

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:

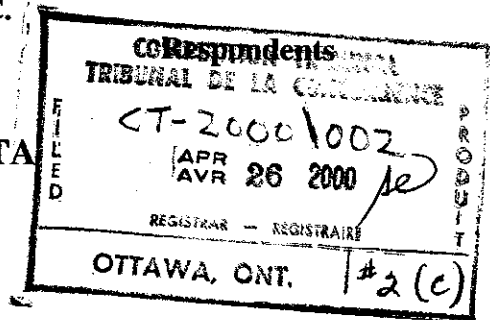
COMMISSIONER OF COMPETITION

Applicant

- and -

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

AFFIDAVIT OF LOURDES DACOSTA
Sworn April 25, 2000



I, LOURDES DACOSTA, of the City of Ottawa, in the District of Ottawa-Carleton, in the Province of Ontario, Public Servant, MAKE OATH AND SAY:

1. I am a commerce officer in the Mergers Branch of the Competition Bureau, responsible for the conduct and management of the review of the transaction by which Canadian Waste Services Inc. has acquired certain non-hazardous solid waste collection, transportation, processing and landfill disposal businesses of Browning-Ferris Industries Ltd. and the shares and assets related thereto.

2. I have been an employee of the Bureau since 1992. I graduated from University of Toronto in June 1992 with a Masters Degree in Economics. I have held increasingly responsible positions with the Bureau during my employment. I have spent a considerable portion of my time with the Bureau focussing upon competition issues in the waste management industry. I was involved in two previous

competition issues in the waste management industry. I was involved in two previous waste cases in 1997 and 1998, both of which were the subject of Consent Orders issued by the Competition Tribunal.

3. As part of my responsibilities I have reviewed public sources of information about the waste industry, including a review of relevant jurisprudence, economic analyses and relevant articles in trade and other publications. I have interviewed numerous competitors in the industry and representatives of customers, government agencies at all levels, and other anti-trust agencies who have investigated the practices of the industry. I have reviewed numerous documents which have passed into the Bureau's hands over the past ten years during previous investigations of major participants in this industry. I have also conducted economic analyses and identified product and geographic markets, calculated market shares and measured market power in such markets. I have become familiar with the nature of entry in this industry and the barriers thereto.

I. THE PARTIES TO THE MERGER

4. The acquirers are Canadian Waste Services Inc. ("CWS") and Waste Management, Inc. ("WMI-U.S."). CWS is the largest waste management company in Canada, and is a wholly owned subsidiary of WMI-U.S., the largest waste management company in the United States. WMI-U.S. owns CWS through Canadian Waste Services Holdings Inc. ("CWSH"), which owns all of the issued and outstanding shares of CWS. CWS is engaged in the solid non-hazardous waste and recycling collection businesses in the commercial, residential, and industrial segments. It also owns and operates waste disposal sites in Canada, including landfills, transfer stations and materials recycling facilities.

5. The acquiree, Browning-Ferris Industries Ltd. ("BFIL"), is the second largest waste management company in Canada. It is engaged in the collection, transportation, transfer, recycling and disposal of solid non-hazardous waste generated by residential, institutional, commercial, and industrial customers. In most markets across Canada, BFIL is CWS' main competitor.

6. BFIL is the Canadian arm of Browning-Ferris Industries, Inc. (“BFII”). In July 1999, Allied Waste Industries Inc. (“Allied”), one of the largest waste management companies in the United States, purchased the North American business of BFII, including BFIL.

II. THE MERGER

7. Pursuant to a Purchase Agreement dated March 31, 2000, among CWSH, CWS, WMI-U.S., BFIL, BFII, and Allied, CWS purchased certain assets and shares comprising collection and disposal businesses of BFIL, including the Ridge landfill in Blenheim, Ontario (the “Ridge”) (the “Merger”).

