

THE COMPETITION TRIBUNAL

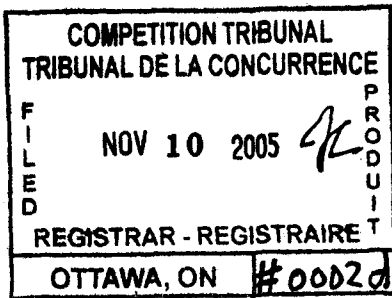
IN THE MATTER OF the *Competition Act*, R.S. 1985, c. C-34, as amended;

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.

BETWEEN:



THE COMMISSIONER OF COMPETITION

Applicant

- AND -

SASKATCHEWAN WHEAT POOL INC. ,

JAMES RICHARDSON INTERNATIONAL LIMITED,

6362681 CANADA LTD. AND 6362699 CANADA LTD.

Respondents

DRAFT INTERIM ORDER

WHEREAS Saskatchewan Wheat Pool Inc. and James Richardson International Limited, together with their Affiliates, 6362681 Canada Ltd. and 6362699 Canada Ltd., have entered into a series of agreements dated April 6, 2005 creating joint ventures in connection with the Marketing of grain handling services to Non-Integrated Graincos and the operation of their respective port terminal grain handling terminals in the Port of Vancouver;

AND WHEREAS the Commissioner of Competition has made an application pursuant

to sections 92 and 104 of the *Competition Act*, R.S. 1985, c. C-34, as amended;

AND ON READING the Notice of Application under section 92 of the *Competition Act* dated November 10, 2005, the Notice of Application for a Interim Order under sections 104 of the *Competition Act* dated November 10, 2005, , the affidavit of Denis Corriveau dated November 10, 2005, the Memorandum of Argument for the Interim Relief, the Statement of Grounds and Material Facts and the Draft Interim Order;

AND ON DETERMINING that this is an appropriate case for the issuance of an interim order pursuant to sections 92 and 104 of the *Act*;

THE TRIBUNAL ORDERS THAT:

I. DEFINITIONS

1. For the purposes of this Order, the following capitalized terms have the following meaning:
 - (a) “*Act*” means the *Competition Act*, R.S. 1985, c. C-34, as amended;
 - (b) “Affiliate” has the meaning given to it in subsection 2 (2) of the *Act*;
 - (c) “Order” means this Interim Order against Saskatchewan Wheat Pool Inc., James Richardson International Limited, 6362681 Canada Ltd. and 6362699 Canada Ltd. pursuant to section 104 of the *Act*;
 - (d) “Commissioner” means the Commissioner of Competition appointed pursuant to section 7 of the *Act*;
 - (e) “Hold Separate Monitor” means the Person appointed pursuant to Part IV of the Order, and any employees, agents or other persons acting for or on behalf of the Hold Separate Monitor;
 - (f) “JRI” means James Richardson International Limited, a corporation existing under the laws of Canada, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates;
 - (g) “JV” means the proposed joint venture between JRI and Saskatchewan Wheat Pool Inc., and their Affiliates, 6362681 Canada Ltd. And 6362699 Canada Ltd., as reflected in their agreements dated April 6, 2005, for the joint operation and marketing of their Vancouver port terminal facilities;
 - (h) “JV Operator” means 6362699 Canada Ltd.;

- (i) “Non-Integrated Grainco” means a grain company which may own a primary elevator but does not own a port terminal on the Canadian west coast;
 - (j) “Marketing” means any action taken to promote or sell services and, without limiting the generality of the foregoing, includes the setting of prices, rates, rebates, allowances, diversion premiums, tariffs and terms of service;
 - (k) “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity;
 - (l) “SWP” means Saskatchewan Wheat Pool Inc., a corporation existing under the laws of Canada, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates;
 - (m) “Tribunal” means the Competition Tribunal established by the *Competition Tribunal Act (Canada)*, R.S.C. 1985, c. 19 (2nd Supp.), as amended.
2. For the purposes of this Order, “Confidential Information” means competitively sensitive or proprietary information pertaining to the provision of grain handling services to Non-Integrated Graincos including, without limiting the generality of the foregoing, with respect to the provision of grain handling services to Non-Integrated Graincos, any and all information pertaining to marketing methods or techniques, pricing, terms of service, revenues, costs, customer lists or other trade secrets pertaining to marketing.

II. APPLICATION

3. The provisions of this Order apply to:
- (a) JRI;
 - (b) SWP;
 - (c) 6362681 Canada Ltd.;
 - (d) 6362699 Canada Ltd.;
 - (e) all other Persons acting in concert or participating with (a) to (d), above with respect to the matters referred to in this Order, who shall have received actual notice of this Order;

- (f) the Commissioner; and
- (g) the Hold Separate Monitor.

