

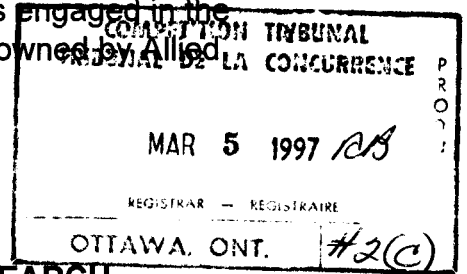
SCHEDULE "B"

CT-97101

THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research and Canadian Waste Services Inc. under Sections 104 and 105 of the *Competition Act*, R.S.C. 1985 c. C-34 as amended;

AND IN THE MATTER OF the proposed acquisition by Canadian Waste Services Inc. of the totality of shares of certain corporations engaged in the solid waste management and related businesses that are owned by Allied Waste Holdings (Canada) Ltd.



Between:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

APPLICANT

- and -

CANADIAN WASTE SERVICES INC.

RESPONDENT

AFFIDAVIT

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 as follows:

1. I am a commerce officer in the Bureau of Competition Policy of the Department of Industry Canada, acting under the authority of the Director of Investigation and Research under the Competition Act (the "Act").

2. This affidavit is made in support of an application for a consent interim order under s.104 of the Act in order to preserve and hold separate certain businesses to be acquired by the respondent who is purchasing the shares of Allied Waste Holdings (Canada) Ltd. (the "proposed acquisition"). The said businesses are carried on in two distinct geographic markets: Sarnia and Brantford. The said businesses are the subject of an Application by the Director for a consent (divestiture) order (the "divestiture application") filed concurrently with the within application. The interim order sought herein under s.104 of the Act is intended to preserve the integrity of the said businesses pending the determination by the Tribunal of the divestiture application, by holding them separate and apart until that application has been dealt with.

3. The said businesses and the proposed acquisition are more fully described in the divestiture application. I have been engaged in the conduct of the preliminary examination and assessment of the proposed acquisition described in the divestiture application, a true copy of which is attached hereto as Exhibit "A". As such, I have knowledge of the information in the attached Exhibit "A". I verily believe to the best of my knowledge that said information is true.

4. Should the Consent Interim Order sought herein not be made, the efficacy of the divestiture application will be greatly reduced, if not rendered useless, since the respondent would have the opportunity to obtain proprietary commercial information such as customer lists, routing and other business practices and methodology and practices, details of customer contracts and current and planned strategic information in

each of the said markets which would effectively diminish the attractiveness to any possible purchaser of those businesses as a going concern.

5. Without the said order the substantial lessening of competition that I have concluded exists in those markets would not be able to be effectively remedied. It would be relatively impractical in those circumstances to craft an alternative remedy and the public interest served by the Act would not be achieved. I further adopt the Consent Order Impact Statement filed with the divestiture application, a true copy of which is attached hereto as Exhibit "B".

SWORN before me, at
the City of Hull,
in the Province of Quebec
this day of March, 1997



A Commissioner etc.

ELSPETH A. GULLEN



Lourdes DaCosta

THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research and Canadian Waste Services Inc. under Sections 92 and 105 of the *Competition Act*, R.S.C. 1985 c. C-34 as amended;

AND IN THE MATTER OF the proposed acquisition by Canadian Waste Services Inc. of the totality of shares of certain corporations engaged in the solid waste management and related businesses that are owned by Allied Waste Holdings (Canada) Ltd.

Between:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

This is Exhibit " A " to the affidavit of Lourdes DeCosta

APPLICANT

sworn before me this

- and -

5th day of March

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A Commissioner
Notary Public, etc.

CANADIAN WASTE SERVICES INC.

RESPONDENT



NOTICE OF APPLICATION FOR A CONSENT ORDER

TAKE NOTICE THAT:

1. Pursuant to section 92 and 105 of the *Competition Act* (the "Act"), the Applicant, the Director of Investigation and Research (the "Director") will make an Application, on consent of the Respondent, for :

THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research under sections 92, 104 and 105 of the *Competition Act*, R. S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the proposed acquisition by Canadian Waste Services Inc. of the totality of shares of certain corporations engaged in the solid waste management and related businesses that are owned by Allied Waste Holdings (Canada) Ltd.

