

Competition Tribunal



Tribunal de la Concurrence

Reference: *United Grain Growers Limited v. Commissioner of Competition*, 2006 Comp.Trib.15
File No.: CT-2002-001
Registry Document No.: 0167

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

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

AND IN THE MATTER OF an application by United Grain Growers Limited under section 106 of the *Competition Act*.

B E T W E E N:

United Grain Growers Limited
(applicant)

and

The Commissioner of Competition
(respondent)

and

The Canadian Wheat Board and Mission Terminal Inc.
(intervenors)



Date of case management conference call: 20060317
Presiding Judicial Member: Lemieux J.
Date of Order: March 20, 2006
Order signed by: Mr. Justice F. Lemieux

**ORDER RELATING TO MATTERS CONSIDERED AT THE CASE MANAGEMENT
CONFERENCE OF MARCH 17, 2006**

[1] FURTHER to the application filed by United Grain Growers Limited (“UGG”) pursuant to section 106 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Application”);

[2] AND FURTHER to the letter of January 31, 2006, sent by the Deputy Registrar of the Tribunal to the parties and intervenors (the “Registry Letter”) setting out the logistical details of the hearing of the Application, including the tendering and identification of documents;

[3] AND FURTHER to the letter of counsel for UGG of March 16, 2006 (the “UGG Letter”), setting out various proposals regarding the hearing of the Application scheduled to commence in Ottawa on March 27, 2006, including suggestions on the filing and taking into evidence of documents contained in the Joint Book of Documents to be filed on behalf of all parties and intervenors (the “UGG’s Joint Book Proposal”), the use of lay witness panels at the hearing and the disclosure of the names and addresses of witnesses prior to the commencement of the hearing;

[4] AND WHEREAS the UGG Letter identifies certain areas of agreement on procedural matters related to the Application including: (1) how the exception contained in paragraph 17 of the Interim Confidentiality Order (*United Grain Growers Limited v. Commissioner of Competition*, 2006 Comp. Trib. 10) shall be invoked; (2) the procedure concerning the production of daily confidential and public transcripts of the hearing; (3) the Tribunal giving its consent to amendments to the parties’ disclosure statements; and (4) whether it is necessary for UGG to amend its Statement of Grounds and Material Facts to refer to Canadian National Railway’s rate reduction to grain destined for the Prince Rupert Grain Terminal;

[5] AND FURTHER to the letter of counsel for the Commissioner of Competition (the “Commissioner”) of March 16, 2006 (the “Commissioner’s Letter”) in which he agrees with some, but not all, of UGG’s proposals;

[6] AND WHEREAS counsel for UGG has not persuaded me that the Tribunal should depart from its usual practice set out in the Registry Letter regarding the tendering and identification of documents since the risks associated with UGG’s Joint Book Proposal outweigh the benefits which would allegedly result from this proposal;

[7] AND WHEREAS counsel for UGG also has not persuaded me that it would be appropriate to hear lay witnesses in a panel format thus departing from usual and normal procedure, without the consent of counsel for the Commissioner for the reasons expressed in the Commissioner’s Letter;

[8] AND WHEREAS counsel for the parties have agreed that they will attempt to resolve their dispute regarding the exchange of names of witnesses prior to the hearing;

[9] AND FURTHER to the discussion held with counsel during the case management conference of March 17, 2006;

THE TRIBUNAL ORDERS THAT:

[10] Authorization is hereby granted pursuant to sections 4.1 and 5.1 of the *Competition Tribunal Rules*, SOR/94-290, to the parties to amend their respective Disclosure Statements by the exchange of each other's Supplementary Disclosure Statement and each other's Further Supplementary Disclosure Statement;

[11] The tendering and identification of documents contained in the Joint Book of Documents shall be as set out in the Registry Letter namely through a witness but with the additional flexibility that such documents may be entered into the Tribunal's record upon the consent of opposing counsel;

[12] The lay witness panel format shall not be used at the hearing unless counsel agree otherwise;

[13] The parties' dispute regarding the exchange of the names of witnesses at a time earlier than the time set out in sections 4.2 and 5.2 of the *Competition Tribunal Rules* is deferred for further consideration by the Tribunal, if necessary;

[14] Counsel for the parties shall jointly file as soon as practicable before the commencement of the hearing a witness schedule specifying the order and subject matter of each witness' proposed evidence;

[15] The procedure for invoking the exception contained in paragraph 17 of the Interim Confidentiality Order shall be as set out in the UGG Letter;

[16] A confidential consolidated transcript of the proceedings, including all public and in-camera testimony, and a separate public transcript (excluding any confidential evidence) will be generated on a daily basis. The in-camera evidence contained in the confidential consolidated transcript shall be clearly marked as confidential;

[17] The dispute regarding the confidentiality designation to be given to certain footnotes contained in the Expert Rebuttal Affidavit of Kerry L. Hawkins shall be heard, if necessary, after the Tribunal has disposed of the Commissioner's motion to strike Mr. Hawkins' affidavit in its entirety. This motion shall be heard on Monday, March 27, 2006;

[18] UGG need not amend its Statement of Grounds and Material Facts in order to rely on the fact that CN has reduced its rates to the Prince Rupert Grain Terminal.

DATED at Ottawa, this 20th day of March, 2006.

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

(s) François Lemieux

APPEARANCES:

For the applicant:

United Grain Growers Limited

Sandra Forbes

For the respondent:

The Commissioner of Competition

Jonathan Chaplan

For the intervenors:

Canadian Wheat Board

Jeanne L. Pratt
Margaret Wiebe

Mission Terminal Inc.

William Hourigan