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Date: January 21, 2022  
CT- 2021-002

Annie Ruhlmann for / pour  
REGISTRAR / REGISTRARE

OTTAWA, ONT.

Doc. # 75

**THE COMPETITION TRIBUNAL**

**CT-2021-002**

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

**AND IN THE MATTER OF** the acquisition of Tervita Corporation by Secure Energy Services Inc.;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to 92 of the *Competition Act*;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an interim order pursuant to section 104 of the *Competition Act*;

**B E T W E E N:**

**COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**SECURE ENERGY SERVICES INC.**

**Respondent**

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**MOTION RECORD OF THE COMMISSIONER OF COMPETITION**

*(For Answer to Questions from the Examination of Discovery  
of Secure Energy Services Inc.)*

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**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22<sup>nd</sup> Floor  
Fax: 819.953.9267

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Counsel to the Commissioner of Competition

CT-2021-002

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**AND IN THE MATTER OF** the acquisition of Tervita Corporation by Secure Energy Services Inc.;

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**BETWEEN:**

**COMMISSIONER OF COMPETITION**

— and —

**SECURE ENERGY SERVICES INC.**

**Applicant**

**Respondent**

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**NOTICE OF MOTION**

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**TAKE NOTICE THAT** the Applicant, the Commissioner of Competition (“**Commissioner**”), will make a motion to the Competition Tribunal (“**Tribunal**”) on an expediated basis as such date and times as may be set by the Tribunal.

**THE MOTION IS FOR:**

1. An Order compelling the Respondent, Secure Energy Services Inc. (“**Secure**”), to answer, as applicable, within one week from the date of the Order those questions set out in Appendix “A” to this Notice of Motion, which questions were asked during the Examination of Discovery of David Engel, Secure’s representative, held from December 20, 2021 to December 22, 2021 (the “**Secure Examination**”);
2. Costs if this motion, payable forthwith; and
3. Such further and other relief as counsel may request and the Tribunal may permit.

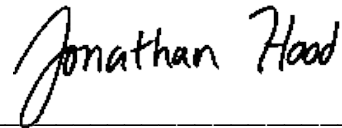
**THE GROUNDS FOR THE MOTION ARE:**

4. During the Secure Examination, 45 questions were refused or taken under advisement.
5. The parties have narrowed down the questions in dispute to two categories of questions listed in Appendix A.
6. The questions in Appendix A are proper questions as they seek information relevant to issues in dispute.
7. The *Competition Tribunal Rules*, R. 2, 34(1), and 64 and the *Federal Courts Rules*, R. 240.
8. Such further or other grounds as counsel may advise and the Tribunal may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- a) The chart contained at Appendix “A”;
- b) The Affidavit of Mallory Kelly affirmed January 21, 2022; and
- c) Such further or other documents as counsel may advise and this Tribunal may permit.

DATED AT TORONTO, ONTARIO, this 21<sup>st</sup> day of January, 2022.



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Counsel to the Commissioner of Competition

## Appendix A

### Refusals at Issue from the Examination of David Engel

#### A. Contact Information refusals

**Relevance:** The Commissioner seeks the contact information of 12 former Secure and Tervita employees who were terminated allegedly to achieve efficiencies as a result of the merger. These individuals are reasonably expected to have knowledge relating to Secure's efficiencies claims, specifically the reasons for their termination as well as their roles and responsibilities prior to termination.

Q. 842  U/A	<p>Could you give us the names and contact information, so telephone and email address, of those individuals?</p> <p>(Contact information for the individuals terminated as of June 30th in the "Employee Cost Tracker Report for Dean" at lines 19-31 of the excel found at Tab 72 of the Commissioner's Discovery Binder)</p>
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#### B. Questions regarding facts related to efficiencies that would be lost in the event of divestiture orders

**Relevance:** Secure relies on the efficiencies defence which the Commissioner contests. One of the issues for the Tribunal at the hearing will be assessing whether those efficiencies would be lost but for the order it grants. This category of questions seeks the facts related to the categories of efficiencies that may be lost if the Tribunal orders Secure to divest former Tervita facilities.

Q. 1230	[...] Please provide all the fact related to savings that would be lost in corporate labour savings if the hypothetical divestiture order was issued.
Q. 1231	How many employees, in your business experience as an executive, would Secure have to rehire if the hypothetical divestiture order were issued?
Q. 1232	The determination of which employees to let go was done with business judgement, not by expert evidence, so would Secure have to rehire corporate-level employees if the hypothetical divestiture order were issued?
Q. 1233	[...] How many employees at the corporate level would Secure have to rehire if the hypothetical divestiture order were issued?
Q. 1236	Can you provide me with all facts related to savings that would be lost in head-office lease savings if the hypothetical divestiture order were issued?

Q. 1237	[...] So, the facts related to Secure's head office, Mr. Engel, are those facts that Secure would have internally?
Q. 1238	Would Secure have to obtain additional head-office space if the hypothetical divestiture order were issued?
Q. 1239	So the divestiture would be the facilities, or the Tervita facilities listed at tab 145?
Q. 1240	If Secure had fewer facilities, would they need more corporate-level employees and office space, just as a simple proposition?
Q. 1241	Can you provide me all facts related to savings, public company costs savings, that would be lost if the hypothetical divestiture order were issued?
Q. 1242	Would Secure have to incur additional public-company costs savings if the hypothetical divestiture order were issued?
Q. 1244	Can you provide all facts related to the other corporate costs savings listed in the Harington efficiencies report that would be lost if the hypothetical divestiture order were issued?
Q. 1245	With respect to the pipeline-access savings for landfills, if the hypothetical order did not require divestiture of Tervita's Fox Creek landfill or Secure's Kaybob standalone water disposal, can you provide me with all facts related to pipeline-access savings that would be lost if the hypothetical divestiture order were issued?
Q. 1246	Same question with respect to field lease and operating cost savings?
Q. 1247	Same question for field and environmental services head-count savings?
Q. 1248	Same question for intercompany transport savings?
Q. 1249	<p>Okay. If we could go to page 440 of the discovery binder and if we could scroll down to paragraph 163, this paragraph says in the relevant part:</p> <p>"Secure has received inquiries from interested parties in purchasing any potential waste-disposal assets or facilities, including --"</p> <p>And then there is a list of parties. So, in this, is it fair to say in this affidavit you are identifying parties -- oh, sorry. I am not going to ask that question. The text is there. With respect to those interested parties identified in paragraph 163, what facts is Secure aware of that relate to savings that would be lost if each of these buyers purchased one or more of the facilities in the hypothetical divestiture order? So, for example, if Pure Environmental were to purchase one or more of the facilities in the</p>

	hypothetical divestiture order, what facts is Secure aware of with respect to savings that would be lost?
Q. 1250	If I ask the [same] question with respect to each of these entities, I take it you would refuse for the same reasons?
Q. 1251	And I will ask the same question with respect to the strategic buyers identified in exhibit 85 to the affidavit. If I ask the same question, would you give the same refusal?
Q. 1252	[...] with respect to specific buyers identified – and I will just use Albright as an example. If Albright purchased one or more of the facilities in the hypothetical divestiture order, what facts is Secure aware of with respect to savings that would be lost?  (repeat of Q. 1251)
Q. 1253	[...] If we go back to page 440, paragraph 164 identified a number of financial buyers. I will ask the same question with respect to those buyers.
Q. 1254	[...] my questions is with respect to all these buyers: If Architect Equity were to purchase one or more of the facilities in the hypothetical divestiture order, what facts is Secure aware of with respect to savings that would be lost?



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**AND IN THE MATTER OF** an application by the Commissioner of Competition for an order pursuant to section of the *Competition Act*.

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

— and —

**SECURE ENERGY SERVICES INC.**

**Respondent**

---

**AFFIDAVIT OF MALLORY KELLY**

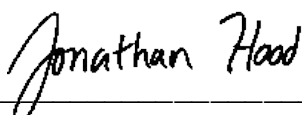
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I, **MALLORY KELLY**, of the City of Ottawa, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am an Acting Senior Paralegal with the Department of Justice Competition Bureau Legal Services, Counsel for the Applicant, the Commissioner of Competition in this proceeding. As such, I have personal knowledge of the matters to which I depose in this affidavit.
2. I submit this affidavit in support of the Commissioner's Motion For Answers to Questions from the Examination for Discovery of Secure Energy Services Inc.

- 3. Attached as Exhibit "A" is the Commissioners Amended Notice of Application, dated June 29, 2021.
- 4. Attached as Exhibit "B" is the Response from Secure Energy Services Inc., dated September 15, 2021.
- 5. Attached as Exhibit "C" is the Reply from the Commissioner of Competition, dated September 29, 2021.
- 6. Attached as Exhibit "D" the Transcript from the Examination for Discovery of David Engel on December 20, 2021.
- 7. Attached as Exhibit "E" is the Transcript from the Examination for Discovery of David Engel on December 21, 2021.
- 8. Attached as Exhibit "F" is the Transcript from the Examination for Discovery of David Engel on December 22, 2021.
- 9. Attached as Exhibit "G" is an email dated January 19, 2022 between Jonathan Hood, Counsel for the Commissioner, and Nicole Henderson, Counsel for Secure Energy Services Inc.
- 10. Attached as Exhibit "H" is the Affidavit of Andrew C. Harington dated July 14, 2021.
- 11. Attached as Exhibit "I" is the Transcript from the Examination of Andrew C. Harington on July 20, 2021.

AFFIRMED remotely by Mallory Kelly stated )  
 as being located in the City of Ottawa in the )  
 Province of Ontario, before me at the City of )  
 Toronto, in the Province of Ontario on the )  
 21<sup>st</sup> day of January 2022, in accordance )  
 with O. Reg 431/20, Administering Oath )  
 or Declaration Remotely. )

  
 \_\_\_\_\_ )  
 A Commissioner for Taking Affidavits, etc. )  
 Jonathan Hood – LSO#515341 )

  
 \_\_\_\_\_ )  
 MALLORY KELLY )

*Jonathan Hood*

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Exhibit "A" to the Affidavit of  
Mallory Kelly  
Affirmed January 21, 2022

**CT-2021-002**

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**AND IN THE MATTER OF** the ~~proposed~~ acquisition of Tervita Corporation by Secure Energy Services Inc.;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to 92 of the *Competition Act*;

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**SECURE ENERGY SERVICES INC.  
~~TERVITA CORPORATION~~**

**Respondents**

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**AMENDED NOTICE OF APPLICATION**

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**TAKE NOTICE** that the Commissioner of Competition (the “**Commissioner**”) will make an application to the Competition Tribunal (the “**Tribunal**”), on a day and place to be determined by the Tribunal, pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C- 34, as amended (the “**Act**”) for an order:

- ~~(a) directing the Respondents not to proceed with the proposed acquisition of Tervita Corporation (“**Tervita**”) by Secure Energy Service Inc. (“**Secure**”) (the “**Proposed Transaction**”);~~
- ~~(b) in the alternative, requiring Secure not to proceed with the acquisition of such assets as are required for an effective remedy in all the circumstances;~~
- (a) to dissolve Secure Energy Services Inc.’s (“**Secure**”) acquisition of Tervita Corporation (“**Tervita**”) (the “**Transaction**”) in such manner as the Tribunal directs;
- (b) dispose of such assets of Secure as are required for an effective remedy in all the circumstances;
- (c) requiring the Respondents to provide the Commissioner with at least 30 days advance written notice of any future proposed merger, as such term is defined by section 91 of the Act, involving either the Respondent for a period of five years, where the proposed merger would not otherwise be subject to notification pursuant to Part IX of the Act;
- (d) requiring the Respondents pay the costs of this proceeding; and
- (e) such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

**AND TAKE NOTICE** that if you do not file a response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon application by the Commissioner and without further notice, make such Order or Orders as it may consider just, including the Orders sought in this Application.

**AND TAKE FURTHER NOTICE** that the Applicant will rely on the Statement of Grounds and Material Facts below in support of this Application and on such further or other material as counsel may advise and the Tribunal may permit.

**AND TAKE FURTHER NOTICE** that a concise statement of the economic theory of the case is attached hereto as Schedule "A".

THE ADDRESSES FOR SERVICE ARE:

For Secure Energy Services Inc.:

Blakes, Cassels & Graydon  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9  
Tel: 416-863-2400  
Fax: 416-863-2653

Attention: Brian Facey

For Tervita Corporation:

~~Bennett Jones  
1730 Pennsylvania Ave  
Suite 875~~

~~Washington, DC  
District of Columbia 20006  
USA  
Tel: 416-777-4855  
Fax: 1-202-204-0498~~

~~Attention: Melanie Aitken~~

The Applicant proposes that the hearing of this matter be held in Ottawa, Ontario and heard in English.

For the purposes of this Application, service of all documents on the Commissioner may be served upon:

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau QC K1A 0C9  
Tel: 819.997.2837  
Fax: 819.953.9267

Attention: Jonathan Hood  
Paul Klippenstein  
Ellé Nekiar

## STATEMENT OF GROUNDS AND MATERIAL FACTS

### I. OVERVIEW

1. Secure competed vigorously with Tervita to provide oil and gas waste services (“**Waste Services**”) in the Western Canadian Sedimentary Basin (“**WCSB**”). ~~Secure is permitted to acquire Tervita~~ After acquiring Tervita, the merged entity will have Secure has significantly enhanced market power that is unlikely to be constrained. Oil and gas producers will likely pay materially higher prices and experience a deterioration in the quality of service to dispose of waste at a time when the oil and gas industry, an important sector of the Canadian economy, is struggling.
2. ~~The merged entity would~~ Secure controls the vast majority of supply of Waste Services in the WCSB and ~~will be~~ is the only reasonable option for many customers in an industry with high barriers to entry for competitors and high transportation costs for customers. Maps are attached as Appendix 1 showing the locations of facilities used to provide Waste Services including industrial landfills, treatment recovery and disposal facilities (“**TRDs**”), and water disposals wells.
3. The ~~Proposed~~ Transaction eliminates the fierce competition that existed between Secure and Tervita. ~~The Respondents have~~ Secure and Tervita had developed competing Waste Services facilities in close proximity to each other – sometimes opening facilities right across the road from one another, leading to decreased prices and service improvements. For a significant number of customers, Secure and Tervita ~~are~~ were the only or the two closest geographic options for Waste Services. Proximity is critical to oil and gas customers when choosing a Waste Services vendor due to the high costs of transportation.
4. The Waste Services business is characterized by high barriers to entry, including regulatory, financial and reputational barriers as well as a mature market. In addition, given the significant size of Secure post-transaction, new entry or



expansion would not be timely, is unlikely, and would be insufficient to constrain an exercise of market power.

5. Oil and gas producers in the WCSB may also retain environmental consulting and waste management companies (referred to in this Application as “**Environmental Management Companies**”) to provide a portfolio of environmental services associated with drilling for oil and gas including environmental consulting services, solids control, demolition & decommissioning, and equipment rentals (“**Environmental Services**”). Secure and Tervita ~~also~~ offered Environmental Services and ~~may~~ sometimes bundled them with Waste Services. Through its dominance in Waste Services, the ~~Proposed~~ Transaction is likely to provide Secure with the ability and incentive to foreclose Environmental Management Companies. This will likely lead to higher prices and degraded services for Environmental Services customers.
6. The ~~Proposed~~ Transaction is also likely to substantially prevent competition in Northeastern British Columbia (“**NEBC**”), where Secure had planned to open an industrial landfill in Wonowon, BC. But for the ~~Proposed~~ Transaction, Secure’s landfill in Wonowon would have competed with Tervita’s Silverberry and Northern Rockies landfills for Waste Services. Customers in NEBC would have benefited from the likely decreased prices and increased quality of service had Secure’s Wonowon landfill opened.

## II. THE PARTIES

7. The Applicant, the Commissioner, is responsible for the administration and enforcement of the Act.
8. Secure is a publicly traded company headquartered in Calgary, Alberta and listed on the Toronto Stock Exchange. Secure owns and operates 18 TRDs, 6 industrial landfills (as well as one it does not own but operates under contract), and 15 standalone water disposal wells in the WCSB that provide Waste Services. Secure also offers a wide range of Environmental Services associated with oil and gas

drilling including: the sale of drilling fluids, production chemicals, and water services, and demolition, decommissioning, remediation, and reclamation of oil and gas wells.

9. Tervita ~~is~~ was a publicly traded company based in Calgary, Alberta. Its common shares ~~are~~ were listed on the Toronto Stock Exchange. Among other assets, Tervita owned and operated 44 TRDs, 22 industrial landfills (18 of which ~~are~~ were owned by Tervita, one of which it operated under a contract, and three sites that Tervita marketed under contract for other landfill operators), 3 cavern disposal facilities, and 8 standalone water disposal wells in the WCSB. Tervita ~~also~~ offered a range of Environmental Services including the demolition, decommissioning, remediation, and reclamation of oil and gas wells.

### III. ~~THE PROPOSED~~ TRANSACTION

10. Secure acquired all the issued and outstanding shares of Tervita on July 2, 2021.
- ~~10. Pursuant to an Arrangement Agreement, dated March 8, 2021, Secure and Tervita intend to carry out an all-share transaction. Under the Plan of Arrangement, Secure will acquire all of the issued and outstanding shares of Tervita and upon completion of the transaction, Secure and Tervita shareholders will own approximately 52% and 48%, respectively of Secure.~~

### IV. INDUSTRY BACKGROUND

11. The WCSB is a vast sedimentary basin in Western Canada, including southwestern Manitoba, southern Saskatchewan, Alberta, northeastern British Columbia and the southwest corner of the Northwest Territories. The WCSB contains one of the world's largest reserves of petroleum and natural gas.
12. Various forms of waste are produced in connection with the development, operation, remediation and reclamation of oil and gas wells including produced water, waste water, sludge, drill cuttings, contaminated soil and other chemicals.

Oil and gas customers, which includes a number of small to medium sized enterprises, generally pay third parties to take this waste, depending on its composition, to three types of facilities: TRDs, industrial landfills, and standalone water disposal wells.

13. TRDs process contaminated fluids that contain mixtures of solids, oil and water. At the TRD, each of the solids, water, and oil components are separated using centrifuges or other thermal processes. If the TRD facility contains a terminal with a pipeline connection, the oil recovered from the waste will be delivered via pipeline to an oil and gas plant. If the TRD is not connected via terminal to a pipeline, the oil will be trucked to a facility which has a terminal. The water is disposed of at a disposal well, often co-located at the TRD, and the solids are separately disposed of at an industrial landfill.
14. Industrial landfills are engineered sites that dispose of solid waste. As discussed above, industrial landfills receive solid waste produced from TRDs but also receive solid waste directly from oil and gas customers, particularly contaminated soil and drill cuttings. In Alberta and Saskatchewan, industrial landfills that receive oilfield waste streams fall into two categories, Class I (hazardous oilfield waste) and Class II (nonhazardous oilfield waste) industrial landfills. The majority of solid oil and gas waste in Alberta and Saskatchewan is nonhazardous and is disposed of in Class II landfills. In British Columbia, both hazardous and nonhazardous solid oilfield waste is disposed of in secure landfills.
15. Solid waste that has been contaminated with naturally occurring radioactive materials (“**NORM Waste**”) can only be disposed of in a landfill licensed to accept NORM Waste. In the WCSB, the only two landfills that ~~can~~ could accept solid waste contaminated with NORMs ~~are~~ were Tervita’s Silverberry landfill in NEBC and Secure’s Pembina landfill in Alberta.
16. Standalone disposal wells are used to dispose of produced or waste water.

17. Once produced, the various types of waste streams are trucked to the appropriate type of Waste Services facility. Typically, trucking costs constitute a high percentage of disposal costs and are paid by the oil and gas producer. Therefore, hauling distance is a key factor in a customer's decision as to which facility to send waste. Some oil and gas customers can avoid trucking produced water if they are connected by pipeline to a facility with a disposal well.
18. While oil and gas companies are responsible for the waste produced while drilling for oil and gas, there are a large number of orphaned and abandoned well sites across the WCSB. Regulatory authorities in Alberta, British Columbia and Saskatchewan are responsible for remediation and reclamation for these well sites. They purchase Waste Services to dispose of certain types of waste during the remediation and reclamation process.
19. In 2020, the federal government announced a \$1.7 billion stimulus package to help fund the closure of orphan and inactive wells in the WCSB. A portion of these funds will be used to purchase Waste Services that Secure and Tervita ~~currently~~ previously competed to provide. Both Secure and Tervita had publicly referenced the importance of this stimulus package to their future revenues prior to Secure's acquisition of Tervita. An increase in the price of Waste Services will decrease the number of orphaned and abandoned sites that can be remediated and reclaimed pursuant to this stimulus package.
20. In addition to Waste Services, there is a comprehensive portfolio of Environmental Services associated with drilling for oil and gas, including environmental consulting services, solids control, demolition & decommissioning, and equipment rentals. Environmental Management Companies that offer these Environmental Services may also require Waste Services from ~~Tervita or~~ Secure. Tervita and Secure ~~also~~ competed to offer several of the Environmental Services listed above prior to Secure's acquisition of Tervita.

21. The ~~Proposed~~ Transaction ~~will~~ results in Secure owning the vast majority of TRDs, industrial landfills, and third-party standalone disposal wells in the WCSB. No other company who provides Waste Services comes close to having the geographic range and breadth of facilities that Secure now has after acquiring Tervita ~~will have if it acquires Tervita~~.

## V. THE RELEVANT MARKETS

### A. Relevant Product Market

22. The relevant product markets for assessing the effects of the ~~Proposed~~ Transaction are: (i) the supply of waste processing and treatment services by TRDs; (ii) the disposal of solid oil and gas waste into industrial landfills, (iii) the disposal of produced and waste water into water disposal wells owned by third party Waste Service providers; (iv) the disposal of NORM Waste into landfills permitted to accept this type of solid waste; and (v) the provision of Environmental Services.
23. Customer switching between different types of Waste Services listed above is generally not possible due to federal and provincial regulations that restrict disposal of certain waste streams to certain types of facilities, as well as the technical capabilities of facilities.
24. Caverns can take certain types of waste streams that can be disposed of at TRDs and disposal wells. As such, caverns can be considered a functional substitute for TRDs and disposal wells. There are five operating caverns in the WCSB that accept third-party waste – three ~~are~~ were owned by Tervita, one is owned by White Swan Environmental Ltd. (“**White Swan**”) and one is owned by Plains Environmental.
25. Solid NORM Waste can only be disposed of in landfills permitted to accept this type of waste. There are no functional substitutes for the disposal of solid NORM Waste into permitted landfills.

26. Produced water and waste water can only be disposed of in disposal wells.
27. Other waste management options such as on-site storage or bioremediation are not close substitutes for the services provided by landfills, TRDs, and disposal wells. On-site storage for long periods is neither practical nor economically feasible. Bioremediation may only be practical for a narrow range of contaminated soil not impacted by salts, heavy metal, or heavy end hydrocarbons.
28. Environmental Services are not a functional substitute for the provision of Waste Services. Environmental Management Companies may need to purchase Waste Services to offer certain Environmental Services. For example, an Environmental Services Company remediating a well site may need to dispose of contaminated soil in an industrial landfill.

**B. Relevant Geographic Market**

29. The relevant geographic market for this Application is the aggregated locations of customers for Waste Services in the WCSB that ~~currently~~ previously benefited from the competition between Secure and Tervita. Waste Services customers most affected are located generally in NEBC, Northwestern Alberta, Western Alberta, the conventional heavy oil region, Lloydminster and Kindersley.
30. Suppliers of Waste Services can and do price discriminate among their customers. They identify and charge different prices to customers based on, among other factors, the customer's geographic location. Because transportation costs constrain the ability of customers to haul waste to disposal facilities that are distant from the location where the waste is produced, the geographic location of where the waste is produced is an important factor to determine the price of disposal.
31. Because the Respondents ~~have~~ has the ability to price discriminate, when defining geographic markets it is appropriate to aggregate the oil and gas customers based on ~~their~~ its location and the number of competitive options available to ~~it~~ them. Two sets of oil and gas customers that will experience the largest impact from the

~~Proposed~~ Transaction are: (1) those oil and gas customers whose location means that the ~~Proposed~~ Transaction effectively resulted in a merger to monopoly; and (2) those oil and gas customers whose location means that the ~~Proposed~~ Transaction ~~will~~ reduced their competitive options from 3 to 2. Even those oil and gas customers that ~~will~~ have more than two competitive options will still be affected by the ~~Proposed~~ Transaction.

