

**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 United Grain Growers Limited under section 106 of the *Competition Act*;

**AND IN THE MATTER OF** the acquisition by United Grain Growers Limited of Agricore Cooperative Ltd., a company engaged in the grain handling business.

**BETWEEN:**

**UNITED GRAIN GROWERS LIMITED**

Applicant

-AND-

**THE COMMISSIONER OF COMPETITION**

Respondent

-AND-

**MISSION TERMINAL INC.**

Proposed Intervenor

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE  <b>FILED / PRODUIT</b> September 26, 2005 CT-2002-001  Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	#0135a

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**REQUEST FOR LEAVE TO INTERVENE  
 ON BEHALF OF MISSION TERMINAL INC.  
 Re: Section 106 of the *Competition Act***

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Mission Terminal Inc. ("Mission") 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, Mission intends to rely upon the Affidavit of Bruce Hayles, sworn September 26, 2005.

**1. Name and Address of the Proposed Intervenor:**

Mission Terminal Inc.  
428-360 Main Street  
Winnipeg, Manitoba  
R3C 3Z3

Attention: Bruce Hayles, President

Telephone: (204) 942-5153  
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**Address for Service:**

Fasken Martineau DuMoulin.  
66 Wellington Street West  
Suite 4200, Toronto Dominion Bank Tower  
Box 20, Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1N6

Attention: Jeffrey S. Leon  
C. William Hourigan

Telephone: (416) 366-8381  
Fax: (416) 364-7813

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

- (a) Mission is a corporation incorporated under the *Canada Business Corporations Act* and has extensive experience in the Canadian grain industry. It is the owner and operator of a grain handling port terminal located in Thunder Bay, Ontario (the "Thunder Bay Terminal"). It carries on business as a non-integrated port terminal grain handling operator ("Independent Port Terminal Operator") in that,

while it owns a port terminal and provides port terminal grain handling services, Mission does not own any primary or other inland elevators. This distinguishes its grain handling business and the grain handling services that it provides from those of both integrated grain companies and non-integrated grain companies.

- (b) In reliance upon the consent agreement between the Commissioner of Competition and United Grain Growers Limited (now carrying on business as Agricore United) dated October 17, 2002 (the "Consent Agreement"), Mission has invested considerable time and money investigating the feasibility of purchasing and operating one of the Port Terminals (as defined in the Consent Agreement) in the Port of Vancouver. Mission believes that there is a good business case to support such an acquisition and is ready, willing and able to purchase such a Port Terminal. Mission has expressed its interest in acquiring a Port Terminal to Agricore United on several occasions. Full particulars of Mission's interest and the steps taken in that regard are known to Agricore United and the Competition Bureau.
- (c) As a prospective purchaser of a Port Terminal in connection with the divestiture contemplated in the Consent Order (the "Divestiture"), Mission is directly affected by Agricore United's application pursuant to section 106 of the *Competition Act*. If the Divestiture is no longer required, Mission will lose the opportunity to purchase a port terminal and to become a new competitor providing independent port terminal grain handling services in the Port of Vancouver.
- (d) Mission as an Independent Port Terminal Operator and as a potential competitor in the Port of Vancouver who has completed an extensive analysis of a purchase of a port terminal, has a unique perspective on the issue raised by Agricore United in the Application regarding the business viability of an independent port terminal operation. If granted leave to intervene, subject to issues with respect to confidentiality, Mission will adduce evidence regarding the commercial viability of an independent grain handling port terminal in the Port of Vancouver.

- (e) Moreover, based on its unique perspective as a potential purchaser and as an Independent Port Terminal Operator throughout the relevant time period with expert knowledge of the Canadian grain industry, Mission is also in a position to challenge the submission made by Agricore United that there have been significant changes in the circumstances that led to the making of the Consent Agreement in October 2002.
- (f) Agricore United has raised in the Application the alleged anti-competitive nature of grain handling agreements with the Canadian Wheat Board (the "CWB"). Mission as an Independent Port Terminal Operator is a party to one of only two such agreements currently extant. Consequently, Mission has a unique perspective on the impact that such agreements have on the Western Canadian grain handling industry, on the CWB and on Western Canadian grain farmers. If leave to intervene is granted, subject to issues of confidentiality, Mission will provide a perspective that will assist the Tribunal in assessing whether such agreements do or do not have an anti-competitive impact. Mission is in a position to demonstrate based on its own experience that such agreements do not have an anti-competitive impact on the market.
- (g) Mission as an Independent Port Terminal Operator serving the Western Canadian grain industry has a unique perspective on the potential competitive effects of the order sought and the extent to which the Divestiture would provide an adequate remedy, as well as on the effects that rescinding the Consent Agreement would have on the Western Canadian grain industry.
- (h) Finally, with respect to whether the Divestiture would have been effective in achieving its intended purpose given the alleged changes in circumstances, Mission has a unique perspective on the competitive nature of the market place from the point of view as a potential competitor.

**3. The party whose position Mission intends to support:**

Mission intends to generally support the position of the Respondent.

**4. The Official Language to be used:**

English

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

- a. That Mission 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*, S OR/94-290, and case management.
- b. And that Agricore United not be permitted to seek documentary or oral discovery of Mission.

DATED at Toronto, Ontario this 26th day of September, 2005.

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