



Reference: *The Commissioner of Competition v. CCS Corporation et al.*, 2013 Comp. Trib. 6

File No.: CT-2011-002

Registry Document No.: 220

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an Order pursuant to section 92 of the *Competition Act*;

AND IN THE MATTER OF the acquisition by CCS Corporation of Complete Environmental Inc.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

CCS Corporation (now Tervita Corporation), Complete Environmental Inc., Babkirk Land Services Inc., Karen Louise Baker, Ronald John Baker, Kenneth Scott Watson, Randy John Wolsey, and Thomas Craig Wolsey
(respondents)

Date of hearing by conference call: 20130314

Before: S. Simpson J., P. Crampton C.J. and Dr. W. Askanas

Date of Order: March 18, 2013

Order signed by: Madam Justice Sandra J. Simpson



AMENDED DIVESTITURE PROCEDURE ORDER

[1] WHEREAS on January 7, 2011, CCS Corporation acquired the shares of Complete Environmental Inc. and ownership of its wholly-owned subsidiary Babkirk Land Services Inc. (the “Merger”);

[2] AND WHEREAS the Commissioner of Competition (“Commissioner”) commenced an application pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34 (“Act”), and the Competition Tribunal (“Tribunal”) issued an Order dated May 29, 2012 that CCS Corporation must divest the assets or shares of Babkirk Land Services Inc. (“BLS”);

[3] AND UPON HEARING counsel for the Commissioner and counsel for CCS Corporation with respect to the terms of the divestiture;

[4] AND FURTHER to the Tribunal’s direction dated July 10, 2012;

THE TRIBUNAL ORDERS THAT:

I. DEFINITIONS

[5] Whenever used in this Divestiture Procedure Order, the following words and terms have the meanings set out below:

- (a) “**Act**” means the *Competition Act*, R.S.C., 1985, c. C-34, as amended;
- (b) “**Affiliate**” means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
- (c) “**Babkirk Site**” means the site, owned by Tervita, at mile 115, Alaska Highway, Wonowon, British Columbia;
- (d) “**BLS**” means Babkirk Land Services Inc.;
- (e) “**Business Day**” means a day on which the Competition Bureau’s Gatineau, Quebec office is open for business;
- (f) “**Commissioner**” means the Commissioner of Competition appointed under the Act;
- (g) “**Confidential Information**” means competitively sensitive, proprietary and all other information that is not in the public domain, and that is owned by or pertains to a Person or a Person’s business, and includes, but is not limited to, manufacturing, operations and financial information, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, or other trade secrets;
- (h) “**Divestiture**” means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to a Purchaser pursuant to this Divestiture Procedure

Order and with the prior approval of the Commissioner, such that Tervita will have no direct or indirect interest in the Divestiture Assets;

- (i) **“Divestiture Agreement”** means a binding and definitive agreement between Tervita and a Purchaser to effect the Divestiture pursuant to this Divestiture Procedure Order and subject to the prior approval of the Commissioner;
- (j) **“Divestiture Assets”** means all of the right, title and interest in, to and under, or relating to, the assets, property and undertaking owned or used or held by BLS or Tervita for the benefit of BLS, including the “Babkirk Assets” as defined in the Transaction Agreement, excluding the “Term Deposit” as defined therein;
- (k) **“Divestiture Procedure Order”** means this order, including the schedules hereto, and references to an “Article”, “Section”, “Part”, “Paragraph” or “Schedule” are, unless otherwise indicated, references to a section, part, paragraph or schedule of or to this Divestiture Procedure Order;
- (l) **“Divestiture Process Agreement”** means the agreement described in Section 14 of this Divestiture Procedure Order;
- (m) **“Divestiture Trustee”** means the Person appointed pursuant to Part V of this Divestiture Procedure Order (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;
- (n) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part V of this Divestiture Procedure Order;
- (o) **“Divestiture Trustee Sale Period”** begins on Monday, June 17, 2013 and expires on Friday, September 13, 2013;
- (p) **“First Reference Date”** shall have the meaning set out in Paragraph 7(c) of this Divestiture Procedure Order;
- (q) **“Interpretation Act”** means the *Interpretation Act*, R.S.C. c. I-21, as amended;
- (r) **“Initial Sale Period”** begins on Monday, March 18, 2013 and expires on Sunday, June 16, 2013;
- (s) **“Material Contracts, Approvals and Authorizations”** means all contracts, approvals, and authorizations relating to BLS as set out in the Transaction Agreement, including the permits identified as part of the “Babkirk Assets” as defined in the Transaction Agreement;
- (t) **“Merger”** means the transaction described in the first recital to this Divestiture Procedure Order;