**VI. THE ~~PROPOSED~~ TRANSACTION IS LIKELY TO SUBSTANTIALLY LESSEN AND PREVENT COMPETITION**

32. The ~~Proposed~~ Transaction ~~will~~ eliminates the competitive rivalry between Secure and Tervita, the two largest suppliers of Waste Services in the WCSB and by far each other's closest competitor. For some customers of Waste Services in the WCSB, the ~~Proposed~~ Transaction will result in a merger to monopoly, as the next closest facility may be hundreds of kilometers away. For example, oil and gas customers with wells between Tervita's Silverberry landfill and Secure's Saddle Hills landfill would have to travel well over 400 kilometers to get to the next closest third party landfill.
33. Customers ~~are~~ were able to play Secure and Tervita ~~the Respondents~~ off one another to get the best price and the highest quality services. ~~Currently, when a customer switches from one Respondent that will result in a loss of profit to the other Respondent.~~ Because Secure acquired Tervita, ~~then~~ the profit Secure would have lost from a customer switching to Tervita will be recaptured, giving Secure an ability to raise prices ~~once it acquires Tervita~~.
34. The removal of Tervita as a competitor coupled with, among other things, high barriers to entry, increased concentration and limited remaining competition, is likely to allow Secure to exercise new or enhanced market power resulting in a likely substantial lessening of competition, to the detriment of Waste Services customers which includes a number of small to medium sized enterprises.

35. The new or increased exercise of market power by Secure is likely to take the form of an increase in prices for Waste Services and/or a decrease in Waste Services service quality. An increase in the price of Waste Services will also likely decrease the number of orphaned and abandoned sites that can be remediated and reclaimed based on the current stimulus package.
36. The ~~Proposed~~ Transaction is also likely to prevent or substantially lessen competition in two additional ways.
37. First, Secure has submitted an application to the British Columbia Environmental Assessment Office to construct a secure landfill near Wonowon in NEBC. As of June 2020, Secure's representatives publicly projected that this landfill would be operational by the third quarter of 2021. If it had been opened, this new landfill would have competed with Tervita's Silverberry and Northern Rockies landfills. Competition between these landfills would have likely decreased price and increased quality of service for customers in NEBC. With the ~~Proposed~~ Transaction, Secure no longer plans to open this landfill.
38. Second, as described above, Secure ~~will be~~ is by far the largest provider of Waste Services in the WCSB which may be bundled with Environmental Services. Secure ~~will have~~ has the incentive and ability to increase price and/or degrade service quality of Waste Services to Environmental Services competitors who cannot offer bundled services, leading to new or increased market power in the provision of Environmental Services. This will likely lead to higher prices and degraded services for Environmental Services customers.

**VII. SECTION 93 FACTORS SUPPORT LIKELY SUBSTANTIAL LESSENING AND/OR PREVENTION OF COMPETITION**

39. A number of section 93 factors support the conclusion that the ~~Proposed~~ Transaction is likely to lessen or prevent competition substantially in the provision of Waste Services and Environmental Services in the WCSB.

**A. Barriers to Entry**



40. Secure's dominant position in the provision of Waste Services in certain areas of the WCSB will not likely be constrained by entry or expansion as barriers to building a facility that provides Waste Services are high. Therefore, timely entry by potential competitors is unlikely to occur on a sufficient scale and with sufficient scope to constrain a material price increase.
41. Barriers to entry include regulatory and permitting requirements for establishing a waste disposal site; high capital costs; reputational barriers; high sunk costs; market maturity; and limits on the number of available geologically suitable sites for waste disposal.
42. Secure's entry demonstrates the high barriers to entry. Secure was started in 2007 by former employees and contractors of Tervita. After Secure entered the market, there were multiple lawsuits between Secure and Tervita. Tervita (which, at the time, was called CCS) alleges that a number of its former employees conspired to take Tervita's confidential information and formed Secure for the purpose of taking certain business opportunities from Tervita. Specifically, in its Statement of Claim, Tervita alleged that if Secure had not taken this confidential information Secure would not have been able to establish itself as a competitor as quickly as it did.
43. Finally, given the absolute size of Secure ~~if it~~ after acquiring Tervita, entry is unlikely to occur on a sufficient scale or scope, or within the time required to constrain an exercise of market power by Secure.

#### **B. Removal of a Vigorous and Effective Competitor**

44. The ~~Proposed~~ Transaction ~~will~~ eliminates the head-to-head rivalry between Secure and Tervita, who are the two largest providers of Waste Services in WCSB. For a significant number of customers, Secure and Tervita ~~are~~ were the two closest geographic options for Waste Services.
45. Since its creation in 2007, the rivalry between Secure and Tervita had been intense, extending to every aspect of their business leading to better price and

service outcomes for customers of Waste Services. In an effort to win back business that has been lost to Secure, Tervita had, for example, increased spending on promotional items, increased advertising in newspapers and at a public venues, become a sponsor of the Calgary Stampede, and increased spending at client events, such as hockey games and golf tournaments.

46. Tervita had built facilities close to new Secure facilities including its South Grand Prairie landfill, Fox Creek TRD, and Willesden Green landfill. Oil and gas companies ~~would~~ benefited from decreased prices and better service where Secure and Tervita operated facilities in close proximity to each other. The direct competition between these facilities, and others, is eliminated with the ~~Proposed~~ Transaction.

### **C. Insufficient Effective Remaining Competition**

47. There is insufficient remaining competition to constrain an exercise of market power by Secure. The remaining competitors may follow price increases by Secure ~~if~~ as there is one less competitor in the market.
48. As described above, and evident from the maps attached at Appendix 1, no other company comes close to having the facilities to match the geographic scope and product depth of Secure ~~and Tervita~~. Combining the assets of Secure and Tervita ~~would~~ results in one entity owning 62 TRDs, 24 landfills, 3 caverns, and 8 standalone disposal wells in the WCSB. Post transaction, remaining competitors ~~may~~ include:
- a. Wolverine Energy and Infrastructure, which operates five TRDs in Alberta and one industrial landfill in Saskatchewan;
  - b. Aqua Terra Water Management ("**Aqua Terra**"), which operates eight standalone disposal wells – two in British Columbia, five in Alberta, and one in Saskatchewan;

- c. Ridgeline Canada Inc., which accepts certain types of solid waste at municipal landfills in Alberta and Saskatchewan;
  - d. RemedX, which operates one industrial landfill in Breton, Alberta;
  - e. Catapult Water Midstream ("**Catapult**"), which operates two standalone disposal wells in Alberta and one in British Columbia;
  - f. Medicine River Oil Recyclers ("**MROR**"), which operates one TRD in Drayton Valley, Alberta; and
  - g. White Swan, which operates one cavern and one TRD in Alberta.
49. The scope and scale of Secure's operations after it acquired Tervita, including the breadth of its facility infrastructure, ability to service multiple well sites for larger customers, diverse customer relationships, and organizational advantages, provides a significant advantage over its rivals. Rival firms are unlikely to be able to constrain an exercise of market power following the ~~Proposed~~ Transaction.
50. Some municipal landfills may accept volumes of contaminated soil and drill cuttings. However, the volume of this type of waste accepted by municipal landfills is insignificant relative to the volumes of contaminated soil and drill cuttings produced in the WCSB and collected by Secure and Tervita at their landfills prior to the acquisition. Municipal landfills are often not located as close to oil and gas wells as the Respondent's landfills.
51. Oil and gas producers may have internal waste disposal capabilities. Even oil and gas producers that have some self-disposal capacity still rely on third party water disposal wells, TRDs and landfills to dispose of their waste. Facilities owned by oil and gas producers are generally not permitted to offer Waste Services to other third parties. Waste Services are not the core competencies of oil and gas customers who prefer to use their capital to produce oil and gas.
52. Oil and gas customers do own and operate a number of water disposal wells that can receive water produced in the ordinary operation of a well. However, even oil and gas customers that operate their own water disposal wells typically need third

party water disposal wells because their own wells cannot handle the volume of water that is needed to complete the drilling of a well. As well, these oil and gas customers may not have internal water disposal capacity available for all of their well locations, and must rely on third party disposal capacity from vendors such as the Respondents.

53. Secure and Tervita ~~are~~ were by far the largest third party operators of water disposal wells. In February 2021, Secure and Tervita combined to inject over 20,000 cubic meters of waste water. By comparison, in that same month, the next three largest competitors (Aqua Terra, MROR, and Catapult) combined to inject less than 6,000 cubic meters.

#### **VIII. RELIEF SOUGHT**

54. As described in detail above, the ~~Proposed~~ Transaction is likely to result in a substantial lessening and/or prevention of competition in many different relevant markets across the WCSB. Therefore the Commissioner requests the relief sought in the Notice of Application above.

**DATED AT** Ottawa, Ontario, this 29<sup>th</sup> day of June, 2021

Original signed by Matthew Boswell

Commissioner of Competition

**SCHEDULE “A” – CONCISE STATEMENT OF ECONOMIC THEORY**

1. Secure and Tervita competed vigorously to provide Waste Services in the WCSB prior to the Transaction.
2. The development, operation, remediation and reclamation of oil and gas wells produces various forms of waste that depending on the wastes composition must be disposed of at a specialized facility. These services are not functional substitutes for each other. Therefore, relevant product markets are (i) the supply of waste processing and treatment services by TRDs; (ii) the disposal of solid oil and gas waste into industrial landfills; (iii) the disposal of produced and waste water into water disposal wells owned by third party Waste Service providers; and (iv) the disposal of NORM Waste into landfills permitted to accept this type of solid waste.
3. A functional substitute for some Waste Services at these facilities would be disposal in caverns, as such caverns can be considered substitutes in the relevant product market for TRDs and disposal wells. A hypothetical monopolist of any of these four types of services could profitably impose a small but significant and non-transitory price increase.
4. Suppliers of Waste Services price discriminate among their customers. They identify and charge different prices to customers, based on, among other factors, the customer’s geographic location. Because transportation costs constrain the ability of customers to haul waste to disposal facilities that are distant from the location where the waste is produced, the geographic location of where the waste is produced is an important factor to determine the price of disposal.
5. Therefore, the relevant geographic market is the aggregated locations of customers for Waste Services in the WCSB that ~~currently~~ previously benefited from the competition between Secure and Tervita. Waste Services customers most

affected are located in NEBC, Northwestern Alberta, Western Alberta, the conventional heavy oil region, Lloydminster and Kindersley.

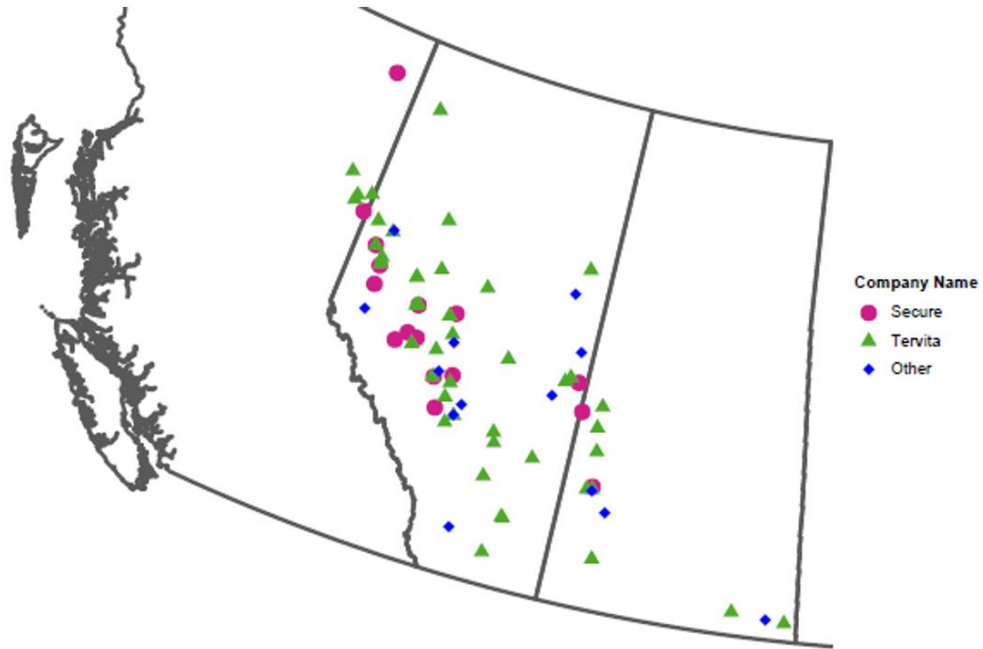
6. The ~~Proposed~~ Transaction causes the loss of competition between Secure and Tervita for Waste Services, ~~likely~~ increasing prices and decreasing the quality of Waste Services. Secure and Tervita ~~are~~ were by far the two largest suppliers of Waste Services in the WCSB and each other's closest competitor. The ~~Proposed~~ Transaction will increase the ability for the merged entity to raise prices, since profit that would otherwise have been lost by customers' ability to switch between ~~the Respondents'~~ Secure and Tervita's competing facilities will be recaptured by the merged firm.
7. Entry or expansion by competitors is unlikely to occur in a timely and sufficient manner due to high barriers to entry. The barriers to entry faced by a potential entrant include regulatory and permitting requirements, high capital costs, reputational barriers, high sunk costs, market maturity, and limits on the number of geologically suitable sites for waste disposal.
8. The remaining competition, including any competition from customers' ability to leverage or build its own facilities, ~~would~~ is not likely to be an effective constraint on an exercise of market power by ~~if Secure acquires Tervita~~.
9. The ~~Proposed~~ Transaction increases concentration for the provision of Waste Services in the WCSB.
10. Based on the above, it is likely that the ~~Proposed~~ Transaction ~~would~~ provides Secure with a new or increased ability to exercise market power. Therefore, the ~~Proposed~~ Transaction will likely lead to a substantial lessening of competition for the provision of Waste Services in WCSB.
11. The ~~Proposed~~ Transaction is also likely to prevent competition for the disposal of solid waste into industrial landfills in NEBC. But for the ~~Proposed~~ Transaction,

Secure would have opened an industrial landfill in NEBC in competition with Tervita's Silverberry and Northern Rockies landfills. This new competition would have likely decreased prices and increased quality of service for customers in NEBC. With the ~~Proposed~~ Transaction, Secure no longer plans to open this landfill.

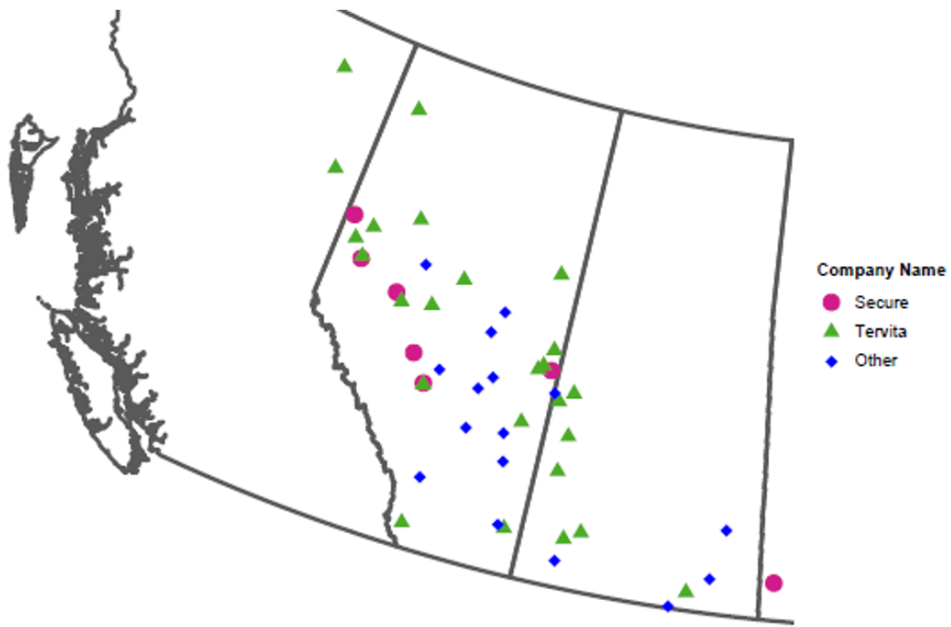
12. ~~The Respondents~~ Secure and Tervita also competed to provide Environmental Services. Environmental Services include environmental consulting services, solids control, demolition & decommissioning, and equipment rentals.
13. Certain Environmental Services require access to facilities that provide Waste Services. For example, an Environmental Services Company remediating a well site may need to dispose of contaminated soil in an industrial landfill.
14. As described above, the ~~Proposed~~ Transaction provides Secure with the ability to exercise market power in the provision of Waste Services in certain areas of the WCSB. Secure ~~will have~~ has the ability and incentive to extend its dominance in Waste Services to i) foreclose rival Environmental Services providers from accessing Secure's Waste Services and/or ii) drive customers to use Secure's Environmental Services through bundling with Waste Services.
15. This will result in a likely substantial lessening of competition for the provision of Environmental Services. Oil and gas companies will likely pay higher prices or receive decreased quality of service for Environmental Services.

### Appendix 1

*Map of TRD facilities operated by Tervita, Secure, and competitors in the WCSB*

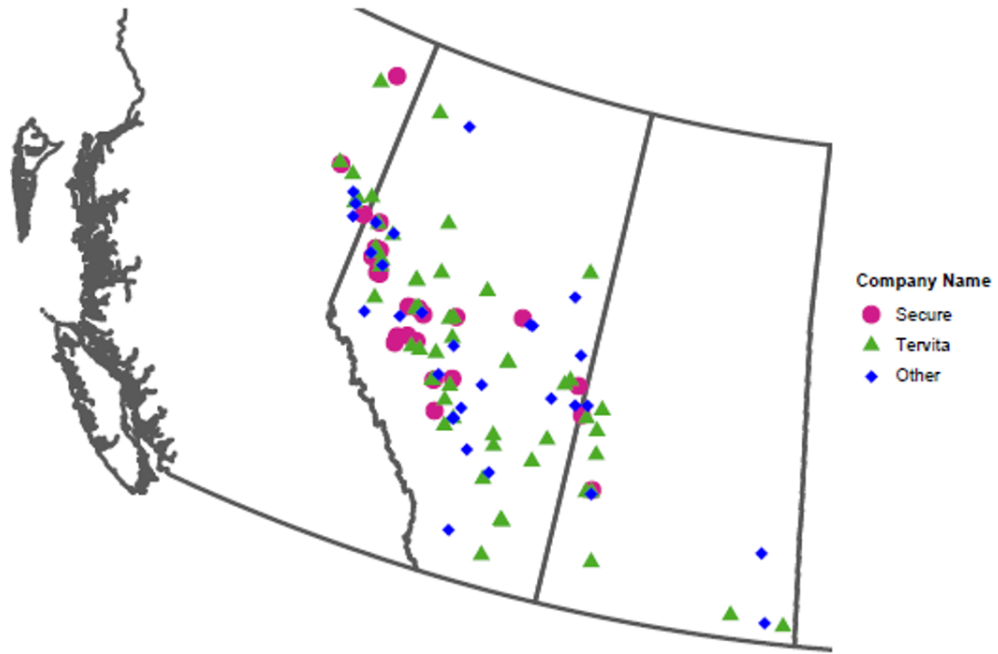


*Map of landfill facilities operated by Tervita, Secure, and competitors in the WCSB*





*Map of water disposal facilities operated by Tervita, Secure, and competitors in the WCSB*



*Jonathan Hood*

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Exhibit "B" to the Affidavit of  
Mallory Kelly  
Affirmed January 21, 2022

CT-2021-002

**THE COMPETITION TRIBUNAL**

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

**AND IN THE MATTER OF** the acquisition of Tervita Corporation by SECURE Energy Services Inc;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

**BETWEEN**

**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**SECURE ENERGY SERVICES INC.**

Respondent

---

**RESPONSE OF SECURE ENERGY SERVICES INC.**

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**PART I: OVERVIEW**

1. SECURE Energy Services Inc. ("**SECURE**") opposes the Commissioner of Competition's (the "**Commissioner**") application pursuant to section 92 of the *Competition Act* and denies that the Commissioner is entitled to any of the relief sought in the Amended Notice of Application.
2. The Commissioner has improperly defined the relevant product and geographic markets and asserted a substantial lessening or prevention of competition where there is none. He has also has not properly considered the significant efficiencies generated by the merger of SECURE and Tervita Corporation ("**Tervita**"), which dwarf any alleged anticompetitive effects.

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3. The Commissioner of Competition has failed three times to block closing of the Transaction, dissolve the Transaction, or require SECURE to hold separate assets of the former Tervita business. The Commissioner now requests a final order dissolving the Transaction, which closed on July 2, 2021. Such an order is neither warranted nor necessary because:

- (a) the Transaction has not and will not prevent or lessen competition substantially in Canada; and
- (b) the Transaction has and will continue to result in substantial gains in efficiency that exceed and offset any alleged anti-competitive effects.

## **PART II: FACTS ADMITTED AND DENIED**

4. Except for the allegations in paragraphs 7-10, 11, 13, and 16 of the Amended Notice of Application, SECURE denies all the Commissioner's allegations unless expressly admitted below. SECURE further denies that the Commissioner is entitled to the relief sought in paragraph 1 of the Amended Notice of Application or to any relief whatsoever.

## **PART III: STATEMENT OF FACTS**

### **A. The Transaction and Rationale**

5. SECURE is a publicly traded company headquartered in Calgary, Alberta and listed on the Toronto Stock Exchange ("TSX"). SECURE provides solutions to upstream oil and natural gas companies operating in Western Canada and certain regions in the U.S. The majority of SECURE's customers are large, sophisticated oil and gas producers.

6. Pursuant to an Arrangement Agreement in accordance with the *Business Corporations Act (Alberta)* dated March 8, 2021, SECURE acquired Tervita effective July 2, 2021 (the "**Transaction**"). Under the Plan of Arrangement, SECURE acquired all the issued and outstanding shares of Tervita upon completion of the Transaction and then amalgamated with Tervita. Following the Transaction, former SECURE and former Tervita shareholders own approximately 52% and 48%, respectively, of SECURE post-

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merger. The Plan of Arrangement was approved by the Alberta Court of Queen's Bench on June 18, 2021.

7. As a result of the Transaction, SECURE is becoming more efficient to adapt to and survive fundamental changes in the oil and gas industry. Since 2014, Western Canada's entire oil and gas sector has been marked by significant volatility and consolidation. This wave was caused first by a global slump in prices, significant supply changes, and more recently, by commitments from governments, investors, and operators to lower carbon emissions, focus on renewable energy and, ultimately, achieve a transition to net zero emissions.

8. SECURE has already achieved and will continue to achieve significant efficiencies from the Transaction, which would be lost if the order sought by the Commissioner is granted.

9. More importantly, the Transaction is critical to SECURE's efforts to support customers through this period of fundamental industry change. The Transaction has resulted in an improved and more cost-effective infrastructure to support a growing and consolidating customer base and shared commitments to economic, social, and governance ("**ESG**") initiatives, safety, performance, and customer service. For that reason, the Transaction is supported by many of SECURE's customers.

## **B. Operations of SECURE**

10. The Transaction generates significant synergies and efficiencies in large part because the asset bases and operations of SECURE and the former Tervita business were underutilized. SECURE and formerly Tervita both provided waste treatment and disposal services, environmental remediation services, and oil terminalling and marketing services to upstream oil and gas producers.

11. SECURE's customers can and do provide these same services. Oil and gas producers dispose of far more water at their owned wells than does SECURE. SECURE operates only a small proportion of water disposal wells in Western Canada, with the vast

- 4 -

majority being operated by producers. Some producers also own and operate landfills. SECURE and formerly Tervita have lost significant waste volumes to customer self-supply in recent years.

12. Due to customer insourcing and reduced drilling activity, many of SECURE's assets (including those of the former Tervita business) remain underutilized, a source of significant inefficiency and loss to the Canadian economy. The combination of these underutilized assets will enable SECURE to suspend many of these facilities without reducing output.

**PART IV: TRANSACTION DOES NOT PREVENT OR LESSEN COMPETITION  
SUBSTANTIALLY**

13. Contrary to the allegations in the Amended Notice of Application, the Transaction has not and will not prevent or lessen competition substantially, because it does not and will not provide SECURE the ability to exercise market power.

**A. Relevant Product Markets**

14. The Commissioner raises five relevant product markets in his Section 92 Application:

- (a) supply of waste processing and waste treatment services by TRDs,
- (b) disposal of solid oil and gas waste into industrial landfills,
- (c) disposal of produced water and waste water disposal wells by third-party waste service providers,
- (d) disposal of naturally occurring radioactive materials ("**NORM Waste**") into landfills permitted to accept this type of solid waste, and
- (e) provision of environmental services.

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15. The Commissioner's market definition is deficient for at least three reasons:
- (a) First, the relevant product markets include first-party produced water and waste water disposal wells and other waste service sites owned by SECURE and the former Tervita's customers as they are proper substitutes for third-party sites. SECURE and the former Tervita's customers frequently compare and weigh the costs of using third-party services and the internal cost to self-supply these services.
  - (b) Second, the relevant product market for the disposal of solid oil and gas waste includes municipal solid waste landfills and bioremediation sites in addition to industrial landfills.
  - (c) Third, the relevant product market for the disposal of NORM Waste includes NORM-certified caverns, and Class I landfills, which are each substitutes for NORM-certified landfills.

