



Reference: *The Commissioner of Competition v. Canadian Waste Services Holdings* 2001, Comp. Trib. 35

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PUBLIC VERSION

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 under section 92 of the *Competition Act*;

AND IN THE MATTER of the acquisition by Canadian Waste Services Inc. of certain assets of Browning-Ferris Industries Ltd., a company engaged in the solid waste business.

B E T W E E N:

**The Commissioner of Competition**  
(applicant)

and

**Canadian Waste Services Holdings Inc.**  
**Canadian Waste Services Inc.**  
**Waste Management, Inc.**  
(respondents)

and

**The Corporation of the Municipality of Chatham-Kent**  
(intervenor)



Date of hearing: 20010620-22

Member: McKeown J. (presiding); L.P. Schwartz; and G. Solorsh

Date of order: 20011003

Order signed by: McKeown J.

**DIVESTITURE ORDER**

[1] WHEREAS the Tribunal has determined that the acquisition by Canadian Waste Services Inc. of the Ridge Landfill is likely to result in a substantial lessening and substantial prevention of competition in the disposal of industrial, commercial and institutional waste ("ICI Waste") from the Greater Toronto Area ("GTA") as well as for the disposal of ICI Waste from the Chatham-Kent Area;

[2] AND WHEREAS the Tribunal has determined that the respondents are required to divest the Ridge Landfill;

[3] UPON HEARING counsel for the parties and for the intervenor with respect to the terms of the divestiture;

[4] AND FURTHER TO the Reasons and Order dated March 28, 2001, and the Reasons and decision regarding the remedy dated October 3, 2001;

THE TRIBUNAL ORDERS THAT:

### **Definitions**

[5] For the purposes of this order:

(a) definitions used in the Notice of Application and Statement of Grounds and Material Facts dated April 26, 2000, the Interim Consent Order dated April 28, 2000, the Statement of Agreed Facts dated October 2, 2000, and the Supplementary Statement of Agreed Facts dated November 20, 2000, shall apply herein except where otherwise defined in this order;

(b) "Ridge Landfill" shall mean the Ridge Landfill facility at Blenheim, Ontario, together with all associated business, shares and assets, including the Host Community Agreement entered into between the Municipality of Chatham-Kent and Browning-Ferris Industries Ltd.;

(c) "Purchaser" shall mean the person or entity who purchases the Ridge Landfill in accordance with the procedure for divestiture set out in this order.

### **Application**

[6] The provisions of this order shall apply to the respondents and to:

(a) each division, subsidiary or other person controlled by the respondents and each officer, director, employee, agent or other person acting for or on behalf of the respondents with respect to any of the matters referred to in this order;

(b) the respondents' successors and assigns;

(c) the Trustee;

(d) Hugh Thomas Consulting Ltd. as independent manager of the Ridge pursuant to the Interim Consent Order, and each employee, agent or other person acting for or on behalf of Hugh Thomas Consulting Ltd. with respect to any matter referred to in this order; and

(e) Deloitte & Touche Inc. as monitor pursuant to the Interim Consent Order, and each employee, agent or other person acting for or on behalf of Deloitte & Touche Inc. with respect to any matter referred to in this order.

### **Divestiture of the Ridge Landfill**

[7] The respondents shall promptly commence their efforts to divest, and shall use best efforts to complete the divestiture of the Ridge Landfill within 180 days from the date of this order, in accordance with the procedure for divestiture set out herein.

[8] If the divestiture of the Ridge Landfill is not completed within 180 days from the date of this order or such further time as specified by the Tribunal, the divestiture shall be carried out by a trustee in accordance with the procedure for a Trustee Sale set out herein.

[9] The respondents shall not, without the consent of the Commissioner, provide financing for all or any part of the divestiture under this order which would permit the respondents to influence or control directly or indirectly the operations of Ridge Landfill after the divestiture.

### **Divestiture Procedure**

[10] The divestiture of the Ridge Landfill shall be completed on the following terms:

(a) by sale, assignment, transfer, sale of shares or other disposition necessary to ensure that, by completion of the divestiture, the respondents have, directly or indirectly, no remaining title, right or interest in the Ridge Landfill;

(b) by way of disposition of the Ridge Landfill for use as a going concern;

(c) to a Purchaser who is at arm's length to each of the respondents and meet the following objective criteria:

(i) the Purchaser shall effect the purchase with the expressed intention of carrying on the business and competing effectively in the market for the disposal of ICI Waste from the GTA as well as the disposal of solid waste from the Chatham-Kent area; and

(ii) the Purchaser shall have the managerial, operational and financial capability to compete effectively in the market for the disposal of ICI Waste from the GTA as well as the disposal of solid waste from the Chatham-Kent area;

(iii) the Purchaser shall have agreed to accept the assignment of and assume the obligations set out in the Host Community Agreement entered into between the Municipality of Chatham-Kent and Browning-Ferris Industries Ltd.

