

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S. 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 3, 2006

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT

#0014a

THE 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

Proposed Intervenor

**REQUEST FOR LEAVE TO INTERVENE
ON BEHALF OF CANADIAN PACIFIC RAILWAY COMPANY
Re: Application by the Commissioner of Competition under section 92 of the
Competition Act**

Canadian Pacific Railway Company (“CPR”) requests leave of the Competition Tribunal pursuant to Section 9(3) of the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.), as amended, to intervene in these proceedings. In support of this request, CPR will rely on the Affidavit of Michael Foran sworn January 2, 2006.

1. Name and Address of the Proposed Intervenor:

Canadian Pacific Railway Company
Suite 920
Gulf Canada Square
4-1 – 9th Avenue S.W.
Calgary, Alberta
T2P 4Z4

Attention: Marc Shannon, Senior Counsel CPR Legal Services

Telephone: (403) 319-6165

Fax: (403) 319-6770

Address for Service:

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2. The matters in issue in this Application that affect CPR and consequences arising from such matters:

- (a) CPR is a federally regulated railway, holding a Certificate of Fitness issued by the Canadian Transportation Agency (“Agency”) pursuant to the Canada Transportation Act (“CTA”) and operating interprovincially and internationally.
- (b) CPR carries millions of tonnes of grain on its railway from country elevators in western Canada to the Port Terminal elevators at Vancouver for export to other countries.
- (c) Unlike Canadian National Railway (“CNR”), the other major Canadian railway, CPR serves only one of the two major western Canadian ports. While CNR serves the port of Prince Rupert, CPR serves only Vancouver and, at Vancouver, serves only the South Shore. The millions of tonnes of grain that move via CPR to the North Shore must be interchanged between CNR and CPR at busy and difficult interchanges. CPR, therefore, has a particular and direct interest in ensuring that the transportation of grain to Vancouver and the receipt of and unloading of its railway cars of grain by Vancouver grain terminal elevators is as prompt and efficient as is possible.
- (d) CPR capacity through the mountains to and from the Port of Vancouver is limited and the capacity, despite recent significant investments by CPR, is strained. As a result, efficient grain transportation and handling is of great importance to CPR and, given the growing demands of shippers of all rail freight traffic should be of importance to shippers generally.
- (e) Failure to achieve efficiency improvements, especially in respect of railway operations to and from Vancouver through the Rocky Mountains will further strain CPR railway operating capacity, at a time when shipper demands for rail transportation exceed available capacity.
- (f) The Respondents’ joint venture in this case has resulted in railway efficiency improvements at Vancouver and it is anticipated that these improvements will continue and increase in the future. The joint venture creates grain handling flexibility and choice, allowing the joint venture to shift production between its two terminals to capitalize on available space and vessel loading. This flexibility helps maintain railcar pipeline fluidity and generates additional railcar supply.

- (g) CPR is concerned that, if the joint venture is terminated these efficiencies will no longer be realized.
- (h) CPR has a unique perspective in this matter as one of only two prescribed Class I, federal railways carrying regulated grain from western Canada to British Columbia west coast ports. Moreover, CPR is the only one that delivers to only one of the two major B.C. ports, since CNR serves both Prince Rupert and Vancouver. Furthermore, CPR has a particular interest in efficiency of operations to and on the North Shore of Vancouver, where the joint venture elevators are located, since CPR grain cars reach and return from the North Shore only via CNR interchange handling of the cars. Since CPR is dependent on CNR handling of rail cars to and from the North Shore, CPR is particularly sensitive to the need for efficiency in acceptance, receipt, unloading and release of its rail cars by the North Shore Terminal Elevators.
- (i) As outlined above, CPR will be directly affected by the outcome of this Application, will make representations that are relevant to the issues specifically raised in this Application and has a unique and distinct perspective separate and apart from the other parties that will assist the Tribunal in deciding the issues in the application.
- (j) If granted leave to intervene, CPR will be able to adduce evidence regarding numerous issues relevant to the Application; including: the transportation by rail of grains from primary grain elevators to, among other places, port terminals located in Vancouver and the logistics relating to the allocation and delivery by rail of grain at the Port of Vancouver and elsewhere.
- (k) CPR will be directly affected by this Application. CPR expects that if the joint venture is allowed to proceed the efficiency gains already experienced will continue and will increase. If the Tribunal determines that the joint venture is not permitted to proceed, CPR will be deprived of the benefits associated with improved railway efficiency and railway capacity utilization that have resulted and are anticipated to result from the joint venture.

3. The party whose position CPR intends to support:

CPR intends to support the Respondents in this Application.

4. The Official Language to be used:

English

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

a) that CPR 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 condition that CPR provide: (1) the names of the witnesses sought to be called; (2) a will-say statement for each witness, with 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 respondents have been asked to adduce such evidence and have 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, Can. Reg. S0R/94-290, and case management,

b) and that the parties not be allowed to seek documentary or oral discovery of CPR.

DATED at Calgary, Alberta this 2nd day of January, 2006.

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