#### **B. Relevant Geographic Market**

16. The Commissioner pleads at paragraph 29 of the Amended Notice of Application that the relevant geographic market is the "aggregated locations of customers for Waste Services in the Western Canadian Sedimentary Basin that previously benefitted from the competition between SECURE and Tervita."

17. The Commissioner's proposed geographic market is unclear. He has set out no measurable or defined area in his Amended Notice of Application. SECURE reserves its right to respond to any further specified geographic market alleged by the Commissioner.

#### **C. No Barriers to Entry**

18. Contrary to the allegations in the Amended Notice of Application, there are no material barriers to entry or expansion in any relevant product or geographic market.

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**D. Effective Remaining Competition**

19. Contrary to the Commissioner's suggestions, SECURE continues to face effective remaining competition from first party producers and third-party waste disposal services providers. Third-party competitors include but are not limited to Medicine River Oil Recyclers, Aqua Terra, Albright, Catapult, Wolverine/Voda Inc., Aspen Water Management, Cancen, Clean Harbors, Dragos, Energy Transfer, Envolve, Recover Energy Services, RemedX, Rush Energy Services, Tidewater, and Topaz, all of whom are currently actively competing against SECURE for waste volumes. These competitors are capable of expanding their capacity in response to any alleged price increases, and oil and gas producers can and do sponsor the entry of new and expansion of existing service providers.

20. Similarly, the market for environmental services is highly fragmented, with numerous competitors and low barriers to entry. Such competitors include but are not limited to Waste Management, Clean Harbors, GFL Environmental, Aecom, and ClearStream Energy.

21. SECURE has no incentive to foreclose or turn away waste volumes from third-party environmental service providers or to drive customers to use SECURE's environmental services through bundling with waste services. SECURE's waste disposal business is characterized by relatively higher fixed costs than variable costs, such that securing waste volumes is critical for the profitability of its business. Furthermore, waste volumes from third-party environmental service providers are normally attributable to their originating oil and gas producers, who are customers of SECURE. Any attempted foreclosure or interference with their use of rival environmental services providers would have significant negative long-term impacts on SECURE's reputation and relationships with oil and gas producers.



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### **E. Customers' Countervailing Power**

22. The majority of SECURE's revenues are from customers that are large, sophisticated oil and gas producers. These customers purchase significant disposal volumes from SECURE and command significant bargaining power as a result.

23. Nearly all SECURE's revenues come from servicing producers who operate across multiple geographies and/or utilize multiple service lines offered by SECURE. These customers can credibly threaten to punish SECURE for any price increases in a particular geography or on a particular service line by moving waste volumes in other geographies or service lines to competing service providers, or by self-supplying the disposal of such waste. The volume of waste that these customers provide, the incremental volume they could provide, and the risk of losing volume across products and facilities providers these customers with significant economic power.

24. Customers' ability to constrain prices is further enhanced by their presence as counterparties for the purchase and resale of crude oil, where they supply critical inputs necessary for midstream infrastructure providers' energy marketing (terminalling) business. This is especially significant for SECURE, as one of its key business strategies is to maximize oil purchase and resale volumes.

### **F. Ability to Self-Supply**

25. The majority of SECURE's customers are capable of self-supplying nearly all waste disposal services internally. Many customers currently self-supply waste disposal services. In particular, oil and gas producers own substantial infrastructure for waste water disposal. For example, producers internally dispose of the vast majority of waste water volumes. SECURE operates only a small proportion of facilities with produced water and waste water disposal capabilities and has lost significant water disposal volumes to customers' self-supply over the past several years.

26. Produced water and waste water represent the largest share of revenue for SECURE of all waste streams. Customers' ability to self-supply these volumes creates significant bargaining power and constrains SECURE's pricing. Customers also can and

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do self-supply landfill, liquid waste, and energy marketing services, which similarly constrain pricing.

### **G. No Anticompetitive Effects**

27. SECURE denies that the Transaction has or will cause the anticompetitive effects alleged in the Amended Notice of Application. First, SECURE denies that the Transaction will cause increased prices or decreased levels of customer service as alleged in the Amended Notice of Application. In the alternative, any alleged price increases from the Transaction (which are denied) would not result in any lost allocative efficiency (or deadweight loss) to the Canadian economy or any other anticompetitive effects.

28. Market demand for waste disposal is a function of the level of oil and gas production activity in the Western Canadian Sedimentary Basin (“WCSB”). Waste is generated as a by-product of drilling, production, well remediation and reclamation activity, among other activities. Canadian oil and gas producers are price-takers on the global market, and global oil and gas prices are the primary driver of the level of exploration and drilling activity. As a result, any alleged price increase in waste disposal services (which SECURE strongly denies it has the ability to implement), would result in little to no change in output or corresponding deadweight loss to the Canadian economy.

29. Moreover, the majority of SECURE’s customers are large, sophisticated oil and gas producers. Any alleged price increase for waste disposal services (which SECURE strongly denies it has the ability to implement) would be a wealth transfer between corporations, and not socially adverse. No end-consumers or vulnerable individuals or entities are affected by the prices of oil and gas waste disposal services.

### **H. No Prevention of Competition for Wonowon**

30. Prior to the Transaction, SECURE’s proposed landfill in the Wonowon area was highly speculative and dependent on several important contingencies, including internal approvals for funding, receipt of numerous approvals from external regulatory bodies, and consultations with Indigenous peoples. In that regard, the Blueberry River First Nations have sought a moratorium on all further activity in the region, and the B.C. Supreme Court

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issued a recent decision finding that the cumulative impact of industrial development in the region had violated the treaty rights of the Blueberry River First Nations. As such, the potential entry by SECURE remained highly uncertain and the timeframe for entry could not be discernible, and SECURE cannot be said to have been likely to enter but for the Transaction. In the alternative, the Transaction will lead to significant efficiencies and other benefits in the Wonowon area, including saving the costs of constructing and operating a new facility.

#### **PART V: EFFICIENCIES ARISING FROM THE TRANSACTION**

31. The Transaction has already generated and will continue to generate significant efficiencies to the Canadian economy, cognizable under section 96 of the *Competition Act*. SECURE and the former Tervita business operated many facilities that were significantly below capacity. The Transaction will allow SECURE to consolidate its operations and better serve its customers through increased efficiency, lower prices, a more stable balance sheet, and a greater ability to meet its customers' ESG goals.

#### **PART VI: RELIEF SOUGHT**

32. As described above, the Transaction is not likely to result in any substantial lessening or prevention of competition in any potential relevant markets across the WCSB. The efficiencies from the Transaction will exceed and offset any alleged anticompetitive effects (which SECURE strongly denies). In the alternative, dissolution of the Transaction is not necessary to address the anticompetitive effects alleged in the Amended Notice of Application.

33. SECURE requests an order dismissing the Application in its entirety and awarding it costs in the highest possible scale.

#### **PART VII: CONCISE STATEMENT OF ECONOMIC THEORY**

34. SECURE's Concise Statement of Economic Theory is attached as Schedule A.

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**PART VIII: LOCATION AND CONDUCT OF THE HEARING**

35. SECURE agrees that the Application may be heard in Ottawa, Ontario, subject to public health guidance regarding the ongoing COVID-19 pandemic in effect at the time of the hearing. In the alternative, SECURE asks that the Application be heard by videoconference (Zoom).

Dated at Toronto, Ontario, this 15<sup>th</sup> day of September, 2021



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Counsel for the respondent  
SECURE Energy Services Inc.

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TO: For the Commissioner of Competition

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22<sup>nd</sup> Floor  
Gatineau, QC K1A 0C9

Attention: Jonathan Hood  
Paul Klippenstein  
Ellé Nekiar

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## **SCHEDULE "A" – CONCISE STATEMENT OF ECONOMIC THEORY**

1. Oil and gas producers generate liquid and solid waste as a by-product of drilling, production, well remediation and reclamation activities. Producers can treat, store, or dispose of this waste internally or through third-party service providers such as SECURE and its competitors.
2. Any attempt by SECURE to raise prices or decrease levels of customer service for waste disposal services would be counteracted by the strong countervailing buyer power of its customers, the ability of its customers to self-supply waste disposal services, the ability of customers to sponsor entry or expansion by new or existing competitors, and strong competition for these services.
3. The majority of SECURE's revenues are from customers that are large, sophisticated oil and gas producers. They use their bargaining power to negotiate volume discounts and discounts for multiple services and the use of multiple disposal facilities.
4. Nearly all SECURE's revenues come from servicing producers who operate across multiple geographies and/or utilize multiple service lines offered by SECURE. These customers can credibly threaten to punish SECURE for any price increases in a particular geography or on a particular service line by moving waste volumes in other geographies or product lines to competing service providers, sponsoring entry by competing service providers, or by self-supplying the disposal of such waste. The volume of waste that these customers provide, the incremental volume they could provide, and the risk of losing volume across products and facilities provides these customers with significant bargaining power.
5. Many customers currently self-supply waste disposal services. In particular, oil and gas producers own substantial infrastructure for produced water and waste water disposal. SECURE operates only a small proportion of facilities with produced water and waste water disposal capabilities. Produced water and waste water represent the largest share of revenue for SECURE of all waste streams. Customers' ability to self-supply these volumes creates significant bargaining power and constrains SECURE's pricing. Customers also can and do self-supply landfill, liquid waste, and energy marketing services, which similarly constrain SECURE's pricing of these services.
6. SECURE has several competitors for waste disposal services in the WCSB. These competitors further constrain SECURE's pricing as producers are able to shift volumes to competitors in response to price increases and sponsor entry or expansion by new or existing competitors.

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7. SECURE has no ability or incentive to foreclose rival environmental service providers or to drive customers to use SECURE's environmental services through bundling with waste services. SECURE's waste disposal business is characterized by relatively higher fixed costs than variable costs, such that maximizing waste disposal volumes (regardless of their source) is critical for the profitability of its business. Furthermore, waste volumes are attributable to their originating oil and gas producers, who are current or potential customers of SECURE. Any attempted foreclosure or interference with their use of rival environmental services providers would have significant negative long-term impacts on SECURE's reputation and relationships with oil and gas producers.

8. In any event, while SECURE does not have the ability to raise prices for the above reasons, any increase in prices would result in few to no anticompetitive effects, including little to no deadweight loss. Among other things, the market demand for waste disposal services is a function of oil and gas exploration activity; more "waste" is not generated by lowering waste disposal prices. Any hypothetical increase in the price of waste disposal services would therefore result in little to no change in output and little to no deadweight loss.

9. Further, the majority of SECURE's customers are large, sophisticated oil and gas producers. Any hypothetical price increase for waste disposal services would represent only a socially neutral wealth transfer between corporations and would not be socially adverse.

10. The Transaction will generate significant efficiencies to the Canadian economy. Many of the facilities of SECURE and the former Tervita business were operating significantly below capacity due to declining oil and gas activity within the WCSB due to falling global prices and an international shift to net-zero carbon emissions. The Transaction will allow SECURE to operate significantly more efficiently, with a more stable balance sheet, and be able to better service its customers through lower prices, improved service, and a greater ability to realize customers' ESG goals.

11. These efficiencies will significantly outweigh any alleged anticompetitive effects generated by the Transaction (which are strongly denied by SECURE).

*Jonathan Hood*

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Exhibit "C" to the Affidavit of  
Mallory Kelly  
Affirmed January 21, 2022



**CT-2021-002**

**THE COMPETITION TRIBUNAL**

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

**AND IN THE MATTER OF** the acquisition of Tervita Corporation by Secure Energy Services Inc.;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to 92 of the *Competition Act*;

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

**SECURE ENERGY SERVICES INC.**

**Respondent**

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**REPLY OF THE COMMISSIONER OF COMPETITION**

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1. **Overview.** Secure uses the struggling oil and gas industry to attempt to avoid the obvious; Secure has likely substantially lessened and prevented competition for the provision of Waste Services in the WCSB by removing Tervita, its largest and closest competitor.<sup>1</sup>
2. Oil and gas companies benefit when there is competition to provide the best price and service for Waste Services. Instead, at a time when the industry is struggling, Secure has obtained the ability to exercise new and increased market power that will harm oil and gas customers. Contrary to Secure's allegations, the power of competition, not anticompetitive mergers, can more effectively address changing market conditions, including overcapacity, to the benefit of oil and gas customers. Moreover, any cognizable efficiencies that Secure may obtain through the Transaction and that would be lost if the order sought were made will not be greater than or offset the anticompetitive effects of the Transaction.
3. The Commissioner denies the allegations in Secure's Response, except paragraphs 6, 14, and 16. In addition to repeating and relying on the facts pleaded in the Application, the Commissioner makes four additional points in this Reply.
4. **Geographic market is clear.** Secure alleges that the Commissioner's definition of the geographic market is uncertain in an attempt to distract from the fact it has no answer for: Secure can and does engage in price discrimination. Secure charges different prices to a customer based on, among other factors, the geographic location of the customer's waste relative to its disposal options.
5. Defining the geographic market with reference to locations of customers most likely to be harmed by a merger is appropriate when price discrimination is practiced which the Commissioner has pleaded. The Commissioner's definition of

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<sup>1</sup> Unless otherwise indicated, defined terms in this Reply have the meaning ascribed to them in the Commissioner's Amended Notice of Application and Statement of Grounds and Materials Facts (together the "**Application**")

geographic market is clear, it is the aggregate locations of customers that have lost the benefit of competition between Secure and Tervita in the WCSB. Secure also ignores the fact the Commissioner has identified the areas in the WCSB where customers are most affected.

6. **Barriers to entry are high.** Secure alleges in one sentence in its response (para. 18) that there are no material barriers to entry without providing a single fact to support this allegation. In fact, Secure's response contains two material facts that contradicts its position on barriers to entry. First, Secure argues that the industry is overcapitalized and shrinking, which if true, is a barrier to entry. Second, in paragraph 30 of its response, Secure describes the problems it has faced trying to obtain approval to build its proposed landfill in Wonowon all which demonstrates high barriers to entry.
7. The reality is that Secure is providing Waste Services to dispose of waste so hazardous to the environment that the applicable regulations are strict. Secure's contention that there are no material barriers to entry is unsupportable.
8. **Countervailing power will not constrain Secure's ability to exercise new or increased market power.** Secure alleges that its customers will be able to exercise countervailing buyer power because they are large and operate in different areas of the WCSB. Secure can and does charge large customers different prices for the same service depending on which Secure facility the customer uses demonstrating the limited nature of any countervailing power.
9. Prior to the Transaction, oil and gas companies' bargaining leverage arose from the ability to turn to Secure or Tervita if the oil and gas customers failed to negotiate favourable terms with one of them. With the Transaction completed, a Secure customer can no longer use its ability to ship its waste to a Tervita facility as leverage, which significantly weakens the customer's bargaining position given

that Secure and Tervita facilities were often each other's closest substitutes (a fact implicitly acknowledged by Secure in its efficiencies claims).

10. Even if it is possible for some of Secure's customers to exercise countervailing power, it will not be sufficient to constrain Secure from exercising new or increased market power.
11. **Any efficiencies do not outweigh or offset the anticompetitive effects of the Transaction.** Secure takes one paragraph in its response to allege efficiencies without describing any of the categories of efficiencies it expects to obtain. The Transaction will not generate cognizable gains in efficiencies to the extent alleged by Secure. Any cognizable efficiencies that may be obtained through the Transaction and that would be lost if the Order sought by the Commissioner were made will not be greater than or offset the anticompetitive effects of the Transaction. The efficiencies, if any, are unlikely to be passed on to oil and gas producers and will not contribute to the efficiency and adaptability of the Canadian economy.
12. Oil and gas producers will likely pay materially higher prices and experience a deterioration in the quality of services to dispose of waste as a result of the Transaction. These effects will result in a corresponding loss of allocative efficiency, or deadweight loss, to the Canadian economy that outweighs any cognizable efficiencies that may arise from the Transaction.

DATED AT Gatineau, Quebec, this 29<sup>th</sup> day of September, 2021.

Matthew Boswell

Commissioner of Competition  
Competition Bureau  
Place du Portage, Phase I  
50 Victoria Street  
Gatineau, Quebec  
K1A 0C9

*Jonathan Hood*

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Exhibit "D" to the Affidavit of  
Mallory Kelly  
Affirmed January 21, 2022

CT-2021-002

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF the acquisition of Tervita  
Corporation by Secure Energy Services Inc.;

AND IN THE MATTER OF an Application by the  
Commissioner of Competition for an order pursuant  
to 92 of the Competition Act;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondent

EXAMINATION FOR DISCOVERY OF DAVID ENGEL  
held virtually  
on Monday, December 20, 2021, at 10:15 a.m.

APPEARANCES:

Jonathan Hood on behalf of the Applicant  
Paul Klippenstein  
Elle Nekiar

Rob Kwinter on behalf of the Respondent  
Nicole Henderson  
Joe McGrade

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Ottawa, Ontario K1P 1J9 Toronto, Ontario M5H 2R2  
(613) 564-2727 (416) 861-8720































































































































































































































































































































































































































































































*Jonathan Hood*

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Exhibit "E" to the Affidavit of  
Mallory Kelly  
Affirmed January 21, 2022

CT-2021-002

## THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF the acquisition of Tervita  
Corporation by Secure Energy Services Inc.;

AND IN THE MATTER OF an Application by the  
Commissioner of Competition for an order pursuant  
to 92 of the Competition Act;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondent

CONTINUED EXAMINATION FOR DISCOVERY OF DAVID ENGEL  
held via Arbitration Place Virtual  
on Tuesday, December 21, 2021 at 10:00 a.m.

APPEARANCES:

Jonathan Hood on behalf of the Applicant  
Paul Klippenstein  
Elle Nekiar

Rob Kwinter on behalf of the Respondent  
Nicole Henderson  
Joe McGrade

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940-100 Queen Street 900-333 Bay Street  
Ottawa, Ontario K1P 1J9 Toronto, Ontario M5H 2R2  
(613) 564-2727 (416) 861-8720



































































































































































































































































































































































































































































*Jonathan Hood*

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Exhibit "F" to the Affidavit of  
Mallory Kelly  
Affirmed January 21, 2022

CT-2021-002

## THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF the acquisition of Tervita  
Corporation by Secure Energy Services Inc.;

AND IN THE MATTER OF an Application by the  
Commissioner of Competition for an order pursuant  
to 92 of the Competition Act;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondent

CONTINUED EXAMINATION FOR DISCOVERY OF DAVID ENGEL  
held via Arbitration Place Virtual  
on Wednesday, December 22, 2021 at 10:00 a.m.

## REVISED TRANSCRIPT

## APPEARANCES:

Jonathan Hood on behalf of the Applicant  
Paul Klippenstein  
Elle Nekiar

Rob Kwinter on behalf of the Respondent  
Nicole Henderson  
Joe McGrade

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*Jonathan Hood*

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Exhibit "G" to the Affidavit of  
Mallory Kelly  
Affirmed January 21, 2022



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**From:** Hood, Jonathan (CB/BC)  
**Sent:** January 19, 2022 4:37 PM  
**To:** Henderson, Nicole  
**Cc:** Klippenstein, Paul (CB/BC); Nekiari, Elle (CB/BC); Byers, Jacqueline (CB/BC); Kelly, Mallory (CB/BC); Polomeno, Tammy (CB/BC); Facey, Brian; Kwinter, Rob; McGrade, Joe  
**Subject:** RE: Commissioner of Competition v. Secure (CT-2021-002) - Refusals from the discovery of Mr. Engel

Nicole:

In response to the two categories from the examination of the Commissioner's representative you have raised:

1. Call notes (Q50, Request 1 on the Commissioner's chart): We will provide a revised version of Appendix A attached to the answers to undertakings that shows when each of the contacts listed were first contacted. The list should show that for contacts where there are notes reduced to writing that have not been produced, those calls took place after the 104 application. The notes from those calls were clearly created primarily for the purposes of preparing for litigation. If you have any further questions about this they can be asked during the follow up examinations.
2. Questions relating to the Commissioner's review of the Tervita/Newalta transaction (Q156, 157, 332-335, 339, 350-363): As the Commissioner's representative confirmed during discovery, the Commissioner has produced all of the documents from the Tervita/Newalta investigation containing the facts that were learned. This includes notes from all of the market contacts and third party records, including the submissions made by Secure. Any facts from the Tervita/Newalta investigation may absolutely be relevant to the current application – that is why the records from that investigation were produced. As was made clear during discovery, we did not object to questions that Secure had about facts from the Tervita/Newalta investigation. In fact, there are examples of the Commissioner's representative answering questions about notes from contacts during the Tervita/Newalta investigation. In response to undertakings, we also provided information learned from the Tervita/Newalta transaction that support for, example, the use of a customer-based approach to geographic market definition. The questions in this category are not about facts the Commissioner learned during the Tervita/Newalta investigation or how those facts fit with the Commissioner's application in this case, the questions ask for analysis and opinion of those facts. For example, did the Commissioner conduct economic studies or analyze elasticity of demand. The Tribunal jurisprudence is clear that the examining party is not entitled to conclusions or economic opinions. For example, in VAA, the Tribunal held that several of VAA's requests were improper because "they invite economic analysis, opinion or conclusions from the Commissioner on certain issues, or require comparative analyses between different price and non-price factors as opposed to the facts themselves (NutraSweet at paras 23, 38; Southam at paras 12-13). Such requests essentially seek to reveal how the Commissioner assessed and interpreted facts and therefore need not be answered" (2017 Comp Trib 16 at para. 69).

Thank you for your response below. Your response resolves our concerns with respect to the first category. We intend to bring a motion with respect to the remaining two categories.

Regards,

Jonathan

**Jonathan Hood****Senior Counsel - Avocat**

Cel: (647) 625-6782 | Fax: (416) 973-5131

[jonathan.hood@cb-bc.gc.ca](mailto:jonathan.hood@cb-bc.gc.ca)

Department of Justice - Ministère de la Justice

Services juridiques - Bureau de la concurrence

Competition Bureau - Legal Services

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---

**From:** Henderson, Nicole <nicole.henderson@blakes.com>

**Sent:** January 19, 2022 1:54 PM**To:** Hood, Jonathan (CB/BC) <jonathan.hood@cb-bc.gc.ca>

**Cc:** Klippenstein, Paul (CB/BC) <paul.klippenstein@cb-bc.gc.ca>; Nekiari, Elle (CB/BC) <Elle.Nekiari@cb-bc.gc.ca>; Byers, Jacqueline (CB/BC) <Jacqueline.Byers@cb-bc.gc.ca>; Kelly, Mallory (CB/BC) <mallory.kelly@cb-bc.gc.ca>; Polomeno, Tammy (CB/BC) <Tammy.Polomeno@cb-bc.gc.ca>; Facey, Brian <brian.facey@blakes.com>; Kwinter, Rob <rob.kwinter@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>

**Subject:** RE: Commissioner of Competition v. Secure (CT-2021-002) - Refusals from the discovery of Mr. Engel

Jonathan,

In the interests of avoiding any unnecessary motions, SECURE will agree to make best efforts to determine whether the 37 documents in the list attached to your email are in SECURE's power, possession, or control post-merger (at a minimum, we will confirm whether there is any dispute that the documents are in SECURE's power, possession, or control). We do not agree that such an admission entitles the Commissioner to rely on the presumptions in section 69 of the *Competition Act* in respect of those documents, but that is an issue we can argue at trial. This agreement is also without prejudice to our client's right to refuse future requests of a similar nature in respect of additional documents, in accordance with the overall principle of proportionality. We trust this resolves the first category.

Our client maintains its refusals in respect of the contact information of its former employees and the questions regarding order-specific efficiencies, for the reasons given during Mr. Engel's discovery and our subsequent correspondence.

At this time, SECURE intends to move to compel answers to the following questions from the examination of the Commissioner's representative:

1. Call notes (Q50, Request 1 on the Commissioner's chart): we intend to move to compel a further and better answer regarding the basis for the claim of litigation privilege over calls with market contacts for which no notes have been provided. Based on the answer provided, we cannot discern the basis for the Commissioner claiming litigation privilege over these calls but not others for which notes have been produced.
2. Questions relating to the Commissioner's review of the Tervita/Newalta transaction (Q156, 157, 332-335, 339, 350-363): We do not agree that the Commissioner's review and analysis of the Tervita/Newalta transaction is irrelevant. Without limiting the generality of that objection, the Commissioner on a number of occasions has sought to rely on evidence regarding the Newalta transaction, including representations made by SECURE to the Competition Bureau in connection with that transaction, to support its claim that the present merger will prevent or lessen competition substantially. We are entitled to explore the Commissioner's knowledge, information, and belief about the earlier transaction and the basis for drawing any comparison between the two.

We remain open to discussions with your office in an effort to resolve any of the above before either side is required to bring motions on Friday.

