

Court File No. 09-8482-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF BRAINHUNTER INC.,
BRAINHUNTER CANADA INC., BRAINHUNTER
(OTTAWA) INC., PROTEC EMPLOYMENT SERVICES
LTD., TREKLOGIC INC.

APPLICANTS

THIRD REPORT OF THE MONITOR
DATED JANUARY 21, 2010

INTRODUCTION

1. By Order of this Honourable Court dated December 2, 2009 (the "Initial Order"), Brainhunter Inc. (the "Company"), Brainhunter Canada Inc., Brainhunter (Ottawa) Inc., Protec Employment Services Ltd., and TrekLogic Inc. (collectively, the "Applicants" or "Brainhunter"), obtained protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"). The CCAA proceeding with respect to the Applicants is referred to herein as the "CCAA Proceeding".
2. Pursuant to the Initial Order, Deloitte & Touche Inc. ("Deloitte") was appointed monitor of the Applicants as part of the CCAA Proceeding (the "Monitor"). Pursuant to the Initial Order, all proceedings against the Applicants were stayed until December 31, 2009, or such later date as this Court may order. A copy of the Initial Order is attached as Exhibit "A".
3. By Order dated December 11, 2009 (the "Bid Process Order"), this Honourable Court approved the Agreement of Purchase and Sale dated December 1, 2009 (the "Stalking

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Horse APA”) between the Applicants as Vendors and TalentPoint Inc., 2223945 Ontario Limited, 2223947 Ontario Limited and 2223956 Ontario Limited as purchasers (together, the “Stalking Horse Purchasers”) and Raj Singh pursuant to which the Stalking Horse Purchasers shall purchase substantially all of the assets of the Vendors. Pursuant to the Bid Process Order, the Stalking Horse APA was approved as a stalking horse bid under the sale process and auction procedures (the “Bid Process”) attached as Schedule “A” to the Bid Process Order. A copy of the Bid Process Order is attached as Exhibit “B”. A copy of the Monitor’s First Report to the Court filed in connection with the Applicants’ motion to approve the Bid Process is attached as Exhibit “C”.

4. Pursuant to the Bid Process Order, the Stay Period, as defined in paragraph 14 of the Initial Order, was extended until February 8, 2010 to permit the Applicants to carry out the Bid Process.
5. Pursuant to the Order of this Honourable Court dated December 11, 2009, the Initial Order was amended (as amended, “First Amended and Restated Initial Order”) to address, among other things, the scope of the Directors’ Indemnity referenced in paragraph 20 of the Initial Order, a reduction in the KERP payable to Mr. Singh, the scope of the Contractor’s Charge referenced in paragraph 46 of the Initial Order and the creation of a charge in favour of the ad-hoc committee of noteholders in respect of reasonable legal costs and reasonable costs of any financial advisor retained by the committee. A copy of the First Amended and Restated Initial Order is attached as Exhibit “D”.
6. By Order of this Honourable Court dated January 12, 2010 (“Bid Deadline Extension Order”), the deadline date to submit an offer to purchase the Applicants’ Assets or sponsor a plan of arrangement pursuant to the Bid Process was extended from January 13, 2010 until 5:00 p.m. (eastern time) on Monday, January 18, 2010.
7. The Orders in this proceeding, together with related Court documents, the Pre-Filing Report of Deloitte in its capacity as Proposed Monitor of the Applicants dated December 1, 2009, all subsequent reports of the Monitor to the Court and the Notice to Creditors dated December 2, 2009 have been posted on the Monitor’s website at

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www.deloitte.com/ca/brainhunter (the "Monitor's Website"). The Monitor has also established a toll free number at 1-877-770-4554 for creditors and other interested parties to call with questions or concerns regarding the CCAA Proceeding.

