''Act''), MLCommons Association (''MLCommons'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tenska Incorporated, Nicasio, CA; EDGECORTIX, INC., Singapore, SINGAPORE; Crosstalk LLC, Kansas City, MO; Amir Gholaminejad (individual), Berkeley, CA; Javier Duarte (individual), La Jolla, CA; Gopika Premsankar (individual), Aalto, FINLAND; DEEPX Co., Inc., Gyeonggi-do, REPUBLIC OF KOREA; Christopher Poptic (individual), Columbus, OH; and Krai Ltd., Cambridge, UNITED KINGDOM have joined as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and MLCommons intends to file additional written notifications disclosing all changes in membership.

On September 15, 2020, MLCommons filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 2020 (85 FR 61032).

The last notice was filed with the Department on January 5, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 19, 2021 (86 FR 5252).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–07230 Filed 4–7–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open RF Association, Inc.

Notice is hereby given that, on March 15, 2021 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open RF Association, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Rohde & Schwarz GmbH & Co. KG, Munich, GERMANY has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open RF Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On February 21, 2020, Open RF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2020 (85 FR 14247).

The last notification was filed with the Department on January 4, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2021 (86 FR 2698).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–07240 Filed 4–7–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

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

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America, et al.* v. *Republic Services, Inc., et al.,* Civil Action No. 1:21–cv–00883. On March 31, 2021, the United States filed a Complaint alleging that Republic Services, Inc.'s proposed acquisition of Santek Waste Services, LLC would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Republic and Santek to divest certain tangible and intangible assets relating to small container commercial waste collection and municipal solid waste disposal in six local markets located in five states.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website 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, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 and State of Alabama, Office of the Attorney General, Consumer Interest Division, 501 Washington Avenue, Montgomery, AL 36130, *Plaintiffs,* v. Republic Services, Inc., 18500 North Allied Way, Phoenix, AZ 85054 and Santek Waste Services, LLC, 650 25th Street NW, Suite 100, Cleveland, TN 37311, *Defendants.*

Civil Action No.: 1:21–cv–00883–RDM
Judge: Randolph D. Moss

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, and the State of Alabama, bring this civil antitrust action against Defendants Republic Services, Inc. (''Republic'') and Santek Waste Services, LLC (''Santek'') to enjoin Republic's proposed acquisition of Santek. The United States and the State of Alabama complain and allege as follows:

I. Nature of the Action

1. Republic's proposed acquisition of its rival, Santek, would combine two of the largest waste management companies in numerous markets across the southeastern United States. Republic and Santek compete daily to provide essential waste collection and disposal services to keep neighborhoods sanitary.

If the transaction proceeds unremedied, customers likely will pay higher prices and receive lower quality waste collection and disposal services.

2. In a number of markets in the southeastern United States, Defendants Republic and Santek are two of only a few significant providers of small container commercial waste (''SCCW'') collection and municipal solid waste (''MSW'') disposal, which are necessary for businesses, municipalities, and towns.

3. If the transaction proceeds to close in its current form, consumers would likely pay higher prices and receive lower quality service. Competition between Republic and Santek has resulted in lower prices and improved service to numerous customers, including towns and cities, restaurants, offices, apartment buildings, and other businesses. SCCW collection customers depend on Republic and Santek to collect their waste reliably and on a regular basis. In the absence of competition between Republic and Santek, these customers would likely pay more for waste collection and receive lower quality service. Disposal customers, such as independent and municipally-owned waste haulers, rely on Republic and Santek for affordable and accessible waste disposal options, including landfills and transfer stations, to dispose of the waste they collect from towns, cities, and other municipalities. If the transaction is consummated as proposed by Defendants, these disposal customers would likely face higher fees and less favorable access to Republic's and Santek's disposal facilities.

4. In addition, the merger would also substantially lessen competition in waste collection in one geographic market (Chattanooga, Tennessee and North Georgia), as a result of the vertical integration of these firms, both of which enjoy strong positions in collection and disposal. Specifically, the combination of these two vertically-integrated firms that are both strong in collection and disposal would give the merged firm an increased incentive and ability to weaken its collection competitors by raising the price of disposal, a key input for collection services. With limited alternative disposal options left in the market, collection rivals would have to incur these higher costs or cease their operations, thereby limiting the ability of these rivals to compete with the merged firm's collection operations.

5. By eliminating competition between Republic and Santek and combining their businesses, the proposed acquisition would result in higher prices, fewer choices, and lower-quality service for waste collection and disposal customers in certain markets in the southeastern United States. Accordingly, Republic's acquisition of Santek would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and therefore should be enjoined.

II. The Parties and the Transaction

6. Pursuant to a purchase agreement dated February 18, 2020, and amended on May 19, 2020, July 10, 2020, October 6, 2020, and March 8, 2021, Republic proposes to acquire all of the outstanding membership interest in Santek.

7. Republic, a Delaware corporation headquartered in Phoenix, Arizona, is the second-largest non-hazardous solid waste collection and disposal company in the United States. It provides waste collection, recycling, and disposal (including transfer) services. Republic operates in 41 states and Puerto Rico. For 2020, Republic reported revenues of approximately $10.2 billion.

8. Santek, a Tennessee limited liability company headquartered in Cleveland, Tennessee, is a vertically integrated solid waste management company with waste collection and disposal (including transfer) operations in nine southeastern states. In 2019, the last year for which information is publicly available, Santek generated approximately $140 million in revenue.

III. Jurisdiction and Venue

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

10. The State of Alabama 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 Alabama, by and through the Attorney General of Alabama, brings this action as *parens patriae* on behalf of and to protect the health and welfare of its citizens and the general economy of the State of Alabama.

11. Defendants' activities substantially affect interstate commerce. They provide collection and disposal services throughout the southeastern United States. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

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

IV. Relevant Markets

A. Product Markets

i. Small Container Commercial Waste Collection

13. Small container commercial waste (''SCCW'') collection is a relevant product market. Waste collection firms—also called haulers—collect municipal solid waste (''MSW'') from residential, commercial, and industrial establishments, and transport that waste to a disposal site, such as a transfer station, landfill, or incinerator, for processing and disposal.

14. SCCW collection is the business of collecting MSW from commercial and industrial accounts, usually in small containers (*i.e.,* dumpsters with one to ten cubic yards capacity), and transporting such waste to a disposal site. Typical SCCW collection customers include office and apartment buildings and retail establishments like stores and restaurants.

15. SCCW collection is distinct from other types of waste collection such as residential and roll-off collection. An individual commercial customer typically generates substantially more MSW than a residential customer. To handle this high volume of MSW efficiently, SCCW haulers often provide commercial customers with small containers for storing the waste. SCCW haulers organize their commercial accounts into routes and collect and transport the MSW generated by these accounts in front-end load (''FEL'') trucks that are uniquely well suited for commercial waste collection.

16. On a typical SCCW collection route, an operator drives a FEL truck to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts, until the vehicle is full. The operator then drives the FEL truck to a disposal facility, such as a transfer station, landfill, or incinerator, and empties the contents of the vehicle. Depending on the number of locations and amount of waste collected on the route, the operator may make one or more trips to the disposal facility in servicing the route.

17. In contrast to a SCCW collection route, a residential waste collection route is highly labor intensive. A residential customer's MSW is typically stored in much smaller containers such

as trash cans, and instead of using a FEL truck manned by a single operator, residential haulers routinely use rear-end load or side-load trucks typically manned by two- or three-person teams who may need to hand-load the customer's MSW. In light of these differences, haulers typically organize commercial customers into separate routes from residential customers.

18. Roll-off container collection also is not a substitute for SCCW collection. Roll-off container collection is commonly used to serve construction and demolition customers. A roll-off container is much larger than a SCCW container and is serviced by a truck capable of carrying a single roll-off container. Unlike SCCW customers, multiple roll-off customers are not served between trips to the disposal site, as each roll-off truck is typically only capable of carrying one roll-off container at a time.

19. Other types of waste collection, such as hazardous or medical waste collection, also are not substitutes for SCCW collection. These forms of collection differ from SCCW collection in the equipment required, the volume of waste collected, and the facilities where the waste is disposed.

20. Because no other waste collection service can substitute for SCCW collection, other waste collection services do not constrain pricing for SCCW collection. Absent competition, SCCW collection providers could profitably increase their prices without losing significant sales to firms engaged in the provision of other types of waste collection services. In other words, in the event of a small but significant non-transitory price increase for SCCW collection, customers would not substitute to other forms of collection in sufficient numbers so as to render the price increase unprofitable. SCCW collection is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

ii. Municipal Solid Waste Disposal

21. MSW disposal is a relevant product market. MSW is solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and industrial facilities. MSW has physical characteristics that readily distinguish it from other liquid or solid waste, such as waste from manufacturing processes, regulated medical waste, sewage, sludge, hazardous waste, or waste generated by construction or demolition sites.

22. Haulers must dispose of all MSW at a permitted disposal facility. There are intermediary disposal facilities—transfer stations—and ultimate disposal facilities—landfills and incinerators. All such facilities must be located on approved types of land and operated under prescribed procedures. Federal, state, and local safety, environmental, zoning, and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing, and disposal of MSW. In less densely populated areas, MSW often is disposed of directly into landfills that are permitted and regulated by a state and the federal government. Landfill permit restrictions often impose limitations on the type and amount of waste that can be deposited. In many urban and suburban areas, landfills are scarce due to high population density and the limited availability of suitable land. As a result, MSW generated in such areas often is burned in an incinerator or taken to a transfer station. Transfer stations briefly hold MSW until it is reloaded from collection vehicles onto larger tractor-trailers for transport, in bulk, to more distant landfills or incinerators for final disposal.

23. Some haulers—including Republic and Santek—are vertically integrated and operate their own disposal facilities. Vertically-integrated haulers often prefer to dispose of waste at their own disposal facilities. Vertically-integrated haulers may also sell a portion of their disposal capacity to disposal customers in need of access to a disposal facility.

24. Disposal customers include private waste haulers without their own disposal assets (referred to in the industry as ''independent haulers'') as well as local governments that own their own equipment and collect their citizens' waste themselves. Disposal customers also include independent and municipally-owned transfer stations that serve as temporary disposal sites for haulers in areas where landfills and incinerators are not easily accessible. Disposal customers that are not vertically-integrated lack their own ultimate disposal facilities and rely on cost-competitive landfills.

25. Due to strict laws and regulations that govern the disposal of MSW, there are no reasonable substitutes for MSW disposal, which must occur at landfills, incinerators, or transfer stations. Thus, in the event of a small but significant non-transitory price increase from MSW disposal firms, customers would not substitute to other forms of disposal in sufficient numbers so as to render the price increase unprofitable. MSW disposal is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

B. Relevant Geographic Markets

i. Small Container Commercial Waste Collection Geographic Markets

26. The relevant geographic markets for SCCW collection are local. This is because SCCW haulers need a large number of closely located customer pick-up locations to operate efficiently and profitably. If there is significant travel time between customers, then the SCCW hauler earns less money for the time that the truck operates. SCCW haulers, therefore, try to minimize the ''dead time'' in which the truck is operating and incurring costs from fuel, wear and tear, and labor, but not generating revenue from collecting waste. Likewise, customers must be near the SCCW hauler's base of operations as it would be unprofitable for a truck to travel a long distance to the start of a route. SCCW haulers, therefore, generally establish garages and related facilities to serve as bases within each area served.