Kind regards,  
Nicole

**Nicole Henderson** (she, her, hers)  
Partner  
[nicole.henderson@blakes.com](mailto:nicole.henderson@blakes.com)  
T. +1-416-863-2399

---

**From:** Hood, Jonathan (CB/BC) <[jonathan.hood@cb-bc.gc.ca](mailto:jonathan.hood@cb-bc.gc.ca)>

**Sent:** Tuesday, January 18, 2022 1:40 PM

**To:** Henderson, Nicole <[nicole.henderson@blakes.com](mailto:nicole.henderson@blakes.com)>

**Cc:** Klippenstein, Paul (CB/BC) <[paul.klippenstein@cb-bc.gc.ca](mailto:paul.klippenstein@cb-bc.gc.ca)>; Nekiari, Elle (CB/BC) <[Elle.Nekiari@cb-bc.gc.ca](mailto:Elle.Nekiari@cb-bc.gc.ca)>; Byers, Jacqueline (CB/BC) <[Jacqueline.Byers@cb-bc.gc.ca](mailto:Jacqueline.Byers@cb-bc.gc.ca)>; Kelly, Mallory (CB/BC) <[mallory.kelly@cb-bc.gc.ca](mailto:mallory.kelly@cb-bc.gc.ca)>; Polomeno, Tammy (CB/BC) <[Tammy.Polomeno@cb-bc.gc.ca](mailto:Tammy.Polomeno@cb-bc.gc.ca)>; Facey, Brian <[brian.facey@blakes.com](mailto:brian.facey@blakes.com)>; Kwinter, Rob <[rob.kwinter@blakes.com](mailto:rob.kwinter@blakes.com)>; McGrade, Joe <[joe.mcgrade@blakes.com](mailto:joe.mcgrade@blakes.com)>

**Subject:** RE: Commissioner of Competition v. Secure (CT-2021-002) - Refusals from the discovery of Mr. Engel

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WITH PREJUDICE

Nicole:

Thanks for this. With respect to the remaining three categories:

- Possession, power and control over records from the former Tervita and Newalta businesses: In an effort to resolve this category, we have attached a list of 37 document ids from the Tervita/Newalta investigation for Secure to confirm whether these documents are in Secure's possession, power and control. We also reserve our right to ask Secure prior to the hearing to confirm whether additional documents from the Tervita/Newalta investigation are in Secure's possession, power and control.
- Contact information: We are narrowing our request to accept the contact information for the individuals formerly employed by Tervita or Secure. We have only asked for the identity of 13 of these individuals. These individuals have information relevant to Secure's efficiencies defence. It is not disproportionate or burdensome for Secure to provide contact information for 13 individuals. As described below, the Federal Court Rules require Secure to answer these questions and do not permit these questions to be refused on the grounds of privacy concerns. Regardless, we have a confidentiality order in place and we are not going to publicly disclose these individuals' contact information.
- Questions seeking facts relevant to efficiencies lost in the event of a divestiture: As the questions make clear, we are not seeking any analysis conducted by Secure's efficiencies expert. The questions ask for facts related to efficiencies that Secure has claimed and whether those efficiencies would be lost in the event of a divestiture order. For example, whether a Secure executive would make a business decision to seek to lease additional head-office space if required to divest Tervita facilities is a factual question. Secure's efficiencies expert cannot give opinions without a basis in fact. As we have already seen, that basis in fact comes from Secure's efficiencies expert having conversations with Secure executives. By refusing these questions, Secure is depriving the Commissioner of the ability to explore with a Secure executive the factual basis for this aspect of its efficiencies defence.

As the deadline for filing motions arising from discovery is Friday please advise us of Secure's position on the three remaining categories as soon as possible. As well, can you let us know if Secure intends to bring a motion regarding refusals from the examination of Ms. Byers so that we can try and narrow down the categories that will be in dispute.

Regards,

Jonathan

**Jonathan Hood**

**Senior Counsel - Avocat**

Cel: (647) 625-6782 | Fax: (416) 973-5131

[jonathan.hood@cb-bc.gc.ca](mailto:jonathan.hood@cb-bc.gc.ca)

Department of Justice - Ministère de la Justice

Services juridiques - Bureau de la concurrence

Competition Bureau - Legal Services

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---

**From:** Henderson, Nicole <[nicole.henderson@blakes.com](mailto:nicole.henderson@blakes.com)>

**Sent:** January 14, 2022 5:04 PM

**To:** Hood, Jonathan (CB/BC) <[jonathan.hood@cb-bc.gc.ca](mailto:jonathan.hood@cb-bc.gc.ca)>

**Cc:** Klippenstein, Paul (CB/BC) <[paul.klippenstein@cb-bc.gc.ca](mailto:paul.klippenstein@cb-bc.gc.ca)>; Nekiar, Elle (CB/BC) <[Elle.Nekiar@cb-bc.gc.ca](mailto:Elle.Nekiar@cb-bc.gc.ca)>; Byers, Jacqueline (CB/BC) <[Jacqueline.Byers@cb-bc.gc.ca](mailto:Jacqueline.Byers@cb-bc.gc.ca)>; Kelly, Mallory (CB/BC) <[mallory.kelly@cb-bc.gc.ca](mailto:mallory.kelly@cb-bc.gc.ca)>; Polomeno, Tammy (CB/BC) <[Tammy.Polomeno@cb-bc.gc.ca](mailto:Tammy.Polomeno@cb-bc.gc.ca)>; Facey, Brian <[brian.facey@blakes.com](mailto:brian.facey@blakes.com)>; Kwinter, Rob <[rob.kwinter@blakes.com](mailto:rob.kwinter@blakes.com)>; McGrade, Joe <[joe.mcgrade@blakes.com](mailto:joe.mcgrade@blakes.com)>

**Subject:** RE: Commissioner of Competition v. Secure (CT-2021-002) - Refusals from the discovery of Mr. Engel

Counsel,

Thank you for your email below. Our undertakings, under advisements, and refusals chart will be delivered shortly under separate cover. As you will see our client has agreed to answer the questions relating to offloading capacity and lease and sub-lease savings. We trust that resolves these categories.

In the interests of resolving the "synergy tracker" category, we will agree to produce the most-recently updated versions of the three documents referred to in question 1208 on March 11. We trust that resolves this category as well.

Our client maintains its refusals in respect of the other categories set out in your email below. Without limiting the reasons for those refusals stated on the record, our positions are briefly summarized below with respect to the categories:

- Possession, power, and control over records from the former Tervita and Newalta businesses: Mr. Engel provided SECURE's best information regarding SECURE's possession of the records of the former Tervita business on the record. A demand for broader admissions with respect to tens of thousands of documents is unnecessary and disproportionate.

- Contact information: we disagree that any of the individuals for whom the Commissioner has sought contact information are reasonably likely to have any specific knowledge of the matters in issue on this application. In that light, we see no justification to disclose private information of individuals formerly employed by Tervita or SECURE. With respect to SECURE's vendors, we have identified those businesses and the Commissioner is free to contact them if so advised, although we disagree that they are likely to have any relevant knowledge.
- Hypothetical questions regarding specific divestiture orders: Mr. Engel stated on the record that SECURE has not done the type of analysis that would be necessary to respond to the questions posed in this regard. Neither he nor SECURE is required to perform this analysis to respond to questions on discovery. Those questions were improper as they were overly broad, required the witness to speculate to respond to hypotheticals, and called for expert opinion from a lay witness. SECURE reserves its right to lead appropriate expert evidence on these issues as advised.

I wanted to flag that there are a very small number of undertakings for which our client is still working on obtaining the responsive information and records. These are indicated in the chart and we will provide these few remaining answers in due course.

Finally, on a housekeeping note, would your office please copy Brian Facey on emails regarding this file going forward.

Regards,  
Nicole

Nicole Henderson (*she/her*)  
Partner  
[nicole.henderson@blakes.com](mailto:nicole.henderson@blakes.com)  
Dir: 416-863-2399  
*\*I am available and may be reached at my direct line above*

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**From:** Hood, Jonathan (CB/BC) <[jonathan.hood@cb-bc.gc.ca](mailto:jonathan.hood@cb-bc.gc.ca)>  
**Sent:** Monday, January 10, 2022 7:35 PM  
**To:** Henderson, Nicole <[nicole.henderson@blakes.com](mailto:nicole.henderson@blakes.com)>; McGrade, Joe <[joe.mcgrade@blakes.com](mailto:joe.mcgrade@blakes.com)>; Kwinter, Rob <[rob.kwinter@blakes.com](mailto:rob.kwinter@blakes.com)>  
**Cc:** Klippenstein, Paul (CB/BC) <[paul.klippenstein@cb-bc.gc.ca](mailto:paul.klippenstein@cb-bc.gc.ca)>; Nekiari, Elle (CB/BC) <[Elle.Nekiari@cb-bc.gc.ca](mailto:Elle.Nekiari@cb-bc.gc.ca)>; Byers, Jacqueline (CB/BC) <[Jacqueline.Byers@cb-bc.gc.ca](mailto:Jacqueline.Byers@cb-bc.gc.ca)>; Kelly, Mallory (CB/BC) <[mallory.kelly@cb-bc.gc.ca](mailto:mallory.kelly@cb-bc.gc.ca)>; Polomeno, Tammy (CB/BC) <[Tammy.Polomeno@cb-bc.gc.ca](mailto:Tammy.Polomeno@cb-bc.gc.ca)>  
**Subject:** Commissioner of Competition v. Secure (CT-2021-002) - Refusals from the discovery of Mr. Engel

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WITH PREJUDICE

All:

There are a number of refusals from the discovery of Mr. Engel that the Commissioner intends to move to compel answers pursuant to the Scheduling Order. Before we do, we would like to see if we can resolve or limit the questions that that will be the subject of the refusals motion. Below are six categories of questions or single questions that would be the subject of most of the motion along with our justification for seeking answers to those questions.

Possession, power, and control of records from Tervita-Newalta merger – Q29

The Commissioner has produced documents he received in connection with the Tervita-Newalta merger, specifically those starting with the DOC IDs TER, PGMJ, NEW, and PGMK. Mr. Engel's evidence during his examination was that he believed these documents were likely transmitted to Secure as part of the Tervita-Secure merger. We asked for an undertaking to let us know whether Secure disputes that any of these documents are in fact in Secure's possession, power and control, which was refused. The Commissioner will be using Section 69 to introduce these records into evidence. It is a proper question for discovery whether Secure is going to dispute having possession, power and control over these records so that this issue is dealt with before the hearing.

Records/data related to tracking offloading capacity at facilities – Q407/408

Mr. Engel's evidence on discovery was that Secure tracks offloading capacity, specifically the utilization of risers, through a BI dashboard. Secure took this undertaking under advisement so it can consider the volume and accessibility of information available, citing proportionality as a concern. The impact of the merger on offloading capacity is an anticompetitive effect. The Supreme Court of Canada requires the Commissioner to quantify anticompetitive effects where quantifiable.

Internal synergy tracking - Q1208

Secure produced three documents that it is using to track synergies at issue in the application. The evidence from Mr. Engel's discovery and those records is that Secure is updating these at least on a monthly basis. During discovery, we asked for these records to be produced when they are updated. To resolve this issue, we are willing to accept an undertaking to produce the current version of these documents on March 11<sup>th</sup>. It is neither disproportionate nor burdensome for Secure to update three documents once that are central to Secure's defence. We will not accept a promise to produce these documents on April 15<sup>th</sup>. The continuing production obligations were done in the absence of the evidence that has developed about these documents through the discovery process. Our responding expert report on efficiencies is due April 11<sup>th</sup> and the extent to which Secure is taking advantage of this to provide Mr. Harington with more time to consider these documents than Dr. Eastman is prejudicial and unfair.

Records underlying lease savings (leases and sub-leases) - Q877/1177 & Q833/1178

We understand that Secure intends to claim efficiencies based on sub-leasing office space it currently leases. The terms of the leases and any subleases are directly relevant to the issue of whether any efficiencies were in fact achieved and the quantum of any such efficiencies. There is no basis for concern regarding proportionality, since these are specific and readily identifiable records.

Persons with knowledge relating to a matter in question

Secure refused to answer certain questions with respect to persons who might reasonably be expected to have knowledge relating to specific categories of claimed efficiencies. The employees for whom the Commissioner sought contact information (Q842/1177) might reasonably be expected to have knowledge relating to the question of the corporate labour savings claimed as efficiencies by Secure. The request is proportionate as it requests the contact information of only 12 employees which are readily identifiable. The contact names sought in respect of metal recycling (Q1336) and environmental solutions trucking savings (Q1343) might reasonably be expected to have knowledge

relating to those respective categories of claimed efficiencies. Rule 240(b) of the Federal Court Rules is clear that Secure shall answer any question that “concerns the name or address of any person, other than an expert witness, who might reasonably be expected to have knowledge relating to a matter in question in the action”. The Federal Court Rules do not permit these questions to be refused on the grounds of confidentiality concerns. In any event, there is a confidentiality order in place so Secure can designate the information as confidential. We will not be making this information public. It will only be used to contact potential witnesses.

Facts relating to cost savings lost in the event of a divestiture order - Q1230-1254

Secure has also refused to answer questions related to the cost savings that would be lost if a divestiture order is made regarding certain facilities. This is relevant by virtue of the express wording of subsection 96(1) of the Act. The Commissioner is entitled to know the facts that are in Secure's knowledge relating to savings that would be lost to Secure in the event the Tribunal issues a divestiture order. For example, Mr. Engel did admit on discovery that as a general proposition Secure would not have to hire back corporate employees or lease more office space if it is required to divest the former Tervita facilities. This is exactly the type of factual admission about this issue we are entitled to seek on discovery to help narrow down issues in dispute and save time at the hearing.

These questions above are proper questions and the Commissioner intends to move for answers on these if we are unable to resolve this. Given the tight timelines in the Scheduling Order please advise us of your position on these six categories by January 14<sup>th</sup>.

Regards,

Jonathan

**Jonathan Hood**

**Senior Counsel - Avocat**

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Department of Justice - Ministère de la Justice

Services juridiques - Bureau de la concurrence

Competition Bureau - Legal Services

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*Jonathan Hood*

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Exhibit "H" to the Affidavit of  
Mallory Kelly  
Affirmed January 21, 2022



File No.

**COMPETITION TRIBUNAL**

**IN THE MATTER OF** an Application by the Commissioner of Competition for an Interim Order pursuant to section s. 104 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**AND IN THE MATTER OF** an application pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, into the acquisition by SECURE Energy Services Inc. of all of the outstanding shares of Tervita Corporation.

**B E T W E E N :**

**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**SECURE ENERGY SERVICES INC.**

Respondents

**AFFIDAVIT OF ANDREW C. HARINGTON  
(Affirmed July 14, 2021)**

I, **ANDREW HARINGTON**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

**PROFESSIONAL QUALIFICATIONS AND EXPERTISE**

1. I, Andrew Harington, am a Chartered Professional Accountant (formerly referred to as a Chartered Accountant), Chartered Financial Analyst

charterholder, and Chartered Business Valuator. I am a Principal in the Toronto office of The Brattle Group. Prior to joining The Brattle Group in 2016, I was a Managing Director at Duff & Phelps and a partner at its predecessor firm, Cole & Partners. Before this, I had over seven years of experience in mergers and acquisitions, advisory, corporate restructuring and financial advisory services.

2. I have extensive experience in competition-related matters including, but not limited to, on behalf of (i) the Commissioner of Competition in respect of the proposed acquisition of Complete Environmental Inc. by CCS Corporation and the proposed acquisition of the grain elevators and related assets of Louis Dreyfus Company Canada ULC by Parrish & Heimbecker Limited and (ii) on behalf of Agrium Inc., American Iron & Metal Company Inc., BCE Inc., Cintas Corporation, Labatt Brewing Company Limited, Rogers Wireless Communications Inc., Suncor Energy Inc., Superior Plus Corp, West Fraser Timber Co. Ltd., WestJet Airlines Ltd., and Yellow Pages Group Inc. in respect of corporate transactions in which each of them was involved. I have been qualified by the Competition Tribunal as an expert in the quantification of efficiencies.
3. I assisted in the preparation of the Affidavit of Stephen Cole in connection with the Application by the Commissioner of Competition for an interim order pursuant to section s. 100 of the *Competition Act* (the “Act”) relating to the

proposed acquisition of Lakeport Brewing by Labatt Brewing; which Affidavit was referenced in the Competition Tribunal's decision in that matter.

4. I have prepared numerous affidavits for matters before the Federal Court, and testified thereto in connection with allegations of irreparable harm in matters unrelated to competition law.
5. I have extensive experience in providing strategic advice to businesses in connection with sale or exit opportunities, and in executing sale transactions. In the course of my work, I have developed an expertise in assessing the strength and reasonability of strategic integration plans.
6. Through my involvement in the above, I have developed an in-depth understanding of the relevant issues for my mandate in this matter, as set out below.
7. A copy of my *curriculum vitae* is attached hereto as Exhibit "A".
8. I have prepared this affidavit with the assistance of other professionals under my direction and supervision.
9. I am being compensated on an hourly basis for the time taken to prepare my affidavit and to testify. I have no interest, financial or otherwise, in the outcome of the litigation or the subject of my opinion. I understand that I have an obligation to be independent as an expert witness and I confirm that I have read

and understood the Expert Code of Conduct attached as Exhibit “B” to my affidavit.

**MANDATE**

10. I understand that, pursuant to an Arrangement Agreement in accordance with the *Business Corporations Act (Alberta)* dated March 8, 2021, SECURE Energy Services Inc. (“SECURE”) acquired Tervita Corporation (“Tervita”) for approximately \$478 million effective July 2, 2021 (the “Transaction”). Under the Plan of Arrangement, SECURE acquired all of the issued and outstanding shares of Tervita upon completion of the Transaction. The Plan of Arrangement was approved by the Alberta Court of Queen’s Bench on June 18, 2021. Immediately subsequent to the closing of the Transaction on July 2, 2021, SECURE and its wholly owned subsidiary Tervita were amalgamated pursuant to a short form amalgamation and a Certification of Amalgamation was issued by the Registrar of Corporations for the Province of Alberta in accordance with the *Business Corporations Act (Alberta)*. Upon the amalgamation SECURE and Tervita ceased to exist as separate legal entities and continued as one corporate entity. As a result of the transactions undertaken pursuant to the Plan of Arrangement, all of the Tervita shares were transferred to SECURE in consideration for shares of SECURE and on the amalgamation all of the Tervita shares were cancelled. When SECURE acquired 100% of Tervita, Tervita’s shares were de-listed from the Toronto Stock Exchange (TSX).

11. I understand that the Commissioner of Competition (the “**Commissioner**”) has applied for an interim order under section 104 of the Competition Act (the “**Act**”) in relation to this matter (the “**Section 104 Application**”). Specifically, the Commissioner is seeking, until such time as the Competition Tribunal’s (“**Tribunal**”) decision in respect of the Commissioner’s application pursuant to section 92 of the Act (the “**Section 92 Application**”) is finally disposed of:
- a) An unwinding of SECURE’s acquisition of Tervita (hereinafter referred to as the “**Commissioner Unwinding Alternative**”);
  - b) In the alternative, holding the former business of Tervita separate, apart, and independent (hereinafter referred to as the “**Commissioner Hold Separate Alternative**”); or
  - c) In the further alternative, directing SECURE not to proceed with any further integration of Tervita’s former operations and to preserve all assets (hereinafter referred to as the “**Commissioner Non-Integration Alternative**”).
12. I have been asked to assume for purposes of this affidavit that the Tribunal’s decision in respect of the Commissioner’s Section 92 Application would occur either 6, 12 or 18 months from the date of the Section 92 Application; i.e., June 29, 2021 (the “**Interim Period**”).

13. I understand the Commissioner's allegations relating to his Section 104 Application are that, in the absence of the interim order, the Transaction:
- a) Is likely to substantially lessen competition in the provision of Waste Services in the Western Canadian Sedimentary Basin;
  - b) Is likely to substantially prevent competition in Northeastern British Columbia where SECURE had planned to build a landfill in Wonowon, British Columbia, that would have competed with Tervita's Silverberry and Northern Rockies landfills for Waste Services; and
  - c) Is likely to substantially lessen competition for the provision of Environmental Services.
14. I have been retained by Blake, Cassels and Graydon LLP ("**Blakes**"), counsel to SECURE, to opine on whether any of the alternative interim orders sought by the Commissioner pursuant to his Section 104 Application is required to preserve the ability of the Tribunal to remedy the effect of the Transaction on competition should the Tribunal determine in due course, pursuant to the Commissioner's Section 92 Application that a remedy is required, as well as the impact of any of these alternatives on the efficiencies and synergies arising from the Transaction. Specifically, you have asked me to opine on:
- a) Whether it would be possible, if so ordered by the Tribunal at the end of the Interim Period, for SECURE to separate the merged business into two independent, viable and effective competitors, including all

required facilities, equipment and personnel (hereinafter “**divisionalization**”);

- b) Whether, if so ordered by the Tribunal, SECURE would be able to sell one of the divisionalized businesses referenced in (a) above, either by itself or through a divestiture trustee, to a buyer or buyers that would operate the acquired business as an independent, viable and effective competitor following divestiture;
- c) The dollar value of the efficiencies, as defined in section 96 of the Act, that are likely to be realized as a result of the Transaction;<sup>1</sup> and
- d) The dollar values of the efficiencies, as defined in section 96 of the Act, and operating cost synergies as well as, where applicable, the costs required to be incurred to facilitate that order, that are likely to be lost

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<sup>1</sup> As a result of the restrictions imposed by the Act on pre-closing integration and integration planning, SECURE had not had unfettered access to the information of Tervita until after closing on July 2, 2021. Based on the information evaluated by SECURE at the current date, I am of the opinion that the dollar value of efficiencies set out herein and included in my report appended to this affidavit will be achieved. However, I note that, during the ongoing integration planning process, SECURE may further refine and quantify the productive, innovative and value-enhancing efficiency benefits likely from the merger.

during the Interim Period<sup>2</sup> in the event that the Tribunal concludes that SECURE must undertake:

- i. The Commissioner Non-Integration Alternative;
  - ii. The Commissioner Hold Separate Alternative; and
  - iii. The Commissioner Unwinding Alternative.
15. For purposes of my affidavit I have relied upon my efficiencies report dated June 3, 2021, attached as Exhibit “C” (the “**June Efficiencies Report**”). The June Efficiencies Report is incorporated as part of my affidavit for purposes of fulfilling the above-described mandate, notably items d) and e) above, and this affidavit is to be read in conjunction with the June Efficiencies Report. For purposes of my June Efficiencies Report and this affidavit, I and professionals working at my direction spent in excess of 783 hours analyzing the SECURE and Tervita businesses, the efficiencies likely to arise from the Transaction, the steps required to be taken to realize said efficiencies (including the costs and timing associated with said realization), and respond to the questions put to me herein. I, personally, spent in excess of 211 hours on these issues, including holding numerous meetings with management personnel of SECURE and Tervita.

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<sup>2</sup> Being either a 6 month, 12 month or 18 month period (as noted above).



