

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.

BETWEEN:

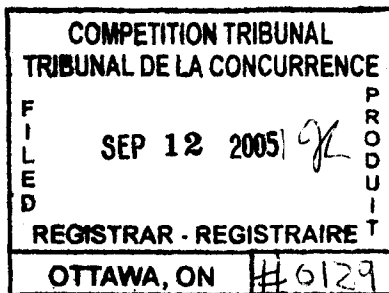
UNITED GRAIN GROWERS LIMITED

Applicant

- AND -

THE COMMISSIONER OF COMPETITION

Respondent



REPLY
of the
CANADIAN WHEAT BOARD TO APPLICANT's RESPONSE
Re: Request for Leave to Intervene of CWB

The Canadian Wheat Board
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R3C 2P5

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1. There are five relevant grain-handling terminal facilities in the Port of Vancouver. The Applicant owns two of them outright and 50% of a third.
2. As a result of the Section 92 Application, the Applicant admitted that UGG's acquisition of Agricore resulted in a substantial lessening of competition with respect to terminal grain handling in Vancouver. Eventually the Applicant agreed that one of the two facilities that it owns outright should be sold. Accordingly, once the Consent Agreement was reached in October 2002 the public examination of the competitive circumstances in the Port of Vancouver ceased.
3. The Applicant now seeks to retain *all* of its Vancouver terminals.
4. It does so under the guise of certain allegedly "changed" circumstances said to have occurred during the three years in which it ought to have divested of that terminal.
5. In its Response of September 9, 2005 to the CWB's Request for Leave to Intervene, aside from one cryptic and unsupported reference to "factual inaccuracies" the Applicant does not challenge the accuracy of *any* of the facts set out in Mr. Weisensel's affidavit of September 8, 2005. In fact, the Applicant goes so far as to concede that the CWB "may be affected by the Section 106 Application."

Applicant's Response to CWB's Request for Leave to Intervene, at para's 25 and 22.

6. The Applicant properly references the Chair's Direction of September 2, 2005 in which the question before the Tribunal was identified as being "whether a divestiture would have been agreed to or would have been effective in achieving its intended purpose, given the alleged change in circumstances."
Applicant's Response at para. 4. [Emphasis added]
7. However, aside from this one reference, the Applicant's Response focuses entirely upon the parties' intentions and how the CWB has nothing to add to the proceeding on that point. Significantly, the Applicant ignores that a substantial lessening of competition was found in the related Section 92 Application and that divestiture was the accepted remedy. In so doing the Applicant utterly ignores the very real interest that the CWB has in these issues and accordingly, in this proceeding.
8. This Tribunal rightly granted the CWB intervenor status in the related Section 92 Application. That application dealt with a far narrower issue than the present one, namely whether a *partial* divestiture of Pacific Elevators (one of the two wholly owned terminals) was an adequate remedy. In the present case the issue is whether there will be any divestiture *at all* of *any* terminal.
9. As set out in the CWB's Request and supporting materials, the CWB's interest is at least as keen in this Application as it was in the Section 92 Application. In the circumstances, the Applicant's suggestion that the CWB has no right to intervene in this proceeding is, quite frankly, offensive.

10. It is inevitable that the Motion for Interim Relief will address matters relevant to the Section 106 Application. Accordingly, the CWB has a legitimate interest in participating in the Motion to that extent.
11. Similarly, given what is at stake in this proceeding the scope of the CWB's intervention request is eminently reasonable and the Applicant's submissions regarding a limitation on that scope should be rejected.

All of which is respectfully submitted this 12th day of September 2005.



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TO: United Grain Growers Limited

AND TO: The Registrar of the Competition Tribunal

AND TO: Counsel to the Commissioner of Competition