



Reference: *Commissioner of Competition v. Saskatchewan Wheat Pool Inc.*, 2006 Comp. Trib.12  
File No.: CT2005009  
Registry Document No.: 0048

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

AND IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to section 92 of the *Competition Act*;

AND IN THE MATTER OF a joint venture between Saskatchewan Wheat Pool Inc. and James Richardson International Limited in respect of port terminal grain handling in the Port of Vancouver.

B E T W E E N :

**Commissioner of Competition**  
(applicant)

and

**Saskatchewan Wheat Pool Inc.**  
**James Richardson International Limited**  
**6362681 Canada Ltd. and 6362699 Canada Ltd.**  
(respondents)

and

**Canadian Pacific Railway Company**  
**Canadian National Railway Company and Canadian Wheat Board**  
(intervenors)

and

**Vancouver Port Authority**  
(applicant for leave to intervene)

Decided on the basis of the written record  
Presiding Judicial Member: Simpson J. (Chairperson)  
Date of Order: February 24, 2006  
Order signed by: Madam Justice S. Simpson

**ORDER GRANTING THE VANCOUVER PORT AUTHORITY LEAVE TO INTERVENE**



[1] FURTHER TO the application filed by the Commissioner of Competition under section 92 of the *Competition Act*, R.S.C. 1985, c. C-34, for an order dissolving a grain handling joint venture between the Respondents at the Port of Vancouver;

[2] AND FURTHER TO the request for leave to intervene filed by the Vancouver Port Authority (the "VPA"), a port authority incorporated for the purpose of operating the Port of Vancouver and constituted by letters patent made pursuant to the *Canada Marine Act*, S.C. 1998, c.10;

[3] AND FURTHER TO reading the VPA's request for leave to intervene, the affidavit of Scott Galloway sworn on December 30, 2005, filed in support of the request and the responses filed by the Commissioner of Competition and the Respondents;

[4] AND FURTHER TO the VPA's letter of February 20, 2006, indicating that it intends to support the position of the Respondents;

[5] AND WHEREAS the Respondents support the VPA's request for leave to intervene and the Commissioner of Competition does not oppose the request and acknowledges that the VPA has met the test for granting intervenor status;

**THE TRIBUNAL ORDERS THAT:**

[6] The VPA is granted leave to intervene on the following topic: The effects anticipated to result from the Joint Venture on the VPA including any effects on rail traffic into and out of the grain handling facilities at the Port (the "Topic").

[7] The VPA is granted leave to intervene on the following terms:

- (i) the VPA is permitted to review discovery transcripts and productions subject to confidentiality orders but shall not be allowed to participate in the discovery process and shall not attend discoveries;
- (ii) the VPA is permitted to call viva voce evidence in respect of the Topic if it serves the Commissioner of Competition with a will-say statement for each witness at a time to be determined during case management before the commencement of the hearing. The statement is to include: (1) the name of the witness to be called; (2) a description of the evidence to be provided; (3) an explanation of the relevance of the evidence; and (4) a statement that the Respondents have been asked to adduce such evidence and have refused;
- (iii) the Commissioner will have the right of documentary and oral discovery of the VPA on the Topic;
- (iv) the VPA is permitted to cross-examine witnesses at the hearing of the application only in respect of the Topic and only to the extent that such cross-examination is not repetitive of the cross-examinations of the parties to the application;
- (v) the VPA is permitted to introduce expert evidence only with respect to the Topic and in accordance with the procedures set out in the *Competition Tribunal Rules* and case management decisions; and

- (vi) the VPA is permitted to submit legal arguments at the hearing of the application and at any pre-hearing motions or pre-hearing conferences, which are not repetitive in nature.

DATED at Ottawa, this 24<sup>th</sup> day of February 2006.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

Commissioner of Competition

André Brantz  
Jonathan Chaplan  
Valérie Chénard

For the respondents:

Saskatchewan Wheat Pool Inc.  
6362681 Canada Ltd. and  
6362699 Canada Ltd.

Peter Bergbusch

James Richardson International Limited

Adam F. Fanaki  
Robert Russell

For the applicant for leave to intervene

Vancouver Port Authority

Richard T. Shrieves