BETWEEN:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

This is Exhibit " B "
to the affidavit of

APPLICANT

 Lourdes Da Costa

-and-

sworn before me this
 5th day of March

19 97

A Commissioner
Notary Public, etc.

CANADIAN WASTE SERVICES INC.

RESPONDENT

CONSENT ORDER IMPACT STATEMENT

1. This Statement is filed by the Director of Investigation and Research (the "Director") pursuant to section 77 of the *Competition Tribunal Rules*. It describes the circumstances surrounding, and anticipated effect on competition of, the Draft Consent Order submitted by agreement of the Parties to this proceeding.

I. **NATURE AND PURPOSE OF THE PROCEEDING**

2. The Director files with this Consent Order Impact Statement, a Notice of Application with a Statement of Grounds and Agreed Material Facts and a Draft Consent Order, under sections 92 and 105 of the Competition Act (the "Act").
3. Canadian Waste Services Inc. ("CWS") has agreed to acquire all of the shares of Laidlaw Waste Systems (Canada) Ltd. and Laidlaw Waste Systems Ltd. (collectively referred to as "Laidlaw") engaged in the non-hazardous solid waste management business that are owned by Allied Waste Holdings (Canada) Ltd. ("Allied"), giving CWS control of their operations in Brantford, Sarnia, Ottawa, and the Outaouais region. Having regard to competitive concerns expressed by the Director in connection with these markets, CWS has agreed to divest these business operations.
4. The settlement reached between the Director and CWS is designed to eliminate the substantial prevention or lessening of competition which would be likely otherwise to have arisen in these markets. The Director requests the Competition Tribunal's approval of the Draft Consent Order pursuant to sections 92 and 105 of the Act to effect this settlement.
5. The settlement provides that CWS will divest Laidlaw's non-hazardous solid waste management business in Sarnia and provide a contractual licence for access to disposal facilities controlled or operated by CWS in the Sarnia market, that CWS will divest of its current non-hazardous solid waste management business in Brantford, and that CWS will divest the Ottawa and Outaouais non-hazardous solid waste management business previously acquired by Laidlaw from Waste Management Inc. ("WMI") and will provide a contractual licence for

access to disposal facilities in the Ottawa market controlled or operated by CWS. Furthermore, CWS has agreed to restrict the extent to which it will be able, during the divestiture period, to direct, manage and influence the conduct of the solid waste management businesses to be divested in the Brantford, Sarnia, Ottawa, and Outaouais markets. As explained below, these measures are intended to restore any competition which would, in all likelihood, have been otherwise eliminated in the relevant markets as a result of the merger.

II. EVENTS GIVING RISE TO THE ALLEGED SUBSTANTIAL LESSENING OR PREVENTION OF COMPETITION

6. Pursuant to an agreement dated January 15, 1997, CWS and its parent, USA Waste Services, Inc. ("USA Waste") entered into an agreement (the "Agreement") with Allied Waste Industries, Inc. ("Allied Parent") to purchase all of Allied's outstanding shares in Laidlaw and their subsidiaries, namely Laidlaw Energy Technologies Ltd., Laidlaw Waste Systems (Richmond) Ltd., Laidlaw Waste Systems (Storrington) Ltd., Laidlaw Waste Systems (Ottawa) Ltd., 3240720 Canada Inc., 635952 Ontario Inc., Laidlaw Waste Systems (Durham) Ltd., Laidlaw Waste Systems (Warwick) Ltd., 2686848 Canada Inc., Bestan Inc., Gestion de Rebutis Laidlaw Quebec Ltee., Centre de Tri Transit (1) Inc./Transit Sorting Center (1) Inc., Location Sanico Ltee, Dechex Ltee and Endwaste Inc., (the whole of which is hereinafter referred to as the "Proposed Acquisition").
7. CWS is a wholly-owned subsidiary of USA Waste, which is a recent entrant into the solid waste business in North America. In August, 1996, CWS acquired all of the Canadian non-hazardous solid waste assets of Philip Environmental Inc. and additional Canadian assets of Sanifill Inc., thereby gaining a market presence in the Greater Toronto Area, Southwestern Ontario and the Niagara Peninsula.

