

THE COMPETITION TRIBUNAL

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

IN THE MATTER OF an application by the Commissioner of Competition under 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 Vancouver

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT January 9, 2006 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	#0018b

THE COMMISSIONER OF COMPETITION

Applicant

- AND -

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

Respondents

- AND -

CANADIAN NATIONAL RAILWAY COMPANY

Proposed Intervenor

**AFFIDAVIT OF KIRK CARROLL
(SWORN ON JANUARY 6, 2006)**

I, KIRK CARROLL, of the City of Surrey, in the Province of British Columbia, MAKE OATH AND SAY THAT:

1. I am General Manager Operations, British Columbia, for Canadian National Railway Company ("CN") and as such am involved in the operation of all the CN trains originating and terminating in B.C., including the grain shipped to and handled by the terminal elevators located at the Port of Vancouver. As such, I have personal knowledge of the facts and matters

hereinafter deposed to, except where stated to be based on information and belief, in which case I verily believe the same to be true.

Introduction

2. CN seeks leave to intervene in the within application (the "Application") in support of the Respondents, Saskatchewan Wheat Pool ("SWP"), James Richardson International Limited ("JRI"), 6362681 Canada Ltd. and 6362699 Canada Ltd.

3. I verily believe that CN will be directly impacted by the decision of the Tribunal in this Application and will be able to provide the Tribunal with a perspective that is both instructive and distinct from the parties or other entities seeking intervenor status.

Background

4. CN is a federally regulated railway pursuant to the *Canada Transportation Act* (the "Act") and operates both interprovincially and internationally.

5. As part of its operations, CN transports western grain on its railway from the country elevators in Western Canada to the port terminal elevators located at Thunder Bay, Vancouver and Prince Rupert for export abroad. CN is the only rail carrier which operates to the Port of Prince Rupert.

6. Each year, CN carries millions of tonnes of Western Canadian grain to the grain terminal facilities on Vancouver's North Shore (defined as the trackage between the Second Narrows Bridge to North Vancouver Junction). This movement by CN includes both grain marketed by the Canadian Wheat Board ("CWB"), as well as grain owned or marketed by the grain companies (referred to as "Non-Board grain"). Also included in the grain moved by CN to the Vancouver terminals is grain that is loaded directly into railway cars by the producers themselves ("producer cars"), effectively by-passing the country elevator system.

7. It is imperative to note that CN is the only railway company directly serving the grain terminal elevators on Vancouver's North Shore. Put another way, CN is the sole direct rail service provider to not only the SWP and JRI grain facilities, but also to the other terminal facilities located on the North Shore corridor as well. In addition to the JRI and SWP terminals

located on the corridor, there also exists LynnTerm Terminal (primarily handling pulp and other forest products) and Neptune Terminals (which handles potash, coal and grain products).

8. In addition to the movement of its own traffic, as the sole service provider for Vancouver's North Shore facilities, CN is also required by the Act to interchange railway cars presented for interchange by other rail carriers, such as Canadian Pacific Railway Company ("CPR"), Burlington Northern-Sante Fe ("BNSF") and Union Pacific ("UP") for ultimate delivery to the terminals located on the North Shore. This situation makes CN's position and perspective unique, even as compared to other rail carriers, with respect to the operation of the Vancouver terminals.

9. Total rail volumes to Vancouver's North Shore have grown substantially during the past three years. The volumes experienced for 2004 exhibit a substantial 55 percent increase over the 3 year average volumes experienced between 2000 through 2002.

10. The most significant contributor to this increase has been bulk commodity shipments (grain, potash and coal) originating on CP lines. In 2004, for example, CN handled a total of 115,126 CP carloads at North Shore, as compared with only 40,131 carloads back in 2000.

11. It is also important to note that CN's ability to expand its rail infrastructure on the North Shore is restricted. There is no ability to physically expand the existing rail infrastructure given the geographic constraints; the area is effectively land-locked, bordered by Burrard Inlet to the south and Lower Level Road to the north.

12. Given the significant growth in rail traffic volumes to Vancouver's North Shore, combined with the restricted rail infrastructure and CN's obligation to deliver other carriers' traffic in addition to its own, it is critically important from CN's perspective that all rail-receiving facilities operate most efficiently and achieve the highest possible performance levels.

13. CN is also subject to the grain transportation revenue regulation provisions of the Act. This means that the maximum revenues which CN is allowed to earn for the carriage of Western Canadian grain from the prairies to the Vancouver grain terminals for export is federally regulated. This underscores CN's direct interest in ensuring the most efficient and effective receipt, handling, unloading and release of its railway cars by Vancouver grain terminal elevators

– the promptness and efficiency of these terminal operations directly impacts on the efficiency, cost and effectiveness of CN’s railway operations.

14. As a result, CN has continually over the past number of years attempted to encourage more efficient grain shipping behaviour to the ports at Vancouver. For example, CN offers rate incentives for shipping and unloading in large car blocks of 50 and 100 cars, so as to encourage efficient behaviour and handling by the shipper at both the origin and destination.