**SUMMARY OF CONCLUSIONS**

16. Based on my review and analysis, including my discussions with individuals listed below, my review of the SECURE Affidavit, and my independent research, in my opinion:

a) It is feasible if so ordered by the Tribunal after a section 92 hearing (i.e., at the end of the Interim Period), for SECURE to create two viable, independent and effective competitors out of the merged firm that would operate separately at the end of the Interim Period. My analysis in this regard is set out commencing at paragraph 22;

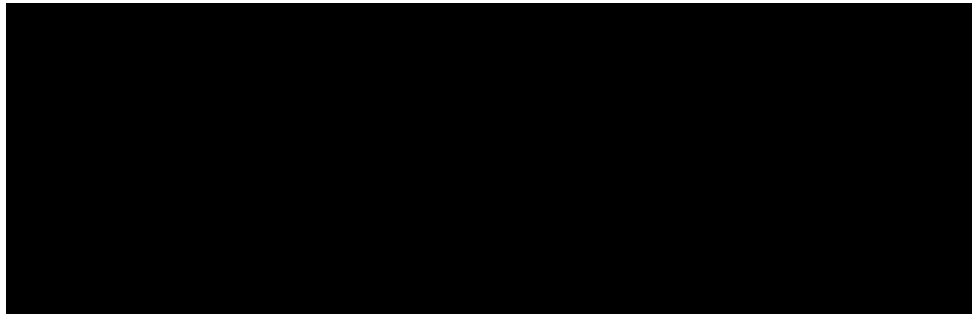
b) If required by the Tribunal, SECURE would be able to sell one of the divisionalized businesses referenced in (a) above, either by itself or through a divestiture trustee, to a buyer or buyers that would operate the acquired business as an independent, viable and effective competitor;

My analysis in this regard is set out commencing at paragraph 38;

c) The dollar value of the efficiencies, as defined in Section 96 of the Act and as set out in my June Efficiencies Report, that are likely to be realized as a result of the Transaction are ██████████ per year (run rate), ██████████ over a 10 year period on an undiscounted basis and

██████████ over a 10 year period on a discounted basis.<sup>3</sup> My analysis in this regard is set out commencing at paragraph 52 below and in my June Efficiencies Report; and

- d) The dollar value of the efficiencies, as defined in Section 96 of the Act, that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in his Section 104 Application, are as follows (and my analysis in this regard is set out commencing at paragraph 54):

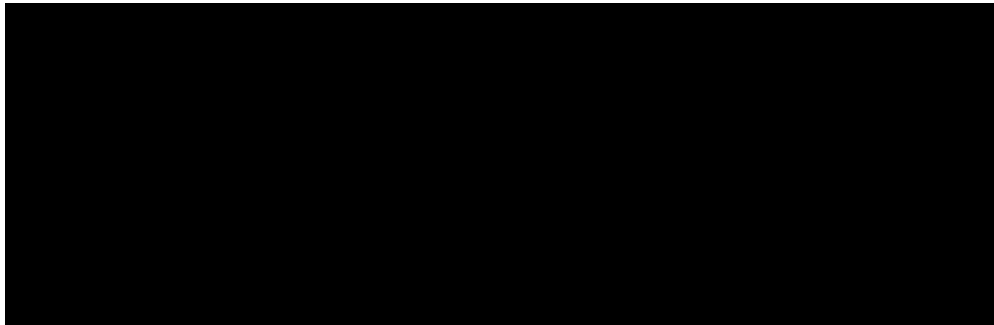


In the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application the dollar value of the operating cost synergies that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, as well as

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<sup>3</sup> To assist the reader, all conclusions set out in this affidavit are expressed as point estimates. However, such precision in respect of hypothetical scenarios such as those addressed herein is not realistic. Accordingly, my point estimates should be considered as a range around the point estimate. Based on the information I have reviewed and the assumptions I have adopted, I believe that the conclusions presented herein are appropriate in the circumstances.

the costs required to be incurred to facilitate that order, are as follows  
(and my analysis in this regard is set out commencing at paragraph 97):



### **SCOPE OF WORK UNDERTAKEN**

17. In order to prepare this affidavit, I have reviewed and relied upon the following materials:
- (a) The application materials filed with the Tribunal by the Commissioner for his Section 92 Application and his Section 104 Application;
  - (b) The Affidavit of David Engel, dated July 14, 2021 (the “**SECURE Affidavit**”);
  - (c) The Competition Act, Sections 96 and 104;
  - (d) Merger Enforcement Guidelines, Competition Bureau Canada, issued October 2011;
  - (e) The Consent for the order dismissing in the matter of the *Director of Investigation and Research v. Superior Propane Inc. et. al.* dated December 11, 1998;<sup>4</sup>
  - (f) The Competition Tribunal Reasons for the order dismissing the motion for a stay and continuing of the above Consent Interim Order in *Canada*

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<sup>4</sup> The Director of Investigation and Research v. Superior Propane Inc. et al., CT-1998/002 – Doc #013 (C.T. Dec. 11, 1998).

*(Commissioner of Competition) v. Superior Propane Inc. and ICG Propane Inc. (C.A.)* dated September 19, 2000;<sup>5</sup>

- (g) The Competition Tribunal Reasons for the order dismissing the application of the Commissioner for an Interim (under s. 100 Competition Act) prohibiting the respondents, in that matter, from closing the acquisition of units of Lakeport Brewing Income Fund in the matter of *Canada (Commissioner of Competition) v. Labatt Brewing Co.* dated March 30, 2007;<sup>6</sup>
- (h) The Competition Tribunal Reasons for order and order (public version) in *the Commissioner of Competition v. CCS Corporation et al.*, dated May 29, 2012;<sup>7</sup>
- (i) Public reasons for judgement in *Tervita Corporation v. Commissioner of Competition*, dated February 11, 2013;<sup>8</sup>
- (j) The Supreme Court judgement on appeal from the Federal Court of Appeal in *Tervita Corp. v. Canada (Commissioner of Competition)*, dated January 22, 2015;<sup>9</sup>
- (k) The Reasons for Order and Order (Public Version) in *The Commissioner of Competition v. Parkland Industries Ltd*, 2015 Comp. Trib. 4 (CT-2015-003), dated May 12, 2015;<sup>10</sup>

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<sup>5</sup> *Canada (Commissioner of Competition) v. Superior Propane Inc.*, No. A-539-00, [2000] F.C.J. No. 1518 (F.C.J. Sep. 19, 2000).

<sup>6</sup> *The Commissioner of Competition v. Labatt Brewing Company Limited et al.*, CT-2007-003 – Doc #0032, 2007 Comp. Trib. 9 (C.T. Mar. 30, 2007).

<sup>7</sup> *The Commissioner of Competition v. CCS Corporation et al.*, CT-2011-002 – Doc #189, 2012 Comp. Trib. 14 (C.T. May 29, 2012).

<sup>8</sup> *Tervita Corp. v. Canada (Commissioner of Competition)*, 2013 FCA 28 (F.C.A. Feb. 11, 2013).

<sup>9</sup> *Tervita Corp. v. Canada (Commissioner of Competition)*, 2015 SCC 3, (S.C.R. Jan. 22, 2015).

<sup>10</sup> *The Commissioner of Competition v. Parkland Industries Ltd*, CT-2015-003 – Doc # 046, 2015 Comp. Trib. 4 (C.T. May 12, 2015).

- (l) IT Savings for Competition Bureau Close Delayed Scenario (Jul-09).xlsx, a copy of which is attached at Exhibit “D”;
  - (m) Synergy Roll Up.xlsx, a copy of which is attached at Exhibit “E”;
  - (n) 2021.06.29 - Secure Landfill volumes.xlsx, a copy of which is attached at Exhibit “F”; and
  - (o) 2021.06.29 - Tervita Landfill volumes.xlsx, a copy of which is attached at Exhibit “G”.
18. In addition, I and/or others working at my direction have conducted interviews, in person and/or by teleconference, with executives and management of SECURE and Tervita, including:
- (a) Rene Amirault, President and Chief Executive Officer
  - (b) Corey Higham, Executive Vice President, Midstream Infrastructure Operations
  - (c) Dave Engel, Executive Vice President, New Ventures
  - (d) Bevan Howell, Vice President, Mergers & Acquisitions
  - (e) Aly Sudermann, Manager, Mergers & Acquisitions
  - (f) Neil Widish, Director, Commercial Development & Transport
  - (g) Keith Blundell, Corporate Development
  - (h) Rob Dawson, Executive Vice President, Strategy & Corporate Development, Tervita
  - (i) Mike Husband, Director, Corporate Development & Strategy, Tervita; and

(j) Taki Tsougrianis, Director, Business Development, Tervita.

The facts that I obtained from the above conversations that are reflected in my June Efficiencies Report or this affidavit are contained in the SECURE Affidavit.

### **DESCRIPTION OF THE PARTIES**

#### **THE CANADIAN MIDSTREAM INFRASTRUCTURE INDUSTRY**

19. To avoid repetition, see paragraphs 27 to 29 of June Efficiencies Report.

#### **SECURE ENERGY SERVICES INC.**

20. To avoid repetition, see paragraphs 30 to 38 of June Efficiencies Report.

#### **TERVITA**

21. To avoid repetition, see paragraphs 39 to 47 of June Efficiencies Report.

### **THE FEASIBILITY OF SECURE SEPARATING THE MERGED BUSINESS INTO TWO INDEPENDENT, VIABLE AND EFFECTIVE COMPETITORS AT THE END OF THE INTERIM PERIOD**

22. Based on my review and analysis, including my discussions with individuals listed above, my review of the SECURE Affidavit, and my independent research, in my opinion, it is feasible for SECURE to continue with the implementation of its planned integration of Tervita and subsequently separate some or all of the acquired Tervita business into an independent, viable, and effective competitor (“**divisionalization**” as previously defined) in the event of such an order by the Tribunal at the end of the Interim Period.

23. Further, based on my review and analysis, it is my opinion that divisionalization could occur within three months from the time of issuance of a Tribunal order to this effect given that, even with full integration of Tervita, SECURE has every intention of keeping all required regulatory approvals and licenses and that any remaining assets and staff are readily available and easily replaceable within three months.
24. In arriving at my conclusions, I considered the following principal factors which, among others, strongly support my conclusions:
- a) The integration of the businesses of SECURE and Tervita will not be complete by the end of the Interim Period, irrespective of whether that period is 6, 12 or 18 months; and
  - b) The Tribunal will have the ability, if required, to order a separation and divestiture of assets and customers such that: (1) each of the divested business and ongoing business retained by SECURE (collectively referred to herein as the “**Successor Businesses**”) will have a sufficient and established customer base and strong corporate systems (such as those related to information technology); (2) neither of the Successor Businesses will be a ‘start-up’ operation; and (3) each of the Successor Businesses will be financially strong.
25. Each of these is discussed in more detail below.

a) The integration of the businesses of SECURE and Tervita will not be fully complete by the end of the Interim Period, irrespective of whether that period is 6, 12 or 18 months

26. It is unclear when the Tribunal will render a decision in respect of the Section 92 Application. Accordingly, I have been asked to assume that any delay in integration will last for 6, 12 or 18 months from the date of the Section 92 Application, which occurred at substantially the same time as the closing of the Transaction (the “**Interim Period**” as previously defined).

27. The SECURE Affidavit confirms that my June Efficiencies Report remains consistent with, in all material respects, the integration plan that SECURE intends to follow, and that there are no matters which have come to SECURE’s attention that would require material departures therefrom.<sup>11</sup>

28. The SECURE Affidavit sets out the anticipated timing of the integration of each of the full service facilities, and my June Efficiencies Report sets out the anticipated timing of the capping of each of the landfill locations. Collectively, these indicate that only a few locations (as described in detail below) will be integrated within 6 months and full integration will take up to 6 years to complete.<sup>12</sup> Consequently, the full integration of the business of Tervita will

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<sup>11</sup> [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] This saving is in addition to the amounts set out in my June Efficiencies Report. For further discussion see paragraph 74 below.

<sup>12</sup> [REDACTED]  
[REDACTED]



not have occurred by the end of the Interim Period. For those locations not yet integrated, all physical assets, site employees, trucks and equipment will continue to exist. Accordingly, no divisionalization will be required for the locations that have not yet been integrated during the Interim Period.

29. If the Tribunal requires that SECURE be capable of divisionalizing the businesses within three months, SECURE intends to preserve the Tervita brand, physical locations and regulatory licenses for any operations that have been integrated (as set out in the SECURE Affidavit).

b) The Tribunal will have the ability to order a separation and divestiture of assets and customers such that: (1) each of the divested business and ongoing business retained by SECURE (collectively referred to herein as the “**Successor Businesses**”) will have a sufficient and established customer base and strong corporate systems (such as those related to information technology), (2) neither of the Successor Businesses will be a ‘start-up’ operation, and (3) each of the Successor Businesses will be financially strong

30. Neither of the Successor Businesses will be a start-up operation. Each will begin with an established business and an allocation of all the requisite assets, tangible and intangible, physical and human capital, proprietary and other know-how and goodwill from SECURE (stemming from the integration of

Tervita), each will have experienced people, assets, training, and an established customer base. In particular, in this regard:<sup>13</sup>

- a) All intangible assets of SECURE and Tervita are being preserved;
- b) All tangible assets of SECURE and Tervita are either being preserved or the divisionalized businesses will be capable of purchasing new assets in a short time period;
- c) All people, and associated training, will either be preserved or the divisionalized businesses will be capable of hiring and training the required people in a short time period; and
- d) The Tribunal will have the ability to ensure that the customer base of SECURE will be distributed between the Successor Businesses as required to ensure that both are viable, established businesses.

31. Further, based on my discussions with management of SECURE and as indicated in the Secure Affidavit, reconstitution of the Tervita business could be done within three months.<sup>14</sup>

32. As to customers, the Tribunal will have the ability to ensure that each of the Successor Businesses will have a sufficient complement of customers. There is very high likelihood that, given the historical use of various facilities by

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<sup>13</sup> SECURE Affidavit, paragraphs 138 to 161.

<sup>14</sup> SECURE Affidavit, paragraphs 156.

customers and certain customer contracts and pricing, there will be good customer retention and, at the end of the divisionalization period, there is very likely to be a strong and stable customer base in both Successor Businesses. In particular, the Commissioner, and if necessary the Tribunal, is in a position to ensure that each of the Successor Businesses will start out with what it considers to be the appropriate customer base and, further, is in a position to monitor, through the divisionalization, the effectiveness of customer transition and to make such modifications as are appropriate.

33. Based upon the time it takes to integrate the two businesses (as set out in my June Efficiencies Report and confirmed through recent discussions with SECURE management and the SECURE Affidavit), I expect that it would take three months to divide the merged entity into two viable and effective competitors since SECURE intends on preserving both the relevant physical locations and operating licenses.
34. The ability to divisionalize the merged business is consistent with the order sought in the Section 92 Application which requested (prior to the closing of the Transaction), in the alternative, an order directing SECURE not to proceed with the acquisition of such assets as are required for an effective remedy. The implication in this request is the Commissioner's acceptance that, if the Tribunal were to issue an order to this effect, the locations that SECURE would be allowed to acquire would be capable of extraction from Tervita, notwithstanding that those locations are established parts of the Tervita

organization, integrated into its accounting and back office systems, and that Tervita management would have full knowledge of the names of customers, and pricing arrangements with them.

35. Further, the example of the acquisition of Newalta Corporation by Tervita in 2018 demonstrates the Commissioner's recognition that the closing of a transaction in this industry would not impede the Tribunal's ability to remedy the transaction in the event of a subsequent successful challenge by the Competition Bureau.
36. In this regard, on July 30, 2018 the Competition Bureau issued a press release stating "The Competition Bureau continues to actively review competition concerns related to Tervita Corporation's merger with Newalta Corporation despite the parties' announcement that the transaction closed today. The Bureau's review is focused on the parties' oilfield waste disposal services within the Western Canadian Sedimentary Basin. The Competition Act allows for a one-year period following the completion of a transaction during which the Commissioner may bring an application to the Competition Tribunal challenging the transaction."<sup>15</sup>
37. I understand that the Competition Bureau continued its review for the subsequent year but ultimately did not challenge that transaction as evidenced by the press release issued by Tervita on July 22, 2019 which stated "Tervita

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<sup>15</sup> <https://www.canada.ca/en/competition-bureau/news/2018/07/competition-bureau-continues-tervita-and-newalta-merger-review.html>

Corporation ...announced today that the deadline has passed for the Canadian Competition Bureau ("CCB") to challenge Tervita's acquisition of Newalta Corporation ("the transaction") completed on July 19, 2018. As such, the transaction is clear from any further CCB review. 'We are pleased that after a thorough review the CCB decided not to challenge the transaction. Since closing the transaction one year ago, the combined business has significantly enhanced value for our customers and shareholders, and we look forward to continuing to execute our growth plans,' said John Cooper, President and CEO of Tervita."<sup>16</sup>

**THE ABILITY OF SECURE, OR A DIVESTITURE TRUSTEE, TO SELL ONE OF THE DIVISIONALIZED BUSINESSES**

38. Based on my review and analysis, including my discussions with individuals listed above and my review of the SECURE Affidavit, in my opinion, if required by the Tribunal, SECURE would be able to sell one of the divisionalized businesses, either by itself or through a divestiture trustee, to a buyer or buyers that would operate the acquired business as an independent, viable and effective competitor.

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<sup>16</sup> <https://tervita.com/news/article/tervita-corporation-announces-end-of-competition-bureau-review-p/>

39. In reaching this conclusion I have considered, amongst others, the following factors set out in the SECURE Affidavit:

- a) In respect of a divisionalization, the divisionalized businesses would incorporate all requisite property, employees and operating assets necessary to allow a strategic purchaser to operate a competing business and, if ordered by the Tribunal, incorporate the necessary customer contracts necessary to operate on a standalone basis allowing for a financial purchaser;
- b) The historic profitability, and expected future profitability, of the former Tervita business;
- c) A number of strategic (also referred to as “in market participant”) buyers may be interested in acquiring the assets of the former Tervita business; and
- d) The appeal of the former business of Tervita to a financial (also referred to as “non-market participant”) buyer.

40. Each of the above factors is discussed in more detail below.

*a) In respect of a divisionalization, the divisionalized businesses would incorporate all requisite property, employees and operating assets necessary to allow a strategic*

*purchaser to operate a competing business and, if ordered by the Tribunal, incorporate the necessary customer contracts necessary to operate on a standalone basis*

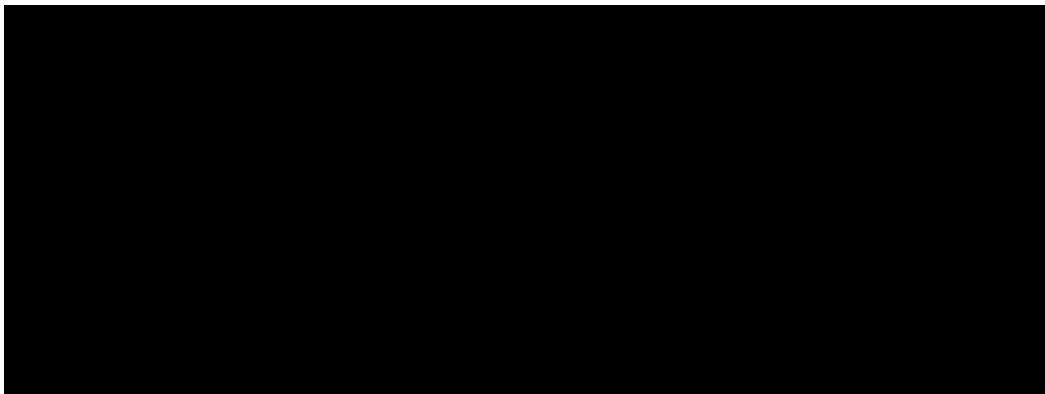
41. Following divisionalization, neither of the Successor Businesses will be a start-up operation. Each will begin with an established business and an allocation of all the requisite assets, tangible and intangible, physical and human capital, proprietary and other know-how and goodwill from SECURE (stemming from the integration of Tervita), each will have experienced people, assets, training, and an established customer base.
42. As to customers, each of the Successor Businesses will have a sufficient complement of customers in each of the relevant markets. There is very high likelihood that, given the historical use of various facilities by customers and certain customer contracts and pricing, there will be good customer retention and, at the end of the three month divisionalization period, there is very likely to be a strong and stable customer base in both successor companies.
43. The Commissioner, and if necessary the Tribunal, is in a position to ensure that each of the Successor Businesses will start out with what it considers to be the appropriate customer base and, further, is in a position to monitor, through the divisionalization period, the effectiveness of customer transition and to make such modifications as are appropriate.

b) The historic profitability, and expected future profitability, of the former Tervita business

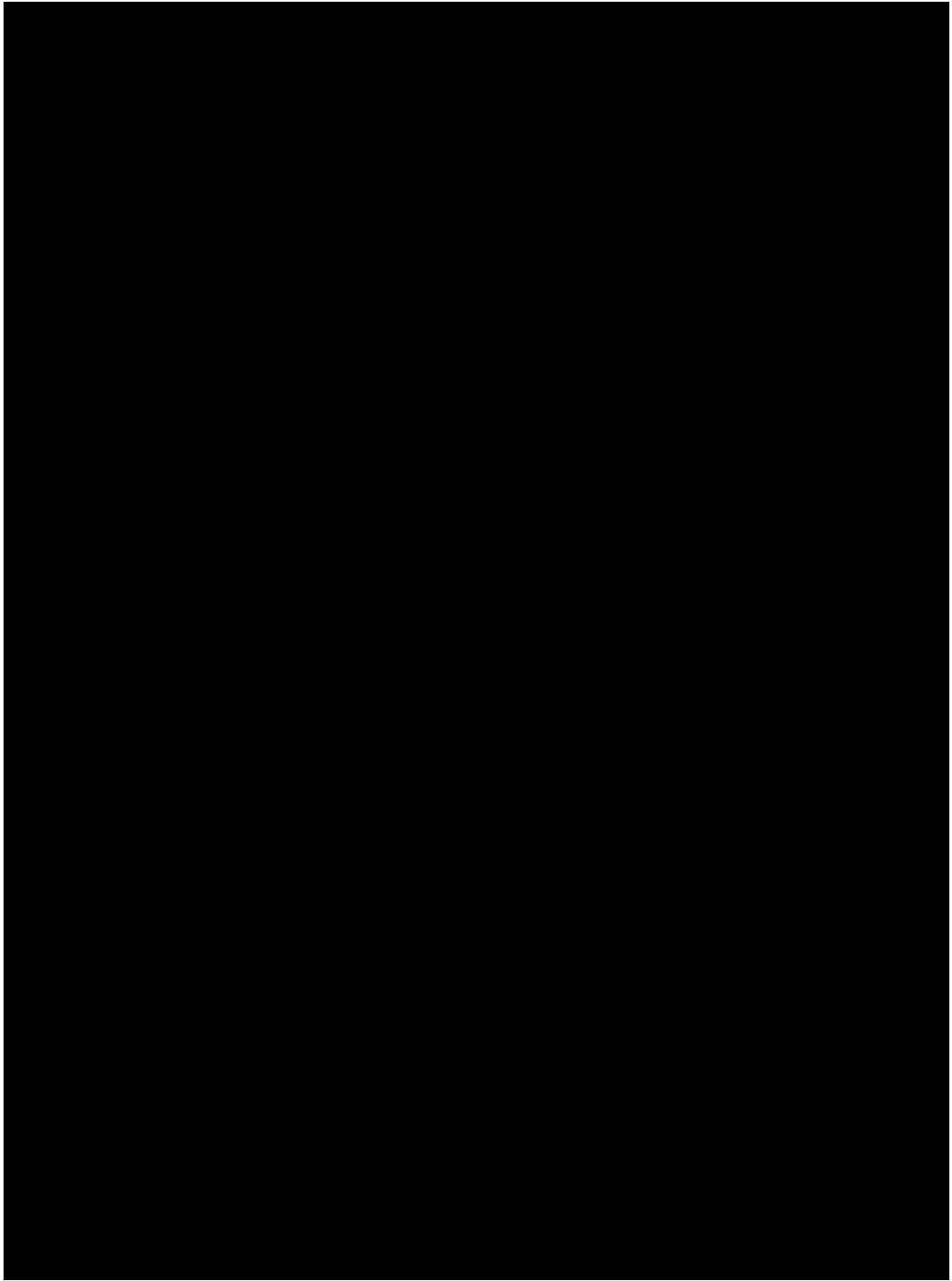
44. The historical income statements of the former Tervita business are attached to the SECURE Affidavit.
45. As this Exhibit demonstrates, Tervita has positive cash flow and operating profits, and will constitute a viable and saleable business.
46. As indicated in the SECURE Affidavit, management of SECURE have no reason to believe the historic profitability of the Tervita businesses will be adversely affected as a result of the Transaction.

c) A number of strategic (also known as “in market participant”) buyers may be interested in acquiring the assets of the former Tervita Business

47. I understand that SECURE has received inquiries from the following parties with stated interest in acquiring assets if any are required to be sold. These include:

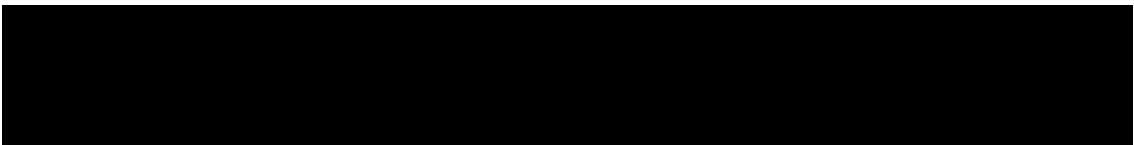


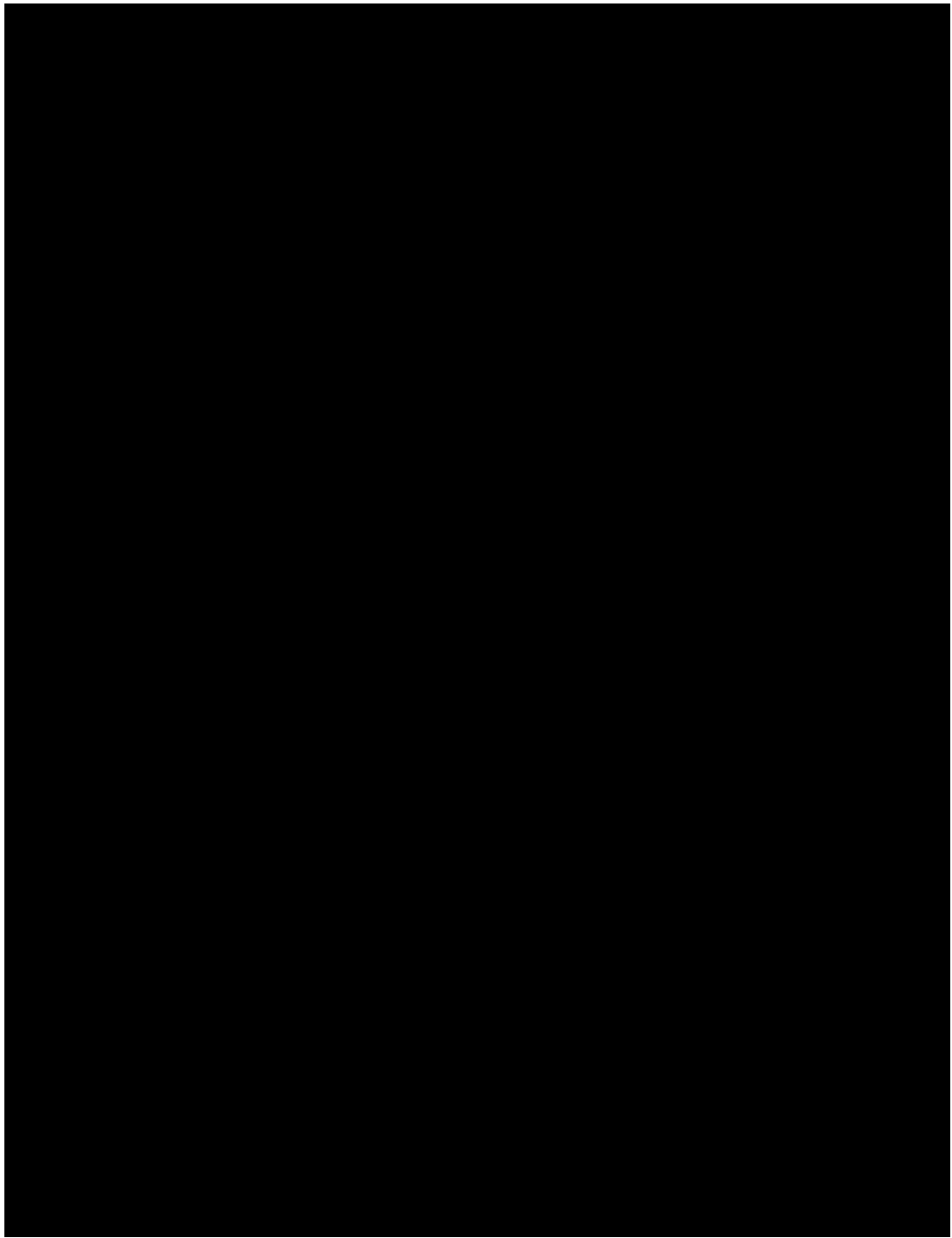




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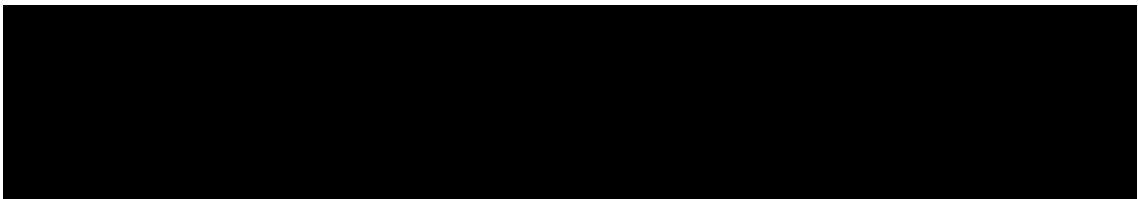
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48. In preparing the above list of strategic buyers I have not attempted to exclude prospective buyers that may be precluded from acquiring certain assets because the assets are separable and can be sold “piecemeal” such that buyers which are precluded from acquiring certain assets would be able to acquire other assets.

