

THE COMPETITION TRIBUNAL

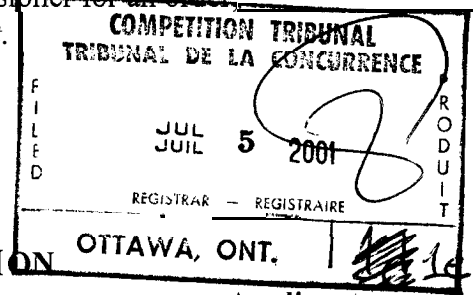
IN THE MATTER OF THE *COMPETITION ACT*, R.S. 1985, c.C-34, as amended, and the *Competition Tribunal Rules*, SOR/94-290, as amended (the “*Rules*”);

AND IN THE MATTER OF an inquiry pursuant to subsection 10(1)(b) of the *Competition Act* relating to the proposed acquisition of all of the issued and outstanding shares of Newalta Corporation by Canadian Crude Separators Inc.;

AND IN THE MATTER OF an Application by the Commissioner for an order, on consent, pursuant to ss. 100 and 105 of the *Competition Act*.

BETWEEN

THE COMMISSIONER OF COMPETITION



Applicant

- and -

CANADIAN CRUDE SEPARATORS INC.

Respondent

CONSENT ORDER IMPACT STATEMENT

1. This Statement is filed by the Commissioner of Competition (the “Commissioner”) pursuant to paragraph 77(1)(b) of the *Competition Tribunal Rules* for the issuance of a Draft Consent Interim Order (the “DCIO”). It describes the circumstances surrounding the Commissioner’s application for the DCIO; the anticipated effect on competition and the Tribunal’s ability to remedy such effect if the DCIO is not granted; and the anticipated effect on the Tribunal’s ability to remedy the effects on competition resulting from the merger if the DCIO is issued by the Tribunal.

2. The Respondent does not agree with the analyses and all of the facts contained in the Affidavit of Richard Taylor and the consent order impact statement. Nevertheless, for the purposes of this application or any proceeding relating to the DCIO, including an application to vary or rescind the DCIO pursuant to section 106 of the Competition Act, the Respondent does not contest the above-noted documents.

NATURE AND PURPOSE OF THE PROCEEDING

3. The Commissioner files this consent order impact statement, a notice of application, the supporting affidavit of Richard J. Taylor and a DCIO pursuant to sections 100 and 105 of the *Competition Act* (the “Act”).
4. The Commissioner requests the issuance of the DCIO, to preserve, during the course of the Commissioner's investigation of the Merger (as hereinafter defined) of the Respondent and Newalta Corporation, each of the Affected Businesses (as hereinafter defined) as independent, viable, ongoing and competitive businesses and to preserve the Competition Tribunal's ability to order appropriate relief pending final disposition by the Tribunal of a possible application pursuant to section 92 of the Act.

CIRCUMSTANCES GIVING RISE TO THE DRAFT CONSENT INTERIM ORDER

OVERVIEW

5. The Commissioner has commenced an inquiry (the “Inquiry”) into the proposed acquisition (the “Merger”) of Newalta Corporation (“Newalta”) by Canadian Crude Separators Inc. (“CCS”) pursuant to the provisions of paragraph 10(1)(b) of the Act.

6. On May 3, 2001 CCS commenced a bid to acquire all of the issued and outstanding Newalta common shares and Newalta common share purchase warrants. The date identified in the June 25, 2001 Notice of Variation to Newalta shareholders and warrant holders for tendering their interests in Newalta is July 6, 2001 unless such bid is extended.
7. CCS has advised the Bureau that it intends to take up the shares tendered pursuant to the Offer on Friday, July 6, 2001.
8. The Commissioner has conducted a preliminary investigation into the effects on competition of the proposed Merger and has identified preliminary significant competition concerns with respect to certain product markets and geographic markets in which the merging parties compete, but requires additional time to complete his Inquiry.
9. A description of the steps taken in the Commissioner's review of the Merger to date are described in paragraphs 9 through 16 of the Affidavit of Richard J. Taylor filed in support of the Application.
10. Given that CCS is determined to close the transaction on July 6, 2001 and the obligations of the Commissioner to complete his review of this matter, there is insufficient time to complete these tasks and file an application under s.92 of the *Competition Act*.
11. While the Commissioner has reached preliminary conclusions regarding the appearance of substantial anti-competitive effects in certain markets as a result of the proposed merger, the Commissioner and his staff are still analysing and defining the product and geographic markets and the precise nature of the substantial lessening or prevention of competition and will make every effort to complete such analysis within the next 30 days.
12. To further quantify these effects on a market by market basis and to verify the preliminary market assessments in a complex multi-market industry, the Bureau during the next 30 days

