

THE COMPETITION TRIBUNAL
IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 as amended;
AND IN THE MATTER OF an application by United Grain Growers Limited
under section 106 of the *Competition Act*
AND IN THE MATTER OF the acquisition by United Grain Growers Limited of
Agricore Cooperative Ltd., a company engaged in the grain handling business.
B E T W E E N:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT
CT-2002-001
October 24, 2005

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT

#0128e

UNITED GRAIN GROWERS LIMITED

Applicant

-and-

THE COMMISSIONER OF COMPETITION

Respondent

AFFIDAVIT OF DAVID OUELLET

I, David Ouellet of the City of Ottawa, Province of Ontario, MAKE OATH AND SAY:

1. I have worked as a Competition Law Officer at the Competition Bureau since 1975, and have worked in the Mergers Branch from January 1994 as a Senior Competition Law

Officer until I retired from the Public Service on May 25, 2005.

2. I was the Senior Competition Law Officer responsible for this matter from June 2001, when the Commissioner was first apprised of this proposed transaction, until December 2, 2004. To the extent that this affidavit refers to matters subsequent to this date, I have relied on documentary evidence to update my knowledge as to what has transpired in this case. As such, I have knowledge of the matters to which I hereinafter depose. Where I have been provided information by others, I believe such information to be true.
3. On August 23, 2005 I was retained by the Commissioner of Competition (“Commissioner”) under contract to work on this matter.

Relevant Background

4. On October 31, 2001, the Commissioner and the applicant, United Grain Growers Ltd. (“UGG”) signed a confidential agreement allowing the acquisition of Agricore Cooperative Ltd. (“the Acquisition”) to proceed under certain conditions. As part of the agreement the Commissioner and UGG would seek a consent order from the Competition Tribunal (“Tribunal”) which would provide for a divestiture package of prairie grain elevators. The Commissioner would also file a section 92 application with the Tribunal with respect to the divestiture of a grain terminal in the Port of Vancouver. UGG agreed not to contest the Commissioner’s evidence in the section 92 application with respect to the establishment of a substantial lessening of competition (“SLC”) in the Port of Vancouver resulting from the Acquisition. However UGG would contest the appropriate remedy, arguing that the competitive concerns could be adequately addressed with the divestiture of a smaller terminal than that sought by the Commissioner.
5. The October 31, 2001 confidential agreement between the Commissioner and UGG established, among other things:

- (a) A Port Terminal Initial Period which covered the time between the closing of the transaction and July 31, 2003 (representing 21 months) which was the period given to UGG to sell the terminal as selected by the Tribunal.
 - (b) The appointment of a Trustee at least 120 days prior to the end of the Port Terminal Initial Period, allowing the Trustee to fully prepare for the possibility of a Trustee sale.
 - (c) After July 31, 2003, the Trustee would have [CONFIDENTIAL] to sell the asset at a price and on terms and conditions most favourable to UGG then reasonably available [CONFIDENTIAL] .
 - (d) If the Trustee was unable to sell the asset in the [CONFIDENTIAL] period, [CONFIDENTIAL] .
6. Due to the length of the selling period, an interim behavioural remedy was included in the agreement designed to assist in ensuring access to Vancouver port terminal facilities by non-integrated grain companies (i.e. those companies without an interest in a Vancouver grain terminal).
7. On November 1, 2001, UGG completed the Acquisition, creating the largest grain handling firm in Canada, operating as Agricore United Ltd. (“AU”)

Section 92 Application

8. On January 2, 2002, the Commissioner filed an application pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “Act”) alleging that AU’s

acquisition of Agricore Cooperative Ltd. on November 1, 2001 was likely to prevent or lessen competition substantially in the market for port terminal grain handling services in the Port of Vancouver. With his application, the Commissioner sought an order directing the divestiture of either the UGG grain terminal or AU's interest in Pacific Elevators Limited ("PEL") terminal, both of which are located in the Port of Vancouver.

9. On September 10, 2002, the Tribunal convened a hearing, further to a Joint Submission of the Commissioner and AU, requesting certain findings and determinations pursuant to section 92 of the Act. At that hearing the Tribunal heard the expert testimony of Dr. William Wilson. I also provided evidence under oath. In Findings and Determinations dated September 12, 2002, the Tribunal stated that, based on the evidentiary record before it, it should make certain findings. Among the findings made by the Tribunal was that AU's acquisition of Agricore Cooperative Ltd. "causes an SLC as alleged by the Commissioner, and for the purposes of this proceeding, not contested by the Respondent, without the need for further evidence to establish an SLC or elements of an SLC". The Tribunal's decision is appended and marked as Exhibit "A" to my affidavit.
10. The contested section 92 hearing to determine the issue of which Port Terminal needed to be divested to remedy the SLC were scheduled to take place on October 21, 2002 in Vancouver. However, after further negotiations between AU and the Commissioner, a settlement was reached on October 16, 2002 whereby UGG agreed to sell either the UGG terminal or the PEL terminal. Since AU had been successful in acquiring the Saskatchewan Wheat Pool's 30% interest in PEL, they became sole proprietors of that facility. The settlement provided for an Initial Sale Period ("ISP") to sell one of the Terminals which would end on October 31, 2004.
11. On October 17, 2002, the Commissioner and AU filed a Consent Agreement with the Tribunal which included details of the October 31, 2001 confidential agreement discussed in Paragraphs 4 and 5 above as well as details of the October 16, 2002 agreement discussed

in Paragraph 10 above. The Consent Agreement also included a clause which required that AU advise the Commissioner in writing every 60 days of its efforts to sell the UGG and/or PEL terminal. A copy of the Consent Agreement is appended and marked as Exhibit "B"

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Ongoing Discussions and Developments

12. On December 19, 2002, counsel for AU advised the Commissioner's counsel that since the registration of the Consent Agreement with the Tribunal on October 17, 2002, they had been in contact with representatives of [CONFIDENTIAL] as well as [CONFIDENTIAL] regarding the sale of either port terminal. Counsel indicated that discussions with [CONFIDENTIAL] had not been material, although they had recently executed a confidentiality agreement. Counsel further advised that [CONFIDENTIAL] indicated that they were not interested in acquiring either port terminal, and thus AU did not intend to pursue further contact with [CONFIDENTIAL] at that time.
13. On February 14, 2003, counsel for AU wrote to the Commissioner's counsel indicating that since providing its last report on December 19, 2002, there was nothing new to report on the sale of either port terminal.
14. On April 15, 2003, AU's counsel advised the Commissioner's counsel, in writing, that since providing the last report on February 14, 2003 AU had received expressions of interest from [CONFIDENTIAL] and [CONFIDENTIAL]. AU had also contacted a number of merchant bankers, soliciting proposals with respect to the sale of the Port Terminals.
15. On April 22, 2003, [CONFIDENTIAL] wrote to a representative of the Commissioner advising that they had expressed an interest in the terminal acquisition in Vancouver, but had not yet heard back from AU. They also attached a copy of an April 8, 2003 letter to AU's Chief Executive Officer in which they express an interest in acquiring either the UGG

or PEL terminal and asked for details about the sale process as well as a tour of the facilities. A copy of these letters are appended and marked as Exhibit "C".

16. On June 18, 2003, counsel for AU wrote to the Commissioner's counsel indicating that, since providing its last report on April 15, 2003 there was nothing new to report on the sale of either port terminal.
17. On August 5, 2003, [CONFIDENTIAL] wrote to Mr. Jim Wilson, the Chairman of Agricore expressing interest in purchasing the terminal to be divested. In this letter, [CONFIDENTIAL] points out that his representative has spoken to Mr. Christopher Martin of AU on three occasions earlier in the year and as of June was being advised that AU was still not in a position to provide divestiture details. A copy of this letter is appended and marked as Exhibit "D".
18. Further to its 60 day reporting requirement, counsel for AU wrote to the Commissioner's counsel on August 29, 2003, indicating that they were in the final stages of retaining Scotia Capital to assist in the divestiture of the UGG or PEL terminal. There were no further details on any progress in the divestiture.
19. On September 10, 2003, a representative of the Commissioner received an electronic mail ("e-mail") message from [CONFIDENTIAL], in which it was indicated that the Consent Agreement was approaching its first anniversary and his company had not been made aware of any of the details of the sale by the seller in spite of early attempts to gain access to this information. [CONFIDENTIAL] reiterated its interest in purchasing a port terminal and expressed interest in participating in a Trustee sale if such should take place and wished to know when the Trustee Sale Period commenced. A copy of the e-mail is appended and marked as Exhibit "E". A representative of the Commissioner subsequently advised [CONFIDENTIAL] that the date of the commencement of the Trustee Sale Period was confidential.

20. On or about November 12, 2003, AU's counsel advised the Commissioner's counsel that they had retained Scotia Capital to assist in the divestiture of the UGG terminal.
21. On December 3, 2003, [CONFIDENTIAL] submitted a non-binding expression of interest in purchasing the AU terminal in Vancouver. The terminal is not identified, but presumably relates to the UGG Terminal as I understand the CIM related to that terminal. Among other things the offer indicated that: [CONFIDENTIAL] valuation of the terminal was between [CONFIDENTIAL] million and [CONFIDENTIAL] million. A copy of the letter from [CONFIDENTIAL] to Scotia Capital is appended and marked as Exhibit "F".
22. On January 16, 2004, AU's counsel wrote to the Commissioner's counsel to provide an update on their efforts to divest a Vancouver port terminal. The letter indicated that AU and Scotia Capital had drafted a CIM which had been circulated to prospective purchasers in order to determine whether they had any interest in acquiring the UGG terminal. The prospective purchasers were: [CONFIDENTIAL]. The letter also advised that, subsequent to reviewing the CIM, [CONFIDENTIAL] had expressed interest in acquiring the UGG terminal. AU was in the process of arranging to provide a number of these firms with site tours as well as access to detailed financial and operational information concerning the UGG terminal. AU also indicated that it had negotiated a new lease with respect to the PEL terminal and was in the process of finalizing a new lease with respect to the UGG Terminal.
23. On March 16, 2004, AU's counsel wrote to the Commissioner's counsel, indicating that since providing its last report on January 16, 2004, that AU continued to work with Scotia Capital in soliciting offers for the UGG terminal. The letter indicated that there were four potential bidders, namely [CONFIDENTIAL]. All potential bidders had done site visits. AU also indicated that it hoped to close the process soon and to evaluate any bids that may be offered.