CWS has subsequently acquired the assets of other waste management companies in Canada and has thereby expanded its business to parts of Quebec.

8. Laidlaw directly and indirectly through their subsidiaries provide non-hazardous solid waste management services to institutional, commercial, industrial and residential customers in six Canadian provinces. Solid waste services are conducted primarily under the name "Laidlaw Waste Systems".
9. In September 1996, Laidlaw purchased the non-hazardous solid waste business of WMI in the Ottawa and Outaouais areas (hereinafter referred to as the "WMI Transaction"). The WMI Transaction was not pre-notifiable under Part IX of the Act. The Director commenced an examination of the WMI Transaction shortly thereafter to determine its competitive impact.
10. Subsequent to the WMI Transaction, Allied purchased the non-hazardous solid waste business of Laidlaw in Canada (hereinafter referred to as the "Laidlaw Transaction"). Prior to the Laidlaw Transaction, Allied was not engaged in the non-hazardous solid waste business in Canada.
11. At the time the Laidlaw Transaction closed, in December 1996, the Director had not completed the examination of the WMI Transaction. In the course of the Director's examination of the WMI Transaction, the Director notified Allied that the transaction was likely to give rise to a substantial lessening of competition in the Ottawa and Outaouais markets.
12. At the time of the Proposed Acquisition, the Director and Allied had not reached an agreement to settle the Director's competition concerns. CWS has nonetheless agreed to resolve the competition issues in respect of the Ottawa

and Outaouais markets which it will inherit upon completion of the Proposed Acquisition. It is for these reasons that the Ottawa and Outaouais divestitures are being sought at this time.

III. THE ALLEGED EFFECTS ON COMPETITION

13. The relevant product market is non-hazardous solid waste management services, which is composed of four separate categories: (i) residential, (ii) commercial lift-on-board, (iii) industrial, and (iv) recycling. From a demand perspective, these four market categories are not close enough substitutes to be considered a single product market. With respect to any one of commercial lift-on-board, industrial, residential and recycling services, there are operational impediments to the other three alternatives being a cost-effective substitute such that customers would not switch to these alternatives in the face of a significant, non-transitory price increase.

14. The first type of service, residential, involves the collection and disposal of small quantities of waste from individual residences and apartments pursuant to contracts with cities, towns and municipalities. Contracts are generally awarded on the basis of tenders. The second type of service, commercial lift-on-board, also known as front-end service, involves the collection and disposal of containers of waste by front-end trucks from customers who generate a significant quantity of solid waste and are often restaurants, offices, and small commercial establishments. The third type of service, industrial, also known as roll-off service, is required by industrial customers who generate large amounts of waste, which is often not compactable. The large containers used to collect this waste are loaded onto a flat-bed truck and taken to disposal sites. The fourth type of service, recycling, involves the collection, sorting and disposal of

recyclable solid waste from residences and apartments. Like residential service, this service is provided under contracts with cities, towns and municipalities, a significant portion of which are awarded on the basis of tenders.

15. Whatever the relevant non-hazardous solid-waste product, once collected this waste is disposed of at either transfer stations or sanitary landfills. Transfer stations are commonly used in urban centres as areas where waste is off-loaded into larger open top transport trailers which are then taken to landfills. Transfer stations and landfills are owned and operated either by municipal or regional governments or by private companies, some of whom are also involved in the collection and disposal of solid waste. The cost of disposal is a very significant component of the total cost of providing non-hazardous solid waste management services, and as such it is important for those companies who do not have their own disposal facilities to have access to transfer stations and landfills at competitive rates.
16. The relevant geographic markets for non-hazardous solid waste management services are local in nature. The geographic limits of the market are circumscribed by such factors as legal payloads and other regulatory requirements, type and density of customers, cost of disposal, and the time taken to travel to and from customers and then to disposal sites.
17. While CWS and Laidlaw operate in many local geographic markets throughout Canada, the Proposed Acquisition is likely to substantially lessen or prevent competition in only two geographic markets: Brantford (including the surrounding area of Brant County), and Sarnia (including the surrounding area of Lambton County). In addition, the WMI Transaction substantially lessens or prevents competition in Ottawa (including the cities of Ottawa, Nepean, Kanata, Gloucester and the surrounding communities in the Ottawa-Carleton region), and