27. As currently contemplated, the transaction would likely cause harm in four relevant geographic markets for SCCW collection: (1) The Birmingham, Alabama area (Jefferson and Shelby Counties); (2) the Chattanooga, Tennessee and North Georgia area (Hamilton, Marion, Rhea, and Sequatchie Counties in Tennessee; and Catoosa, Chattooga, Dade, Gordon, Murray, and Walker Counties in Georgia); (3) the Eastern Montgomery County, Texas area (the area east of the City of Conroe defined as zip codes 77357, 77365, and 77372); and (4) the Hattiesburg, Mississippi area (Forrest and Jones Counties). In each of these markets, a hypothetical monopolist of SCCW collection could profitably impose a small but significant non-transitory increase in price for SCCW collection without losing significant sales to more distant competitors. Accordingly, each of these areas constitutes a relevant geographic market and section of the country for purposes of analyzing the effects of the acquisition on SCCW collection under Section 7 of the Clayton Act.

ii. Municipal Solid Waste Disposal Geographic Markets

28. The relevant geographic markets for MSW disposal are local as the cost of transporting MSW to a disposal site—including fuel, regular truck maintenance, and hourly labor—is a substantial component of the total cost

of MSW disposal. Haulers also prefer nearby MSW disposal sites to minimize the FEL truck dead time. Due to the costs associated with travel time and customers' preference to have MSW disposal sites close by, an MSW disposal provider must have local facilities to be competitive.

29. The proposed transaction would likely cause harm in two relevant geographic markets for MSW disposal: (1) The Chattanooga, Tennessee area (Hamilton County); and (2) the Estill Springs and Fayetteville, Tennessee area (Franklin and Lincoln Counties). In each of these local markets, a hypothetical monopolist of MSW disposal could profitably impose a small but significant non-transitory increase in price for MSW disposal without losing significant sales to more distant MSW disposal sites. Accordingly, the Chattanooga, Tennessee area, and the Estill Springs and Fayetteville, Tennessee area constitute relevant geographic markets for the purposes of analyzing the effects of the acquisition on MSW disposal under Section 7 of the Clayton Act.

V. Anticompetitive Effects

30. The proposed transaction would increase concentration significantly and substantially lessen competition and harm consumers in each relevant market by eliminating the substantial head-to-head competition that currently exists between Republic and Santek.

31. Market concentration can be a useful indicator of the level of competitive vigor in a market and likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that the transaction would result in harm to consumers by meaningfully reducing competition.

32. Concentration in relevant markets is typically defined by the Herfindahl-Hirschman Index (or ''HHI,'' defined in Appendix A). Markets in which the HHI is above 2,500 are considered to be highly concentrated. Mergers that increase the HHI by more than 200 points and result in a highly concentrated market are presumed to likely enhance market power. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.3 (revised Aug. 19, 2010) (''Horizontal Merger Guidelines''), *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.*

33. Republic's acquisition of Santek would result in a highly concentrated market in every relevant SCCW collection market and relevant MSW disposal market. Moreover, as a result of the acquisition, the HHI would increase by more than 400 points in each of these markets, suggesting an increased likelihood of significant anticompetitive effects. Therefore, Republic's proposed acquisition of Santek is presumptively likely to enhance Republic's market power. *See* Horizontal Merger Guidelines § 5.3.

34. In addition, the merger would also substantially lessen competition through the vertical integration of the two companies. Specifically, by combining Republic's strong position in both SCCW collection and MSW disposal with Santek's strong position in both SCCW collection and MSW disposal, the proposed transaction would increase Republic's incentive and ability to harm its SCCW collection rivals by raising the costs of MSW disposal in the Chattanooga, Tennessee and North Georgia area. With SCCW collection rivals facing higher operational costs, they would have to raise their SCCW collection prices to offset these costs and would be less able to apply competitive pressure on Republic's SCCW collection operations. As a result, businesses, municipalities, and other customers likely would pay higher prices for SCCW collection. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Vertical Merger Guidelines § 4(a) (June 30, 2020), *https://www.justice.gov/atr/page/file/1290686/download.*

A. Elimination of Horizontal Competition in SCCW Collection

35. Republic's acquisition of Santek would eliminate a significant competitor for SCCW collection in markets that are already highly concentrated and difficult to enter. Republic and Santek compete head-to-head for SCCW collection customers in the relevant SCCW collection markets. In these four geographic markets, Republic and Santek each account for a substantial share of total revenue generated from SCCW collection and, in each relevant market, are two of no more than five significant competitors.

36. In each relevant SCCW collection market, collection customers including offices, apartment buildings, and retail establishments have been able to secure better collection rates and improved collection service by threatening to switch from Republic to Santek or vice versa. In each of the relevant markets, the elimination of this head-to-head competition would allow Republic to exercise market power unilaterally to increase prices and reduce the quality of service for SCCW collection customers.

i. Birmingham, Alabama Area SCCW Collection

37. In the Birmingham, Alabama area, the proposed acquisition would reduce from five to four the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 61 percent of the SCCW collection customers in the market. The post-merger HHI for SCCW collection in this market would be approximately 4,157, an increase of 445 points from the current HHI.

ii. Chattanooga, Tennessee and North Georgia Area SCCW Collection

38. In the Chattanooga, Tennessee and North Georgia area, the proposed acquisition would reduce from five to four the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 73 percent of the SCCW collection customers in the market. The post-merger HHI for SCCW collection in this market would be approximately 5,551, an increase of 2,660 points from the current HHI.

iii. Eastern Montgomery County, Texas Area SCCW Collection

39. In the Eastern Montgomery County, Texas area, the proposed acquisition would reduce from three to two the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 58 percent of the SCCW collection customers in the market. The post-merger HHI for SCCW collection in this market would be approximately 4,064, an increase of 1,703 points from the current HHI.

iv. Hattiesburg, Mississippi Area SCCW Collection

40. In the Hattiesburg, Mississippi area, the proposed acquisition would reduce from five to four the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 55 percent of SCCW collection customers in the market. The post-merger HHI for SCCW collection would be approximately 3,853, an increase of 1,420 points from the current HHI.

B. Elimination of Horizontal Competition in MSW Disposal

41. Republic's acquisition of Santek would also eliminate a significant competitor for MSW disposal in markets that are already highly concentrated and difficult to enter. Republic and Santek compete head-to-head for MSW disposal customers in the relevant MSW disposal

markets. In these geographic markets, Republic and Santek each account for a substantial share of total revenue generated from MSW disposal and, in each relevant MSW disposal market, are two of no more than three significant competitors. In each relevant MSW disposal market, independent haulers and municipalities have been able to negotiate more favorable MSW disposal rates by threatening to move MSW from Republic's facilities to Santek's facilities and vice versa. In each of the relevant MSW disposal markets, the elimination of this head-to-head competition would allow Republic to exercise market power unilaterally to increase prices and reduce the quality of service for MSW disposal customers.

i. Chattanooga, Tennessee Area MSW Disposal

42. In the Chattanooga, Tennessee area, the proposed acquisition would reduce from three to two the number of significant competitors in the MSW disposal market. After the acquisition, approximately 82 percent of the waste generated in the Chattanooga, Tennessee area would either be disposed of directly in the Defendants' landfills or pass through the Defendants' transfer stations in Chattanooga before ultimately being disposed of in the Defendants' landfills. The post-merger HHI for MSW disposal would be approximately 6,980, an increase of 3,018 points from the current HHI.

ii. Estill Springs and Fayetteville, Tennessee Area MSW Disposal

43. MSW in the Estill Springs and Fayetteville, Tennessee area, is hauled to municipally-owned transfer stations before it is transferred to a landfill. The proposed acquisition would reduce from three to two the number of significant landfill competitors available to bid to dispose of the MSW from these transfer stations. Since Santek was awarded the most recent contracts for the exclusive right to dispose of the waste from the Estill Springs and Fayetteville, Tennessee area's municipally-owned transfer stations, the transaction will not have an impact on the market's HHI. Still, the loss of competition between Republic and Santek for the area's contracts will result in higher prices and lower quality service for these municipalities in the upcoming years when the current contracts expire.

C. Raising Rivals' Costs of MSW Disposal in the Chattanooga, Tennessee and North Georgia Area

44. In the Chattanooga, Tennessee and North Georgia area, the proposed transaction also would substantially lessen competition in the SCCW collection market by raising the MSW disposal costs of independent haulers.

45. As noted above, Republic and Santek collectively serve approximately 73 percent of the SCCW collection customers in the Chattanooga, Tennessee and North Georgia area. In addition, the vast majority of the waste generated in this area is disposed of in landfills operated by Republic and Santek. Thus, not only are Defendants each other's largest competitor in the SCCW collection market, they also compete with each other to supply MSW disposal services to independent haulers, including those that compete with them in the SCCW collection market.

46. By combining the two firms' SCCW collection and MSW disposal businesses, the merger would increase Republic's incentive and ability to raise its MSW disposal price for independent haulers. Having acquired its largest MSW disposal competitor, Santek, Republic would be able to raise its MSW disposal prices without fear of losing significant sales to remaining disposal competitors. With few alternative MSW disposal facilities available, independent haulers would be forced to incur these increased MSW disposal costs or shutter their operations. Those independent haulers that remained in business would need to raise their SCCW collection prices in order to offset higher MSW disposal costs, rendering them less competitive in SCCW collection. The merger would also increase Republic's incentive to raise the MSW disposal costs of independent haulers because Republic—no longer confronting competition from Santek in SCCW collection—would capture more of the business lost by independent haulers in the SCCW collection market.

47. As a result, the merged firm would likely find it profitable to raise the cost of MSW disposal or to deny service altogether to the merged firm's SCCW collection rivals, thereby reducing competition in the SCCW collection market.

VI. Entry

A. Difficulty of Entry Into Small Container Commercial Waste Collection

48. Entry of new competitors into the relevant SCCW collection markets would be difficult and time-consuming and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

49. A new entrant in SCCW collection could not provide a significant competitive constraint on the prices that market incumbents charge until achieving a minimum efficient scale and operating efficiency comparable to existing competitors. In order to obtain a comparable operating efficiency, a new competitor would have to achieve route densities similar to those of firms already in the market. Incumbents in a geographic market, however, can prevent new entrants from winning a large enough base of customers by selectively lowering prices and entering into longer term contracts with collection customers.

B. Difficulty of Entry Into Municipal Solid Waste Disposal

50. Entry of new competitors into the relevant MSW disposal markets would be difficult and time-consuming and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

51. A new entrant in MSW disposal would need to obtain a permit to construct an MSW disposal facility or to expand an existing one, and this process is costly and time-consuming, typically taking many years. Land suitable for MSW disposal is scarce, as a landfill must be constructed away from environmentally-sensitive areas, including fault zones, wetlands, flood plains, and other restricted areas. Even when suitable land is available, local public opposition frequently increases the time and uncertainty of the permitting process.

52. Construction of a new transfer station or incinerator also is difficult and time consuming and faces many of the same challenges as new landfill construction, including local public opposition.

53. Entry by constructing and permitting a new MSW disposal facility would thus be costly and time-consuming and unlikely to prevent market incumbents from significantly raising prices for MSW disposal in each of the relevant MSW disposal markets following the acquisition.

VII. Violations Alleged

54. Republic's proposed acquisition of Santek is likely to substantially lessen competition in each of the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

55. The acquisition will likely have the following anticompetitive effects, among others, in the relevant markets:

a. Actual and potential competition between Republic and Santek will be eliminated;

b. competition generally will be substantially lessened; and

c. prices will likely increase and quality and the level of service will likely decrease.

VIII. Request for Relief

56. The United States and the State of Alabama request that this Court:

a. Adjudge and decree Republic's acquisition of Santek to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. preliminarily and permanently enjoin Defendants and all persons acting on their behalf from consummating the proposed acquisition by Republic of Santek or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Republic with Santek;

c. award the United States and the State of Alabama the costs for this action; and

d. grant the United States and the State of Alabama such other relief as the Court deems just and proper.

Dated: March 31, 2021

Respectfully submitted,

Counsel for Plaintiff United States:

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Acting Assistant Attorney General, Antitrust Division.