24. On June 8, 2004, AU representatives and counsel met with Competition Bureau officers (i.e. official representatives of the Commissioner) and counsel. AU requested the meeting with a view to obtaining the Commissioner's cooperation to amend the Consent Agreement under section 106 of the *Act*, so that they would no longer be required to divest a port grain terminal, but rather would rely on the interim behavioural order. During this meeting AU provided an update on their efforts to sell the terminal, indicating that:
- (a) AU appraised the value of the UGG terminal at more than [CONFIDENTIAL] million and wanted offers from potential buyers in the [CONFIDENTIAL] million to [CONFIDENTIAL] million range.
 - (b) [CONFIDENTIAL] offer to purchase the UGG Terminal was [CONFIDENTIAL] million. The low offer was due to the fact that [CONFIDENTIAL] did not have any grain origination facilities in the prairies.
 - (c) [CONFIDENTIAL] had been eager to purchase the facility indicating they were considering making an offer in the [CONFIDENTIAL] million to [CONFIDENTIAL] million range, however their actual offer came in at [CONFIDENTIAL] million because they could not find sufficient grain originations.
 - (d) [CONFIDENTIAL] offer to purchase the UGG terminal was for [CONFIDENTIAL] million, but the offer was contingent on obtaining a contractual arrangement with the Canadian Wheat Board ("CWB") whereby the CWB would direct grain from the Prairies to [CONFIDENTIAL] terminal in Vancouver. Under this arrangement originating grain companies would not obtain diversion premiums which they currently earn on their shipments to Vancouver ports. AU would lose this source of revenue on any of their originations directed to the [CONFIDENTIAL] terminal.

25. The week following the June 8, 2004 meeting, AU was advised by the Commissioner that she would not agree to their request to amend the Tribunal Consent Agreement.
26. On June 29, 2004, counsel for AU advised the Commissioner's counsel in writing, that AU was in discussions with [CONFIDENTIAL] (on a non-exclusive basis) and anticipated having a binding agreement in place by the end of July. AU also requested delaying the appointment of a trustee until August 3, 2004 (approximately a one month delay). A copy of this letter is appended and marked as Exhibit "G".
27. On July 6, 2004, counsel for the Commissioner advised AU's counsel that the Commissioner agreed to delaying the appointment of a trustee until August 3, 2004. A copy of the letter is appended and marked as Exhibit "H".
28. On July 26, 2004, counsel for the Commissioner wrote to AU's counsel indicating that further to AU's telephone conversation of July 13, 2004 with the Commissioner, she remained of the view that there had been no change in circumstances such that the structural remedies set out in the Consent Agreement would no longer be necessary and saw no reason to amend the Consent Agreement.
29. On July 26, 2004, counsel for the Commissioner wrote to AU's counsel requesting AU's approval of the Trustee proposed by the Commissioner.
30. Between July 30, 2004 and August 12, 2004 there were negotiations between the Commissioner and AU as to the appropriateness of the Trustee which the Commissioner proposed. AU objected to the appointment of the Trustee suggested by the Commissioner alleging that the principle partner of the proposed Trustee had a conflict of interest [CONFIDENTIAL]. Ultimately the Commissioner and AU agreed:
 - (a) to extend the date by which AU must elect a port terminal for divestiture to August

31, 2004;

- (b) to extend the Trustee appointment date to September 1, 2004;
- (c) to the commencement of the Trustee Sale Period would be November 1, 2004;
- (d) [CONFIDENTIAL] .

- 31. On August 31, 2004, counsel for AU wrote to counsel for the Commissioner to advise that the UGG terminal had been selected as the divestiture asset to be sold, should a Trustee sale take place. The letter also noted that talks with [CONFIDENTIAL] were continuing and that an outcome of these negotiations should be known within the next two to three weeks.
- 32. On September 9, 2004, counsel for the Commissioner wrote to [CONFIDENTIAL] advising that they had been selected as Trustee further to the Consent Agreement. The letter provided details on timing, among other things.
- 33. On September 24, 2004, [CONFIDENTIAL] wrote to counsel for the Commissioner advising that they met with AU officials on September 22, 2004 and had a very productive and cooperative meeting. [CONFIDENTIAL] was advised that AU was close to finalizing a possible sale of the UGG terminal and that a more definitive confirmation of whether or not a sale was pending would be sent to [CONFIDENTIAL] in the following week. In the meantime in the interests of costs and efficiency, [CONFIDENTIAL] had agreed to limit their preliminary preparations.
- 34. On October 15, 2004, AU faxed to counsel for the Commissioner an [CONFIDENTIAL] offer to purchase the AU Vancouver terminal, dated May 14, 2004 for [CONFIDENTIAL] million with a May 21, 2004 expiry date as well as a letter dated October 15, 2004 from [CONFIDENTIAL] to AU indicating it was still interested in acquiring the terminal;

however the letter was not intended to be a formal offer.

35. An issue arose as to whether the offer to purchase and the letter referred to in paragraph 34 constituted a letter of intent [CONFIDENTIAL]. On October 19, 2004, counsel for the Commissioner wrote to AU and its counsel to advise that the Commissioner would accept a draft letter dated October 19, 2004 that outlined [CONFIDENTIAL] interest in purchasing the terminal as a proper letter of intent [CONFIDENTIAL], provided it was executed by both parties. The letter went on to say that if the extension was granted and the divestiture was not completed [CONFIDENTIAL] that commencing immediately after the expiration of the [CONFIDENTIAL], the Trustee would have [CONFIDENTIAL] to implement a divestiture. A copy of the Commissioner's letter and attachment are appended and marked as Exhibit "I".
36. On October 22, 2004, counsel for the Commissioner wrote to AU and its counsel to point out that there were five business days before the Trustee sale period was to begin and [CONFIDENTIAL]
37. On October 27, 2004, AU's counsel wrote to the Commissioner's counsel forwarding a copy of a letter of intent between AU and [CONFIDENTIAL] regarding the sale of the AU terminal. This letter also confirmed AU's understanding that, for the purposes of the Consent Order, this letter of intent, [CONFIDENTIAL]. Since the purchase was not going to close until January 14, 2005, the Commissioner agreed to extend [CONFIDENTIAL]. **This represented the first extension of the ISP [CONFIDENTIAL] and an agreement on the part of the Commissioner and AU for the balance of the period.** A copy of this letter is appended and marked as Exhibit "J".
38. On November 23, 2004, for the Commissioner e-mailed AU's counsel to discuss AU's stated preference that Commissioner staff not speak to [CONFIDENTIAL] while negotiations were still going on. Counsel for the Commissioner reminded AU's counsel,

that pursuant to the Consent Agreement, the Commissioner had to assess proposed purchasers to ensure that they met specified conditions and wanted adequate time to do so, given the proposed closing date of January 14, 2005.

39. On December 10, 2004, Agricore representatives had a conference call with the Commissioner's representatives where AU provide an update on the divestiture of the AU terminal in Vancouver. Among other things, AU indicated the following
- (a) Negotiations with [CONFIDENTIAL] had reached somewhat of an impasse.
 - (b) AU had returned to negotiations with [CONFIDENTIAL], and discussions were proceeding quickly with no major difficulties foreseen.
 - (c) AU was hopeful that they would have a [CONFIDENTIAL] deal completed by the end of the December 2004 with closing on January 15, 2005 or by the end of January, 2005.
 - (d) The [CONFIDENTIAL] deal was not unworkable provided they came back to AU with a more "reasonable" approach.
 - (e) AU would contact the Trustee to update them in case these deals collapsed so that the Trustee could take over the sale process immediately.
40. On January 12, 2005, two days before the end of the ISP, AU's counsel e-mailed counsel for the Commissioner attaching an asset purchase agreement dated January 7, 2005, signed by both AU and [CONFIDENTIAL]. The letter indicated, among other things, that what remained to be finalized were financing of the transaction and board approval which were expected to be completed within the following two or three weeks. The letter also confirmed that AU had agreed not to deal with any other entity regarding the sale of the AU

terminal prior to January 28, 2005. A copy of this letter is appended and marked as Exhibit “K”. It is apparent from the e-mail from counsel for the Commissioner to the Trustee, referred to below in paragraph 42, indicating that the Trustee would be appointed if there was no sale, that the ISP was extended to at least January 28, 2005. **This represents the second extension of the ISP.**

41. On January 28, 2005, counsel for the Commissioner e-mailed AU’s counsel stating that he was awaiting some indication that things were progressing with the proposed terminal sale and that a target date for the sale had been arrived at by the parties. Counsel for the Commissioner also pointed out that, as soon as practicable, the Commissioner would need to commence her assessment of the potential purchaser, including meeting the potential purchaser, obtaining strategic documents and doing third party contacts. The e-mail ends by stating that it would be prudent for the Commissioner to begin her review forthwith and requested that AU identify its preferred contact person at [CONFIDENTIAL]. In addition, if the sale was not proceeding, then the Trustee would need to be formally appointed.
42. On January 31, 2005 counsel for the Commissioner also indicated by e-mail to the Trustee that, as the proposed Agricore - [CONFIDENTIAL] transaction was “still limping along, it remains in the best interests of the public to encourage the parties to reach an agreement”. The ISP is clearly being extended beyond January 31, 2005 but it is noted that “the Commissioner may later decide to declare the Interim Sales Period to have terminated with no further extensions, but [the Commissioner] is not yet at that stage.” **This represents the third extension.**
43. On January 31, 2005, AU wrote to [CONFIDENTIAL] confirming AU’s understanding that [CONFIDENTIAL] has received financial proposals and was in the final stages of assessing them, but required an additional week to complete their financing assessment. AU then stated that, assuming the aforementioned was correct, AU looked forward to hearing from them on February 7, 2005.

