

- proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Release and Receipt of Imported Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6A (5330.3C). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, Not-for-profit institutions. *Abstract:* The data provided by this information collection request is used by ATF to determine if articles imported meet the statutory and regulatory criteria for importation and if the articles shown on the permit application have been actually imported.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 20,000 respondents, who will complete the form within approximately 24 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 8,000 total burden hours associated with this collection.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010-1869 Filed 1-29-10; 8:45 am]

BILLING CODE 4410-FY-P

#### DEPARTMENT OF JUSTICE

##### Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0087]

##### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day notice of information collection under review: eForm 6 access request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 228, page 62597 on November 30, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* eForm 6 Access Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5013.3. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* none. *Abstract:*

Respondents must complete the eForm 6 Access Request form in order to receive a user ID and password to obtain access to ATF's eForm 6 System. The information is used by the Government to verify the identity of the end users prior to issuing passwords.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 500 respondents, who will complete the form within approximately 18 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 150 total burden hours associated with this collection.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010-1868 Filed 1-29-10; 8:45 am]

BILLING CODE 4410-FY-P

#### DEPARTMENT OF JUSTICE

##### Antitrust Division

##### United States, et al. v. Stericycle, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed

Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States, et al. v. Stericycle, Inc., et al.*, Civil Action No. 1:09-cv-02268. On November 30, 2009, the United States and the States of Missouri and Nebraska filed a Complaint alleging that the proposed acquisition by Stericycle, Inc. of MedServe, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Stericycle to divest all MedServe assets used in the provision of infectious waste collection and treatment services for Large Quantity Generator ("LQG") customers in the states of Kansas, Missouri, Nebraska, and Oklahoma. These assets include an autoclave in

Newton, Kansas; transfer stations in Kansas City, Kansas; Oklahoma City, Oklahoma; Omaha, Nebraska; and Booneville, Missouri; LQG customer contracts associated with these facilities; and certain tangible and intangible assets. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division

upon request and payment of a copying fee set by Department of Justice regulations.

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

**J. Robert Kramer II,**

*Director of Operations and Civil Enforcement.*

**United States District Court for the District of Columbia**

UNITED STATES OF AMERICA, Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 8700, Washington, DC 20530; STATE OF MISSOURI, Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102; and STATE OF NEBRASKA, Office of the Attorney General, 2115 State Capitol Building, Lincoln, Nebraska 68509-8920, *Plaintiffs*, v. STERICYCLE, INC., 28161 North Keith Drive, Lake Forest, Illinois 60045; ATMW ACQUISITION CORP., 28161 North Keith Drive, Lake Forest, Illinois 60045; MEDSERVE, INC., 6575 West Loop South, Suite 145, Bellaire, Texas, 77401; and AVISTA CAPITAL PARTNERS, L.P., 6575 West Loop South, Suite 145, Bellaire, Texas 77401, *Defendants*.

CASE NO.: 1:09-cv-02268; JUDGE: John D. Bates; DECK TYPE: Antitrust; DATE STAMP: November 30, 2009.

## Complaint

Plaintiff, the United States of America ("United States"), acting under the direction of the Attorney General of the United States, and plaintiffs, the State of Missouri and the State of Nebraska, acting under the direction of their respective Attorneys General, bring this civil antitrust action against defendants, Stericycle, Inc. and ATMW Acquisition Corp. and MedServe, Inc. and Avista Capital Partners, L.P. to enjoin Stericycle's proposed acquisition of MedServe and to obtain other equitable relief. Plaintiffs complain and allege as follows:

### I. Nature of the Action

1. Pursuant to an agreement and plan of merger dated May 9, 2009, Stericycle intends to acquire all of the voting shares of MedServe in a transaction valued at \$185 million. Defendants Stericycle and MedServe currently compete in the provision of infectious waste collection and treatment services for large quantity generator ("LQG") customers. The resulting combination would create a monopoly in the provision of infectious waste collection and treatment services for LQG customers in the states of Missouri, Nebraska, Oklahoma, and Kansas.

