

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT
August 30, 2006
CT- 2002-001

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

0192a

PUBLIC

CT-2002-001

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 sections 92 and 105 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:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

UNITED GRAIN GROWERS LIMITED

Respondent

- and -

THE CANADIAN WHEAT BOARD

Intervener

AFFIDAVIT OF TERENCE STECHYSIN

I, Terence Stechysin, of the City of Ottawa, Province of Ontario, MAKE OATH AND SAY:

1. I have worked as a Competition Law Officer in the Mergers Branch of the Competition

Bureau since January 2, 2002.

2. Since August 11, 2005, I am the Senior Competition Law Officer responsible for the conduct of an inquiry by the Commissioner of Competition ("Commissioner"), pursuant to section 10 of the *Competition Act*, into the Acquisition of Agricore Cooperative Ltd. by United Grain Growers Limited ("UGG", "AU" or "the Respondent") (the "Acquisition"). As such, I have knowledge of the matters to which I hereinafter depose. Where others have provided me information, I believe such information to be true.
3. On October 31, 2001, the Commissioner and UGG signed a confidential agreement (the "Letter Agreement") allowing the Acquisition to proceed under certain conditions. A copy of the Letter Agreement is attached to this Affidavit as Exhibit "A".
4. On November 1, 2001, UGG completed the Acquisition, creating the largest grain handling firm in Canada, operating as Agricore United ("AU").
5. On January 2, 2002, pursuant to the Letter Agreement, the Commissioner filed an Application with the Competition Tribunal ("Tribunal") pursuant to section 92 of the *Competition Act* alleging that the Acquisition was likely to prevent or lessen competition substantially in the market for port terminal grain handling services in the Port of Vancouver. The Commissioner sought an order directing the divestiture of either the

UGG grain terminal (the "UGG Terminal") or AU's interest in the Pacific Elevators Limited terminal (the "Pacific Terminal"), both of which are located in the Port of Vancouver. Pleadings closed on January 25, 2002.

6. On September 10, 2002, the Tribunal convened a hearing, to consider whether or not the Acquisition was likely to result in a substantial lessening of competition ("SLC") in the market for port terminal grain handling services in the Port of Vancouver. The Commissioner filed with the Tribunal, among other things, the expert report of Dr. William Wilson and the affidavit of David Ouellet, the lead Senior Competition Law Officer assigned to the matter. Both Dr. Wilson and Mr. Ouellet testified before the Tribunal at the hearing on September 10, 2002.

7. On September 12, 2002, the Tribunal issued its Findings and Determinations pursuant to that hearing (the "SLC Finding"). The Tribunal stated that it was satisfied, based on the evidentiary record, that "the Acquisition causes an SLC as alleged by the Commissioner and, for the purposes of this proceeding, not contested by the Respondent, without need for further evidence to establish an SLC or elements of an SLC." The Tribunal also found that a divestiture of the UGG Terminal or AU's interest in the Pacific Terminal would remedy the SLC. A copy of the Findings and Determinations of the Tribunal is attached to this Affidavit as Exhibit "B".

8. The Tribunal left open for determination the question of whether the divestiture of that part of the Pacific Terminal referred to as Pacific 1 ("PAC1") would also remedy the SLC. That determination was to have been made following a hearing which was to have commenced on October 21, 2002. Following the issuance of the Tribunal's SLC Finding, there were negotiations between AU and the Commissioner on that issue and a settlement was reached on October 16, 2002, whereby AU agreed to sell either the UGG Terminal or the Pacific Terminal.

9. On October 17, 2002, the Tribunal registered a Consent Agreement filed by the Commissioner and AU, pursuant to which AU agreed to divest either the UGG Terminal or the Pacific Terminal in the Initial Sale Period ("ISP") between October 17, 2002 and [CONFIDENTIAL], failing which a trustee would be appointed to implement the sale. A copy of the Consent Agreement is attached hereto and marked as Exhibit "C".

10. Paragraph 45(a) of the Consent Agreement provides the Commissioner with the right to conduct inspections for purposes of determining or securing compliance with the Consent Agreement. It provides as follows:

"For the purposes 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; "

11. In the fall of 2003, AU elected to divest the UGG Terminal.

12. Through a mechanism provided for under the Consent Agreement and a series of extensions agreed to by the Commissioner to facilitate a divestiture by AU, the Commissioner agreed to extend the ISP from [CONFIDENTIAL] to August 12, 2005, relying on the AU's representations that a sale of the UGG Terminal was imminent. However, there was no divestiture in that period.