8. The purpose of this report (the "Third Report") is to provide this Honourable Court with information regarding the Monitor's motion for advice and directions in connection with:
 - (a) the auction rules and procedures established by the Monitor pursuant to the Bid Process; and
 - (b) the status of the Stalking Horse APA as a Back-up Bid, as defined in the Bid Process, in the event that a Superior Bid (as defined in the Bid Process) does not close by February 5, 2010.
9. Unless otherwise provided, capitalized terms not otherwise defined in this Third Report are as defined in the First Report, the Amended and Restated Initial Order, the Bid Process Order or the Stalking Horse APA.
10. In preparing the Third Report and making the comments contained herein, Deloitte has been provided with and relied upon unaudited financial information, the Applicants' books and records, the financial information prepared by the Applicants and their advisors, and discussions with management of the Applicants. Deloitte has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, Deloitte expresses no opinion or other form of assurance on the information contained in the Third Report. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants ("CICA") Handbook has not been performed. Future oriented financial information referred to or relied upon in the Third Report is based on management's assumptions regarding future events and conditions that are not ascertainable. Accordingly, actual results achieved will vary from this information, and the variations may be material.
11. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.

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STATUS OF BID PROCESS

12. Following issuance of the Bid Deadline Extension Order, both E&Y and the Monitor continued to receive and respond to due diligence requests from those parties which had signed a satisfactory confidentiality agreement ("Interested Parties"). E&Y continued to populate the electronic data room maintained as part of the Bid Process, which contains detailed information regarding the Applicants' assets and business to permit Interested Parties to conduct their due diligence via secure web access.
13. On Friday, January 15, 2010, one of the Interested Parties requested that the Monitor further extend the Bid Deadline from January 18, 2010 to January 29, 2010, with a corresponding extension of all other dates referenced in the Bid Process, including the date of the Auction. The Interested Party indicated it required additional time to obtain the necessary financing to proceed with an offer to purchase the Applicants' assets.
14. The Monitor consulted with members of the special committee of the Board of Directors of Brainhunter as well as Breakwall in its capacity as Chief Restructuring Advisor of the Applicants. The Applicants were not prepared to support the request for a further extension of the Bid Deadline for the following reasons:
 - (c) the Interested Party was advised of the motion to extend the Bid Deadline prior to return of that motion on January 12, 2010. The Interested Party did not request an extension beyond January 18, 2010 or indicate at that time that it would require additional time to obtain financing in connection with any offer to purchase the Applicants' assets;
 - (d) as described in the First Report of the Monitor, E&Y was engaged to market Brainhunter in February 2009 for purposes of refinancing or selling the business. The Interested Party carried out extensive due diligence on the Applicants' assets during the summer of 2009 as part of the E&Y process. The Interested Party continued to conduct due diligence on the Applicants prior to commencement of the CCAA proceeding and the Bid Process, with the result that it had ample

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opportunity to conduct its due diligence and obtain any financing necessary to purchase the Applicants' assets;

- (e) Brainhunter is concerned that the longer the Bid Process continues, there is a greater risk that clients will resource the services supplied by the Applicants and the Applicants' employees and Contractors will seek alternate employment, resulting in a potentially significant deterioration in the value of the Applicants' assets and business; and
 - (f) Brainhunter was concerned with the prejudice to other Interested Parties which did not raise any objection to or seek any further extension of the Bid Deadline at the motion to extend the Bid Deadline on January 12, 2010.
15. Based on the foregoing, Brainhunter determined that it would not support any further extension of the Bid Deadline or any of the other deadline dates referenced in the Bid Process. For the reasons outlined above, the Monitor supports this decision.
 16. Following the Bid Deadline on January 18, 2010, one of the Bidders requested that the deadline date by which the Monitor is to determine if a bid is a Qualified Bid be extended from January 21, 2010 to 5:00 p.m. on January 22, 2010 to permit that bidder to address certain terms of that bid which, in the Monitor's view, would negatively impact the Monitor's consideration of that bid as a Qualified Bid, as well as the value which would be ascribed to that bid at the Auction, if such bid were a Qualified Bid.
 17. The Monitor consulted with Breakwall (the Applicants' Chief Restructuring Advisor), Mr. Singh, the principal of the purchasers under the Stalking Horse APA as well as counsel to the ad hoc committee of noteholders. None of these parties objected to the request. Mr. Singh agreed to the extension on the condition that he be advised of the number of other bids which the Monitor had received by the Bid Deadline. The bidder which sought the extension also made that request. On that basis, the Monitor agreed to extend the deadline date by which the Monitor shall determine if a bid is a Qualified Bid from January 21, 2010 to 5:00 p.m. (Eastern Time) on January 22, 2010.