2. The United States, the State of Missouri, and the State of Nebraska bring this action to prevent the

proposed acquisition because it would substantially lessen competition in the provision of infectious waste collection and treatment services for LQG customers in the states of Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

### II. Jurisdiction and Venue

3. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 4 and 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The State of Missouri and the State of Nebraska bring 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 Missouri and the State of Nebraska, by and through their respective Attorneys General, or other authorized officials, bring this action in their sovereign capacities and as *parens patriae* on behalf of the citizens, general welfare, and economy of each of their states.

4. Defendants collect and treat infectious waste generated by LQG customers in the flow of interstate commerce. Defendants' activities in collecting and treating infectious waste substantially affect interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to

15 U.S.C. 22, and 28 U.S.C. 1331 and 1337.

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

### III. The Defendants

6. Defendant Stericycle, Inc. is a Delaware corporation with its principal place of business in Lake Forest, Illinois. Stericycle, a multi-national company, is the largest provider of infectious waste collection and treatment services in the United States, with operations in nearly all of the contiguous 48 states, including 46 treatment facilities and 80 transfer and collection sites. In 2008, Stericycle reported total worldwide sales of approximately \$1.1 billion, of which approximately 78 percent were generated in the United States. ATMW Acquisition Corp. is a corporation formed by Stericycle to facilitate its acquisition of MedServe. Stericycle and ATMW hereinafter are collectively referred to as Stericycle.

7. Defendant MedServe is a Delaware corporation with its principal place of business in Bellaire, Texas. MedServe is the second-largest provider of infectious waste collection and treatment services in the United States, with operations in

25 states that include eight treatment facilities and 18 transfer and collection sites. In 2008, MedServe had total revenues of about \$35.6 million. Avista Capital Partners, L.P. is an entity formed by MedServe to facilitate the acquisition of MedServe by Stericycle. MedServe and Avista hereinafter are collectively referred to as MedServe.

#### IV. Trade and Commerce

##### A. The Relevant Service Market

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

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

10. Regulated medical waste must be stored separately from other types of waste, and each type of regulated medical waste must be stored separately from the other types in specially marked and sealed containers. Collection and transport of regulated medical waste to treatment facilities must be performed by state-approved companies.

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

12. Autoclaves are the most prevalent treatment technology for infectious waste. An autoclave uses steam sterilization combined with pressure to render infectious waste non-infectious. Because autoclaving is a reliable and long-proven technology, it has become

the preferred choice for treating infectious waste.

13. The infectious waste collection and treatment services industry categorizes customers according to the amount of infectious waste they generate. LQG customers typically are hospitals, large laboratories, and other large medical facilities that generate large amounts of infectious waste. LQG customers often need collection to occur on a daily basis, or at least several times a week, and must receive continuous supplies of containers with sizeable storage capacity from their service providers.

14. LQG customers require their service providers to perform both infectious waste collection and treatment. They also require their providers to meet strict standards to ensure they have sufficient technical capability, knowledge, and financial resources. For example, an LQG customer typically requires an infectious waste collection and treatment service provider to have: (a) An adequate infrastructure to serve the customer's needs, including trucks, storage containers, transfer stations, electronic equipment capable of monitoring and tracking each type of waste, and personnel with a variety of expertise to support the infrastructure; (b) an established reputation for providing reliable and timely collection and treatment for LQG customers; (c) its own infectious waste treatment facility to minimize the number of companies that handle the waste, thereby reducing the possibility that the waste is mishandled; and (d) substantial liability insurance that meets all Federal and state regulatory requirements governing infectious waste.

15. Collection and treatment providers bid for each LQG customer's business separately, and an infectious waste collection and treatment service provider can identify the specific competitive conditions that apply to each LQG customer, including which potential competitors can serve that LQG customer. Infectious waste collection and treatment service providers for LQG customers can and do price discriminate based on an LQG customer's requirements and the number of other competitors available to provide such services.

16. A small but significant increase in the price of infectious waste collection and treatment services for LQG customers would not cause LQG customers to move sufficient volumes of infectious waste to another type of collection and treatment service so as to make such a price increase unprofitable.

17. Accordingly, the provision of infectious waste collection and treatment services for LQG customers is a line of commerce and a relevant price discrimination service market within the meaning of Section 7 of the Clayton Act.

