

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE  FILED / PRODUIT August 30, 2006 CT-2002-001  Chantal Fortin for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	# 0190

**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 section 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**

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**NOTICE OF MOTION**

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**TAKE NOTICE THAT** the Commissioner of Competition ("Commissioner") will make a motion to the Competition Tribunal ("Tribunal") on September 1, 2006 at 10:00 a.m. or as soon thereafter as this motion can be heard.

**THE MOTION IS FOR:**

1. an Order requiring United Grain Growers Limited (“AU”):
  - (i) to appear before the Tribunal in Ottawa on September 5, 2006 or at such time as is fixed by the Tribunal, to answer allegations of contempt;
  - (ii) to be prepared to hear proof of the alleged contempt, as outlined in this Notice of Motion and the Commissioner’s Memorandum of Argument; and
  - (iii) to present any defence it may have;
  
2. an order that any cross-examinations shall be conducted *viva voce* before the Tribunal at the show cause hearing;
  
3. an order awarding costs of this motion to the Commissioner on a full indemnity basis;  
and
  
4. such further and other relief as the Commissioner may request and this Honourable Tribunal deems appropriate.

**THE GROUNDS OF THE MOTION ARE:**

**Background Facts**

1. on November 1, 2001 AU completed its acquisition of Agricore Cooperative Ltd. (the “Acquisition”);
2. on September 10, 2002 the Tribunal convened a hearing to consider whether the Acquisition resulted in a substantial lessening of competition (“SLC”) in the market for port terminal grain handling services at Vancouver;
3. on September 12, 2002, the Tribunal issued Findings and Determinations in which it found, among other things, that the Acquisition had caused an SLC in the market for port terminal grain handling services at Vancouver and that a divestiture of the UGG Terminal or AU’s interest in the Pacific Terminal would remedy the SLC; the issue of whether something less than those divestitures would remedy the SLC was deferred to a hearing scheduled to commence on October 21, 2002;
4. however, on October 17, 2002, AU and the Commissioner entered into a Consent Agreement which was registered with the Tribunal that same day;

5. pursuant to the Consent Agreement, AU agreed to divest either the UGG Terminal or the Pacific Terminal during an initial sale period (“ISP”), failing which a trustee would be appointed to implement the divestiture;
6. paragraph 45 of the Consent Agreement provides the Commissioner with a right of inspection, during the life of the Consent Agreement, for the purpose of “determining or securing compliance” with the Consent Agreement;
7. the Commissioner’s right of inspection permits the Commissioner, on a minimum of two business days notice, “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”;

**The Notice**

8. on August 23, 2006, the Commissioner served AU with a written notice of inspection pursuant to paragraph 45 of the Consent Agreement (the “Notice”), notifying AU that the Commissioner would attend at the offices of AU in Winnipeg to conduct an inspection at 9 a.m. on Monday, August 28, 2006;

9. on August 25, 2006, pursuant to a request for additional time made by AU, the Commissioner agreed, as a courtesy, to defer the inspection until 9 a.m. Tuesday, August 29, 2006;
10. subsequently, on August 25, 2006, AU's counsel, Davies Ward Phillips & Vineberg LLP ("Davies"), advised that AU would not permit the Commissioner to conduct an inspection at its offices on August 29, 2006, citing AU's purported, but wholly unsubstantiated, concerns that the Notice had been served with an "improper purpose", was "excessive in scope" and contained "improper requests";
11. by letter dated August 27, 2006, the Commissioner responded to Davies' August 25th letter, requiring compliance and addressing AU's purported but unsubstantiated objections;
12. AU has persisted in refusing to allow the Commissioner to conduct an inspection on August 29, 2006, and confirmed that position in writing on August 28, 2006, notwithstanding the Commissioner's clear right to do so and AU having no legitimate or substantiated basis to refuse;
13. consequently, AU is in breach of paragraph 45 of the Consent Agreement and, pursuant to s-s. 105 (4) of the Act is, in effect, in contempt of the Tribunal's Order;

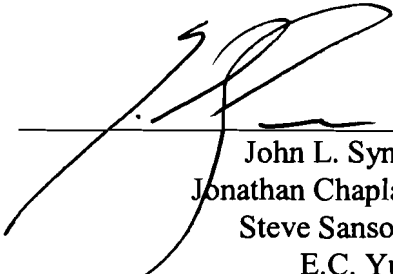
14. in such circumstances, AU should be required to appear before the Tribunal to show cause why it should not be found in contempt, and be required to comply with the Notice forthwith;
15. sections 8 and 8.1 of the *Competition Tribunal Act*;
16. sections 92 and 105 of the *Competition Act*;
17. Rules 466 through 472 of the *Federal Court Rules, 1998*;
18. Rules 17, 38 and 68(1) of the *Competition Tribunal Rules*; and
19. such further and other grounds as counsel may advise and this Honourable Tribunal permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the affidavit of Terence Stechysin sworn the 29th day of August 2006; and

2. such further and other evidence as counsel may advise and this Honourable Tribunal permit.

DATED AT OTTAWA, this 29th day August, 2006.



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