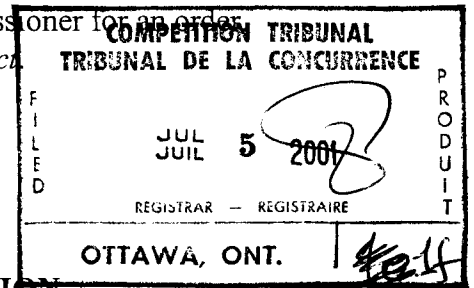


THE COMPETITION TRIBUNAL

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

MEMORANDUM OF ARGUMENT ON INTERIM RELIEF
OF THE COMMISSIONER OF COMPETITION

1. This is an application by the Commissioner of Competition (the "Commissioner") pursuant to sections 100 and 105 of the *Competition Act* (the "Act") for a consent interim order (the "Consent Interim Order Application") pending the completion of the an inquiry commenced pursuant to section 10(1)(b) by the Commissioner.
2. The Commissioner seeks an order on consent abridging the time for filing and hearing of the Consent Interim Order Application.

3. The Respondent has made a hostile take-over bid to acquire all of the issued and outstanding Newalta Corporation (“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 at 1:01 am (Calgary time) unless such bid is extended. The bid is conditional inter alia on fifty percent plus one of the outstanding Newalta shares being deposited in accordance with the Respondent’s Offer.
4. The Commissioner has provided, as a courtesy, notice of the application to Newalta’s counsel.
5. The Commissioner seeks an interim order on consent that the Respondent be restrained and prohibited from, until further order of this Tribunal or for a period of thirty (30) days in accordance with the terms of the Draft Consent Interim Order (the “DCIO”), doing any act or thing which may constitute or be directed toward the implementation of the Merger with respect to the Affected Businesses as defined therein, except as provided therein.

THE LAW

A. Abridging the Time for Service of and Hearing of the Consent Interim Order Application

6. Subsections 68(1) and (2) of the *Competition Tribunal Rules* provide:
 - 68(1) Subject to subsection (2), a judicial member may, by order, extend or shorten a time limit prescribed by these rules.
 - 68(2) No judicial member may shorten the time limit prescribed by subsection 24(1).
7. Subsections 76(2) and (3) of the *Competition Tribunal Rules* provide:
 - 76(2) The Tribunal may, if it is satisfied that the procedure set out in this Part is not appropriate because of the limited scope fo the consent order applied for, including the limited impact on the public or on competition, vary the procedure set out in this Part.

76(3) Sections 38 to 41 and 49 to 75 apply in respect of applications for a consent order, with such modifications as the circumstances require.

8. Part II of the Competition Tribunal Rules Applicable to consent proceedings apply. The Tribunal has the authority pursuant to sections 68 of the Rules to shorten or extend a time limit prescribed by the rules except in the case of a contested section 100 application for which the time limit may not be shortened pursuant to subsection 24(1) of Part I - contested proceedings.
9. Section 24 of the Rules is inapplicable to consent orders under section 105 by virtue of subsection 76(3) of the Rules which prescribes the Rules applicable to contested proceedings and those which are applicable to consent order proceedings.
10. Subsection 76(2) of the Rules allows the Tribunal to vary the procedures set out for consent orders in Part II where such Rules are not appropriate because of the limited scope of the consent order applied for, including the limited impact on the public or on competition.

B. Interim Orders - s.100

11. Section 100 of the Act provides a statutory criteria that must be satisfied for the Tribunal to issue an interim order pursuant to section 100. Paragraph 100(1)(a) of the Act provides that:

100(1) The Tribunal may issue an interim order forbidding any person named in the application from doing any act or thing that it appears to the Tribunal may constitute or be directed toward the completion or implementation of a proposed merger in respect of which an application has not been made under section 92 or previously under this section , where

- (a) on application by the Commissioner, certifying that an inquiry is being made under paragraph 10(1)(b) and that, in the Commissioner's opinion, more time is required to complete the inquiry, the Tribunal finds that in the absence of an interim order a party to the proposed merger or any other person is likely to take an action that would substantially impair the ability of the Tribunal to remedy the effect of the proposed merger on competition under that section because that action would be difficult to reverse.

12. Subsection 100(4) further provides that:

100(4) An interim order issued under subsection (1):

- (a) shall be on such terms as the Tribunal considers necessary and sufficient to meet the circumstances of the case; and
- (b) subject to subsections (5) and (6), shall have effect for such period of time as is specified in it.

13. Pursuant to subsection 100(5) the duration of an interim order issued pursuant to section 100 may not exceed 30 days subject to a further extension of time pursuant to subsection 100(7) not to exceed 60 days from the date that the interim order was first issued.

C. The Consent Order Process - s.105

14. Section 105 of the Act provides that:

105 Where an application is made to the Tribunal under this Part for an order and the Commissioner and the person in respect of whom the order is sought agree on the terms of the order, the Tribunal may make the order on those terms without hearing such evidence as would ordinarily be placed before the Tribunal had the application been contested or further contested.

15. When proceedings are brought on consent, the Tribunal has stated that its role is to determine only whether the consent order meets a minimum test. The Tribunal further treats the Commissioner's proposal with initial deference and will assume at the outset that the proposed consent order will meet its stated objectives.