8. Initially, CWS had proposed to acquire all of BFIL’s businesses in Canada. In response to competition concerns raised by the Commissioner, the Respondents changed the transaction by significantly reducing the businesses to be acquired. The businesses acquired are:

- (a) BFIL’s exclusively industrial and recycling collection businesses in Canada;
- (b) BFIL’s commercial, industrial and recycling collection businesses in the Greater Toronto Area (excluding Halton), Halifax, St. John’s, Brandon, Kenora and Naniamo;
- (c) certain of BFIL’s predominantly industrial and recycling collection businesses in Vancouver, Victoria, Kelowna, Calgary, Edmonton, Medicine Hat, Lethbridge, Winnipeg, Portage la Prairie, Thunder Bay, Windsor, London, Kitchener, Halton, and Ottawa, relating to customers who require a combination of commercial, industrial and recycling collection services;
- (d) BFIL’s residential collection businesses in Canada, with the exception of residential collection businesses in Ontario;
- (e) BFIL’s landfill located in Red Deer and BFIL’s interest in a disposal business in Halifax, subject to receiving the required regulatory environmental approvals; and
- (f) the Ridge.

9. The BFIL assets and business which CWS has agreed not to acquire include the following:
- (a) BFIL's predominantly commercial collection businesses in Vancouver, Victoria, Kelowna, Calgary, Edmonton, Medicine Hat, Lethbridge, Winnipeg, Portage la Prairie, Thunder Bay, Windsor, London, Kitchener, Halton, Eastern Lakes (Napanee), Ottawa, Niagara;
 - (b) BFIL's collection businesses and landfill facilities in Montreal;
 - (c) BFIL's residential collection businesses in Ontario;
 - (d) BFIL's landfills located in Calgary and Winnipeg;
 - (e) BFIL's materials recycling facilities located in Victoria, Kelowna, Calgary, Ottawa/Kingston, and Winnipeg.
10. Apart from the Ridge, the Merger as presently constituted does not raise competition concerns.
11. The parties completed the Merger on March 31, 2000, subject to an undertaking to the Commissioner, a true copy of which is annexed hereto as Exhibit "A".

III. THE EXAMINATION

12. The examination into a proposed merger between CWS and BFIL was commenced by the Bureau on May 25, 1999. The parties filed a long-form pre-notification on May 26, 1999 pursuant to section 121 of the *Competition Act* (the Act). A formal inquiry under the Act was commenced on June 5, 1999.
13. Seven officers were assigned to the investigation of the matter, as well as two staff economists. Counsel from the Department of Justice was assigned to assist in the matter and subsequently outside counsel was retained. Over 80 Section 11 Orders were issued by the Federal Court and directed to the parties and third party competitors across Canada.
14. During the course of the investigation, numerous telephone interviews and meetings were conducted with landfill operators, both in Canada and the United States, waste collectors, customers, as well as

municipal and regional governments (both with respect to their requirements for residential collection and recycling services and as landfill operators).

IV. SUBSTANTIAL LESSENING OR PREVENTION OF COMPETITION

15. The Commissioner has concluded, on the basis set out in the Application and Statement of Grounds and Material Facts, that the acquisition by CWS of BFIL's Ridge landfill is likely to result in a substantial lessening or prevention of competition in disposal markets in southern Ontario.

16. Based on my experience and our investigation in this matter, I believe that the statements made by the Commissioner in the Application and Statement of Grounds and Material Facts are true, and that the conclusions stated therein are correct.

17. The Respondents already own or control six landfills in southern Ontario. If they are permitted to keep the Ridge, they will control a significant proportion of the current solid waste disposal capacity in southern Ontario, which proportion is expected to increase by 2002.

18. The Ridge has been a strong competitor to the Respondents' disposal facilities, particularly those in southwestern Ontario. The Ridge recently underwent a significant expansion, which will enhance its ability to compete with the Respondents, so long as it remains in competitive hands.

19. If the Respondents are permitted to take control of the Ridge, they will thereby eliminate the Ridge as a competitor. For some southern Ontario communities, local disposal options are sufficient. However, for the Greater Toronto Area ("GTA"), and for the Chatham-Kent area, the Ridge is an important competitive disposal option which will be eliminated if retained by the Respondents. Acquisition of the Ridge will enable the Respondents to exercise market power in the disposal markets relating to the GTA and the Chatham-Kent area.

20. Control of the Ridge by the Respondents will substantially lessen the disposal options for waste collected in the GTA. Apart from the Ridge, there will be little effective competition to the Respondents' facilities, and barriers to new entry and expansion are high. Transfer stations and waste collectors in the

GTA will effectively be forced to either use the Respondents' facilities, or to incur additional costs and uncertainty by transporting their waste to distant sites in the United States.

