

station buildings and related appurtenances before permitting it to acquire Reuter. The United States is satisfied, however, that the relief outlined in the proposed Final Judgment will eliminate WMF's ability to constrain prices or output by eliminating a competitor from the solid waste disposal market in the relevant geographic market. The relief obtained will maintain the competition in the market by creating an essentially independent transfer station for five years and also by providing property upon which an independent transfer station can be constructed to be in operation for the indefinite future. The relief sought eliminates anticompetitive effects in the short term by essentially maintaining the *status quo*. It preserves competition in the long term by providing time to build and by facilitating the construction of an additional competitive transfer station.

VII

Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448, 1462 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating

the benefits of prompt and less costly settlement through the consent decree process."⁶ Rather,

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

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

Accordingly, 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) quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460. Precedent requires that the 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.⁷

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more

⁶ 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. & Ad. News 6535, 6538.

⁷ *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d at 565.

flexible and less strict than the standard required for a finding of liability. "[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.'" (citations omitted).⁸

VIII

Determinative Documents

In formulating the proposed Final Judgment, the United States considered the following determinative materials or documents within the meaning of the APPA: the Transfer Station Agreement attached to the proposed Final Judgment as Exhibit A; the Amendment to Transfer Station Agreement attached to the proposed Final Judgment as Exhibit B; and the Option Agreement attached to the proposed Final Judgment as Exhibit C.

Dated: October 20, 1995.

Respectfully submitted,

Nancy H. McMillen,

Attorney, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307-5777.

Certification of Service

I hereby certify that a copy of the foregoing has been served upon Waste Management, Inc. of Florida and Reuter Recycling of Florida, Inc., by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above named parties at the addresses given below, this 20th day of October, 1995.

Michael Sennett, Esquire,

Bell, Boyd & Lloyd, 3 First National Plaza, 70 West Madison Street, Chicago, IL 60602.

Andrew N. Cook, Esquire,

Bell, Boyd & Lloyd, 1615 L Street, N.W., Washington, D.C. 20036.

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Office of the Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399-1050.

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BILLING CODE 4410-01-M

⁸ *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) quoting *United States v. Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Expansion Arts Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multidisciplinary/VMDL Section) to the National Council on the Arts will be held on November 27-30, 1995. The panel will meet from 9:00 a.m. to 6:00 p.m. on November 27-29 and from 9:00 a.m. to 4:00 p.m. on November 30. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 9:00 a.m. to 10:30 a.m. on November 27, for opening remarks and a general program overview and from 3:30 p.m. to 4:30 p.m. on November 29, for a policy discussion.

The remaining portions of this meeting from 10:30 a.m. to 6:00 p.m. on November 27, from 9:00 a.m. to 6:00 p.m. on November 28-29, from 9:00 a.m. to 3:30 p.m. on November 30, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682-5433.

Dated: October 27, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 95-27161 Filed 11-1-95; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Literature Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory panel (Creative Writing: Fiction: Creative Nonfiction Section) to the national Council on the Arts will be held on November 7-9, 1995. The panel will meet from 9:00 a.m. to 5:30 p.m. on November 7; from 9:00 a.m. to 6:30 p.m. on November 8; and from 9:00 a.m. to 5:00 p.m. on November 9 in Room M-07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington D.C. 20506.

A portion of this meeting will be open to the public from 3:00 p.m. to 5:00 p.m. on November 9, for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on November 7; from 9:00 a.m. to 6:30 p.m. on November 8; and from 9:00 a.m. to 3:00 p.m. on November 9, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682-5433.

Dated: October 27, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 95-27163 Filed 11-1-95; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Music Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Orchestra Section) to the National Council on the Arts will be held on November 6-10, 1995, from 9:00 a.m. to 6:00 p.m. on November 6-9 and on November 10, from 9:30 a.m. to 3:00 p.m. This meeting will be held in Room M-09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 1:00 p.m. to 3:00 p.m. on November 10, for a discussion regarding the Endowment's new structure; the needs and opportunities for the Orchestral field; and leadership initiatives.

The remaining portions of this meeting from 9:00 a.m. to 6:00 p.m. on November 6-9 and from 9:30 a.m. to 1:00 p.m. on November 10, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4)(6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the