UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WASTE MANAGEMENT OF GEORGIA, INC., d/b/a WASTE MANAGEMENT OF SAVANNAH, WASTE MANAGEMENT OF LOUISIANA, INC., d/b/a WASTE MANAGEMENT OF CENTRAL LOUISIANA, and WASTE MANAGEMENT, INC., Defendants.	Civil Action No.: CV496-35 Filed: 2/15/96

COMPETITIVE IMPACT STATEMENT

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

I.

NATURE AND PURPOSE OF THE PROCEEDING

On February 15, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Waste Management, Inc. ("WMI"), Waste Management of Georgia, Inc. ("WMG"), d/b/a Waste Management of Savannah, and Waste Management of Louisiana, Inc. ("WML"), d/b/a Waste Management of Central Louisiana from

using contracts that have restrictive and anticompetitive effects in the small containerized hauling service markets in Savannah and Central Louisiana, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. As alleged in the Complaint, Defendants have attempted to monopolize small containerized hauling service in the Savannah and Central Louisiana geographic markets by using and enforcing contracts containing restrictive provisions to maintain and enhance their existing market power there.

The Complaint alleges that: (1) Defendant WMG has market power in small containerized hauling service in the Savannah, GA market and Defendant WML has market power in small containerized hauling service in the Central Louisiana market; (2) Defendants, acting with specific intent, used and enforced contracts containing restrictive provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized hauling service in those markets; (3) in the context of their large market shares and market power, Defendants' use and enforcement of those contracts in the Savannah and Central Louisiana markets has had anticompetitive and exclusionary effects by significantly increasing barriers to entry facing new entrants and barriers to expansion faced by small incumbents; (4) Defendants' market power is maintained and enhanced by their use and enforcement of those contracts; and, (5) as a result, there is a dangerous probability that Defendants will achieve monopoly power in the Savannah and Central Louisiana markets.

In its Complaint, Plaintiff seeks, among other relief, a permanent injunction preventing Defendants from continuing any of the anticompetitive practices alleged to violate the Sherman Act, and thus affording fair opportunities for other firms to compete in small containerized hauling service in the Savannah and Central Louisiana markets.

The United States and Defendants also have filed a Stipulation by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of Defendants' actions in the Savannah and Central Louisiana markets. Under the proposed Final Judgment, as explained more fully below, in dealing with small-container customers in the Savannah and Central Louisiana markets, Defendants would only be permitted to enter into contracts containing significantly less restrictive terms than the contracts they now in use in those markets. Furthermore, Defendants would be prohibited from enforcing provisions in existing contracts that are inconsistent with the Final Judgment.

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

II.

DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

Waste Management, Inc. ("WMI"), a subsidiary of WMX Technologies, Inc., is the world's largest company engaged in the solid waste hauling and disposal business, with operations throughout the United States. WMI had total 1994 revenues of approximately $5.8 billion.

Waste Management of Georgia, Inc. ("WMG"), d/b/a Waste Management of Savannah, is a subsidiary of WMI with its principal offices in Savannah, GA. It is the largest solid waste hauling and disposal company in the Savannah market. WMG had revenues of over $14 million in its 1994 fiscal year.

Waste Management of Louisiana, Inc. ("WML"), d/b/a Waste Management of Central Louisiana, is also a subsidiary of WMI. It has offices in Alexandria, LA and Natchitoches, LA. It is the largest solid waste hauling and disposal company in the Central Louisiana market. WML had revenues over $3 million in its 1994 fiscal year.

A. The Solid Waste Hauling Industry

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

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than do residential customers. Waste generated by commercial customers is generally placed in metal containers of two to ten cubic yards provided by their hauling company. In the markets at issue, two to ten cubic yard containers are called "small containers." Small containers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Service to commercial customers that use small containers is called "small containerized hauling service."

Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags, trash cans, or small plastic containers at curbside.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste

into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash similar to the waste of commercial customers, but in much greater quantities; it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

B. Relevant Product Market

The relevant product market is small containerized hauling service. There are no practical substitutes for this service. Small containerized hauling service customers will not generally switch to noncontainerized service in the event of a price increase, because it is too impractical and more costly for those customers to bag and carry their volume of trash to the curb for hand pick-up. Similarly, roll-off service is much too costly and the container takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of compactible solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

C. Relevant Geographic Markets

The relevant geographic markets are the Savannah market and the Central Louisiana market. Small containerized solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances from customers without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

D. Defendants' Attempt to Monopolize

Defendant WMG has market power in small containerized hauling service in the Savannah market. WMG has maintained a very high market share since at least 1991--consistently in excess of 60 percent.