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INDEPENDENT ASSESSMENT OF NOTEHOLDERS' SECURITY

18. Brainhunter issued two tranches of secured subordinated promissory notes bearing interest at 8% and 10% respectively. Brainhunter issued approximately \$7,856,000 of convertible promissory notes bearing interest at 8% per annum (the "Original 8% Notes") pursuant to an offering which closed in stages on October 15, November 14 and December 14, 2005 and approximately \$2.6 million of convertible promissory notes bearing interest at 10% per annum (the "Original 10% Notes") pursuant to an offering which closed February 2, 2007.
19. Brainhunter delivered a General Security Agreement to the holders of each of the Original 8% Notes and the Original 10% Notes. The holders of the Original 8% Notes are parties to a pari passu agreement which provides that each of the 8% Notes ranks equally in priority in respect of Brainhunter's present and after acquired personal property, notwithstanding the date of any promissory note or advance of a loan from any one of the holders of the Original 8% Notes. The holders of the Original 10% Notes are parties to a similar pari passu agreement. The Original 8% Notes and the Original 10% Notes as well as the pari passu agreements and security delivered to the holders of such Notes, were subsequently amended in April 2009 pursuant to separate amending agreements affecting the Original 8% Notes and the Original 10% Notes.
20. Counsel to the Monitor, ThorntonGrouffinnigan LLP ("TGF"), has reviewed the security granted to the holders of the Original 8% Notes and Original 10% Notes by Brainhunter as amended pursuant to the April 2009 amending agreements. TGF has advised the Monitor that, subject to the assumptions and qualifications contained in its written opinion, the foregoing security creates a valid and enforceable security interest in all of the personal property, assets and undertaking of Brainhunter located within the Province of Ontario and referenced in such security agreements and in respect of which registrations have been made against Brainhunter by the secured parties referenced therein in accordance with the provisions of the *Personal Property Security Act* (Ontario).

VALUATION ISSUE

21. In accordance with the auction procedures established under the Bid Process, the Monitor is authorized to determine in its sole discretion if any bid constitutes a Revised Bid during the Auction, that is, a bid which is higher or better than the current leading bid. The auction procedures also provide that the Monitor has the sole right to value any non-cash consideration, including the assumption of liabilities, offered in any bid or proposal to determine whether it represents the best or highest bid at any time during the Auction.
22. The Monitor understands that certain of the 8% Notes and 10% Notes issued by Brainhunter may be tendered as partial consideration for the purchase price payable under a bid at the Auction.
23. The issue in respect of which the Monitor seeks advice and directions of this Honourable Court is as follows: if some, but not all, of the Notes are tendered as partial consideration for the purchase price under a bid at the Auction, should the value ascribed to such Notes be the full face value thereof or some lesser amount?
24. As set out in the Monitor's First Report to the Court, the Stalking Horse APA provides that the purchase price thereunder shall be partially satisfied through the assignment of all of the Roynat Debt and all security and guarantees in support of the Roynat Debt by TalentPoint to Brainhunter at closing.
25. As with the value ascribed by the Monitor to the Roynat indebtedness which will be tendered for cancellation as part of the Stalking Horse APA, if all of the Notes were tendered for cancellation or assumed in partial satisfaction of the purchase price under a bid, the Monitor would assess the value of such indebtedness at the full face value thereof for the purpose of determining the aggregate consideration under that bid, subject to any requirement that the cash component of the purchase price be increased if a shortfall would occur in payment of any of the indebtedness ranking in priority to the tendered indebtedness.
26. However, if only certain of the Notes are tendered for cancellation ("Tendered Notes") in partial satisfaction of the purchase price under a bid and full face value is ascribed to

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those Notes but the remaining Notes which have not been tendered ("Residual Notes") receive less than the full face value of such Notes under that bid, then the Residual Notes could receive a lesser distribution than under a different bid in which cash would be distributed to all of the Noteholders.

