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Tervita’s ACQUISITION OF COMPLETE ENVIRONMENTAL INC. (A)[[1]](#footnote-1)

Ken Mark wrote this case under the supervision of Professor Brandon Schaufele solely to provide material for class discussion. The authors do not intend to illustrate either effective or ineffective handling of a managerial situation. The authors may have disguised certain names and other identifying information to protect confidentiality.

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On January 26, 2011, Melanie Aitken, Commissioner of Competition at the Canadian Competition Bureau (Competition Bureau), announced that the Competition Bureau would seek an order to dissolve CCS Corporation’s (Tervita’s) acquisition of Complete Environmental Inc. (Complete). Prior to its acquisition by Tervita, Complete had received regulatory approval to operate a secure landfill site on its Babkirk facility in Northeastern British Columbia (NEBC).

A complaint about the purchase was filed by SECURE Energy Services Inc. (SECURE), one of Tervita’s competitors. The complaint claimed that the price Tervita paid for Complete was well above fair market value, and that the purchase would eliminate a competitor in the NEBC market.

The question was whether the Competition Bureau should challenge Tervita’s acquisition. According to the complaint, the acquisition would lower or eliminate competition in the region. At the time, only two secure landfills operated in NEBC: Silverberry and Northern Rockies. Both sites were owned by Tervita, a large diversified company. Tervita provided a wide range of waste management, recovery, and disposal services to the North American oil and gas industry. Aitken seemed to agree, stating:

(Tervita’s) purchase of the Babkirk Secure Landfill prevents competition substantially. By purchasing, rather than face competing with the Babkirk Secure Landfill, CCS will prevent the entry of competition into the market for secure hazardous waste disposal in Northeastern British Columbia.[[2]](#footnote-2)

In addition to the two landfill sites owned by Tervita, two other secure landfill sites had been granted regulatory approval to operate: Babkirk and Peejay. The Babkirk facility, which was granted approval in February 2010, was located a 90-minute drive from the Silverberry facility (see Exhibit 1). The Peejay secure landfill project, which was approved in 2008, was not yet operational; in fact, construction had not even started.

The Competition Bureau, as part of the challenge, would evaluate the economics underlying Tervita’s decision to pay a premium price for Complete. It would also need to determine whether the acquisition violated the *Competition Act,* or whether the complaint was merely a frivolous case of “sour grapes,” an expression of anger by SECURE stemming from its own failure to acquire Complete. Observers wondered if the Competition Bureau had a strong legal and economic case.

**CANADIAN COMPETITION ACT**

The Government of Canada cited its reasons for enacting the *Competition Act* as follows:

To promote the efficiency and adaptability of the Canadian economy, expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and [to] provide consumers with competitive prices and product choices.[[3]](#footnote-3)

The act was the federal legislation governing competition law in Canada. Its enforcement and administration were performed by the Competition Bureau, with cases adjudicated by the Competition Tribunal. Headed by the commissioner of competition, the Competition Bureau was an independent law enforcement agency of the federal government. The Competition Bureau’s main operating assumption was that competition was good for both business and consumers.

In the evaluation of the Tervita case, the Competition Bureau focused on sections 92 and 96 of the act. Section 92 stated that the commissioner could challenge a merger if the “merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially.”[[4]](#footnote-4) The words “prevents” and “lessens” were pivotal in this section. When any firm acquired a competitor—or future competitor—the Competition Bureau could argue that the proposed or completed merger be disallowed or dissolved on the premise that the combination of the two firms would substantially prevent or lessen competition. This lessening or prevention of competition could be either immediate or occurring in the future.

Section 96 then placed conditions, or limitations, on the scope of section 92. Section 96 was known as the efficiencies clause. It stated that the merger should be allowed to proceed if it was “likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is likely to result from the merger.”[[5]](#footnote-5) Section 96 went on to state that the merger was allowed to proceed if the anticipated gains were not possible without the completion of the merger.

**NORTHEASTERN BRITISH COLUMBIA SECURE LANDFILL MARKET**

Hazardous waste generated by the oil and gas industry, located in the Western Canadian Sedimentary Basin (WCSB), created demand for secure landfills in NEBC. The WCSB stretched from NEBC through to Manitoba. The oil and gas industry contaminated the soil with crude oil, salt water, refined fuels, metals and drilling waste, and other toxic materials. Hazardous waste was not allowed in regular landfills. Regulations required that hazardous waste be remediated onsite or disposed of in secure landfills.