13. On August 12, 2005, the Commissioner refused to agree to a further extension of the ISP. Immediately thereafter, on August 12, 2005, AU filed an application for an Order rescinding the Consent Agreement. The grounds were that the circumstances that led to the making of the Consent Agreement had changed and, in the circumstances that existed at the time of the application, the Consent Agreement would not have been made or would have been ineffective in achieving its intended purpose. The ISP was extended while the section 106 proceeding remained extant.

14. The hearing of AU's application commenced on March 27, 2006. After two weeks of hearing, on April 10, 2006, AU indicated that it was closing its case, and would be filing a motion for an adjournment of the proceedings *sine die* or, in the alternative, for leave to discontinue the proceedings without costs.

PUBLIC

15. On April 21, 2006, the Tribunal heard AU's motion to adjourn the section 106 proceeding *sine die* or, in the alternative, to be able to withdraw its section 106 application without having costs awarded against it.
16. On May 10, 2006, the Tribunal issued an order dismissing AU's motion to adjourn, and refused AU's alternative motion.
17. On May 11, 2006, AU served the Commissioner and the Interveners with a Notice of Withdrawal of its section 106 application. The Notice was also filed with the Tribunal on that same date. The Notice is attached to this Affidavit as Exhibit "D".
18. On May 12, 2006, Jonathan Chaplan, counsel for the Commissioner, confirmed the appointment of Grant Thornton LLP as Trustee ("GTL", or the "Trustee") for the sale of the UGG Terminal. The Trustee Sale Period ("TSP") therefore commenced on May 12, 2006, and was to last for a period of up to four months, ending on September 12, 2006. The letter is attached to this Affidavit as Exhibit "E".
19. **[CONFIDENTIAL]**
20. On July 11, 2006, the Trustee sent a Confidential Information Memorandum ("CIM") to **[CONFIDENTIAL]** prospective purchasers who had signed a confidentiality agreement

with AU and the Trustee. The CIM contained, among other things, the timeline for the TSP as described above. The CIM is attached to this Affidavit as Exhibit "G".

21. [CONFIDENTIAL]

22. [CONFIDENTIAL]

23. [CONFIDENTIAL]

24. On August 23, 2006, the Commissioner served a Notice of Inspection on AU under paragraph 45(a) of the Consent Agreement. The Notice stated that on Monday, August 28, 2006, representatives of the Commissioner would attend at the offices of AU in Winnipeg for the purpose of determining and/or securing compliance with the Consent Agreement. In keeping with the wording of paragraph 45(a), the Notice required that Agricore make available for inspection and copying at that time all relevant books, ledgers, accounts, correspondence, memoranda and other records and documents, including electronic documents and records in the possession and control of AU and relating to compliance with the Consent Agreement, and included a list of classes of documents to be inspected and/or copied by the Commissioner. The Notice of Inspection is attached to this Affidavit as Exhibit "K".

25. On August 24, 2006, John Syme, counsel to the Commissioner, sent a letter on behalf of the Commissioner to Chris Martin, stating that AU has an obligation to take whatever action is necessary to ensure that all of the conditions needed to implement a divestiture are met, including such approvals as are required from the VPA. The letter stated that, given this obligation, the Commissioner is prepared to attend additional meetings between the VPA, AU and the Trustee, and that she has no objection to AU and the Trustee meeting independently with the VPA. **[CONFIDENTIAL]**.

26. On August 25, 2006, John Syme sent an email message to John Bodrug and Sandra Forbes, counsel to AU, stating that the Commissioner was prepared to defer the compliance inspection under paragraph 45 of the Consent Agreement until Tuesday, August 29, 2006, in order to assist AU in assembling the records contemplated by the Commissioner's notice. The email message is attached to this Affidavit as Exhibit "M".