III. HOLD SEPARATE

4. SWP and JRI shall, during the term of this Order, take all necessary steps to ensure they operate independently in respect of the Marketing of grain handling services to Non-Integrated Graincos at the Port of Vancouver and at the Prince Rupert Terminal.
5. 6362681 Canada Ltd. shall not engage in the coordinated marketing of services of the SWP and JRI port terminals.
6. SWP and JRI shall, during the term of this Order:
 - (a) maintain and hold such physical assets, including computer systems and databases used in connection with the Marketing of grain handling services to Non-Integrated Graincos, in good condition and repair, normal wear and tear excepted, and to standards at least equal to those maintained prior to the date of this Order;
 - (b) take all commercially reasonable steps to maintain quality and service standards for Non-Integrated Graincos at the level that existed prior to the date of this Order, save as required by prudent management of such;
 - (c) not communicate Confidential Information to any Person, including each other, other than the Hold Separate Monitor and the Commissioner, or as otherwise permitted herein;
 - (d) not, to any material extent, alter, or cause to be altered, the management of those parts of their companies that market port terminal grain handling services to Non-Integrated Graincos as they existed prior to the date of this Order, except as may be necessary to comply with the terms of this Order or to replace employees that may resign, save as required by prudent management; and;
 - (e) not terminate or alter any current employment, salary or benefit agreements for any employees working in those parts of their companies that market port terminal grain handling services to Non-Integrated Graincos, to any material extent, save as required by prudent management.
7. Notwithstanding paragraph 4 and subparagraph 6(c) of this Order, SWP and JRI may each communicate with the JV Operator with respect to matters of logistics in respect of

the receiving, handling and shipping of grain. This does not permit SWP or JRI to communicate with the JV Operator or each other relating to any information pertaining to diversion premiums.

8. SWP shall not offer employment to employees of JRI employed, directly or indirectly in the marketing of port terminal grain handling services to Non-Integrated Graincos. The foregoing shall apply *mutatis mutandis* to JRI.

IV. MONITOR

9. Upon registration of this Agreement, the Commissioner shall appoint a Hold Separate Monitor. The choice of Hold Separate Monitor shall be subject to the consent of JRI and SWP, which consent shall not be unreasonably withheld. The Hold Separate Monitor shall be responsible for monitoring the compliance of JRI, SWP, 6362681 Canada Ltd. and 6362699 Canada Ltd. with this Order, pending the Tribunal's final determination on the merits of the Commissioner's Application pursuant to section 92 of the *Act*.
10. If the Hold Separate Monitor ceases to act or fails to act diligently and consistent with the purposes of this Order or if he/she is unable to perform his/her duties under the terms of this Order because of death, disability, termination for cause or any other reasons, the Commissioner shall apply to the Tribunal for an order appointing a new Hold Separate Monitor within 15 days. This Order shall apply to any substitute Hold Separate Monitor appointed pursuant to this paragraph.
11. SWP and JRI shall be jointly responsible for all fees or expenses reasonably and properly charged or incurred by the Hold Separate Monitor, or any substitute thereof appointed pursuant to this Order, in connection with the execution or performance of the Hold Separate Monitor's duties under this Order.
12. The Hold Separate Monitor shall have full and complete access to all personnel, books, records, documents and facilities of SWP, JRI, 6362681 Canada Ltd. and 6362699 Canada Ltd. that pertain, directly or indirectly to the Marketing of port terminal grain handling services to Non-Integrated Graincos. SWP, JRI, 6362681 Canada Ltd. and 6362699 Canada Ltd. shall cooperate with any reasonable request of the Hold Separate Monitor. Neither SWP, JRI, 6362681 Canada Ltd. or 6362699 Canada Ltd. shall take any action to interfere with or impede the Hold Separate Monitor's ability to discharge his/her duties and responsibilities.
13. The Hold Separate Monitor shall serve without bond or other security, on such reasonable and customary terms and conditions as are agreed, with the approval of the Commissioner. The Hold Separate Monitor shall have the authority to employ, at the cost and expense of SWP and JRI such persons as are reasonably necessary to carry out the Hold Separate Monitor's duties and responsibilities under this Order. The Hold Separate

Monitor shall account for all expenses incurred, including fees for his/her services, and such account shall be subject to the approval of the Commissioner.