21. In the Chatham-Kent area, the only disposal options are the Ridge and the Respondents' Gore landfill. If they acquire control of the Ridge, the Respondents will then control 100% of the Chatham-Kent waste disposal market.

22. Accordingly, the acquisition of the Ridge by the Respondents will likely result in a substantial lessening or prevention of competition in the following markets:

- (a) The disposal of solid non-hazardous waste from the GTA; and
- (b) The disposal of solid non-hazardous waste from the Chatham-Kent area.

23. In addition, because of the vertical relationship between disposal and collection markets, acquisition of the Ridge by the Respondents and the ensuing effects on disposal markets will also have anti-competitive effects in waste collection markets in the GTA and Chatham-Kent.

V. THE PROPOSED INTERIM CONSENT ORDER

24. The Commissioner proposes an interim Order for the purpose of maintaining the Ridge as an independent business, separate from the Respondents' other operations, pending the determination of the Commissioner's Application.

25. Under the proposed Order, the Ridge will be managed by an Independent Manager, Hugh Thomas Consulting Ltd., under the supervision of an Independent Monitor, Deloitte & Touche.

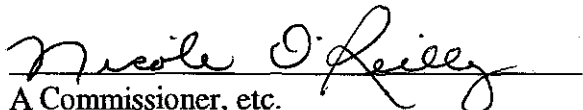
26. The Respondents have consented to the interim consent Order proposed by the Commissioner.

27. I believe that without the interim consent Order, there will be irreparable harm to competition in at least the following respects:

- (b) The Respondents would have access to pricing, customer lists and other confidential information pertaining to the Ridge; and
- (c) Another concern in this case arises in regard to the recent expansion of the capacity of the Ridge landfill, as referred to in the Notices of Application. The Commissioner believes that in independent hands, this additional capacity will enhance competition in waste disposal markets in southern Ontario. Without the proposed interim Order, the Respondents would be in a position to use this capability for their own purposes, thus significantly impairing the effectiveness of divestiture as a remedy.

28. I believe that the interim consent Order is necessary to preserve divestiture of the Ridge as an effective remedy in this case. I believe that the form of interim consent Order proposed by the Commissioner will achieve that purpose.

SWORN BEFORE ME, at the City of Hull,
in the Province of Quebec,
this 25th day of April, 2000.


A Commissioner, etc.

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LOURDES DACOSTA



EXHIBIT A

TO: The Commissioner of Competition
FROM: Canadian Waste Services Inc., Canadian Waste Services Holdings Inc., Waste Management, Inc. and Allied Waste Industries, Inc.

WHEREAS,

Canadian Waste Services Inc. ("CWS") anticipates entering into a Purchase Agreement dated as of March 31, 2000 in which CWS would acquire from Browning-Ferris Industries Ltd. ("BFIL") certain assets relating to the solid waste business including assets that together constitute the business conducted at BFIL's waste disposal site in Blenheim, Ontario (the "Ridge"), and shares held by BFIL in two companies which own assets relating to the solid waste business (the "Acquisition");

The Commissioner alleges that the acquisition of the Ridge by CWS is likely to substantially lessen or prevent competition and thus intends to promptly file an application in the Competition Tribunal (the "Tribunal") pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") seeking an order that CWS be required to divest of the Ridge (the "Contested Proceeding");

The Commissioner of Competition (the "Commissioner") consents to CWS proceeding with the Acquisition, subject to receiving, prior to closing, this undertaking and the consent of Canadian Waste Services Holdings Inc., CWS and Waste Management Inc. (the "Respondents") to the Draft Interim Order as described below;

The Commissioner will forthwith file an application in the Contested Proceeding for an interim order on the consent of the Respondents for an order (the "Interim Order") that the Ridge be held separate and apart from the businesses of the Respondents, under the management of an independent manager (the "Independent Manager"), and supervised by an independent monitor (the "Monitor"), pending the final determination by the Tribunal of the Contested Proceeding;

There will be an interim period between the date of the closing of the Acquisition and the date upon which the Commissioner's application for an Interim Order is heard by the Tribunal; and