27. On August 25, 2006, the Commissioner received a letter from Sandra Forbes, stating that AU would not permit the Commissioner or her representatives to attend its offices in Winnipeg on August 29, 2006. The letter expressed AU's concern with regards to the validity and motivation behind the Notice of Inspection, that paragraph 45 was being used for an improper purpose, that the Notice was excessive and open-ended in scope, and that it embodied an improper request. In addition, the letter stated that the scope of the Notice coupled with the short time frame in which to comply would impose a heavy burden and

cost on AU. AU requested more time to assess the implications of the Notice, consult with its counsel and assess its position. [CONFIDENTIAL].

28. [CONFIDENTIAL]

29. On August 27, 2006, John Syme sent a letter on behalf of the Commissioner to Sandra Forbes. The letter takes issue with AU's contention that the Commissioner is using the Notice to clandestinely obtain discovery, and states that the Commissioner's right to conduct and inspection pursuant to paragraph 45 of the Consent Agreement is absolute. The letter states that the Notice uses precisely the same language as that used in paragraph 45 of the Consent Agreement, and that AU's obligations under paragraphs 34 through 44 of the Consent Agreement did not end with its election of the UGG terminal, rather with the implementation of a Port Terminal Divestiture Option. In closing, the letter states that AU's refusal to allow the Commissioner to attend at its offices is a clear breach of the Consent Agreement and is, by extension, a breach of an Order of the Tribunal. AU is obstructing the Commissioner in exercising her rights under the Consent Agreement and, more generally, in discharging her obligations under the Act. The letter is attached to this Affidavit as Exhibit "P".

30. On August 28, 2006, the Commissioner received a letter from Sandra Forbes. The letter reiterated AU's request for more time to consider its position regarding the Notice. The

letter expressed concern with what AU considered to be the threatening tone of the Commissioner's last letter, and offered to the Commissioner the opportunity to review the documents in its data room. The letter is attached to this Affidavit as Exhibit "Q".

31. I make this Affidavit in support of the Commissioner's Motion for a show cause order requiring the Respondent, AU, to appear before the Tribunal, to show cause why it should not be found in contempt of the Consent Agreement, and not for any improper purpose.

SWORN BEFORE ME,)
at the City of Gatineau,)
in the Province of Québec,)
this 29th day of August, 2006.)

("Terence Stechysin")
TERENCE STECHYSIN

("Marie-France Taschereau")
A Commissioner for taking Affidavits, etc.

EXHIBIT "A": [CONFIDENTIAL]

Competition Tribunal



THIS IS EXHIBIT.....^B..... TO THE
AFFIDAVIT OF Teresa Stehpin
.....
SWORN BEFORE ME THIS 25..... DAY
OF August..... 2006.....
James Aschew
Tribunal de ~~Commissioner~~ ^{Commissioner} FOR OATHS

Reference: *The Commissioner of Competition v. United Grain Growers Limited*, 2002 Comp. Trib. 33
File no.: CT2002001
Registry document no.: 0074

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

AND IN THE MATTER of an application 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.

B E T W E E N :

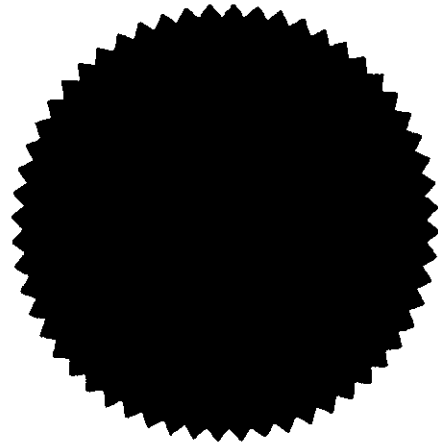
The Commissioner of Competition
(applicant)

and

United Grain Growers Limited
(respondent)

and

The Canadian Wheat Board
(intervenor)



Date of hearing: 20020910
Members: Dawson J. (presiding), L. Schwartz, A. Reny
Date of findings and determinations: 20020912
Findings and determinations signed by: Dawson J.

**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, 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 subsections 8(1) and 8(2) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), 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 W. Wilson, sworn September 10, 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 hearing the expert testimony of Dr. William W. Wilson and the evidence of David Ouellet, a senior competition law officer at the Competition Bureau who was involved with the investigation of the case, 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 subsections 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;

[7] AND BEING SATISFIED that based on the evidentiary record before the Tribunal as of September 10, 2002, the Tribunal should make the findings below;

[8] AND FOR THE REASONS that will be delivered in writing after the completion of the balance of the hearing scheduled to take place in Vancouver, on October 21, 2002;

Definitions

[9] 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;

[10] 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 acquirer 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 acquirer 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 set out immediately above (the "Four Part Test").