Outaouais (including the cities of Hull, Gatineau and Aylmer).

18. The ease of competitive entry differs with each relevant product market. The industrial market is the easiest to enter, requiring minimal capital investments and low operating costs. Customers generally require service on an “as-needed” basis and are not tied into contracts. In the residential and recycling markets, municipalities generally tender the available business. Municipalities have the option of splitting contracts to allow smaller operators the opportunity to bid on this business. Capital investments are again minimal although operating costs are higher for residential and recycling service. Of the four markets, entry is the most difficult in the commercial lift-on-board market, owing to the need for a concentrated route, higher capital investments and the difficulty of obtaining customers. Within this industry, it is fairly common practice to use various contractual requirements which tend to restrict or limit the availability to a new entrant of a large volume of unfettered customers, thereby acting to raise the cost of entry into the commercial lift-on-board market.

Brantford

19. The Brantford market is comprised of the non-hazardous solid waste business generated by the city of Brantford and the surrounding area of Brant County. This market is distinct from that of neighbouring Hamilton/Wentworth for the following reasons. First, the customer base is not as densely distributed, and the nature of the accounts differs, with a larger percentage of customers requiring residential and commercial lift-on-board services than industrial. Second, the parties' route structure for serving Brantford customers does not generally extend beyond the Brant County line. Third, average gross margins are considerably higher in Brantford than in Hamilton/Wentworth for both companies. Notwithstanding fairly significant differential gross margins between Brantford

and Hamilton/Wentworth, competitors located in Hamilton/Wentworth expressed little interest in entering the Brantford market, on the hypothesis of a significant, non-transitory price increase.

20. Post-merger, CWS will hold more than 80% of the Brantford commercial lift-on-board market and more than 70% of the Brantford industrial market. Currently, CWS holds between 75% and 80% of the residential market.
The remainder of the market is held by a number of much smaller competitors which include Norm Shropshall & Sons, (commercial lift-on-board), Brantford Disposal (industrial) and BT Disposal (industrial).
21. As noted in paragraph 18, both Laidlaw and CWS use contractual terms which tend to limit commercial customer availability and hence deter entry.
22. The high post-merger market shares and barriers to entry in the commercial lift-on-board market provide *prima facie* evidence that the merger will likely substantially lessen or prevent competition in the Brantford commercial lift-on-board market. The DCO, by proposing divestiture, will provide an effective competitor to CWS post-merger. Given the relative size of the commercial lift-on-board market and other markets in Brantford, the Director is of the view that it is necessary to include in any divestiture designed to overcome a substantial prevention or lessening of competition, the additional assets involved in industrial, residential and recycling businesses in order to create an effective, viable and independent competitor to CWS post-merger.

Sarnia

23. The Sarnia market is comprised of the non-hazardous solid waste business generated by the city of Sarnia and the surrounding area within Lambton county. This market is of considerable distance from the larger metropolitan areas of

- Windsor and London such that it is not economic for waste management companies to provide service in Sarnia from these more distant locations. Furthermore, the Director has determined that certain market developments in Sarnia may limit the extent to which the remaining players could be considered effective competitors to CWS post-merger.
24. Post-merger, CWS would hold more than 90% of the Sarnia commercial lift-on-board market. Similarly, based on recent market developments, CWS will hold virtually all of the industrial and residential business in Sarnia.
 25. As noted in paragraph 18, both Laidlaw and CWS use contractual terms which tend to limit commercial customer availability and hence deter entry.
 26. The high post-merger market shares and the existence of barriers to entry provide *prima facie* evidence that the merger will likely substantially lessen or prevent competition in the Sarnia market. The DCO, by proposing divestiture, will provide an effective competitor to CWS post-merger.