##### B. The Relevant Geographic Market

18. The geographic market for the provision of infectious waste collection and treatment services for LQG customers is largely defined by transportation costs. Infectious waste collection and treatment companies rely on trucks to transport waste from customer sites to their treatment facilities. Transfer stations enable service providers to transfer their waste into tractor-trailers and more cost-effectively to transport their waste to treatment facilities. Typically, the greater the distance between an LQG customer's operations and the service provider's treatment or transfer facility, the less price competitive the provider is.

19. For LQG customers served by MedServe in Kansas, Missouri, Nebraska, and Oklahoma, the only competitive alternative is Stericycle. In these states, no other infectious waste collection and treatment service provider has a facility located within approximately 300 miles of Stericycle's or MedServe's facilities.

20. In the states of Kansas, Missouri, Nebraska, and Oklahoma, LQG customers would not switch to a more distant infectious waste collection and treatment service provider in sufficient numbers so as to make a small but significant increase in price unprofitable.

21. Accordingly, the states of Kansas, Missouri, Nebraska, and Oklahoma are a relevant geographic market within the meaning of Section 7 of the Clayton Act.

##### C. Anticompetitive Effects of the Acquisition

22. In the states of Kansas, Missouri, Nebraska, and Oklahoma, the market for the provision of infectious waste collection and treatment services for LQG customers is highly concentrated. Following the acquisition, Stericycle would become the monopoly provider of infectious waste collection and treatment services for LQG customers in these states.

23. Vigorous price competition between Stericycle and MedServe in the provision of infectious waste collection and treatment services has benefited LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. Stericycle and MedServe are each other's only rivals, directly competing on price and quality

of service in the provision of infectious waste collection and treatment services for LQG customers.

24. Therefore, the proposed acquisition will eliminate the competition between Stericycle and MedServe; reduce the number of providers of infectious waste collection and treatment services for LQG customers from two to one; and enable Stericycle to establish a monopoly in the provision of such services, leading to higher prices and lower quality of service for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act.

*D. Entry Into Collection and Treatment of Infectious Waste Generated by LQG Customers*

25. Successful entry into the provision of collection and treatment services for infectious waste for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would be difficult, time-consuming, and costly. A prospective provider of infectious waste collection and treatment services for LQG customers faces substantial financial and permitting requirements to build a facility and the infrastructure needed to serve LQG customers. It also must have an established reputation for handling the large amounts of infectious waste produced by LQG customers.

26. A provider of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma must establish a treatment facility that contains a treatment technology, such as an autoclave, with sufficient capacity for treating large volumes of infectious waste. In addition to the capital costs of the treatment unit, local zoning and state permits are required.

27. A provider of infectious waste collection and treatment services for LQG customers also must have an infrastructure of trucks, transfer stations, and electronic equipment capable of collecting, transporting, treating and disposing, and monitoring and tracking the infectious waste.

28. A provider of infectious waste collection and treatment services for LQG customers must develop a reputation and record of reliably collecting and treating large volumes of infectious waste in compliance with state and Federal regulations.

29. A provider of infectious waste collection and treatment services for LQG customers must have the financial capability to indemnify LQG customers for any environmental fines or accidents

resulting from the collection, transportation, and treatment of the infectious waste.

30. Obtaining the necessary permits and building an autoclave facility, establishing the infrastructure to serve LQG customers, and developing a reputation and record of service and compliance would require in excess of two years.

31. Entry into the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would not be timely, likely, or sufficient to counter anticompetitive price increases or diminished quality of service that Stericycle could impose after the proposed acquisition.

**V. Violation Alleged**

32. The United States incorporates the allegations of paragraphs 1 through 31 above.

33. Stericycle's proposed acquisition of all of MedServe's voting securities and infectious waste collection and treatment assets in the states of Kansas, Missouri, Nebraska, and Oklahoma will substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

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

a. Actual and potential competition between Stericycle and MedServe in the provision of infectious waste collection and treatment services for LQG customers in the states of Kansas, Missouri, Nebraska, and Oklahoma will be eliminated;

b. Competition generally in the provision of infectious waste collection and treatment services for LQG customers in the states of Kansas, Missouri, Nebraska, and Oklahoma will be substantially lessened; and

c. Prices for infectious waste collection and treatment services for LQG customers in the states of Kansas, Missouri, Nebraska, and Oklahoma will likely increase, and service likely will be reduced.