Secure landfills featured polyethylene liners as the primary containment layer plus an engineered clay liner as the secondary containment layer. Waste liquids leaching from the deposits were collected and processed before final disposal. In addition, devices monitored the quality of ground water around the site to ensure that hazardous waste did not contaminate the surrounding soil and aquifers.

Some hazardous waste from the oil and gas industry could be remediated on the actual drilling site. This process was referred to as onsite remediation. For example, contaminated soil could be treated and sifted to encourage the breakdown of contaminants by natural microbes. However, onsite remediation was less effective than disposal in a secure landfill. It was also more costly in NEBC, due to the cold climate. Therefore, the majority of hazardous waste from oil and gas activity in this region was shipped to a secure landfill site.

There were two costs associated with disposal of hazardous waste. First, the waste needed to be transported to a disposal site, for a cost of approximately CA$4[[6]](#footnote-6) per tonne-hour. Total transportation costs were calculated on a round-trip basis. Landfill sites, such as Silverberry, took transportation costs into account when negotiating with customers. Second, once the waste was taken to a secure landfill facility, tipping fees were charged, for a cost of approximately $18 per tonne. Tipping fees varied by customer, and volume discounts applied in some cases. Tervita’s book rates and average tipping fees varied by landfill site.[[7]](#footnote-7)

Secure landfill site operators normally offered discounts on tipping fees to attract business to their site, especially if competition was strong in the region. Tervita tended to charge lower tipping fees at sites located near competitors and higher tipping fees at sites located farther from competitors.[[8]](#footnote-8)

The two secure landfills operating in NEBC were both owned by Tervita, and both were located in the heart of the oil and gas region of NEBC. The Silverberry site was 50 kilometres (km) northwest of Fort St. John; the Northern Rockies site was 20 km south of Fort Nelson. The distance between the two sites was 340 km (see Exhibit 1).

The nearest competitors to the Silverberry and Northern Rockies landfill sites were located in the province of Alberta. The Newalta Fairview landfill was 246 km from Silverberry, for an eight-hour round trip, and 562 km away from Northern Rockies, for a 16-hour round trip. The South Grande Prairie landfill was 290 km from Silverberry, for an eight-hour round trip, and 606 km from Northern Rockies, for a 16.5-hour round trip.[[9]](#footnote-9)

As noted earlier, two other secure landfill sites were granted approval to operate. The Babkirk facility, owned by Complete, was granted approval in February 2010. The Peejay Secure Landfill project, owned by Doig River Environmental, was approved in 2008 but was not yet operational. The Peejay site was located in a remote region not easily accessible by customers. With a round trip of seven and a half hours, the site was too far away to have an impact on the business of the Babkirk facility.

The Peejay site, which was a round trip of 16 hours from Northern Rockies,[[10]](#footnote-10) was estimated to cost $4 million in capital expenditures to become an operational secure landfill. Typical costs to develop a secure landfill site ranged from $2 million to $7 million, and construction time was about four months. These costs included preparing the site, putting in a liner, and building infrastructure such as roads, offices, and gates.[[11]](#footnote-11) In January 2011, construction had not yet started at the Peejay site.

Two additional secure landfill sites had been proposed in NEBC, but both applications were rejected. SECURE attempted to obtain a secure landfill permit for its Heritage Project near Tupper, British Columbia. After three years and $1.3 million in expenses, continued public opposition to the Heritage application led to its rejection in 2010. Tervita also attempted to open another landfill in Bessborough, near Dawson Creek, British Columbia. Similar opposition to the Heritage Project led Tervita to abandon the site three years into the permitting process.

Several oil and gas companies in NEBC chose to ship their hazardous waste to secure landfill sites outside the area, particularly to locations in Alberta, as well as to other secure landfill sites such as Spirit River and LaGlace, owned by Tervita.