Ottawa

27. The Ottawa market is comprised of the non-hazardous solid waste business generated by the cities of Ottawa, Nepean, Kanata, Gloucester and the surrounding communities in the Ottawa-Carleton region. The cities of Gatineau, Hull and Aylmer located in Quebec constitute a separate geographic market owing to disposal restrictions.
28. Post-merger, CWS will hold more than 70% of the Ottawa commercial lift-on-board market and more than 50% of the Ottawa industrial market. CWS will also hold over 70% of the residential and recycling markets. The remaining

competitors include BFI, and a number of smaller competitors.

29. As noted in paragraph 18, both Laidlaw and CWS use contractual terms which tend to limit commercial customer availability and hence deter entry.
30. The high post-merger market shares and barriers to entry in the commercial lift-on-board market provide *prima facie* evidence that the merger will likely substantially lessen or prevent competition in the Ottawa commercial lift-on-board market. The DCO, by proposing divestiture of WMI's Ottawa business will provide an effective competitor to CWS post-merger. Given the relative size of the WMI's commercial business in Ottawa, the Director is of the view that it is necessary to include in any divestiture designed to overcome a substantial prevention or lessening of competition, the additional assets involved in industrial, residential and recycling businesses in order to create an effective, viable and independent competitor to CWS post-merger.

Outaouais

31. The Outaouais market is comprised of the non-hazardous solid waste business generated by the cities of Gatineau, Hull, Aylmer and surrounding communities. The cities of Ottawa, Nepean, Kanata, and Gloucester constitute a separate geographic market owing to disposal restrictions which tend practically to confine operators to one side of the Ottawa River or the other.
32. Post-merger, CWS will hold a share greater than 95% of the Outaouais commercial lift-on-board market. The competitors who remain, including Huneault Waste Management, Malex (a former WMI employee who has recently started his own business) and a number of smaller competitors, are primarily involved in serving industrial customers.

33. As noted in paragraph 18, both Allied and CWS use contractual terms which tend to limit commercial customer availability and hence deter entry.
34. The high post-merger market shares and barriers to entry in the commercial lift-on-board market provide *prima facie* evidence that the merger will likely substantially lessen or prevent competition in the Outaouais commercial lift-on-board market. The DCO, by proposing divestiture of WMI's Outaouais business, will provide an effective competitor to CWS post-merger. Given the relative size of the WMI's commercial lift-on-board business in Outaouais, the Director is of the view that it is necessary to include in any divestiture designed to overcome a substantial prevention or lessening of competition, the additional assets involved in industrial, residential and recycling businesses in order to create an effective, viable and independent competitor to CWS post-merger.

IV. DESCRIPTION AND ANTICIPATED IMPACT OF THE DCO

35. The DCO requires:
- (i) the divestiture of the non-hazardous solid waste management business of CWS in the market of Brantford, consisting of trucks used for commercial lift-on-board, industrial and residential waste collection as well as the collection of recyclable materials, containers, and related collection equipment, customer contracts and related service obligations, employees, real estate and other real property including leasehold arrangements relating to the Brantford business. CWS has elected to divest its current business. The CWS business is considered to be the appropriate business to divest since it consists of a stand-alone operation with the necessary administrative and sales functions;
 - (ii) the divestiture of the non-hazardous solid waste management business of

Laidlaw in the market of Sarnia, consisting of trucks used for commercial lift-on-board, industrial and residential waste collection as well as the collection of recyclable materials, containers, and related collection equipment, customer contracts and related service obligations, employees, real estate and other real property including leasehold arrangements relating to the Sarnia business;

