



*Commissioner of Competition v Secure Energy Services Inc.* (CT-2021-002)

**INFORMATION NOTE: March 3<sup>rd</sup>, 2023**

The Competition Tribunal today granted in part the application brought by the Commissioner of Competition (the “**Commissioner**”) against SECURE Energy Services Inc. (“**Secure**”) pursuant to the merger provisions in section 92 of the *Competition Act*, RSC 1985, c C-34, as amended (the “**Act**”).

In the application, the Commissioner alleged that Secure’s July 2021 acquisition of Tervita Corporation (“**Tervita**”) substantially lessened competition in approximately 143 distinct relevant markets for the supply of three different types of oilfield waste disposal services in Western Canada. To remedy that ongoing situation, the Commissioner sought the divestiture of 41 facilities previously owned by Tervita.

The Tribunal agreed with the Commissioner’s allegation with respect to 136 of the 143 relevant markets. The Tribunal also found that the divestiture of 29 of the facilities identified by the Commissioner would suffice to restore competition to the requisite standard. Those facilities are identified in Appendix 1, attached.

Finally, the Tribunal determined that Secure did not meet the requirements of the efficiencies defence that it invoked pursuant to section 96 of the Act.

In the course of rejecting Secure’s efficiency defense, the Tribunal found that Secure failed to meet its burden regarding (i) its claimed cost savings pertaining to facility rationalizations, and (ii) some of its claimed “corporate cost savings”. Consequently, Secure was only able to demonstrate total cognizable gains in efficiency of approximately \$32,205,813, in net present value (“**NPV**”) terms. The annualized equivalent amount is \$4,618,433. These are the efficiencies that would not likely be attained if the Tribunal’s order were made (the “**Foregone Efficiencies**”).

For his part, the Commissioner was able to demonstrate anti-competitive effects (also known as the deadweight loss to the economy (“**DWL**”)) with an NPV of between approximately \$30,219,522 and at least \$39,354,443. The annualized equivalent of this range is \$4,333,591 to at least \$5,643,572. This DWL is comprised of adverse price/output effects (\$654,991 to at least \$1,964,972 annually) and adverse non-price effects (approximately \$3,678,600, annually). The latter effects consist of increased transportation costs that Secure’s customers will likely have to pay as a result of Secure’s closure of a significant number of facilities.

It follows that Secure was not able to demonstrate that its acquisition of Tervita (the “**Merger**”) is likely to bring about Foregone Efficiencies that will be greater than, and will offset, the effects of any lessening of competition that is likely to result from the Merger, as required by section 96.

The Tribunal is working with the Commissioner and Secure to identify the competitively sensitive information in its decision that will be redacted from the public version. It expects to be in a position to issue that version of its decision in approximately three weeks.

The Tribunal panel was composed of Chief Justice Paul Crampton (Presiding Member), Justice Denis Gascon and Lay Member Dr. Ted Horbulyk.

**Appendix 1 – Summary of Tribunal’s divestiture findings by facility**

<b>Divestiture Required</b>			<b>Divestiture Not Required</b>		
<b>#</b>	<b>Facility<sup>1</sup></b>	<b>Type</b>	<b>#</b>	<b>Facility</b>	<b>Type</b>
1	Brazeau	TRD <sup>2</sup>	1	Boundary Lake	TRD
2	Buck Creek	TRD	2	Coronation	TRD
3	Elk Point	TRD	3	Eckville	TRD
4	Fort McMurray	TRD	4	Grande Prairie Industrial	TRD
5	Fox Creek East	TRD	5	Green Court	TRD
6	Fox Creek (Bigstone and HT)	TRD	6	Gull Lake	TRD
7	Gordondale	TRD	7	Mitsue	TRD
8	Judy Creek	TRD	8	Niton Junction	TRD
9	Kindersley	TRD	9	Valleyview	TRD
10	La Glace	TRD			
11	Silverberry	TRD	10	Swan Hills	SWD
12	South Taylor	TRD			
13	South Wapiti	TRD	11	Fox Creek	Landfill
14	Spirit River	TRD	12	Marshall	Landfill
15	Stauffer	TRD			
16	West Edson	TRD			
17	Willesden Green	TRD			
			<b>Notes:</b> 1. These facilities were all formerly owned by Tervita. 2. Treatment, Recovery and Disposal facility. 3. Stand-alone Water Disposal well.		
18	08-09	SWD <sup>3</sup>			
19	Kakwa	SWD			
20	Mile 103	SWD			
21	Moose Creek	SWD			
22	Elk Point	Landfill			
23	La Glace	Landfill			
24	Silverberry	Landfill			
25	South Wapiti	Landfill			
26	Spirit River	Landfill			
27	Willesden Green	Landfill			
28	Lindbergh	Cavern			
29	Unity	Cavern			