[11] 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 Ottawa, this 12th day of September, 2002.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Eleanor R. Dawson

APPEARANCES:

For the applicant:

The Commissioner of Competition

**John Campion
John L. Syme
Melanie L. Aitken**

For the respondent:

United Grain Growers Limited

**Kent Thomson
Sandra A. Forbes
John D. Bodrug**

For the intervenor:

The Canadian Wheat Board

Randal T. Hughes

PUBLIC VERSION

THIS IS EXHIBIT... C ... TO THE
AFFIDAVIT OF France Stechny

THE COMPETITION TRIBUNAL

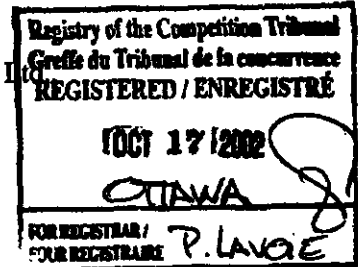
SWORN BEFORE ME THIS 29 DAY

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

OF August 29 2006
France Stechny
COMMISSIONER FOR OATHS

AND IN THE MATTER of an application for an order by the
Commissioner of Competition under section 92 of the *Competition Act*; # 105 A

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"

NCBK 5720

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.

THIS IS EXHIBIT D TO THE
AFFIDAVIT OF Terence Stechsin

SWORN BEFORE ME THIS 29 DAY
OF August 20 06

Francis J. Aschewan
COMMISSIONER FOR OATHS
CT-2002-001

THE COMPETITION TRIBUNAL

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

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:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT	
CT- 2801/002	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	#

UNITED GRAIN GROWERS LIMITED

Applicant

- and -

THE COMMISSIONER OF COMPETITION

Respondent

- and -

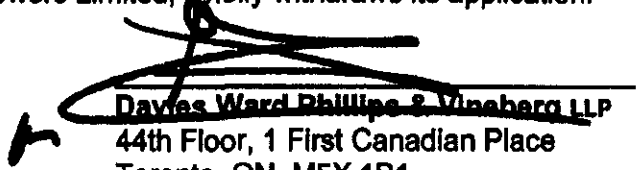
**CANADIAN WHEAT BOARD
MISSION TERMINAL INC.**

Intervenors

NOTICE OF WITHDRAWAL

The Applicant, United Grain Growers Limited, wholly withdraws its application.

May 11, 2006


David Ward Phillips & Vineberg LLP
44th Floor, 1 First Canadian Place
Toronto, ON M5X 1B1

Sandra A. Forbes
Davit D. Akman

Tel: 416.863.0900
Fax: 416.863.0871

Solicitors for United Grain Growers
Limited

TO: Department of Justice Canada
Competition Law Division
Place du Portage, Phase 1, 22nd Floor
50 Victoria Street
Hull, QC K1A 0C9

John Syme
Jonathan Chaplan

Tel: 819.997.3325
Fax: 819.953.9267

Counsel to the Commissioner of Competition

CT-2002/001

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

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

- and -

**CANADIAN WHEAT BOARD
MISSION TERMINAL INC.**

Intervenors

NOTICE OF WITHDRAWAL

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

Sandra A. Forbes (LSUC #33252P)
David D. Akman (LSUC #44274R)

Telephone: (416) 863-0900
Facsimile: (416) 863-0871

Solicitors for United Grain Growers Limited



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

THIS IS EXHIBIT E TO THE
AFFIDAVIT OF Terence Stechysin
SWORN BEFORE ME THIS 29 DAY
OF August 2006
France Hascheva
COMMISSIONER FOR OATHS

Téléphone/Telephone: (819) 953-3895
Télécopieur/Facsimile: (819) 953-9267
Courriel/Email: chaplan.jonathan@cb-bc.gc.ca

May 12, 2006

Mr Mark Wentzell
Senior Manager
Grant Thornton LLP
P.O. Box 11177, Royal Centre
Suite 2800
1055 West Georgia Street
Vancouver, British Columbia
V6E 4N3

Dear Mr Wentzell:

Agricore United - Confirmation of Appointment of Trustee for Sale of Vancouver Grain Terminal

Further to our letter of 22 September 2004, the present letter is to confirm the engagement of Grant Thornton LLP ("GTL") as Trustee pursuant to the Consent Agreement dated 17 October 2002, between the Commissioner of Competition and United Grain Growers Limited (the "Consent Agreement").