Defendant WML has market power in small containerized hauling service in the Central Louisiana market. WML has maintained a very high market share since at least 1988--consistently in excess of 60 percent.

There are substantial barriers to entry and to expansion into the small containerized hauling markets in Savannah and in Central Louisiana. A new entrant or small incumbent hauler must be able to achieve minimum efficient scale to be competitive.

First, it must be able to generate enough revenues to cover significant fixed costs and overhead.

Second, a new entrant or small incumbent hauler must be able to obtain enough customers to use its trucks efficiently. For example, it is not efficient to use a truck half a day because the firm doesn't have enough customers to fill up the truck.

Third, a new entrant or small incumbent hauler needs to obtain customers that are close together on its routes (called "route density"). Having customers close together enables a company to pick up more waste in less time (and generate more revenues in less time). The better a firm's route density, the lower its operating costs.

Until a firm overcomes these barriers, the new entrant or small incumbent will have higher operating costs than Defendants in the relevant geographic markets, may not operate at a profit, and will be unable effectively to constrain pricing by Defendants in those markets.

Defendant WMG in the Savannah market and Defendant WML in the Central Louisiana market have entered into written contracts with the vast majority of their small containerized hauling customers. Many of these contracts contain terms that, when taken together in the relevant markets where Defendants have market power, make it more difficult and costly for customers to switch to a competitor of Defendants and allows Defendants to bid to retain customers approached by a competitor.

The contracts enhance and maintain Defendants' market power in the Savannah and Central Louisiana markets by significantly raising the cost and time required by a new entrant or small incumbent firm to build its customer base and obtain efficient scale and route density. Therefore, Defendants' use and enforcement of these contracts in the Savannah and Central Louisiana markets raise barriers to entry and expansion in those markets. Those contract terms are:

a. a provision giving Defendants the exclusive right to collect and dispose of all the customers' solid waste and recyclables;

b. an initial term of three years;

c. a renewal term of three years that automatically renews unless the customer sends Defendants a written notice of cancellation by certified mail more than 60 days from the end of the initial or renewal term;

d. a term that requires a customer that terminates the contract at any other time to pay Defendants, as liquidated damages, its most recent monthly charge times six (if the remaining term is six or more months) or its most recent monthly charge times the number of months remaining under the contract (if the remaining term is less than six months); and

e. a "right to compete" clause that requires the customer to give Defendants notice of any offer by or to a hauling competitor or requires the customer to give Defendants a

reasonable opportunity to respond to such an offer for any period not covered by the contract.

The appearance and format of the contracts also enhances Defendants' ability to use the contracts to maintain their market power in these markets. The provisions that make it difficult for a customer to switch to a competing hauler are not obvious to customers in the relevant markets. The document is not labeled "Contract" so its legally binding nature is not always apparent to the customer. Also, all the restrictive provisions mentioned above are in small print on the back of the document.

Defendants' use and enforcement of the contracts described above in the Savannah and Central Louisiana markets have raised the barriers already faced by new entrants and small existing firms in those markets. Defendants' use and enforcement of the contracts has reduced the likelihood that customers will switch to a Defendant's competitor. Given Defendants' market power, this has made it more difficult for competitors to achieve efficient scale, obtain sufficient customers to use their trucks efficiently, and develop sufficient route density to be profitable and to constrain Defendants' pricing in those markets.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment will end the unlawful practices currently used by Defendants to perpetuate and enhance their market power in the Savannah and Central Louisiana markets. It

requires Defendants to offer less restrictive contracts to small containerized hauling customers in the Savannah and Central Louisiana markets.[1/]

In particular, Paragraphs IV(A) and (B) prohibit Defendants from entering into contracts containing the type of restrictive terms described above. Paragraphs IV(C), (D), (E), and (F) are designed to bring existing contracts into compliance with the proposed Final Judgment on an expeditious basis.

A. Prohibition of Contract Terms and Formats

The contracts used most frequently by Defendants in the relevant markets have an initial term of three years and renew automatically and perpetually for additional three-year terms unless cancelled by the customer. In these markets, given that the Defendants have market power and a vast majority of their existing customers are subject to such contracts, the long initial term and long renewal terms prevent new entrants and small incumbents, no matter how competitive, from quickly obtaining enough customers that are close together to be profitable. Shortening the initial term and the renewal term will allow competitors to compete for more of the customer base each year and, if they compete effectively, to obtain efficient

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[1] The proposed Final Judgment applies to all contracts entered into by Defendants with customers for service locations in the relevant markets except contracts described in Paragraph IV(G). Contracts awarded to Defendants by municipal or government entities as a result of a formal request for bids or a formal request for proposals need not contain the provisions dictated by the proposed Final Judgment. These contracts were excluded from the decree to assure that competition for such bids would not be adversely affected by preventing Defendants from bidding.

scale and route density more quickly. This, in turn, will enhance competition in the relevant markets and will help offset Defendants' market power.

