

increase their charges to haulers of MSW without losing significant sales to any other firms. Thus, for purposes of antitrust analysis, the disposal of MSW constitutes a line of commerce, or relevant service, for purposes of analyzing the transaction.

The disposal of MSW generally occurs in localized markets. The Complaint alleges that the Bergen and Passaic Counties, New Jersey disposal area (which includes Bergen and Passaic Counties and areas within 10 miles of these counties) constitutes a section of the country, or a relevant geographic market, for purposes of assessing the competitive efforts of the transaction. Due to the high costs of transporting MSW and the substantial travel time to other disposal facilities based on distance, natural barriers, and congested roadways, virtually all of the MSW generated in Bergen and Passaic Counties, New Jersey is disposed of in transfer stations in the Bergen and Passaic Counties, New Jersey disposal area. Firms that compete in the disposal of MSW in the Bergen and Passaic Counties, New Jersey disposal area can profitably increase their charges for MSW disposal without losing significant sales to more distant disposal sites.

The Complaint also alleges that the Tulsa and Muskogee, Oklahoma area (which includes Muskogee, Rogers, Tulsa, and Wagoner Counties, Oklahoma) constitutes a section of the country, or a relevant geographic market, for purposes of assessing the competitive effects of the transaction. Because of transportation costs and travel time to more distant facilities, virtually all of the MSW generated in the Tulsa and Muskogee, Oklahoma area is disposed of in landfills within roughly 25 miles of Tulsa or Muskogee, Oklahoma. Firms that compete in the disposal of MSW in the Tulsa and Muskogee, Oklahoma area can profitably increase their charges for MSW disposal without losing significant sales to more distant disposal sites.

There are significant barriers to entry in MSW disposal. Obtaining a permit to construct a new disposal facility or expand an existing one is a costly and time-consuming process that typically takes many years to conclude. Local public opposition often increases the time and uncertainty of successfully permitting a facility. In the Bergen and Passaic Counties, New Jersey disposal area and the Tulsa and Muskogee, Oklahoma area, entry by a new MSW disposal facility would be costly and time-consuming, and unlikely to prevent market incumbents from

significantly raising prices for the disposal of MSW following the acquisition.

b. Anticompetitive Effects in the Disposal of Municipal Solid Waste.

(1) *Bergen and Passaic Counties, New Jersey Disposal Area.* The proposed acquisition would reduce from four to three the number of significant competitors for the disposal of MSW in the Bergen and Passaic Counties, New Jersey disposal area. Defendants Waste Management and Allied operate five of the nine transfer stations in this market and collectively control over 55 percent of the available disposal capacity for Bergen and Passaic Counties. Annual revenue from disposal of waste in Bergen and Passaic Counties, New Jersey is over \$50 million.

(2) *Tulsa and Muskogee, Oklahoma Area.* In the Tulsa and Muskogee, Oklahoma area, the acquisition would reduce from three to two the number of significant firms competing to dispose of MSW. There are currently four owners of the six landfills that service the Tulsa and Muskogee, Oklahoma area. Two of the six landfills are expected to close in the near future, leaving four landfills owned by three companies to service haulers in the area. After the acquisition, Waste Management would own three of the four remaining landfills in this area.

The Complaint alleges that a combination of Waste Management and Allied in the Bergen and Passaic Counties, New Jersey disposal area and the Tulsa and Muskogee, Oklahoma area would remove a significant competitor in the market for the disposal of MSW. In each of these markets, the resulting increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely will result in higher prices for the disposal of MSW.

III. Explanation of the Proposed Final Judgment

A. Small Container Commercial Waste Collection Service

The divestiture and contract-revision requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial waste collection services in the markets identified in the Complaint by establishing a new, independent, and economically viable competitor in each of those markets and, in some areas, by also reducing the barriers to entry created by the contracts currently used by Waste Management. the proposed Final Judgment requires Waste

Management, within 90 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business or businesses, small container commercial waste collection assets (e.g., routes, trucks, containers, and customer lists) in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; and Myrtle Beach, South Carolina. On or before January 1, 2005, the proposed Final Judgment also requires Waste Management to alter the contracts it uses with its existing and new small container commercial waste customers in the areas of Myrtle Beach, South Carolina and Augusta, Georgia. The proposed Final Judgment further requires Defendants, within 90 days after approval by the New Jersey Department of Environmental Protection of Waste Management's request to acquire assets in New Jersey, to divest certain waste-hauling and disposal assets located in New Jersey and New York. The assets must be divested in such a way as to satisfy the United States that the operations can and will be operated by the purchaser or purchasers as a viable, ongoing business or businesses that can compete effectively in each relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In the event that Defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Waste Management will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court, United States, and New Jersey as appropriate, setting forth his or her efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee, United States, and New Jersey as appropriate, will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.