**VI. Requested Relief**

35. Plaintiffs request:

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

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from

consummating the proposed acquisition of MedServe by Stericycle, or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to merge the voting securities or assets of the defendants;

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

d. That plaintiffs recover the costs of this action.

Dated: November 30, 2009.

Respectfully submitted,  
For Plaintiff United States of America.

/s/

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435204.

/s/

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/s/

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/s/

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**IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF  
COLUMBIA**

UNITED STATES OF AMERICA, STATE OF MISSOURI, and STATE OF NEBRASKA, *Plaintiffs*, v. STERICYCLE, INC., ATMW ACQUISITION CORP., MEDSERVE, INC., and AVISTA CAPITAL PARTNERS, L.P., *Defendants*.

CASE NO.: 1:09-cv-02268,  
JUDGE: John D. Bates,  
DECK TYPE: Antitrust,  
DATE STAMP: November 30, 2009.

### Proposed Final Judgement

*Whereas*, plaintiffs, the United States of America, the State of Missouri, and the State of Nebraska, filed their Complaint on November 30, 2009; plaintiffs and defendants, Stericycle, Inc. and ATMW Acquisition Corp., and MedServe, Inc. and Avista Capital Partners, L.P., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of law or fact;

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

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

*And Whereas*, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

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

*Now, Therefore*, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby *Ordered, Adjudged, and Decreed*:

### I. Jurisdiction

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

### II. Definitions

As used in this Final Judgment:

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

B. "Stericycle" means defendant Stericycle, Inc., a Delaware corporation with its principal place of business in

Lake Forest, Illinois, and ATMW Acquisition Corp. (a corporation formed to facilitate the acquisition), and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

C. "MedServe" means defendant MedServe, Inc., a Delaware corporation with its principal place of business in Bellaire, Texas, and Avista Capital Partners, L.P. formed to facilitate the acquisition, and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

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

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

F. "Large Quantity Generator Customer" or "LQG Customer" means any customer that spends \$1000 or more per month on infectious waste collection and treatment services.

G. "Divestiture Assets" means:

1. The following facilities:

a. MedServe's Newton, Kansas autoclave facility, located at 1021 South Spencer Avenue, Newton, Kansas 67114;

b. MedServe's Kansas City, Kansas transfer station, located at 200 Funston Road, Suite B, Kansas City, Kansas 66115;

c. MedServe's Oklahoma City, Oklahoma transfer station, located at 8800 SW 8th Street, Oklahoma City, Oklahoma 73128;

d. MedServe's Omaha, Nebraska transfer station, located at 13824-C Plaza, Omaha, Nebraska 68144; and

e. MedServe's Booneville, Missouri transfer station, located at 680 Al Bersted Drive, Booneville, Missouri 65233;

2. All tangible assets at the MedServe facilities listed in Paragraph II(G)(1), including all research and development activities, equipment, and fixed assets,

real property (leased or owned), equipment, personal property, inventory (containers), office furniture, materials, supplies, on- or off-site warehouses or storage facilities; all licenses, permits, and authorizations issued by any governmental organization relating to the facilities; all lists of MedServe LQG customers; all MedServe LQG customer contracts, accounts, and credit records; all other records; and all trucks and other vehicles assigned to the facilities as of May 9, 2009; and

3. All intangible assets associated with the MedServe facilities listed in Paragraph II(G)(1), including, but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software (including waste monitoring software and management information systems) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to employees, customers, suppliers, agents or licensees.

### III. Applicability

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

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

### IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is

later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with the State of Missouri and the State of Nebraska. The United States, in its sole discretion, after consultation with the State of Missouri and the State of Nebraska, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

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

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

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

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

F. Defendants shall not take any action that will impede in any way the

permitting, operation or divestiture of the Divestiture Assets.