Paragraph IV(A)(1) prohibits Defendants from using contracts for service locations in the Savannah and Central Louisiana markets that have an initial term longer than two years, except under certain very limited circumstances.

A contract with an initial term in excess of two years in the relevant markets is permitted, under limited circumstances, pursuant to Paragraph IV(B) of the proposed Final Judgment, but the contracts must otherwise conform to the Final Judgment. The United States is aware that some customers, for valid business reasons such as long-term price assurance, want contracts with an initial term longer than two years. Paragraph IV(B) is intended to permit customers who want them to have such contracts, while ensuring that customers who have not made such a choice do not, nevertheless, find themselves with long contracts. Under Paragraph IV(B)(1), Defendants may sign a contract of longer than two years with a customer, but only if the customer has been offered the two year contract and has acknowledged, in writing, that this offer was made.[2/] Even if the customer signs a contract with an initial term longer than two years, the customer retains the right to terminate that contract at the end of the

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[2] The United States envisions that the customer's written acknowledgment that the two year contract was offered, but declined, by the customer could be made by having the customer check an appropriate box on the face of the contract near the customer's signature, or by some similar mechanism.

first 2 years, without payment of any liquidated damages, pursuant to Paragraph IV(B)(2). Paragraph IV(B) was included to give Defendants the ability to contract with customers who truly want a longer term, for the United States anticipates that contracts with initial terms longer than two years will be the exception, not the rule. To assure such an outcome, Paragraph IV(B)(4) limits the number of service locations subject to such contracts in either the Savannah or Central Louisiana markets to no more than 25 percent of the total number of small containerized solid waste hauling service locations in each relevant market.

Paragraph IV(A)(2) prohibits Defendants from signing a contract with a renewal term longer than one year in length, down from the three-year renewal term used as a standard in the Savannah and Central Louisiana markets.

Paragraph IV(A)(3) increases the period of time that a customer may notify Defendants of its intention not to renew the contract from a period ending 60 days before the end of any initial or renewal term to a period ending 30 days before the end of any such term. This allows the customer to make a decision concerning renewal closer to the end of the contract term. A customer is more likely to consider whether or not it wants its existing contract renewed the closer that customer is to the end of the contract term. Paragraph IV(A)(3) assures that a customer will be able to choose not to renew its contract up to 30 days from the end of the contract term. Paragraph IV(A)(3) also

eliminates the requirement that a customer give its nonrenewal notice in writing and send it to Defendants by certified mail. A telephone call or letter is sufficient under the proposed Final Judgment. These changes in the notification provisions make it easier for the customer not to renew within the terms of the contract. This, in turn, enhances customer choice and enables a new entrant or small incumbent to compete for more customers.

A liquidated damages provision is intended to allow a seller to recover otherwise unrecoverable costs where the amount of the damage resulting from a breach of contract is difficult to determine. Defendants do incur some unrecoverable costs, including sales costs, in contracting with customers for small containerized solid waste hauling services. The contract currently most widely used by Defendants in the relevant markets contains the following liquidated damages provision for early termination: the customer must pay six times its prior monthly charge unless the contract has a remaining term of less than six months, in which case the customer pays its prior monthly charge times the number of months remaining in its contract term. If this case went to trial, the United States believes it could prove that these liquidated damages far surpass the contracting costs the Defendants incur, and that, in the relevant markets where Defendants have market power, Defendants have threatened to enforce such liquidated damages provisions with the effect that customers did not switch to new entrants and small incumbents when they desired to do so. In the presence of market power, the

threat of enforcing large liquidated damages provisions can deter sufficient customers from switching to a competitor and harm competition.

Paragraphs IV(A)(4) and (5) reduce the amount of liquidated damages Defendants can collect from a customer. The liquidated damages Defendants may collect from a customer in the relevant markets during the first year of the initial term of a customer's contract are reduced to the greater of three times the customer's prior monthly charge or average monthly charge over the prior six months. A firm that has been a customer of a Defendant for a continuous period in excess of one year can be required to pay Defendants no more than two times the greater of the customer's prior monthly charge or average monthly charge over the prior six months. The changes made in the liquidated damages provisions make it less expensive (and therefore more likely) that a customer can switch to a competing hauler should it choose to do so during the contract term. Defendants have incurred costs to sign small containerized solid waste hauling customers to contracts. However, as customers pay their monthly bills over time, the unrecovered amount of those costs decreases. That fact is reflected in the proposed Final Judgment by the reduction of the liquidated damages Defendants may collect once a firm has been Defendants' customer for more than one year.