Allied Waste Industries, Inc. ("Allied"), an indirect parent corporation of BFIL, has agreed to operate the Ridge for the benefit of CWS subsequent to the closing of the Acquisition and until the hearing by the Tribunal of the Commissioner's application for an Interim Order;

to the affidavit of

LOURDES D'ACOSTA

sworn before me this

25th day of April

#2000

Michael O'Leary
A Commissioner

THEREFORE, effective immediately upon the closing of the Acquisition and until such time as the hearing by the Tribunal of the Commissioner's application for an Interim Order **THE RESPONDENTS UNDERTAKE:**

1. To ensure that the Ridge is held separate and apart from the businesses of the Respondents, under the independent management of Allied;
2. To not exercise any direction or control over the operation of the Ridge or influence the marketing of the services of the Ridge;
3. To not directly or indirectly receive, have access to, or use any competitively sensitive or proprietary information relating to the Ridge not independently known to the Respondents or their affiliates, including, without limiting the generality of the foregoing, any such customer lists, price lists, marketing methods or trade secrets;
4. To consent to an Interim Order of the Tribunal in the form of the draft interim order (the "Draft Interim Order") attached hereto as Annex "A", which has been agreed upon by the parties and is to be submitted with the application for the Interim Order;
5. To consent to the Commissioner revising the Draft Interim Order to provide for an independent Manager other than Hugh Thomas, selected by the Commissioner after consultation with the Respondents, in the event the Commissioner does not agree to propose to the Competition Tribunal that Hugh Thomas be appointed independent manager, and to such other revisions as may be required in regard to the appointment of the Monitor or Independent Manager;
6. To continue to use their best efforts to develop an expansive Statement of Agreed Facts and to otherwise facilitate an efficient and expeditious process for determination of the Contested Proceeding.

AND, effective immediately upon the closing of the Acquisition and until such time as the hearing by the Tribunal of the Commissioner's application for the Interim Order, **ALLIED UNDERTAKES:**

1. To manage the Ridge independently of the Respondents in the same manner it was managed before the closing of the Acquisition without any direction, control or involvement of any of the Respondents;
2. To ensure that none of the Respondents directly or indirectly receive, have access to, or use any competitively sensitive or proprietary information relating to the Ridge not independently known to the Respondents or their

affiliates, including, without limiting the generality of the foregoing, any such customer lists, price lists, marketing methods or trade secrets;

IN THE EVENT the Tribunal, upon the application of the Commissioner on the consent of the Respondents, does not make an Interim Order, as contemplated by this undertaking **THE RESPONDENTS UNDERTAKE:**

1. To conduct themselves in accordance with the terms of the Draft Interim Order as if it were an undertaking, pending the final determination by the Tribunal of the Contested Proceeding;
2. If requested by the Commissioner, to enter into a new undertaking on the terms of the Draft Interim Order, pending the final determination by the Tribunal of the Contested Proceeding.

DATED at Toronto, Ontario the 30th day of March, 2000

Canadian Waste Services Inc.

Per: _____

Canadian Waste Services Holdings
Inc.

Per: _____

Waste Management, Inc.

Per: _____

Allied Waste Industries, Inc.

Per:  _____

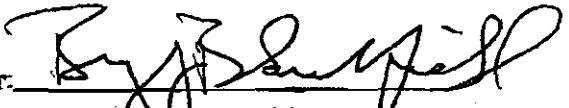
affiliates, including, without limiting the generality of the foregoing, any such customer lists, price lists, marketing methods or trade secrets;

IN THE EVENT the Tribunal, upon the application of the Commissioner on the consent of the Respondents, does not make an Interim Order, as contemplated by this undertaking **THE RESPONDENTS UNDERTAKE:**

1. To conduct themselves in accordance with the terms of the Draft Interim Order as if it were an undertaking, pending the final determination by the Tribunal of the Contested Proceeding;
2. If requested by the Commissioner, to enter into a new undertaking on the terms of the Draft Interim Order, pending the final determination by the Tribunal of the Contested Proceeding.

DATED at Toronto, Ontario the 30th day of March, 2000

Canadian Waste Services Inc.

Per: 
 Bryan J. Blankfield
 Vice President & Secretary

Canadian Waste Services Holdings Inc.

Per: 
 Bryan J. Blankfield
 Vice President & Secretary

Waste Management, Inc.

Per: 
 Bryan J. Blankfield
 Vice President & Assistant Secretary

Allied Waste Industries, Inc.

