

**SCHEDULE "A"**

**CT-2002-001**

**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

FILED / PRODUIT

August 22, 2005

Jos LaRose for / pour  
REGISTRAR / REGISTRARIE

**UNITED GRAIN GROWERS LIMITED**

Applicant

- and -

OTTAWA, ONT

#112i & #113c

**THE COMMISSIONER OF COMPETITION**

Respondent

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**STATEMENT OF GROUNDS AND MATERIAL FACTS**  
**Re: Section 106 Application**

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**PART I – SUMMARY**

1. On November 1, 2001, United Grain Growers Limited ("UGG") acquired Agricore Cooperative Limited ("Agricore") (the "Acquisition"). (Since the closing of the Acquisition, UGG and Agricore have been carrying on business as "Agricore United". Accordingly, the Applicant will hereinafter be referred to as "Agricore United".)
2. On January 2, 2002, the Commissioner of Competition (the "Commissioner") filed an application with the Competition Tribunal (the "Tribunal") pursuant to section 92 of the *Competition Act* (the "Act") alleging that the Acquisition would likely prevent or lessen competition substantially in the market for the provision of port terminal grain handling services in the Port of Vancouver (the "Section 92 Application"). In order to remedy the alleged substantial prevention and lessening of competition, the Commissioner requested that the Tribunal issue an order requiring that Agricore United divest all or part of a port terminal in the Port of Vancouver.
3. **[CONFIDENTIAL]**, the issues in dispute at the hearing of the Section 92 Application were confined to whether a divestiture of that portion of the Pacific Complex known as the Pacific 1 Terminal, either alone or with a portion of the Annex component of the Pacific Complex (as defined in the Statement of Grounds and Material Facts filed in connection with the Section 92 Application (the "Section 92 SGMF")), would remedy the substantial prevention and lessening of competition alleged by the Commissioner.
4. The hearing of the Section 92 Application was scheduled to commence on October 21, 2002. However, on October 17, 2002, the Commissioner and Agricore United filed and registered a consent agreement with the Tribunal pursuant to section 105 of the Act (the "Consent Agreement").
5. The Consent Agreement requires, among other things, that Agricore United offer to divest, at its option, either the UGG Terminal (as defined in the Consent Agreement) or its interest in the Pacific Complex (each a "Port Terminal" and, collectively, the "Port Terminals"). Agricore United subsequently selected the UGG Terminal for disposition.

In the event that Agricore United is unable to divest a Port Terminal within a certain period of time, the Consent Agreement provides that a Trustee (as defined in the Consent Agreement) will be appointed to carry out any required divestiture.

6. The Commissioner's objective in requiring the divestiture of a Port Terminal pursuant to the Consent Agreement was to ensure that Independent Grain Companies (as defined in the Consent Agreement) would have access to port terminal grain handling services in the Port of Vancouver at competitive rates.
7. Since October 17, 2002, the circumstances that led to the making of the Consent Agreement have changed significantly. The amount of uncommitted grain shipped to the Port of Vancouver by Independent Grain Companies in Western Canada ("independent grain") that would be available to a prospective purchaser of the UGG Terminal has diminished dramatically as a result of consolidation among grain companies in Western Canada and exclusive, long-term handling agreements entered into by Independent Grain Companies and port terminal operators in the Port of Vancouver since the Consent Agreement was executed. It has thus become clear both that a prospective purchaser will not be able to secure enough independent grain to operate the UGG Terminal as a grain terminal on a sustainable basis and that Independent Grain Companies have been able to secure long-term access to the Port of Vancouver pursuant to such handling agreements.
8. The only realistic prospect for the UGG Terminal to be used for grain handling would be an acquisition by a purchaser who enters into a handling agreement with the Canadian Wheat Board, a statutory monopoly incorporated pursuant to the provisions of the *Canadian Wheat Board Act* (the "CWB Monopoly"). A handling agreement between a purchaser of the UGG Terminal and the CWB Monopoly would, however, adversely affect the Western Canadian grain handling industry, including Independent Grain Companies, and would be inconsistent with, and undermine, the objectives of the Consent Agreement.
9. The significantly reduced volume of uncommitted independent grain demonstrates both the absence of any continuing basis for a divestiture to provide an alternative port

terminal for Independent Grain Companies in the Port of Vancouver and the inability to make an effective divestiture pursuant to the Consent Agreement under current market conditions. It also demonstrates that Independent Grain Companies continue to have access to port terminal grain handling services in the Port of Vancouver at competitive rates. In this regard, every Independent Grain Company that ships grain to the Port of Vancouver has or will have a port terminal access contract covering at least the next crop year and in some cases many years, and most independent grain is being delivered under handling agreements with terms of [CONFIDENTIAL]. (A crop year runs from August 1 to July 31 of the following calendar year.)

