so as to make such a price increase unprofitable. The relevant market is the provision of infectious waste treatment services to customers in the New York City Metropolitan Area.

3. Anticompetitive Effects of the Transaction

In the New York City Metropolitan Area, the acquisition would remove a significant competitor in the treatment of infectious waste in an already highly concentrated market. The proposed acquisition would reduce from three to two the number of competitors with local transfer stations, and Stericycle and HWS would have approximately 90 percent of the infectious waste treatment market in the New York City Metropolitan Area. Vigorous price competition between Stericycle and HWS in the provision of infectious waste treatment services has benefited customers in the New York City Metropolitan Area. The third competitor is a small firm that opened an autoclave treatment facility in Mount Vernon, New York, in 2010; it is unlikely to replace the competition lost as a result of the merger.

The proposed acquisition will eliminate the competition between Stericycle and HWS and enable Stericycle to raise prices and lower quality of service for customers in the New York City Metropolitan Area, in violation of Section 7 of the Clayton Act.

4. Entry Into the Treatment of Infectious Waste

Successful entry into the provision of infectious waste treatment services for customers in the New York City Metropolitan Area is unlikely without first obtaining a local transfer station from which waste can be transferred to more distant treatment facilities.

A prospective provider of infectious waste treatment services faces substantial barriers to site and build a transfer station. Obtaining the state and local permits and approvals necessary to site an infectious waste transfer station would require a substantial investment in time and money, without any guarantee that the permits and approvals would ultimately be granted. In recent years, several infectious waste treatment service providers have attempted without success to obtain the

necessary permits to site a local transfer station within New York City.

Entry into the provision of infectious waste treatment services to customers in the New York City Metropolitan Area would not be timely, likely, or sufficient to counter anticompetitive price increases or diminished quality of service that Stericycle could impose after the proposed acquisition.

III. Explanation of the Proposed Final Judgment

The terms of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition alleged in the Complaint. Section IV of the proposed Final Judgment requires defendants, within forty-five (45) 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 HWS's transfer station in the Bronx, New York, which is used in the provision of infectious waste treatment services to customers in the New York City Metropolitan Area. The acquirer of the transfer station, along with associated tangible and intangible assets, must be acceptable to the United States, in its sole discretion after consultation with the State of New York. The divestiture of these assets according to the terms of the proposed Final Judgment will establish a new, independent, and economically viable competitor, thereby preserving competition in the provision of infectious waste treatment services to customers in the New York City Metropolitan Area.

In the event that defendants do not accomplish the divestiture within the time prescribed in the proposed Final Judgment, 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 defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court, United States, and the State of New York as appropriate, setting forth his or her efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee, the United States, and the State of New York, 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 Final Judgment also requires, in Section VIII, that defendants provide advance notification of certain future proposed acquisitions not otherwise subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a. That provision requires 30 days' advance written notice to the United States and the State of New York before defendants acquire, directly or indirectly, (1) Interest in any business engaged in the treatment of infectious waste that serves the New York City Metropolitan Area; (2) other than in the ordinary course of business, assets of a person engaged in the treatment of infectious waste generated in the New York City Metropolitan Area; or (3) capital stock or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the treatment of infectious waste generated in the New York City Metropolitan Area, where that person's annual revenues in this area from the treatment of infectious waste were in excess of $500,000. With this provision, the United States and the State of New York will have knowledge in advance of acquisitions that may impact competition in the provision of infectious waste treatment services in the New York City Metropolitan Area.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, the State of New York, 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 sixty (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 sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530.

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

VI. Alternatives to The Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have commenced litigation and sought a judicial order enjoining the acquisition of HWS by Stericycle. The United States is satisfied that the divestiture and other relief described in the proposed Final Judgment will preserve competition in the provision of infectious waste treatment services for customers in the New York City Metropolitan Area. The relief contained in the proposed Final Judgment would achieve all or substantially all of the relief that the United States would have obtained through litigation, while avoiding the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by

the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.DC 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.DC Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

As the United States Court of Appeals for the District of Columbia has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; see *also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer–Daniels–Midland Co.,* 272 F. Supp. 2d 1, 6 (D.DC 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case); *United States* v. *Republic Serv., Inc.,* 2010–2 Trade Cas. (CCH) ¶ 77,097, 2010 U.S. Dist. LEXIS 70895, No. 08–2076 (RWR), at *160 (D.D.C. July 15, 2010) (finding that "[i]n light of the deferential review to which the government's proposed remedy is accorded, [amicus curiae's] argument that an alternative remedy may be comparably superior, even if true, is not a sufficient basis for finding that the proposed final judgment is not in the public interest.").

