

Michael R. Baye's Rebuttal to the Expert Report of Professor George Hay

1. I examined the *Expert Report of Professor George A. Hay*, which is dated 10 October 2000. Nothing in Professor Hay's report changes my opinion that the acquisition of the Ridge landfill by CWS would likely result in a substantial lessening or prevention of competition in the GTA and CKA service areas.
2. Professor Hay is silent on the issue of whether the acquisition would likely result in a substantial prevention of competition. Yet, he indicates in Paragraph 14 of his report that CWS would own a "substantial share" of Southern Ontario disposal capacity if it acquires the Ridge landfill. For the reasons noted in my report, excess capacity in the hands of an independent Ridge and CWS would likely result in strong competition and lower tipping fees in Southern Ontario. If CWS gains control of the Ridge landfill, this competition would be eliminated.
3. Professor Hay's report is silent on the competitive effects of the merger in the Chatham-Kent service area. For the reasons noted in my report, it is important to consider these effects.
4. Professor Hay's report is silent on the impact of the acquisition on vertically linked markets. For the reasons noted in my report, it is important to consider these effects.
5. Professor Hay assumes in Paragraph 15 of his report that tipping fees are currently at the competitive level (marginal cost), and therefore that landfills do not enjoy market power. Based on this assumption, he concludes that the acquisition would not substantially lessen competition. Furthermore, in Paragraph 26, he argues that in any event, U.S. landfills are in the relevant market, and thus would discipline the tipping fees charged by

landfills in Southern Ontario.

6. I disagree with these assumptions and conclusions. Among other things, Professor Hay's analysis does not recognize that
 - a. The evidence indicates that landfills in Southern Ontario enjoy market power. As discussed in my report, it is important to consider these effects.
 - b. The evidence indicates that major landfills in Southern Ontario were operating at full capacity during 1999. For the reasons noted in my report, it is important to consider these effects.
 - c. The evidence indicates that U.S. disposal sites are poor substitutes for landfills in Southern Ontario. As discussed in my report, it is important to consider these effects.
 - d. The ownership, contractual obligations, and capacity restrictions at U.S. disposal sites substantially limit their ability to discipline the tipping fees charged by landfills in Southern Ontario. As discussed in my report, it is important to consider these effects.
 - e. Price discrimination is prevalent in this market. As discussed in my report, it is important to consider these effects.
7. In Paragraph 28, Professor Hay appears to imply that, so long as the total cost (tipping fee + transport cost) of disposing of waste in the U.S. and Canada are the same, there can be no anti-competitive effects of the merger. A simple example will illustrate several flaws with this reasoning.
8. A hypothetical movie theater controls all of the theater capacity in Ottawa, and charges

\$40 for a ticket. The theater's nearest competitors are in Toronto, and charge only \$10 for a ticket. Imagine that the cost of traveling to Toronto involves \$30 in travel and inconvenience costs to movie-goers. Professor Hay would have you believe that, since the total cost to a person in Ottawa who travels to Toronto to watch a movie is \$40 (the \$10 ticket price plus \$30 in travel costs), Toronto theaters are effectively competing with the theater in Ottawa. However, note two things. First, the \$40 ticket price in Ottawa reflects a \$30 premium over the prices received by theaters in Toronto. This premium reflects the market power that the Ottawa theater enjoys because of its distance advantage over theaters in Toronto. Second, consider what would happen to local ticket prices in Ottawa if new seating capacity was made available in Ottawa. If the new capacity was in the hands of an independent theater, local competition in Ottawa would likely result in a substantial reduction in the price of movie tickets. However, if the existing theater in Ottawa could somehow gain control of the new capacity, it could continue to charge \$40 for a ticket.

9. This simple example illustrates that (a) distance creates market power in spatially separated markets, and (b) excess capacity in the local market will tend to mitigate market power in the local market, provided one firm does not effectively control that capacity. My report shows that these types of issues are relevant in the present case, and that the acquisition by CWS of the Ridge landfill would likely result in a substantial lessening or prevention of competition.