Kathleen S. O'Neil,
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Appendix A: Definition of the Herfindahl-Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30 percent, 30 percent, 20 percent, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is above 2,500 are considered to be highly concentrated. *See* Horizontal Merger Guidelines § 5.3. Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed to be likely to enhance market power under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

United States District Court for the District of Columbia

United States of America and State of Alabama, *Plaintiffs,* v. Republic Services, Inc. and Santek Waste Services, LLC, *Defendants.*
Civil Action No.: 1:21–cv–00883–RDM
Judge: Randolph D. Moss

Proposed Final Judgment

Whereas, Plaintiffs, United States of America and the State of Alabama, filed their Complaint on March 31, 2021;

And whereas, the United States, the State of Alabama, and Defendants, Republic Services, Inc. (''Republic'') and Santek Waste Services, LLC. (''Santek''), have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to make certain divestitures to remedy the loss of competition alleged in the Complaint;

And whereas, Defendants represent that the divestitures and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

Now therefore, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. ''Republic'' means Defendant Republic Services, Inc., a Delaware corporation with its headquarters in Phoenix, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Santek'' means Defendant Santek Waste Services, LLC, a Tennessee limited liability company with its headquarters in Cleveland, Tennessee, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''CWS'' means Capital Waste Services, LLC, a portfolio company of Kinderhook and a Delaware limited liability company with its headquarters in Columbia, South Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''EcoSouth'' means EcoSouth Services of Birmingham and EcoSouth Services of Mobile.

E. ''EcoSouth of Birmingham'' means EcoSouth Services of Birmingham, LLC, a portfolio company of Kinderhook and a Delaware limited liability company with its headquarters in Birmingham, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''EcoSouth of Mobile'' means EcoSouth Services of Mobile, LLC, a portfolio company of Kinderhook and an Alabama limited liability company with its headquarters in Axis, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. ''Kinderhook'' means Kinderhook Industries LLC, a Delaware limited liability company with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, portfolio companies (including but not limited to CWS and EcoSouth), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. ''Waste Connections'' means Waste Connections, Inc., a Canadian corporation with its headquarters in Ontario, Canada, its successors and assigns, and its subsidiaries (including but not limited to Waste Connections of Texas), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

I. ''Waste Connections of Texas'' means Waste Connections of Texas, LLC, a subsidiary of Waste Connections and a Delaware limited liability company with its headquarters in The Woodlands, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

J. ''Divestiture Assets'' means the Southeast Divestiture Assets and the Texas Divestiture Assets.

K. ''Southeast Divestiture Assets'' means all of Defendants' rights, titles, and interests in and to:

1. The transfer stations and landfills listed in Appendix A;

2. all property and assets, tangible and intangible, wherever located, related to or used in connection with the transfer stations and landfills listed in Appendix A, including but not limited to:

a. All real property, including but not limited to fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all offices, garages, material recovery facilities, and other related facilities;

b. all tangible personal property, including but not limited to capital equipment, trucks and other vehicles, scales, power supply equipment, and office furniture, materials, and supplies;

c. all contracts, contractual rights, and customer relationships; and all other agreements, commitments, and understandings;

d. all licenses, permits, certifications, approvals, consents, authorizations, and registrations and all pending applications or renewals; and

e. all records and data, including but not limited to customer lists, accounts, credits records, and repair and performance records;

3. the collection facilities and Routes listed in Appendix A; and

4. all property and assets, tangible and intangible, wherever located, related to or used in connection with the Routes listed in Appendix A, including but not limited to:

a. All real property, including but not limited to fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all offices, garages, and related facilities;

b. all tangible personal property, including but not limited to capital equipment, vehicles, and containers assigned to Routes listed in Appendix A, and, at the option of the Acquirer of the Southeast Divestiture Assets, spare vehicles and containers, scales, power supply equipment, and office furniture, materials, and supplies;

c. all contracts (except Hybrid Contracts), contractual rights, and customer relationships; and all other agreements, commitments, and understandings;

d. all licenses, permits, certifications, approvals, consents, and authorizations, and all pending applications or renewals; and

e. all records and data, including but not limited to customer lists, accounts, and credits records, and repair and performance records; *provided, however,* that the assets specified in Paragraphs II(K)(4)(a)–(e) above do not include the collection facility located at 101 Barber Boulevard, Gardendale, Alabama 35071 or the Excluded Disposal Agreements.

L. ''Texas Divestiture Assets'' means all of Defendants' rights, titles, and interests in and to:

1. Santek SCCW Collection Routes 902 and 903 (''Routes 902 and 903''); and

2. all property and assets, tangible and intangible, wherever located, related to or used in connection with the Routes 902 and 903, including but not limited to:

a. All tangible personal property, including but not limited to capital equipment, vehicles, and containers assigned to Routes 902 or 903, and, at the option of the Acquirer of the Texas Divestiture Assets, spare vehicles and containers;

b. all contracts, contractual rights, and customer relationships; and all other agreements, commitments, and understandings;

c. all licenses, permits, certifications, approvals, consents, and authorizations, and all pending applications or renewals; and

d. all records and data, including but not limited to customer lists, accounts, and credits records, and repair and performance records; *provided, however,* that the assets specified in Paragraphs II(L)(2)(a)–(d) above do not include the collection facility located at 701 US Hwy 59 South, Cleveland, Texas 77327.

M. ''Acquirer'' or ''Acquirers'' means the Acquirer of the Southeast Divestiture Assets and the Acquirer of the Texas Divestiture Assets.

N. ''Acquirer of the Southeast Divestiture Assets'' means Kinderhook, including CWS and EcoSouth, or another entity to whom Defendants divest the Southeast Divestiture Assets.

O. ''Acquirer of the Texas Divestiture Assets'' means Waste Connections, including Waste Connections of Texas, or another entity to whom Defendants divest the Texas Divestiture Assets.

P. ''Commercial Recycling Collection'' means the business of collecting recyclables, which are discarded materials that will be processed and reused, from commercial and industrial accounts and transporting those recyclables to a recycling site (typically called a ''materials recovery facility,'' or ''MRF'').

Q. ''Disposal'' means the business of disposing of waste into disposal sites, including the use of transfer stations to facilitate shipment of waste to other disposal sites.

R. ''Excluded Disposal Agreements'' means (1) the Landfill Disposal Services Agreement, dated December 1, 2012, between Putnam County, Tennessee and Santek Environmental, Inc., as amended by First Amendment to Landfill Disposal Services Agreement, dated October 16, 2020, and (2) the Waste Disposal Agreement, dated November 16, 2018, between Santek Environmental, LLC and Clean Harbors Environmental Services, Inc., as amended by First Amendment to Waste Disposal Agreement, dated January 26, 2021.

S. ''Hybrid Contracts'' means customer waste or recycling collection contacts that include a combination of services and/or collection stops included in the Southeast Divestiture Assets and services and/or collection stops not included in the Southeast Divestiture Assets.

T. ''MSW'' means municipal solid waste. Municipal solid waste is a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.,* waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

U. ''Route'' means a group of customers receiving regularly scheduled waste collection service as of February 23, 2021, including customers from that

group for whom service has been suspended due to issues related to COVID–19 and any customers added to that group between February 23, 2021, and the date that the Route is divested to an Acquirer.

V. ''Small Container Commercial Waste Collection'' (or ''SCCW Collection'') means the business of collecting MSW from commercial and industrial accounts, usually in ''dumpsters'' (*i.e.,* small containers with one-to-ten cubic yards of storage capacity), and transporting—or ''hauling''—that waste to a disposal site, typically by use of a front-end, side-load, or rear-end truck. Typical SCCW Collection customers include office and apartment buildings and retail establishments (*e.g.,* stores and restaurants).

W. ''Southeast Divestiture Date'' means the date on which the Southeast Divestiture Assets are divested to the Acquirer of the Southeast Divestiture Assets.

X. ''Southeast Personnel'' means all full-time, part-time, or contract employees wherever located, involved in the MSW Disposal, SCCW Collection, and Commercial Recycling Collection services provided for a Route or facility included in the Southeast Divestiture Assets at any time between February 18, 2020 and the Southeast Divestiture Date. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Southeast Personnel.

Y. ''Texas Divestiture Date'' means the date on which the Texas Divestiture Assets are divested to the Acquirer of the Texas Divestiture Assets.

Z. ''Texas Personnel'' means all full-time, part-time, or contract employees of Santek, wherever located, involved in the SCCW Collection services provided for a Route included in the Texas Divestiture Assets at any time between February 18, 2020 and the Texas Divestiture Date. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Texas Personnel.

III. Applicability

A. This Final Judgment applies to Republic and Santek, as defined above, and all other persons, in active concert or participation with any Defendant, who receive actual notice of this Final Judgment.

B. If, prior to complying with Sections IV, V, and VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers.

IV. Divestiture of the Southeast Divestiture Assets

A. Defendants are ordered and directed, within thirty (30) calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, to divest the Southeast Divestiture Assets in a manner consistent with this Final Judgment to Kinderhook (through its portfolio companies, CWS or EcoSouth) or another Acquirer acceptable to the United States, in its sole discretion, after consultation with the State of Alabama. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed sixty (60) calendar days in total, and will notify the Court of any extensions.

B. Defendants must use their best efforts to divest the Southeast Divestiture Assets as expeditiously as possible and may not take any action to impede the permitting, operation, or divestiture of the Southeast Divestiture Assets.

C. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Southeast Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State of Alabama, that the Southeast Divestiture Assets can and will be used by the Acquirer of the Southeast Divestiture Assets as part of a viable, ongoing business of MSW Disposal and a viable, ongoing business of SCCW Collection and that the divestiture to the Acquirer of the Southeast Divestiture Assets will remedy the competitive harm alleged in the Complaint.

D. The divestiture must be made to an Acquirer that, in the United States' sole judgment, after consultation with the State of Alabama, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the business of MSW Disposal and SCCW Collection.

E. The divestiture must be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State of Alabama, that none of the terms of any agreement between the Acquirer of the Southeast Divestiture Assets and Defendants give Defendants the ability unreasonably to raise the costs of the Acquirer of the Southeast Divestiture Assets, to lower the efficiency of the Acquirer of the Southeast Divestiture Assets, or otherwise to interfere in the ability of the Acquirer of the Southeast Divestiture Assets to compete effectively in the business of MSW Disposal and SCCW Collection.

F. Divestiture of the Southeast Divestiture Assets may be made to one or more Acquirers, provided that it is demonstrated to the sole satisfaction of the United States, after consultation with the State of Alabama, that the criteria required by Paragraphs IV(C), IV(D), and IV(E) will still be met.

G. In the event Defendants are attempting to divest the Southeast Divestiture Assets to an Acquirer other than Kinderhook (through its portfolio companies, CWS or EcoSouth), Defendants promptly must make known, by usual and customary means, the availability of the Southeast Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Southeast Divestiture Assets that the Southeast Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers of the Southeast Divestiture Assets, subject to customary confidentiality assurances, all information and documents relating to the Southeast Divestiture Assets that are customarily provided in a due-diligence process; *provided, however,* that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to Plaintiffs at the same time that the information and documents are made available to any other person.

H. Defendants must provide prospective Acquirers of the Southeast Divestiture Assets with (1) access to make inspections of the Southeast Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information; and (3) access to all financial, operational, or other documents and information customarily provided as part of a due diligence process. Defendants also must disclose all encumbrances on any part of the Southeast Divestiture Assets, including on intangible property.

I. Defendants must cooperate with and assist the Acquirer of the Southeast Divestiture Assets in identifying and, at the option of the Acquirer of the Southeast Divestiture Assets, hiring all Southeast Personnel.

