

**REGISTRY DOCUMENT # 0123****Direction to counsel:****File No. File No. CT-2002-001 (4)****Date: Friday, September 2, 2005****Subject: United Grain Growers Limited v. Commissioner of Competition****- Procedural track for this matter**

The Commissioner of Competition (“Commissioner”) and United Grain Growers Limited (“UGGL”) have requested a direction from the Tribunal concerning the proper procedural track to be used for the section 106 application filed by UGGL on August 12, 2005 to rescind the consent agreement filed on October 17, 2002.

The Commissioner argues, in a letter dated August 26, 2005, that the section 106 application should proceed under the rules applicable to section 92 applications, since the consent agreement relates to a merger. Sections 13 to 16 of the *Competition Tribunal Rules* (“Rules”) would apply, and the application would proceed by way of discovery of documents (“Discovery Track Procedure”).

UGGL argues, in letters dated August 26 and August 30, 2005, that the section 106 application should proceed under the rules applicable to all applications other than section 92 applications, and bases its arguments on the wording of sections 49 and 2.1 of the Rules. Section 49 of the Rules provides that a section 106 application proceeds as any other application, while subsection 2.1(2) of the Rules provides that the sections of the Rules relating to the disclosure statement process (“Disclosure Track Procedure”) will apply “in respect of applications other than applications referred to in section 92 of the Act”.

Given the wording of the Rules, the Chairperson of the Tribunal has directed me to advise that she has found UGGL’s arguments persuasive. An application under section 106 is not an application referred to in section 92. Under section 92, the Commissioner applies for relief as defined in section 92. Under section 106, any party to a consent agreement may apply for an order to vary or rescind a consent agreement.

Accordingly, the Rules relating to the Disclosure Track Procedure will apply to the section 106 application.

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