Paragraph IV(A)(6) prohibits Defendants from including a "right to compete" clause in their contracts in the relevant markets. That clause requires a customer to give Defendants

notice of any offer by or to another solid waste hauling firm or requires the customer to give Defendants a reasonable opportunity to respond to such an offer for any period not covered by the contract. Defendants currently use such a clause in the vast majority of contracts in use in the Savannah and Central Louisiana markets.[3/] Such a clause enables a firm with market power easily to deny a sufficient customer base to new entrants or small incumbents because the customer must notify it of the terms of offers from competitors before the competitor obtains a single customer's business. It is a simple matter for the dominant firm to match or beat the competitor's price and induce the customer not to switch to the competitor. Furthermore, it allows the dominant firm to target price reductions only to those customers approached by a competitor without dropping prices across the board. The existence of this clause reduces a new entrant's expected profitability for luring a customer away from Defendants. It has the effect of retarding entry. The Final Judgment prohibits the use of this provision in the relevant markets.

The contracts predominantly used by Defendants in the relevant markets currently give Defendants the exclusive right to perform all of a customer's solid waste hauling services and

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[3] The clause reads: "RIGHT TO COMPETE. Customer grants to Contractor the right to compete with any offer which Customer receives (or intends to make) relating to the provision of nonhazardous waste collection and disposal services upon the termination of this Agreement for any reason, and agrees to give Contractor written notice of any such offer and a reasonable opportunity to respond to it."

recycling, just because the customer has signed a contract for small containerized solid waste hauling service. Paragraph IV(A)(8) of the proposed Final Judgment prohibits this provision in the relevant markets. Instead, it provides that Defendants may perform only those services a customer selects. Defendants may perform all types of solid waste hauling services and recycling for a customer only if the customer affirmatively chooses to have Defendants do so by so stating on the front of the contract.[4/] The United States does not intend this provision to prohibit Defendants from requiring that it be the exclusive supplier of any one type of service for which it contracts with a customer. For example, if a customer contracts with Defendants to perform small containerized solid waste hauling service at a specific service location, Defendants may require that it be the exclusive supplier for that service at that location.

Paragraph IV(A)(7) of the proposed Final Judgment also requires Defendant to change the appearance and format of its contracts in the relevant markets. If this case went to trial, evidence from customers in those markets would show that some of them were not aware they had signed legally binding documents. Therefore, the proposed Final Judgment requires that the document be labeled "SERVICE CONTRACT" in large letters. Furthermore, evidence from customers in the relevant markets would show that

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[4] The United States anticipates that the customer should be able to affirmatively indicate its choice of service types by checking a box, by writing in the type of service it wants on the front of the contract, or by some similar mechanism.

the contractual provisions that enable a firm with market power to restrict customers from switching to a competitor are in very small print on the back of the document. The proposed Final Judgment requires that the contracts used in the relevant markets be easily readable in formatting and type-face.

B. Transition Rules

In the Stipulation consenting to the entry of the proposed Final Judgment, Defendants agreed to abide by the provisions of the proposed Final Judgment immediately upon the filing of the Complaint, i.e., as of February 15, 1996. Among other things, the transition provisions described herein will require Defendants to abide by the foregoing limitations and prohibitions when entering into any contracts with new small containerized hauling customers after February 15, 1996. Certain additional provisions of the proposed Final Judgment also apply to existing customer contracts that are inconsistent with the proposed Final Judgment's requirements for new customer contracts.

Under Paragraph IV(C), Defendants must offer contracts that conform with Paragraphs IV(A) or (B) of the proposed Final Judgment to all new customers with service locations in the Savannah and Central Louisiana markets beginning today, the date of the filing of the executed Stipulation.

Under Paragraph IV(D), within 30 days of the entry of the proposed Final Judgment, Defendants must notify existing customers in the Savannah and Central Louisiana markets who have

contracts with an initial term longer than two years and do not otherwise comply with the proposed Final Judgment of their right to sign a new contract complying with the proposed Final Judgment. These notices must also inform any customers choosing to retain their existing contracts that no provisions inconsistent with the proposed Final Judgment will be enforced against them. With regard to municipal and government entities, Defendants are not required to notify those entities with nonconforming contracts that were awarded on the basis of a formal request for bids or a formal request for proposals issued by the customer.

