



Reference: *Commissioner of Competition v. Saskatchewan Wheat Pool Inc.*, 2006 Comp. Trib.7
File No.: CT2005009
Registry Document No.: 0033

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 an application by the Commissioner of Competition for an Order pursuant to section 104 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
(applicant for leave to intervene)



Decided on the basis of the written record
Presiding Judicial Member: Simpson J. (Chairperson)
Date of Order: February 6, 2006
Order signed by: Madam Justice S. Simpson

ORDER GRANTING 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 Canadian Pacific Railway Company (“CPR”), a federally regulated railway which carries grain from grain elevators in western Canada to Port Terminal elevators located at the Port of Vancouver;

[3] AND FURTHER TO reading CPR’s request for leave to intervene, the affidavit of Michael Foran sworn on January 2, 2006, filed in support of the request and the responses filed by the Commissioner of Competition and the Respondents;

[4] AND WHEREAS the Respondents support CPR’s request and the Commissioner of Competition does not oppose the request and acknowledges that CPR has met the test for granting intervenor status;

THE TRIBUNAL ORDERS THAT:

[5] CPR is granted leave to intervene on the following topics in these proceedings (“the Topics”):

- (i) the transportation of grain by rail from primary grain elevators to the port terminals located in Vancouver;
- (ii) the receipt and unloading of railway cars of grain at the Port of Vancouver; and
- (iii) the efficiencies relating to rail operations anticipated to result from the Joint Venture.

[6] CPR is granted leave to intervene on the following terms:

- (i) CPR 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) CPR is permitted to call viva voce evidence in respect of the Topics 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 CPR on the Topics;
- (iv) CPR is permitted to cross-examine witnesses at the hearing of the application only in respect of the Topics and only to the extent that such cross-examination is not repetitive of the cross-examinations of the parties to the application;

- (v) CPR is permitted to introduce expert evidence only with respect to the Topics and in accordance with the procedures set out in the *Competition Tribunal Rules* and case management decisions; and
- (vi) CPR 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 6th day of February 2006.

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

(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:

Canadian Pacific Railway Company

Marc Shannon