The Initial Sale Period has now expired and thus the Trustee's obligations to sell the AUV Terminal commences as of today's date and continues for a period of four months, pursuant to the Consent Agreement (including Confidential Schedule "B") and amendments thereto. The engagement of GTL will terminate at the end of the term of the Trustee's appointment, currently 12 September 2006.

GTL is advised that the Legal Counsel for the Commissioner regarding this matter is now John Syme or Jonathan Chaplan, Department of Justice, Legal Services, Place du Portage, Phase 1, 50 Victoria Street, Gatineau, Quebec, K1A 0C9.

The remaining terms and conditions as outlined in the initial letter of engagement of GTL continue to apply.

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

Yours truly,

Jonathan Chaplan
Legal Counsel

EXHIBIT “F”: [CONFIDENTIAL]

EXHIBIT "G": [CONFIDENTIAL]

EXHIBIT “H”: [CONFIDENTIAL]

EXHIBIT "I": [CONFIDENTIAL]

EXHIBIT “J”: [CONFIDENTIAL]

THIS IS EXHIBIT K TO THE
AFFIDAVIT OF TERENCE STECHYSIN

SWORN BEFORE ME THIS 25 DAY
OF AUGUST 20 06

Grace Vaschera
COMMISSIONER FOR OATHS

**NOTICE PURSUANT TO PARAGRAPH 45 OF CONSENT AGREEMENT BETWEEN
COMMISSIONER OF COMPETITION AND UNITED GRAIN GROWERS LIMITED
REGISTERED BY THE TRIBUNAL ON OCTOBER 17, 2002 (THE "CONSENT AGREEMENT")**

The Commissioner of Competition ("Commissioner") hereby notifies United Grain Growers Limited ("Agricore") that on Monday, August 28, 2006 at 9:00 A.M., representatives of the Commissioner will attend at the offices of Agricore located at 201 Portage Avenue in Winnipeg, Manitoba pursuant to paragraph 45(a) of the Consent Agreement for the purpose of determining and/or securing compliance with the Consent Agreement.

Agricore is required to make available for inspection and copying at that time all relevant books, ledgers, accounts, correspondence, memoranda and other records and documents, including electronic documents or records (hereinafter collectively referred to as "Records") in the possession and control of Agricore and relating to compliance with the Consent Agreement. Without limiting the generality of the foregoing, in respect of both the UGG Terminal and the Pacific Complex (as defined in the Consent Agreement) (collectively the "Terminals") for the period between October 17, 2002 and August 28, 2006, the Commissioner will inspect and/or copy Records relating to some or all of the following matters:

- Terminal grain receipts and shipments;
- plans, proposals, discussion papers or analysis relating to capital improvements and/or maintenance of the Terminals, including equipment and other assets used in connection with the operation of the Terminals;
- expenditures or planned expenditures relating to capital improvements and/or maintenance of the Terminals, including equipment and other assets used in connection with the operation of the Terminals;
- plans, proposals, discussion papers or analysis relating to the sales, managerial, administrative, operational and financial support Agricore has provided to promote the continued effective operation of the Terminals;
- expenditures or planned expenditures relating to the sales, managerial, administrative, operational and financial support Agricore has provided to promote the continued effective operation of the Terminals;
- plans, proposals, discussion papers or analysis relating to the reduction of capacity at the Pacific Terminal, including capacity to receive, elevate, dry, blend, store or ship grain;
- *handling agreements between Agricore and third parties relating to the Terminals, whether or not currently in force;*
- all material contracts or arrangements, including leases, relating to the Terminals, whether or not currently in force;
- such Records as are necessary to substantiate Agricore's compliance with paragraph 38 of the Consent Agreement; and
- employment agreements relating to management personnel employed in relation to either Terminal, whether or not currently in force.

