

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Canadian Waste Services Holdings* 2000,
Comp. Trib. 11
File no.: CT2000002
Registry document no.: 23

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34;

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)



Date of conference call: 20000629
Member: McKeown J. (presiding)
Date of order: 20000629
Order signed by: McKeown J.

INTERIM CONFIDENTIALITY ORDER

[1] FURTHER TO the draft interim confidentiality order filed by the applicant and respondents;

[2] AND FURTHER TO the motion made orally on consent by counsel for the applicant and the respondents at the hearing on June 29, 2000;

THE TRIBUNAL ORDERS THAT:

[3] For purposes of this order:

(a) "Protected Documents" shall mean the documents **[produced in this application]** with respect to which claims for confidentiality have been advanced which claims have not been withdrawn in writing or determined by the Tribunal. Protected Documents adduced in evidence at the hearing of this application shall be identified as such and clearly marked one of the following confidentiality levels:

(i) "Level A" which means Protected Documents that shall only be disclosed to counsel for the Commissioner of Competition ("Commissioner") and the Respondents (the "Parties"), counsel's staff directly involved in this application, independent experts retained by the Parties, the Commissioner and the Commissioner's staff directly involved in this application; or

(ii) "Level B" which means Protected Documents that shall only be disclosed to counsel for the Parties, counsel's staff directly involved in this application, independent experts retained by the Parties, the Commissioner, the Commissioner's staff directly involved in this application and the representatives of each Respondent who have been designated pursuant to paragraph 10 of this order.

[4] This order shall apply to all persons who acquire access to Protected Documents through this application.

[5] No Protected Documents produced in this application shall be disclosed or form part of the public record, except with the prior written consent of the person that claimed confidentiality over the document or in accordance with this order or any other order of the Tribunal.

[6] Each party shall provide a copy of the Protected Documents identified by it to counsel for each other party who requests a copy.

[7] A party may, at its option, provide another party with electronic copies of its Protected Documents, provided that originals may be inspected if a party so requests. Copies of electronic versions of Protected Documents may be used at the hearing of this application.

[8] At or before the time of production of any Protected Documents to the Commissioner, the Respondents shall provide counsel for the Commissioner with written notice identifying whether the Protected Documents identified by them should be designated as Level A or Level B.

[9] At or before the time of production of any Protected Documents to the Respondents, the Commissioner shall provide counsel for the Respondents with written notice identifying whether the Protected Documents identified by the Commissioner should be designated as Level A or Level B Protected Documents.

[10] All documents identified as Protected Documents shall, on a preliminary basis, be afforded the highest confidentiality level designation claimed by any of the parties pending further determination of the confidentiality level pursuant to this Order.

[11] Following the exchange of documents, the Parties shall use their best efforts to agree on appropriate levels of confidentiality for the Protected Documents or portions thereof. If agreement cannot be reached, any of the Parties may apply to the Tribunal to determine the confidentiality or level of confidentiality of any Protected Document or portions thereof.

[12] Canadian Waste Services Holdings Inc. and Canadian Waste Services Inc., collectively may designate up to 3 individuals and Waste Management Inc., may designate up to 2 individuals as their representatives who will be permitted access to Level B Protected Documents in accordance with the terms of this order. Such designation of individuals shall be made by written notice to the Tribunal, with copies sent to the Commissioner.

[13] Counsel for a Party shall only disclose Level A Protected Documents to counsel for another Party, counsel's staff directly involved in this application, independent experts retained by the Parties, the Commissioner and to the Commissioner's staff directly involved in this application.

[14] Counsel for a Party shall only disclose Level B Protected Documents to counsel for another Party, counsel's staff directly involved in this application, independent experts retained by the Parties, the representatives designated by each Respondent pursuant to paragraph 10 of this order, the Commissioner and to the Commissioner's staff directly involved in this application.

[15] Prior to gaining access to Protected Documents referred to in this order, independent experts and designated representatives permitted by this order to have such access shall execute a confidentiality agreement in the form attached as Schedule A. A confidentiality agreement signed pursuant to this order shall be filed promptly with the Registrar of the Tribunal who shall retain all such agreements in confidence until completion or final disposition of this application and any related appeals, at which time the agreements may be disclosed to the Parties upon request.