44. On February 9, 2005, AU's counsel e-mailed counsel for the Commissioner, attaching a February 8, 2005 e-mail which provided an update of the progress of the terminal sale. The February 8, 2005 e-mail indicated that AU had a brief conversation with [CONFIDENTIAL] the previous week in which [CONFIDENTIAL] indicated that they continue to work with their proposed lenders and were optimistic that they would have a deal soon.
45. On February 17, 2005, counsel for the Commissioner contacted AU's counsel requesting information on the progress of the terminal sale since the Commissioner last received any indication that the parties were still negotiating. The e-mail stated that:
- (a) The Commissioner required information detailing what precisely were the outstanding issues between the parties, noting that advice that they were "continuing to talk" was not helpful and vague, notwithstanding AU's apparent satisfaction with the way the matter was moving.
 - (b) The Commissioner was assured many weeks previously that a firm commitment was imminent, yet the parties had not yet reached consensus on a binding agreement.
 - (c) The Commissioner required an estimate of firm dates (not vague time frames) for a binding agreement and closing of the transaction.
 - (d) It appeared to be less and less in the public interest for this matter to drag on endlessly.
46. On February 28, 2005, AU's counsel e-mailed the Commissioner's staff, indicating that the deal with [CONFIDENTIAL] was very close to being finalized and that AU understood that such a divestiture could be completed by March 18, 2005. The Commissioner

subsequently agreed to a one week extension of the ISP to March 18, 2005. **This represents the forth extension of the ISP.**

47. On March 15, 2005, three days before the expiration of the ISP, AU's counsel spoke with the Deputy Commissioner, Mergers and indicated that the [CONFIDENTIAL] deal would not be completed by the end of the week and that [CONFIDENTIAL] , with money and a willingness to meet a tight time line were interested in buying the AU terminal.
48. On March 16, 2005, a letter from [CONFIDENTIAL] to AU submitted a purchase proposal for the AU terminal. Among other things this letter indicated that:
 - (a) [CONFIDENTIAL] had [CONFIDENTIAL] for the purpose of acquiring the UGG terminal in Vancouver.
 - (b) A price of [CONFIDENTIAL] million was offered and the [CONFIDENTIAL] had tentatively arranged financing for the purchase.
 - (c) One of the conditions of the offer was that [CONFIDENTIAL] had to be able to secure grain originations to the terminal of [CONFIDENTIAL] tonnes per annum, which was required as part of the business plan for financing purposes.
 - (d) The [CONFIDENTIAL] wanted to close the transaction as soon as possible, but no later than August 1, 2005.
49. On March 18, 2005, the Deputy Commissioner, Mergers e-mailed AU's counsel and extended the initial sales period three days to March 21, 2005 from the current March 18, 2005 deadline.
50. On March 21, 2005, counsel for the Commissioner wrote AU's counsel confirming that the

Commissioner was agreeable to extending the Port Terminal Initial Sales Period to March 31, 2005 for the purpose of allowing AU to reach an agreement of sale on the AU terminal with [CONFIDENTIAL] **The extensions agreed to by the Commissioner in this paragraph and paragraph 49 collectively represent the fifth extension of the ISP.**

51. On March 27, 2005, AU's counsel wrote to counsel for the Commissioner in which AU's counsel, among other things, confirmed that the Commissioner was agreeable to extending the Port Terminal Initial Sales Period to April 5, 2005 for the purpose of allowing AU to reach an agreement of sale on the AU terminal with [CONFIDENTIAL]. **This extension by agreement of the Commissioner represents the sixth extension of the ISP.**
52. On April 7, 2005, counsel for the Commissioner wrote AU's counsel. Among other things this letter indicated that:
 - (a) AU had requested another extension of the Port Terminal Initial Sales Period in order to have more time to negotiate and execute a firm agreement of sale of the UGG terminal to [CONFIDENTIAL].
 - (b) This was yet another one in a long line of these requests by AU and while previous extensions had been agreed to by the Commissioner, the reluctance to do so had grown with each request.
 - (c) The initial sales period had now lasted for nearly two and one half years and, notwithstanding crop conditions in the Prairie Provinces, this had been more than enough time for AU to dispose of either Vancouver terminal.
 - (d) The Commissioner would agree to a final extension of 4 p.m. on April 27, 2005, only on the following conditions:

- i. AU would contact the Trustee in order to update him as to the current status of matters with [CONFIDENTIAL] , including material terms of the proposed transaction.
- ii. April 27, 2005, was a final deadline. If no final agreement for the sale of the terminal had been entered by then, the Trustee would automatically be responsible for the divestiture.
- iii. As soon as deemed advisable by the Commissioner her representatives would commence market contacts as part of her review of the proposed transaction.

The agreement to extend to April 27, 2005 was the seventh extension of the ISP.

53. On April 25, 2005, counsel for the Commissioner wrote AU's counsel confirming that AU had advised and represented as follows:
- (a) AU had yet to reach a binding agreement with either [CONFIDENTIAL] or [CONFIDENTIAL].
 - (b) AU's Board of Directors had authorized AU management to conclude an agreement with [CONFIDENTIAL] to sell the UGG terminal. Approval had not yet been obtained to sign an agreement with [CONFIDENTIAL], although such an approval in the future remained a possibility.
 - (c) AU and [CONFIDENTIAL] had reached an agreement in principle and AU was of the view that there were no outstanding material issues and the only outstanding issues for [CONFIDENTIAL] were:
 - i. the receipt by [CONFIDENTIAL] of a letter of commitment from its

lender;

- ii. upon receipt of the letter of commitment, approval by the respective [CONFIDENTIAL] of the Purchase and Sale Agreement of the proposed sale; and
- iii. execution of the Purchase and Sale Agreement.

(d) The letter of commitment could be obtained by April 29, 2005.

(e) August 1, 2005 remained the latest closing date for the transaction.

The letter went on to say that the Commissioner was encouraged by the progress made to date, even in the face of delays caused by various unexpected events. However, the delays continued to mount to the point where there was concern that public interest reflected in the Consent Agreement required immediate agreement for the sale of the UGG terminal either by Agricore or by the Trustee. The letter also indicated that, based on the foregoing AU representations, that the Commissioner was agreeable to extending the final deadline for completion of an agreement to sell the UGG terminal to 12 noon (Winnipeg time), May 2, 2005. This date was subsequently extended to May 6, 2005. **The agreement to extend the ISP another week was the eighth extension.**

54. On May 3, 2005, counsel for the Commissioner wrote AU's counsel confirming that AU had advised and represented as follows:

- (a) AU had yet to sign a binding agreement with [CONFIDENTIAL] although agreement in principle had been reached.
- (b) The respective board of directors of AU and [CONFIDENTIAL] had authorized

their management to conclude the agreement to sell the UGG terminal

(c) AU was of the view that there were no outstanding material issues and the only outstanding issues for [CONFIDENTIAL] were:

- i. The receipt by [CONFIDENTIAL] of a letter of commitment from its lender; and
- ii. upon receipt of the letter of commitment, execution of the Purchase and Sale Agreement.

(d) The letter of commitment had not yet been approved at all required levels but to the best of AU's understanding, the lender had raised no concerns respecting the terms of the letter of commitment.

(e) August 1, 2005 remained the latest closing date for the transaction..

55. On May 6, 2005, AU's counsel wrote to counsel for the Commissioner advising, among other things, that AU had entered into a binding agreement to sell the UGG terminal to Terminal One [CONFIDENTIAL]. The letter also attached an AU press release announcing the terminal sale. Subsequent correspondence on May 10, 2005 warned that failure by the parties to complete the proposed transaction in accordance with the Agreement of Purchase and Sale ("PSA") would result in the sale process automatically reverting to the Trustee under the terms of the Consent Agreement. The latest date for completion of the PSA was August 1, 2005. **This effectively extended the ISP to August 1, 2005 and was the ninth extension.**

56. On July 18, 2005 the Commissioner's counsel wrote AU's counsel indicating that the letter was in response to requests received from both AU and Terminal One for a further

extension of the final deadline for the completion of an agreement to sell the UGG terminal. The letter went on to state that the Commissioner was agreeable to extending the final deadline to 12 noon (Winnipeg time), August 15, 2005. The letter concluded by indicating that the purpose of this further extension was to allow Terminal One to secure grain commitments to the terminal. **The agreement to yet again extend the ISP represented the tenth extension.**

57. On August 9, 2005, AU's counsel wrote to counsel for the Commissioner requesting that the Commissioner agree to extend the Port Terminal Initial Sale Period from August 15, 2005 to August 29, 2005. The letter went on to state that, since the last extension was granted, **[CONFIDENTIAL]** This letter is appended and marked as Exhibit "L".
58. On August 10, 2005 counsel for the Commissioner wrote both AU and Terminal One counsel, in separate letters, advising that the Commissioner was not prepared to grant any further extension beyond August 15, 2005. These letters are attached and marked collectively as Exhibit "M". **To grant yet another extension would have been to agree to a eleventh extension to the ISP.**
59. On August 11, 2005, AU's counsel wrote to counsel for the Commissioner in response to the August 10, 2005 letter in which Commissioner's counsel indicated that the Commissioner was not prepared to grant any further extension of the Port Terminal Initial Sale Period. The letter from AU's counsel indicated, among other things, that counsel was under instructions to file an application with the Competition Tribunal for an order under section 106 of the *Competition Act* rescinding the Consent Agreement, which they planned to file shortly.
60. On August 11, 2005, counsel for the Commissioner replied to AU's counsel's letter of August 11, 2005. Among other things, the letter confirms that, notwithstanding AU's intention to bring a section 106 application and to seek interim relief, the Commissioner was

not prepared to revisit her decision to grant no further extensions to the initial sale period deadline of August 15, 2005.

61. On August 11, 2005, AU filed an application for interim relief, as well as a section 106 application with the Competition Tribunal.
62. On August 12, 2005, counsel for the Commissioner wrote to AU's counsel to confirm that, without prejudice to AU's motion for interim relief and any position AU or the Commissioner wished to take on the interim relief motion or AU's 106 application, the Commissioner agreed to extend the terminal sale deadline date of August 15, 2005 to such date as the Competition Tribunal finally disposes of the motion.
63. Subsequent to AU filing an application for interim relief, as well as a section 106 application with the Competition Tribunal, a number of potential purchasers have indicated to the Commissioner that they have an interest in acquiring the UGG terminal.

SWORN BEFORE ME, at the City of Hull,)

in the Province of Quebec,)

this 9th day of September 2005.)