- (u) **“Parties”** means the Commissioner and Tervita collectively, and **“Party”** means any one of them;
- (v) **“Person”** means any individual, sole proprietorship, partnership, joint venture, firm, corporation, unincorporated organization, trust, or other business or government entity, and any subsidiaries, divisions, groups or Affiliates thereof;
- (w) **“Purchaser”** means a Person that acquires Divestiture Assets pursuant to this Divestiture Procedure Order and a Divestiture Agreement;
- (x) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (y) **“Second Reference Date”** shall have the meaning set out in Paragraph 7(d) of this Divestiture Procedure Order;
- (z) **“Tervita”** means Tervita Corporation, its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by Tervita Corporation, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- (aa) **“Third Party”** means any Person other than the Commissioner, Tervita or the Purchaser;
- (bb) **“Transaction Agreement”** means the Share Purchase Agreement between Tervita and the Vendor Respondents dated December 30, 2010;
- (cc) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.);
- (dd) **“Tribunal’s Decision”** means the Reasons for Order and Order of the Tribunal dated May 29, 2012; and
- (ee) **“Vendor Respondents”** means Karen Louise Baker, Ronald John Baker, Kenneth Scott Watson, Randy John Wolsey and Thomas Craig Wolsey, collectively.

II. COMMISSIONER APPROVAL OF DIVESTITURE

- [6] The Divestiture shall be made to a single Purchaser and may proceed only with the prior approval of the Commissioner in accordance with this Part.
- [7] Tervita (during the Initial Sale Period) or the Divestiture Trustee (during the Divestiture Trustee Sale Period), as the case may be, shall comply with the following process for

seeking and obtaining a decision of the Commissioner regarding her approval of a proposed Divestiture:

- (a) Tervita or the Divestiture Trustee, as the case may be, shall promptly:
 - (i) inform the Commissioner of any negotiations with a prospective Purchaser that may lead to a Divestiture; and
 - (ii) forward to the Commissioner copies of any agreement or non-binding expression of interest that is signed with a prospective Purchaser.
- (b) Tervita or the Divestiture Trustee, as the case may be, shall immediately notify the Commissioner that it intends to enter into a Divestiture Agreement with a prospective Purchaser, or has entered into an agreement that, if approved by the Commissioner, will be a Divestiture Agreement within the meaning of this Divestiture Procedure Order. Such notice shall be in writing and shall include: the identity of the proposed Purchaser; the details of the proposed Divestiture Agreement and any related agreements; and information concerning whether and how the proposed Purchaser would, in the view of Tervita or the Divestiture Trustee, likely satisfy the terms of this Divestiture Procedure Order.
- (c) Within fourteen (14) days following receipt of the notice described in Paragraph 7(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Tervita, the Divestiture Trustee, and the prospective Purchaser. These Persons shall each provide any and all additional information requested from them. When they have provided a complete response to the Commissioner's request, these Persons shall comply with the following procedures:
 - (i) the Divestiture Trustee shall provide written confirmation to the Commissioner that the Divestiture Trustee has provided to the Commissioner all additional information requested from the Divestiture Trustee; and
 - (ii) an officer or other duly authorized representative of Tervita or the prospective Purchaser, as the case may be, shall certify that he or she has examined any additional information provided to the Commissioner and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

The date on which the last of the Divestiture Trustee, Tervita, and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **"First Reference Date"**.