will require more specific information from each of the parties and their competitors concerning each facility and its capacities, revenues and pricing structures for each customer and waste type handled. Obtaining this information, and its subsequent analysis, will assist the Bureau in quantifying the level of dominance the combined firm would have in each service in each local market. Further documentary evidence will also be gathered to assess incentives, plans and views of competitors in the relevant markets and the reasons for the subject transaction. CCS has agreed to cooperate with the Bureau's information requests.

13. Given the transformation of the market for the supply of oilfield waste treatment and disposal services into one characterised as a monopoly or duopoly, as the case may be, the Commissioner requires more time and information from market participants, customers, industry experts, economists and counsel in order to further and conclusively analyse and assess the competitive impact of the Merger.

THE BUREAU'S PRELIMINARY ANALYSIS

The Parties

14. CCS is a corporation constituted under the laws of Alberta and is engaged primarily in the provision of services to the upstream oil and gas sector through the operation of its two divisions: the Treatment and Disposal Division and the Well Servicing Division. The Treatment and Disposal Division operates oilfield waste treatment facilities and disposal sites in 21 centres in Alberta and Saskatchewan. The Well Servicing Division has a fleet of 39 well service rigs operating in Alberta and northeastern British Columbia. CCS' revenues for the twelve months ended December 31, 2000 were Cdn. \$67.8 million.
15. Newalta is a corporation constituted under the laws of Alberta and is engaged primarily in the provision of services through the processing and recovery of resalable products from waste materials generated by the oil production industry. In Alberta, Newalta operates 28 waste treatment facilities in four lines of business: Conventional Oilfield Services; Heavy Oilfield Services; Oil Recycling Services; and Industrial Services. Newalta does not operate

oil well service rigs. Newalta's revenues for the twelve months ended December 31, 2000 were Cdn. \$78.4 million.

16. The only other significant multi-market commercial participant in the oilfield waste treatment and disposal market is Anadime Corporation ("Anadime"). Anadime has revenues from all businesses of \$13.2 million in 2000 (\$11 million in Canada) and operates five oilfield waste processing facilities at Niton, Hays, Stettler, Elk Point and Provost and a terminalling facility at Willesden Green.

Market Definition

17. The Bureau's investigation has identified three relevant product markets: (a) oilfield waste treatment and disposal services; (b) crude oil separation and terminalling services; and (c) uncontaminated liquid and solid oilfield waste disposal services. The Bureau has identified competition concerns relating to the market for the supply of oilfield waste treatment and disposal services. The Merger does not appear to raise significant competition concerns with respect to the remaining identified product markets.
18. The oilfield waste treatment and disposal services product market includes the consolidation, treatment and final disposal of various contaminated liquids, sludges, and solids that are a byproduct of oilfield operations. These wastes include products such as drilling muds, work over fluids, spill materials, tank bottoms, slop oil, produced waters and other liquids, emulsions, solids and sludges derived from drilling, producing and maintaining oil production. Certain liquid and solid wastes may be disposed of directly without further treatment.
19. The Bureau has identified 16 geographic markets in which the parties have waste treatment facilities or disposal facilities. The Bureau has identified serious competition concerns in three markets affecting six (6) Newalta facilities and requires additional information with

respect to four additional geographic markets affecting four (4) Newalta facilities.

20. It appears to the Commissioner that the Merger will likely result in the creation of practical monopolies in the supply oilfield waste treatment and disposal services in the following areas:

1. Zama/Rainbow Lake, AB;
2. Gordondale/Spirit River/La Glace/Grand Prairie, AB;
3. Rocky Mountain House/Pigeon Lake/Stauffer/Eckville AB.

