

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 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 Ltd. in respect of port terminal grain handling in the Port of Vancouver.

BETWEEN:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT

December 30, 2005

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT

0013a

THE COMMISSIONER OF COMPETITION

Applicant

- AND -

**SASKATCHEWAN WHEAT POOL INC.
JAMES RICHARDSON INTERNATIONAL LIMITED
6362681 CANADA LTD. and 6362699 CANADA LTD.**

Respondents

**REQUEST FOR LEAVE TO INTERVENE
ON BEHALF OF THE VANCOUVER PORT AUTHORITY
Re: Application of Commissioner of Competition under Section 92 of the
Competition Act**

The Vancouver Port Authority (the "VPA") requests leave of the Competition Tribunal pursuant to Section 9(3) of the Competition Tribunal Act, R.S.C. 1985, c. 19, as amended, to intervene in these proceedings. In support of this request, the VPA intends to rely upon the Affidavit of M. Scott Galloway sworn December 30, 2005.

1. Name and Address of the Proposed Intervenor:

The Vancouver Port Authority
100 The Pointe
999 Canada Place
Vancouver, British Columbia
V6C 3T4

Attention: J. Dean Readman, Director Legal Services and Corporate Secretary

Telephone: (604) 665-9057

Fax: (866) 284-4271

Address for Service:

The Vancouver Port Authority
c/o Heenan Blaikie LLP
Lawyers
2200 – 1055 West Hastings Street
Vancouver, British Columbia
V6E 2E9

Attention: Robert W. Grant

Telephone: (604) 669-0011

Fax: (604) 669-5101

2. The matters in issue that affect the VPA and the competitive consequences arising from such matters:

(a) The VPA is a port authority incorporated for the purpose of operating the Port of Vancouver and constituted by letters patent (the “letters patent”) effective March 1, 1999, made pursuant to the *Canada Marine Act*, S.C. 1998, c. 10 (the “*Marine Act*”).

(b) The powers of the VPA include all powers necessary to operate the Port of Vancouver, including, without limitation, the power:

- (i) to conduct activities related to shipping, navigation, transportation of passengers and goods, handling of goods and storage of goods, to the extent those activities are specified in the letters patent (*Marine Act*, s. 28(2)(a));
- (ii) to conduct other activities deemed in the letters patent to be necessary to support port operations (*Marine Act*, s. 28(2)(b));

- (iii) construct, purchase, lease, operate and maintain railways on lands the VPA manages, holds or occupies (*Marine Act*, S. 29(1)(a)); and
- (iv) enter into arrangements with any person for facilitating rail traffic to, from or within the limits of the port (*Marine Act*, s. 29(1)(c)).

(c) Pursuant to section 7.1 of the letters patent, the VPA may undertake, *inter alia*, the following port activities:

(i) per section 7.1(b), the creation, imposition, collection, remission or reimbursement or other fixing or acceptance of fees or charges authorized by the *Marine Act*, which include (per section s. 49(1) of the *Marine Act*) fees in respect of:

- (A) ships, vehicles, aircraft and persons coming into or using the port;
- (B) goods loaded on ships, unloaded from ships or transhipped by water within the limits of the port or moved across the port; and
- (C) any service provided by the VPA, or any right or privilege conferred by it, in respect of the port,

which fees are to be fixed at a level that permits the VPA to be on a self-sustaining financial basis and which shall be fair and reasonable (*Marine Act*, s. 49(3));

(ii) transport services within the port (letters patent, s. 7.1(j)(x));

(d) The VPA's vision is for the Port of Vancouver (the "Port") to be the port of choice on the west coast of North America. The VPA intends to continue to facilitate and expand the movement of cargo and passengers through the Port in the best interests of Canadians.

(e) The Port terminal grain handling services are a significant factor in the Port's operations.

(f) The VPA is concerned that any alteration of the grain handling terminal capacity or the process for grain handling at the Port may adversely impact the VPA's ability to maintain its operations, and as a result, its ability to provide prices, levels and quality of service in other areas of its operations at levels competitive with other ports on the west coast of North America.

(g) The VPA has a unique perspective on the potential effects of the JV and the Order sought by the Commissioner of Competition on all of the operations of the Port, including but not limited to its effect on rail traffic into and out of the grain handling facilities at the Port.

3. The party whose position the VPA intends to support:

Based on the materials filed to date with the Competition Tribunal, the VPA cannot say as of the date of this request which party it intends to generally support. The VPA wishes to consider its position following the filing of the response of the Respondents as currently required on or before January 20, 2006 (per the Order relating to matters considered at the Case Management Conference of December 9, 2005).

4. The Official Language to be used:

English.

5. At this time, the VPA proposes to participate in the proceedings on the following terms, namely:

- a) that the VPA be allowed to participate in the proceedings and be permitted:
 - i. to review any discovery transcripts and access any discovery documents of the parties to the application but not direct participation in the discovery process, subject to confidentiality orders;
 - ii. to call *viva voce* evidence on the following conditions and containing the following information: (1) the names of the witnesses sought to be called; (2) the nature of the evidence to be provided and an explanation as to what issue within the scope of the intervention such evidence would be relevant; (3) a demonstration that such evidence is not repetitive, that the facts to be proven have not been adequately dealt with in the evidence so far; and (4) a statement that the Commissioner had been asked to adduce such evidence and had refused;
 - iii. to cross-examine witnesses at the hearing of the application to the extent that it is not repetitive of the cross-examination of the parties to the application;
 - iv. to submit legal arguments at the hearing of the application that are non-repetitive in nature and at any pre-hearing motions or pre-hearing conferences; and
 - v. to introduce expert evidence which is within the scope of its intervention in accordance with the procedure set out in the Competition Tribunal Rules, SOR/94-290, and case management.

b) and that the Respondents not be permitted to seek documentary or oral discovery of the VPA.

DATED at Vancouver, British Columbia this 30th day of December, 2005.

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