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

H. Unless the United States, after consultation with the State of Missouri and the State of Nebraska, otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall be made to a single Acquirer and shall include all the Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State of Missouri and the State of Nebraska, that the divestitures will achieve the purposes of this Final Judgment and that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business providing infectious waste collection and treatment services for LQG customers located in Kansas, Missouri, Nebraska, and Oklahoma. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

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

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

#### **V. Appointment of Trustee**

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the

Court to effect the sale of the Divestiture Assets.

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

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

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

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential

research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

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

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

#### **VI. Notice of Proposed Divestitures**

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States, the State of Missouri, and the State of Nebraska of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the

proposed divestitures 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, together with full details of the same.

B. Within fifteen (15) calendar days of receipt of such notice by the United States, the State of Missouri, and the State of Nebraska, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If the United States, after consultation with the State of Missouri and the State of Nebraska, provides written notice that it does not object, the divestitures may be consummated, subject only to defendants' limited right to object to the sale under paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

#### **VII. Notice of Future Acquisitions**

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), Stericycle, without providing advance notification to the United States, the State of Missouri, and the State of Nebraska, shall not directly or indirectly acquire, any (1) interest in any business located in Kansas, Missouri, Nebraska, and Oklahoma that is engaged in the collection and treatment of infectious waste; (2) other than in the ordinary course of business, assets located in Kansas, Missouri,

Nebraska, and Oklahoma that are used in the collection and treatment of infectious waste; or (3) capital stock or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the collection and treatment of infectious waste in Kansas, Missouri, Nebraska, or Oklahoma, where that person's annual revenues in these states from the collection and treatment of infectious waste were in excess of \$500,000.

B. Such notification shall be provided to the United States, the State of Missouri, and the State of Nebraska in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about the collection and treatment of infectious waste. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the United States make a written request for additional information, Stericycle shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

#### **VIII. Financing**

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

#### **IX. Hold Separate**

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no



action that would jeopardize the divestitures ordered by this 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 divestitures have been completed under Section IV or V, defendants shall deliver to the United States, the State of Missouri, and the State of Nebraska an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the State of Missouri and the State of Nebraska, to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

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

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

#### **XI. Compliance Inspection**

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

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

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

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

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule

26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### **XII. No Reacquisition**

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

#### **XIII. Retention of Jurisdiction**

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

#### **XIV. Expiration of Final Judgment**

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

#### **XV. Public Interest Determination**

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

Date: \_\_\_\_\_

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

\_\_\_\_\_  
United States District Judge

**United States District Court for the District of Columbia**



UNITED STATES OF AMERICA, STATE OF MISSOURI, and STATE OF NEBRASKA, *Plaintiffs*, v. STERICYCLE, INC., ATMW ACQUISITION CORP., MEDSERVE, INC., and AVISTA CAPITAL PARTNERS L.P., *Defendants*.

CASE NO.: 1:09-cv-02268,  
JUDGE: Hon. John D.  
Bates, DECK TYPE: Anti-  
trust, DATE STAMP.

## Competitive Impact Statement

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

### I. Nature and Purpose of the Proceeding

Defendant Stericycle, Inc., through ATMW Acquisition Corp., and defendant MedServe, Inc., through Avista Capital Partners, L.P., entered into a stock purchase agreement dated May 9, 2009, pursuant to which Stericycle would acquire all of the voting shares of MedServe, valued at \$185 million. The United States, and the State of Missouri and the State of Nebraska ("States"), filed a civil antitrust Complaint on November 30, 2009, seeking to enjoin the proposed acquisition. The Complaint alleged that the likely effect of the acquisition would be to substantially lessen competition in the provision of infectious waste collection and treatment services for large quantity generator ("LQG") customers in the states of Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in higher prices and reduced service for these customers of infectious waste collection and treatment services.

With the filing of the Complaint in this case, the United States and the States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, explained more fully below, Stericycle and MedServe are required within ninety (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 business, all of the MedServe infectious waste collection and treatment assets in Kansas, Missouri, Nebraska, and Oklahoma. Under the terms of the Hold Separate Stipulation and Order, Stericycle and MedServe are required to take certain steps to ensure that the assets to be divested will be preserved

and held separate from their other assets and businesses.