10. In the circumstances that now exist, Agricore United would not have entered into the Consent Agreement or any consent agreement contemplating the divestiture of a Port Terminal. Moreover, given the significantly reduced volume of uncommitted independent grain shipped through the Port of Vancouver as a result of subsequent events, and the adverse implications that such reduced volume has for the prospects for an effective divestiture, Agricore United submits that the Commissioner also would not, on any reasonable basis, have entered into a consent agreement contemplating the divestiture of a Port Terminal. Accordingly, Agricore United requests that the Tribunal rescind the Consent Agreement pursuant to section 106 of the Act.

## **PART II – BACKGROUND TO THIS APPLICATION**

### **A. The Original Section 92 Application**

#### *The Acquisition*

11. Pursuant to the terms of a Merger Agreement between UGG and Agricore dated July 30, 2001, UGG and Agricore agreed to merge by way of a court-approved plan of arrangement under section 192 of the *Canada Business Corporations Act* (the "Plan of Arrangement"). The Plan of Arrangement provided that UGG would acquire control of all business assets of Agricore, including interests in port terminal facilities in the Port of Vancouver.

12. As noted above, the Acquisition was completed on November 1, 2001.

*Commissioner's Review and Challenge of the Acquisition*

13. Following his review of the Acquisition, the Commissioner concluded that the Acquisition would likely result in a substantial prevention or lessening of competition with respect to, among other things, the purchasing and handling of grain in certain local markets in Western Canada and the provision of port terminal grain handling services in the Port of Vancouver.

*Purchasing and Handling of Grain in Certain Local Markets in Western Canada*

14. In order to remedy his concerns with respect to the purchasing and handling of grain in certain local markets in Western Canada, the Commissioner filed an application for a consent order with the Tribunal pursuant to sections 92 and 105 of the Act (the "Consent Order"). The Consent Order, which was issued by the Tribunal on February 19, 2002, required that Agricore United divest a number of primary grain elevators located in Alberta and Manitoba. In full satisfaction of its obligations under the Consent Order, Agricore United divested a total of seven primary grain elevators, the last such divestiture being completed on February 13, 2004.

*Port Terminal Grain Handling Services in the Port of Vancouver*

15. In order to remedy his concerns with respect to the provision of port terminal grain handling services in the Port of Vancouver, the Commissioner commenced the Section 92 Application. As part of the Section 92 Application, the Commissioner sought an order from the Tribunal requiring that Agricore United divest all or part of a port terminal in the Port of Vancouver.

16. There are five port terminals located in the Port of Vancouver. They are:

- (a) the Cascadia Terminal ("Cascadia"), which is owned equally by Agricore United and Cargill Limited ("Cargill");

- (b) the James Richardson International Limited ("JRI") Terminal, which is wholly-owned by JRI;
  - (c) the Pacific Elevators Limited Terminal ("PEL"), which, at the time the Consent Agreement was executed in October 2002, was owned 70% by Agricore United and 30% by Saskatchewan Wheat Pool ("SWP"). Agricore United subsequently purchased SWP's interest and now owns all of the issued and outstanding shares of PEL;
  - (d) the SWP Terminal, which is wholly-owned by SWP; and
  - (e) the UGG Terminal, which is wholly-owned by Agricore United.
17. In addition to these port terminals, Neptune Terminals and Vancouver Wharves Limited Partnership ("Vancouver Wharves") provide certain grain handling services in the Port of Vancouver. However, the Commissioner did not consider these facilities to be in the relevant market for the purposes of the Section 92 Application.
18. At the same time that the Section 92 Application was filed with the Tribunal, the Commissioner also filed a notice of application requesting the issuance of an interim consent order pursuant to section 104 of the Act (the "Section 104 Application"). On the basis of the written record, the Tribunal issued an interim consent order on January 14, 2002 (the "Interim Consent Order").
19. Pursuant to the terms of the Interim Consent Order, Agricore United was required to, among other things, maintain the Port Terminals, honour all existing contracts for the handling of grain for Independent Grain Companies and offer to handle for Independent Grain Companies a minimum of 125,000 tonnes of grain per month (1.5 million tonnes per year), by way of contracts, through the Port Terminals or, at no additional cost to the Independent Grain Companies, through terminal arrangements entered into with other terminal operators. Prior to October 2002, Agricore United estimates that Independent Grain Companies had historically shipped between approximately [CONFIDENTIAL] and [CONFIDENTIAL] tonnes of grain through the Port of Vancouver each year. The

volume of independent grain shipped through the Port of Vancouver in any given year has generally varied proportionately with the total volume of grain shipped through the Port of Vancouver during that year.