- (d) Within seven (7) days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of Tervita, the Divestiture Trustee, and the prospective Purchaser. These Persons shall each provide any further additional information requested

from them. When they have provided a complete response to the Commissioner's request, if any, these Persons shall comply with the procedures outlined in Paragraph 7(c)(i)-(ii) in regard to the further additional information provided. The date on which the last of the Divestiture Trustee, Tervita, and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the "**Second Reference Date**".

- (e) The Commissioner shall notify Tervita or the Divestiture Trustee, as the case may be, of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within fourteen (14) days after the date on which the Commissioner receives that notice described in Paragraph 7(b) or, if she requests any additional information under Paragraph 7(c) or further additional information under Paragraph 7(d), within fourteen (14) days after the later of:
 - (i) the First Reference Date; and
 - (ii) the Second Reference Date, if any.
- (f) The Commissioner's determination as to whether to approve a proposed Divestiture shall be in writing.

[8] The Commissioner has sole discretion to determine whether to approve a proposed Divestiture. In exercising such discretion, the Commissioner shall take into account the likely impact of the Divestiture on competition. Prior to granting her approval, the Commissioner must also be satisfied that:

- (a) the proposed Purchaser is fully independent of and operates at arm's length from Tervita;
- (b) Tervita will have no direct or indirect interest in the Divestiture Assets following the Divestiture, subject to section 32 below;
- (c) the Divestiture to the proposed Purchaser will not substantially lessen or prevent competition for the supply of solid hazardous disposal from oil and gas producers in Northeastern British Columbia; and,
- (d) the proposed Purchaser will (i) if the Commissioner grants her approval during the Initial Sale Period, use best efforts to complete the Divestiture prior to the expiry of the Initial Sale Period and, in any event, no later than 7 days after the expiry of the Initial Sale Period; or (ii) if the Commissioner grants her approval during the Divestiture Trustee Sale Period, use best efforts to complete the Divestiture during the Divestiture Trustee Sale Period and, in any event, no later than 7 days after the expiry of the Divestiture Trustee Sale Period.

III. PRESERVATION OF DIVESTITURE ASSETS

[9] In order to preserve the Divestiture Assets pending completion of the Divestiture, Tervita shall maintain the economic viability, marketability and potential competitiveness of the Divestiture Assets. Without limiting the generality of the foregoing, Tervita shall:

- (a) maintain and hold the Divestiture Assets in good condition and repair, normal wear and tear excepted, and to standards that are, in the view of the Commissioner, at least equal to those that existed at the time of the Merger;
- (b) not knowingly take or allow to be taken any action that, in the view of the Commissioner, materially or adversely affects the potential value, viability and saleability of the Divestiture Assets;
- (c) maintain all approvals, registrations, consents, licences, permits, waivers, and other authorizations that are currently granted in connection with the Divestiture Assets; and
- (d) maintain in accordance with Canadian generally accepted accounting principles, separate and adequate financial ledger books and records of material financial information with respect to the Divestiture Assets.

[10] Pending completion of the Divestiture, Tervita shall not, without the Commissioner's prior written approval:

- (a) create any new encumbrances on the Divestiture Assets, other than ordinary course obligations that are not due or delinquent;
- (b) enter into, withdraw from, amend or otherwise take steps to alter any obligations in material contracts relating to the Divestiture Assets, except as necessary to comply with this Divestiture Procedure Order; or
- (c) make any material changes to the Divestiture Assets, except as required to comply with this Divestiture Procedure Order.

IV. DIVESTITURE PROCEDURE

[11] Tervita shall use commercially reasonable efforts commensurate with a transaction of the size and nature of that contemplated in this Divestiture Procedure Order to complete the Divestiture during the Initial Sale Period in accordance with the provisions of the Divestiture Procedure Order.