The United States, the 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 this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

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

#### A. The Defendants and the Proposed Transaction

Stericycle is a Delaware corporation with its principal place of business in Lake Forest, Illinois. Stericycle, a multi-national company, is the largest provider of infectious waste collection and treatment services in the United States, with operations in nearly all of the contiguous 48 states, including 46 treatment facilities and 80 transfer and collection sites. In 2008, Stericycle reported total worldwide sales of approximately \$1.1 billion, of which approximately 78 percent were generated in the United States. ATMW Acquisition Corp. is a corporation formed by Stericycle to facilitate its acquisition of MedServe.

MedServe is a Delaware corporation with its principal place of business in Bellaire, Texas. MedServe is the second-largest provider of infectious waste collection and treatment services in the United States, with operations in 25 states that include eight treatment facilities and 18 transfer and collection sites. In 2008, MedServe had total revenues of about \$35 million. Avista Capital Partners, L.P. is an entity formed by MedServe to facilitate the acquisition of MedServe by Stericycle.

The proposed transaction, as agreed to by defendants on May 9, 2009, would substantially lessen competition in the provision of infectious waste collection and treatment services for LQG customers in the states of Missouri, Nebraska, Oklahoma, and Kansas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States and the States on November 30, 2009.

#### B. The Competitive Effects of the Transaction

##### 1. Relevant Service Market: Infectious Waste Collection and Treatment Services for LQG Customers

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

State and Federal governments heavily regulate the collection and treatment of regulated medical waste. They prescribe how each type of regulated medical waste must be stored, collected, and treated. Providers of infectious waste collection and treatment services are required to be licensed by the various state and Federal regulatory agencies before they can offer such services. Regulated medical waste must be stored separately from other types of waste, and each type of regulated medical waste must be stored separately from the other types in specially marked and sealed containers. Collection and transport to treatment facilities must be performed by a state-approved company.

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

Autoclaves are the most prevalent treatment technology for infectious waste. An autoclave uses steam sterilization combined with pressure to render infectious waste non-infectious. Because autoclaving is a reliable and long-proven technology for treating infectious waste, it has become the

preferred choice for treating infectious waste.

The infectious waste collection and treatment services industry categorizes customers according to the amount of infectious waste that they generate. LQG customers typically are hospitals, large laboratories, and other large medical facilities that generate large amounts of infectious waste. LQG customers often need collection to occur on a daily basis, or at least several times a week, and must receive continuous supplies of containers with sizeable storage capacity from their service providers.

LQG customers require that their service providers perform both infectious waste collection and treatment. They also require their providers to meet strict standards to ensure they have sufficient technical capability, knowledge, and financial resources. For example, LQG customers typically require an infectious waste collection and treatment service provider to have: (a) An adequate infrastructure to serve the customer's needs, including trucks, storage containers, transfer stations, electronic equipment capable of monitoring and tracking each type of waste, and personnel with a variety of expertise to support the infrastructure; (b) an established reputation for providing reliable and timely collection and treatment for LQG customers; (c) its own infectious waste treatment facility to minimize the number of companies that handle the waste, thereby reducing the possibility that the waste is mishandled; and (d) substantial liability insurance that meets all Federal and State regulatory requirements governing infectious waste.

Collection and treatment service providers bid for each LQG customer's business separately, and an infectious waste collection and treatment service provider can identify the specific competitive conditions that apply to each LQG customer, including which potential competitors can serve that LQG customer. Infectious waste collection and treatment service providers for LQG customers can and do price discriminate based on an LQG customer's requirements and the number of competitors available to provide such services.

A small but significant increase in the price of infectious waste collection and treatment services for LQG customers would not cause LQG customers to move sufficient volumes of infectious waste to another type of collection and treatment service so as to make such a price increase unprofitable. Accordingly, the provision of infectious waste collection and treatment services

for LQG customers is a line of commerce and a relevant price discrimination service market within the meaning of Section 7 of the Clayton Act.