Per: _____

ANNEX "A"

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 Holdings Inc. of certain assets of Browning-Ferris Industries Ltd., a company engaged in the solid waste business;

Commissioner of Competition

Applicant

- and -

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

Respondents

DRAFT CONSENT INTERIM ORDER

COMPETITION TRIBUNAL

DRAFT CONSENT INTERIM ORDER

FURTHER to the application (the "Contested Proceeding") of the Commissioner pursuant to section 92 of the Act for an order requiring divestiture of the Ridge landfill;

AND FURTHER to the application of the Commissioner in the Contested Proceeding for a Consent Interim Order pursuant to sections 92 and 104 of the Act;

AND ON READING the notice of application dated _____, 2000, the motion for a consent interim order, and the draft consent interim order, the affidavits of _____, and the consent of the parties;

AND ON HEARING counsel for the parties in respect of the application in the Contested Proceeding for a Consent Interim Order;

AND ON DETERMINING that this is an appropriate case for the issuance of an interim order pursuant to sections 92 and 104 of the Act;

THE TRIBUNAL ORDERS THAT:

Definitions

1. For the purposes of this order the following definitions shall apply:
 - (a) "Acquisition" means the proposed acquisition by Canadian Waste Services Inc. of the certain assets of BFIL relating to the solid waste business, including those that constitute the business conducted at the Ridge and shares held by BFIL in companies which own assets relating to the solid waste business;
 - (b) "BFIL" means Browning-Ferris Industries Ltd., a corporation existing under the laws of Ontario;
 - (c) "Closing Date" means the date on which CWS substantially completes the Acquisition;

- (d) "Confidential Information" means competitively sensitive or proprietary information relating to the Ridge not independently known to WMI-US, CWS or their affiliates, including, without limiting the generality of the foregoing, any such customer lists, price lists, marketing methods or other trade secrets;
- (e) "CWSH" means Canadian Waste Services Holdings Inc., a corporation existing under the laws of Ontario, and an indirect wholly owned subsidiary of WMI-US;
- (f) "CWS" means Canadian Waste Services Inc., a corporation existing under the laws of Ontario and a direct, wholly owned subsidiary of CWSH and its subsidiaries;
- (g) "person" means any natural person, corporation, association, firm, partnership or other business or legal entity;
- (h) "Respondents" means WMI-US, CWSH and CWS;
- (i) "Ridge" means the Ridge disposal facility in Blenheim, Ontario, owned by BFIL, and all assets and rights associated with and the business conducted at that facility; and
- (j) "WMI-US" means Waste Management, Inc., a corporation existing under the laws of the State of Delaware, U.S.A.

Application

- 2. The provisions of this order shall apply to:
 - (a) the Respondents;
 - (b) each division, subsidiary or other person controlled by the Respondents, and each officer, director, employee, agent or other

person acting for or on behalf of the Respondents with respect to any matter referred to in this order;

- (c) the successors and assigns of the Respondents and all other persons acting in concert or participating with any of them with respect to the matters referred to in this order who shall have received actual notice of this order;
- (d) Hugh Thomas Consulting Ltd. as described and appointed herein as independent manager of the Ridge and each employee, agent or other person acting for or on behalf of Hugh Thomas Consulting Ltd. with respect to any matter referred to in this order; and
- (e) Deloitte & Touche Inc. as described and appointed herein as Monitor and each employee, agent or other person acting for or on behalf of Deloitte & Touche Inc. with respect to any matter referred to in this order.

Independent Manager

3. Effective immediately upon issuance of this Order, Hugh Thomas Consulting Ltd. is hereby appointed independent manager of the Ridge (the "Independent Manager") to manage and operate the Ridge independently of the Respondents, as specified herein, pending final disposition of the Commissioner's application in regard to the Ridge. CWS shall be responsible for all fees and expenses properly charged or incurred by the Independent Manager.