)

DAVID OUELLET

THIS IS EXHIBIT H TO THE
AFFIDAVIT OF DAVID OUELLET

SWORN BEFORE ME THIS 9 DAY
OF September 20 02
Helene Chartrand
COMMISSIONER FOR OATHS

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CT-2002/001



THE COMPETITION TRIBUNAL

IN THE MATTER OF an application for an order by the
Commissioner of Competition pursuant to section 92 of the
Competition Act, R.S.C. 1984, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by United Grain
Growers Limited of Agricore Cooperative Ltd., a company
engaged in the grain handling business;

BETWEEN:

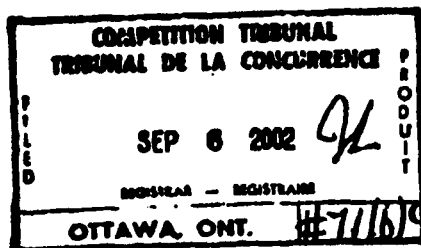
THE COMMISSIONER OF COMPETITION

Applicant

- AND -

UNITED GRAIN GROWERS LIMITED

Respondent



- AND -

OTTAWA, ONT. #7/16/ CANADIAN WHEAT BOARD

Intervenor

**FINDINGS AND DETERMINATIONS OF THE
COMPETITION TRIBUNAL PURSUANT TO
SECTION 92 OF THE COMPETITION ACT**

1. **FURTHER** to the application filed on January 2, 2002 by the Commissioner of
Competition (the "Commissioner") pursuant to section 92 of the *Competition Act*, R.S.C. 1985,

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c. C-34, as amended (the "Act") for an order directing the divestiture of certain assets and certain other remedies in respect of the Respondent's acquisition of Agricore Cooperative Ltd. on November 1, 2001 (the "Acquisition"), the merged entities having carried on business as "Agricore United" as of November 1, 2001;

2. **AND FURTHER** to the Joint Submission by the Respondent and the Commissioner requesting certain findings and determinations pursuant to section 92 of the Act and sections 8(1) and 8(2) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19, as amended (the "Competition Tribunal Act");

3. **AND UPON READING** the notice of application filed January 2, 2002 (the "Notice of Application"), the Statement of Grounds and Material Facts dated December 19, 2001 (the "SGMF"), the Affidavit of David Ouellet sworn December 19, 2001, the response filed February 6, 2002 (the "Response"), the reply filed February 25, 2002 (the "Reply"), the Joint Submission and Request for Findings and Determinations, dated September 6, 2002, the draft Findings and Determinations, the Respondent's memorandum of argument, the affidavit of Debra Bilous, sworn August 13, 2002, the Commissioner's memorandum of argument, the affidavit of Dr. William Wilson, sworn September 6, 2002, the affidavit of David Ouellet, sworn September 6, 2002 and the Parties' Position on the SGMF;

4. **AND UPON CONVENING** the hearing of this matter in respect of the findings and determinations set out below, and adjourning the balance of the hearing to a later date;

5. **AND UPON DETERMINING** that this is an appropriate case for the Tribunal to

make findings and determinations at the outset of the hearing pursuant to section 92 of the Act and sections 8(1) and 8(2) of the *Competition Tribunal Act*;

6. **AND UPON CONSIDERING** the Confidential Agreement reached between the Commissioner and the Respondent on October 31, 2001;

Definitions

7. For the purposes of these Findings and Determinations, the following definitions apply:

- (a) "PEL Interest" means the Respondent's interest in Pacific Elevators Limited ("PEL") and Western Pool Terminals Ltd. ("WPTL") and its interest in the loan agreement between PEL, WPTL and Alberta Wheat Pool dated January 11, 1996;
- (b) "Pacific 1 Terminal" means that part of the Pacific Elevators complex known as the Pacific 1 terminal and more particularly described in the Response;
- (c) "SGMF" means the Statement of Grounds and Material Facts filed with the Notice of Application;
- (d) "SLC" means the substantial lessening of competition as alleged by the Commissioner in the SGMF; and
- (e) "UGG Terminal" means the grain terminal in Vancouver, British Columbia owned by the Respondent prior to the Acquisition;

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8. The Tribunal hereby finds and determines that:
- (a) the Acquisition causes an SLC as alleged by the Commissioner and, for the purposes of this proceeding, not contested by the Respondent, without the need for further evidence to establish an SLC or elements of an SLC;
 - (b) the divestiture by the Respondent of either the UGG Terminal or the PEL Interest, as requested by the Commissioner in the Notice of Application, is sufficient to address the SLC;
 - (c) the divestiture by the Respondent of the Pacific 1 Terminal, either alone or in combination with a portion of the Annex component of the Pacific Elevators complex (the "Annex"), would also be sufficient to address the SLC if:
 - (i) the divestiture is to an entity that does not have any direct or indirect interest in a Vancouver port grain terminal (other than Neptune or Vancouver Wharves);
 - (ii) the acquiring entity is independent of Agricore United;
 - (iii) the divestiture would result in the acquiror being able to operate on a stand alone basis independent of the other port grain terminal operators similar to, for example, the stand alone basis on which the UGG Terminal operates today; and
 - (iv) the divestiture would enable the acquiror to handle at least 2.2 million tonnes of any combination of grain, oil seeds and specialty crops per annum in the Port of Vancouver on a commercially competitive basis; and
 - (d) the Tribunal leaves to determination at a later date the issue of whether the Pacific 1 Terminal, either alone or in combination with a portion of the Annex, meets the four part test set out immediately above (the "Four Part Test").

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9. The Tribunal further confirms that the parties' joint submission and request for findings and determinations, and the findings and determinations made herein, do not limit the scope of the evidence which the parties are permitted to lead in respect of the issue of whether the Pacific 1 Terminal meets the Four Part Test.

DATED at _____, this _____ day of _____, 2002.

THIS IS EXHIBIT Y TO THE
AFFIDAVIT OF David Ouellet

SWORN BEFORE ME THIS 9 DAY
OF September 20 05
Hélène Chastand
COMMISSIONER FOR OATHS



THE COMPETITION TRIBUNAL

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

AND IN THE MATTER of an application for an order by the
Commissioner of Competition under section 92 of the *Competition Act*;

AND IN THE MATTER of the acquisition by
United Grain Growers Limited of Agricore Cooperative Ltd.,
a company engaged in the grain handling business.

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

- AND -

UNITED GRAIN GROWERS LIMITED

Respondent

- AND -

THE CANADIAN WHEAT BOARD

Intervenor

CONSENT AGREEMENT BETWEEN
THE COMMISSIONER OF COMPETITION AND UNITED GRAIN GROWERS
LIMITED IN RELATION TO THE ACQUISITION OF
AGRICORE COOPERATIVE LTD. BY UNITED GRAIN GROWERS LIMITED

WHEREAS United Grain Growers Limited ("UGG") acquired Agricore Cooperative Ltd. ("Agricore") on November 1, 2001 (the "Acquisition") and subsequently began carrying on business as Agricore United;

AND WHEREAS the Commissioner of Competition has alleged that the Acquisition is likely to result in a substantial lessening of competition ("SLC") in the provision of port terminal grain handling services at the Port of Vancouver and has filed an application before the Competition Tribunal under section 92 of the *Competition Act* (the "Act"), R.S.C. 1985, c. C-35, as amended, for an order requiring the divestiture by UGG of its interest in one of two port terminal facilities in the Port of Vancouver;

AND WHEREAS the UGG Terminal and the Pacific Complex are the subject of an interim consent order (the "Interim Consent Order") issued by the Competition Tribunal on January 14, 2002;

AND WHEREAS at the request of the Commissioner and UGG, the Competition Tribunal made certain findings and determinations on September 12, 2002, including that:

- (a) the Acquisition causes an SLC as alleged by the Commissioner and, for the purposes of this proceeding, not contested by the Respondent, without the need for further evidence to establish an SLC or elements of an SLC; and
- (b) the divestiture by the Respondent of either the UGG Terminal or the PEL Interest (as therein defined), as requested by the Commissioner in the Notice of Application, is sufficient to address the SLC;

AND WHEREAS the Commissioner declares himself satisfied that the Agreement set out herein will be sufficient to avoid the SLC in the provision of port terminal grain handling services at the Port of Vancouver resulting from the Acquisition;

AND WHEREAS in order to finally resolve the above-mentioned section 92 application, Agricore United and the Commissioner hereby agree as follows:

Definitions

1. For the purposes of this Agreement, the following definitions shall apply:
 - (a) "Acquisition" means the acquisition by UGG of the port terminal grain handling operations of Agricore in the Port of Vancouver pursuant to an agreement dated as of July 30, 2001;
 - (b) "Agreement" means this consent agreement entered into by UGG and the Commissioner;
 - (c) "Agricore" means Agricore Ltd., a corporation continued under the provisions of the *Canada Business Corporations Act* (Canada), R.S.C. 1985, c. C-44, as amended, and the successor to Agricore Cooperative Ltd.;
 - (d) "Agricore United" means, following the Closing Date, United Grain Growers Limited, a corporation existing under the provisions of the *United Grain Growers Act* (Canada), a Special Act of the Parliament of Canada, and affiliates thereof, and carrying on business as "Agricore United";
 - (e) "Closing Date" means November 1, 2001;
 - (f) "Commissioner" means the Commissioner of Competition appointed pursuant to section 7 of the Act;
 - (g) "Competition Tribunal" means the Competition Tribunal established pursuant to the *Competition Tribunal Act* (Canada), R.S.C. 1985, c. 19 (2nd Supp.), as amended;

- (h) "Confidential Information" means competitively sensitive or proprietary information relating to the Port Terminals not independently known to Persons other than Agricore United, including, without limiting the generality of the foregoing, customer lists, price lists, marketing methods or other trade secrets that relate to the Port Terminals;
- (i) "CWB" means the Canadian Wheat Board, an organization established under *The Canada Wheat Board Act* (Canada) R.S.C., c. C-12, as amended;
- (j) "Divest" means to implement a Divestiture;
- (k) "Divestiture" means the sale, transfer, assignment, redemption or other disposition (including, with the approval of the Commissioner, an asset swap arrangement), necessary to ensure that Agricore United does not retain, directly or indirectly, except as permitted herein or upon the consent of the Commissioner, any right, title, control, interest, liability or obligation in respect of any of the assets to be Divested inconsistent with the intent of this Agreement, other than obligations in respect of any representations, warranties and covenants included in any agreement between Agricore United and the Purchaser of the relevant Port Terminal as permitted by this Agreement;
- (l) "Full Capacity Operation" means a circumstance where terminal authorizations issued by the relevant terminal, which permit a Person to deliver grain to that terminal, equal available capacity at that terminal;
- (m) "Independent Grain Companies" means those grain handling companies with no ownership interest in a port terminal in Vancouver and with no affiliation with an

owner of a port terminal in Vancouver. For the purpose of this definition, a grain handling company is affiliated with a port terminal owner if it has a 20% or more direct or indirect shareholding or ownership interest in the port terminal owner, or if a port terminal owner, other than Agricore United, has a 20% or more direct or indirect shareholding or ownership interest in the grain handling company;

- (n) "Interim Consent Order" means the interim consent order issued by the Competition Tribunal on January 14, 2002;
- (o) "Pacific Complex" means the Pacific Elevators Limited port terminal facility located at 1803 Stewart Street, Vancouver B.C. V5L 5G1 and more particularly described in Schedule "A";
- (p) "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity;
- (q) "Port Terminal Divestiture Option" has the meaning set out in Schedule "A";
- (r) "Port Terminal Initial Sale Period" has the meaning set out in Confidential Schedule "B";
- (s) "Port Terminals" means, subject to Schedule "A", the UGG Terminal and the Pacific Complex and "Port Terminal" means either one of them;
- (t) "Purchaser" means the Person(s) or entity(ies) who purchase(s) a Port Terminal pursuant to this Agreement;
- (u) "Trustee" means the Person appointed trustee pursuant to paragraphs 14 or 15 of this Agreement to effect the Divestiture of a Port Terminal, if necessary;

- (v) "UGG Terminal" means the UGG port terminal located at 1155 Stewart Street, Vancouver, BC V6A 4H4; and
- (w) "UGG" means, prior to the Closing Date, United Grain Growers Limited, a corporation existing under the provisions of the *United Grain Growers Act* (Canada), a Special Act of the Parliament of Canada.

