

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. CCS Corporation et al.*, 2011 Comp. Trib. 23
File No.: CT-2011-002
Registry Document No.: 127

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



Dates of teleconferences: 20111101 and 20111102
Before Judicial Member: Simpson J. (Chairperson)
Date of Order: November 3, 2011
Order signed by: Madam Justice Sandra J. Simpson

**ORDER DISMISSING A MOTION FOR SUMMARY DISPOSITION BY THE VENDOR
RESPONDENTS**

[1] **UPON** motion for summary disposition by Karen Louise Baker, Ronald John Baker, Kenneth Scott Watson, Randy John Wolsey, and Thomas Craig Wolsey (collectively, the “Vendor Respondents”);

[2] **AND UPON** reading the material filed by counsel for the Vendor Respondents and by counsel for the Commissioner;

[3] **AND WITH** the agreement of counsel for the Vendor Respondents and counsel for the Commissioner that their written materials could replace oral submissions in chief and in response (except for one topic);

[4] **AND UPON** hearing counsel for the Commissioner on the one topic by teleconference on November 1, 2011;

[5] **AND UPON** hearing counsel for the Vendor Respondents in reply in a later teleconference on November 1, 2011;

[6] **AND UPON** reserving my decision to a teleconference on November 2, 2011.

NOW THEREFORE, THE TRIBUNAL ORDERS THAT:

[7] For the reasons given orally, which are found in the attached transcript, the motion is hereby dismissed with costs in favour of the Commissioner based on the Federal Court Tariff B, Column III.

DATED at Ottawa, this 3rd day of November, 2011.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

ORAL REASONS FROM THE TRIBUNAL:

JUSTICE SIMPSON: The Vendor-Respondents in this proceeding have moved for summary disposition pursuant to section 9(4) of the Competition Tribunal Act and Tribunal Rule 89. They ask that the Commissioner's Application be dismissed against them on the following grounds: One, they are only named as Respondents because the Commissioner seeks dissolution, two, the Commissioner has not explicitly alleged that dissolution is the only effective remedy and, three, the Commissioner's witness statements do not show that an order of divestiture is unlikely to be effective.

For the reasons that follow, the motion will be dismissed.

The evidence on this motion shows that there may be difficulties associated with dissolution. But the seriousness of those difficulties cannot be evaluated at this time.

In my view, the question to be addressed is have the moving parties demonstrated that there is no genuine basis for the Commissioner to seek dissolution as a remedy, and the onus is on the moving parties to demonstrate that the answer is yes.

It seems to me that the only convincing way to answer yes to that question is to say yes because, in this case, divestiture is an effective and realistic remedy.

While a divestiture approved by the Commissioner is in theory an effective remedy because it places the asset in the hands of a party that will compete, it is only a realistic remedy if there is in fact a willing buyer able to restore competition in a timely way.

The difficulty is that, in this case, there is at present no evidence of such a buyer.

I am unwilling to remove dissolution from the inventory of remedies available to the Tribunal because the Commissioner has satisfied me that there may be evidence adduced at the hearing, through documents or cross-examinations, that deals with the effectiveness and intrusiveness of dissolution and divestiture.

I am also of the view that the Commissioner is not required to explicitly allege that dissolution is the only effective remedy. In her Reply, she says that dissolution is appropriate if it is the only remedy available to adequately address a substantial prevention of competition.

The Commissioner is entitled to propose alternative remedies, and it will be for the Tribunal to weigh the evidence for and against dissolution and divestiture, including

evidence about which remedy is least intrusive and, if the Commissioner is successful on the merits, the Tribunal will come to a decision about the most appropriate remedy.

For all these reasons, the motion is dismissed.

COUNSEL:

For the applicant:

The Commissioner of Competition

Nikiforos Iatrou
Jonathan Hood

For the respondents:

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

Linda Plumpton

Karen Louise Baker, Ronald John Baker,
Kenneth Scott Watson, Randy John Wolsey and
Thomas Craig Wolsey

J. Kevin Wright
Morgan Burris