

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

#0014b

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

AFFIDAVIT OF MICHAEL FORAN

**Re: Application by the Commissioner of Competition under section 92 of the
Competition Act and in Support of the Request for Leave to Intervene by
Canadian Pacific Railway Company**

I, Michael Foran, of the City of Calgary in the Province of Alberta, Make Oath and Say That:

1. I am Manager, Grain Shipment Management, for Canadian Pacific Railway Company (“CPR”) and am involved in operation of the trains of CPR that serve the shippers of Canadian grain, including grain shipped to and handled by the terminal elevators located at the Port of Vancouver and as such I have personal knowledge of the matters herein, except where stated to be based on information and belief and where so stated I do verily believe same to be true.
2. CPR seeks leave to intervene in the within application (the “Application”) in support of the Respondents Saskatchewan Wheat Pool Inc. (“SWP), James Richardson International Limited (“JRI”), 6362681 Canada Ltd. and 6362699 Canada Ltd.
3. As will be outlined below, CPR will be directly affected by the outcome of this Application, will make representations that are relevant to 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.
4. 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.
5. CPR carries grain on its railway from country elevators in western Canada to the Port Terminal elevators at Thunder Bay and at Vancouver for export.

6. CPR is one of the two prescribed railways in Canada under the Part III of the CTA and as such is subject to the grain transportation revenue regulation provisions in Part III of the CTA. As a result, the revenues which CPR is allowed to earn for the carriage by rail of western Canadian grain from prairie origins to the Port of Vancouver grain terminals for export is regulated. CPR, therefore, has a particular and direct interest in transportation of grain to Vancouver and the receipt of and unloading of its railway cars of grain by Vancouver grain terminal elevators. The promptness and efficiency of the receipt and unloading of CPR railway cars by Vancouver terminal grain elevators affects the efficiency, cost and effectiveness of the CPR railway operation.

7. While Canadian National Railway (“CNR”) is also a prescribed railway under Part III of the CTA, CNR operates to the Port of Prince Rupert, while CPR does not. CPR’s only direct access to a west coast Canadian port is to Vancouver. As a result, the interest and views of CPR are somewhat different than are those of CNR.

8. CNR also serves the grain terminal elevators on the North Shore of Vancouver. CPR does not directly serve the grain terminal elevators on the North Shore of the Port of Vancouver. Railway cars of grain carried by CPR for delivery to grain terminal elevators on the North Shore must be interchanged by CPR to CNR at Vancouver for ultimate delivery to the elevators on the North Shore. Given the operating constraints at the Port of Vancouver and the necessity to interchange such cars of grain to CNR, efficiency of operations at the North Shore terminal elevators are especially important to CPR.

9. Each year CPR handles millions of tonnes of western Canadian grain to the Vancouver North Shore grain terminals. This includes both grain marketed by the Canadian Wheat Board (“CWB”) and grain owned or marketed by the grain companies (“non-board grain”). Included in the western grain carried by CPR to the

Vancouver terminal elevators is grain loaded directly by farmers into railway cars (“producer cars”), by-passing the Canadian country elevator system.

10. The western Canadian grain that is carried by CPR to Vancouver moves over CPR’s line through the Rocky Mountains. This line is the busiest and most congested part of CPR’s railway system. The demand for railway transportation over this line through the Rocky Mountains exceeds its capacity. In order to meet some of this increasing demand CPR, in 2005 invested over \$150 million dollars. The cost of expanding railway capacity for transportation to the west coast is very expensive and, therefore, the efficient use of resources is very important to CPR.

11. Given the variety of grain, the number of shippers, rail line capacity constraints and Vancouver operational and interchange challenges the object of improving efficiency of receipt, handling, unloading and releasing railway cars at the Vancouver terminal elevators is very important to CPR. This is especially so since the federal government regulates the revenue that CPR can earn for transportation of western grain to Vancouver for export.

12. CPR does currently and has for many years offered large incentives to shippers and consignees of western grain destined to Vancouver in return for shipping in more efficient fashions. These include incentives for shipping grain in large car blocks of 50 and 100 cars. The purpose of the incentive rates offered by CPR is to encourage efficient behaviour and handling by the shipper at origin and destination.

13. From an operational perspective, CPR endorses the formation of Pacific Gateway Terminals Limited (PGTL), through the joint venture between SWP and JRI, as a means to improve grain throughput and increase grain system capacity into and out of the Port of Vancouver. The joint venture is consistent with actions taken by CPR over the past year, expanding our western corridor to more

effectively manage increased rail demand across all commodities destined to Vancouver

14. The joint venture creates grain handling flexibility and choice, allowing PGTL to shift product between its two terminals to capitalize on available space and vessel loading. This flexibility helps maintain railcar pipeline fluidity, and generates additional railcar supply.

15. Recent experience has demonstrated this efficiency gain. Shipments of grain to Vancouver terminal elevators peaks annually during the fall, at time when railway capacity is strained and must be rationed among shippers. During the Fall 2005 grain shipping peak, (October 2 to December 17) the two PGTL terminals unloaded approximately 100 more CPR grain cars per week as compared to the same period in 2004. This was a significant 14.7% improvement.

16. PGTL accepted, unloaded and released CPR loaded railcars roughly 22.5% faster in 2005 than in 2004. Over the course of the 11-week grain shipping peak period, this improved railway car turnover generated roughly 1800 additional unloads and, therefore, 1800 additional empty railway cars that could then be returned to the country for loading again. While other factors contributed to the increased efficiency, the flexibility generated by the joint venture played a significant role in the year-over-year improvement.

17. Often trains must be held out of Vancouver waiting for space to open up at a grain terminal so that a loaded train can be placed for unloading. This sort of activity wastes limited railway resources, both in rail yards and along the mainline. The ability to direct loaded railway cars to either of the PGTL terminals during the Fall of 2005, however, meant that there were very few trains that had to be held by

CPR short of Vancouver due to PGTL terminal congestion, despite inclement weather and some delays to PGTL destined vessels.

18. As described in greater detail above, given its unique position as a rail services provider with extensive experience in supplying rail transportation services for grain shipments, CPR has a unique perspective on the issues raised in this Application.

19. If granted leave to intervene, CPR will be able to adduce evidence regarding numerous issues relevant to the Application; including, the following: the transportation by rail of CWB and non-board grain from primary grain elevators to, among other places, port terminals located in Vancouver; the logistics relating to the allocation and delivery by rail of grain at the Port of Vancouver and elsewhere; and, the efficiencies relating to rail operations anticipated to result from the joint venture.

20. As described more fully above, CPR will be directly affected by this Application. CPR expects that if the joint venture is allowed to proceed the gains already experienced will continue and will increase. There will be improved railway efficiency and railway capacity utilization through the CPR western corridor. Further, 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 as described above.

21. I make this Affidavit in support of the application by CPR for leave to intervene in the Application.

SWORN BEFORE ME at the city of)
Calgary, in the Province of Alberta,)
this 2nd day of January, 2006)

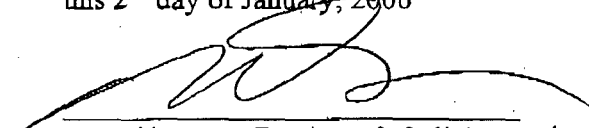
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Marc Shannon, Barrister & Solicitor and)
Notary Public in and for Alberta)

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