20. [CONFIDENTIAL], a hearing was held on September 10, 2002 to determine, among other things, whether the Acquisition would likely result in a substantial lessening of competition in the provision of port terminal grain handling services in the Port of Vancouver, as alleged by the Commissioner (the "SLC Motion"). Agricore United did not, for the purpose of the SLC Motion, contest the Commissioner's allegation that the Acquisition would likely result in such a substantial lessening of competition.
21. On September 12, 2002, pursuant to the uncontested SLC Motion, the Tribunal found that the Acquisition would likely result in a substantial lessening of competition in the provision of port terminal grain handling services in the Port of Vancouver. The Tribunal also found, pursuant to the uncontested SLC Motion, that the divestiture of either the UGG Terminal or Agricore United's interest in the Pacific Complex would remedy the substantial lessening of competition, as would the divestiture of that portion of the Pacific Complex known as the Pacific 1 Terminal, either alone or with a portion of the Annex component of the Pacific Complex, provided, in the case of a divestiture of only part of the Pacific Complex, that such a divestiture satisfied certain criteria previously agreed to by Agricore United and the Commissioner.
22. The Tribunal left for determination at a later date the only remaining issue of whether the divestiture of the Pacific 1 Terminal, either alone or with a portion of the Annex component of the Pacific Complex, would satisfy such criteria. The hearing on this issue was scheduled to commence on October 21, 2002. However, on October 17, 2002, the Commissioner and Agricore United filed and registered the Consent Agreement with the Tribunal, thereby terminating the Section 92 Application.

Requests for Leave to Intervene

23. Requests for leave to intervene in the Section 92 Application were filed by each of the CWB Monopoly, SWP and the Inland Terminal Association of Canada ("ITAC").
24. Pursuant to the *Canadian Wheat Board Act*, the CWB Monopoly is, by law, the only purchaser of wheat and barley that is either to be exported from Canada or used for domestic human consumption. CWB Monopoly grain has accounted for approximately 65% to 75% of all grain shipped through the Port of Vancouver on an annual basis over the past five years.
25. The CWB Monopoly sought leave to argue, among other things, that the divestiture of the Pacific 1 Terminal alone was not an adequate remedy. The Tribunal granted the CWB Monopoly's request for leave to intervene on May 29, 2002.
26. SWP is a publicly-traded agribusiness which operates a number of primary elevators in Western Canada and port terminals in Vancouver and Thunder Bay. SWP sought leave to argue, among other things, that an order requiring the divestiture of Agricore United's interest in the Pacific Complex would nullify many of SWP's rights under various agreements in respect of the Pacific Complex in which Agricore United was a party. The Tribunal granted SWP's request for leave to intervene on May 29, 2002.
27. ITAC is an association whose purpose is to promote the common interests and goals of modern, efficient high-throughput inland terminals. At the time it filed a request for leave to intervene, ITAC had ten members, namely:
  - (a) CMI Terminal Joint Venture ("CMI");
  - (b) Gardiner Dam Terminal ("GDT");
  - (c) Great Sandhills Terminal Marketing Centre Ltd. ("GST");
  - (d) Mid-Sask Terminal Ltd. ("MST");

- (e) North East Terminal Ltd. ("NET");
  - (f) North West Terminal Ltd. ("NWT");
  - (g) Prairie West Terminal Ltd. ("PWT");
  - (h) South West Terminal Ltd. ("SWT");
  - (i) Terminal 22 (1998) Inc. ("Terminal 22"); and
  - (j) Weyburn Inland Terminal Ltd. ("Weyburn").
28. Today, ITAC has these ten members as well as:
- (a) Providence Grain;
  - (b) Westlock Terminal; and
  - (c) Westmor Terminal.
29. Each of the members of ITAC is an Independent Grain Company and ITAC's membership includes all of the farmer-owned Independent Grain Companies in Western Canada which together account for a significant percentage of the independent grain shipped to the Port of Vancouver. Delmar Commodities Ltd. ("Delmar Commodities"), Fill-More Seeds Inc. ("Fill-More Seeds"), Great Northern Grain ("GNG"), Louis Dreyfus Canada Ltd. ("Dreyfus"), N.M. Paterson & Sons Limited ("Paterson"), Parrish & Heimbecker, Limited ("P&H") and West Central Road & Rail ("WCRR") are other significant Independent Grain Companies in Western Canada that are not members of ITAC.
30. ITAC sought leave to address certain issues relating to the provision of port terminal grain handling services in the Port of Vancouver. The Tribunal denied ITAC's request for leave to intervene on May 29, 2002.

