

CT - 2000/002

**THE COMPETITION TRIBUNAL**

IN THE MATTER OF the Competition Act, R.S. 1985, c. C-34, as amended;

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.

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

COMPETITION TRIBUNAL	
TRIBUNAL DE LA CONCURRENCE	
FILED	JUN 19 2000 <i>Jo</i>
REGISTRAR - REGISTRAIRE	
OTTAWA, ONT.	<i>15 (a)</i>
Applicant	

- and -

**CANADIAN WASTE SERVICES HOLDINGS INC., CANADIAN WASTE SERVICES INC. AND WASTE MANAGEMENT, INC.**

**Respondents**

**RESPONDENTS' RESPONSE TO THE REQUEST FOR LEAVE TO INTERVENE BY MR. MARK THOMPSON AND MR. LUCIANO BET**

**I. Introduction**

1. The Respondents, Canadian Waste Services Holdings Inc. ("CWSH"), Canadian Waste Services Inc. ("CWS"), and Waste Management, Inc. ("WMI") oppose the request for leave to intervene by Mr. Mark Thompson ("Thompson") and Mr. Luciano Bet ("Bet").
2. Thompson and Bet were employed by Browning Ferris Industries Limited ("BFI") as Toronto area sales representatives. There are no matters in issue in

this proceeding that affect Thompson and Bet. Thompson and Bet have no connection to the Ridge proceeding or to the Chatham-Kent area.

3. Under the purchase agreement (the “Purchase Agreement”) between CWS and BFI, CWS was required to make offers of employment to designated employees of BFI at a salary or hourly wage rate at least equal to the salary or hourly wage rate of each of each such employee.

Paragraph 4 of the Affidavit of Garth Fowles sworn June 19, 2000.

4. Thompson and Bet were offered employment in accordance with the terms of the Purchase Agreement, and rejected this offer.

Paragraph 6 of the Fowles Affidavit.

5. Thompson and Bet have advanced claims against CWS in respect of their termination of employment with BFI.

Paragraph 8 of the Fowles Affidavit.

6. The employment issues raised by Thompson and Bet have no connection to the Ridge.

Paragraph 9 of the Fowles Affidavit.

## **II. Test for Intervention in the Competition Tribunal**

7. Subsection 9(3) of the *Competition Tribunal Act* (the “Act”) provides:

Any person may, with leave of the Tribunal, intervene in any proceedings before the Tribunal to make representations relevant to those proceedings in respect of any matter that affects that person.

8. All of the following tests must be satisfied before leave to intervene may be granted:

- (a) Any representations made by a person seeking leave to intervene, must be relevant to an issue specifically raised by the Commissioner;

*Canada (Competition Act, Director of Investigation and Research) v. Tele-Direct (Publications) Inc.*, [1995] C.C.T.D. No.4, (QL) (Comp. Trib.).

- (b) The matter alleged to affect the person seeking leave to intervene must be legitimately within the purview of the Tribunal's consideration, or must be a matter sufficiently germane to the mandate of the Tribunal to justify allowing the intervention;

*Canada (Director of Investigation and Research, Competition Act) v. Air Canada* (1988), 32 Admin. L.R. 157 (Comp. Trib.); Rev'd on other grounds [1989] 2 F.C. 88 (C.A.); Rev'd on other grounds [1989] 1 S.C.R. 236.

*Director of Investigation and Research v. Air Canada* (1992), 46 C.P.R. (3d) 184 at 187 (Comp. Trib.).

- (c) There must be direct alleged affects on the person seeking leave to intervene;

*Director of Investigation and Research v. Air Canada* (1992), *supra*, at 187.

*Washington v. Canada (Competition Act, Director of Investigation and Research)*, [1998] C.C.T.D. No. 4 (QL) (Comp. Trib.).

- (d) The person seeking leave to intervene must bring to the Tribunal a unique or distinct perspective which will assist the Tribunal in deciding the issues before it.

*Washington v. Canada (Competition Act, Director of Investigation and Research)*, *supra*.

### **III. Alleged Matters in Issue**

9. The two matters in issue alleged by Thompson and Bet to have affected them are the "takeover" of BFI by CWS and the conduct of CWS in relation to its employees.

10. Neither of the matters alleged to affect Thompson and Bet were raised in the application filed by the Commissioner and neither is relevant to the proceeding before the Tribunal.

*Canada (Competition Act, Director of Investigation and Research) v. Tele-Direct (Publications) Inc., supra.*

11. Thompson and Bet are also not directly affected by the proceeding. The issue before the Tribunal is whether the retention of the Ridge by CWS would result in a likely substantial lessening or prevention of competition substantially in any relevant market. Determination of this issue can have no direct affect on Thompson or Bet, who have no connection, either by virtue of their employment or otherwise, to the Ridge landfill.

*Director of Investigation and Research v. Air Canada (1992), supra.*

12. The matters alleged to be at issue and to directly affect Thompson and Bet are employment-related matters arising from the Purchase Agreement between CWS and BFI. Not only are these matters are not relevant to the proceeding before the Tribunal, they are also not matters legitimately within the purview of the Tribunal.

*Canada (Director of Investigation and Research, Competition Act) v. Air Canada (1988), supra.*

*Director of Investigation and Research v. Air Canada (1992), supra.*

13. Given that Thompson and Bet have no connection with the Ridge and that they are not directly affected by any matter relevant to the issues before the Tribunal, Thompson and Bet will be unable to make relevant representations that will assist the Tribunal in determining the issues before it and will be unable to bring a relevant unique and distinct perspective to the proceedings.

*Washington v. Canada (Competition Act, Director of Investigation and Research), supra.*

14. With respect to Thompson and Bet's proposed method of participation in the proceeding, the Commissioner and the Respondents have agreed to a streamlined process in the Tribunal. The procedure proposed by Thompson and Bet would unduly prolong and complicate this streamlined process. In the event Thompson and Bet are granted leave to intervene in this proceeding, such intervention should be limited to the presenting of argument only, on such specific issues as may be permitted by the Tribunal.

**IV. Procedure**

15. A hearing has been scheduled by the Tribunal for June 22, 2000 at 3:00 p.m. in Toronto to determine this issue.

**V. Order Sought**

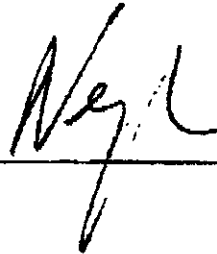
16. The Respondents seek an order denying Thompson and Bel's request for leave to intervene in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Toronto, Ontario this 19th day of June, 2000.

Lawson A.W. Hunter, Q.C.  
Shawn C.D. Neylan  
Danielle K. Royal

per: \_\_\_\_\_



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B E T W E E N:

Commissioner of Competition

Applicant

- and -

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RESPONSE TO REQUEST TO INTERVENE OF  
THOMPSON AND BET

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