Application

2. The provisions of this Agreement shall apply to:

- (a) Agricore United (including United Grain Growers Limited and Agricore Ltd.);
- (b) each division, subsidiary or other Person controlled by Agricore United and each officer, director, employee, agent or other Person acting for or on behalf of Agricore United with respect to any matter referred to in this Agreement;
- (c) the successors and assigns of Agricore United, and all other Persons acting in concert or participating with them with respect to any matter referred to in this Agreement who shall have received actual notice of this Agreement;
- (d) the Trustee and each employee, agent or other Person acting for or on behalf of such Trustee with respect to any matter referred to in this Agreement; and
- (e) a proposed Purchaser and each employee, agent or other Person acting for or on behalf of such proposed Purchaser with respect to any matter referred to in this Agreement.

Port Terminal Divestiture Option

3. Agricore United shall offer to Divest one of the Port Terminals within the Port Terminal Initial Sale Period.

4. If a Port Terminal has not been Divested within the Port Terminal Initial Sale Period, then the Divestiture of a Port Terminal shall be carried out by the Trustee in accordance with the procedure set out herein.

Divestiture Procedure

5. Divestiture of the Port Terminal, whether by Agricore United or the Trustee, shall be completed on the following terms:

- (a) by way of disposition of the Port Terminal for use as a going concern;
- (b) to one or more arm's length Purchasers who:
 - (i) shall use the Port Terminal for the same purpose it was used prior to the Closing Date; and
 - (ii) shall have the managerial, operational and financial capability to operate the Port Terminal as contemplated in sub-paragraph 5(b)(i) above.

6. Any Person making a *bona fide* inquiry of Agricore United, its agent or the Trustee regarding the possible purchase by that Person or its principal of a Port Terminal shall be notified that the sale is being made pursuant to this Agreement and provided with a copy of this Agreement, with the exception of the provisions hereof which are confidential as set out in Confidential Schedule "B".

7. Following the Port Terminal Initial Sale Period and subject to paragraph 12 below, any prospective Purchaser that demonstrates its *bona fide* interest in purchasing a Port Terminal shall:

- (i) be furnished with all pertinent information regarding the relevant Port Terminal; and
- (ii) be permitted to make such reasonable inspection of the relevant Port Terminal and of all financial, operational or other documents and information as may be relevant to the Divestiture, except for any documents which shall in the future be made the subject of an order of confidentiality of the Competition Tribunal.

8. Agricore United shall not, without the consent of the Commissioner, provide financing for all or any part of any Divestiture under this Agreement which would permit Agricore United to influence or control, directly or indirectly, the relevant Port Terminal after the Divestiture.

9. [Confidential].

10. Agricore United shall allow the Purchaser of a Port Terminal an opportunity to employ those persons employed primarily in relation to the Port Terminal (the "Employees") as follows:

- (a) not later than 14 days, or such other period as may be agreed upon by the Purchaser and Agricore United, before the date of the Divestiture of the Port Terminal, Agricore United shall, to the extent permissible under applicable laws,
 - (i) provide to the Purchaser a list of all the Employees, (ii) allow the Purchaser an

opportunity to interview the Employees for purposes of determining whether or not to offer them employment, and (iii) allow the Purchaser to inspect the personnel files and other documentation relating to the Employees; and

- (b) Agricore United shall, to the extent permissible under applicable laws, (i) not offer any incentive to any Employee to decline employment with the Purchaser, (ii) remove any contractual impediments with Agricore United that may deter any Employee from accepting employment with the Purchaser, including, but not limited to, any non-compete or confidentiality provisions of employment relating specifically to the Port Terminal that would affect the ability of the Employee to be employed by the Purchaser, (iii) not interfere with the employment by the Purchaser of any Employee, and (iv) continue employee benefits offered by Agricore United until the Divestiture has been completed, including regularly scheduled raises and bonuses, and regularly scheduled vesting of all pension benefits.

11. Nothing in paragraph 10 of this Agreement is intended to diminish any of Agricore United's or a Purchaser's obligations under any applicable labour laws or relevant collective bargaining agreements.

12. Access by a prospective Purchaser to the information and assets identified in paragraph 7 of this Agreement shall be conditional on the execution of a customary confidentiality agreement containing, among other things, non-solicitation terms relating to personnel and suppliers.

13. Agricore United shall advise the Commissioner in writing every 60 days during the Port Terminal Initial Sale Period of the progress of its efforts to accomplish the implementation of a Port Terminal Divestiture Option, including a description of contacts or negotiations and the identity of all parties contacted and prospective Purchasers who have come forward, all with reasonable detail. The Commissioner has the right to request additional information from Agricore United regarding the progress of its efforts to implement a Port Terminal Divestiture Option and Agricore United shall respond to any such requests within a reasonable time having regard to the nature of the request.

Trustee Sale

14. If a Port Terminal Divestiture Option has not been implemented within the Port Terminal Initial Sale Period, the Commissioner shall appoint a trustee. The Commissioner shall select a trustee, subject to the consent of Agricore United (which shall not be unreasonably withheld), at least 120 days before the expiry of the Port Terminal Initial Sale Period, and the Trustee shall, upon the expiry of the Port Terminal Initial Sale Period, be responsible for implementing a Port Terminal Divestiture Option in accordance with the requirements set out in this Agreement, including Confidential Schedule "B". If Agricore United and the Commissioner fail to agree on the selection of a trustee, the Competition Tribunal, on the application of the Commissioner or Agricore United, shall appoint the trustee.

15. If the Commissioner reasonably concludes that any Trustee appointed pursuant to this Agreement has ceased to act or failed to act diligently or otherwise in accordance with this Agreement, the Commissioner shall, subject to the consent of Agricore United (which shall not be unreasonably withheld), forthwith appoint a substitute Trustee. If Agricore United reasonably concludes that any Trustee appointed pursuant to this Agreement has ceased to act or failed to act

diligently or otherwise in accordance with this Agreement, and the Commissioner has not appointed a substitute Trustee, Agricore United may apply to the Competition Tribunal for the appointment of a substitute Trustee. If Agricore United and the Commissioner fail to agree on the selection of a substitute Trustee, the Competition Tribunal, on the application of the Commissioner or Agricore United, shall appoint a substitute Trustee.

16. Agricore United shall assist the Trustee in accomplishing the Divestiture. Consistent with Confidential Schedule "B" hereto, in connection therewith, following the Port Terminal Initial Sale Period, Agricore United shall provide any prospective Purchaser that demonstrates its *bona fide* interest in purchasing a Port Terminal with full access to all information and assets as set out in paragraph 7 of this Agreement. The Trustee shall have full and complete access, as is reasonable in the circumstances, to the personnel, books, records and facilities of the relevant Port Terminal and Agricore United shall take no action to interfere with or impede the Trustee's accomplishment of the Divestiture.

17. Agricore United shall not object to a Divestiture proposed by the Trustee on any grounds other than the Trustee's malfeasance, gross negligence, bad faith or breach of this Agreement.

18. Agricore United shall hold the Trustee harmless against any losses, claims, damages or liabilities arising out of, or in connection with, the performance of the Trustee's duties under this Agreement except to the extent that such liabilities, losses, damages or claims result from the Trustee's malfeasance, gross negligence, bad faith or breach of this Agreement.

19. The Trustee shall have such other powers as the Competition Tribunal may grant to the Trustee upon the application of Commissioner or Agricore United.

20. All expenses reasonably and properly incurred by the Trustee in the course of the Trustee sale shall be paid by Agricore United and the proceeds of any Trustee sale shall be paid to Agricore United or as Agricore United may direct.

21. The Trustee shall implement a Port Terminal Divestiture Option at the price and on the terms and conditions most favourable to Agricore United then reasonably available.

[Confidential]

22. The Trustee shall execute a customary confidentiality agreement and shall not communicate any Confidential Information except to the extent required by this Agreement.

23. After the expiry of the Port Terminal Initial Sale Period and until the end of the term of the Trustee's appointment, only the Trustee shall have the full power and authority to implement the relevant Port Terminal Divestiture Option on such terms as are required by this Agreement.

24. The Trustee shall have the full power and authority to retain, on usual and reasonable commercial terms, financial, legal and other professional advisers, including investment bankers, that may be reasonably necessary or advisable in advising and assisting the Trustee in implementing a Port Terminal Divestiture Option.

25. After the Trustee's appointment becomes effective, the Trustee shall, every 30 days, file reports with the Commissioner and Agricore United, setting forth the Trustee's efforts to accomplish the Divestiture, all with reasonable detail. The Commissioner has the right to ask for additional information from the Trustee regarding the Divestiture and the Trustee shall respond within a reasonable time having regard to the nature of the request.

Commissioner's Approval

26. The implementation of a Port Terminal Divestiture Option is subject to the approval of the Commissioner in writing, which shall be based on the criteria outlined in paragraph 5 of this Agreement and shall be obtained in accordance with the notification procedure set out in paragraphs 28 to 31 of this Agreement.

27. The Commissioner may, in addition to the criteria set out in paragraph 5 of this Agreement, also take into account the likely impact of the Divestiture on competition in that market in deciding whether or not to approve the Divestiture.

Notification

28. Agricore United or the Trustee, whichever is then responsible for effecting the Divestiture required herein, shall notify the Commissioner in writing of any proposed Divestiture. If the Trustee is responsible, it shall similarly notify Agricore United. Such notice shall be given at or before the time a binding offer that is acceptable to Agricore United or the Trustee, as the case may be, is received and the notice shall include:

- (a) the identity of the proposed Purchaser;
- (b) the details of the proposed transaction;
- (c) information concerning whether the proposed Purchaser would satisfy the terms of paragraphs 5 and 27 of this Agreement;
- (d) an update of the last report provided pursuant to paragraph 13 of this Agreement or paragraph 25 of this Agreement, as the case may be; and

- (e) the agreement of the proposed Purchaser that it will respond as soon as possible to a request by the Commissioner for additional information regarding the proposed Divestiture.

