

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*;

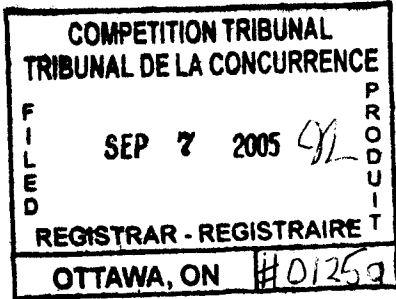
AND IN THE MATTER OF the acquisition by United Grain Growers Limited of Agricore Cooperative Ltd., a company engaged in the grain handling business.

BETWEEN:

UNITED GRAIN GROWERS LIMITED

Applicant

- AND -



THE COMMISSIONER OF COMPETITION

Respondent

**REQUEST FOR LEAVE TO INTERVENE
ON BEHALF OF THE CANADIAN WHEAT BOARD
Re: Section 106 of the Competition Act & Motion for Interim Relief**

The Canadian Wheat Board ("the CWB") 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, the CWB intends to rely up on the Affidavit of Ward Weisensel sworn September 7, 2005.

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

The Canadian Wheat Board
423 Main Street
P.O. Box 816
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Winnipeg, Manitoba
R3C 2P5

Attention: James E. McLandress, General Counsel

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

(a) The CWB is a farmer controlled marketing organization. It is a corporation incorporated pursuant to the provisions of the *Canadian Wheat Board Act*, R.S., c. C-12 (the "*CWB Act*"). The statutory object of the corporation is to market grain grown in Western Canada in an orderly manner in interprovincial and export trade. Its mission is to market and provide quality products and services in order to maximize value to its owners, western Canadian grain

farmers. The *CWB Act* and the regulations passed under it give the CWB exclusive jurisdiction over the purchase and sale of wheat, durum and barley grown in Western Canada and intended for export or domestic human consumption ("CWB grains").

(b) All of the money received by the CWB for the sale of CWB grains is pooled into one of four accounts (wheat, durum, barley and designated (i.e. malt) barley) and, after deducting the CWB's operating costs, all of the sales revenue earned by the CWB is returned to producers. Any increase in the operating costs of the CWB results in a reduction in the return to the roughly 70,000 producers of CWB grains that the CWB markets on their behalf.

(c) The CWB does not own any grain handling facilities in Canada, including any at the Port of Vancouver, and it therefore relies on grain handling services and the facilities provided by both integrated and non-integrated companies, including United Grain Growers Limited ("UGG") and Agricore Cooperative Ltd. ("Agricore").

(d) The port terminal grain handling services in the Port of Vancouver are essential to the CWB's operations.

(e) The CWB is concerned that any further consolidation of the terminal capacity at the Port of Vancouver will further enhance the considerable market power which now exists in that market, adversely impacting access to facilities, prices, levels and quality of service both at the Port of Vancouver and upstream at the primary grain elevator level.

(f) The CWB is of the view that there have been no material changes in the circumstances that existed at the time the Consent Agreement was entered into in October 2002 and the present and that, if anything the competitive situation in Vancouver has worsened since then. The CWB is therefore concerned that the substantial lessening or prevention of competition arising from the acquisition will not be remedied without a divestiture of one of the two Agricore United facilities and sees no need to extend the deadline to complete such divestiture.

(g) The CWB continues to have a unique perspective on the potential competitive effects of the acquisition and the extent to which divestiture would provide an adequate remedy and on the effects that rescinding the Consent Agreement and/or extending the deadline to complete the divestiture as contemplated in that Agreement would have on the CWB and the Western Canadian grain industry.

3. The party whose position CWB intends to support:

Based on the materials filed to date with the Competition Tribunal, the CWB intends to generally support the position of the Respondent.

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

English

5. **At this time, CWB proposes to participate in the proceedings on the same terms as were imposed by the Tribunal's order of May 29, 2002 made in respect of the CWB's intervention in the related Section 92 application, namely:**

- a) That the Canadian Wheat Board 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*, SOR/94-290, and case management.

b) And that UGG not be permitted to seek documentary or oral discovery of the CWB.

DATED at Winnipeg, Manitoba this 7th day of September, 2005.

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