1. Within ten (10) business days following the filing of the Complaint in this matter, Defendants must identify all

Southeast Personnel to the Acquirer of the Southeast Divestiture Assets and Plaintiffs, including by providing organization charts covering all Southeast Personnel.

2. Within ten (10) business days following receipt of a request by the Acquirer of the Southeast Divestiture Assets or the United States, Defendants must provide to the Acquirer of the Southeast Divestiture Assets and Plaintiffs additional information related to Southeast Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational history, relevant certifications, job performance evaluations. Defendants must also provide to the Acquirer of the Southeast Divestiture Assets and Plaintiffs current, recent, and accrued compensation and benefits, including most recent bonuses paid, aggregate annual compensation, current target or guaranteed bonus, if any, any retention agreement or incentives, and any other payments due, compensation or benefits accrued, or promises made to Southeast Personnel. If Defendants are barred by any applicable law from providing any of this information, within ten (10) business days following receipt of the request, Defendants must provide the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information, including specifically identifying the provisions of applicable laws.

3. At the request of the Acquirer of the Southeast Divestiture Assets, Defendants must promptly make Southeast Personnel available for private interviews with the Acquirer of the Southeast Divestiture Assets during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by the Acquirer of the Southeast Divestiture Assets to employ any Southeast Personnel. Interference includes but is not limited to offering to increase the compensation or improve the benefits of Southeast Personnel unless: (a) The offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to February 18, 2020; or (b) the offer is approved by the United States in its sole discretion. Defendants' obligations under this Paragraph will expire six (6) months after the divestiture of the Southeast Divestiture Assets pursuant to this Final Judgment.

5. For Southeast Personnel who elect employment with the Acquirer of the Southeast Divestiture Assets within six (6) months of the Southeast Divestiture Date, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all other compensation and benefits that those Southeast Personnel have fully or partially accrued, and provide all other benefits that those Southeast Personnel otherwise would have been provided had the Southeast Personnel continued employment with Defendants, including but not limited to any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Southeast Personnel of Defendants' proprietary non-public information that is unrelated to the business of MSW Disposal, SCCW Collection, and Commercial Recycling Collection and not otherwise required to be disclosed by this Final Judgment.

6. For a period of twelve (12) months from the Southeast Divestiture Date, Defendants may not solicit to rehire Southeast Personnel who were hired by the Acquirer of the Southeast Divestiture Assets within six (6) months of the Southeast Divestiture Date unless (a) an individual is terminated or laid off by the Acquirer of the Southeast Divestiture Assets or (b) the Acquirer of the Southeast Divestiture Assets agrees in writing that Defendants may solicit to rehire that individual. Nothing in this Paragraph prohibits Defendants from advertising employment openings using general solicitations or advertisements and rehiring Southeast Personnel who apply for an employment opening through a general solicitation or advertisement.

J. Defendants must warrant to the Acquirer of the Southeast Divestiture Assets that (1) the Southeast Divestiture Assets will be operational and without material defect on the Southeast Divestiture Date; (2) there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Southeast Divestiture Assets; and (3) Defendants have disclosed all encumbrances on any part of the Southeast Divestiture Assets, including on intangible property. Following the sale of the Southeast Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits pertaining to the operation of the Southeast Divestiture Assets.

K. Defendants must assign, subcontract, or otherwise transfer all contracts (except Hybrid Contracts and the Excluded Disposal Agreements), agreements, and relationships (or portions of such contracts, agreements, and relationships) included in the Southeast Divestiture Assets, including but not limited to all supply and sales contracts, to the Acquirer of the Southeast Divestiture Assets; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between the Acquirer of the Southeast Divestiture Assets and a contracting party.

L. At the option of the Acquirer of the Southeast Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the Southeast Divestiture Date, Defendants must assign, subcontract, or otherwise transfer all Hybrid Contracts; *provided, however,* that for any Hybrid Contract that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or other transfer. Defendants must not interfere with any negotiations between the Acquirer of the Southeast Divestiture Assets and a contracting party.

M. Defendants must make best efforts to assist the Acquirer of the Southeast Divestiture Assets to obtain all necessary licenses, registrations, and permits to operate the Southeast Divestiture Assets. Until the Acquirer of the Southeast Divestiture Assets obtains the necessary licenses, registrations, and permits, Defendants must provide the Acquirer of the Southeast Divestiture Assets with the benefit of Defendants' licenses, registrations, and permits to the full extent permissible by law.

N. At the option of the Acquirer of the Southeast Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the Southeast Divestiture Date, Defendants must enter into a contract to provide transition services for back office, human resources, accounting, employee health and safety, telephone and information technology services and support for a period of up to three (3) months on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendments to or modifications of any provisions of a contract for transition services are subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to an additional three (3) months. If the Acquirer of the Southeast Divestiture

Assets seeks an extension of the term of any transition services agreement, Defendants must notify the United States in writing at least fifteen (15) days prior to the date the contract expires. The Acquirer of the Southeast Divestiture Assets may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty at any time upon thirty (30) days' written notice to Republic. The employee(s) of Defendants tasked with providing transition services must not share any competitively sensitive information of the Acquirer of the Southeast Divestiture Assets with any other employee of Defendants.

O. At the option of the Acquirer of the Southeast Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the Southeast Divestiture Date, Defendants must enter into a landfill disposal contract to provide rights to landfill disposal at Republic's Pineview Landfill, located at 2730 Bryan Road, Dora, Alabama 35062 and Santek's Mt. Olive Landfill, located at 101 Barber Boulevard, Gardendale, Alabama 35071. The landfill disposal contract must allow the Acquirer of the Southeast Divestiture Assets to dispose up to a total of 100,000 tons of MSW per year at the Pineview Landfill and Mt. Olive Landfill for a period of up to three (3) years from the Southeast Divestiture Date. Defendants must operate the Pineview Landfill and Mt. Olive Landfill gates, scale houses, and disposal areas for the benefit of the Acquirer of the Southeast Divestiture Assets under terms and conditions no less favorable than those that Defendants provide to their own vehicles. The Acquirer of the Southeast Divestiture Assets may terminate a contract for landfill disposal without cost or penalty at any time upon thirty (30) days' written notice to Republic.

P. At the option of the Acquirer of the Southeast Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the Southeast Divestiture Date, Defendants must enter into an agreement to provide the Acquirer of the Southeast Divestiture Assets, for a period of up to six (6) months from the Southeast Divestiture Date, the exclusive use of one maintenance bay, outdoor parking for six trucks and empty container storage, and an interior office at Republic's collection facility located at 3950 50th Street SW, Birmingham, Alabama 35221.

Q. If any term of an agreement between Defendants and the Acquirer of the Southeast Divestiture Assets, including but not limited to an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

V. Divestiture of the Texas Divestiture Assets

A. Defendants are ordered and directed, within thirty (30) calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, to divest the Texas Divestiture Assets in a manner consistent with this Final Judgment to Waste Connections (through its subsidiary Waste Connections of Texas) or another Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed sixty (60) calendar days in total, and will notify the Court of any extensions.

B. Defendants must use their best efforts to divest the Texas Divestiture Assets as expeditiously as possible and may not take any action to impede the permitting, operation, or divestiture of the Texas Divestiture Assets.

C. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Texas Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Texas Divestiture Assets can and will be used by the Acquirer of the Texas Divestiture Assets as part of a viable, ongoing SCCW Collection business and that the divestiture to the Acquirer of the Texas Divestiture Assets will remedy the competitive harm alleged in the Complaint.

D. The divestiture must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the business of SCCW Collection.

E. The divestiture must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer of the Texas Divestiture Assets and Defendants give Defendants the ability unreasonably to raise the costs of the Acquirer of the Texas Divestiture Assets, to lower the efficiency of the Acquirer of the Texas Divestiture Assets, or otherwise to interfere in the ability of the Acquirer of the Texas Divestiture Assets to compete effectively in the business of SCCW Collection.

F. In the event Defendants are attempting to divest the Texas Divestiture Assets to an Acquirer other than Waste Connections (through its subsidiary Waste Connections of Texas), Defendants promptly must make known, by usual and customary means, the availability of the Texas Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Texas Divestiture Assets that the Texas Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers of the Texas Divestiture Assets, subject to customary confidentiality assurances, all information and documents relating to the Texas Divestiture Assets that are customarily provided in a due-diligence process; *provided, however,* that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

G. Defendants must provide prospective Acquirers of the Texas Divestiture Assets with (1) access to make inspections of the Texas Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information; and (3) access to all financial, operational, or other documents and information customarily provided as part of a due diligence process. Defendants also must disclose all encumbrances on any part of the Texas Divestiture Assets, including on intangible property.

H. Defendants must cooperate with and assist the Acquirer of the Texas Divestiture Assets in identifying and, at the option of the Acquirer of the Texas Divestiture Assets, hiring all Texas Personnel.

1. Within ten (10) business days following the filing of the Complaint in this matter, Defendants must identify all Texas Personnel to the Acquirer of the Texas Divestiture Assets and the United States, including by providing organization charts covering all Texas Personnel.

2. Within ten (10) business days following receipt of a request by the Acquirer of the Texas Divestiture Assets or the United States, Defendants must provide to the Acquirer of the Texas Divestiture Assets and the United States additional information related to Texas

Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational history, relevant certifications, job performance evaluations. Defendants must also provide to the Acquirer of the Texas Divestiture Assets and the United States current, recent, and accrued compensation and benefits, including most recent bonuses paid, aggregate annual compensation, current target or guaranteed bonus, if any, any retention agreement or incentives, and any other payments due, compensation or benefits accrued, or promises made to Texas Personnel. If Defendants are barred by any applicable law from providing any of this information, within ten (10) business days following receipt of the request, Defendants must provide the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information, including specifically identifying the provisions of applicable laws.

3. At the request of the Acquirer of the Texas Divestiture Assets, Defendants must promptly make Texas Personnel available for private interviews with the Acquirer of the Texas Divestiture Assets during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by the Acquirer of the Texas Divestiture Assets to employ any Texas Personnel. Interference includes but is not limited to offering to increase the compensation or improve the benefits of Texas Personnel unless: (a) The offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to February 18, 2020; or (b) the offer is approved by the United States in its sole discretion. Defendants' obligations under this Paragraph will expire six (6) months after the divestiture of the Texas Divestiture Assets pursuant to this Final Judgment.

5. For Texas Personnel who elect employment with the Acquirer of the Texas Divestiture Assets within six (6) months of the Texas Divestiture Date, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all other compensation and benefits that those Texas Personnel have fully or partially accrued, and provide all other benefits that those Texas Personnel otherwise would have been provided had the Texas Personnel continued employment with Defendants, including but not limited to any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Texas Personnel of Defendants' proprietary non-public information that is unrelated to the business of SCCW Collection and not otherwise required to be disclosed by this Final Judgment.

6. For a period of twelve (12) months from the Texas Divestiture Date, Defendants may not solicit to rehire Texas Personnel who were hired by the Acquirer of the Texas Divestiture Assets within six (6) months of the Texas Divestiture Date unless (a) an individual is terminated or laid off by the Acquirer of the Texas Divestiture Assets or (b) the Acquirer of the Texas Divestiture Assets agrees in writing that Defendants may solicit to rehire that individual. Nothing in this Paragraph prohibits Defendants from advertising employment openings using general solicitations or advertisements and rehiring Texas Personnel who apply for an employment opening through a general solicitation or advertisement.

I. Defendants must warrant to the Acquirer of the Texas Divestiture Assets that (1) the Texas Divestiture Assets will be operational and without material defect on the Texas Divestiture Date (2) there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Texas Divestiture Assets; and (3) Defendants have disclosed all encumbrances on any part of the Texas Divestiture Assets, including on intangible property. Following the sale of the Texas Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits pertaining to the operation of the Texas Divestiture Assets.