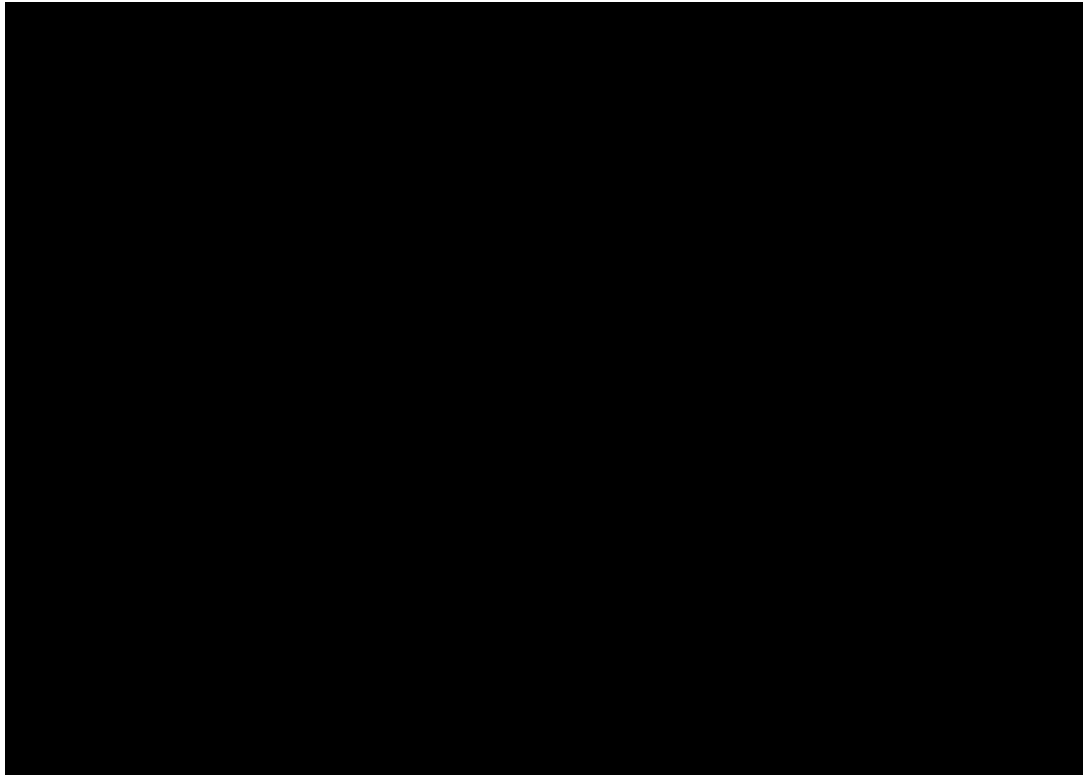
d) The appeal of the former business of Tervita to a financial (also referred to as “non-market participant”) buyer

49. In addition to, or in conjunction with, the above market participant buyers, the operations of Tervita could be an ideal auction candidate for acquisition by a non-market participant, either from within Canada or internationally, subject to regulatory requirements. As demonstrated by the list of interested parties above, several are owned by financial investors and it is likely that these, and others, would continue to be interested bidders for one of the Successor Businesses.

50. A non-market participant buyer may, or may not, partner with a market participant buyer as contemplated above, or with management by participating in a management buy-out.

51. I understand from SECURE that the following non-market participant buyers have expressed interest to management of SECURE in acquiring assets from SECURE, and thus they may be interested in acquiring one or more assets from

SECURE in the event that SECURE is required by the Tribunal to sell either one of the divisionalized business or any assets specified by the Tribunal:



**THE DOLLAR VALUE OF THE EFFICIENCIES, AS DEFINED IN SECTION 96 OF THE ACT AND AS SET OUT IN MY JUNE EFFICIENCIES REPORT, THAT ARE LIKELY TO BE REALIZED AS A RESULT OF THE TRANSACTION**

52. The dollar value of the efficiencies, as defined in Section 96 of the Act and as set out in my June Efficiencies Report, that are likely to be realized as a result of the Transaction are [REDACTED] per year (run rate), [REDACTED] over a 10 year period on an undiscounted basis and [REDACTED] over a 10 year period on a discounted basis.
53. For details in this regard, see the June Efficiencies Report, attached as Exhibit "C."

**THE DOLLAR VALUE OF THE EFFICIENCIES, AS DEFINED IN SECTION 96 OF THE ACT, THAT ARE LIKELY TO BE LOST IN THE EVENT THAT THE TRIBUNAL ISSUES AN ORDER THAT PREVENTS SECURE FROM INTEGRATING THE FORMER TERVITA BUSINESS**

54. The dollar value of the efficiencies, as defined in Section 96 of the Act, that are likely to be lost in the Interim Period in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, are as follows:

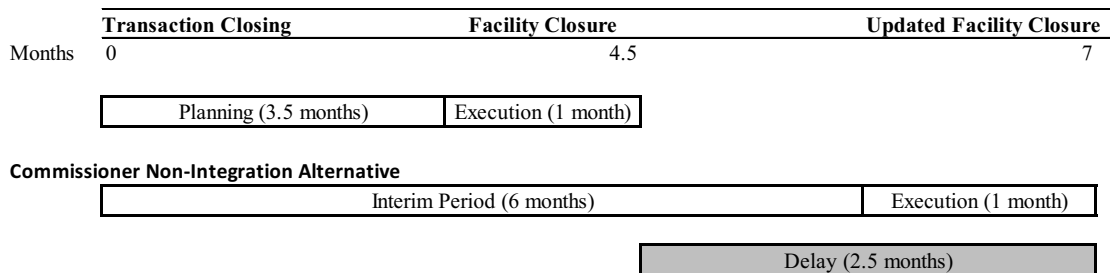


55. Delay in implementing the integration plan will cause irreparable harm to the Canadian economy in the form of lost efficiencies as explained below. The nature of the harm is that:

- a) Under the Commissioner Non-Integration Alternative, the Commissioner is seeking an order which directs SECURE not to proceed with any further integration. Under this alternative I have assumed that SECURE will be capable, with the benefit of access to the operations of Tervita which they did not have prior to closing of the Transaction, of proceeding to plan the integration but stop short of executing it. Accordingly, to the extent that the execution of the

integration activities would have occurred prior to the end of the Interim Period, SECURE is delayed in achieving the efficiencies.

This is illustrated in the following example where an integration activity required 3.5 months of planning and 1 month of execution such that the efficiencies would be realized commencing after 4.5 months. With an Interim Period of 6 months, assuming SECURE is able to undertake the planning, the execution of the plan is still delayed such that it can only commence after 6 months, rather than after 3.5 months, resulting in a delay of 2.5 months until the integration is complete.

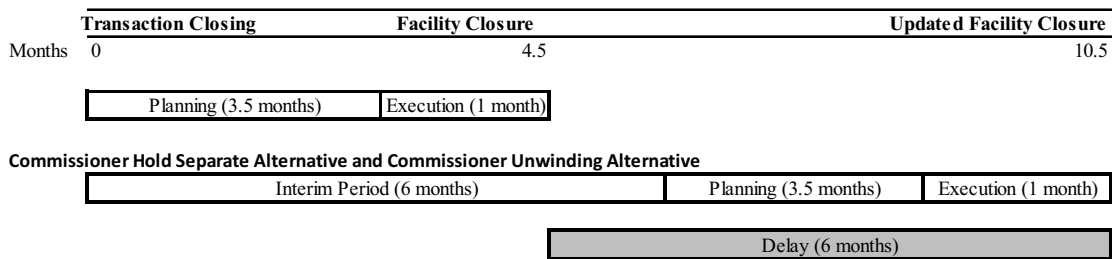


The efficiencies lost as a result of this delayed integration will never be recovered by SECURE or the Canadian economy and represent a permanent loss in the efficiencies that would have otherwise accrued to the benefit of the Canadian economy.

- b) Under both the Commissioner Hold Separate Alternative and Commissioner Unwinding Alternative, the Commissioner is seeking an order which will have the effect that SECURE no longer has access to the operations of Tervita (akin to the period prior to closing of the Transaction) and will therefore be incapable of either planning the integration or executing it. Accordingly SECURE is delayed in

achieving substantially all of the efficiencies for a time period equating to the length of the Interim Period.

This is illustrated in the following example using the same integration example above. With an Interim Period of 6 months, assuming SECURE is unable to undertake the planning or the execution of the integration, this results in a delay of 6 months – what I refer to as a “month for month” delay, i.e. a delay in the integration equal to the number of months of the Interim Period.



The efficiencies lost as a result of this delayed integration period will never be recovered by SECURE or the Canadian economy and represent a permanent loss in the efficiencies that would have otherwise accrued to the benefit of the Canadian economy.

56. Further, as indicated in the June Efficiencies Report,<sup>25</sup> it is likely that additional customer benefits exist. Including these amounts will have the effect of increasing the lost efficiencies from an interim order. These benefits have not been quantified to date.

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<sup>25</sup> See, for example, paragraphs 180 to 182 and 187 of June Efficiencies Report.

57. The methodology that I have used to determine the lost efficiencies is described below for each of the following Alternatives:

- a) Commissioner Non-Integration Alternative;
- b) Commissioner Hold Separate Alternative; and
- c) Commissioner Unwinding Alternative.

58. Under each of these alternative orders, I describe my approach for the following groups of assets and functions:

- a) Landfills;
- b) FSTs;
- c) Intercompany transport savings;
- d) Other geographic based operating cost savings;
- e) Corporate labour costs of employees terminated prior to August 20, 2021;
- f) Other corporate labour cost savings;
- g) Public company cost savings;
- h) Other corporate cost savings;
- i) IT costs;



- j) [REDACTED]
- k) [REDACTED] avoided capital expenditures;
- l) Costs of a monitor (Commissioner Hold Separate Alternative only); and
- m) Cost to sell the former Tervita business (Commissioner Unwinding Alternative only).

### **Commissioner Non-Integration Alternative**

59. I understand that the Commissioner has described this alternative as one in which the Tribunal directs SECURE not to proceed with any further integration of Tervita's operations and to preserve all assets. The specifics of what is captured by "further integration" are not perfectly clear to me, but for purposes of my affidavit, I have assumed this to mean that, in this alternative:

- a) SECURE will continue to own the former business of Tervita;
- b) SECURE management and employees will have access to the former operations of Tervita during the Interim Period for purposes of planning (but not executing) all integration activities; and
- c) SECURE management and employees will be able to implement cost saving opportunities that do not involve any integration activities during the Interim Period. These include, for example, inter-company transport savings whereby waste is transported between facilities for

further processing and, where a destination facility that was previously a facility of the other entity<sup>26</sup> is now closer, resulting in transport cost savings.

### Landfills

60. As described in the June Efficiencies Report at paragraphs 66 to 76, I computed the estimated timing of each of the landfill closures as a result of the Transaction. The efficiencies in the June Efficiencies Report were calculated on an annual basis. For purposes of this affidavit, in order to be able to estimate the lost efficiencies in question, I have updated those calculations to be on a monthly basis.
61. Due to seasonality, inbound waste volumes have been determined on a monthly basis for each location based on a review of historical monthly volumes for the period January 2017 to date.<sup>27</sup> Based on my review of that information, the impact of Covid 19 commencing in April 2020 appeared significant for some facilities. Therefore, to be consistent, I used the average seasonal impact for the period January 2017 to December 2019 for all locations. These seasonal allocation factors (the proportion of annual volume that occurs in each month) are calculated in schedules 8 to 17, attached.

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<sup>26</sup> E.g., where shipments from a former SECURE facility will now be sent to a former Tervita facility.

<sup>27</sup> For SECURE locations, I used information to April 2021 and, for Tervita locations, I used information to May 2021.

62. Using these seasonal allocation factors, I then determined the month that each closing facility would close based on the same methodology described in the June Efficiencies Report.<sup>28</sup> In this regard, I concluded that, in the Commissioner Non-Integration Alternative:

- a) [REDACTED] [REDACTED]  
[REDACTED] Accordingly, if the Interim Period were 6 or 12 months there would be no impact on the integration plan (which includes diversion of volumes from the continuing facility) or the resultant date at which the existing cell will become full. Therefore, there is no impact on the efficiencies realized from the Transaction in these scenarios. However, if the Interim Period is 18 months then [REDACTED]

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28

29 Schedule 3A, column F.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) [REDACTED]

[REDACTED] Accordingly, if the Interim Period were 6 months there would be no impact on the integration plan and the efficiencies realized from the Transaction. However, if the Interim Period is 12 months then [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>30</sup> For purposes of this calculation, I have been instructed to assume that the length of the Interim Period will be known shortly after August 20, 2021 when the Tribunal issues a schedule for the hearing of the Section 92 Application. Accordingly, management of SECURE will operate the facility, specifically the rate of diversion of waste volumes from the continuing facility, so as to ensure that, if the Interim Period is known to be 18 months, there will be sufficient cell capacity at that date.

[REDACTED]

<sup>31</sup> Schedule 3A, column H.

<sup>32</sup> See Schedule 18 which summarizes the net run rate savings at each facility. These comprise the fixed costs that are avoided [REDACTED] as per the June Efficiencies Report.

<sup>33</sup> Schedule 4A, column F.

<sup>34</sup> Schedule 4A, column H.

<sup>35</sup> Schedule 4A, column J.

[REDACTED]

c) [REDACTED] [REDACTED]  
[REDACTED] Accordingly, regardless of whether the Interim Period is 6, 12 or 18 months there would be no impact on the integration plan and the efficiencies realized from the Transaction. This is reflected at Schedule 2A, row [3].

d) [REDACTED] [REDACTED]  
[REDACTED] Accordingly, regardless of whether the Interim Period is 6, 12 or 18 months it is necessary for SECURE to [REDACTED]  
[REDACTED]  
Accordingly, if the Interim Period is 6, 12 or 18 months then [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

e) [REDACTED] [REDACTED]  
[REDACTED] Accordingly, regardless of whether the

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<sup>36</sup> Schedule 5ABC, column F.  
<sup>37</sup> Schedule 6A, column F.  
<sup>38</sup> Schedule 6A, column H.  
<sup>39</sup> Schedule 7ABC, column F.

Interim Period is 6, 12 or 18 months there would be no impact on the integration plan and the efficiencies realized from the Transaction. This is reflected at Schedule 2A, row [5].

63. The dates at which each facility would be closed in the Commissioner Non-Integration Alternative is summarized in the following table:



FSTs and TRDs

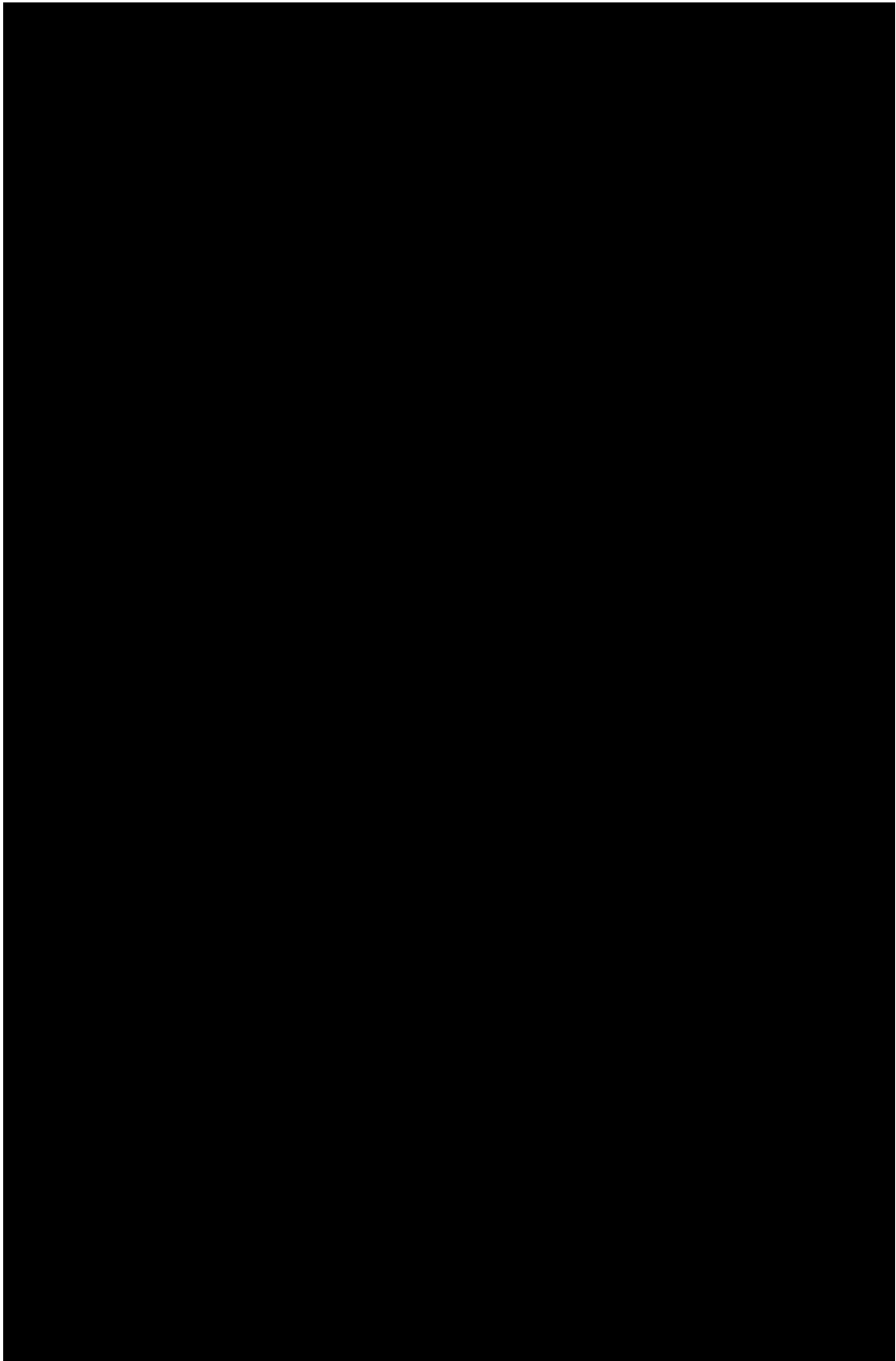
64. The June Efficiencies Report incorporated management of SECURE's intention to close the FSTs and TRDs in the first year with the savings being fully achieved by year 2.<sup>40</sup> Management of SECURE have updated their intentions to close the facilities in the following order, consistent with the above:

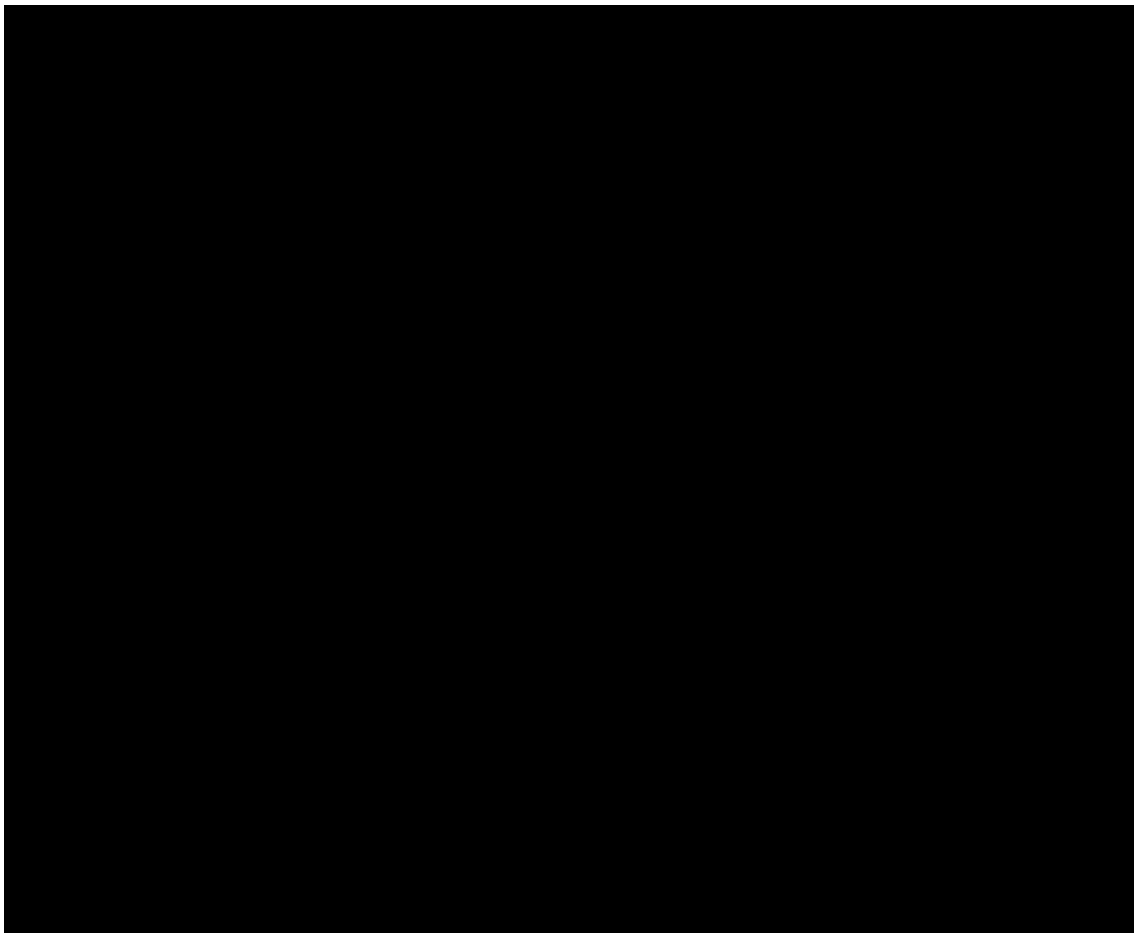
- a) [REDACTED] For this facility, in the Commissioner Non-Integration Alternative, there is no lost efficiencies regardless of the length of the Interim Period.<sup>41</sup>

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<sup>40</sup> June Efficiencies Report, paragraph 90.

