

COMPETITION TRIBUNAL

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.

BETWEEN:

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

**NOTICE OF MOTION OF THE
VENDOR RESPONDENTS**

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Wolsey and Thomas Craig Wolsey

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- 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

NOTICE OF MOTION

TAKE NOTICE THAT certain of the Respondents, being Karen Louise Baker, Ronald John Baker, Kenneth Scott Watson, Randy John Wolsey and Thomas Craig Wolsey (collectively, the "Vendor Respondents") will make a motion to the Competition Tribunal on November 8, 2011 at 10:00 am or as soon thereafter as the motion can be heard, by telephone conference or in person, as the Tribunal may direct.

THE MOTION IS FOR:

- (a) an order dismissing this Application as against the Vendor Respondents;
- (b) costs of this motion and the application; and
- (c) such further and other relief as the Tribunal deems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) This is a motion for summary disposition brought under Section 9(4) of the *Competition Tribunal Act*.
- (b) It is common ground that on January 7, 2011, CCS Corporation (“CCS”) acquired the shares of Complete Environmental Inc. (“Complete”) (the “Transaction”).
- (c) In her Application, the Commissioner alleges that the Transaction is a merger within the meaning of Part VIII of the *Competition Act*, and that the Transaction is likely to prevent competition substantially because it results in CCS controlling the assets of Babkirk Land Services Inc. (“BLS”) since Complete owned 100% of the shares of BLS.
- (d) The Vendor Respondents no longer have an interest in Complete or BLS. The only reason that these individuals have been named as parties is that the Commissioner, in her Application (paragraphs 1 and 31(a)), seeks dissolution of the Transaction (in addition to other alternative remedies, including divestiture).
- (e) The Vendor Respondents dispute, *inter alia*, that the Transaction is likely to substantially prevent competition (“SPC”) and that CCS’ acquisition of BLS is a merger such that the Tribunal may have jurisdiction under Section 92 of the *Competition Act* to issue any order. However, for the purposes of this motion only, the Vendor Respondents do not rely on these grounds. If this motion is dismissed, the Vendors will resist this Commissioner’s application on these and other grounds set out in their Response.

- (f) The Vendor Respondents move with respect to the question of remedy. The appropriate remedy to be ordered in the case of a contested application under section 92(1)(e) of the *Competition Act* is the least intrusive remedy that will effectively eliminate the SPC alleged by the Commissioner and found by the Tribunal. Both the Vendor Respondents and the Corporate Respondents (i.e. CCS, Complete and BLS) plead in their respective Responses that in this case, divestiture, and not dissolution, is the appropriate remedy (if the prerequisites for any order are established).
- (g) There is no genuine basis for the Tribunal to order dissolution (assuming in the alternative that the Commissioner establishes the prerequisites of Section 92 of the *Competition Act*) having regard to the circumstances of this case. In particular, there is no genuine basis to say that divestiture of the shares or assets of BLS to a person independent of CCS would not be an effective remedy. Further, dissolution (whether or not it would be effective) is overly broad and punitive and would not be the least intrusive effective remedy.
- (h) While the Commissioner has disputed in her Reply that dissolution is overly broad and punitive, it is a bare denial bereft of supporting material facts. The Commissioner's witness statements and reports for the hearing of this matter were delivered on September 30, 2011. They do not provide any factual basis to say that dissolution which would involve the return of all of the shares of Complete to the Vendor Respondents is not overly broad. Nor could they.
- (i) In her Reply, the Commissioner contends that dissolution is appropriate if it is the only effective remedy. However, the Commissioner does not go on to allege that dissolution is the only effective remedy. To the contrary, one of the premises of the Application is that competition is substantially prevented because, but for the Transaction, the relevant assets of BLS would have been sold to a third party independent of CCS. That is precisely what divestiture would accomplish.
- (j) Nor do the Commissioner's witness statements provide a basis to say that an order of divestiture is unlikely to be effective. Instead,

the Commissioner has adduced the witness statement of Secure Energy Services, a competitor of CCS who was the complainant that apparently launched the Bureau's investigation and who professes an interest in acquiring BLS or its assets.

- (k) *Competition Act*, R.S.C, 1985, c. C-34, as amended, Section 92
- (l) *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), SubSection 9(4), 9(5)
- (m) *Competition Tribunal Rules*, Can. Reg. 2008-141, Rules 89-94.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) Notice of Application;
- (b) Response of the Vendor Respondents;
- (c) Response of the Corporate Respondents;
- (d) Commissioner's Reply;
- (e) Affidavit of Ken Watson sworn October 28, 2011;
- (f) Affidavit of Susan Koehl sworn October 28, 2011;

October 28, 2011



Signature of Solicitor

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