27. The following example illustrates this issue. Assume that the outstanding amount of the Notes is \$12 million. If bidder A offers \$3 million cash in addition to the purchase price payable under the Stalking Horse APA, each Noteholder would receive approximately \$.25 on the dollar (\$3 million payment divided by \$12 million of Notes).
28. If bidder B offers \$9 million of Tendered Notes with no additional amount payable to the Residual Notes, then the balance sheet of the Applicants is improved by \$9 million, but that results in no benefit or distribution to the Residual Notes or other creditors other than a corresponding reduction in the amount of the Notes outstanding. In that situation, a bid that pays any amount of cash to all Noteholders would be an improvement for the holders of the Residual Notes.
29. If bidder B offered \$9 million of Tendered Notes and also offered additional cash consideration in the amount of \$600,000, then the Residual Notes would receive a distribution of \$.20 on the dollar. In that scenario, the above cash offer to all Noteholders of \$3 million which results in a distribution equivalent to \$.25 on the dollar would be a superior offer from the point of view of the Residual Notes as compared to either of the foregoing scenarios.
30. The Monitor is mindful of the competing interests of the holders of the Tendered Notes and the Residual Notes. The Monitor has developed a valuation methodology that attempts to ascribe value to the Tendered Notes, while at the same time recognizing the value of consideration received by the holders of the Residual Notes.

RECOMMENDATION ON VALUE ISSUE

31. In the circumstances, given that valuation of any Tendered Notes may directly affect the outcome of the Auction, the Monitor respectfully requests the direction of this Honourable Court regarding the valuation procedures to be applied at the Auction.

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32. It is the Monitor's recommendation that this issue be resolved as follows. The Auction rules as prepared by the Monitor and attached as Exhibit "E" contemplate that if some but not all Notes are tendered in partial satisfaction of the purchase price under a bid, the value ascribed to the Tendered Notes will not be the face amount thereof but will instead be the greater of the value of (i) the consideration received by the holders of the Tendered Notes under that offer; and (ii) the amount calculated by multiplying the face amount of the Tendered Notes by the percentage recovery received by the Residual Notes. This would recognize the value received by the holders of the Tendered Notes, but permit the holders of the Residual Notes to see if a better offer could be achieved through the Auction.
33. Although the Noteholders only hold security upon the assets of Brainhunter, given the significant amount of intercompany indebtedness owing by the Applicants other than Brainhunter to Brainhunter itself, approximately 97.3% of the unsecured claims against the Applicants are indirectly held by the Noteholders pursuant to their secured claims against Brainhunter. Attached as Exhibit "F" is a copy of the Monitor's analysis of the unsecured claims against each of the Applicants.
34. In the circumstances, the Monitor seeks the direction of this Honourable Court to conduct the Auction in accordance with the Auction rules attached at Exhibit "E".

CLOSING DATE ISSUE

35. The Monitor is also seeking clarification regarding the date by which the Superior Bid from a party other than the Stalking Horse Purchasers must close in order for the Stalking Horse APA to continue as the Back-up Bid and remain capable of acceptance in the event that the Superior Bid does not close. The Stalking Horse APA is attached as Exhibit "G".
36. The Stalking Horse APA defines the "Closing Date" as, "February 5, 2010 or such other date as is hereafter agreed to by both the Vendor Entities and the Purchaser Entities, provided that such date is not later than February 25, 2010". The parties have not agreed to extend that date.
37. The Stalking Horse APA defines a "Superior Bid" as follows:

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37. The Stalking Horse APA defines a "Superior Bid" as follows:

1.1 Definitions

In this Agreement:

...

(vvv) "Superior Bid" means any bona fide, written bid for the acquisition of the Purchased Assets, or a proposal to sponsor a plan of arrangement for the Vendor Entities, made by any third party, that: in the determination of the Monitor in consultation with the board of directors of the Vendor Entities' (A) is capable of being completed without any undue delay taking into account all legal, financial, regulatory and other aspects of such proposal and the Party making such proposal, but in any event on or prior to the Closing Date; [emphasis added] ...

...

38. Section 6.2 of the Stalking Horse APA provides as follows:

6.2 Auction

- (a) the procedures to be followed at the Auction are set out in Schedule "11" attached hereto.
- (b) if the sale transaction(s) pursuant to the Superior Bid **does not close on the Closing Date** [emphasis added] and the Purchaser Entities are the second highest bidder, the Vendor Entities shall immediately provide written notice to the Purchaser Entities of this fact pursuant to the Bid Procedures (the "Failure Notice"). Upon receipt by the Purchaser Entities of such Failure Notice, the Purchaser Entities shall be required to close the transactions contemplated by this agreement on the same terms set out herein, or in the Purchaser Entities' Revised Bid, as applicable, by no later than February 25, 2010.