Purpose of Divestiture

31. The materials filed by the Commissioner in connection with the Section 92 Application, the Section 104 Application and the SLC Motion clearly indicate that the purpose of any divestiture of a Port Terminal by Agricore United pursuant to the Consent Agreement was to provide Independent Grain Companies with access to port terminal grain handling services in the Port of Vancouver at competitive rates. For example, in paragraph 38 of the Section 92 SGMF, the Commissioner stated that:

[f]or [Independent Grain Companies] to compete effectively with Integrated [Grain Companies] ... it is essential that they have regular and predictable access to a port terminal.... [A]ccess is provided on an individual shipment basis in the form of terminal authorization. A terminal authorization must be obtained before a tender is submitted to the [CWB Monopoly] or, in respect of non-tendered grain, before the railways will provide rail cars for loading at a primary elevator. In order to compete, it is ... important that [Independent Grain Companies] have access to all the revenue streams associated with grain handling, such as ... terminal diversion premiums.

32. Terminal diversions premiums are per tonne payments made by grain companies that have an ownership interest in one or more of the existing port terminals ("Integrated Grain Companies") to Independent Grain Companies to attract grain to their port terminals. At the time the Consent Agreement was executed in October 2002, terminal diversion premiums generally ranged from approximately \$1 to \$4 per tonne. Today, terminal diversion premiums generally range from approximately [CONFIDENTIAL] to [CONFIDENTIAL] per tonne.

**B. The Consent Agreement**

33. On October 17, 2002, the Commissioner and Agricore United filed and registered the Consent Agreement with the Tribunal. As discussed in more detail below, the Consent Agreement includes both divestiture and interim access provisions.

*Divestiture Provisions*

34. The Consent Agreement requires that Agricore United offer to divest, at its option, either the UGG Terminal or its interest in the Pacific Complex within the Port Terminal Initial Sale Period (as defined in the Consent Agreement). The Port Terminal Initial Sale Period would have expired on October 31, 2004 in the absence of any extensions. In this regard, at the time the Consent Agreement was executed in October 2002, Agricore United and the Commissioner recognized that, in light of the drought which severely reduced grain shipments to the Port of Vancouver during the 2001/2002 crop year and the depressed market conditions which existed at that time as a result, it would be very difficult for Agricore United to sell a Port Terminal within a short period of time. Agricore United and the Commissioner therefore agreed to a lengthy divestiture period, with the expectation that market conditions would significantly improve over the following two years.
35. The Port Terminal Initial Sale Period was extended to December 30, 2004 [CONFIDENTIAL]. In addition, Agricore United and the Commissioner mutually agreed to a number of additional extensions pursuant to paragraph 48 of the Consent Agreement [CONFIDENTIAL]. The Port Terminal Initial Sale Period is now currently scheduled to expire at 12:00 noon (Winnipeg time) on August 15, 2005 in the absence of Agricore United and the Commissioner agreeing to a further extension or an order of the Tribunal. However, as discussed in more detail below, in a letter dated 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.
36. If Agricore United has not divested a Port Terminal within the Port Terminal Initial Sale Period, absent an extension of time or a variation or rescission of the Consent Agreement, a Trustee will be appointed to seek to implement a divestiture pursuant to the Consent Agreement. [CONFIDENTIAL].

37. The Consent Agreement also provides that Agricore United is permitted to elect, at least 90 days before the expiry of the Port Terminal Initial Sale Period, whether the Trustee will be entitled to divest the UGG Terminal or Agricore United's interest in the Pacific Complex. On August 31, 2004, Agricore United elected that the Trustee would (if necessary) be entitled to divest the UGG Terminal.