EXHIBIT "L": [CONFIDENTIAL]

THIS IS EXHIBIT M TO THE
AFFIDAVIT OF TERENCE Stechysin

Stechysin, Terence: #CB - BC

SWORN BEFORE ME THIS 29 DAY

From: Syme, John: #LEG
Sent: Friday, August 25, 2006 11:52 AM
To: John Bodrug; 'Sandra Forbes'
Cc: Chaplan, Jonathan: #LEG; Sansom, Steve: #LEG; Yuh, Eunice: #LEG
Subject: Argicore - Notice under CA para 45

OF AUGUST 2006

Francis D'Aschea
COMMISSIONER FOR OATHS

John, Sandra,

Further to our conversation of yesterday afternoon, I write to advise that the Bureau is prepared to defer the inspection under paragraph 45 of the Consent Agreement until Tuesday, August 29 in order to assist Argicore in assembling the records contemplated by the Commissioner's Notice.

Regards,

John

John L. Syme
Senior Counsel
Department of Justice
Competition Law Division

Tel / Téléphone (819) 953-3901
Fax / Télécopieur (819) 953-9267
syme.john@ic.gc.ca
50 Victoria St. Gatineau, Quebec K1A 0C9

This e-mail and any attachments are being transmitted in confidence. This e-mail and any attachments may be solicitor-client privileged, such privilege is expressly claimed. If you have received this e-mail in error please call (819) 997-3325 and delete the original e-mail and attachments.

EXHIBIT “N”: [CONFIDENTIAL]

EXHIBIT “O”: [CONFIDENTIAL]



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

August 27, 2006

Notre référence / Our file:

Electronically

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

THIS IS EXHIBIT P TO THE
AFFIDAVIT OF Terence Stechysin
SWORN BEFORE ME THIS 29 DAY
OF August 2006
Francine Ascherec
COMMISSIONER FOR OATHS

Dear Ms. Forbes:

**Re: Consent Agreement between Commissioner of Competition and
United Grain Growers Limited dated October 17, 2002 (the "Consent Agreement")**

Thank you for your letter of August 25, 2006. In your letter, you advise that Agricore United ("AU") refuses to permit the Commissioner to attend at its offices on Tuesday, August 29, 2006 to exercise her right to conduct an inspection pursuant to paragraph 45 of the Consent Agreement and the notice served on AU on August 23, 2006 (the "Notice").

a. AU's Grounds for Refusal are without Merit

AU's refusal is based on three grounds, all of which have no merit.

Improper Purpose: AU claims that the Notice was served on AU with an "improper purpose." AU states that it "is concerned that the Notice has been given with a view to discovering documents and information for the purpose of a further proceeding before the Tribunal, in respect of which the Commissioner may not otherwise be entitled to discovery, and not for a valid purpose contemplated by paragraph 45 of the Consent Agreement." In effect, AU suggests that the Commissioner, a public office holder appointed pursuant to s. 7 of the *Competition Act* (the "Act") to administer and enforce the Act, is abusing her rights under paragraph 45 to clandestinely obtain discovery to which, you state, she is not otherwise entitled.

The Commissioner considers this to be an extremely serious allegation. The allegation is untrue and unsupported: rather it is based on speculation and supposition as to the

Commissioner's motives. The Commissioner's right to conduct an inspection pursuant to paragraph 45 of the Consent Agreement is absolute, not conditional. Once notice under paragraph 45 has been given, AU is required to allow the Commissioner to conduct an inspection.

Excessive Scope: AU claims that even if the Commissioner had the right to invoke paragraph 45, the Notice itself is excessive in scope. However, the second paragraph of the Notice, which identifies the records which are to be made available for inspection and/or copying, describes those records using precisely the same language as is employed in paragraph 45 of the Consent Agreement. Therefore, the class of records identified and sought pursuant to the Notice is precisely that which AU agreed under paragraph 45 that it would provide. Given that fact, the Notice is *necessarily* not excessive in scope.