29. Within ten (10) days after receipt of the notice referred to in paragraph 28 above, the Commissioner and, where the notice has been provided by the Trustee, Agricore United, may request additional information concerning the proposed Divestiture, the proposed Purchaser and any other potential Purchaser. Where the Commissioner requests additional information, Agricore United, the Trustee or the proposed Purchaser, as the case may be, shall provide the additional information within ten (10) days of the receipt of the request, unless the Commissioner agrees in writing to extend the time. Where Agricore United requests additional information, the Trustee shall provide the additional information within ten (10) days of the receipt of the request, unless Agricore United agrees in writing to extend the time.

30. Within fifteen (15) days after receipt of the notice pursuant to paragraph 28 of this Agreement or, if the Commissioner and/or Agricore United have requested additional information pursuant to paragraph 29 above, within fifteen (15) days after receipt of the said information:

- (a) the Commissioner shall notify, in writing, Agricore United and, where appropriate, the Trustee, if the Commissioner objects to the proposed Divestiture on one or more of the grounds set out in paragraphs 5 and/or 27 of this Agreement; and
- (b) in the case of a Divestiture proposed by the Trustee, Agricore United shall notify, in writing, the Commissioner and the Trustee if Agricore United objects to the

proposed Divestiture on one or more of the grounds set out in paragraph 17 of this Agreement.

31. If:
- (a) the Commissioner fails to object as contemplated by paragraph 30 of this Agreement or if the Commissioner notifies, in writing, Agricore United and, where appropriate, the Trustee, that the Commissioner does not object; and
 - (b) Agricore United fails to object as contemplated by paragraph 30 of this Agreement or if Agricore United notifies, in writing, the Commissioner and, where appropriate, the Trustee, that Agricore United does not object,

then the Divestiture may be completed.

32. Where the Commissioner or Agricore United has objected to a proposed Divestiture, that Divestiture shall not be completed without the approval of the Competition Tribunal.

33. Agricore United or the Trustee, as the case may be, shall notify the Commissioner forthwith after a Divestiture required by this Agreement has been completed.

Maintenance of the Port Terminals

34. The Commissioner confirms, that based on all the information currently available to him, that he has no reason to believe that Agricore United has violated any provision of the Interim Consent Order, including those provisions regarding the maintenance of the UGG Terminal and the Pacific Complex. Agricore United agrees that, until the implementation of a

Port Terminal Divestiture Option by Agricore United or the Trustee, Agricore United shall take such steps as are necessary to maintain the competitive viability of both the UGG Terminal and the Pacific Complex and shall not dispose of any material assets of the UGG Terminal or the Pacific Complex.

35. Without limiting the generality of the foregoing, until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, Agricore United shall provide such sales, managerial, administrative, operational and financial support as is necessary in the ordinary course of business to promote the continued effective operation of the UGG Terminal and the Pacific Complex in accordance with standards similar to those existing prior to the Closing Date.

36. Except as set out in paragraphs 39 to 43 below, until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, Agricore United shall not, without prior approval from the Commissioner (such approval not to be unreasonably withheld), enter into or withdraw from any material contracts or arrangements relating to the UGG Terminal or the Pacific Complex, make any material changes to such operations, or terminate any current employment, salary or benefit agreements for any management personnel employed in relation to either the UGG Terminal or the Pacific Complex.

37. For greater certainty, notwithstanding paragraphs 34 to 36, Agricore United may temporarily shut down the UGG Terminal or the Pacific Complex and may temporarily lay-off personnel employed in relation to either the UGG Terminal or the Pacific Complex in response to material changes in shipments through the Port of Vancouver caused by drought, poor crop quality, labour disputes, acts of God, action or failure to act of any government or governmental

regulatory authority, accident, fire, flood, or other event beyond the control of Agricore United or for the purpose of performing routine maintenance on either the UGG Terminal or the Pacific Complex. Notice of any temporary shut-down or lay-off shall be provided to the Commissioner in writing.

38. Until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, Agricore United shall honour all existing contracts for the handling of grain for Independent Grain Companies. In addition, Agricore United shall offer to handle for Independent Grain Companies in the aggregate a minimum of 125,000 tonnes of grain per month (1.5 million tonnes per year), by way of contracts, through either the UGG Terminal or the Pacific Complex or through terminal arrangements entered into by Agricore United with other terminals. Where Agricore United enters into a terminal arrangement for the handling of an Independent Grain Company's grain with a third party, there shall be no additional cost to the Independent Grain Company as a result of the use of such third party's facility beyond that contemplated in paragraph 40 below.

39. Until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, new contracts for the handling of Independent Grain Companies' grain shall be based on reasonable commercial terms consistent with past practice, and shall include: (1) a contract term that ends on a date certain, provided that the Independent Grain Company shall have an option to terminate the contract upon either (i) a Trustee being appointed pursuant to this Agreement to Divest one of the Port Terminals, or (ii) a Divestiture of one of the Port Terminals, (2) a commitment by the Independent Grain Company that Agricore United will handle all of its Vancouver volume for the duration of the contract, and (3) renegotiation or arbitration in the event of major regulatory change. Agricore United may terminate such an

agreement if the Independent Grain Company does not ship all of its Vancouver volume during the term of the contract through Agricore United.

40. Until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, prices for the handling of Independent Grain Companies' grain under any new contract shall be based on Agricore United's tariffs as filed with the Canadian Grain Commission under the *Canada Grain Act* (Canada) and Agricore United shall pay a diversion premium of at least \$2 per tonne. Diversion premiums negotiated between Agricore United and an Independent Grain Company shall remain confidential. Any non-CWB tariff increase or any diversion premium decrease (CWB or non-CWB grain) from these initial levels must be commercially reasonable.

41. In the event that bottlenecks, bountiful crop production or other causes create a situation of Full Capacity Operation at a port terminal facility designated to handle Independent Grain Companies' grain in respect of a given period (the "Relevant Period"), a terminal authorization for any given Independent Grain Company's grain will be issued in an amount equal to $(A \div B) \times C$

where:

A = the relevant Independent Grain Company's shipment of grain through the Port of Vancouver for the last three completed months before the Relevant Period;

B = the total shipments of grain through the Port of Vancouver for the last three completed months before the Relevant Period; and

C = the available capacity at the designated port terminal facility for the Relevant Period.

In the event that an Independent Grain Company's terminal authorizations are reduced pursuant to this provision, all shippers to that terminal will have their terminal authorizations reduced on the same basis.

42. Until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, any disputes as to compliance with the commitments in paragraphs 38 to 41 as to price, tariffs, diversion premiums or other terms shall be settled by way of an arbitration procedure as outlined in Schedule "C" that is consistent with existing commercial practice and with terms of reference that have regard to market conditions and structure, capacity utilization, costs of operation, reasonable rate of return on investment and regulatory framework. During any arbitration procedure, Agricore United shall continue to provide port terminal services to the Independent Grain Company that initiated the arbitration.

43. Notwithstanding any other provision of this Agreement, Agricore United shall have no obligation to deal with an Independent Grain Company that defaults in payment or breaches other material terms of its contract with Agricore United.

44. Agricore United shall provide a copy of this Agreement to the Manager of Vancouver Operations and Agricore United shall direct such manager and any servants or agents of the parties operating and managing the UGG Terminal and the Pacific Complex to do so in accordance with the terms of this Agreement.

Compliance Inspection

45. For the purpose of determining or securing compliance with this Agreement, subject to any valid claim to a legally recognized privilege, and upon written request, Agricore United shall permit any duly authorized representative of the Commissioner:

- (a) upon a minimum of two (2) business days notice to Agricore United, access during office hours of Agricore United to inspect and copy all relevant books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Agricore United relating to compliance with this Agreement; and
- (b) upon a minimum of five (5) business days notice to Agricore United, and without restraint or interference from Agricore United, to interview relevant directors, officers or employees of Agricore United on matters in the possession or under the control of Agricore United relating to compliance with this Agreement. Such directors, officers or employees may have counsel present at these interviews.

Notices

46. Notices, reports or other communications required or permitted pursuant to this Agreement shall be in writing and shall be considered to be given if dispatched by confirmed personal delivery or facsimile transmission to the address or facsimile number below:

- (a) If to the Commissioner:

The Commissioner of Competition
Competition Bureau
Industry Canada
Place du Portage
Phase I, 50 Victoria Street
Hull, Quebec
K1A 0C9

Attention: John Campion
John L. Syme
Melanie Aitken
Arsalaan Hyder

Fax: (819) 953-9267

(b) If to Agricore United:

Agricore United
201 Portage Avenue
TD Centre
Winnipeg, Manitoba
R3C 3A7

Attention: Christopher Martin

Fax: (204) 944-2299

With a copy to:

Davies Ward Phillips & Vineberg LLP
Suite 4400
1 First Canadian Place
Toronto, Ontario
M5X 1B1

Attention: Kent Thomson
Sandra Forbes
John Bodrug

Fax: (416) 863-0871

Term of Consent Agreement

47. This Agreement shall remain in effect until a Divestiture contemplated by this Agreement has occurred or is no longer required hereunder.

General

48. The Commissioner and Agricore United may, by way of mutual agreement, extend any of the time periods applicable herein.

49. If the Commissioner's approval is sought pursuant to this Agreement and such approval is not granted, or if a decision of the Commissioner is unreasonably delayed or withheld, Agricore United may apply to the Competition Tribunal for approval.

50. In the event of a dispute as to the interpretation or application of this Agreement, the Commissioner, the Trustee or Agricore United shall be at liberty to apply to the Competition Tribunal for an order interpreting any of the provisions of this Agreement.

51. It is understood that Agricore United does not agree with all of the allegations by the Commissioner in relation to this proceeding.

52. This Agreement constitutes the entire agreement between the Commissioner and Agricore United with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. Registration of this Agreement, in accordance with section 105 of the Act, terminates the Interim Consent Order.

53. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.

DATED this 17th day of October, 2002.

UNITED GRAIN GROWERS LIMITED

(signed) Konrad von Finckenstein
Commissioner of Competition

by (signed) Brian Hayward

SCHEDULE "A"

Port Terminal Divestiture Option: means, at Agricore United's option, the Divestiture of one of the following:

Option 1: all of the issued and outstanding shares of Pacific Elevators Limited ("PEL") and all of the issued and outstanding shares in Western Pool Terminals Ltd. ("WPTL") or all of the assets owned by PEL and WPTL; or

Option 2: the UGG Terminal.