<sup>41</sup> See further below for capital costs in respect of [REDACTED]





65. My calculations of the effect of the above delays are set out in Schedule 2A, rows [6] to [25].

Intercompany transport savings

66. In the Commissioner Non-Integration Alternative this activity is continuing as planned as there is no integration required and, accordingly, there is no impact on the efficiencies. This is indicated in Schedule 2A, row [26].

Other geographic based operating cost savings

67. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for



month” impact on the efficiencies; e.g., a 6 month Interim Period will delay the implementation of these efficiency opportunities by 6 months. This is indicated in Schedule 2A, row [27].

Corporate labour costs of employees terminated prior to August 20, 2021

68. The dollar value of annual savings of corporate employees that have left, been terminated or will be terminated prior to August 20, 2021 is [REDACTED] as summarized at Schedule 19. Accordingly, in the Commissioner Non-Integration Alternative there is no impact on the efficiencies. This is indicated in Schedule 2A, row [28].

Other corporate labour cost savings

69. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2A, row [29].

Public company cost savings

70. The dollar value of these savings, which were achieved as of closing of the Transaction, is [REDACTED] as summarized at the June Efficiencies Report, schedule 5.3, row [7]. Accordingly, in the Commissioner Non-Integration Alternative there is no impact on the efficiencies. This is indicated in Schedule 2A, row [30].





**Commissioner Hold Separate Alternative**

76. I understand that the Commissioner has described this alternative as one in which the Tribunal directs SECURE to hold the business of Tervita separate, apart, and independent. For purposes of my affidavit, I have assumed this to mean that, in this alternative:

- a) SECURE will continue to own the former business of Tervita; and
- b) A management team separate, apart and independent from SECURE will be responsible for all strategy, leadership and other management responsibilities but SECURE management will not have any access to the former operations of Tervita during the Interim Period for any purposes (i.e., akin to the situation that existed prior to closing of the Transaction).

**Landfills**

77. I applied the same approach and assumptions to my calculations of the timing of when each of the landfills would be closed with only one change to reflect the fact that, under the Commissioner Hold Separate Alternative, SECURE will be unable to divert inbound volumes from the continuing facilities to the closing facilities during the Interim Period. I have, however, incorporated the diverted volumes commencing immediately after the end of the Interim Period.

Reflecting these calculations of the month in which the cell will be full and the facility closed:

- a) [REDACTED] [REDACTED] after closing of the Transaction in the absence of any restrictions. With a 6 month Interim Period this is delayed until [REDACTED] [REDACTED], a delay of [REDACTED]. With a 12 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With an 18 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. My calculations in this regard are set out in Schedule 3BC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [1].
- b) [REDACTED] [REDACTED] after closing of the Transaction in the absence of any restrictions. With a 6 month Interim Period this is delayed until [REDACTED] [REDACTED] a delay of [REDACTED]. With a 12 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With an 18 month Interim Period this is delayed until [REDACTED] a delay of [REDACTED]. My calculations in this regard are set out in Schedule 4BC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [2].

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<sup>46</sup> Schedule 3BC, column F.

<sup>47</sup> Schedule 4BC, column F.

c) [REDACTED] [REDACTED]  
[REDACTED] after closing of the Transaction in the absence of any restrictions. With a 6 month Interim Period there is no delay. With a 12 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With an 18 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. My calculations in this regard are set out in Schedule 5ABC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [3].

d) [REDACTED] [REDACTED]  
[REDACTED] after closing of the Transaction in the absence of any restrictions. As described in paragraph 62(d) above, regardless of whether the Interim Period is 6, 12 or 18 months it is necessary for SECURE to [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

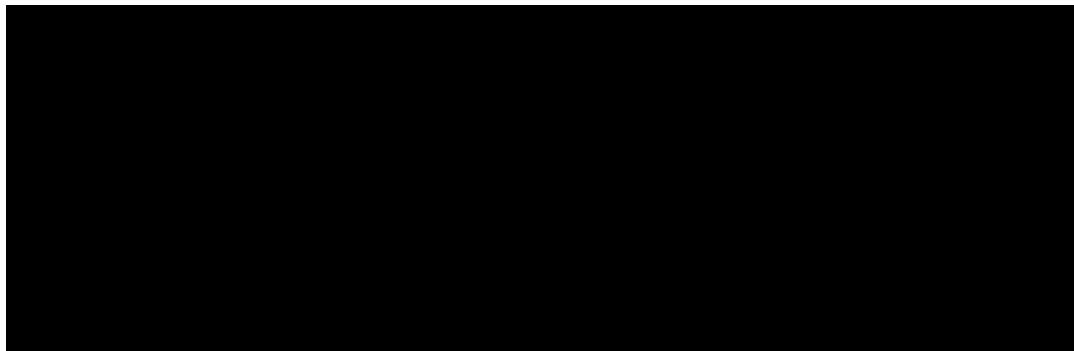
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<sup>48</sup> Schedule 5ABC, column F.  
<sup>49</sup> Schedule 6BC, column F.

months. My calculations in this regard are set out in Schedule 6BC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [4].

e) [REDACTED] [REDACTED] after closing of the Transaction in the absence of any restrictions. With a 6 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With a 12 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With an 18 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. My calculations in this regard are set out in Schedule 7ABC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [5].

78. The dates at which each facility would be closed in the Commissioner Hold Separate Alternative is summarized in the following table:



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<sup>50</sup> Schedule 7ABC, column F.

FSTs

79. In the Commissioner Hold Separate Alternative, the planning activities for the closure of these facilities cannot be undertaken. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, rows [6] to [25].

Intercompany transport savings

80. In the Commissioner Hold Separate Alternative, SECURE will be unable to coordinate the intercompany transport savings. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, rows [26].

Other geographic based operating cost savings

81. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, row [27].

Corporate labour costs of employees terminated prior to August 20, 2021

82. All corporate employees that have left, been terminated or will be terminated prior to August 20, 2021 will need to be rehired or replaced under the Commissioner Hold Separate Alternative. Thereafter, a delay in the ability to restore this integration activity is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2C, row [28].



Other corporate labour cost savings

83. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, row [29].

Public company cost savings

84. The dollar value of these savings, which were achieved as of closing of the Transaction, is [REDACTED] as summarized at the June Efficiencies Report, schedule 5.3, row [7]. Accordingly, in the Commissioner Hold Separate Alternative there is no impact on the efficiencies. This is indicated in Schedule 2B, row [30].

Other corporate cost savings

85. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, row [31].

IT costs

86. The impact on IT costs in the Commissioner Hold Separate Alternative is identical to that previously described in paragraph 72.

[REDACTED]

87. [REDACTED] avoided capital cost in the Commissioner Hold Separate Alternative is identical to that previously described in paragraph 74.

[REDACTED] avoided capital expenditures

88. As discussed above at paragraph 74, if management of SECURE does not have access to the Tervita assets, which is assumed in the Commissioner Hold Separate Alternative, and the Interim Period is 18 months, management will proceed with [REDACTED]. [REDACTED] I have therefore included this as an avoided capital expenditure that arises as a result of the Transaction that will be lost in this regard. This is indicated in Schedule 2B, row [34].

Costs of a monitor

89. I understand that, in the Commissioner Hold Separate Alternative, costs will be required for a monitor. As these costs are not known at this point, I have indicated this cost as “TBD” and, accordingly, my conclusions in this alternative are understated and conservative.

Summary

90. Reflecting the above, the efficiencies that will be lost under the Commissioner Hold Separate Alternative will be [REDACTED] and [REDACTED] for Interim Periods of 6, 12 and 18 months respectively as indicated in Schedule 2B, row [36].

**Commissioner Unwinding Alternative**

91. I understand that the Commissioner has described the Commissioner Unwinding Alternative as one in which the Tribunal orders an unwinding of SECURE's acquisition of Tervita. It is not clear to me what is intended by the Commissioner in referring to "unwinding" the Transaction. As the target was a public company, the shareholders are numerous, including potentially thousands of private individuals. In my experience as an advisor in mergers and acquisitions and my experience in securities litigation involving public companies, the individual shareholders are frequently not readily knowable. Reconstructing, publicly listing, identifying each of the individual shareholders, and informing them that they are required to repurchase the shares they previously owned is not practical and, likely, not possible. This is even further exacerbated where the shareholders are told that they will only be holding the shares for a period of 6, 12 or 18 months at which point the Transaction may be re-instituted and they would be required to sell them at that date.

92. However, for purposes of quantifying the efficiencies that would be lost under this alternative, if it were possible, Blakes has instructed me to assume that the Commissioner Unwinding Alternative should be interpreted as akin to the Commissioner Hold Separate Alternative except that the former Tervita business is to be sold (rather than held separate). Accordingly, for purposes of my affidavit, I have assumed this to mean that, in this alternative:

- a) SECURE will sell the former business of Tervita; and
- b) As in the Commissioner Hold Separate Alternative, SECURE management will not have any access to the former operations of Tervita during the Interim Period for any purposes.

Landfills, FSTs, Intercompany transport savings; Other geographic based operating cost savings; Corporate labour costs of employees terminated prior to August 20, 2021; Other corporate labour cost savings; Other corporate cost savings; IT costs; [REDACTED] and [REDACTED] avoided capital expenditures

93. The impact of each of these items in the Commissioner Unwinding Alternative is identical to that in the Commissioner Hold Separate Alternative previously described in paragraphs 77 to 87 and these are set out in Schedule 2C at rows [1] to [29] and [31] to [34].

Public company cost savings

94. Under the Commissioner Unwinding Alternative, I have assumed that a separate legal entity will need to be created that will require audited financial statements and a separate board of directors. I have assumed that the costs that will be required in this regard are the costs for the audit previously incurred by Tervita [REDACTED] and 50% of the costs of the board of directors previously incurred by Tervita [REDACTED]. The total of these additional costs of [REDACTED] per year, is set out on Schedule 2C at row [30].

Cost to sell the former Tervita business

95. Consistent with Blakes instruction that the Commissioner Unwinding Alternative, if possible, would require costs equivalent to a sale of the former business of Tervita, management of SECURE has indicated that it estimate the out of pocket costs to facilitate such a transaction. From these costs, I have identified that those costs which represent negative efficiencies would be [REDACTED]. These costs, which are costs for either SECURE or the acquirer, comprise [REDACTED] of advisor fees<sup>52</sup> and [REDACTED] of legal fees.<sup>53</sup> This is indicated on Schedule 2C at row [35] and is the same, irrespective of whether the Interim Period is for 6, 12 or 18 months.

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<sup>52</sup> [REDACTED] by SECURE and [REDACTED] by the acquirer.

<sup>53</sup> [REDACTED] for each of SECURE and the acquirer.

Summary

96. Reflecting the above, the efficiencies that will be lost under the Commissioner Unwinding Alternative will be [REDACTED] and [REDACTED] for Interim Periods of 6, 12 and 18 months respectively as indicated in Schedule 2C, row [36].

**THE DOLLAR VALUE OF THE OPERATING COST SYNERGIES THAT ARE LIKELY TO BE LOST IN THE EVENT THAT THE TRIBUNAL ISSUES AN ORDER THAT PREVENTS SECURE FROM INTEGRATING THE FORMER ASSETS OF TERVITA, AS WELL AS THE COSTS REQUIRED TO BE INCURRED TO FACILITATE THAT ORDER**

97. In addition to the lost efficiencies there are certain categories of synergies for which SECURE will lose the benefit in the event that the Tribunal issues one of the orders sought by the Commissioner in his Section 104 Application.<sup>54</sup>

98. These additional items are described in the June Efficiencies Report, at paragraphs 183 to 190 and my calculations in respect of the lost operating cost savings are described and summarized in Schedule 21.

99. In addition, I understand from the SECURE Affidavit, that SECURE will incur out-of-pocket costs in connection with undertaking the divestiture of [REDACTED] [REDACTED] comprising: [REDACTED] of advisor fees, [REDACTED] of legal fees,

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<sup>54</sup> As indicated in the June Efficiencies Report, at Table 9 and Schedule 4, these operating cost synergy items were not included as efficiencies under section 96 and the loss of these operating cost synergies as a result of the delay in integration during the Interim Period are additive or incremental to the efficiency items set out above.

██████████ of credit facility fees and ██████████ of bond pre-payment penalties.

100. The aggregate of the lost efficiencies (which also represent synergies)<sup>55</sup> and the incremental lost operating cost synergies that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, as well as the costs required to be incurred by SECURE to facilitate that order, are as follows:



### **CONCLUSIONS**

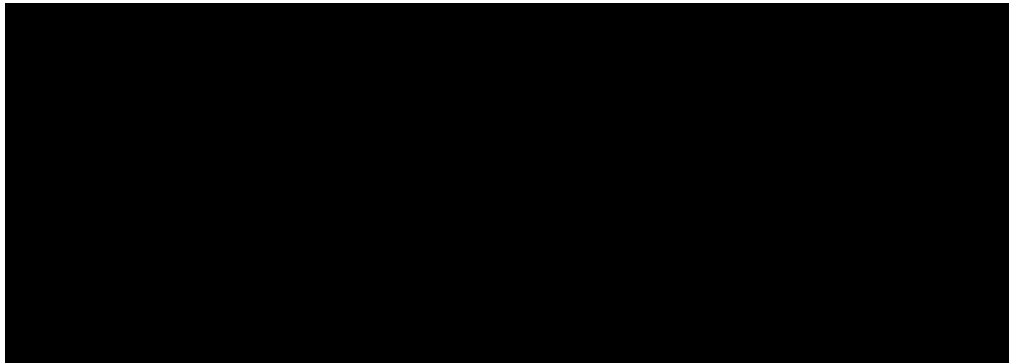
101. For the reasons set out above, my conclusions (as set out previously) are as follows:

- a) It is feasible if so ordered by the Tribunal at the end of the Interim Period, for SECURE to create two viable, independent and effective competitors out of the merged firm that would operate separately at the end of the Interim Period;

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<sup>55</sup> For ease of reference I have included the negative customer trucking cost savings as if they were negative synergies and, accordingly, my conclusions with respect to the synergies lost as a result of the delayed integration are slightly understated and conservative.

- b) If required by the Tribunal, SECURE would be able to sell one of the divisionalized businesses referenced in (a) above, either by itself or through a divestiture trustee, to a buyer or buyers that would operate the acquired business as an independent, viable and effective competitor;
- c) The dollar value of the efficiencies, as defined in Section 96 of the Act and as set out in my June Efficiencies Report, that are likely to be realized as a result of the Transaction are [REDACTED] per year (run rate), [REDACTED] over a 10 year period on an undiscounted basis and [REDACTED] over a 10 year period on a discounted basis<sup>56</sup> and
- d) The dollar value of the efficiencies, as defined in Section 96 of the Act, that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, are as follows:

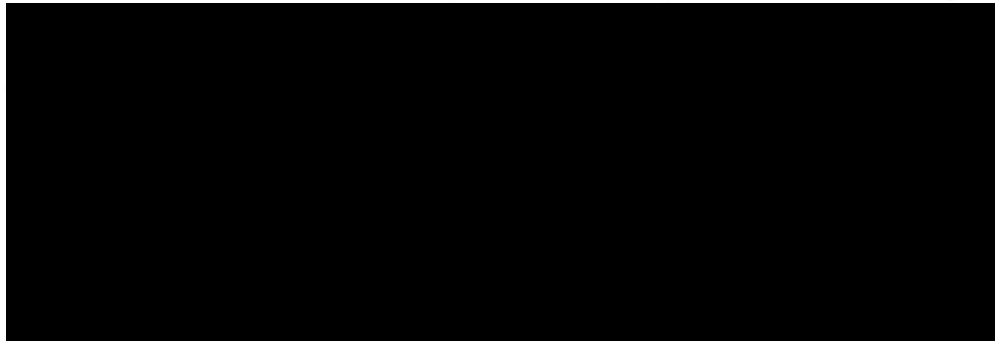


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<sup>56</sup> To assist the reader, all conclusions set out in this affidavit are expressed as point estimates. However, such precision in respect of hypothetical scenarios such as those addressed herein is not realistic. Accordingly, my point estimates should be considered as a range around the point estimate. Based on the information I have reviewed and the assumptions I have adopted, I believe that the conclusions presented herein are appropriate in the circumstances.



In the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application the dollar value of the operating cost synergies that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, as well as the costs required to be incurred to facilitate that order, are as follows:



**SWORN** before me at the City of Toronto,  
in the Province of Ontario on July 14, 2021

A Commissioner for taking affidavits  
Name: Alysha Li (LSO#: 80055G)

Andrew C. Harington





















































































**EXHIBIT "A"**

**Curriculum Vitae of Andrew Harington**

**Sworn before me on July 14, 2021**



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A Commissioner for taking affidavits

Name: Alyscha Li (LSO#: 80055G)



**ANDREW C. HARINGTON CPA, CA, CFA, CBV**  
Principal

Toronto, Canada

+1.416.360.4850

Andy.Harington@brattle.com

I am a Principal in the Toronto office of The Brattle Group, a financial and economic consulting firm headquartered in Boston that answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world. I have provided business and intellectual property valuation and mergers and acquisition advisory services for over 25 years and specialize in:

- Financial aspects of Canadian competition law
- The quantification of loss in commercial litigation and international arbitration disputes
- The quantification of loss and accounting of profits in intellectual property disputes
- The valuation of intellectual property and commercial businesses

I have been qualified as an expert in the valuation of intellectual property and commercial businesses and the quantification of loss and accounting of profits in intellectual property and commercial litigation damages in both the Federal Court of Canada and the Ontario Superior Court of Justice and as an expert in the quantification of efficiencies by the Competition Tribunal of Canada. I have also given evidence before the International Court of Arbitration of the ICC as well as in domestic arbitrations and mediations. I have been recognized in Who's Who Legal as a Global Leader - Experts in Financial Advisory and Valuation – Quantum of Damages since 2020.

## BUSINESS EXPERIENCE

2016 to date	Principal, The Brattle Group
2010 – 2016	Managing Director, Duff & Phelps
2000 – 2010	Partner, Cole & Partners, Toronto
1993 – 2000	Manager, Transaction Advisory Services, Audit and Consulting, Andersen

## PROFESSIONAL MEMBERSHIPS

I am a member of the Canadian Institute of Chartered Accountants, CFA Institute, Toronto CFA Society, the Licensing Executives Society, the Intellectual Property Institute of Canada, the Toronto Intellectual Property Group and the Canadian Institute of Chartered Business Valuators

## EDUCATIONAL QUALIFICATIONS

2005	Chartered Business Valuator
2002	Chartered Financial Analyst
1998	Chartered Accountant (Canada)
1995	Chartered Accountant (South Africa)
1992	Post Graduate Diploma in Accounting (University of Cape Town)
1992	Bachelor of Commerce (Honours) Financial Accounting (University of Cape Town)
1991	Bachelor of Commerce (University of Cape Town)

## SELECTED EXPERIENCE

For over 25 years, I have been providing financial litigation consulting, financial advisory and business and intellectual property valuation services in numerous industries. Selected experience includes<sup>1</sup>:

### In connection with the Canadian Competition Act:

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1. Authored an expert report on behalf of the Competition Bureau and provided expert testimony in front of the Competition Tribunal as to the section 96 efficiencies that would be lost in the event of an sought by the Commissioner following the acquisition by Parrish & Heimbecker, Limited of certain grain elevators and related assets from Louis Dreyfus Company Canada ULC
2. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the waste management industry
3. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the insurance industry
4. Authored an expert report on the quantum of section 96 efficiencies likely to arise from the acquisition of Morton Salt and Windsor Salt by Kissner Group Holdings LP from K+S AG
5. Authored an expert report on the quantum of section 96 efficiencies likely to arise from the acquisition of McInnis Cement by St Mary's Cement Inc., a subsidiary of Votorantim Cimentos SA
6. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the funeral home industry
7. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the trustee services industry
8. Authored an expert report as to whether, absent the acquisition of Total Metal Recovery (TMR) Inc. by American Iron & Metal Company Inc., the business of TMR was likely to fail (<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04528.html>)

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<sup>1</sup> Note that the listed experience does not include active or past engagements where my involvement was not in the public domain or is not known by other parties involved and/or for which authorization to disclose my involvement has not been provided by clients

9. Authored an expert report as to whether the closing of the acquisition of Total Metal Recovery (TMR) Inc. by American Iron & Metal Company Inc. under the terms of the proposed preservation order would preserve the ability of the Competition Tribunal to, if necessary, issue a remedial order
10. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the oil and gas sector
11. Authored an expert report in response to allegations of predatory pricing on behalf of Swoop Inc. and WestJet Airlines Ltd. in connection with a review by the Commissioner of Competition
12. Retained by counsel to assist them in providing legal advice to both merging parties as to the quantum of section 96 efficiencies likely to arise from the acquisition by Enterprise Holdings, Inc. of Discount Car and Truck Rentals Ltd
13. Retained by Commissioner of Competition to review the submissions of the parties and advise as to the quantum of Efficiencies likely to arise as a result of acquisition by Canadian National Railway Company of H&R Transport Ltd. (<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04527.html>)
14. Authored an expert report on behalf of the merging parties as to the quantum of section 96 efficiencies arising from the acquisition by Parmalat Canada Inc. of the natural cheese business of Kraft Heinz Canada ULC
15. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to be lost in the event of a remedial order being proposed by the Commissioner in connection with the acquisition by La Coop fédérée's acquisition of the retail crop inputs business of Cargill in Ontario
16. Retained by counsel to assist them in providing legal advice to both merging parties as to the quantum of section 96 efficiencies likely to arise from a transaction in the chemicals industry
17. Retained by counsel to assist them in providing legal advice to both merging parties as to the quantum of section 96 efficiencies likely to arise from a transaction in the transportation industry

18. Retained by counsel to assist them in providing legal advice to a potential target as to the quantum of section 96 efficiencies likely to arise from a transaction in the airline industry
19. Retained by counsel to assist them in responding to a SIR on behalf of a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the forestry industry
20. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an agreement in the airline industry
21. Retained by counsel to assist them in providing legal advice to a potential acquirer as to whether a proposed transaction exceeds the transaction notification thresholds
22. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the heavy equipment industry
23. Retained by counsel to assist them in providing legal advice to a potential target as to the quantum of section 96 efficiencies likely to arise from an acquisition in the food products industry
24. Retained by Commissioner of Competition to advise in connection with a transaction in the newspaper industry in which failing firm and efficiencies were alleged by the parties
25. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from an acquisition in the forestry sector
26. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the transportation services industry
27. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from an acquisition in the waste management industry
28. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from an acquisition in the media industry

29. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the propane industry
30. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the fisheries sector
31. Retained by counsel to assist them in providing legal advice to a foreign investor as to the interpretation of operating liabilities so as to assess whether the transaction exceeded Investment Canada thresholds
32. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the public exchange industry
33. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from an acquisition in the oil and gas pipeline industry
34. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the acquisition by Superior Plus, LP. of the Retail Propane operations of Gibsons Energy ULC (Canwest) (See <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04307.html>)
35. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the aircraft services industry
36. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the transport industry
37. Retained by Commissioner of Competition to advise them in connection with an investigation in which predatory pricing was alleged to have occurred
38. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the outdoor recreation retail industry
39. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from the home services industry

40. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the acquisition of G&K Services by Cintas Corporation
41. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the proposed merger of Agrium Inc. and Potash Corporation of Saskatchewan Inc. (See <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04305.html>)
42. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the acquisition of Manitoba Telecom Services Inc. (MTS Inc.) by BCE
43. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the proposed acquisition by Superior Plus Corp. of Canexus Corporation (See <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04111.html>)
44. Retained by Commissioner of Competition to advise in connection with a proposed agreement in which efficiencies were alleged by the parties
45. Retained by Commissioner of Competition to advise in connection with a proposed merger in the airline sector in which failing firm and efficiencies were alleged by the merging parties
46. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the construction industry
47. Retained by Commissioner of Competition to advise in connection with the acquisition by Sobeys of the food and gas retail and wholesale operations of Co-op in which failing firm was alleged by the parties
48. Retained by Commissioner of Competition to advise in connection with a proposed merger in the newspaper industry in which failing firm was alleged by the merging parties
49. Retained by counsel to assist them in providing legal advice to a potential acquirer in connection with efficiencies that would likely arise from an acquisition in the newspaper industry