Independent Management of the Ridge

4. Pending final determination of the Commissioner's application in regard to the Ridge, or until further order of the Tribunal, the Independent Manager

shall take all necessary steps and give all necessary instructions to cause the Ridge and any servants or agents operating the Ridge to:

- (a) operate the Ridge independently of the Respondents;
- (b) operate the Ridge in compliance with all applicable laws;
- (c) maintain all material permits and approvals necessary for the operation of the Ridge;
- (d) accept for disposal at the Ridge only material permitted to be so disposed by applicable law;
- (e) use commercially reasonable efforts to maintain and enhance the competitiveness and the customer base of the Ridge and in particular, continue to solicit business and to submit bids in response to tenders as they arise;
- (f) maintain and hold the Ridge in good condition and repair, normal wear and tear excepted, and to standards at least equal to those maintained by BFIL prior to the date of this order;
- (g) establish all fees, deductions, discounts, credits or allowances with respect to the services provided by the Ridge;
- (h) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers at the level that existed prior to the date of this order;
- (i) ensure that the Ridge does not engage in any type of business other than the type of business conducted by the Ridge as of the date of this order;

- (j) not enter into any customer contract with a term longer than one year, or for a weight in excess of 68,000 tonnes, without the concurrence of the Monitor that such contract would not materially and adversely affect the competitiveness, assets, operations or financial status of the Ridge;
- (k) not communicate any Confidential Information related to the Ridge to any of the Respondents except as permitted herein;
- (l) not knowingly take or allow to be taken any action that materially and adversely affects the competitiveness, assets, operations or financial status of the Ridge;
- (m) not make any material changes to the financial arrangements of the Ridge with its bankers;
- (n) not materially curtail marketing, sales, promotional or other activities of the Ridge in connection with the solicitation of existing or prospective customers;
- (o) not, to any material extent, relocate, destroy or dismantle any fixed assets of the Ridge;
- (p) not, to any material extent, enter into any agreement to lease or otherwise encumber any assets of the Ridge, or real property occupied by the Ridge, to or in favour of any other person;
- (q) not, to any material extent, alter, or cause to be altered, the management of the Ridge as it existed prior to the date of this order, except as may be necessary to comply with the terms of this order, or to replace employees that may resign; or

- (r) not terminate or alter any current employment, salary or benefit agreements for any employees working in the Ridge, to any material extent.
5. Subject to paragraph 4(j) of this order the Independent Manager shall have authority to enter into or renew customer contracts in relation to the Ridge, in the name of CWS.
 6. The Respondents shall contribute working capital with respect to the Ridge to permit the Ridge to continue to operate at standards at least equal to those existing at the date of the Acquisition and may contribute funds for significant capital expenditures in consultation with the Independent Manager and the Monitor.
 7. Notwithstanding any other provision of this order, the Independent Manager is permitted to use the managerial, administrative and operational (including maintenance) resources of the Respondents for the following purposes:
 - (a) to maintain, in accordance with Canadian generally accepted accounting principles, separate and adequate financial ledger books and records of material financial information with respect to the Ridge;
 - (b) human resources and payroll;
 - (c) accounts payable;
 - (d) occupational health and safety;
 - (e) environmental permitting and liability issues;
 - (f) insurance, including notification of claims for which coverage is sought; and

- (g) financial services including banking;

except that, in using such resources the Independent Manager will not, other than as permitted below, disclose any Confidential Information. The Independent Manager may provide Confidential Information to the following persons: (i) any person employed by Arthur Andersen, the external auditors of CWS; and (ii) George Close, senior accountant of landfills, employed by WMI-US (the "Permitted Persons"), only for the purposes of preparing standard financial and regulatory reports, tax returns and benefits administration and to comply with applicable law and governmental authorities in Canada and the United States (the "Permitted Purposes") and provided that:

- (A) prior to disclosure of any Confidential Information, each Permitted Person shall execute a confidentiality undertaking in the form attached hereto as Annex "A"; and
- (B) the Permitted Persons shall use the Confidential Information only for the Permitted Purposes and shall not disclose such information to any other person, whether or not an employee of any of the Respondents. This order does not preclude disclosure of summaries in aggregate form such as revenue summaries, cash receipt summaries and tonnage summaries, provided that no Confidential Information is disclosed.

8. The Respondents shall:

- (a) take all reasonable steps to ensure that the Ridge is independent of the Respondents ;
- (b) not exercise any direction or control over the operations of the Ridge or influence the marketing of the services of the Ridge; and

- (c) cause the operational manager of the Ridge to follow the reasonable instructions and directions of the Independent Manager given pursuant to the provisions and purposes of this order.
- 9. The Respondents shall not directly or indirectly receive, have access to, or use any Confidential Information relating to the Ridge, except as may be necessary to comply with the terms of this order.
- 10. The Independent Manager is bound by the terms of this order but shall otherwise not be subject to liability for any act or omission arising out of his duties pursuant to this order.
- 11. The Independent Manager shall not communicate any Confidential Information acquired in the performance of his duties under this order to any person except to the extent required or permitted by this order.