**Tervita**

David P. Werklund co-founded Tervita in 1979 under the name Concord Well Servicing. Originally, the company was a privately owned firm based in Alberta. In 1984, it was renamed Canadian Crude Separators Corporation. In 2012, after growing into a conglomeration of 12 companies that specialized in energy and environmental waste, Canadian Crude Separators adopted the name Tervita. Tervita catered to companies in Canada and the United States, offering various services including oil field waste disposal, landfill remediation, demolition, metals recycling, water treatment, civil and environmental construction, oil sands exploration, construction drilling, and oil spill clean-up. The company owned and operated 18 hazardous waste landfills in Canada, as well as several waste disposal facilities in both Canada and the United States. Tervita employed over 3,000 people and generated $2.79 billion in revenue in 2010.[[12]](#footnote-12)

At the time of its acquisition of Complete, the residual capacity at the Silverberry site was about 4.5 million tonnes, which was sufficient for several years of operation based on the projected growth in waste disposal volumes in NEBC.[[13]](#footnote-13) Information about the remaining capacity at the Northern Rockies site was not publicly available.

In late 2010, Tervita began talks with Complete, a privately owned company that was operating a waste disposal service on a former landfarming site.[[14]](#footnote-14) Complete’s most attractive asset was its permit to operate a secure landfill site in the Babkirk facility. The site had 750,000 tonnes of permitted capacity and could remediate about 90,000 tonnes of contaminated soil.[[15]](#footnote-15)

**Complete Environmental**

In 1998, a landfarming site was opened on what is now the Babkirk site. The land was acquired in April 2009 by Karen Baker, Ronald Baker, Kenneth Watson, Randy Wolsey, and Thomas Wolsey. Complete spent $300,000 over four years to obtain a secure landfill permit for the Babkirk site.[[16]](#footnote-16) Complete did not have experience in the design, development, or operation of secure landfills. In contrast to Tervita’s large workforce, Complete had only a handful of employees, some of whom were part-time workers.

**SECURE Energy Services**

SECURE was one of Tervita’s main competitors in the NEBC and Albertan secure landfill markets. In November 2007, SECURE opened its South Grande Prairie landfill in Alberta, a round-trip distance of two and a half hours from Tervita’s LaGlace, Alberta site. Immediately upon the opening of this site, Tervita’s tipping fees at LaGlace dropped by 22 per cent. SECURE subsequently opened its Willesden Green landfill, which was a round trip of two hours away from Tervita’s Rocky Mountain House facility. Tipping fees at Rocky Mountain House—for contaminated soil—dropped by 17 per cent when the Willesden Green site opened.[[17]](#footnote-17)

**BASIC ECONOMICS UNDERLYING THE RECOMMENDATION**

Most economic analyses began with a model of perfect competition. In a perfect competition environment, there were several assumptions: all companies offered homogenous products; prices equalled marginal costs; the market had low barriers to entry and exit; and there were many suppliers, each with relatively small market shares. Perfect competition implied that while the market demand curve sloped downward, any given firm’s demand curve was perfectly flat. The Competition Bureau dismissed the perfectly competitive model. Negotiated prices and few companies at the NEBC landfill sites immediately ruled it out as a reasonable option.

At the other end of the spectrum from perfect competition was a monopoly, a model where a single firm controlled the entire market. In a monopoly, one firm had the ability to unilaterally set prices without worrying about adverse consequences from competition. Because consumers were willing to pay more for goods and services as quantity decreased, monopolists set prices above the perfectly competitive level. Higher prices meant that the monopolist would lose some portion of its sales (lower quantity), but that it earned more money on each sale that the company made. Based on the trade-off between lost sales and higher revenues on the remaining sales, monopolists chose to price goods and services at the point where marginal revenues equalled marginal costs. However, the willingness of several NEBC oil companies to ship their hazardous waste to Alberta suggested that the monopoly framework did not apply in this situation.

The Competition Bureau understood the economic building blocks of perfect competition and monopoly, however, in the real world markets usually sat at a point between the two extremes. Neither perfect competition nor monopoly adequately described the NEBC secure landfill market. In economics, markets were usually defined according to two dimensions: a set of products or services and the geographic area served. The NEBC and Northern Alberta secure landfill market included several landfill sites, each offering very similar services. The largest source of differentiation between the competitors was the distance needed to transport the contaminated soil and other hazardous waste (i.e., the location or geographic area). Given that the firms were differentiated by the distance that customers needed to travel, an alternative analytical framework was required.