J. Defendants must assign, subcontract, or otherwise transfer all contracts, agreements, and relationships (or portions of such contracts, agreements, and relationships) included in the Texas Divestiture Assets, including but not limited to all supply and sales contracts, to the Acquirer of the Texas Divestiture Assets; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between the Acquirer of the Texas Divestiture Assets and a contracting party.

K. Defendants must make best efforts to assist the Acquirer of the Texas Divestiture Assets to obtain all necessary licenses, registrations, and permits to operate the Texas Divestiture Assets. Until the Acquirer of the Texas Divestiture Assets obtains the necessary licenses, registrations, and permits, Defendants must provide the Acquirer of the Texas Divestiture Assets with the benefit of Defendants' licenses, registrations, and permits to the full extent permissible by law.

L. At the option of the Acquirer of the Texas Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the Texas Divestiture Date, Defendants must enter into a contract to provide transition services for back office, human resources, accounting, employee health and safety, telephone and information technology services and support for a period of up to six (6) months on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendments to or modifications of any provisions of a contract for transition services are subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to an additional six (6) months. If the Acquirer of the Texas Divestiture Assets seeks an extension of the term of any transition services agreement, Defendants must notify the United States in writing at least one (1) month prior to the date the contract expires. The Acquirer of the Texas Divestiture Assets may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty at any time upon thirty (30) days' written notice to Republic. The employee(s) of Defendants tasked with providing transition services must not share any competitively sensitive information of the Acquirer of the Texas Divestiture Assets with any other employee of Defendants.

M. If any term of an agreement between Defendants and the Acquirer of the Texas Divestiture Assets, including but not limited to an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

VI. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the periods specified in Paragraph IV(A) and Paragraph V(A), Defendants must immediately notify Plaintiffs of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the

United States and approved by the Court to effect the divestiture(s) of any of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets that the divestiture trustee has been appointed to sell. The divestiture trustee will have the power and authority to accomplish the divestiture(s) to an Acquirer or Acquirers acceptable to the United States, in its sole discretion, after consultation with the State of Alabama, at a price and on terms as are then obtainable upon reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets that the divestiture trustee has been appointed to sell as quickly as possible.

C. Defendants may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants must be conveyed in writing to Plaintiffs and the divestiture trustee within ten (10) calendar days after the divestiture trustee has provided the notice of proposed divestiture required under Section VII.

D. The divestiture trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, that are approved by the United States in its sole discretion.

E. The divestiture trustee may hire at the cost and expense of Defendants any agents or consultants, including but not limited to investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including terms and conditions governing confidentiality requirements and conflict-of-interest certifications, that are approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets that the divestiture trustee has been appointed to sell and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture(s) and the speed with which it is accomplished. If the divestiture trustee and Defendants are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the divestiture trustee by the Court, the United States may, in its sole discretion, take appropriate action, including by making a recommendation to the Court. Within three (3) business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the assets sold by the divestiture trustee and all costs and expenses incurred. Within thirty (30) calendar days of the date of the sale of the assets sold by the divestiture trustee, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Defendants and the trust will then be terminated.

H. Defendants must use their best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets that the divestiture trustee has been appointed to sell. Defendants also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants must not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with Plaintiffs setting forth the divestiture trustee's efforts to accomplish the divestitures ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets that the divestiture trustee has been appointed to sell and must describe in detail each contact with any such person.

J. If the divestiture trustee has not accomplished the divestitures ordered by this Final Judgment within six months of appointment, the divestiture trustee must promptly provide Plaintiffs with a report setting forth: (1) The divestiture trustee's efforts to accomplish the required divestitures; (2) the reasons, in the divestiture trustee's judgment, why the required divestitures have not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestitures. Following receipt of that report, the United States may make additional recommendations consistent with the purpose of the trust to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets that the divestiture trustee has been appointed to sell is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement with an Acquirer other than Kinderhook (through its portfolio companies, CWS or EcoSouth) or Waste Connections (through its subsidiary Waste Connections of Texas), Defendants or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify Plaintiffs of a proposed divestiture required by this Final Judgment. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within fifteen (15) calendar days of receipt by the United States of this notice, the United States may request from Defendants, the proposed Acquirer(s), other third parties, or the divestiture trustee additional

information concerning the proposed divestiture, the proposed Acquirer(s) and other prospective Acquirers. Defendants and the divestiture trustee must furnish the additional information requested within fifteen (15) calendar days of the receipt of the request, unless the United States provides written agreement to a different period.

C. Within forty-five (45) calendar days after receipt of the notice required by Paragraph VII(A) or within twenty (20) calendar days after the United States has been provided the additional information requested pursuant to Paragraph VII(B), whichever is later, the United States will provide written notice to Defendants and any divestiture trustee that states whether or not the United States, in its sole discretion, after consultation with State of Alabama, objects to the Acquirer(s) or any other aspect of the proposed divestiture. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph VI(C) of this Final Judgment. Upon objection by Defendants pursuant to Paragraph VI(C), a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section VII may be divulged by Plaintiffs to any person other than an authorized representative of the executive branch of the United States or an authorized representative of the State of Alabama, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information at 28 CFR 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

F. If at the time that a person furnishes information or documents to the United States or the State of Alabama pursuant to this Section VII, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States and the State of Alabama must give that person ten calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

VIII. Financing

Defendants may not finance all or any part of any Acquirer's purchase of all or part of the Divestiture Assets made pursuant to this Final Judgment.

IX. Asset Preservation

Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by the Court. Defendants must take no action that would jeopardize the divestiture ordered by the Court.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture required by this Final Judgment has been completed, each Defendant must deliver to Plaintiffs an affidavit describing the fact and manner of that Defendant's compliance with this Final Judgment. Republic's affidavits must be signed by the Senior Vice President of Emerging Business and a Deputy General Counsel; Santek's affidavits must be signed by the Chief Operating Officer and the Chief Business Officer. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. Each affidavit must include: (1) 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, an interest in the Divestiture Assets and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. Objection by the United States to information provided by Defendants to prospective Acquirers must be made within fourteen (14) calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one year after the divestitures have been completed.

D. Within twenty (20) calendar days of the filing of the Complaint in this matter, each Defendant also must deliver to Plaintiffs an affidavit that describes in reasonable detail all actions that Defendant have taken and all steps that Defendant has implemented on an ongoing basis to comply with Section IX of this Final Judgment. Republic's affidavits must be signed by the Senior Vice President of Emerging Business and a Deputy General Counsel; Santek's affidavits must be signed by the Chief Operating Officer and the Chief Business Officer. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If a Defendant make any changes to the efforts and actions outlined in any earlier affidavits provided pursuant to Paragraph X(D), the Defendant must, within fifteen (15) calendar days after any change is implemented, deliver to Plaintiffs an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to preserve the Divestiture Assets until one year after the divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of related orders such as the Asset Preservation Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. To have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide 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 must 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 for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the United States pursuant to this Section XI may be divulged by Plaintiffs to any person other than an authorized representative of the executive branch of the United States or an authorized representative of the State of Alabama, except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information at 28 CFR 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section XI, Defendants represent and identify in writing information or documents for 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,'' the United States must give Defendants ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XII. Notification

A. Unless a transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendants may not, without first providing notification to the United States and, if any of the assets or interests are located in Alabama, to the State of Alabama, directly or indirectly acquire (including through an asset swap agreement) any assets of or any interest, including a financial, security, loan, equity, or management interest, in any person or entity involved in MSW Disposal and/or SCCW Collection services in any area identified in Appendix B, where that person's or entity's revenues for the 12 months preceding the proposed acquisition from MSW Disposal and/or SCCW Collection services in the identified area were in excess of $500,000. This provision also applies to an acquisition of facilities that serve an identified area but are located outside the area and requires notice to the State of Alabama where an identified area in Alabama is serviced by assets or interests to be acquired that are located outside of Alabama.

B. Defendants must provide the notification required by this Section XII in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about MSW Disposal and SCCW Collection. Notification must be provided at least thirty (30) calendar days before acquiring any assets or interest, and must include, beyond the information required by the instructions, the names of the principal representatives who negotiated the transaction on behalf of each party and all management or strategic plans discussing the proposed transaction. If, within the thirty (30) calendar days following notification, representatives of the United States make a written request for additional information, Defendants may not consummate the proposed transaction until thirty (30) calendar days after submitting all requested information.

C. Early termination of the waiting periods set forth in this Section XII 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 XII must be broadly construed and any ambiguity or uncertainty regarding whether to file a notice under this Section XII must be resolved in favor of filing notice.

XIII. Limitations on Reacquisition

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment.

XIV. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the 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. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment or of related orders such as the Asset Preservation Stipulation and Order, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States and the State of Alabama allege was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States

to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce the Final Judgment, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XV.

XVI. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States, after consultation with the State of Alabama, to the Court and Defendants that the divestiture has been completed and the continuation of this Final Judgment is no longer necessary or in the public interest.

XVII. 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 by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, 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

Appendix A: Southeast Divestiture Assets

I. Landfills and Transfer Stations (Paragraph II(K)(1))

a. Rhea County Landfill, located at 207 Sanitary Drive, Dayton, Tennessee 37321;

b. Murray County Landfill and Transfer Station, located at 6585 US–411, Chatsworth, Georgia 30734; and

c. Chattanooga Transfer Station, located at 1387 Wisdom Street, Chattanooga, Tennessee 37406.

II. Collection Facilities and Routes (Paragraph II(K)(3))

a. Collection facilities located at:

i. 140 Goodrich Drive, Birmingham, Alabama 35217;

ii. 1387 Wisdom Street, Chattanooga, Tennessee 37406;

iii. 2207 Industrial South Road, Dalton, Georgia 30721;

iv. 108 Nehi Road, Ellisville, Mississippi 39437;

b. Routes:

i. Santek Birmingham SCCW Collection Routes 901, 902, 903 and 904;

ii. Santek Chattanooga SCCW Collection Routes 901, 902, 903, 904, 906, and 907;

iii. Santek Chattanooga Commercial Recycling Collection Route 201;

iv. Santek North Georgia SCCW Collection Routes 902, 904, 905, 909, 919, 920, 922, and 923; and

v. Santek Hattiesburg SCCW Collection Routes 901, 902, 903, 904 and 905.

Appendix B: Areas for Which the Notice Provision in Paragraph XII(A) Applies

Geographic market	Counties within geographic market	Relevant service
Birmingham, Alabama	Jefferson and Shelby Counties	SCCW Collection.
Chattanooga, Tennessee and North Georgia.	Hamilton, Marion, Rhea, and Sequatchie Counties in Tennessee; and Catoosa, Chattooga, Dade, Gordon, Murray, and Walker Counties in Georgia.	MSW Disposal and SCCW Collection.
Eastern Montgomery County, Texas	Montgomery County (limited to zip codes 77357, 77365, and 77372).	SCCW Collection.
Estill Springs and Fayetteville, Tennessee.	Franklin and Lincoln Counties	MSW Disposal.
Hattiesburg, Mississippi	Forrest and Jones Counties	SCCW Collection.

United States District Court for the District of Columbia

United States of America and State of Alabama, *Plaintiffs,* v. Republic Services, Inc. and Santek Waste Services, LLC *Defendants.*

Civil Action No.: 1:21–cv–00883–RDM

Judge: Randolph D. Moss

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On February, 18, 2020, Republic Services, Inc. (''Republic'') agreed to acquire Santek Waste Services, LLC (''Santek''). The United States and the State of Alabama filed a civil antitrust Complaint on March 31, 2021, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for small container commercial waste (''SCCW'') collection and municipal solid waste (''MSW'') disposal in six geographic markets in the southeastern United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and an Asset Preservation Stipulation and Order (''Stipulation and Order''), which are designed to remedy the loss of competition alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest specified SCCW collection and MSW disposal assets in six local markets in five states. The assets to be divested are grouped into two packages—the Southeast Divestiture Assets and the Texas Divestiture Assets (capitalized terms are defined in the proposed Final Judgment). The Southeast Divestiture Assets includes assets in Alabama,

Georgia, Mississippi, and Tennessee. The Texas Divestiture Assets includes assets in Texas.