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *Republic Serv.,* 2010 U.S. Dist. LEXIS 70895, at *158 (entering final judgment "[b]ecause there is an adequate factual foundation upon which to conclude that the government's proposed divestitures will remedy the antitrust violations alleged in the complaint.").

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its

[1] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

[2] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the

intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

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 8, 2011.

Respectfully submitted,

/s/ _____

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list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.DC 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of 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."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

United States District Court for the District of Columbia

United States of America and State of New York, Plaintiffs, v. *Stericycle, Inc., SAMW Acquisition Corp., and Healthcare Waste Solutions, Inc.,* Defendants.

Case No.:
Judge:
Deck Type: Antitrust
Date Stamp:

Proposed Final Judgment

Whereas, plaintiffs, the United States of America and the State of New York, filed their Complaint on April ___, 2011; plaintiffs and defendants, Stericycle, Inc. and SAMW Acquisition Corp., and Healthcare Waste Solutions, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of law or fact;

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

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

And Whereas, plaintiffs require defendants to make a divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

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

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

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to which defendants shall divest the Divestiture Asset.

B. "Stericycle" means defendant Stericycle, Inc., a Delaware corporation with its principal place of business in Lake Forest, Illinois, and SAMW Acquisition Corp. (a corporation formed to facilitate the acquisition), and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

C. "HWS" means defendant Healthcare Waste Solutions, Inc., a Delaware corporation with its principal place of business in Cincinnati, Ohio, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

D. "Infectious Waste" means regulated medical waste that is generated in the diagnosis, treatment, or immunization of human beings or animals and that has come into contact with bodily fluids, and "sharps" waste, such as syringes and scalpels.

E. "Treatment" means the sterilization of infectious waste at a state-approved treatment facility, including the use of transfer stations to facilitate the shipment of infectious waste to other treatment sites.

F. "Divestiture Asset" means HWS's Bronx, New York transfer station, located at 1281 Viele Avenue, Bronx, New York 10474, including:

1. Tangible assets at the HWS facility identified in this Paragraph II(F), including all research and development activities, equipment, and fixed assets, real property (leased or owned), equipment, personal property, inventory, office furniture, materials, supplies, on- or off-site warehouses or storage facilities; all licenses, permits, and authorizations issued by any governmental organization relating to the facilities; and all facility records, but excluding assets used exclusively in the HWS collection business; and

2. All intangible assets associated with the HWS facility identified in this Paragraph II(F), including, but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software (including waste monitoring software and management information systems) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to employees, customers, suppliers, agents or licensees, but excluding assets used exclusively in the HWS collection business.

G. "New York City Metropolitan Area" means the area encompassing the City of New York, and the counties of Westchester, Rockland, Nassau, and

Suffolk in New York, the counties of Hudson, Bergen, Passaic, Essex, Union, and Middlesex in New Jersey, and the county of Fairfield in Connecticut.

III. Applicability

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

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

IV. Divestiture

A. Defendants are ordered and directed, within forty-five (45) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Asset in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with the State of New York. The United States, in its sole discretion, after consultation with the State of New York, may agree to one or more extensions of this time period not to exceed thirty (30) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Asset as expeditiously as possible.

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

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

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

E. Defendants shall warrant to the Acquirer that the Divestiture Asset will be operational on the date of sale.

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

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

H. Unless the United States, after consultation with the State of New York, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State of New York, that the divestiture will achieve the purposes of this Final Judgment and that the Divestiture Asset can and will be used by the Acquirer as part of a viable, ongoing business providing infectious waste treatment services. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment:

1. Shall be made to the Acquirer that, in the United States's sole judgment, after consultation with the State of New York, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of providing infectious waste treatment services; and

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

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Asset within the time period specified in Section IV, 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 sale of the Divestiture Asset.

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

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 VI.

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

the speed with which it is accomplished, but timeliness is paramount.

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

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

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

VI. Notice of Proposed Divestiture

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

B. Within ten (10) calendar days of receipt of such notice by the plaintiffs, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within ten (10) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within fifteen (15) calendar days after receipt of the notice or within fifteen (15) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, 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, after consultation with the State of New York, provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Notice to Customers

No later than five (5) calendar days following the sale of the Divestiture Asset, Defendants shall send a Notice, in a form approved by the United States, in its sole discretion, after consultation with the State of New York, to all customers located in the New York City Metropolitan Area that are under contract with HWS and served by the Divestiture Asset, informing such customers that they have the right to terminate such contracts for a period of ninety (90) days from the date of the Notice. Defendants shall certify to the United States that the Notice was timely sent.