Oligopoly was a third possible option to define the NEBC market. The Cournot model of oligopoly, also known as “quantity-setting behaviour,” described competitors as working independently to maximize profits by finding an equilibrium level of production. For example, each firm chose a quantity, or level of output, based on the other firms’ quantity choices. Alternatively, Bertrand competition, known as the “price-setting behaviour,” could apply. In this case, competitors found equilibrium in the market by setting prices for their products conditionally, based on all other competitors’ price decisions.

Beyond the basics of market structure—perfect competition, monopoly, or oligopoly—there were a range of additional factors that itneeded to consider. For example, exactly what role did geographical space or location play in Tervita’s acquisition? Was there a way to explicitly incorporate distance into the analysis? Also, how broadly should it define the NEBC secure landfill market geographically? How might this definition affect the analysis of Tervita’s acquisition? Specifically, would the acquisition result in a significant lessening or prevention of competition? Further, what about future competitors? Were there barriers preventing other firms from entering the NEBC market? The potential for future entrants could drastically alter the recommendation. For example, prior to Tervita’s acquisition of Complete, one expert estimated that opening the Babkirk secure landfill facility would prompt average tipping fees in NEBC to drop by at least 10 per cent—potentially more.[[18]](#footnote-18)

**DECISION**

The facts were that Tervita paid $6.1 million for this facility, a small operation which handled normal, non‑secure waste. Given the price paid, it could be argued that a large part of the value in Babkirk was its secure landfill permit. Attaining a secure landfill permit could cost the requesting company several hundred thousand dollars and could take several years. The Competition Bureau learned of the impending merger in early December 2010, when Tervita notified the bureau, even though it was not mandatory to do so.

Observers noted that the Competition Bureau would need to review the evidence to see if there was enough to bring a case against Tervita. It would need to have a recommendation based on solid economic theory.

Exhibit 1: The Landfill Sites and the Babkirk Site



Source: Created by case authors.

1. This case has been written on the basis of published sources only. Consequently, the interpretation and perspectives presented in this case are not necessarily those of the Canadian Competition Bureau, CCS Corporation, Complete Environmental Inc., or any of their employees. [↑](#footnote-ref-1)
2. “Archived—Competition Bureau Challenges BC Landfill Merger,” Government of Canada, January 26, 2011, accessed June 3, 2017, www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03343.html. [↑](#footnote-ref-2)
3. “What Is the Competition Act?” Competition Bureau of Canada, 2016, accessed June 21, 2016, www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\_00148.html#competition. [↑](#footnote-ref-3)
4. “Competition Act (R.S.C., 1985, c. C-34),” Government of Canada, Justice Laws Acts, accessed June 21, 2016, www.laws.justice.gc.ca/eng/acts/C-34/FullText.html. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. All currency amounts are in Canadian dollars unless otherwise specified. [↑](#footnote-ref-6)
7. Michael Baye, *“*Competition Tribunal – Between: The Commissioner of Competition and CCS Corporation, Complete Environmental Inc., Babkirk Land Services Inc., Karen Louise Baker, Ronald John Baker, Kenneth Scott Watson, Randy John Wolsey, and Thomas Craig Wolsey,” September 2011, 22. [↑](#footnote-ref-7)
8. Ibid., 30. [↑](#footnote-ref-8)
9. Ibid., 13–14. [↑](#footnote-ref-9)
10. Ibid., 15. [↑](#footnote-ref-10)
11. Ibid., 40–41. [↑](#footnote-ref-11)
12. Ibid.,1. [↑](#footnote-ref-12)
13. Ibid.*,* 37. [↑](#footnote-ref-13)
14. Land farming is a type of bioremediation, which entails introducing microbes into the soil mound and turning the soil every so often to aerate it in order for the microbes to erode the hazardous waste; Government of Canada, *Federal Contaminated Sites Action Plan (FCSAP): Federal Guidelines for Landfarming Petroleum Hydorcarbon Contaminated Soils,* March 2006, accessed May 6, 2017, www.federalcontaminatedsites.gc.ca/B15E990A-C0A8-4780-9124-07650F3A68EA/Landfarming\_en.pdf. [↑](#footnote-ref-14)
15. Michael Baye, op. cit.*,* 36. [↑](#footnote-ref-15)
16. Ibid., 40. [↑](#footnote-ref-16)
17. Ibid., 53. [↑](#footnote-ref-17)
18. Ibid.*,* 7. [↑](#footnote-ref-18)