[16] If a Party is required by law to disclose a Protected Document, or if a Party receives written notice from a person who has signed a confidentiality agreement pursuant to this order that it is required by law to disclose a Protected Document, that party shall give prompt written notice to counsel for the party that claimed confidentiality over the Protected Document so that the party that claimed confidentiality may seek a protective order or other appropriate remedy.

[17] For greater certainty, all persons, including the Commissioner and his staff, who obtain access to documents through the discovery process in this application are subject to an implied undertaking to use the documents and information for the purposes of this application and any related appeals only.

[18] Counsel for a Party, and the Commissioner and his staff, may make such copies as they require in connection with these proceedings. Copies of Protected Documents may be provided to representatives designated by each respondent pursuant to paragraph 10 of this order and to independent experts retained by a party.

[19] Upon completion or final disposition of this application and any appeals, all Protected Documents and any copies of Protected Documents disclosed in accordance with this order, with the exception of Protected Documents in the possession of the Commissioner and his staff, shall be destroyed or returned to the party that produced the Protected Documents unless the Protected Documents have become public or the party that produced the Protected Documents states, in writing, that they may be disposed in some other manner.

[20] The termination of proceedings in this application shall not relieve any person to whom Protected Documents were disclosed pursuant to this order from the obligation of maintaining the confidentiality of such documents in accordance with the provisions of this order and any confidentiality agreement.

[21] This order shall be subject to further direction of the Tribunal.

DATED at Ottawa, this 29th day of June, 2000.

SIGNED on behalf of the Tribunal by the presiding judicial member

(s)W.P. McKeown

A handwritten signature in cursive script, appearing to read "W.P. McKeown".

SCHEDULE "A"

IN CONSIDERATION of being provided with documentation in connection with this application over which claims for confidentiality have been advanced, I, _____, in the Province of _____, hereby agree to maintain the confidentiality of the documentation so obtained. I will not copy or disclose the documentation so obtained or any information therein, to any other person, except persons permitted by the order granted by the Competition Tribunal on _____, nor will I use the documentation so obtained or any information therein for any purpose other than in connection with this application and any related appeals only.

Upon completion of this application and any related appeals, I agree that such documentation, and any copies of same, shall be dealt with in accordance with any applicable order of the Competition Tribunal.

I acknowledge that I am aware of the order granted by the Competition Tribunal on _____, in this regard, a copy of which is attached to this agreement, and agree to be bound by same. I acknowledge that any breach of this agreement by me will be considered to be a breach of the said order of the Competition Tribunal. I further acknowledge and agree that the Commissioner of Competition ("Commissioner"), Canadian Waste Services Holdings Inc., Canadian Waste Services Inc. and Waste Management, Inc., or any other owner of the documentation may not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this agreement are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that any one or more of the Commissioner, Canadian Waste Services Holdings Inc., Canadian Waste Services Inc. and Waste Management, Inc., or any other owner shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.

In the event that I am required by law to disclose any of the documentation which is subject to this agreement, I will provide counsel for the party on whose behalf I have been retained with prompt written notice so that the person that claimed confidentiality over such documentation may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the documentation which is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded to the documentation.

I will promptly, upon the request of the party providing the documentation, advise where such documentation is kept by me and at the conclusion of my involvement in this application and any related appeals, destroy the documentation or deliver it to the said party without retaining any copies thereof. I will destroy all documents received by me relating to such documentation, except that I may retain in my confidential files, subject to the requirements of confidentiality imposed by this agreement, materials prepared by me, such as study results and materials of a general nature which do not replicate any confidential documents.

I hereby attorn to the jurisdiction of the Federal Court of Canada and/or the Competition Tribunal to resolve any disputes arising under this agreement.

SIGNED, SEALED AND DELIVERED before a witness this _____ day of _____, 2000.

(Witness Signature)

(Signature)

(Print Name)

xxxxxx

APPEARANCES:

For the applicant:

The Commissioner of Competition

Donald Houston
Michael Osborne
André Brantz

For the respondents:

Canadian Waste Services Holdings Inc.
Canadian Waste Services Inc.
Waste Management, Inc.

Shawn C.D. Neylan