Monitor

- 12. Deloitte & Touche Inc. is hereby appointed monitor (the "Monitor"). The Monitor shall be responsible for monitoring compliance by the Respondents with this order. CWS shall be responsible for all fees and expenses properly charged or incurred by the Monitor.
- 13. In the event that the Monitor is unable to perform monitoring duties under the terms of this order because of death, disability, termination for cause or any other reason, the Commissioner shall apply to the Tribunal for an order appointing a new monitor within 15 days and this order shall apply to such appointment.
- 14. For the purposes of monitoring compliance by the Respondents with this order, subject to any valid claim to a legally recognized privilege, the

Respondents and the Independent Manager shall respond to requests for information and give the Monitor unlimited access to:

- (a) the premises of the Ridge, and all premises in which records relating to the Ridge are located;
 - (b) all information, records and documents relating to the Ridge; and
 - (c) meetings of the management and directors of any of the Respondents relating to the Ridge.
15. The Respondents shall not exert or attempt to exert any influence, direction or control over the Monitor which may adversely affect the discharge of the Monitor's duties under the terms of this order.
 16. If the Monitor considers that any of the Respondents are in default of any of the terms of this order, the Monitor shall immediately notify the Commissioner of such breach, who shall forthwith give notice to such Respondent(s) setting out the particulars of such default.
 17. The Monitor shall provide to the Commissioner, upon request, a written report in affidavit form relating to compliance with the terms of this order.
 18. The Monitor is bound by the terms of this order but shall not otherwise be subject to liability for any act or omission pursuant to the terms of this order. This order shall not be construed as providing the Monitor with ownership, management, possession, charge or control of the Ridge.
 19. The Monitor shall not communicate any Confidential Information acquired in the performance of his or her duties to any person except to the extent required or permitted by this order.

20. If the Monitor advises the Commissioner, that any Respondent is in default of any of the terms of this order, or if the Commissioner otherwise believes such to be the case, then for the purpose of determining or securing compliance with this order, subject to any valid claim to a legally recognized privilege, and upon written request on 48 hours notice to the relevant Respondent(s), such Respondent(s) shall permit any duly authorized representative of the Competition Bureau:
- (a) access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memorandum, and other records and documents in the possession or under control of the Respondents; and
 - (b) without restraint or interference from any Respondent, to interview directors, officers or employees of the Respondents.

General

21. The Respondents shall immediately provide a copy of this order to the senior managers of the Ridge, and shall direct such managers to operate and manage the Ridge in accordance with the terms of this order.
22. CWS shall immediately provide a copy of this order to the senior managers of the CWS operations in Ontario and CWS shall direct such managers to operate and manage the operations for which they are responsible in accordance with the terms of this order.
23. Notices, reports or other communications required or permitted pursuant to this order shall be in writing and shall be considered to be given if dispatched by confirmed personal delivery or facsimile transmission to the parties listed in Annex "B" to this order.

24. If the Commissioner's approval is sought pursuant to this order and such approval is not granted, or if a decision of the Commissioner is unreasonably delayed or withheld, any Respondent may apply to the Tribunal for approval.
25. This Order does not prohibit anyone from providing Confidential Information to the Commissioner for purposes of the administration or enforcement of the *Competition Act*, including for the purposes of this proceeding.
26. The parties have liberty to apply to the Tribunal with respect to any issue concerning this order.

DATED at Ottawa, this day of , 2000.

SIGNED on behalf of the Tribunal by the presiding judicial member.

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the
Commissioner of Competition under sections 92, 104
and 105 of the Competition Act, R.S.C. 1985, c. C-34;

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

Applicant

- and -

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

Respondents

DRAFT CONSENT INTERIM ORDER

THE COMPETITION TRIBUNAL

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B E T W E E N:

Commissioner of Competition

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- and -

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

Respondents

AFFIDAVIT OF LOURDES DACOSTA

Sworn April 25, 2000

Mr. Donald Houston

Mr. W. Michael G. Osborne

Kelly Affleck Greene

Suite 840, P.O. Box 489

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