Under the terms of the Stipulation and Order, Defendants must take certain steps to ensure that the assets that must be divested are operated as ongoing, economically viable, competitive assets for the provision of SCCW collection and MSW disposal and must take all other actions to preserve and maintain the full economic viability, marketability, and competitiveness of the assets to be divested.

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

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Pursuant to a purchase agreement dated February 18, 2020, and amended on May 19, 2020, July 10, 2020, October 6, 2020, and March 8, 2021, Republic proposes to acquire all of the outstanding membership interest in Santek.

Republic, a Delaware corporation headquartered in Phoenix, Arizona, is the second largest non-hazardous solid waste collection and disposal company in the United States. It provides waste collection, recycling, and disposal (including transfer) services. Republic operates in 41 states and Puerto Rico. For 2020 Republic reported revenues of approximately $10.2 billion.

Santek, a Tennessee limited liability company headquartered in Cleveland, Tennessee, is a vertically integrated solid waste management company with waste collection and disposal (including transfer) operations in nine southeastern states. In 2019, the most recent year for which information is publicly available, Santek generated approximately $140 million in revenue.

B. Relevant Product Markets

57. Small Container Commercial Waste Collection

As alleged in the Complaint, SCCW (small container commercial waste collection) is a relevant product market. Waste collection firms—also called haulers—collect MSW (municipal solid waste) from residential, commercial, and industrial establishments, and transport that waste to a disposal site, such as a transfer station, landfill, or incinerator, for processing and disposal.

SCCW collection is the business of collecting MSW from commercial and industrial accounts, usually in small containers (*i.e.,* dumpsters with one to ten cubic yards capacity), and transporting such waste to a disposal site. Typical SCCW collection customers include office and apartment buildings and retail establishments like stores and restaurants.

SCCW collection is distinct from other types of waste collection such as residential and roll-off collection. An individual commercial customer typically generates substantially more MSW than a residential customer. To handle this high volume of MSW efficiently, SCCW haulers often provide commercial customers with small containers for storing the waste. SCCW haulers organize their commercial accounts into routes and collect and transport the MSW generated by these accounts in front-end load (''FEL'') trucks that are uniquely well suited for commercial waste collection.

On a typical SCCW collection route, an operator drives a FEL truck to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts, until the vehicle is full. The operator then drives the FEL truck to a disposal facility, such as a transfer station, landfill, or incinerator, and empties the contents of the vehicle. Depending on the number of locations and amount of waste collected on the route, the operator may make one or more trips to the disposal facility in servicing the route.

In contrast to a SCCW collection route, a residential waste collection route is highly labor intensive. A residential customer's MSW is typically stored in much smaller containers such as trash cans, and instead of using a FEL truck manned by a single operator, residential haulers routinely use rear-end load or side-load trucks typically manned by two- or three-person teams who may need to hand-load the customer's MSW. In light of these differences, haulers typically organize commercial customers into separate routes from residential customers.

Roll-off container collection also is not a substitute for SCCW collection. Roll-off container collection is commonly used to serve construction and demolition customers. A roll-off container is much larger than a SCCW container and is serviced by a truck capable of carrying a single roll-off container. Unlike SCCW customers, multiple roll-off customers are not served between trips to the disposal site, as each roll-off truck is typically only capable of carrying one roll-off container at a time.

Other types of waste collection, such as hazardous or medical waste collection, also are not substitutes for SCCW collection. These forms of collection differ from SCCW collection in the equipment required, the volume of waste collected, and the facilities where the waste is disposed.

The Complaint alleges that, because no other waste collection service can substitute for SCCW collection, other waste collection services do not constrain pricing for SCCW collection. Absent competition, SCCW collection providers could profitably increase their prices without losing significant sales to firms engaged in the provision of other types of waste collection services. In other words, in the event of a small but significant non-transitory increase in price for SCCW collection, customers would not substitute to other forms of collection in sufficient numbers so as to render the price increase unprofitable. SCCW collection is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

58. Municipal Solid Waste Disposal

As alleged in the Complaint, MSW disposal is a relevant product market. MSW is solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and industrial facilities. MSW has physical characteristics that readily distinguish it from other liquid or solid waste, such as waste from manufacturing processes, regulated medical waste, sewage, sludge, hazardous waste, or waste generated by construction or demolition sites.

Haulers must dispose of all MSW at a permitted disposal facility. There are intermediary disposal facilities—transfer stations—and ultimate disposal facilities—landfills and incinerators. All such facilities must be located on approved types of land and operated under prescribed procedures. Federal, state, and local safety, environmental, zoning, and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing, and disposal of MSW. In less densely populated areas, MSW often is disposed of directly into landfills that are permitted and regulated by a state and

the federal government. Landfill permit restrictions often impose limitations on the type and amount of waste that can be deposited. In many urban and suburban areas, landfills are scarce due to high population density and the limited availability of suitable land. As a result, MSW generated in such areas often is burned in an incinerator or taken to a transfer station. Transfer stations briefly hold MSW until it is reloaded from collection vehicles onto larger tractor-trailers for transport, in bulk, to more distant landfills or incinerators for final disposal.

Some haulers—including Republic and Santek—are vertically integrated and operate their own disposal facilities. Vertically integrated haulers often prefer to dispose of waste at their own disposal facilities. Vertically integrated haulers may also sell a portion of their disposal capacity to disposal customers in need of access to a disposal facility.

Disposal customers include private waste haulers without their own disposal assets (referred to in the industry as ''independent haulers'') as well as local governments that own their own equipment and collect their citizens' waste themselves. Disposal customers also include independent and municipally-owned transfer stations that serve as temporary disposal sites for haulers in areas where landfills and incinerators are not easily accessible. Disposal customers that are not vertically integrated lack their own ultimate disposal facilities and rely on cost-competitive landfills.

As alleged in the Complaint, due to strict laws and regulations that govern the disposal of MSW, there are no reasonable substitutes for MSW disposal, which must occur at landfills, incinerators, or transfer stations. Thus, in the event of a small but significant non-transitory increase in price from MSW disposal firms, customers would not substitute to other forms of disposal in sufficient numbers so as to render the price increase unprofitable. MSW disposal is therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Relevant Geographic Markets

1. Small Container Commercial Waste Collection Geographic Markets

As alleged in the Complaint, the relevant geographic markets for SCCW collection are local. This is because SCCW haulers need a large number of closely located customer pick-up locations to operate efficiently and profitably. If there is significant travel time between customers, then the SCCW hauler earns less money for the time that the truck operates. SCCW haulers, therefore, try to minimize the ''dead time'' in which the truck is operating and incurring costs from fuel, wear and tear, and labor, but not generating revenue from collecting waste. Likewise, customers must be near the SCCW hauler's base of operations as it would be unprofitable for a truck to travel a long distance to the start of a route. SCCW haulers, therefore, generally establish garages and related facilities to serve as bases within each area served.

As alleged in the Complaint, the transaction would likely cause harm in four relevant geographic markets for SCCW collection: (1) The Birmingham, Alabama area (Jefferson and Shelby Counties); (2) the Chattanooga, Tennessee and North Georgia area (Hamilton, Marion, Rhea, and Sequatchie Counties in Tennessee; and Catoosa, Chattooga, Dade, Gordon, Murray, and Walker Counties in Georgia); (3) the Eastern Montgomery County, Texas area (the area east of the City of Conroe defined as zip codes 77357, 77365, and 77372); and (4) the Hattiesburg, Mississippi area (Forrest and Jones Counties). In each of these markets, a hypothetical monopolist of SCCW collection could profitably impose a small but significant non-transitory increase in price for SCCW collection without losing significant sales to more distant competitors. Accordingly, each of these areas constitutes a relevant geographic market and section of the country for purposes of analyzing the effects of the acquisition on SCCW collection under Section 7 of the Clayton Act.

2. Municipal Solid Waste Disposal Geographic Markets

As alleged in the Complaint, the relevant geographic markets for MSW disposal are local as the cost of transporting MSW to a disposal site—including fuel, regular truck maintenance, and hourly labor—is a substantial component of the total cost of MSW disposal. Haulers also prefer nearby MSW disposal sites to minimize the FEL truck dead time. Due to the costs associated with travel time and customers' preference to have MSW disposal sites close by, an MSW disposal provider must have local facilities to be competitive.

As alleged in the Complaint, the proposed transaction would likely cause harm in two relevant geographic markets for MSW disposal: (1) The Chattanooga, Tennessee area (Hamilton County); and (2) the Estill Springs and Fayetteville, Tennessee area (Franklin and Lincoln Counties). In each of these local markets, a hypothetical monopolist of MSW disposal could profitably impose a small but significant non-transitory increase in price for MSW disposal without losing significant sales to more distant MSW disposal sites.

Accordingly, the Complaint alleges that the Chattanooga, Tennessee area, and the Estill Springs and Fayetteville, Tennessee area constitute relevant geographic markets for the purposes of analyzing the effects of the acquisition on MSW disposal under Section 7 of the Clayton Act.

D. Anticompetitive Effects of the Proposed Transaction

As alleged in the Complaint, the proposed transaction would increase concentration, significantly and substantially lessen competition, and harm consumers in each relevant market by eliminating the substantial head-to-head competition that currently exists between Republic and Santek.

Market concentration can be a useful indicator of the level of competitive vigor in a market and likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that the transaction would result in harm to consumers by meaningfully reducing competition.

Concentration in relevant markets is typically defined by the Herfindahl-Hirschman Index (''HHI''). Markets in which the HHI is above 2,500 are considered to be highly concentrated. Mergers that increase the HHI by more than 200 points and result in a highly concentrated market are presumed to likely enhance market power. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.3 (revised Aug. 19, 2010) (''Horizontal Merger Guidelines''), *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.*

As alleged in the Complaint, Republic's acquisition of Santek would result in a highly concentrated market in every relevant SCCW collection market and relevant MSW disposal market. Moreover, as a result of the acquisition, the HHI would increase by more than 400 points in each of these markets, suggesting an increased likelihood of significant anticompetitive effects. Therefore, Republic's proposed acquisition of Santek is presumptively likely to enhance Republic's market power. *See* Horizontal Merger Guidelines § 5.3.

As alleged in the Complaint, the merger would also substantially lessen competition through the vertical integration of the two companies. Specifically, by combining Republic's strong position in both SCCW collection and MSW disposal with Santek's strong position in both SCCW collection and MSW disposal, the proposed transaction would increase Republic's incentive and ability to harm its SCCW collection rivals by raising the costs of MSW disposal in the Chattanooga, Tennessee and North Georgia area. With SCCW collection rivals facing higher operational costs, they would have to raise their SCCW collection prices to offset these costs and would be less able to apply competitive pressure on Republic's SCCW collection operations. As a result, businesses, municipalities, and other customers likely would pay higher prices for SCCW collection. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Vertical Merger Guidelines § 4(a) (June 30, 2020), *https://www.justice.gov/atr/page/file/1290686/download.*

1. Elimination of Horizontal Competition in SCCW Collection

As alleged in the Complaint, Republic's acquisition of Santek would eliminate a significant competitor for SCCW collection in markets that are already highly concentrated and difficult to enter. Republic and Santek compete head-to-head for SCCW collection customers in the relevant SCCW collection markets. In these four geographic markets, Republic and Santek each account for a substantial share of total revenue generated from SCCW collection and, in each relevant market, are two of no more than five significant competitors.