Effect of the Joint Venture

15. CN also encourages and endorses any operational measures adopted by other participants in the grain transportation and logistics chain aimed at improving grain throughput and increasing grain system capacity into and out of the Port of Vancouver. The formation of Pacific Gateway Terminals Limited (“PGTL”), through the joint venture between SWP and JRI, is such a measure that CN endorses.

16. The joint venture being reviewed in this Application has allowed for grain handling flexibility and choice, allowing PGTL to shift product between its two terminals so as to capitalize on available space and vessel loading. This flexibility has assisted in maintaining railcar pipeline fluidity in the corridor and generating additional car supply.

17. These efficiency improvements in throughput are particularly evident when one reviews CN’s recent experience. Traffic throughput by PGTL (as defined by railcar unload performance) has increased by 100 cars per week since August 1, 2005 relative to the 2004/05 crop year, and by 200 cars per week as compared to the 2003/04 crop year. I believe that the operation of the two grain terminals as a single facility has provided increased flexibility for rail operations, as the joint venture is able to maximize available grain terminal capacity by efficiently diverting loaded rail cars consigned to one facility over to the other facility where they can be processed more quickly in an effort to increase unloads. This results in fewer trains being held out of Vancouver waiting for space to open up, and acts to reduce railcar congestion on the North Shore.

18. A terminal’s failure to efficiently receive and unload railcars upon delivery to the North Shore can have a serious rippling effect on CN’s broader operations, by directly reducing CN’s capacity to handle other traffic to be delivered to other terminals on the North Shore, in Vancouver, and along CN’s line operations leading into Vancouver, as explained below.

19. When rail cars are brought in to the North Shore, the existing infrastructure at CN's Lynn Creek yard requires that the cars be spotted as soon as possible at customer facilities for a quick unloading. CN simply does not have the capacity to store or hold an excessive number of rail cars pending unloading on the North Shore. When rail car inventories begin to build up, CN's operations can become congested, and it is restricted in its ability to make-up and operate trains through the area. CN becomes unable to receive any additional rail cars and, until the congestion is relieved, CN must hold inbound North Shore traffic out at other facilities in Vancouver (e.g. CN's Thornton Yard) or further out in its mainline network leading into Vancouver.

20. Holding railcars or trains on CN's mainline into Vancouver in turn affects both CN's and CP's rail operations, as CN and CP operate all westbound trains into Vancouver on CN's rail line from Kamloops as part of a co-production initiative between the railways. If required to hold North Shore traffic out, CN and CP generally have to stage the train at Boston Bar or some other mainline point. When this occurs, operating costs increase, as the railways are required to idle high valued assets and rail operations along the line become constrained.

Effect of Being Granted Leave

21. Given that CN is the sole railway carrier directly serving Prince Rupert and the Vancouver North Shore grain terminal elevators, and given CN's extensive experience in supplying rail transportation services for grain shipments generally, I believe that CN can provide a unique and useful perspective on the issues raised in this Application.

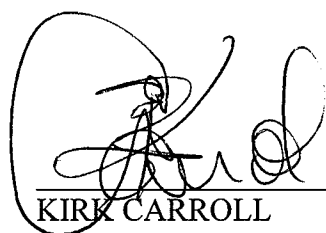
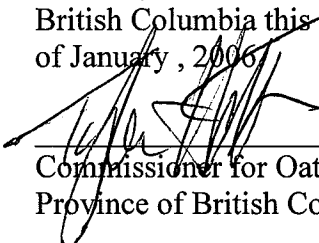
22. If granted leave to intervene, CN will be able to adduce evidence regarding numerous issues relevant to the Application, including the transportation by rail of grain from prairie origins to port terminal located in Vancouver, the challenges relating to the movement of grain and other traffic from both CN origins and from other railways received in interchange at Vancouver for delivery to port terminals on the North Shore of Vancouver, and the efficiencies relating to rail operations anticipated to result from the joint venture.

23. CN will clearly be directly affected by this Application. CN expects that if the joint venture is allowed to proceed, the efficiency gains already experienced and referred to in paragraph 17 above will continue and will increase. There will be improved railway efficiency and railway car capacity utilization on the CN system. Further, if the Tribunal determines that the joint venture is not permitted to proceed, CN will be deprived of the benefits associated with

this improved railway efficiency and railway capacity utilization that have resulted, and are anticipated to result in the future, from the joint venture as described above.

24. I make this Affidavit in support of the request for CN for leave to intervene in the Application.

SWORN BEFORE ME at the City)
of Surrey, in the Province of)
British Columbia this 6th day)
of January , 2006)
)
)
)
Commissioner for Oaths in and for the)
Province of British Columbia)



KIRK CARROLL

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AFFIDAVIT OF KIRK CARROLL
(Sworn on January 6, 2006)

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