39. Section 3.3 of the Stalking Horse APA provides as follows:

3.3 Deposit

...

- (e) If a Superior Bid is accepted by the Vendor Entities and the Purchaser Entities are the second highest bidder, the Deposit, and all interest accrued thereon, shall continue to be held in trust until the earlier of the Closing of the Superior Bid or February 25, 2010 [emphasis added] and shall be returned to TalentPoint the Business Day immediately following such Closing, or February 25, 2010, as the case may be. If the Superior Bid

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does not close, and a Failure Notice is delivered pursuant to Section 6.2(b), then the Deposit shall be credited against the Consideration as provided for in Paragraph 3.3(b) above.

40. Section 9.2 of the Stalking Horse APA provides as follows:

9.2 Break Fee

(a) If:

- (i) the Purchaser Entities' Consideration or revised bid, as applicable, is not the Superior Bid, or the second highest bid (regardless of whether such transactions contemplated by the Superior Bid or second highest bid close);
- (ii) a Closing of the Superior Bid occurs where the Purchaser Entities' Consideration or revised bid, as applicable, is the second highest bid; or
- (iii) the Closing of the Superior Bid does not occur and the Purchaser Entities, being the second highest bidder, have not been provided with a Failure Notice in accordance with Section 6.2(b) (each, a "Terminating Event"),

then, in each case, the Vendor Entities shall pay to TalentPoint, on its behalf and on behalf of the other Purchaser Entities an amount equal to \$700,000 (the "Break Fee") on the earlier of (i) the Business Day immediately following Closing of the Superior Bid, or the second highest bid, as the case may be, and (ii) February 25, 2010.

...

41. The Bid Process as approved by the Bid Process Order is attached as Schedule "11" to the Stalking Horse APA. Paragraph 13 on page 6 of the Bid Process under the heading, "Auction Procedures" provides as follows:

- 13. If the Successful Bidder fails to close a purchase transaction within 14 days after Court approval (or such date that may otherwise be mutually agreed upon between the Vendor and the Successful Bidder), the Monitor shall be authorized but not required to deem that (a) the Successful Bidder has breached its obligations pursuant to the Accepted Bid, (b) has forfeited its deposit to the Vendor, and (c) the Vendor will be authorized to enter into a transaction with the party who has submitted the Back-Up Bid (the "Back-Up Bidder").

42. The above provision of the Bid Process contemplates that a purchase transaction with a Successful Bidder other than the Stalking Horse Purchasers has up to 14 days after Court

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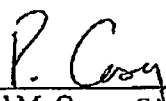
Approval to close and, if such transaction does not close, the Monitor shall be authorized but not required to enter into a transaction with the Back-up Bidder.

43. This provision of the Bid Process appears to contemplate that the closing of a Superior Bid other than the Stalking Horse APA could occur later than February 5, 2010, given that the Auction is scheduled for January 25, 2010. If that interpretation is correct, then the Closing Date under a Superior Bid other than the Stalking Horse APA, or any Revised Bid by the Stalking Horse Purchasers, could be later than February 5, 2010 without jeopardizing the status of the Stalking Horse APA as the Back-up Bid.
44. However, the Stalking Horse APA clearly provides that the Closing Date is February 5, 2010 or such other date as the parties may agree. Section 6.2(b) also contemplates that the Superior Bid must close on the Closing Date of February 5, 2010 and, if the Superior Bid does not close on that date, the Stalking Horse APA may be closed, provided that closing takes place by no later than February 25, 2010.
45. Finally, the summary timeline of important dates attached to the Bid Process provides that the date for "transaction close of sale" is February 5, 2010.
46. Given the above-noted provision of the Bid Process, the Monitor seeks clarification from this Honourable Court that, in circumstances in which the Stalking Horse APA is the Back-up Bid, the Applicants must deliver a Failure Notice to the Stalking Horse Purchasers on or before February 5, 2010 in order to ensure that the Stalking Horse APA continues as the Back-up Bid and may be compelled to close in accordance with the foregoing provisions of the Stalking Horse APA and the Bid Process.

All of which is respectfully submitted at Toronto, Ontario this 21st day of January 2010.

DELOITTE & TOUCHE INC.
in its capacity as Monitor
of Brainhunter Inc. and the other Applicants

Per:



Paul M. Casey, CA-CIRP
Senior Vice-President