50. Retained by Commissioner of Competition to advise in connection with a proposed merger in the lumber industry in which efficiencies were alleged by the merging parties
51. Retained by Commissioner of Competition to advise in connection with a proposed merger in the sporting goods industry in which efficiencies were alleged by the merging parties
52. Retained by Commissioner of Competition to advise in connection with a proposed merger in the home services industry in which efficiencies were alleged by the merging parties
53. Authored a preliminary expert report as to the quantum of section 96 efficiencies likely to arise from a proposed merger in the television and radio industry and a preliminary expert affidavit in connection with alleged irreparable harm arising from a proposed hold-separate agreement
54. Consulted on financial aspects of assessing the quantitative appropriateness of administrative monetary penalties in the context of alleged unlawful multi-party agreements
55. Retained by parties to prepare a preliminary analysis as to the quantum of section 96 efficiencies likely to arise from a proposed agreement between two competitors in the airline sector
56. Retained by Commissioner of Competition to advise in connection with alleged misleading advertising in the car rental industry
57. Retained by parties to prepare a preliminary analysis as to likelihood of entry in connection with an allegation of a significant prevention of competition likely to arise from a proposed merger in the entertainment industry
58. Authored an expert report on behalf of the Competition Bureau and testified at the Competition Tribunal as an expert in the quantification of section 96 efficiencies that would be lost in the event of an order in connection with the proposed acquisition of Complete Environmental Inc. by Tervita Corporation (formerly CCS Corporation) (CT-2011-002) (2013 FCA 28) (2015 SCC 3)
59. Authored a preliminary expert report as to the quantum of section 96 efficiencies likely to arise from a merger in the paint and coatings industry and a preliminary expert affidavit in connection with alleged irreparable harm

60. Retained by parties to prepare preliminary analysis of section 96 efficiencies arising from a proposed merger in the pharmaceutical information sector
61. Consulted on financial aspects of assessing business incentives in response to allegations of unlawful multi-party agreements
62. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the merger of Suncor Energy Inc. and Petro-Canada
63. Retained by counsel to assist them in providing legal advice to a potential acquirer in connection with efficiencies that would likely arise from the acquisition of a target company in the telecommunications industry
64. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from the proposed acquisition by American Iron & Metal Company Inc.'s of SNF Inc.
65. Co-authored, with Stephen Cole, a preliminary expert report in connection with the acquisition of Canadian Phone Directories Holdings Inc (Canpages) by Yellow Pages Group Inc.
66. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from a merger in the forestry sector
67. Co-authored, with Suzanne Loomer, a preliminary expert report as to the quantum of section 96 efficiencies likely to arise from the acquisition by West Fraser Timber Co. Ltd of Weldwood of Canada Limited
68. Assisted with the preparation of a preliminary expert report and an expert affidavit in connection with alleged irreparable harm arising from a proposed hold-separate agreement in the acquisition by Labatt Brewing Company Limited of Lakeport Brewing Income Fund
69. Assisted with the preparation of a preliminary expert report and an expert affidavit in connection with alleged irreparable harm arising from a proposed injunction in the coatings industry
70. Assisted with the preparation of an expert report for the Commissioner of Competition responding to a plan proposed by merging parties after findings of an anti-competitive merger in The Commissioner of Competition v. United Grain Growers Limited



71. Assisted with forensic investigations in connection with allegations of price fixing under the Competition Act on behalf of an intervenor in the hospital sector
72. Assisted with the analysis of allegations of predatory pricing in the airline sector under the Competition Act on behalf of an intervenor
73. Assisted merging or acquiring parties on financial aspects, including as applicable: efficiencies; failing firm; likelihood of entry; and/or affidavits in connection with section 100/104 applications in response to actual or anticipated competition challenges in mergers, proposed mergers or agreements

### **Commercial and securities litigation and international arbitration:**

74. Authored responding expert report on behalf of Blaney McMurtry LLP in connection with commercial damages alleged by Flip Face, Inc.
75. Authored an expert report and testified as to the flows of funds and regulatory disclosures of GFA World and various relevant charities associated with Believers Eastern Church in connection with the proposed class action filed against GFA World
76. Authored expert report in connection with various valuation matters in connection with convertible debenture financing undertaken by Newterra Group Ltd.
77. Authored expert report in connection with damages for alleged breach of fiduciary duty and passing off
78. Authored affidavit on behalf of Horizon Pharma in connection with a review of the pricing of PROCYSBI® by the Patented Medicine Prices Review Board
79. Assisted counsel on financial matters on behalf of Vice-Admiral Mark Norman in connection with litigation against Her Majesty the Queen in Right of Canada
80. Assisted in the preparation of an expert report on the fair market value of the intellectual property assets of J. Crew Group in connection with litigation between Eaton Vance Management, holders of secured debt of J. Crew Group and J. Crew arising from the restructuring of the ownership of IP assets of the company for purposes of raising new debt

81. Authored responding expert affidavit on behalf of MDG Newmarket Inc, d/b/a Ontario Energy Group in connection with a proceeding under the Class Proceedings Act – 1850/16CP.
82. Provided testimony before the International Court of Arbitration of the International Chamber of Commerce on behalf of Origin & Co., Ltd (Republic of Korea) as to damages being sought by JFI Global Purchasing, Ltd (Barbados) for an alleged breach of contract (ICC Case No: 21763/CYK)
83. Co-authored an expert report on behalf of Atomic Energy of Canada Ltd quantifying financial loss relating to a construction insurance claim in the nuclear reactor sector
84. Authored a limited critique report in the quantification of alleged damages suffered by plaintiffs in the context of a claim by a property developer against a prospective tenant for wrongful inducement.
85. Provided valuation consulting services in the context of litigation between a master and sub-franchisor in the leisure products sector.
86. Assisted in the preparation of an expert report prepared for arbitration on behalf of Ontario Lottery and Gaming Corp. in connection with litigation by the Ontario First Nations Limited Partnership
87. Authored a responding expert report in the quantification of alleged damages suffered by plaintiffs in the context of a class action against investment advisors.
88. Co-authored expert reports on behalf of Atomic Energy of Canada Ltd in response to a claim by Nordion Inc. for alleged commercial damages for termination of a contract to construct two isotope production reactors, including alleged commercial damages alleged suffered as well as quantifying other financial aspects of the parties' positions (<https://ipolitics.ca/2012/09/10/nordion-shares-plummet-after-arbitrators-side-with-aecl/>; <http://www.world-nuclear-news.org/Articles/Settlement-deal-over-MAPLE-cancellation>)
89. Authored expert report on behalf of the plaintiff quantifying alleged damages suffered in connection with litigation relating to alleged wrongful dismissal in the investment management sector
90. Authored expert report on behalf of plaintiff on the economic benefits created by a hydro generation plant in connection with litigation in the power generation sector

91. Authored expert report on behalf of the defendant quantifying alleged damages suffered as a result of the termination of a commercial contract in the forestry sector
92. Authored expert reports quantifying alleged damages suffered by two plaintiffs in connection with litigation relating to alleged wrongful dismissal in the investment management sector
93. Authored expert report on behalf of the plaintiff quantifying alleged damages suffered as a result of the termination of a commercial contract in the music and software wholesaling sector
94. Co-authored an expert report on behalf of the defendant on alleged damages suffered as a result of a construction delay claim in the power generation sector
95. Co-authored expert report with Andrew Freedman on behalf of the municipal defendant on alleged damages suffered as a result of alleged unlawful acts inducing contract in the financial sector
96. Co-authored expert report with Andrew Freedman on behalf of the municipal plaintiff on alleged damages suffered as a result of alleged unlawful acts inducing contract in the financial sector

#### **Intellectual property litigation:**

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97. Authored expert reports and testified on behalf of Rovi Guides, Inc. in the liability phase as to the ability to quantify BCE and Telus' profits in connection with its claims against BCE Inc. et al and Telus Communications Company et al arising from alleged patent infringement.
98. Authored expert reports and testified on behalf of Rovi Guides, Inc. as to the quantum of Videotron's profits in connection with its claim against Videotron Ltd for an accounting of profits arising from alleged patent infringement (under each of the incremental profits principle and the full costs methodology).
99. Authored an expert report for mediation on behalf of Robert Teti and ITET Corporation in connection with its claim against Mueller Water Products Inc.
100. Authored expert reports on behalf of Spin Master Ltd. in connection with its claim against Mattel Canada Inc. for an accounting of Mattel's profits for alleged patent infringement (2019 FC 385).
101. Authored and cross examined on an expert affidavit on behalf of Evolution Technologies Inc. as to the financial impact on the appellant's business arising from the trial judgment in connection with

its application for a stay of the Federal Courts finding that Evolution infringed the patent of Human Care Canada Inc. (2019 FCA 11).

102. Authored expert reports on behalf of Apotex Inc. in connection with its claim against Pfizer Canada Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations (T-1064-13).
103. Authored expert reports on behalf of Mylan Pharmaceuticals ULC in connection with its claim against Takeda Canada Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations (T-85-16).
104. Retained as an expert by defendant in connection with damages and an accounting of profits for alleged patent infringement in the oil & gas sector.
105. Authored expert reports on behalf of Apotex Inc. in connection with its claim against Abbott Laboratories, Limited, Takeda Pharmaceuticals Company Limited and Takeda Pharmaceuticals Americas, Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations and responding reports in connection with counterclaims by Abbott Laboratories Limited et al for an accounting of profits and reasonable royalty damages (CV-09-391938).
106. Retained as an expert by defendant in connection with damages and an accounting of profits for alleged trademark infringement in the telecommunications sector.
107. Retained as an expert by a branded pharmaceutical company in connection with an alleged patent infringement in the pharmaceutical sector.
108. Retained as an expert by defendant in connection with alleged patent infringement in connection with the oil and gas fracking sector.
109. Authored expert affidavit on behalf of a plaintiff in the medical marijuana industry in connection with alleged irreparable harm arising from alleged trade-mark infringement and breach of fiduciary duty in the context of an injunction application.

110. Authored and cross-examined on two expert affidavits responding to allegations of irreparable harm in an injunction application by Sleep Country Canada Inc. in context of alleged trademark infringement by Sears Canada Ltd. in the retail sector (2017 FC 148).
111. Authored expert reports and testified before the Federal Court of Canada on behalf of AFD Petroleum Ltd as to damages, an accounting of profits, and reasonable royalty being sought by Frac Shack Inc for alleged patent infringement in the oil and gas sector (2017 FC 104).
112. Authored an expert affidavit on behalf of the defendants, Aird & McBurney LP et al, in connection with alleged irreparable harm in the context of an injunction application being sought by Sim & McBurney.
113. Authored and cross examined on a responding expert affidavit on behalf of Apotex Inc. in the context of a motion for a bifurcation order being sought by Alcon Canada Inc. in an intellectual property case alleging patent infringement (2016 FC 898).
114. Authored a responding expert affidavit in the context of a motion for further production of documents in an intellectual property case alleging patent infringement.
115. Authored an expert report on behalf of Apotex Inc. in connection with its claim against Pfizer Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations and authored an expert report on behalf of Apotex responding to the quantification of alleged patent infringement damages suffered by Pfizer Inc. (T-1736-10)
116. Authored and cross-examined on affidavit on behalf of Apotex Inc. in connection with a motion sought by Pfizer Canada Inc. for proposed pleading amendments. (T-1736-10)
117. Authored expert reports and testified before the Federal Court of Canada on behalf of Arctic Cat, Inc. as to damages being sought by Bombardier Recreational Products Inc. for alleged patent infringement (2017 FC 207)
118. Authored expert reports and testified before the Ontario Superior Court of Justice on behalf of Exact Furniture Limited as to damages and profits being sought by Video Furniture International Inc. for alleged wrongful use of confidential information (2015 ONSC 3399)

119. Retained as an expert to quantify damages in connection with allegations of patent infringement in the pipeline infrastructure sector
120. Authored expert reports and testified before the Federal Court on behalf of Apotex Inc. as to damages being sought by Eli Lilly and Company for patent infringement (2014 FC 1254)
121. Assisted with the preparation of primary and responding expert reports, depositions and trial testimony in the Delaware Court in connection with valuation of intellectual property rights and allocation of sales proceeds following the bankruptcy of Nortel
122. Authored an expert report on behalf of Apotex Inc. in connection with its claim against Glaxosmithkline Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations. (T-714-08)
123. Authored expert reports and testified on behalf of Apotex Inc. in connection with its claim against Takeda Canada Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations. (2013 FC 1237)
124. Authored and cross-examined on an expert affidavit responding to allegations of irreparable harm in an injunction application by AstraZeneca Canada Inc. in the context of alleged patent infringement by Apotex Inc in the pharmaceutical sector (T-1668-10)
125. Authored expert report on behalf of the plaintiff quantifying alleged damages pursuant to Section 8 of the Patent Medicine (Notice of Compliance) Regulations
126. Authored and cross-examined on expert affidavit responding to allegations of irreparable harm in an injunction application by Target Corp. in context of alleged trademark infringement by Fairweather Ltd. in the retail sector (T-1902-10)
127. Retained to provide financial litigation assistance on behalf of a large multinational aerospace manufacturer in response to alleged misuse of confidential information
128. Co-authored draft expert report on behalf of branded pharmaceutical company in connection with alleged patent infringement by another branded pharmaceutical company

129. Authored, and in some cases cross-examined on, affidavits in connection with motions for proposed pleading amendments , bifurcation, further production of information, motion to strike and other matters in the context of litigation where my involvement is not in the public domain.

### **Bankruptcy and restructuring related litigation:**

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130. Authored expert report analyzing flows of funds and regulatory disclosures of GFA World and various relevant charities associated with Believers Eastern Church in connection with the proposed class action filed against GFA World while under creditor protection
131. Assisted in the preparation of an expert report on the fair market value of the intellectual property assets of J. Crew Group in connection with litigation between Eaton Vance Management, holders of secured debt of J. Crew Group and J. Crew arising from the restructuring of the ownership of IP assets of the company for purposes of raising new debt
132. Assisted with the preparation of primary and responding expert reports, depositions and trial testimony in the Delaware Court in connection with valuation of intellectual property rights and allocation of sales proceeds following the bankruptcy of Nortel
133. Assisted in advising a stakeholder in connection with the restructuring of the specialty television channels of Canwest Media in connection with a dispute with Goldman Sachs
134. Authored expert report and testified at arbitration on the quantum of cost savings obtained in the bankruptcy and subsequent restructuring of Air Canada
135. Operational assessment and restructuring of Venator Group (now Footlocker)

## Intellectual property valuation and transfer pricing:

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136. Authored valuation reports in connection with the cross-border transfer of businesses and all forms of intellectual property in the context of global business restructuring of multi-national businesses in various sectors, including:
  - commercial financing
  - consumer staples manufacturing
  - electrical distribution technology
  - locomotive engine manufacturing
  - military technology
137. Authored report on behalf of a company in the oil sector in connection with an anticipated valuation challenge by Canada Revenue Agency.
138. Provided consulting services to a company in the oil and gas sector as to reasonable royalty rates for cross licensing intellectual property
139. Provided assistance with the preparation of an expert report in connection with litigation between Canada Revenue Agency and R. Daren Baxter relating to a valuation of software and algorithms underlying S&P commodity future trading structure.
140. Provided assistance with the preparation of an expert report in connection with litigation between Canada Revenue Agency and GE Capital Canada Inc. relating to the valuation of an inter-corporate guarantee.
141. Authored reports as to royalty rates for cross border licensing of intellectual property between non-arms length parties within multi-national enterprises for purposes of section 247 of the *Income Tax Act* and compliance with OECD.
142. Authored transfer pricing studies for income tax purposes in connection with cross border pricing of transactions between non-arms length parties within multi-national enterprises in the high tech sector for purposes of section 247 of the *Income Tax Act* and compliance with OECD.
143. Authored in excess of 100 reports valuing various forms of intellectual property, including patents, brands, trade-marks, know-how, customer relationships and goodwill for companies in a variety of



sectors including: actuarial services, directory publishing , employer services, financial planning software , food products , mining , oil and gas, real estate services, residential and commercial door manufacturing, software services, spa manufacturing and technology manufacturing.

### **Valuation of commercial interests:**

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144. Authored numerous reports in connection with of the valuation of companies operating in various sectors, including:
  - analytical laboratory services
  - directory publishing
  - portfolio valuation of private equity portfolio, primarily hotels
  - portfolio valuation of private equity technology portfolio
  - portfolio valuation of private equity diversified portfolio (five years)
  - energy marketing services
  
145. Authored or co-authored fairness opinions in connection with transactions in various sectors, including (note that these items are also included in Transaction Advisory):
  - internalization of management contracts in the real estate sector
  - directory services
  - oil and gas management services
  - financial services
  - investment management
  - real estate software
  
146. Authored or co-authored reports responding to fairness opinions in connection with transaction in various sectors, including (note that these items are also included in Transaction Advisory):
  - paper and pulp manufacturing
  - retail department stores

## **Business consulting engagements:**

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147. Preparation of a report to the Board of Directors in the brewing industry opining as to whether the terms of a commercial contract had been complied with
148. Business consulting projects (incorporating business viability analyses) in connection with, amongst others:
  - operational efficiency review and restructuring of a retail department store chain
  - operational assessment and restructuring of Venator Group (now Footlocker)
  - restructuring of an airline
  - start-up of mid-stream gas refinery
149. Business viability analysis:
  - the feasibility of a start-up charter airline
  - feasibility and restructuring of a plastics manufacturer
  - the feasibility of an apparel manufacturer
  - optician practice
  - operational efficiency review and restructuring of a retail department store chain
  - wholesale distributor
150. Advisory services to the Ontario Ministry of Health and Long-Term Care in connection with the design and implementation of a reporting / monitoring system to achieve the objectives of Bill 102 - An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act

## **Transaction advisory:**

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151. Provision of M&A acquisition advisory services, due diligence and post-merger integration in a variety of business sectors, including:
  - apparel manufacturer
  - apparel retailing
  - animated television and feature film
  - collectibles retailing
  - commercial and educational video
  - construction equipment
  - construction supplies
  - equipment financing

- health services
  - hospitality – hotel
  - hospitality – restaurant
  - jewelry manufacturing and retailing
  - laser measurement services
  - oil and gas midstream and downstream
  - printing services
  - real estate appraisal and related services
  - windshield manufacturing
152. Preparation of post-transaction root cause analysis of failure to achieve synergy targets in the context of a valuation
153. Authored or co-authored fairness opinions in connection with transactions in various sectors, including (note that these items are also included in Valuation of Commercial Interests):
- internalization of management contracts in the real estate sector
  - directory services
  - oil and gas management services
  - financial services
  - investment management
  - real estate software
154. Authored or co-authored reports responding to fairness opinions in connection with transaction in various sectors, including (note that these items are also included in Valuation of Commercial Interests):
- paper and pulp manufacturing
  - retail department stores

## ARTICLES, PRESENTATIONS AND OTHER PUBLICATIONS

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I have authored numerous publications as well as articles for professional journals and have spoken at professional and academic conferences. Publications and representative presentations include:

### Publications

1. Contributing author of *Brand Value Special Task Force Report – February 2020* published by INTA, International Trademark Association
2. Lead author of *Calculating Monetary Remedies in Intellectual Property Cases in Canada – a Reference Book of Principles and Case Law – 2018 Edition*
3. Co-author of chapter on Monetary Relief – Quantum in the looseleaf publication *Intellectual Property Disputes: Resolutions and Remedies* edited by Ronald E. Dimock and published by Carswell in 2012, addressing both damages and accounting of profits
4. Co-author of two monographs “Damages Calculations in Intellectual Property Cases in Canada” and “Accounting of Profits Calculations in Intellectual Property Cases in Canada” published in 2012
5. Author of article entitled “Enhancing Synergy Realisation” published by *Financier Worldwide* in 2006
6. Co-author of monograph “Sharing Synergies” published in 2003

### Lectures and presentations

7. March 2021 Canadian Bar Association Panel Discussion on the Section 96 Efficiencies Defense with John MacGregor and Nadia Soboleva, moderated by David Dueck
8. November 2020 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
9. November 2020 Ryerson University guest lecturer on business and litigation aspects of intellectual property

10. October 2020 York University Osgoode Hall Law School guest lecturer with Dr. Renée Duplantis on sections 92, 93 and 96 of the *Competition Act*
11. November 2019 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
12. March 2019 Ryerson University guest lecturer on business and litigation aspects of intellectual property
13. November 2018 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
14. November 2017 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
15. March 2017 Ryerson University guest lecturer on business and litigation aspects of intellectual property
16. February 2017 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
17. November 2016 Canadian Bar Association International Committee Panel Discussion on Dis-Synergies? Analyzing Efficiencies in Cross-Border Mergers with Trevor McKay, Andrew Lacy and Margaret Sanderson, moderated by Navin Joneja
18. June 2016 IPIC Webinar on Patent Case Law Review - Remedies with Trent Horne
19. March 2016 Ryerson University guest lecturer on business and litigation aspects of intellectual property
20. February 2016 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
21. January 2016 Canadian Bar Association Panel Discussion on the Section 96 Efficiencies Defense with Neil Campbell and Margaret Sanderson, moderated by Richard Annan

22. December 2015 Ontario Bar Association Panel Discussion on Intellectual Property Remedies – What Do You Need to Know? with Andrew Shaughnessy and Sangeetha Punniyamoorthy, moderated by Cameron Weir
23. October 2015 International Trademark Association (INTA) guest roundtable speaker on the valuation of brands
24. February 2015 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
25. November 2014 and January 2015 Competition Bureau guest lecturer on financial analysis in the context of competition reviews
26. June 2014 Licensing Executives Society, Toronto Chapter, titled Crossing the Border: The Intersection of Taxation and IP with Brandon Siegal, McCarthy Tetrault on business, valuation, income tax and litigation aspects of intellectual property
27. March 2014 Osgoode Hall Law School, York University guest lecturer on Administration of Civil Justice: Issues in Assessment of Litigation and Regulatory Risk
28. February 2014 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
29. May 2013 Acumen Financial Conference (on valuation of intellectual property)
30. March 2013 Federated Press 3rd Advanced Valuation Course (on valuation of intellectual property)
31. February 2013 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
32. October 2012 Intellectual Property Institute of Canada's 86<sup>th</sup> Annual Meeting in Vancouver (panel on The Basic Principles for Calculating Patent Damages)
33. May 2012 Tax Executive Institute's 46th Annual Canadian Tax Conference in Gatineau (panel on Tax and Valuation Issues in Restructuring Global Business Operations)

**EXHIBIT "B"**

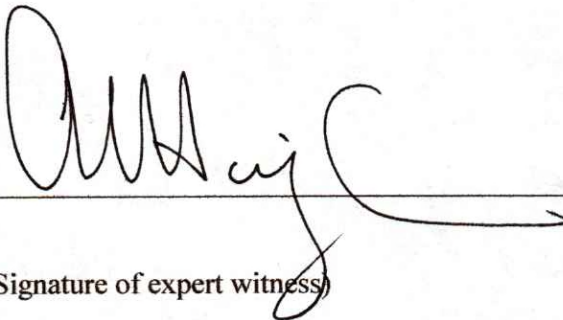
**Acknowledgement of Expert Witness**

I, Andrew Harington, acknowledge that I will comply with the Competition Tribunal's code of conduct for expert witnesses which is described below:

1. An expert witness who provides a report for use as evidence has a duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.
2. This duty overrides any duty to a party to the proceeding, including the person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

\_\_\_\_\_  
July 14, 2021

(Date)

  
\_\_\_\_\_  
(Signature of expert witness)

**Sworn before me on July 14, 2021**

  
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A Commissioner for taking affidavits

Name: Alysha Li (LSO#: 80055G)















































































































































































































































































































































































































































































































*Jonathan Hood*

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Exhibit "I" to the Affidavit of  
Mallory Kelly  
Affirmed January 21, 2022

CT-2021-

THE COMPETITION TRIBUNAL

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

**AND IN THE MATTER OF** the proposed acquisition of Tervita Corporation by Secure Energy Services Inc.;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to 92 of the *Competition Act*;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to section 104 of the *Competition Act*;

TR/am

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.  
TERVITA CORPORATION

Respondents

- - - - -

This is the Cross-Examination via videoconference of ANDY HARINGTON on his Affidavit sworn the 14th day of July, 2021, taken at the offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, Toronto-Dominion Centre, 222 Bay Street, Toronto, Ontario, on the 20th day of July, 2021

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CT-2021-002

**THE COMPETITION TRIBUNAL**

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

**AND IN THE MATTER OF** the acquisition of Tervita Corporation by Secure Energy Services Inc.;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to 92 of the *Competition Act*;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an interim order pursuant to section 104 of the *Competition Act*;

**B E T W E E N:****COMMISSIONER OF COMPETITION****Applicant****- and -****SECURE ENERGY SERVICES INC.****Respondent**

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**MOTION RECORD OF THE COMMISSIONER OF  
COMPETITION**

*(For Answer to Questions from the Examination of  
Discovery of Secure Energy Services Inc.)*

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**ATTORNEY GENERAL OF CANADA**

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Competition Bureau Legal Services  
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50 Victoria Street, 22<sup>nd</sup> Floor  
Fax: 819.953.9267

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Counsel to the Commissioner of Competition