

THE COMPETITION TRIBUNAL

CT-2006-009

IN THE MATTER OF an application by the Director of Investigation and Research under section 79 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER OF certain practices by Laidlaw Waste Systems Ltd. in the communities of Cowichan Valley Regional District, Nanaimo Regional District and the District of Campbell River, British Columbia;

AND IN THE MATTER OF the order made by the Competition Tribunal on February 11, 1992;

AND IN THE MATTER OF an application by Waste Management of Canada Corporation under section 106(1)(a) of the *Competition Act*, R.S.C. 1985, c.C-34, as amended, to rescind on consent the order made by the Competition Tribunal on February 11, 1992.

B E T W E E N:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT

September 7, 2006

CT-2006-009

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

**Waste Management of Canada Corporation
(formerly Laidlaw Waste Systems Ltd.)**

Applicant

OTTAWA, ONT

#0002

- and -

**The Commissioner of Competition
(formerly the Director of Investigation and Research)**

Respondent

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. **STATEMENT OF GROUNDS**

1. As described below, there have been a number of material changes in the relevant markets in the 14 years since February 11, 1992, when the Competition Tribunal made its order in this case (the "Order").

2. The terms "Product" and "Markets" as used in this Statement of Grounds and Material Facts have the same meanings as in the Order.

3. In particular, the Applicant no longer "substantially or completely controls, throughout Canada or any area thereof, a class or species of business" as required for the purposes of making an order under section 79 of the *Competition Act* (the "Act") in that:

(a) numerous competitors have entered and/or expanded in the relevant markets, fundamentally changing the structure of those markets;

(b) the Applicant has substantially lower market shares in the relevant markets; and

(c) entry and expansion is now relatively easy in the three relevant markets.

4. Lower market shares combined with low barriers to entry in the relevant markets mean that the Applicant lacks the degree of market power required under section 79(1)(a) of the Act.

5. In the circumstances that obtain today, the Order would not be made against the Applicant.

6. Following a careful review, the Commissioner of Competition (the "Commissioner") has consented to the rescission of the Order.

II. MATERIAL FACTS

7. The Applicant sets out below the following material facts as the basis for this application. While the Commissioner does not necessarily agree with all of the facts contained in this Statement of Grounds and Material Facts, the Commissioner does not contest them for the purpose of this application or any proceeding relating to this application. However, on balance, Commissioner agrees that sufficient changes of circumstances exist to warrant the order sought.

A. THE PARTIES

8. The Commissioner is the authorized official appointed under section 7 of the Act and is charged with administration and enforcement of the Act. At the time of the Order, the position of the Commissioner was known as the Director of Investigation and Research.

9. The Applicant, Waste Management of Canada Corporation, is a corporation incorporated pursuant to the laws of Canada. In March 1997, Canadian Waste Services Inc. ("CWS"), a wholly-owned subsidiary of USA Waste Services, Inc., acquired all of the assets of Laidlaw Waste Systems Ltd. In 1998, USA Waste Services, Inc. merged with Waste Management, Inc. and continued its operations as Waste Management, Inc. The Applicant is an indirect wholly-owned Canadian subsidiary of Waste Management, Inc.

B. THE RELEVANT BUSINESS

10. In the 14 years since the Order was issued, there have been significant changes in the relevant markets. Specifically, there has been significant entry by new competitors as well as expansion by existing competitors supplying the Product in the Markets.

11. As a result of this new entry and expansion, the Applicant's market share in the supply of the Product has dropped significantly from approximately 90% (as found by the Tribunal in the Order) to less than 45% currently in each of the Markets.

12. An order pursuant to section 79 of the Act can only be made if the party "substantially or completely controls, throughout Canada or any area thereof, a class or species of business". The Tribunal has determined that this provision requires the party to have market power in a relevant market. High market shares and barriers to entry lead to a finding of market power.

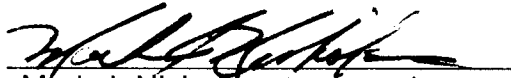
13. Given that the Applicant's market share is now less than 45% in each of the Markets, and given the obvious case of entry and expansion in each of the Markets, the Applicant no longer possesses the requisite degree of market power to make an order under section 79.

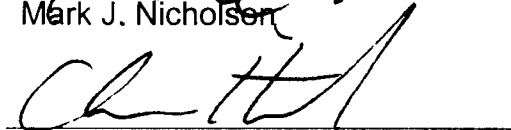
14. Further material facts relating to the Applicant's change of circumstances in the Markets are set out in more detail in the Affidavit of James T. Duncan sworn August 21, 2006 attached as Schedule "B" to the Notice of Application.

III **RELIEF SOUGHT**

15. The Applicant requests that the Order be rescinded in accordance with the terms of the Draft Order attached to the Notice of Application as Schedule "C" and to which the parties have consented.

DATED at Toronto, this 23rd day of August, 2006.


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THE COMPETITION TRIBUNAL

CT-91/2

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BETWEEN:

Waste Management of Canada Corporation
(formerly Laidlaw Waste Systems Ltd.)

Applicant

and

The Commissioner of Competition
(formerly the Director of Investigation and Research)

Respondent

STATEMENT OF GROUNDS AND MATERIAL FACTS

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