In each relevant SCCW collection market, collection customers including offices, apartment buildings, and retail establishments have been able to secure better collection rates and improved collection service by threatening to switch from Republic to Santek or vice versa. In each of the relevant markets, the elimination of this head-to-head competition would allow Republic to exercise market power unilaterally to increase prices and reduce the quality of service for SCCW collection customers.

i. Birmingham, Alabama Area SCCW Collection

As alleged in the Complaint, in the Birmingham, Alabama area, the proposed acquisition would reduce from five to four the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 61 percent of the SCCW collection customers in the market. The post-merger HHI for SCCW collection in this market would be approximately 4,157, an increase of 445 points from the current HHI.

ii. Chattanooga, Tennessee and North Georgia Area SCCW Collection

As alleged in the Complaint, in the Chattanooga, Tennessee and North Georgia area, the proposed acquisition would reduce from five to four the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 73 percent of the SCCW collection customers in the market. The post-merger HHI for SCCW collection in this market would be approximately 5,551, an increase of 2,660 points from the current HHI.

iii. Eastern Montgomery County, Texas Area SCCW Collection

As alleged in the Complaint, in the Eastern Montgomery County, Texas area, the proposed acquisition would reduce from three to two the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 58 percent of the SCCW collection customers in the market. The post-merger HHI for SCCW collection in this market would be approximately 4,064, an increase of 1,703 points from the current HHI.

iv. Hattiesburg, Mississippi Area SCCW Collection

As alleged in the Complaint, in the Hattiesburg, Mississippi area, the proposed acquisition would reduce from five to four the number of significant competitors in the SCCW collection market. After the acquisition, Defendants would have approximately 55 percent of SCCW collection customers in the market. The post-merger HHI for SCCW collection would be approximately 3,853, an increase of 1,420 points from the current HHI.

2. Elimination of Horizontal Competition in MSW Disposal

As alleged in the Complaint, Republic's acquisition of Santek would also eliminate a significant competitor for MSW disposal in markets that are already highly concentrated and difficult to enter. Republic and Santek compete head-to-head for MSW disposal customers in the relevant MSW disposal markets. In these geographic markets, Republic and Santek each account for a substantial share of total revenue generated from MSW disposal and, in each relevant MSW disposal market, are two of no more than three significant competitors. In each relevant MSW disposal market, independent haulers and municipalities have been able to negotiate more favorable MSW disposal rates by threatening to move MSW from Republic's facilities to Santek's facilities and vice versa. In each of the relevant MSW disposal markets, the elimination of this head-to-head competition would allow Republic to exercise market power unilaterally to increase prices and reduce the quality of service for MSW disposal customers.

i. Chattanooga, Tennessee Area MSW Disposal

As alleged in the Complaint, in the Chattanooga, Tennessee area, the proposed acquisition would reduce from three to two the number of significant competitors in the MSW disposal market. After the acquisition, approximately 82 percent of the waste generated in the Chattanooga, Tennessee area would either be disposed of directly in the Defendants' landfills or pass through the Defendants' transfer stations in Chattanooga before ultimately being disposed of in the Defendants' landfills. The post-merger HHI for MSW disposal would be approximately 6,980, an increase of 3,018 points from the current HHI.

ii. Estill Springs and Fayetteville, Tennessee Area MSW Disposal

MSW in the Estill Springs and Fayetteville, Tennessee area, is hauled to municipally-owned transfer stations before it is transferred to a landfill. As alleged in the Complaint, the proposed acquisition would reduce from three to two the number of significant landfill competitors available to bid to dispose of the MSW from these transfer stations. Since Santek was awarded the most recent contracts for the exclusive right to dispose of the waste from the Estill Springs and Fayetteville, Tennessee area's municipally-owned transfer stations, the transaction will not have an impact on the market's HHI. Still, the loss of competition between Republic and Santek for the area's contracts will result in higher prices and lower quality service for these municipalities in the upcoming years when the current contracts expire.

3. Raising Rivals' Costs of MSW Disposal in the Chattanooga, Tennessee and North Georgia Area

As alleged in the Complaint, in the Chattanooga, Tennessee and North Georgia area, the proposed transaction also would substantially lessen competition in the SCCW collection market by raising the MSW disposal

costs of independent haulers. As noted above, Republic and Santek collectively serve approximately 73 percent of the SCCW collection customers in the Chattanooga, Tennessee and North Georgia area. In addition, the vast majority of the waste generated in this area is disposed of in landfills operated by Republic and Santek. Thus, not only are Defendants each other's largest competitor in the SCCW collection market, they also compete with each other to supply MSW disposal services to independent haulers, including those that compete with them in the SCCW collection market.

By combining the two firms' SCCW collection and MSW disposal businesses, the merger would increase Republic's incentive and ability to raise its MSW disposal price for independent haulers. Having acquired its largest MSW disposal competitor, Santek, Republic would be able to raise its MSW disposal prices without fear of losing significant sales to remaining disposal competitors. With few alternative MSW disposal facilities available, independent haulers would be forced to incur these increased MSW disposal costs or shutter their operations. Those independent haulers that remained in business would need to raise their SCCW collection prices in order to offset higher MSW disposal costs, rendering them less competitive in SCCW collection. The merger would also increase Republic's incentive to raise the MSW disposal costs of independent haulers because Republic—no longer confronting competition from Santek in SCCW collection—would capture more of the business lost by independent haulers in the SCCW collection market.

As alleged in the Complaint, as a result, the merged firm would likely find it profitable to raise the cost of MSW disposal or to deny service altogether to the merged firm's SCCW collection rivals, thereby reducing competition in the SCCW collection market.

E. Difficulty of Entry

1. Difficulty of Entry Into SCCW Collection

As alleged in the Complaint, entry of new competitors into the relevant SCCW collection markets would be difficult and time-consuming and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

A new entrant in SCCW collection could not provide a significant competitive constraint on the prices that market incumbents charge until achieving a minimum efficient scale and operating efficiency comparable to existing competitors. In order to obtain a comparable operating efficiency, a new competitor would have to achieve route densities similar to those of firms already in the market. Incumbents in a geographic market, however, can prevent new entrants from winning a large enough base of customers by selectively lowering prices and entering into longer term contracts with collection customers.

2. Difficulty of Entry Into MSW Disposal

As alleged in the Complaint, entry of new competitors into the relevant MSW disposal markets would be difficult and time-consuming and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

A new entrant in MSW disposal would need to obtain a permit to construct an MSW disposal facility or to expand an existing one, and this process is costly and time-consuming, typically taking many years. Land suitable for MSW disposal is scarce, as a landfill must be constructed away from environmentally-sensitive areas, including fault zones, wetlands, flood plains, and other restricted areas. Even when suitable land is available, local public opposition frequently increases the time and uncertainty of the permitting process.

Construction of a new transfer station or incinerator also is difficult and time consuming and faces many of the same challenges as new landfill construction, including local public opposition.

Thus, entry by constructing and permitting a new MSW disposal facility would be costly, time-consuming, and unlikely to prevent market incumbents from significantly raising prices for MSW disposal in each of the relevant MSW disposal markets following the acquisition.

III. Explanation of the Proposed Final Judgment

The relief required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by maintaining competition in each of the SCCW collection and MSW disposal markets alleged in the Complaint. The assets to be divested are grouped into two packages—the Southeast Divestiture Assets and the Texas Divestiture Assets (capitalized terms are defined in the proposed Final Judgment).

The Southeast Divestiture Assets include all of the assets necessary for the Acquirer of the Southeast Divestiture Assets to operate an economically viable business that will remedy the harm that the United States and the State of Alabama allege would otherwise result from the transaction in (1) the SCCW collection markets in the Birmingham, Alabama area; the Chattanooga, Tennessee and North Georgia area; and the Hattiesburg, Mississippi area and (2) the MSW disposal markets in the Chattanooga, Tennessee area and the Estill Springs and Fayetteville, Tennessee area.[1]

The Texas Divestiture Assets include all of the assets necessary for the Acquirer of the Texas Divestiture Assets to operate an economically viable business that will remedy the harm that the United States and the State of Alabama allege would otherwise result from the transaction in the SCCW collection market in the Eastern Montgomery County, Texas area.

A. Southeast Divestiture Assets

Paragraph IV(A) of the proposed Final Judgment requires Defendants, within 30 days after the entry of the Stipulation and Order by the Court, to divest the Southeast Divestiture Assets to Kinderhook Industries LLC (through its portfolio companies Capital Waste Services, LLC, EcoSouth Services of Birmingham, LLC, and EcoSouth Services of Mobile, LLC), or an alternative acquirer acceptable to the United States, in its sole discretion, after consultation with the State of Alabama. The assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with the State of Alabama, that the Southeast Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing SCCW collection business and a viable, ongoing MSW disposal business that can compete effectively in each of the markets in Alabama, Georgia, Mississippi, and Tennessee alleged in the Complaint. Defendants must take all reasonable steps necessary to accomplish the divestiture of the Southeast Divestiture Assets quickly and must cooperate with the Acquirer.

The Southeast Divestiture Assets are defined as all tangible and intangible assets relating to or used in connection with the MSW disposal assets identified in Paragraphs II(K)(1) and II(K)(2) of the

[1] The landfill and transfer station assets to be divested in Tennessee and Georgia, as defined in Paragraphs II(K)(1) and (2) of the proposed Final Judgment, address not only the potential elimination of horizontal competition in MSW disposal as alleged in Paragraphs 41–43 of the Complaint, but along with the SCCW collection assets to be divested in Tennessee and Georgia, as defined in Paragraphs II(K)(3) and (4) of the proposed Final Judgment, they address the potential for Defendants to raise rivals' costs of MSW disposal as alleged in Paragraphs 44–47 of the Complaint.

proposed Final Judgment and the SCCW collection assets identified in Paragraphs II(K)(3) and II(K)(4) of the proposed Final Judgment. The Southeast Divestiture Assets include two landfills, two transfer stations, four collection facilities, and 24 Routes in Alabama, Georgia, Mississippi, and Tennessee. The Southeast Divestiture Assets also include, in each MSW disposal market alleged: All tangible and intangible property and assets related to or used in connection with the transfer stations and landfills except for the Excluded Disposal Agreements, which are explained below. In each SCCW collection market alleged, the Southeast Divestiture Assets include: All intangible and tangible assets related to or used in connection with the Routes except for what the proposed Final Judgment defines as Hybrid Contracts, which are explained below, and a collection facility located at 101 Barber Boulevard, Gardendale, Alabama 35071. In the Chattanooga, Tennessee and North Georgia market, the Southeast Divestiture Assets include not only SCCW collection assets, but also commercial recycling collection assets which should enhance the viability of the Southeast Divestiture Assets.

Paragraph IV(K) of the proposed Final Judgment facilitates the transfer of customers and other contractual relationships, except for Hybrid Contracts and the Excluded Disposal Agreements, to the Acquirer of the Southeast Divestiture Assets. Defendants must transfer all contracts, agreements, and relationships to the Acquirer of the Southeast Divestiture Assets and must make best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting, or other transfer.

Hybrid Contracts, which are defined in Paragraph II(S) as customer waste or recycling contracts that include a combination of services and/or collection stops included in the Southeast Divestiture Assets and services and/or collection stops not included in the Southeast Divestiture Assets, and that make up a small portion of the SCCW collection contracts included in the divestiture package, are required under Paragraph IV(L) to be divested at the option of the Acquirer of the Southeast Divestiture Assets. This will enable the Acquirer of the Southeast Divestiture Assets to have the option to acquire the customer contracts which it determines it can efficiently and profitably serve.