(d) by way of a commercially reasonable public tender, bidding or other procedure instituted in a manner to allow a fair opportunity for one or more bona fide prospective purchasers to obtain notice of the prospective divestiture and to make an offer to acquire the Ridge Landfill; and

(e) on usual commercial terms for transactions of the size and nature of those contemplated in this order.

**[11]** Any person making a bona fide inquiry of the respondents or their agent regarding the possible purchase by that person or its principal of the Ridge Landfill shall be notified that the divestiture is being made pursuant to this order and provided with a copy of this order. Any bona fide prospective Purchaser shall be furnished, subject to the execution of a customary confidentiality agreement, with all pertinent information regarding the Ridge Landfill. Such information shall be provided to the Commissioner upon written request. Any bona fide prospective Purchaser shall be permitted, subject to the execution of a customary confidentiality agreement, to make such inspection of the Ridge Landfill and of all financial, operational or other documents and information as may be relevant to the divestiture.

**[12]** The respondents may request that the Commissioner review a preliminary list of proposed Purchasers. The Commissioner shall, within eight business days after the request, communicate to the respondents any objection to a person on the list. Failure to object to a person pursuant to this paragraph does not prejudice the right of the Commissioner to refuse to approve the eventual proposed Purchaser.

**[13]** The respondents shall, within three business days after a request by the Commissioner, provide the Commissioner with a written report on the progress of their efforts to accomplish the divestiture. The report shall include a description of contacts, negotiations and offers regarding the business to be divested and the identity of all parties contacted and prospective Purchasers who have come forward, all with reasonable detail.

**[14]** The respondents may, with the consent of the Commissioner, have a further 60 days to complete the divestiture if:

(a) the respondents have entered into a binding agreement to divest the Ridge Landfill to a Purchaser within 180 days of the date of this order; and

(b) the respondents and the Purchaser require more time to complete the divestiture transaction.

## **Trustee Sale**

[15] If the respondents have not completed the divestiture within 180 days or such further time as ordered by the Tribunal, Deloitte & Touche Inc., the monitor of the Ridge Landfill pursuant to the Interim Consent Order shall be appointed as Trustee.

[16] If Deloitte & Touche Inc. is unable or unwilling to act as Trustee, another person agreed to by the parties shall be appointed as Trustee. Should the parties fail to agree on the appointment of such other person, the Tribunal, on the application of the Commissioner, shall appoint the Trustee.

[17] The respondents shall transfer to the Trustee the authority to dispose of the Ridge Landfill.

[18] The Trustee shall carry out the sale of the Ridge Landfill on the following terms (the "Trustee Sale"):

- (a) after the appointment of the Trustee becomes effective, only the Trustee shall have the right to effect the divestiture of the Ridge Landfill, subject to the approval of the purchaser by the Commissioner;
- (b) the Trustee shall have the full power and authority to effect the Trustee Sale and shall use all reasonable efforts to do so;
- (c) the Ridge Landfill shall be sold by the Trustee within 90 days of the Trustee's appointment at the most favourable price and on the most favourable terms and conditions available;
- (d) the Trustee Sale shall be accomplished in accordance with paragraphs 10 and 11 of this order;
- (e) the respondents shall use their best efforts to assist the Trustee in accomplishing the Trustee Sale. In connection therewith, the Trustee shall have full and complete access as is reasonable in the circumstances, subject to an appropriate confidentiality agreement, to the personnel, books, records and facilities of the respondents relating to the Ridge Landfill and the respondents shall take no action to interfere with or impede the Trustee's accomplishment of the Trustee Sale;
- (f) after appointment, the Trustee shall, every 30 days, file written reports with the respondents and the Commissioner setting out the Trustee's efforts to sell the Ridge Landfill. The reports shall include a description of contacts, negotiations and offers regarding the business to be divested and the identity of all parties contacted and prospective Purchasers who have come forward, all with reasonable detail;
- (g) all expenses and fees reasonably and properly incurred by the Trustee in the course of the Trustee Sale shall be paid by the respondents and the proceeds of the Trustee Sale shall be paid to the respondents;
- (h) the Trustee shall promptly notify the respondents and the Commissioner of any negotiations with a prospective purchaser that, in the opinion of the Trustee, may lead to a Trustee Sale; and

(i) on application by either the Commissioner or the respondents, the Tribunal may confer any other power on the Trustee that it deems appropriate.

[19] The respondents may not object to the Trustee Sale on any grounds other than the Trustee's malfeasance, gross misconduct or breach of this order and any such objection shall be made in accordance with the provisions of paragraph 25.

[20] If the Trustee has not accomplished the Trustee Sale within 60 days of its appointment, the Trustee shall promptly file with the Tribunal, on a confidential basis, and shall at the same time provide a copy to the Commissioner and the respondents, a report setting forth:

- (a) the Trustee's efforts to accomplish the required divestiture;
- (b) the reasons, in the Trustee's judgement, why the required divestiture has not been accomplished; and
- (c) the Trustee's recommendations.

[21] After receiving the report of the Trustee, the Commissioner or respondents may apply to the Tribunal for any further order to carry out the purpose of the divestiture.