If Agricore United has not implemented one of the Port Terminal Divestiture Options before the expiry of the Port Terminal Initial Sale Period, the Trustee may choose to Divest either Option 1 or Option 2 unless, prior to the expiry of the Port Terminal Initial Sale Period, Agricore United gives notice, at least 90 days before the expiry of the Port Terminal Initial Sale Period, that it elects that the Port Terminal in Option 1 or 2 as the case may be, be Divested by the Trustee, in which case the Trustee shall Divest the Port Terminal selected by Agricore United. If Agricore United selects Option 1, Agricore United can specify whether the Divestiture will occur by way of a share or asset sale.

Once a Divestiture is implemented, or the Trustee has obtained the right to Divest a Port Terminal in accordance with paragraph 14 of this Agreement, the remaining Port Terminal ceases to be a "Port Terminal" for the purposes of this Agreement.

PUBLIC VERSION

CONFIDENTIAL SCHEDULE "B"

SCHEDULE "C"

ARBITRATION PROCEDURES

1. Initiation of Arbitration Proceedings

- (a) If any party to a port terminal handling agreement (the "PTH Agreement") wishes to have any matter under the PTH Agreement arbitrated in accordance with the provisions of the PTH Agreement, it shall give notice to the other party hereto specifying particulars of the matter or matters in dispute and proposing the name of the person it wishes to be the single arbitrator. Within 15 days after receipt of such notice, the other party to the PTH Agreement shall give notice to the first party advising whether such party accepts the arbitrator proposed by the first party. If such notice is not given within such 15 day period, the other party shall be deemed to have accepted the arbitrator proposed by the first party. Failing agreement of the parties on a single arbitrator within such 15 day period, either party may apply to a judge of the Manitoba Queen's Bench for the appointment of a single arbitrator. The arbitrator, whether agreed on by the parties or appointed by the Court (the "Arbitrator"), shall have the qualifications set out in paragraph (b).
- (b) The Arbitrator shall be at arm's length from all parties and as to the five year period prior to the Arbitration shall not be a member of any accounting or legal firm or firms who advise or who have advised any of the parties, nor shall the Arbitrator be an individual who has been retained by any of the parties.

2. Submission of Written Statements

- (a) Within 15 business days of the appointment of the Arbitrator, the party initiating the Arbitration (the "Claimant") shall send to the other party (the "Respondent") a Statement of Claim setting out in sufficient detail the facts and any contentions of law on which it relies, and the relief that it claims.
- (b) Within 15 business days of the receipt of the Statement of Claim, the Respondent shall send to the Claimant a Statement of Defence stating in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies on what grounds and on what other facts and contentions of law the Respondent relies.
- (c) Within 10 business days of receipt of the Statement of Defence, the Claimant may send the Respondent a Statement of Reply.
- (d) All Statements of Claim, Defence and Reply shall be accompanied by copies of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and (where practicable) by any relevant samples.

- (e) After submission of all the Statements, the Arbitrator will give directions for further conduct of the arbitration, which shall include meetings and hearings conducted in conformity with the Rules set forth below.

3. Meetings and Hearings

- (a) Meetings and hearings of the Arbitrator shall take place in the City of Winnipeg, Manitoba or in such other place as the Claimant and the Respondent shall agree upon in writing and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the Arbitrator. Subject to the foregoing, the Arbitrator may fix the date, time and place of meetings and hearings in the arbitration, and will give all the parties adequate notice of these provided the arbitration shall commence within 30 days after the exchange of the Statements. Subject to any adjournments, which the Arbitrator allows, the final hearing will be continued on successive working days until it is concluded.
- (b) All meetings and hearings will be in private unless the parties otherwise agree.
- (c) Any party may attend any meetings and hearings personally and/or be represented at any meetings or hearings by legal counsel or other representative.
- (d) Each party may examine, cross-examine and re-examine, as the Arbitrator shall deem appropriate, all witnesses at the arbitration.
- (e) The Arbitrator may appoint one or more experts to report to him or her on specific issues to be determined by the Arbitrator. The expert shall be at arm's length from all parties and as to the five year period prior to the arbitration shall not be a member of any accounting or legal firm or firms who advise or who have advised any of the parties, nor shall the expert be an individual who has been retained by any of the parties. The Arbitrator may require a party to give such expert(s) any relevant information, or to provide access to any relevant documents, goods, materials or other property for the expert's inspection. If a party so requests or if the Arbitrator considers it necessary, such expert(s) shall, after delivery of his or her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him or her and to present expert witnesses in order to testify on the points in issue.

4. The Decision

- (a) The Arbitrator will make a decision in writing and, unless both the parties otherwise agree, will set out reasons for his or her conclusions and findings in the decision.
- (b) The Arbitrator will send the decision to the parties as soon as practicable after the conclusion of the final hearing, but in any event no later than 60 days thereafter, unless that time period is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control.
- (c) The decision shall be final and binding on the parties and shall not be subject to any appeal or review procedure provided that the Arbitrator has followed these

Rules provided herein in good faith and has proceeded in accordance with the principles of natural justice.

5. Jurisdiction and Powers of the Arbitrator

- (a) By submitting to arbitration under these Rules, the parties shall be taken to have conferred on the Arbitrator the jurisdiction and powers set out in clause 5(b) below, each of which is to be exercised at the Arbitrator's discretion subject only to these Rules and the relevant law with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.
- (b) The Arbitrator shall have jurisdiction to:
 - (i) Determine any question of law arising in the arbitration;
 - (ii) Determine any question as to the Arbitrator's jurisdiction;
 - (iii) Determine any question of good faith, dishonesty or fraud arising in the dispute;
 - (iv) Order any party to furnish further details of that party's case, in fact or in law, or to produce any documents, goods, materials or other property relevant to any fact or law at issue in the arbitration;
 - (v) Proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
 - (vi) Receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
 - (vii) Make one or more interim awards, including without limitation, interim awards to secure all or part of any amount in dispute in the arbitration and injunctive relief;
 - (viii) Hold meetings and hearings, and make a decision (including a final decision);
 - (ix) Order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant; and
 - (x) Order the preservation, storage, sale or other disposal of any property or thing under the control of any of the parties.

- (c) In addition, the Arbitrator shall have such further jurisdiction and powers as may be allowed by the *Arbitration Act* of Manitoba, as amended or substituted from time to time.
- (d) Notwithstanding the parties' intention that the Arbitrator be able to act free of Court proceedings as set forth herein, the parties consent to the decision of the Arbitrator being entered in any Court having jurisdiction for the purposes of enforcement.

6. Arbitration Costs

The Arbitrator's fees and all expenses and disbursements incurred by the Arbitrator in the conduct of the arbitration shall be shared equally between the parties. Expenses and disbursements, including without limitation, legal fees and expenses, travel costs and photocopying incurred by a party for its own participation in the arbitration shall be for the account of such party. The Arbitrator shall not be empowered to award costs to either party.

7. Confidentiality

All statements and evidence submitted for the arbitration, the decision of the Arbitrator, the fact of the arbitration itself and all other aspects regarding the arbitration shall be kept strictly confidential except as otherwise required by applicable law.

Exhibit C

CONFIDENTIAL

Exhibit D

CONFIDENTIAL

Exhibit E

CONFIDENTIAL

Exhibit F

CONFIDENTIAL

DAVIES WARD PHILLIPS & VINEBERG LLP

44TH FLOOR, 1 FIRST CANADIAN PLACE, TORONTO CANADA M5X 1B1
TELEPHONE : 416.863.0900 FAX : 416.863.0871

George N. Addy
Direct Line 416.863.5588
gaddy@dwvpv.com

File No. 197998

June 29, 2004

BY E-MAIL

CONFIDENTIAL

Mr. Graham Law
Legal Counsel, Competition Law Division
Department of Justice
Industry Canada
50 Victoria Street, 22nd Floor
Place du Portage, Phase 1
Hull, Quebec K1A 0C9

Dear Mr. Law:

THIS IS EXHIBIT.....9.....TO THE
AFFIDAVIT OF.....DAVID OUELLET.....

.....
SWORN BEFORE ME THIS.....9.....DAY
OF.....September 20 2005.....

.....Hélène Chartrand.....
COMMISSIONER FOR OATHS



Agricore United – Port Terminals

Further to our telephone conversation earlier today, I confirm that Agricore United is continuing to deal with [REDACTED] on a non-exclusive basis with respect to the sale of the UGG Terminal. I also confirm that Agricore United expects that the parties could have a binding agreement in place by the end of July 2004. Finally, I confirm our understanding that the Commissioner of Competition (the "Commissioner") is prepared to agree to hold off selecting a trustee pursuant to paragraph 14 of the Consent Agreement registered by the Competition Tribunal on October 17, 2002 (the "Agreement") until at least August 3, 2004, recognizing that Agricore United is close to completing a deal with [REDACTED].

By way of this letter, Agricore United requests that the Commissioner formally agree, pursuant to paragraph 48 of the Agreement, to hold off selecting a trustee until at least August 3, 2004. In this regard, paragraph 48 of the Agreement provides that "[t]he Commissioner and Agricore United may, by way of mutual agreement, extend any of the time periods applicable herein", including the time period with respect to the selection of a trustee.

Agricore United is continuing to negotiate with [REDACTED] on the assumption that [REDACTED] would be approved as a purchaser of the UGG Terminal pursuant to paragraph 26 of the Agreement. In this regard, we note that neither Agricore United

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nor any of its subsidiaries holds any ownership interest in [REDACTED] [REDACTED] would therefore be an arm's length purchaser. Moreover, we note that [REDACTED] operates [REDACTED] Accordingly, [REDACTED] would have access to the managerial, operational and financial capability necessary to operate UGG Terminal. Finally, it is Agricore United's understanding that [REDACTED] would continue to use the UGG Terminal in substantially the same manner as it is currently being used today. If Agricore United is wrong in relying upon this assumption, would you please notify us immediately.

Please do not hesitate to contact me if you have any questions with respect to any aspect of the foregoing.