## 2. Relevant Geographic Market

The geographic market for the provision of infectious waste collection and treatment services for LQG customers is largely defined by transportation costs. Infectious waste collection and treatment service companies rely on trucks to transport waste from customer sites to their treatment facilities. Transfer stations enable service providers to transfer their waste into tractor-trailers and more cost-effectively transport their waste to treatment facilities. Typically, the greater the distance between an LQG customer's operations and the service provider's treatment or transfer facility, the less price competitive the provider is.

For LQG customers served by MedServe in Kansas, Missouri, Nebraska, and Oklahoma, the only competitive alternative is Stericycle. In these states, no other infectious waste collection and treatment service provider has a facility located within approximately 300 miles of Stericycle's or MedServe's facilities.

In the states of Kansas, Missouri, Nebraska, and Oklahoma, LQG customers would not switch to a more distant infectious waste collection and treatment service provider in sufficient numbers so as to make a small but significant increase in price unprofitable. Accordingly, the states of Kansas, Missouri, Nebraska, and Oklahoma are a relevant geographic market within the meaning of Section 7 of the Clayton Act.

## 3. Anticompetitive Effects of the Acquisition

In the states of Kansas, Missouri, Nebraska, and Oklahoma, the market for the provision of infectious waste collection and treatment services for LQG customers is highly concentrated. Following the acquisition, Stericycle would become the monopoly provider of infectious waste collection and treatment services for LQG customers in these states.

Vigorous price competition between Stericycle and MedServe in the provision of infectious waste collection and treatment services has benefited LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. Stericycle and MedServe are each other's only rival, directly competing on price and quality of service in the provision of infectious waste collection and treatment services for LQG customers.

Therefore, the proposed acquisition will eliminate the competition between Stericycle and MedServe; reduce the number of providers of infectious waste collection and treatment services for LQG customers from two to one; and enable Stericycle to establish a monopoly in the provision of such services, leading to higher prices and lower quality of service for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act.

Successful entry into the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would be difficult, time-consuming, and costly. A prospective provider of infectious waste collection and treatment services for LQG customers faces substantial financial and permitting requirements to build a facility and the infrastructure needed to serve LQG customers. It also must have an established reputation for handling large amounts of infectious waste produced by LQG customers. A provider of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma must establish a treatment facility that contains a treatment technology, such as an autoclave, with sufficient capacity for treating large volumes of infectious waste. In addition to the capital costs of the treatment unit, local zoning and state permits are required.

A provider of infectious waste collection and treatment services for LQG customers also must have an infrastructure of trucks, transfer stations, and electronic equipment capable of collecting, transporting, treating and disposing, and monitoring and tracking the infectious waste. A provider of infectious waste collection and treatment services for LQG customers also must develop a reputation and record of reliably collecting and treating large volumes of infectious waste in compliance with state and Federal regulations. In addition, a provider of infectious waste collection and treatment services for LQG customers must have the financial capability to indemnify LQG customers for any environmental fines or accidents resulting from the collection, transportation, and treatment of the infectious waste.

Obtaining the necessary permits and building an autoclave facility, establishing the infrastructure to serve LQG customers, and developing a reputation and record of service and compliance would require in excess of two years. Entry into the provision of

infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would not be timely, likely, or sufficient to counter anticompetitive price increases or diminished quality of service that Stericycle could impose after the proposed acquisition.

### III. Explanation of the Proposed Final Judgment

The terms of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition alleged in the Complaint. Section IV of the proposed Final Judgment requires defendants, within ninety (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 the assets currently used by MedServe in the provision of infectious waste collection and treatment services to LQG customers in Kansas, Missouri, Nebraska, and Oklahoma to an acquirer acceptable to the United States, in its sole discretion. The assets to be divested, along with associated tangible and intangible assets, are MedServe's Newton, Kansas autoclave facility and MedServe's transfer stations in Kansas City, Kansas; Oklahoma City, Oklahoma; Omaha, Nebraska; and Booneville, Missouri. These assets comprise all of the assets used by MedServe in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. The divestiture of these assets according to the terms of the proposed Final Judgment will establish a new, independent, and economically viable competitor, thereby preserving competition in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma.

In the event that defendants do not accomplish the divestiture within the time prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court, United States, and the States as appropriate, setting forth his or her

efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee, the United States, and the States, 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.