Paragraph IV(E) requires Defendants to give an additional notice in the form of a reminder to any customer subject to a nonconforming contract that enters a renewal term 120 days or more after the entry of the proposed Final Judgment. Defendants must send the reminder to each such customer ninety (90) days or more prior to the effective date of the renewal term. The reminder informs the customer that it must cancel its contract by a certain date or the contract will renew. It also reminds the customer that it may enter into a new contract conforming to the proposed Final Judgment on request and that terms in the customer's existing contract that are inconsistent with the new form will not be enforced against it. Defendants may send this reminder as part of a monthly bill, as long as it appears on a separate page and in large print so that it will be noticeable.

Under Paragraph IV(F), Defendants may not enforce contract provisions inconsistent with the Final Judgment upon entry of the Final Judgment by the Court.

Under Paragraphs IV(G) and (H), the proposed Final Judgment makes clear that contracts awarded by municipal or government entities on the basis of a formal request for bids or proposals issued by the customer need not comply with Paragraphs IV(A)-(F). Moreover, nothing in the proposed Final Judgment requires Defendants to do business with any customer.

Paragraphs IV(C)-(F) further two consistent goals. Opportunities for competition in small containerized hauling service in the relevant markets will be fostered by a rapid end to the provisions that significantly raise entry barriers in the relevant markets. At the same time, the transition rules avoid creating any unnecessary disruption of the customers' trash hauling service that might result from voiding all nonconforming contracts. Existing customers are not required to terminate or amend their existing contracts with Defendants; the choice belongs to the customer. However, Defendants may not enforce against any customer any provision inconsistent with the proposed Final Judgment.

To ensure that existing customers learn of their rights under the proposed Final Judgment, Paragraphs IV(D) and (E) require Defendants to notify customers of their rights under the Final Judgment and remind them of their right to terminate their existing contract or to sign a new contract form.

C. Enforcement

Section V of the proposed Final Judgment establishes standards and procedures by which the Department of Justice may obtain access to documents and information from Defendants related to their compliance with the proposed Final Judgment.

D. Duration

Section VI of the proposed Final Judgment provides that the Final Judgment will expire on the tenth year after its entry. Jurisdiction will be retained by the Court to conduct further proceedings relating to the Final Judgment, as specified in Section VI.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against 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 sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Anthony V. Nanni
Chief, Litigation I Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530

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

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, litigation against Defendants. The United States could have brought suit and sought preliminary and permanent injunctions against the use and enforcement of these contracts by Defendants in the relevant markets. The United States is satisfied, however, that the relief outlined in the proposed Final Judgment will eliminate Defendants' ability to use restrictive and anticompetitive contracts to maintain and enhance their market power in the relevant markets. The United States believes that these contracts will no longer inhibit the ability of a new entrant to compete with the Defendants. The relief sought will allow new entry and expansion by existing firms in those markets.

VII.

STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine

whether entry of the proposed Final Judgment "is in the public interest." In making that determination,

the court may consider--

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448, 1462 (D.C. Cir. 1995). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[5/] Rather,

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[5] 119 Cong. Rec. 24598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not (continued...)

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

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

The Court's inquiry, under the APPA, is whether the settlement is "within the reaches of the public interest."[6] The proposed Final Judgment enjoins the Defendants' continued use of overly restrictive contract terms and opens local markets to increased competition, thus effectively furthering the public interest.

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[5] (...continued)
invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[6] United States v. Bechtel, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S 1083 (1981); (citations omitted)(emphasis added); see United States v. BNS, Inc., 858 F.2d 456, 463 (9th Cir. 1988); United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); United States v. Gillette Co., 406 F. Supp. at 716; see also United States v. American Cyanamid Co., 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984); United States v. American Tel. and Tel Co., 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) quoting United States v. Gillette Co., supra, 406 F. Supp. at 716; United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky 1985).

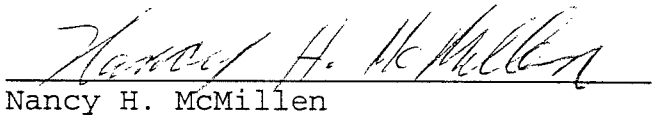
VIII.

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: February 15, 1996

Respectfully submitted,



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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing has been served upon Waste Management, Inc., Waste Management of Georgia, Inc., and Waste Management of Louisiana, Inc., by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this 15th day of February, 1996.

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