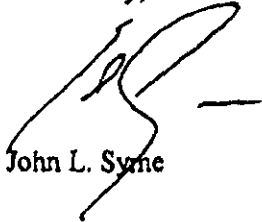
Improper Requests: The Commissioner disagrees that the definition of Port Terminal in Schedule "A" is such that the Notice is improper insofar as it relates to the Pacific Terminal. Among other things, it is clear that AU's obligations under paragraph 34 through 44 of the Consent Agreement did not end with AU's election of the UGG Terminal, but rather continue until the implementation of a Port Terminal Divestiture Option.

b. AU is in Clear Breach of the Consent Agreement

AU's refusal to allow the Commissioner to attend at its offices represents a clear breach of its obligations under the Consent Agreement. With its refusal, AU is obstructing the Commissioner in exercising her rights under the Consent Agreement and, more generally, in discharging her obligations under the Act. Moreover, pursuant to s-s. 105(4) of the Act, the Consent Agreement "has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal." By refusing to allow the Commissioner to conduct an inspection, AU is in effect in breach of an order of the Tribunal and proceedings may be taken accordingly.

If AU does not remedy its breach by advising the Commissioner by noon (Eastern Time) on Monday, August 28, 2006, that the Commissioner may attend at its offices on August 29, 2006 on the terms set out in the Notice, the Commissioner will, without further notice to AU, take such steps as she considers necessary to enforce the Consent Agreement. AU will be responsible for such cost and other consequences, direct or indirect, as arise from its breach and any enforcement action that the Commissioner is required to take.

Yours truly,



John L. Syne



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

August 28, 2006

Sandra A. Forbes
Dir 416 863 5574
sforbes@dwpv.com

File No. 215806

BY EMAIL

John Syme/Jonathan Chaplan
Legal Counsel, Competition Law Division
Department of Justice, Industry Canada
Place du Portage, Phase 1
50 Victoria Street, 22nd Floor
Gatineau, Quebec K1A 0C9

THIS IS EXHIBIT Q TO THE
AFFIDAVIT OF Teresa Stechysin

SWORN BEFORE ME THIS 29 DAY
OF August 2006

Flavie Ascherec
COMMISSIONER FOR OATHS

Dear Sirs:

Consent Agreement between the Commissioner of Competition (the "Commissioner") and United Grain Growers Limited dated October 17, 2002 (the "Consent Agreement")

We are writing to respond to your letter of August 27, 2006.

It is obvious that there is a genuine issue between the Commissioner and Agricore United regarding the appropriate interpretation of paragraph 45 of the Consent Agreement, which may ultimately need to be resolved by the Tribunal.

As we indicated in our letter of August 25, we need meaningful time to consult with our client and obtain instructions regarding the Notice. To be clear, Agricore United has not yet made a decision concerning its position on the validity and scope of the Notice. As you know, Mr. Martin is only back in the office today and has not yet had the opportunity to review the numerous pieces of correspondence which were exchanged last week, let alone discuss them with counsel. It is impossible for us to obtain meaningful instructions by your unilaterally chosen deadline of 12 noon today. Agricore United considers the Notice (including the issues surrounding it) and the current state of the trustee sale process as being extremely serious matters, so much so that Mr. Martin and Mr. MacKay are flying to Toronto to meet with us and provide us with instructions.

If the Commissioner does not provide us with the reasonable time necessary to consult with our client and obtain instructions, then we will file a Motion for Directions with the Tribunal concerning the appropriate interpretation of paragraph 45 of the Consent Agreement, and any other relevant matters related to the trustee sale process.

Finally, we are very concerned about the threatening tone of your letter. We interpret your letter as a threat by the Commissioner to pursue criminal charges in the event Agricore United does not immediately agree with the Commissioner's interpretation of paragraph 45

of the Consent Agreement. Never in our firm's extensive competition law practice have we ever seen such an aggressive and inappropriate response from the Bureau, especially in circumstances such as this where there is absolutely no urgency, the Bureau has not received any complaint about Agricore United's compliance with the Consent Agreement, the Consent Agreement contemplates seeking directions from the Tribunal for any interpretation dispute and there has been no substantive response to any of the concerns that we have raised about the Notice.

We note that many of the documents listed in the Notice are contained in the data room set up for the purposes of the trustee sale process. If you had asked Agricore United for access to the data room, such a request would have been granted. Agricore United remains prepared to provide the Commissioner with access to the data room, without prejudice to (i) its position that such access would be provided as part of the Commissioner's right under the Consent Agreement to be informed about the status of the trustee sale process, and has nothing to do with paragraph 45 of the Consent Agreement, and (ii) the position Agricore United ultimately takes concerning the validity and scope of the Notice.

Yours very truly,



Sandra A. Forbes
SAF/jv