[12] Tervita shall provide to the Commissioner every thirty (30) days a written report describing the progress of its efforts to effect the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. Tervita shall, within three (3) Business Days, respond to any request by the Commissioner for additional information regarding the

status of Tervita's efforts to complete the Divestiture. An officer or other duly authorized representative of Tervita shall certify that he or she has examined the information provided in any such response and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

V. DIVESTITURE TRUSTEE SALE PROCESS

- [13] In the event that Tervita fails to complete the Divestiture during the Initial Sale Period, the Commissioner shall appoint a Divestiture Trustee, selected in the Commissioner's sole discretion, to complete the Divestiture in accordance with this Divestiture Procedure Order, including the terms contained in Confidential Schedule "A", which shall remain confidential until the Divestiture is completed. Such appointment shall be made at or before the expiry of the Initial Sale Period.
- [14] Within five (5) Business Days after the appointment of the Divestiture Trustee, Tervita shall submit to the Commissioner for approval the terms of a proposed Divestiture Process Agreement with the Divestiture Trustee and the Commissioner that transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the Divestiture.
- [15] Within five (5) Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 14, the Commissioner shall advise Tervita whether she approves the terms of the proposed Divestiture Process Agreement. If the Commissioner does not approve the terms of the proposed Divestiture Process Agreement, she shall prescribe alternative terms that Tervita shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.
- [16] Tervita consents to the following terms and conditions regarding the Divestiture Trustee's rights, powers, duties, authority and responsibilities, and shall include such terms in the Divestiture Process Agreement:
- (a) The Divestiture Trustee shall complete the Divestiture in a commercially reasonable fashion as expeditiously as possible, and in any event prior to expiry of the Divestiture Trustee Sale Period.
 - (b) The Divestiture Trustee shall use commercially reasonable efforts to negotiate terms and conditions for the Divestiture that are as favourable to Tervita as are commercially reasonably available at that time. The Divestiture Trustee's opinion of what constitutes favourable terms and conditions and what constitutes commercially reasonably available terms and conditions, is subject to review and approval by the Commissioner in her sole discretion.
 - (c) Subject to oversight and approval by the Commissioner in her sole discretion, the Divestiture Trustee shall have full and exclusive authority during the Divestiture Trustee Sale Period:
 - (i) to complete the Divestiture in accordance with the provisions of this Divestiture Procedure Order;

- (ii) to solicit interest in a possible Divestiture by whatever process or procedure the Divestiture Trustee believes is suitable to allow a fair opportunity for one or more prospective good faith Purchasers to offer to acquire the Divestiture Assets;
 - (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Tervita;
 - (iv) to negotiate, following consultation with Tervita in the presence of a representative of the Commissioner, reasonable commercial covenants, representations, warranties and indemnities to be included in a Divestiture Agreement; and
 - (v) to employ, at the expense of Tervita, such consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants as the Divestiture Trustee believes are necessary to carry out the Divestiture Trustee's duties and responsibilities.
- (d) Where any Person makes a good faith inquiry respecting a possible purchase of Divestiture Assets, the Divestiture Trustee shall notify such Person that the Divestiture is being made and shall provide to such Person a copy of this Divestiture Procedure Order.
- (e) Where, in the opinion of the Divestiture Trustee, a Person has a good faith interest in purchasing Divestiture Assets and has executed a confidentiality agreement in a form satisfactory to the Commissioner with the Divestiture Trustee protecting any Confidential Information that such Person may receive in the course of its due diligence review of the Divestiture Assets, the Divestiture Trustee shall:
 - (i) promptly provide to such Person all information respecting the Divestiture Assets that is determined by the Divestiture Trustee to be relevant and appropriate;
 - (ii) permit such Person to make reasonable inspection of the Divestiture Assets and of all financial, operational or other non-privileged Records and information, including Confidential Information, that may be relevant to the Divestiture; and
 - (iii) give such Person as full and complete access as is reasonable in the circumstances to the personnel involved in managing the Divestiture Assets.
- (f) The Divestiture Trustee shall have no obligation or authority to maintain the Divestiture Assets.
- (g) The Divestiture Trustee shall provide to the Commissioner, within fourteen (14) days after the Divestiture Trustee's appointment and thereafter every twenty-one (21) days, a written report describing the progress of the Divestiture Trustee's

efforts to complete the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Divestiture Trustee shall, within three (3) Business Days, respond to any request by the Commissioner for additional information regarding the status of the Divestiture Trustee's efforts to complete the Divestiture.