VIII. Notice of Future Acquisitions

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), Stericycle, without providing advance notification to the plaintiffs, shall not directly or indirectly acquire, any (1) Interest in any business engaged in the treatment of infectious waste that serves the New York City Metropolitan Area; (2) other than in the ordinary course of business assets of a person engaged in the treatment of infectious waste generated in the New York City Metropolitan Area; or (3) capital stock or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the treatment of infectious waste generated in the New York City Metropolitan Area, where that person's annual revenues in this area from the treatment of infectious waste were in excess of $500,000.

B. Such notification shall be provided to the plaintiffs in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about the treatment of infectious waste. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the United States make a written request for

additional information, Stericycle shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

IX. Financing

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

X. Hold Separate

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

XI. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Asset, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Asset, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the State of New York, to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiffs an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the plaintiffs an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

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

XII. Compliance Inspection

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

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

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

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

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States or the New York Attorney General, 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)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII. No Reacquisition

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

XIV. Retention of Jurisdiction

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

XV. Expiration of Final Judgment

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

XVI. Public Interest Determination

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

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

[FR Doc. 2011–9106 Filed 4–13–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Google Inc. and ITA Software 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 proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Google Inc. and ITA Software Inc.,* Civil Case No. 1:11–cv–00688. On April 8, 2011, the United States filed a Complaint alleging that Google's proposed acquisition of ITA Software Inc. would substantially reduce competition in the online travel planning industry, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment would require Google to continue licensing ITA Software's products for a period of five years following the merger.

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

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James J. Tierney, Chief, Networks and Technology Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530 (telephone: 202–307–6200).

Patricia A. Brink,

Director of Civil Enforcement.

In the United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, Plaintiff, v. *Google Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, and ITA Software, Inc., 141 Portland Street, Cambridge, MA 02139,* Defendants.

Civil Action No. 1:11–cv–00688.

Filed: 4/8/2011.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action against Google Inc. ("Google") and ITA Software, Inc. ("ITA") pursuant to the antitrust laws of the United States to enjoin Google's proposed acquisition of ITA, and to obtain such other equitable relief as the Court deems appropriate. The United States alleges as follows:

I. Nature of Action

1. On July 1, 2010, Google, a significant provider of general Internet search and search advertising in the United States, entered into a merger agreement to acquire ITA, the provider of the leading independent airfare pricing and shopping system ("P&S system"), for $700 million. P&S systems provide flight pricing, schedule and seat availability information to Internet travel sites.

2. Online travel represents a significant share of e-commerce in the United States. Consumers rely on the Internet to make their travel plans, and often begin by shopping for airfare. Online travel intermediaries ("OTIs") such as Orbitz, Kayak and Expedia allow consumers to compare flight prices, schedules, and seat availability on multiple airlines simultaneously. OTIs, and the flight search services they offer, have become very popular with consumers who want to ensure they are getting the best deal. Indeed, most U.S. consumers compare flight options on an OTI Web site before purchasing a ticket online.

3. ITA's P&S system, QPX, powers a significant share of the domestic comparative flight searches conducted by U.S. consumers. ITA licenses QPX to many of the most popular and innovative OTI's providing comparative flight search services, including Orbitz, Kayak, and Microsoft's Bing Travel. QPX is a critical flight search tool for many of its licensees, as other P&S systems cannot match its speed and flexibility, and are not poised to do so in the near future. Thus, these OTIs currently have no adequate alternatives to QPX and will not have any following the merger.

4. Google has the most widely used general Internet search engine in the United States and is the leading seller of Internet search advertising. Google seeks to expand its search services by launching an Internet travel site to offer comparative flight search services.

5. The proposed merger will give Google the means and incentive to use its ownership of QPX to foreclose or disadvantage its prospective flight search rivals by degrading their access to QPX, or denying them access to QPX altogether. As a result, the proposed merger is likely to result in reduced quality, variety, and innovation for consumers of comparative flight search services.

II. Jurisdiction, Venue and Commerce

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

7. Google is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Mountain View, CA. In 2009, Google earned more than $23 billion in revenues in the United States. Google is engaged in interstate commerce and in activities substantially affecting interstate commerce. It sells online search advertising throughout the United States. Its sales of online search advertising in the United States represent a regular, continuous and substantial flow of interstate commerce, and have had a substantial effect upon interstate commerce.

8. ITA is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Cambridge, MA. ITA is engaged in interstate commerce and in activities substantially affecting interstate commerce. It makes sales throughout the United States. Its sales in the United States represent a regular, continuous and substantial flow of interstate commerce, and have had a substantial effect upon interstate commerce.

9. The Court has subject-matter jurisdiction over this action and these defendants pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

10. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(b)(1) and