38. **[CONFIDENTIAL].**

**Interim Access Provisions**

39. Pursuant to the Consent Agreement, until such time as a Port Terminal has been divested, Agricore United is required to honour all existing contracts for the handling of grain for Independent Grain Companies in the Port of Vancouver and offer to handle for Independent Grain Companies a minimum of 125,000 tonnes of grain per month (1.5 million tonnes per year), by way of contracts, through the Port Terminals or, at no additional cost to the Independent Grain Companies, through terminal arrangements entered into with other port terminal operators in the Port of Vancouver.
40. In addition to Agricore United's access obligations under the Consent Agreement, subsection 69(1) of the *Canada Grain Act* provides that, subject to certain exceptions, "the operator of every licensed [port] terminal elevator ... shall, at all reasonable hours on each day on which the elevator is open, without discrimination and in the order in which grain arrives and is lawfully offered at the elevator, receive into the elevator all grain so lawfully offered for which there is, in the elevator, available storage accommodation of the type required by the person by whom the grain is offered". Similarly, subsection 69(2) of the *Canada Grain Act* provides that "[t]he [Canadian Grain Commission (the "CGC")] may, by order, on such conditions as it may specify, authorize or require the operator of a licensed terminal elevator ... to receive grain lawfully offered for storage ... at the elevator otherwise than as required by subsection (1)".
41. The Consent Agreement also provides that new contracts between Agricore United and Independent Grain Companies are to be based on reasonable commercial terms consistent

with past practice. Prices for the handling of Independent Grain Companies' grain under any new contracts are to be based on Agricore United's tariffs as filed with the CGC. Diversion premiums negotiated with Independent Grain Companies are to be kept confidential, but in any event shall be at least \$2 per tonne. Any non-CWB Monopoly tariff increase or any diversion premium decrease (CWB Monopoly or non-CWB Monopoly grain) from these initial levels must be commercially reasonable.

42. Any disputes as to price, tariffs, diversion premiums or other terms are to be settled by way of an arbitration procedure as outlined in Schedule "C" to the Consent Agreement. During any arbitration procedure, Agricore United must, in accordance with the terms of the Consent Agreement, continue to provide port terminal services to the Independent Grain Company that initiated the arbitration.
43. The access provisions included in the Consent Agreement have now been in place for almost three years. Under these access provisions and prevailing market conditions, Independent Grain Companies have not encountered any difficulty in securing access to port terminals in the Port of Vancouver at competitive rates. Agricore United has continued to honour all existing contracts for the handling of grain for Independent Grain Companies. Agricore United has also entered into [CONFIDENTIAL] new handling agreements with Independent Grain Companies since the Consent Agreement was executed on October 17, 2002. [CONFIDENTIAL].
44. [CONFIDENTIAL].
45. Similarly, since the Consent Agreement was executed on October 17, 2002, Agricore United has renewed its handling agreements with [CONFIDENTIAL], while Cascadia, which is owned equally by Agricore United and Cargill, has renewed its handling agreement with [CONFIDENTIAL].
46. In addition, since the Consent Agreement was executed in October 2002, Agricore United has not received any complaints from any Independent Grain Companies with respect to

price, tariffs, diversion premiums or any other terms of access included in the Consent Agreement.

47. Finally, to the best of Agricore United's knowledge, Independent Grain Companies have not made any complaints to the Competition Bureau (the "Bureau") in connection with Agricore United's behaviour under the access provisions of the Consent Agreement.

**C. Proposed Merger of the Vancouver Port Terminals of Saskatchewan Wheat Pool and James Richardson International Limited**

48. On April 6, 2005, SWP and JRI announced their agreement to jointly operate their port terminals in the Port of Vancouver under the name Pacific Gateway Terminal (the "SWP/JRI JV"). According to their press release announcing the proposed SWP/JRI JV, "[t]he agreement, which is subject to regulatory approval, provides for joint administration and operation of the two port terminals. A new business corporation owned equally by [SWP] and JRI will be established to act as a joint venture terminal operator and agent for the two companies. [SWP] and JRI will each continue to own their respective facilities and employees will remain with the parent companies."
49. On July 5, 2005, the Commissioner, SWP and JRI filed a consent interim agreement with the Tribunal (the "SWP/JRI Consent Interim Agreement") requiring that SWP and JRI take all steps necessary to ensure that they operate independently in respect of the marketing of grain handling services to certain Independent Grain Companies during the 60-day term of the SWP/JRI Consent Interim Agreement, which expires on September 3, 2005. According to the SWP/JRI Consent Interim Agreement, the Commissioner had not completed her review of the proposed SWP/JRI JV as of the time the SWP/JRI Consent Interim Agreement was filed with the Tribunal. Agricore United understands that the Commissioner's review of the proposed SWP/JRI JV is ongoing.
50. While the Commissioner has apparently not completed her analysis regarding the effect of the proposed SWP/JRI JV on competition in the Port of Vancouver, a failure to challenge the SWP/JRI JV in the current market conditions would imply a lack of current

grounds to require a divestiture of a Port Terminal by Agricore United pursuant to the Consent Agreement.