- (h) The Divestiture Trustee shall notify Tervita and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Divestiture Assets, and shall provide to Tervita a copy of any executed Divestiture Agreement upon receipt of Commissioner approval of the Divestiture contemplated in such Divestiture Agreement.
- [17] Tervita shall not be involved in the Divestiture process during the Divestiture Trustee Sale Period or in any negotiations with prospective Purchasers undertaken by the Divestiture Trustee, nor will Tervita engage in communication with prospective Purchasers in respect of the Divestiture during the Divestiture Trustee Sale Period.
 - [18] Subject to any legally recognized privilege, Tervita shall provide to the Divestiture Trustee full and complete access to all personnel, Records, information (including Confidential Information) and facilities relating to the Divestiture Assets, to enable the Divestiture Trustee to conduct its own investigation of the Divestiture Assets and to provide access and information to prospective Purchasers.
 - [19] Tervita shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
 - [20] Tervita shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request relating to the Divestiture. The Divestiture Trustee may seek clarification with respect to such information from Tervita in the presence of a representative of the Commissioner when the Divestiture Trustee considers such clarification to be appropriate and the Commissioner consents. Tervita shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Tervita.
 - [21] Tervita will do all such acts and execute all such documents, and will cause the doing of all such reasonable acts and the execution of all such documents as are within its power to cause the doing or execution of, as may be reasonably necessary to ensure that the Divestiture Assets are divested in the Divestiture Trustee Sale Period and that agreements entered into by the Divestiture Trustee are binding upon and enforceable against Tervita.
 - [22] Tervita shall be responsible for all reasonable fees and expenses properly charged or incurred by the Divestiture Trustee in the course of carrying out the Divestiture Trustee's duties and responsibilities under this Divestiture Procedure Order. The Divestiture Trustee shall serve without bond or security, and shall account for all fees and expenses

incurred. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner; and (ii) Tervita shall promptly pay any account approved by the Commissioner.

- [23] Tervita shall pay all reasonable invoices submitted by the Divestiture Trustee within thirty (30) days after receipt. Any outstanding monies owed to the Divestiture Trustee by Tervita shall be paid out of the proceeds of the Divestiture.
- [24] Tervita shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.
- [25] If the Commissioner determines that the Divestiture Trustee has ceased to act or has failed to act diligently, the Commissioner may remove the Divestiture Trustee and appoint a substitute Divestiture Trustee, selected in the Commissioner's sole discretion. The provisions of this Divestiture Procedure Order respecting the Divestiture Trustee shall apply in the same manner to any substitute Divestiture Trustee.
- [26] Tervita may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not in any way restrict the Divestiture Trustee from providing information to the Commissioner or performing its duties pursuant to this Divestiture Procedure Order.
- [27] The Commissioner may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Divestiture Trustee may receive from the Commissioner in connection with the performance of the Divestiture Trustee's duties.
- [28] Notwithstanding any term of this Divestiture Procedure Order, the obligations and powers of the Divestiture Trustee under this Divestiture Procedure Order shall not expire until the Divestiture is completed.

VI. THIRD PARTY CONSENTS

- [29] It shall be a condition in any Divestiture Agreement (whether negotiated by Tervita or by the Divestiture Trustee) that Tervita shall, as a condition of closing, obtain any consents and waivers from Third Parties that are necessary to permit the assignment to, and assumption by, a Purchaser of all Material Contracts, Approvals and Authorizations included in the Divestiture Assets.

VII. FAILURE OF DIVESTITURE TRUSTEE SALE

- [30] If, by the end of the Divestiture Trustee Sale Period, the Divestiture has not been completed, or if the Commissioner is of the opinion that the Divestiture likely will not be completed prior to the end of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal, at her election, for either (i) such order as is necessary to complete the Divestiture; or (ii) such order as is necessary to ensure that the Merger is not likely to prevent competition substantially.