The Excluded Disposal Agreements are not required to be divested because they are not necessary for the Acquirer of the Southeast Divestiture Assets to operate the Southeast Divestiture Assets as part of a viable, ongoing MSW disposal business that can compete effectively in the Chattanooga, Tennessee area and the Fayetteville and Estill Springs, Tennessee area. The Excluded Disposal Agreements are defined in Paragraph II(R) as (1) the Landfill Disposal Services Agreement, dated December 1, 2012, between Putnam County, Tennessee and Santek Environmental, Inc., as amended by First Amendment to Landfill Disposal Services Agreement, dated October 16, 2020, and (2) the Waste Disposal Agreement, dated November 16, 2018, between Santek Environmental, LLC and Clean Harbors Environmental Services, Inc., as amended by First Amendment to Waste Disposal Agreement, dated January 26, 2021. They are not related to MSW disposal services provided in any market alleged in the Complaint, and, therefore, are excluded from the assets to be divested.

The collection facility located at 101 Barber Boulevard, Gardendale, Alabama 35071 is not part of the Southeast Divestiture Assets because the Acquirer of the Southeast Divestiture Assets will acquire a collection facility located 140 Goodrich Drive, Birmingham, Alabama 35217 from which it can competitively run the acquired Routes in the Birmingham, Alabama area.

The proposed Final Judgment contains several provisions to facilitate the transition of the Southeast Divestiture Assets to the Acquirer of the Southeast Divestiture Assets. First, Paragraph IV(P) of the proposed Final Judgement requires Defendants, at the option of the Acquirer of the Southeast Divestiture Assets, to enter into an agreement to provide a maintenance bay, outdoor parking for six trucks and empty container storage, and an interior office at Republic's collection facility in Birmingham, Alabama. This provision is intended to give the Acquirer of the Southeast Divestiture Assets a location from which it can temporarily run the acquired Routes in the Birmingham, Alabama area while it sets up its own maintenance bay and interior offices at the collection facility it is acquiring.

Second, Paragraph IV(N) of the proposed Final Judgment requires Defendants to provide certain transition services to maintain the viability and competitiveness of the Southeast Divestiture Assets during the transition to the Acquirer of the Southeast Divestiture Assets. Paragraph IV(N) of the proposed Final Judgment requires Defendants, at the option of the Acquirer of the Southeast Divestiture Assets, to enter into a transition services agreement for back office, human resources, accounting, employee health and safety, telephone, and information technology services and support for the Southeast Divestiture Assets for a period of up to three months. The Acquirer of the Southeast Divestiture Assets may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon 30 days' written notice to Republic. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional three months and that any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States in its sole discretion. Paragraph IV(N) also provides that employees of Defendants tasked with supporting this agreement must not share any competitively sensitive information of the Acquirer of the Southeast Divestiture Assets with any other employee of Defendants.

Third, Paragraph IV(O) of the proposed Final Judgment requires Defendants, at the option of the Acquirer of the Southeast Divestiture Assets, to enter into a contract to provide rights to landfill disposal at Republic's Pineview Landfill and Santek's Mt. Olive Landfill for a period of up to three years. The proposed Final Judgment also requires Defendants to operate gates, side houses, and disposal areas for the benefit of the Acquirer of the Southeast Divestiture Assets under terms and conditions that are no less favorable than those provided to Defendants' own vehicles. The Acquirer of the Southeast Divestiture Assets may terminate the landfill disposal contract without cost or penalty at any time upon 30 days' written notice to Republic. This provision is intended to give the Acquirer of the Southeast Divestiture Assets an immediate and efficient outlet for the waste that it will collect on the Routes in the Birmingham, Alabama area. This will allow the Acquirer of the Southeast Divestiture Assets to operate cost competitively as soon as it acquires the Routes rather than face a delay in needing to negotiate with disposal facilities in the region.

The proposed Final Judgment also contains provisions intended to facilitate efforts by the Acquirer of the Southeast Divestiture Assets to hire certain employees. Specifically, Paragraph IV(I) of the proposed Final Judgment requires Defendants to provide the Acquirer of the Southeast Divestiture Assets, the United States,

and the State of Alabama with organization charts and information relating to these employees and to make them available for interviews. It also provides that Defendants must not interfere with any negotiations by the Acquirer of the Southeast Divestiture Assets to hire these employees. In addition, for employees who elect employment with the Acquirer of the Southeast Divestiture Assets, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all other compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that those employees otherwise would have been provided had those employees continued employment with Defendants, including but not limited to any retention bonuses or payments. This paragraph further provides that the Defendants may not solicit to hire any employees who elect employment with the Acquirer of the Southeast Divestiture Assets, unless that individual is terminated or laid off by the Acquirer of the Southeast Divestiture Assets or the Acquirer of the Southeast Divestiture Assets agrees in writing that the Defendants may solicit or hire that individual. The non-solicitation period runs for 12 months from the date of the divestiture. This paragraph does not prohibit Defendants from advertising employment openings using general solicitations or advertisements and rehiring employees who apply for a position through a general solicitation or advertisement.

B. Texas Divestiture Assets

Paragraph V(A) of the proposed Final Judgment requires Defendants, within 30 days after the entry of the Stipulation and Order by the Court, to divest the Texas Divestiture Assets to Waste Connections, Inc. (through its subsidiary Waste Connections of Texas, LLC), or an alternative acquirer acceptable to the United States. The Texas Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that the Texas Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing SCCW collection business that can compete effectively in Eastern Montgomery County, Texas. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the Acquirer.

The Texas Divestiture Assets are defined as all tangible and intangible assets relating to or used in connection with the SCCW collection assets identified in Paragraphs II(L)(1) and II(L)(2) of the proposed Final Judgment. The Texas Divestiture Assets include two Routes and all intangible and tangible assets related to or used in connection with the Routes except for the collection facility located at 701 US Hwy 59 South, Cleveland Texas, 77327. The collection facility located at 701 US Hwy 59 South, Cleveland Texas, 77327 is not part of the Texas Divestiture Assets because, as with Waste Connections, any acquirer should already operate a collection facility in the Eastern Montgomery, County area into which it can efficiently integrate the two Routes and from which it can compete.

Paragraph V(J) of the proposed Final Judgment facilitates the transfer of customers and other contractual relationships to the Acquirer of the Texas Divestiture Assets. Defendants must transfer all contracts, agreements, and relationships to the Acquirer and must make best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting or other transfer.

Paragraph IV(N) of the proposed Final Judgment requires Defendants to provide certain transition services to maintain the viability and competitiveness of the Texas Divestiture Assets during the transition to the Acquirer of the Texas Divestiture Assets. Paragraph V(L) of the proposed Final Judgment requires Defendants, at the Acquirer of the Texas Divestiture Assets' option, to enter into a transition services agreement for back office, human resources, accounting, employee health and safety, telephone, and information technology services and support for the Texas Divestiture Assets for a period of up to six months. The Acquirer of the Texas Divestiture Assets may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon 30 days' written notice to Republic. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional six months and that any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States in its sole discretion. Paragraph IV(N) also provides that employees of Defendants tasked with supporting this agreement must not share any competitively sensitive information of the Acquirer of the Texas Divestiture Assets with any other employee of Defendants.

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer of the Southeast Divestiture Assets' efforts to hire certain employees. Paragraph V(H) of the proposed Final Judgment requires Defendants to provide the Acquirer of the Texas Divestiture Assets and the United States with organization charts and information relating to these employees and to make them available for interviews. It also provides that Defendants must not interfere with any negotiations by the Acquirer of the Texas Divestiture Assets to hire these employees. In addition, for employees who elect employment with the Acquirer of the Texas Divestiture Assets, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all other compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that those employees otherwise would have been provided had those employees continued employment with Defendants, including but not limited to any retention bonuses or payments. This paragraph further provides that the Defendants may not solicit to hire any employees who elect employment with the Acquirer of the Texas Divestiture Assets, unless that individual is terminated or laid off by the Acquirer of the Texas Divestiture Assets or the Acquirer of the Texas Divestiture Assets agrees in writing that the Defendants may solicit or hire that individual. The non-solicitation period runs for 12 months from the date of the divestiture. This paragraph does not prohibit Defendants from advertising employment openings using general solicitations or advertisements and rehiring employees who apply for a position through a general solicitation or advertisement.

C. Divestiture Trustee

If Defendants do not accomplish the divestiture(s) within the periods prescribed in Sections IV and V of the proposed Final Judgment, Section VI of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants must pay all costs and expenses of the trustee. The divestiture trustee's commission must be structured so as to provide an incentive for the trustee based on the price and terms of the divestiture(s) and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment

becomes effective, the trustee must provide monthly reports to the Plaintiffs setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within six months of the divestiture trustee's appointment, the United States may make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment.

D. Other Provisions

Section XII of the proposed Final Judgment requires Defendants to notify the United States and, if any of the assets or interests are located in Alabama, to the State of Alabama, in advance of acquiring, directly or indirectly (including through an asset swap agreement), in a transaction that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), any assets of or interest in any business engaged in SCCW collection or MSW disposal in a market where the Complaint alleged a violation, which are listed in Appendix A. Pursuant to the proposed Final Judgment, Defendants must notify the United States of such acquisitions as it would for a required HSR Act filing, as specified in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations. The proposed Final Judgment further provides for waiting periods and opportunities for the United States to obtain additional information analogous to the provisions of the HSR Act before such acquisitions can be consummated. The notification requirement applies when the acquired business's annual revenues from the relevant service in the market exceeded $500,000 for the 12 months preceding the proposed acquisition. It is important for the United States and the State of Alabama to receive notice of even small transactions that have the potential to reduce competition in these markets because the markets alleged in the Complaint are highly concentrated. Requiring notification of any such acquisition will permit the United States and the State of Alabama, as relevant, to assess the competitive effects of that acquisition before it is consummated and, if necessary, seek to enjoin the transaction.

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XV(A) provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XV(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XV(C) provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XV(C) provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XV(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XVI of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Plaintiffs

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 neither impairs nor assists 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 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**, 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 U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. 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

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Republic's acquisition of Santek. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the provision of SCCW collection and MSW disposal in each of the geographic markets alleged in the Complaint. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

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

Under the Clayton Act and APPA, proposed Final Judgments or ''consent decrees'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

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

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final 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 mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[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.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

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 U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he '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.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added 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); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first 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 Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

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 2, 2021

Respectfully submitted,

For Plaintiff United States of America:

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Appendix A: Areas for Which the Notice Provision in Paragraph XII(A) of the Proposed Final Judgment Applies

Geographic market	Counties within geographic market	Relevant service
Birmingham, Alabama	Jefferson and Shelby Counties	SCCW Collection.
Chattanooga, Tennessee and North Georgia.	Hamilton, Marion, Rhea, and Sequatchie Counties in Tennessee; and Catoosa, Chattooga, Dade, Gordon, Murray, and Walker Counties in Georgia.	MSW Disposal and SCCW Collection.
Eastern Montgomery County, Texas	Montgomery County (limited to zip codes 77357, 77365, and 77372).	SCCW Collection.
Estill Springs and Fayetteville, Tennessee.	Franklin and Lincoln Counties	MSW Disposal.
Hattiesburg, Mississippi	Forrest and Jones Counties	SCCW Collection.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on March 22, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), R Consortium, Inc. (''R Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, GlaxoSmithKline USA, Research Triangle Park, NC, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2015 (80 FR 59815).

The last notification was filed with the Department on December 28, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2021 (86 FR 2698).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The National Advanced Mobility Consortium, Inc. (Formerly Known as The Robotics Technology Consortium)

Notice is hereby given that, on March 18, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The National Advanced Mobility Consortium, Inc. (''NAMC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. On February 3, 2015, the RTC officially changed its name to NAMC. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3-Dimensional Services