14. SWP and JRI shall indemnify the Hold Separate Monitor and hold him/her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the duties of the Hold Separate Monitor, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Monitor.
15. The Hold Separate Monitor shall report in writing to the Commissioner: (i) every 20 days after being appointed until this Order is terminated; and (ii) at any other time as requested by the Commissioner or her staff, concerning SWP, JRI, 6362681 Canada Ltd. and/or 6362699 Canada Ltd. compliance with this Order.
16. Neither SWP, JRI, 6362681 Canada Ltd. or 6362699 Canada Ltd. shall exert or attempt to exert any influence, direction or control over the Hold Separate Monitor, which may adversely affect the discharge of the Hold Separate Monitor's duties under the terms of this Order.
17. This Order shall not be construed as providing the Hold Separate Monitor with ownership, management, possession, charge or control of SWP, JRI, 6362681 Canada Ltd. or 6362699 Canada Ltd..
18. The Hold Separate Monitor shall execute a confidentiality agreement with JRI, SWP and their Affiliates, 6362681 Canada Ltd. and 6362699 Canada Ltd. in which the Hold Separate Monitor will undertake not to disclose any competitively sensitive or proprietary information acquired in the performance of the Hold Separate Monitor's duties to any person except to the Commissioner.
19. If the Hold Separate Monitor considers that SWP, JRI, 6362681 Canada Ltd. and/or 6362699 Canada Ltd. are in default of any of the terms of this Order, he shall immediately notify the Commissioner of the breach, who shall forthwith give notice to SWP and JRI setting out the particulars of such default.
20. If the Hold Separate Monitor advises the Commissioner that SWP, JRI, 6362681 Canada Ltd. and/or 6362699 Canada Ltd. are in default of any of the terms of this Order, or if the Commissioner otherwise believes such to be the case, then for the purpose of determining or securing compliance with this Order, subject to any valid claim to a legally recognized privilege, and upon written request, SWP, JRI, 6362681 Canada Ltd. and/or 6362699

Canada Ltd. shall permit any duly authorized representative of the Commissioner:

- a) upon a minimum of 3 days notice to SWP, JRI, 6362681 Canada Ltd. and 6362699 Canada Ltd., access during office hours of SWP and/or JRI, to inspect and copy all books, ledgers, accounts, correspondence, memorandum, and other records and documents in the possession or under control of SWP, JRI, 6362681 Canada Ltd. and/or 6362699 Canada Ltd. relating to compliance with this Order; and
- b) upon a minimum of 8 days notice to SWP, JRI, 6362681 Canada Ltd. and/or 6362699 Canada Ltd., and without restraint or interference from SWP, JRI, 6362681 Canada Ltd. and/or 6362699 Canada Ltd., to interview directors, officers or employees of SWP, JRI, 6362681 Canada Ltd. and/or 6362699 Canada Ltd. on matters in the possession or under the control of SWP, JRI, 6362681 Canada Ltd. and/or 6362699 Canada Ltd. relating to compliance with this Order.

V. NOTIFICATION

21. Each of SWP, JRI, 6362681 Canada Ltd. and 6362699 Canada Ltd. shall provide a copy of this Order to each of their officers, employees, or agents having managerial responsibility for any obligations under this Order, no later than 5 days from the date this Order has been served on them.
22. Notices, reports and other communications required or permitted pursuant to any of the terms of this Order, shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the parties:

a) If to the Commissioner:

Mr. Jonathan Chaplan
Mr. André Brantz
Ms. Valérie Chénard
Competition Law Division
Department of Justice
Place du Portage, 22nd floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Fax: (819) 953-9267

b) If to SWP:

Mr. Glen S. Lekach
Mr. Peter T. Bergbush
Balfour Moss
700-2103 11th Ave
Regina, Saskatchewan
S4P 4G1
Fax: (306) 347-8352 / 8351

c) If to JRI:

Mr. Robert S. Russell
Scotia Plaza
40 King Street West
Toronto, Ontario, Canada
M5H 3Y4

Fax: (416) 361-6070

VI. GENERAL

23. SWP and JRI agree that they will take such steps as are necessary to ensure that 6362681 Canada Ltd. and 6362699 Canada Ltd, which are wholly owned by SWP and JRI, take such measures, including adopting any necessary resolutions or obtaining any necessary authorizations, to ensure they are bound by the terms of this Order.
24. This Order shall remain in effect until the Tribunal's final determination on the merits of the Commissioner's Application pursuant to section 92 of the *Act*.
25. SWP, JRI, 6362681 Canada Ltd. and 6362699 Canada Ltd. and the Commissioner may mutually agree to amend this Order in any manner pursuant to subsection 106(1) of the *Act*.
26. In the event of a dispute as to the interpretation or application of this Order, including any decision by the Commissioner pursuant to this Order or breach of this Order by the Respondents, the Commissioner, SWP, JRI, 6362681 Canada Ltd. and/or 6362699 Canada Ltd. shall be at liberty to apply to the Tribunal for a further order interpreting any of the provisions of this Order or to address any issue concerning this Order.

27. This Order does not prohibit anyone from providing confidential information to the Commissioner for purposes of the administration or enforcement of the *Act*, including for the purposes of this proceeding.

DATED at _____, this _____ day of November, 2005.

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