

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	
OTTAWA, ONT	# 0004

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

Applicant

- and -

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

Respondent

**AFFIDAVIT OF JAMES T. DUNCAN
SWORN AUGUST 21, 2006**

I, James T. Duncan, of the City of Sherwood Park, in the Province of Alberta,
MAKE OATH AND SAY:

1. I have been employed with the Applicant since April 2004. I am currently the Senior District Manager for Northern Alberta. Between April 2004 and December 2005, I was the District Manager for Vancouver Island. Accordingly, I have personal knowledge of the matters set out below, except where stated to be based on information and belief, in which case I believe such statements to be true.

2. On February 11, 1992, the Competition Tribunal issued an order (the "1992 Order") in respect of certain practices engaged in by Laidlaw Waste Systems Ltd. ("Laidlaw") in connection with the supply of commercial lift-on-board solid waste removal and haulage services (the "Product") in the communities of Cowichan Valley Regional District, Nanaimo Regional District and the District of Campbell River, British Columbia (the "Markets").

3. In March 1997, Canadian Waste Services Inc. ("CWS"), a wholly-owned subsidiary of USA Waste Services, Inc., acquired all of the assets of Laidlaw. 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.

A. RESCISSION OF THE ORDER

4. The Applicant seeks to rescind the 1992 Order based on the significant changes in the nature and dynamics of the commercial lift-on-board solid waste removal and haulage services in the Markets.

5. In the more than 14 years since the 1992 Order, there have been several new competitors that have entered each of the Markets and have achieved a sufficient customer base to be viable, significant competitors in the Markets. Additionally, existing competitors have increased their market shares with respect to the Product in each of the Markets. Attached as Exhibit "A" are charts setting out the Applicant's estimates of the competitors in each of the Markets and their respective market shares.

6. The Applicant's estimation of its current market shares in each of the Markets and, in particular, in the Campbell River and Nanaimo Markets, is based on the geographic markets as defined by the 1992 Order. Accordingly, the estimated shares for the Campbell River Market do not include information regarding sales to customers located in the Courtenay/Comox area.

7. The market share estimates provided were determined in the same manner that the Applicant estimates market shares in all areas in which it competes. Specifically, the figures provided are based on the estimated number of trucks that each competitor operates in a market. Based on the Applicant's own operations and industry expertise, it is assumed that each truck represents one route. Using this information, the Applicant estimates the number of routes for a given area and then determines approximate market shares based on the number of routes each competitor operates in that area.

8. The effect of the new entry and expansion referred to in paragraph 5 has been the reduction of the Applicant's share in each of the Markets from approximately 90% at the time of the 1992 Order to below 45% currently.

B. COMPETITIVE ENTRY AND EXPANSION

9. Since the 1992 Order, numerous competitors have entered each of the Markets. These include Salish Disposal, Coastal Disposal, Active Disposal, Maple Leaf Disposal, Suncoast Disposal, Waste Services, Inc ("WSI") and International Paper Industries Ltd. ("IPI"). All of these new entrants became effective, viable competitors. Some of these entities were then purchased by WSI, which is currently the largest competitor in the Cowichan Valley and Nanaimo Markets. Attached as Exhibit "B" is a list of competitors that have entered or expanded in each of the Markets. I will now briefly describe the most significant of these competitors.

10. WSI, headquartered in Burlington, Ontario, is a multi-regional, integrated solid waste services company, providing collection, transfer, landfill disposal and recycling services for residential, commercial and industrial customers in both Canada and the United States. As indicated above, WSI has grown to have the largest market share in

the Cowichan Valley and Nanaimo markets, as well as being one of the largest three competitors in the Campbell River market.

11. IPI is a privately-owned company established in British Columbia in 1976. IPI provides comprehensive integrated and sustainable resource recovery services for the recycling needs of residential, industrial, commercial and institutional sectors. IPI has six material recovery facilities in British Columbia located in Vancouver, Surrey, Nanaimo, Kamloops, Victoria and Courtenay/Comox.

12. Suncoast Disposal ("Suncoast"), which began operating in 2001, is a privately-held waste collection company providing residential, industrial and commercial services to the Nanaimo and Campbell River Markets.

13. Camvest Disposal, which operates in the Campbell River Market, is a privately-held waste collection company providing industrial and commercial service. Camvest has steadily grown since its entry in 1991, and currently holds a [REDACTED] share of the Campbell River Market.

C. CONSULTATION WITH THE COMPETITION BUREAU

14. The Applicant has consulted extensively and co-operated fully with the Competition Bureau in connection with the rescission contemplated in this application. These consultations included written responses to questions posed, teleconferences and face-to-face meetings with the Competition Bureau.

