

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:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	UNITED GRAIN GROWERS LIMITED	
FILED / PRODUIT		
August 22, 2005		Applicant
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	- and -	
OTTAWA, ONT	THE COMMISSIONER OF COMPETITION	Respondent
#0112f		

NOTICE OF MOTION FOR INTERIM RELIEF
Re: Applicant's Section 106 Application

TAKE NOTICE THAT the Applicant will make a motion to the Competition Tribunal (the "Tribunal") on or before August 15, 2005.

THE MOTION IS FOR:

1. the Tribunal's approval, pursuant to paragraph 49 of the consent agreement between the Commissioner of Competition (the "Commissioner") and United Grain Growers Limited (the "Applicant") dated October 17, 2002 (the "Consent Agreement"), to extend the Port Terminal Initial Sale Period (as defined in the Consent Agreement) from 12:00 noon (Winnipeg time) on August 15, 2005 to a date after the final disposition of the

Applicant's application, dated August 11, 2005, for an order rescinding the Consent Agreement pursuant to section 106 of the *Competition Act* (the "Section 106 Application");

2. further, an expedited schedule for the various steps in and hearing of the Section 106 Application;
3. an order abridging the time for service and filing of this motion;
4. an order awarding costs of this motion in favour of the Applicant; and
5. such further and other interim orders as requested by the Applicant and deemed just by the Tribunal.

THE GROUNDS FOR THE MOTION ARE:

1. the Consent Agreement requires that the Applicant offer to divest, at its option, either the UGG Terminal or its interest in the Pacific Complex within the Port Terminal Initial Sale Period;
2. the Applicant elected to offer to divest the UGG Terminal and, over the past almost three years, the Applicant has made repeated efforts to effect a divestiture;
3. the Port Terminal Initial Sale Period (after a number of agreed upon extensions) is currently scheduled to expire at 12:00 noon (Winnipeg time) on August 15, 2005, after which the Consent Agreement provides that a Trustee (as defined in the Consent Agreement) will be appointed to carry out any required divestiture on certain specified terms;
4. on August 9, 2005, the Applicant requested that the Commissioner extend the Port Terminal Initial Sale Period pursuant to paragraph 48 of the Consent Agreement from 12:00 noon (Winnipeg time) on August 15, 2005 to August 29, 2005, to allow a prospective purchaser sufficient time to determine whether a revised offer to purchase could be finalized;

5. on August 10, 2005, the Commissioner's counsel indicated that the Commissioner would not agree to any further extension of the Port Terminal Initial Sale Period beyond 12:00 noon (Winnipeg time) on August 15, 2005;
6. as a result, and for the reasons set out in the Applicant's Notice of Application and Statement of Grounds and Material Facts, dated August 11, 2005, the Applicant has filed the Section 106 Application seeking rescission of the Consent Agreement and an order extending the Port Terminal Initial Sale Period pending the disposition of that application;
7. on August 11, 2005, the Applicant requested, pursuant to section 48 of the Consent Agreement, that the Commissioner agree to extend the Port Terminal Initial Sale Period pending the disposition of the Section 106 Application;
8. the Commissioner has not provided the requested consent or agreement;
9. in the circumstances, the Commissioner has unreasonably withheld her agreement to the requested extension;
10. sections 17, 38 and 68(1) of the *Competition Tribunal Rules* and sections 48 and 49 of the Consent Agreement; and
11. such further and other grounds as counsel may advise and this honourable Tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Affidavit of Stanley Murdoch MacKay, sworn August 11, 2005;
2. the materials filed by the Applicant on the Section 106 Application; and
3. such further and other evidence as counsel may advise and this honourable Tribunal may permit.

DATED AT TORONTO, this 11th day of August 2005.

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TO: **Competition Tribunal**
90 Sparks Street, Suite 600
Ottawa, Ontario K1P 5B4

AND TO: **Commissioner of Competition**
Place du Portage, Phase I
50 Victoria Street, 21st Floor
Gatineau, Quebec K1A 0C9

PUBLIC VERSION

CT-2002-001

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- and -

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