VIII. COMPLIANCE

- [31] Tervita shall provide a copy of this Divestiture Procedure Order to each of its own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Divestiture Procedure Order, within seven (7) Business Days of this Divestiture Procedure Order being made.
- [32] Tervita shall not, for a period of five (5) years after the date when the Divestiture is completed, directly or indirectly acquire any interest in the Divestiture Assets, without the prior written approval of the Commissioner.
- [33] Every sixty (60) days until Divestiture is completed, and then annually thereafter for the next five (5) years on the anniversary of the completion of the Divestiture, and at such other times as the Commissioner may reasonably require, Tervita shall provide the Commissioner with an affidavit or certificate, certifying its compliance with this Divestiture Procedure Order.
- [34] If Tervita or the Divestiture Trustee becomes aware that there has been a breach or possible breach of any of the terms of this Divestiture Procedure Order, such Person shall, within two (2) Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach. Tervita shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to section 33 of this Divestiture Procedure Order.
- [35] Tervita shall notify the Commissioner at least thirty (30) days prior to:
- (a) any proposed dissolution of Tervita; and
 - (b) any other change in Tervita including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Tervita's incorporating statute, if such change may affect compliance obligations arising out of this Divestiture Procedure Order.
- [36] For the period commencing on the date this Divestiture Procedure Order is made and ending when the Divestiture is completed, for purposes of determining or securing compliance with this Divestiture Procedure Order, and subject to any legally recognized

privilege, Tervita shall, upon written request given at least two (2) Business Days in advance to Tervita, permit any authorized representatives of the Commissioner, without restraint or interference to reasonably access, during regular office hours of Tervita on any Business Day(s), all facilities and to inspect and copy all Records, each only as relevant to this Divestiture or this Divestiture Procedure Order, in the possession or control of Tervita related to compliance with this Divestiture Procedure Order, which copying services shall be provided by Tervita at its expense.

IX. NOTICES

[37] For a notice, report, consent, approval, written confirmation or other communication required or permitted to be given under this Divestiture Procedure Order to be valid,

- (a) it must be in writing and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered mail; (3) courier service; (4) facsimile; or (5) electronic mail; and
- (b) it must be addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013

with copies to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267

if to Tervita:

**Tervita Corporation
1800, 140 – 10 Avenue S.E.
Calgary, Alberta
T2G 0R1 Canada**

**Attention: Rob van Wallegem
Vice President & General Counsel
Fax: (403) 231-8445**

with a copy to:

Torys LLP
Suite 3000
79 Wellington St. West
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada

Attention: Linda M. Plumpton
Fax: (416) 865-7380

- [38] A notice, consent or approval under this Divestiture Procedure Order is effective on the day that it is received by the receiving Party. A notice, consent or approval is deemed to have been received as follows:
- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
 - (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip;
 - (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice is received after 5:00 p.m. local time, or on a day that is not a Business Day, then the notice shall be deemed to have been received on the next Business Day.

- [39] Notwithstanding Sections 37 and 38, a notice, report, consent, approval, written confirmation or other communication that is not communicated in accordance with Sections 37 and 38 is valid if a representative of the Party that is the recipient of such communication confirms the receipt and sufficiency of such communication.

X. GENERAL

[40] In this Divestiture Procedure Order:

- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (b) **Time Periods** – Computation of time periods shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21, and the definition of “holiday” in the *Interpretation Act* shall include Saturday.

[41] The Commissioner may, in her sole discretion and after informing Tervita, extend any of the time periods contemplated by this Divestiture Procedure Order other than the Initial Sale Period and the Divestiture Sale Period. If any time period is extended, the Commissioner shall promptly notify Tervita of the revised time period.

[42] In the event of a dispute regarding the interpretation, application, or implementation of this Divestiture Procedure Order, any of the Commissioner or Tervita may apply to the Tribunal for directions or a further order.

DATED at Ottawa, this 18th day of March, 2013.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Sandra J. Simpson

Confidential Schedule “A”

[Confidential]

COUNSEL:

For the applicant:

The Commissioner of Competition

Nikiforos Iatrou
Jonathan Hood

For the respondent:

Tervita Corporation, Complete Environmental Inc. and Babkirk Land Services Inc.

Linda Plumpton
Dany Assaf