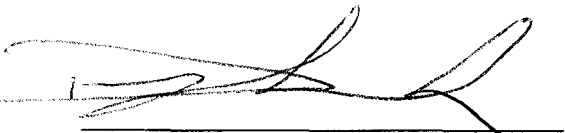
15. I am informed by Mark Nicholson (counsel to the Applicant) that he has been advised by the responsible Competition Bureau officer that, in conducting its review of the Applicant's request to consent to a rescission of the 1992 Order, the Competition Bureau consulted with each of the competitors in the Markets.

16. I am further informed by Mr. Nicholson that, in the course of conducting its review of the Markets to determine whether to consent to the application to rescind the 1992 Order, the Competition Bureau obtained actual sales data from the competitors in the Markets. The Applicant has not, and cannot be made privy to this information.


Mr. Nicholson advises me that the Competition Bureau has indicated that, for the calendar year 2005, the data it obtained yields results not substantially different from the Applicant's estimates of its market shares, either on the basis of the market definition adopted by the Tribunal in its decision or on a reformed market definition that would include Courtenay/Comox in Campbell River.

17. I make this affidavit in support of the Applicant's application to rescind the 1992 Order and for no other or improper purpose.

SWORN BEFORE ME at the City of)
Sherwood Park, in the Province of Alberta)
on August 21st, 2006.)
)



Commissioner for taking affidavits



James T. Duncan

EXHIBIT "A"

COMPETITORS AND MARKET SHARES BY MARKET

Cowichan Valley

Name	Year of Entry	No. of Trucks/Routes	Estimated 2004 & 2005 Market Share*
Waste Services, Inc. (Capital)	2001	██████	██████
Waste Management of Canada Corporation**	1997	██████	██████

Nanaimo

Name	Year of Entry	No. of Trucks/Routes	Estimated 2004 & 2005 Market Share
Waste Services, Inc. (Capital)	2001	██████	██████
International Paper Industries Ltd.	2004	██████	██████
Suncoast Disposal	2001	██████	██████
Waste Management of Canada Corporation	1997	██████	██████

Campbell River

Name	Year of Entry	No. of Trucks/Routes	Estimated 2004 & 2005 Market Share
Waste Services, Inc. (Capital)	2001	██████	██████
Camvest Disposals	1991	██████	██████
Suncoast Disposal	2001	██████	██████
Waste Management of Canada Corporation	1997	██████	██████

* Market shares in all markets have remained relatively static (+/- 1%) between 2004 and 2005. It is estimated that a route generates revenues of approximately ██████ in each of the Markets.

** Waste Management of Canada Corporation acquired Laidlaw Waste Systems Ltd. in 1997, including its operations in Cowichan Valley, Nanaimo and Campbell River.

This is Exhibit "A" referred to in the Affidavit of

Sworn before me this 21st day of August, 2006 A.D., 2006

A Notary Public, A Commissioner of Oaths in and for the Province of Alberta

**DARCY R.W. LEACH
STUDENT - AT - LAW**

EXHIBIT "B"

ENTRY AND EXPANSION BY MARKET

Cowichan Valley

Name	Estimated Date of Entry into Market	Purchaser	Estimated Date of Exit from Market
West Coast Waste	1990	Salish Disposal	1995
Alpine Disposal	1991	Salish Disposal	1995
Jones Disposal	1946	Salish Disposal	1995
DBL Disposal	1996	N/A	In Market
Salish Disposal	1995	Waste Services, Inc.	2001
Coastal Disposal	1999	Waste Services, Inc.	2002
Active Disposal	1997	Waste Services, Inc.	2002
Maple Leaf Disposal	2002	Alpine Waste	2005
Waste Services inc.	2001	N/A	In Market

Nanaimo

Name	Estimated Date of Entry into Market	Purchaser	Estimated Date of Exit from Market
West Coast Waste	1990	Salish Disposal	1995
Salish Disposal	1995	Waste Services, Inc.	2001
Alpine Disposal	1991	Salish Disposal	1995
Coastal Disposal	1999	Waste Services, Inc.	2002
Active Disposal	1997	Waste Services, Inc.	2002
Jones Disposal	1946	Salish Disposal	1995
Suncoast Disposal	2001	N/A	In Market
International Paper Industries Ltd.	2004	N/A	In Market

Sworn before me this 21 day
of August A.D., 2006

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A Notary Public. A Commissioner of Oaths
in and for the Province of Alberta
DARCY R.W. LEACH
STUDENT - AT - LAW

Campbell River

Name	Estimated Date of Entry into Market	Purchaser	Estimated Date of Exit from Market
West Coast Waste	1990	Salish Disposal	1995
Lacey Disposal	1960	Salish Disposal	1995
Valley Disposal	Unknown	Salish Disposal	1995
Coastal Disposal	1999	Waste Services, Inc.	2002
Salish Disposal	1995	Waste Services, Inc.	2001
Suncoast Disposal	2001	N/A	In Market
Camvest Disposal	1991	N/A	In Market