

Competition Tribunal



Tribunal de la Concurrence

CT - 1991 / 002 – Doc # 87

IN THE MATTER OF an application by the Director of Investigation  
and Research under section 79 of the *Competition Act*,  
R.S.C., 1985, c. C-34, as amended;

AND IN THE MATTER OF certain practices by  
Laidlaw Waste Systems Ltd.  
in the communities of Cowichan Valley Regional District,  
Nanaimo Regional District and the District of Campbell River,  
British Columbia.

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

Laidlaw Waste Systems Ltd.

Respondent



**ORDER PURSUANT TO REASONS DATED JANUARY 20, 1992**

COMPETITION TRIBUNAL

**ORDER PURSUANT TO REASONS DATED JANUARY 20, 1992**

*The Director of Investigation and Research*

v.

*Laidlaw Waste Systems Ltd.*

WHEREAS the Tribunal on January 20, 1992 issued Reasons for granting orders against Laidlaw Waste Systems Ltd. ("Laidlaw") pursuant to section 79 of the *Competition Act*, R.S.C., 1985, c. C-34, as amended, and counsel for the Director of Investigation and Research ("Director") was asked to draft terms for such orders in accordance with those reasons and in consultation with counsel for Laidlaw;

AND UPON READING the draft order proposed by counsel for the Director and the amendments thereto proposed by counsel for Laidlaw, both dated February 4, 1992 as well as the written submission of counsel for Laidlaw, dated February 5, 1992 and the written reply by counsel for the Director, dated February 7, 1992;

THIS TRIBUNAL ORDERS THAT:

1. For the purposes of this order the following definitions shall apply:

- (a) "Product" shall mean the lift-on-board waste removal and haulage service as referred to in the said Reasons and for greater clarity waste shall mean material of all kinds including recyclable materials and any other substance in or element of waste produced by customers;
- (b) "Markets" shall mean the Cowichan Valley, Nanaimo and Campbell River markets, being those relevant portions of Vancouver Island within which Laidlaw provides the product and with respect to which this order is to take effect, all as referred to in the said Reasons;
- (c) "Container Service Agreement" as used in this order shall refer to the standard form of contract as executed by customers of Laidlaw heretofore and as hereafter used by Laidlaw to engage its customers to accept and to oblige Laidlaw to supply the product in the markets.

2. Laidlaw shall be prohibited from acquiring the business assets or interest of any competitor with respect to the provision of the product in the markets for a period of three years from the date of this order.

3. Laidlaw shall:

- (a) amend its Container Service Agreements presently in force and which are hereafter implemented, in accordance with its undertaking provided to the Tribunal to remove from and not reintroduce the following clauses therein:

- (i) creating a right of first refusal on the part of Laidlaw for the continuation or reacquisition of the patronage of a customer or past customer ("right of first refusal");
  - (ii) obliging a customer to reveal competitive bids or information regarding discussions, negotiations or quotes provided to the customer from competitors of Laidlaw ("right to compete");
  - (iii) requiring a customer to pay any stipulated sum upon early termination ("liquidated damages");
- (b) not enforce the clauses referred to in paragraphs 3(a) (i), (ii) and (iii);
- (c) notify its customers in the markets in writing of the foregoing within 45 days of the date of this order and provide a copy thereof to the Director.

4. Laidlaw shall amend its Container Service Agreements presently in force and which are hereafter implemented so that:

- (a)
  - (i) such Container Service Agreements shall have a term not exceeding one year from the date of execution thereof or from the last annual anniversary of the said date of execution thereof;

- (ii) any initial renewal of the Container Service Agreements shall be for a term of not more than one year;
  - (iii) any renewal subsequent to the initial renewal shall likewise be for a term of not more than one year;
  - (iv) the initial renewal term as well as any subsequent renewal term shall be terminable at any time upon at least 30 days notice provided by any party thereto;
- (b) such Container Service Agreements shall state clearly and unequivocally thereon that they are contracts of legal significance and that they contain a term of one year and possible renewal terms of one year terminable on 30 days notice;
- (c) such Container Service Agreements shall not contain a requirement that the customer exclusively obtain the product from Laidlaw.

5. Laidlaw shall provide the Director for a period of three years from the date of this order with:

- (a) a copy of any of its existing and future Container Service Agreements upon the request of the Director therefor;

- (b) copies of all forms of Container Service Agreements hereafter implemented in the markets.

6. Laidlaw shall, in the event that it proposes to substitute a form of Container Service Agreement other than that in place with a customer, and in the event that a customer agrees to modify the terms of its Container Service Agreement by such substitution, prior to the execution by such customer of the modified Container Service Agreement, provide such customer with a written statement clearly explaining the differences between it and the Container Service Agreement which the customer had previously executed.

7. Laidlaw at its expense shall provide:

- (a) within 45 days of the date of this order, to all of its customers in the markets (by prepaid post) and to all of its managerial staff engaged in the provision of the product and to its sales employees in the markets, a statement, approved by the Director, of the terms of this order and that Laidlaw's policy is to comply with the *Competition Act*;
- (b) within 60 days of the date of this order, to the Director, a certification under the hand of the Vice-President, Canadian Operations, that the matters referred to in paragraph 7(a) have been accomplished.

8. Laidlaw shall not agree to sell, transfer, lease, assign or withdraw from all or any of the markets all or substantially all of its business, goodwill or assets pertaining to or used in connection with the supply of the product, for a period of three years from the date of this order, without first providing at least 60 days notice and reasonable details thereof to the Director.

9. Either party shall be at liberty to apply to the Tribunal with respect to any such agreement or conduct referred to in paragraph 8 of this order for such further orders as are necessary with a view to the objects of subsection 79(2) of the *Competition Act*.

10. Either party shall be at liberty to apply to the Tribunal at any time for directions concerning clarification of this order and particularly for direction concerning the time period within which the provisions of paragraphs 3 and 4 are to be implemented if such direction becomes necessary.

11. This order shall apply to the successors and assignees of Laidlaw.

DATED at Ottawa, this 11th day of February, 1992.

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

(s) B. Reed  
B. Reed