- (iii) CWS will enter into a contractual licence for a period of ten years to provide the purchaser of the Laidlaw business in Sarnia with a rate per tonne of disposal of waste ("tipping fee") on a "most favoured nation" basis at disposal facilities owned or operated by CWS in the Sarnia market which will be no greater than the tipping fee charged to CWS under its contract with the County of Lambton;
- (iv) the divestiture of the non-hazardous solid waste management business acquired by Laidlaw in the WMI Transaction in the Ottawa and Outaouais markets, consisting of trucks used for commercial lift-on-board, industrial and residential waste collection as well as the collection of recyclable materials, containers, and related collection equipment, customer contracts and related service obligations to the extent that such customer contracts and service obligations can be divested. More particularly, contracts that have been assumed by competitors or which relate to customers who now longer require service, are not required to be divested;
- (v) CWS will enter into a contractual licence for a period of ten years to provide the purchaser of the WMI business acquired by Laidlaw in the WMI Transaction with a tipping fee at the West Carleton disposal facility on a "most favoured nation" basis which will be no greater than the tipping

fee charged to CWS at the West Carleton disposal facility.

36. CWS will proceed forthwith to divest the various businesses according to the procedure for divestiture set out in the DCO.
37. In the Brantford market, the DCO will overcome the substantial lessening of competition in the commercial lift-on-board market by preserving the pre-merger state through the complete divestiture of the business of CWS including divestiture of industrial, residential and recycling operations to ensure that a viable competitive entity will remain in the market.

In the Sarnia market, the DCO will overcome the substantial lessening of competition in the commercial lift-on-board market, and a long term viable competitive entity will be divested because the complete divestiture of the collection business of Laidlaw is required, and the tipping fee arrangement will provide access to disposal facilities at competitive rates.

In the Ottawa and Outaouais markets, the DCO will overcome the substantial lessening of competition in the commercial lift-on-board market by recreating a viable and effective competitor through the divestiture of the WMI business that was acquired in the WMI Transaction to the extent that it can be reconstituted at the date the DCO is approved. In addition, the long term viability of the purchaser of the divested business will be enhanced by the tipping fee arrangement at the West Carleton disposal facility.

38. If CWS fails to obtain expressions of interest in the Sarnia business within four (4) months, CWS will add the Watford landfill to the package of assets to be divested in Sarnia. For each of the four relevant markets, CWS will be accorded not more than six (6) months to effect the divestitures, failing which, the sale will

be turned over to a trustee for completion within three (3) months. The inclusion of the landfill in Sarnia as a "backstop" provides both the incentive to CWS to accomplish the divestiture successfully and in a timely manner and provides the Director and the Tribunal some assurance that if the divestiture to a qualified purchaser does not occur, an alternative remedy which provides for a vigorous and effective competitor will be put into effect.

39. In addition, CWS will maintain and preserve the Brantford and Sarnia non-hazardous solid waste management businesses separate and apart pursuant to the terms and conditions set out in the Draft Consent Interim Order pending the completion of the proposed divestiture. This will ensure that the businesses are maintained in a viable state, and that they will be ongoing and competitively independent suppliers of non-hazardous solid waste management services in Brantford and Sarnia until divestiture is achieved.

V. ALTERNATIVES TO THE SETTLEMENT

40. As an alternative to the DCO, the Director considered contested litigation seeking divestiture in the relevant markets. The Director has accepted the DCO for a number of reasons. First, the Director is satisfied from his review of this transaction and related matters that the proposed divestitures will, in all likelihood, eliminate the substantial lessening of competition which would otherwise have arisen from the mergers. The Director considers that the proposed divestiture should attract effective competitors with a sufficient scale and scope of business to prevent any possible exercise of market power in the markets concerned. Second, the DCO provides a more timely and certain outcome for customers of non-hazardous solid waste collection and disposal services in the markets of Brantford, Sarnia, Ottawa and Outaouais than litigated

proceedings. Third, the DCO provides a more timely and certain outcome for CWS and minimizes intrusion into its contractual relations with other parties to a greater degree than is required, in order that it may proceed with the remainder of the Proposed Acquisition and thereby obtain whatever synergies are expected from it.

VI. CONCLUSION

41. For the reasons presented herein, the Director recommends the settlement and asks the Competition Tribunal to approve the DCO.