ARGUMENT

A. Abridgement of Time

16. The Commissioner and the Respondent have engaged in substantive discussions in an effort to avoid a contested application and to narrow the issues relevant to the Commissioners

inquiry into the competitive effects of the merger.

17. The transaction is a hostile take-over bid. The Order provides clarity as to the Respondent's ability to proceed with the take-up of securities at the expiration of the bid.
18. The draft interim consent order preserves the remedies of the Tribunal with regard to those business activities of the Respondent and Newalta which the Commissioner has identified as problematic without unduly restricting the ability of the Respondent to implement the merger as it relates to non-problematic parts of the transaction.
19. As both Parties consent, there is no prejudice to either the Commissioner nor the Respondent to granting an abridgement of the time limits for filing and serving materials and hearing the application.

B. The Criteria Prescribed by s. 100 are Satisfied

20. The Tribunal may only issue an interim order, in the absence of a section 92 Application, where pursuant to section 100 of the Act:
 - (a) the Commissioner certifies that an inquiry is being made under paragraph 10(1)(b) of the Act;
 - (b) the Commissioner certifies that in his opinion more time is required to complete the inquiry; and
 - (c) on a balance of probabilities in the absence of an interim order a party to the proposed merger or any other person is likely to take an action that will substantially impair the ability of the Tribunal to remedy the effect of the proposed merger on competition because that action would be difficult to reverse.

21. The Commissioner has certified that an inquiry is being made under paragraph 10(1)(b).
Notice of Application filed July 5th, 2001.

22. The Commissioner has certified that in his opinion more time is required to complete the inquiry. The Commissioner will make every effort to complete the Inquiry and analysis of the effects of the merger on competition within the next 30 days. The Commissioner requires additional information from the Respondent, competitors and customers in the market as well as the expert advice of industry experts and economists to complete his analysis.

Notice of Application filed July 5th, 2001.

Affidavit of Richard J. Taylor sworn the 5th day of July 2001 at paragraphs 35 -38.

23. In the absence of an interim order on the terms sought in the Draft Consent Order the Respondent will be able to take up the shares deposited under the terms of the offer and, assuming sufficient shares are deposited, the Respondent will be able to integrate the business operations of Newalta with those of its own, have access to Newalta 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 ongoing competitive businesses to and remedy the effects of the merger on competition.

Affidavit of Richard J. Taylor sworn the 5th day of July 2001 at paragraph 39

24. If the Order is not granted is it 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 issued by the Tribunal will be significantly decreased.

Affidavit of Richard J. Taylor sworn the 5th day of July 2001 at paragraph 40.

Canada (Director of Investigation and Research) v. Southam Inc., (1995) 63 CPR (3rd) 67 at 73.

25. In assessing whether the Tribunal's ability to remedy the effects on competition of the merger is substantially impaired in the absence of the interim order, the Tribunal has confirmed that protecting divestiture as a valid remedial option is a strong impetus for interim relief in merger cases:

Protecting divestiture as a valid remedial option will always be a strong impetus for interim relief in merger cases. The futility of attempting to "unscramble the eggs" upon the later finding that the merger will indeed likely lessen competition substantially is apparent. The legislative scheme attempts to guard against this eventuality by, for example, instituting a regime for pre-notification of some mergers and allowing the Director to apply for interim relief under ss.100 and 104.

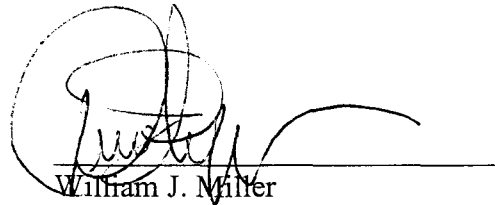
Canada (Director of Investigation and Research) v. Southam Inc. (1991) 36 C.P.R. (3d) 22 (C.T.) at 26.

26. It is submitted that it is appropriate for the Tribunal to exercise its discretion and grant the order sought to preserve the independent operation of those facilities and businesses in market which the Commissioner has identified preliminary concerns and for which additional information is required.

PART IV - ORDERS SOUGHT

27. The Commissioner respectfully requests:
- (a) that the Tribunal issue an order abridging the time for service in the form of the draft consent order filed;
 - (b) that the Tribunal issue an interim hold separate order in the form of the draft consent order filed; and
 - (c) such further and other relief as to the Tribunal may seem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of July, 2001.

A handwritten signature in black ink, appearing to read 'William J. Miller', is written over a horizontal line.

William J. Miller
Duane E. Schippers
Department of Justice
Counsel to the Commissioner of
Competition
Place du Portage, Phase I
50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 997-3325
Facsimile: (819) 953-9267

TO:
Canadian Crude Separators Inc.
c/o Macleod Dixon LLP
Suite 3900
Canada Trust Tower
BCE Place
161 Bay St, POBox 505
Toronto, Ontario
M5J 2S1
Attn: Mr Albert C. Gourley

File No. CT 01/

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AND IN THE MATTER OF an Application by the
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William J. Miller
Duane E. Schippers
Department of Justice
Counsel to the Commissioner of
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50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 997-3325
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