#### Commissioner's Approval

[22] The divestiture of the Ridge Landfill by the respondents or the Trustee is subject to the approval of the Commissioner, who shall take into account the competitive impact of the acquisition by the proposed Purchaser, and which shall be based on the criteria outlined in paragraph 10 and shall be obtained in accordance with the notification procedure set out in paragraphs 23 to 29.

#### **Notification**

[23] The respondents or the Trustee, whichever is then responsible for effecting the divestiture of the Ridge Landfill, shall give a written notice ("Divestiture Notice") to the Commissioner of any proposed divestiture or Trustee Sale. If the Trustee is responsible, the Trustee shall similarly notify the respondents. The Divestiture Notice shall include:

- (a) the identity of the proposed Purchaser;
- (b) the details of the proposed transaction, including the proposed agreement;
- (c) information concerning whether the proposed Purchaser would satisfy the terms of paragraph 10(c);
- (d) an update to the last report provided pursuant to paragraphs 13 and 18(f); and
- (e) the agreement of the proposed Purchaser that it will respond within seven days of a request by the Commissioner for additional information regarding the proposed divestiture or Trustee Sale.

[24] Within seven days after receipt of the Divestiture Notice, the Commissioner, and in the case of a Trustee Sale, the respondents may request additional information concerning the proposed divestiture or Trustee Sale, the proposed Purchaser or any other potential purchaser. The respondents, the Trustee or the proposed Purchaser, as the case may be, shall provide the additional information within seven days of the receipt of the request, unless the Commissioner agrees in writing to extend the time.

[25] Within 15 days after receipt of the Divestiture Notice or, if additional information is requested by the Commissioner or the respondents within the time specified in paragraph 24, within 15 days after receipt of the additional information, the Commissioner shall notify the respondents, and, in the case of a Trustee Sale, the Commissioner or the respondents shall notify the Trustee, in writing, of any objections they may have to the proposed divestiture or Trustee Sale on the ground that it does not conform to the terms of this order, and the reasons for the objections.

[26] Where the Commissioner or the respondents object to any of the terms of the proposed divestiture or Trustee Sale pursuant to paragraph 25, the proposed divestiture shall not be completed without the approval of the Tribunal.

[27] If the Commissioner fails to object within the period set out in paragraph 25 and on the grounds set out in paragraph 22, or if the Commissioner notifies the respondents and the Trustee, if there is one, in writing that he does not object, then the divestiture of the Ridge Landfill shall be completed, subject to paragraph 26.

[28] If the respondents fail to object within the period set out in paragraph 25, then the divestiture of the Ridge Landfill shall be completed, subject to paragraph 26.

[29] The respondents or the Trustee, as the case may be, shall notify the Commissioner forthwith after the divestiture of the Ridge Landfill, required by this order, has been completed.

#### Continuation of Interim Consent Order

[30] The terms of the Interim Consent Order dated April 28, 2000, are hereby continued until the completion of the divestiture or Trustee Sale as defined in paragraph 33 below, of the Ridge Landfill by the Purchaser from the respondents.

#### **Notice**

[31] Notices and reports required to be given pursuant to any of the terms of this order shall be considered given if dispatched by personal delivery, registered mail or facsimile transmission to the parties listed in Schedule A.

[32] Any such notice or other document shall, if delivered or transmitted by facsimile, be deemed to have been given and received on the business day next following the date of sending, and if mailed, be deemed to have been given and received on the third business day following the date of mailing.

### **Completion of divestiture**

[33] The divestiture or Trustee Sale shall be considered to be completed when all right, title and interest of the respondents in the Ridge Landfill has been conveyed to a Purchaser in accordance with the terms of this order.

### **Statement by Commissioner**

[34] Once divestiture or Trustee Sale has taken place in accordance with this order, the Commissioner shall file with the Registrar of the Tribunal a statement identifying the purchaser and setting out the date on which the divestiture or Trustee Sale was accomplished.

### **Post Divestiture**

[35] Following divestiture by the respondents or the Trustee Sale, none of the respondents, their affiliates, their agents or representatives shall acquire the Ridge Landfill, any interest therein, or any part of the business of the Ridge Landfill for a period of 10 years.

### **Confidentiality**

[36] The Commissioner, the respondents and the Trustee, if any, shall keep confidential among the Commissioner, the respondents and the Trustee, if any, and their respective advisors, the identities of all prospective Purchasers and all persons expressing an interest in purchasing the business to be divested or sold, as well as the details of their offers and expressions of interest.

### **Jurisdiction**

[37] Either the respondents or the Commissioner may apply to the Tribunal at any stage of the divestiture or Trustee Sale for directions or such other order as may be appropriate.

[38] The Tribunal shall retain jurisdiction in this matter for the purpose of addressing any matters in this order where specific reference is made to the Tribunal, for purposes of variation and for any other purposes provided for in the Competition Act.

DATED at Ottawa, this 3<sup>rd</sup> day of October, 2001.

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

(s) W.P. McKeown

**SCHEDULE "A"**  
**SERVICE LIST**

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