Yours very truly,



George N. Addy

GNA/pf

cc: Gaston Jorre
Dave Ouellet
Competition Bureau



Ministère de la Justice
Canada

Department of Justice
Canada

Droit de la concurrence
Place du Portage, Tour I
22^e étage
50, rue Victoria
Gatineau (Québec)
K1A 0C9

Competition Law Division
Place du Portage, Phase I
22nd floor
50 Victoria Street
Gatineau, Quebec
K1A 0C9

Téléphone/Telephone: (819) 997-2078
Télocopieur/Facsimile: (819) 953-9267
Courriel/Email: law.graham@cb-bc.gc.ca

July 6th, 2004

BY FACSIMILE

George Addy
Davies Ward Phillips & Vineberg LLP
1 First Canadian Place, 44th Floor
Toronto, Ontario
M5X 1B1

THIS IS EXHIBIT H TO THE
AFFIDAVIT OF DAVID OUELLET

SWORN BEFORE ME THIS 9 DAY
OF September, 2005
Hélène Chartrand
COMMISSIONER FOR OATHS



Dear Mr. Addy:

Re. Agricore United - Vancouver Port Terminals

Thank you for your letter of June 29, 2004. I confirm the Commissioner of Competition's agreement to extend the date in the Consent Agreement for the Commissioner's selection of a trustee until August 3, 2004. The Commissioner has the right to select a trustee on or before August 3rd if there is still no proposed transaction by that date, or there appears to be no reasonable prospect of one.

I wish to clearly state the Commissioner's position respecting [REDACTED] or any other potential purchaser under the Consent Agreement. Any proposed transaction would be reviewed in detail to verify that it meets the requirements necessary to address the substantial lessening of competition. While [REDACTED] may appear at first blush to meet the criteria set out in the Consent Agreement (based on the representations in your letter of June 29, 2004), the Commissioner reserves her right to review the specific terms of any transaction, pursuant to paragraphs 26 and 27 of the Consent Agreement.

Yours truly,

Graham Law
Counsel

Cc: Chuck Stevenson, Gaston Joré



Ministère de la Justice
Canada

Department of Justice
Canada

Droit de la concurrence
Place du Portage, Tour I
22^e étage
50, rue Victoria
Gatineau (Québec)
K1A 0C9

Competition Law Division
Place du Portage, Phase I
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50 Victoria Street
Gatineau, Quebec
K1A 0C9

Téléphone/Telephone: -819
Télécopieur/Facsimile: (819) 953-9267
Courriel/Email:

October 19, 2004

Notre référence / Our file:

VIA EMAIL (PDF)

Mr. Christopher Margison
Davies Ward Phillips & Vineberg LLP
Canadian Place, 44th Floor
Toronto ON M5X 1B1

Mr. Christopher Martin
V-P Corporate Affairs & General Counsel
Agricore United
Box 6600 201 Portage Avenue
Winnipeg, Manitoba
R3C 3A9

Dear Sirs:

Re: Commissioner of Competition v. United Grain Growers Limited

Further to our conversation with you earlier today, we confirm that:

1. it is United Grain Growers Limited's ("UGG") intention to, on or before October 31, 2004, provide the Commissioner with a letter of intent in the form of the attached, executed by [REDACTED]; and
2. such letter of intent will not constitute notification under paragraph 28 of the Consent Agreement entered into between the Commissioner of Competition (the "Commissioner") and UGG and registered with the Competition Tribunal on October 17, 2002 (the "Consent Agreement"). For greater certainty, if and when such notification is provided to the Commissioner pursuant to the Consent Agreement, it will be provided in the manner and on terms provided for by that agreement.

If and when the Commissioner receives a letter of intent as contemplated in paragraph (1) above, the [REDACTED] (as defined in the Consent Agreement) will be [REDACTED]. If a Divestiture (as defined in the Consent Agreement) is not completed [REDACTED] will have a period of [REDACTED] to implement a Divestiture as contemplated under the Consent Agreement.

THIS IS EXHIBIT I TO THE
AFFIDAVIT OF [REDACTED] CHARTERED
SWORN BEFORE ME THIS 21st DAY
OF September 20, 2004
[Signature] Commissioner for Oaths



Please confirm our understanding as set out above by executing below and forwarding a copy of this letter back to me.

Yours truly,

**John L. Syme
Senior Counsel**

A large, stylized handwritten signature in black ink, appearing to be 'JLS', is written over the typed name and title.

I confirm the foregoing

United Grain Growers Limited

CONFIDENTIAL



DAVIES WARD PHILLIPS & VINEBERG LLP

44th Floor Tel 416 863 0900
1 First Canadian Place Fax 416 863 0871
Toronto Canada M5X 1B1 www.dwpv.com

October 27, 2004

Christopher D. Margison
Dir 416 863 5544
cmargison@dwpv.com

File No. 197998

THIS IS EXHIBIT 5 TO THE
AFFIDAVIT OF DAVID OUELLET

BY E-MAIL

CONFIDENTIAL

Mr. Duane Schippers
Senior Counsel, Competition Law Division
Department of Justice, Industry Canada
Place du Portage, Phase 1
50 Victoria Street, 22nd Floor
Gatineau, Quebec K1A 0C9

SWORN BEFORE ME THIS 9 DAY
OF September 20 05
Hélène Chartrand
COMMISSIONER FOR OATHS



Dear Mr. Schippers:

Agricore United (CT-2002-001)

Further to our telephone conversation earlier today, please find attached a copy of the letter of intent between Agricore United and [REDACTED] (the "LOI").

The attached LOI, which has been signed by both parties and sets out the principal terms and conditions relating to [REDACTED] proposed acquisition of the UGG Terminal (the "Proposed Acquisition"), clearly constitutes [REDACTED]

[REDACTED] to the Consent Agreement filed with the Competition Tribunal on October 17, 2002 (the "Consent Agreement"). Accordingly, we trust that the Port Terminal Initial Sale Period will be [REDACTED]

[REDACTED] to the Consent Agreement.

As I discussed in detail with Mr. Ouellet, paragraph 2 of the LOI contemplates that the Proposed Acquisition will close on or before January 14, 2005. This date falls slightly beyond the expiry of the extended Port Terminal Initial Sale Period. In this regard, we confirm our understanding that the Commissioner of Competition (the "Commissioner") has agreed, pursuant to paragraph 48 of the Consent Agreement, to extend the Port Terminal Initial Sale Period to January 14, 2005 in order to allow the parties additional time to complete the Proposed Acquisition.

Please do not hesitate to contact me if you have any questions with respect to the foregoing.

Chris Mayson

**CDM/pf
Attachment**

cc **Chris Martin**
Agricore United

CONFIDENTIAL

Exhibit K

CONFIDENTIAL



DAVIES WARD PHILLIPS & VINEBERG LLP

44th Floor
1 First Canadian Place
Toronto Canada M5X 1B1

Tel 416 863 0900
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August 9, 2005

Christopher D. Margison
Dir 416 863 5588
cmargison@dwpv.com

File No. 205664
THIS IS EXHIBIT TO THE
AFFIDAVIT OF... DAVID OUELLET...

SWORN BEFORE ME THIS... 9... DAY
OF... September... 20... 05...

Hélène Chartrand
COMMISSIONER FOR OATHS



BY E-MAIL

CONFIDENTIAL

Mr. Graham Law
Barrister and Solicitor
525 East 80th Street, #4-A
New York, New York 10021

Dear Graham:

Agricore United – Port Terminals

Further to my voicemail message to you on August 8, 2005 and my telephone conversation with John Syme on August 9, 2005, I am writing to request that the Commissioner of Competition (the "Commissioner") agree to extend the Port Terminal Initial Sale Period from August 15, 2005 to August 29, 2005 pursuant to paragraph 48 of the Consent Agreement registered with the Competition Tribunal on October 17, 2002.

As I discussed with Mr. Syme, since the last extension was granted on July 18, 2005, Terminal One Vancouver Limited ("Terminal One") has devoted a significant amount of time developing a revised offer for the UGG Terminal and had additional meetings with Agricore United.



Agricore United and its board of directors would like the opportunity to fully consider any revised offer for the UGG Terminal put forward by Terminal One and, if necessary, deal

Tor #: 1560272.2

with any issues that arise. However, as a result of the vacation schedules of certain board members, Agricore United's board of directors will not be able to consider any such offer before August 18, 2005. Accordingly, in order to ensure that Agricore United has sufficient time to evaluate any revised offer for the UGG Terminal put forward by Terminal One and deal with any issues that might arise, we are asking that the Commissioner consent to an extension of the Port Terminal Initial Sale Period from August 15, 2005 to August 29, 2005. Such an extension would also provide the Commissioner with additional time to review any revised offer put forward by Terminal One.

Please do not hesitate to contact me if you have any questions with respect to any aspect of the foregoing.

Yours very truly,

A handwritten signature in black ink, appearing to read "Chris Margison".

Christopher D. Margison

CDM/pf

**GRAHAM M. LAW
BARRISTER & SOLICITOR
525 EAST 80TH STREET, #4-A
NEW YORK, NY, U.S.A. 10021**

(212) 879-0514
GrahamMLaw@nyc.rr.com

My file no. GML04-001
Your file no. 197998

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WITHOUT PREJUDICE**

THIS IS EXHIBIT M TO THE
AFFIDAVIT OF DAVID OUELLET

Via email

August 10, 2005

Christopher Margison
Davies Ward Phillips & Vineberg LLP
1 First Canadian Place, 44th Floor
Toronto ON M5X 1B1
CANADA

SWORN BEFORE ME THIS 9 DAY
OF September, 2005

Hélène Chartrand
COMMISSIONER FOR OATHS



Dear Mr. Margison,

**Agricore United (CT-2002-001) - Consent Agreement dated October 17, 2002
and issued by the Competition Tribunal (the "Consent Agreement")**

Further to your letter of August 9, 2005 requesting another extension of time to implement the divestiture of the UGG Terminal to Terminal One Vancouver Limited, this is to advise that, having fully considered the matter, the Commissioner is not prepared to grant any further extension beyond **August 15, 2005**.

Yours truly,

[Original signed and kept on file]

Graham M. Law

c. **D. Milne, J. Syme**


**GRAHAM M. LAW
BARRISTER & SOLICITOR
525 EAST 80TH STREET, #4-A
NEW YORK, NY, U.S.A. 10021**

(212) 879-0514
GrahamMLaw@nyc.rr.com

My file no. GML04-001
Your file no.

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Via email

August 10, 2005

Angela Yadav
Affleck Greene Orr LLP
One First Canadian Place, Suite 840
P.O. Box 489
Toronto ON M5X 1E5
CANADA

Dear Ms. Yadav,

Proposed sale to Terminal One Vancouver Ltd. by Agricore United

Further to your letter of August 10, 2005 requesting another extension of time to implement the divestiture of the UGG Terminal to Terminal One Vancouver Limited, this is to advise that, having fully considered the matter, the Commissioner is not prepared to grant any further extension beyond **August 15, 2005**.

Yours truly,

[Original signed and kept on file]

Graham M. Law

c. D. Milne, J. Syme