The affected Newalta facilities (the “Affected Facilities”) are located at:

1. Grande Prairie;
2. Gordondale;
3. Spirit River;
4. Zama;
5. Eckville; and
6. Stauffer.

21. The Commissioner has not yet completed his analysis and requires additional detailed market information in regard to facilities located in the following geographic markets in which the combined entity would have significant market share and/or control over access to disposal facilities:

1. High Prairie/Valleyview/Fox Creek AB
2. Edson/Wolf Lake/Brazeau/Niton Jct/Drayton Valley AB
3. Hughenden/Provost/Unity/Coronation AB; and
4. Edson/Wolf Lake/Brazeau/Niton Jct/Drayton Valley AB

The affected Newalta facilities (the “Affected Facilities”) are located at:

1. Valleyview
2. Drayton Valley
3. Hughenden including the waste disposal cavern associated with such facility; and
4. Elk Point.

Market Share

22. It appears that the transaction will result in the top two firms in the industry, with an overall market share likely above 80%, and near 100% in certain local geographic regions, dominating the market worth approximately \$160 million per year in Alberta and certain geographic areas of Saskatchewan and British Columbia.

Barriers to Entry

23. Barriers to entry and exit appear to be significant, given the time needed to enter and build a business in numerous local markets, the regulatory obstacles and potential environmental liabilities facing entrants.

Effective Remaining Competition

24. In its preliminary investigation, the Bureau discovered that the oilfield waste treatment and disposal market is characterised by competition among three competitors, CCS, Newalta and Anadime who service oil producers from a number of locations in proximity to oil producing fields. No other firms provide the scope of services or distribution of service locations of these firms in the market, with Anadime being a much smaller competitor in terms of markets served and market share. No other firms enjoy the same reputation as CCS or Newalta in terms of scope and breadth of service, financial stability and environmental stewardship in the industry.

ALLEGED IMPACT ON THE TRIBUNAL'S ABILITY TO REMEDY THE EFFECTS ON COMPETITION OF THE MERGER

25. In the absence of an interim order on the terms sought in the DCIO, CCS will be able to take up the shares deposited under the terms of the offer and, assuming sufficient shares are deposited, the CCS will be able to integrate the business operations of Newalta with those of its own, have access to Newalta's proprietary and competitively sensitive information and terminate a vigorously competitive management team which would seriously jeopardize the Tribunal's ability to order the divestment of any of the Affected Facilities as ongoing competitive businesses to remedy the effects of the merger on competition.
26. If the DCIO is not granted it is highly unlikely that the acquired businesses of Newalta and the Respondent's own competing business in the supply of oil field waste remediation, management and disposal services in Western Canada would be operated independently or on a competitive basis and the effectiveness of any ultimate remedy in respect of the Affected Businesses issued by the Tribunal will be significantly decreased.

ANTICIPATED IMPACT OF THE DCIO

27. The DCIO will allow the Commissioner to complete his assessment of the competition affects of the Merger. CCS has agreed to hold separate those facilities and businesses of Newalta that have been identified by the Commissioner as posing competition concerns notwithstanding the acquisition of Newalta through a successful bid and CCS has further agreed to divest each of those facilities pursuant to the terms of a letter agreement dated July 4th, 2001 attached as Exhibit "B" (the "Letter Agreement") to the Affidavit of Richard J. Taylor.
28. Pursuant to the terms of the DCIO, CCS will not take any action, beyond the acquisition of shares, in respect of the identified Affected Businesses acquired from Newalta. The Affected Business will be managed by an Independent Manager appointed by the Commissioner.

29. Further, under the terms of the DCIO, CCS and its affiliates, officers and employees, the Independent Manager and any Monitor appointed by the Commissioner are obligated to take steps to prevent the disclosure of competitively sensitive and business proprietary information.
30. The commitments of CCS contained in the DCIO and the Letter Agreement address the competition concerns identified by the Bureau's investigation and preserve the Commissioner's ability to complete his inquiry while substantially preserving the ability of the Tribunal to remedy the effects of the proposed merger on competition.

CONCLUSION

31. For the reasons presented herein, the Commissioner is satisfied with and recommends the settlement of the interim proceeding and respectfully requests the Competition Tribunal to issue the DCIO.

DATED AT HULL, QUEBEC, THIS 5TH DAY OF JULY 2001.

THE COMPETITION TRIBUNAL

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B E T W E E N:

THE COMMISSIONER OF COMPETITION
Applicant

- and -

CANADIAN CRUDE SEPARATORS INC.
Respondent

CONSENT ORDER IMPACT STATEMENT

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