Section VII of the proposed Final Judgment requires that defendants provide advance notification of certain future proposed acquisitions not otherwise subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a. That provision requires 30 days' advance written notice to the United States and the States before defendants acquire, directly or indirectly, (1) any interest in any business located in Kansas, Missouri, Nebraska, and Oklahoma that is engaged in the collection and treatment of infectious waste; (2) other than in the ordinary course of business, any assets located in Kansas, Missouri, Nebraska, and Oklahoma that are used in the collection and treatment of infectious waste; or (3) capital stock or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the collection and treatment of infectious waste in Kansas, Missouri, Nebraska, and Oklahoma, where that person's annual revenues in these states from the collection and treatment of infectious waste were in excess of \$500,000. With this provision, the United States and the States will have knowledge in advance of acquisitions that may impact competition in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma.

### IV. Remedies Available to Potential Private Litigants

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

### V. Procedures Available for Modification of the Proposed Final Judgment

The United States, the States, and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest. The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

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

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

### VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have commenced litigation and sought a judicial order enjoining the acquisition of MedServe by Stericycle. The United States is satisfied that the divestiture and other relief described in the proposed Final Judgment will preserve competition in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. The relief contained in the

proposed Final Judgment would achieve all or substantially all of the relief that the United States would have obtained through litigation, while avoiding the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the Final Judgment “is in the public interest.” 15 U.S.C. 16(e)(1). In making that determination, in accordance with the statute, the court 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); see generally *United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.* 2009–2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at \*3 (D.D.C. Aug. 11, 2009) (noting that the court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.”).

As the United States Court of Appeals for the District of Columbia has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the

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 *Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*3. Courts have held that:

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

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>1</sup> In determining whether a proposed settlement is in the public interest, the court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; see also *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’ prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees

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

than in crafting their own decrees following a finding of liability in a litigated matter. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

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

In its 2004 amendments to the Tunney Act,<sup>2</sup> Congress made clear its

<sup>2</sup> The 2004 amendments substituted the word “shall” for “may” when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1)(2006); see also *SBC Commc’ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review.).

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

#### 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: January \_\_, 2010.

Respectfully submitted,

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202-307-0620.

#### Certificate of Service

I, Frederick H. Parmenter, hereby certify that on January \_\_, 2010, caused a copy of the foregoing *Competitive Impact Statement* to be served upon defendants Stericycle, Inc., ATMW Acquisition Corp., MedServe, Inc., and Avista Capital Partners, L.P., and plaintiffs the State of Missouri and State of Nebraska by mailing the document electronically to the duly authorized legal representatives as follows:

<sup>3</sup> See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### United States v. Cameron International Corp., 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 v. Cameron Int’l Corp., et al.*, No. 09-cv-02165–RMC. On November 17, 2009, the United States filed a Complaint alleging that the proposed acquisition by Cameron International Corporation (“Cameron”) of NATCO Group Inc. (“NATCO”) would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The

proposed Final Judgment, filed the same time as the Complaint, requires Cameron to divest certain tangible and intangible assets related to the development, production, sale, repair, and service of customized electrostatic desalters used in the downstream oil refining industry, an option to purchase either Cameron’s or NATCO’s pilot plant, and a license to NATCO’s intellectual property and other assets primarily used in or necessary to the development, production, sale, repair, or service of downstream refinery desalters that utilize dual frequency transformers and AC/DC power supplies.

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

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

Patricia A. Brink,

Deputy Director of Operations and Civil Enforcement.

*United States of America, Antitrust Division, 450 5th Street, NW., Suite 8700, Washington, DC 20530, Plaintiff, v. Cameron International Corporation, 1333 West Loop South, Suite 1700, Houston, TX 77027, and NATCO Group Inc., 11210 Equity Drive, Suite 100, Houston, TX 77041, Defendants.*

Case No.: Case: 1:09-cv-02165.

Assigned To: Bates, John D.

Assign Date: 11/17/2009.

Description: Antitrust.

#### Complaint

The United States of America (“United States”), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against defendants Cameron International Corporation (“Cameron”) and NATCO Group Inc. (“NATCO”) to enjoin Cameron’s proposed acquisition