**PART III – AGRICORE UNITED'S EFFORTS TO DIVEST A PORT TERMINAL**

51. Agricore United has made diligent and good faith efforts to divest a Port Terminal. [CONFIDENTIAL].
52. [CONFIDENTIAL].
53. [CONFIDENTIAL].
54. The fact that Agricore United was offering to divest the UGG Terminal pursuant to the Consent Agreement was widely-known, including throughout the Western Canadian grain handling industry. Newspaper articles discussing the requirement for a divestiture pursuant to the Consent Agreement appeared, for example, in *The Western Producer* and in the *Manitoba Co-operator*. In addition, a public version of the Consent Agreement itself was posted on the Tribunal's public website shortly after the Consent Agreement was registered with the Tribunal on October 17, 2002. As a result of this publicity, some prospective purchasers of the UGG Terminal (other than those noted above) contacted Agricore United directly.
55. Expressions of interest were received from [CONFIDENTIAL]. Agricore United subsequently attempted to negotiate a divestiture of the UGG Terminal with [CONFIDENTIAL].
56. [CONFIDENTIAL].

**PART IV – PROPOSED SALE TO TERMINAL ONE**

**A. Overview of Terminal One**

57. Terminal One represents a consortium of five farmer-owned inland grain terminals operating in Saskatchewan, namely GST, NET, NWT, PWT and SWT. As noted above, each of these companies is an Independent Grain Company and a member of ITAC.

**B. Agreement with Terminal One**

58. [CONFIDENTIAL].

59. [CONFIDENTIAL].

60. [CONFIDENTIAL].

**C. [CONFIDENTIAL]**

61. [CONFIDENTIAL].

62. [CONFIDENTIAL].

63. [CONFIDENTIAL].

64. [CONFIDENTIAL].

65. [CONFIDENTIAL].

**PART V – CHANGES IN CIRCUMSTANCES**

**A. Introduction**

66. Since the time that the Consent Agreement was executed in October 2002, the circumstances that led to the making of the Consent Agreement have changed significantly. In this regard, it has become clear that no prospective purchaser will be able to secure enough independent grain to operate the UGG Terminal as a grain terminal on a sustainable basis as a result of consolidation among grain companies in Western Canada and exclusive, long-term handling agreements entered into by Independent Grain Companies and port terminal operators in the Port of Vancouver since the Consent

Agreement was executed. It has also become clear that most Independent Grain Companies have secured long-term access to a port terminal in the Port of Vancouver, clearly indicating that a divestiture of a Port Terminal is not necessary to fulfil the objectives of the Consent Agreement. Each of the relevant changes is discussed below.

**B. Available Volume of Independent Grain and Access to the Port of Vancouver**

67. Only about 25 grain handling companies need access to port terminal grain handling services in the Port of Vancouver. All of these companies, however, currently have access to port terminal grain handling services in the Port of Vancouver, either because they have an ownership interest in one or more of the existing port terminals or because they have handling agreements in place with Integrated Grain Companies. Agricore United, SWP, JRI and Cargill each have an ownership interest in one or more port terminals in the Port of Vancouver. Those without an ownership interest in a port terminal, such as Dreyfus, P&H and Paterson, have handling agreements in place. Some operators of inland grain handling terminals also have joint venture agreements with the Integrated Grain Companies. For example, Cargill has an equity interest in each of NET, SWT and Terminal 22.
68. At and before the time the Consent Agreement was executed in October 2002, handling agreements between Integrated Grain Companies and Independent Grain Companies for the handling of grain in the Port of Vancouver were typically negotiated on a year-to-year basis or for terms no longer than three years. Since that time, long-term handling agreements have become more common. [CONFIDENTIAL].
69. As discussed in more detail below, a significant volume of independent grain is now committed to the Vancouver port terminal operators (other than Agricore United) under long-term handling agreements. As a result of its investigations of the grain handling industry, including both the Acquisition and the proposed SWP/JRI JV discussed above, Agricore United expects that the Bureau has obtained copies of most or all of the handling agreements between port terminal operators and Independent Grain Companies

for the handling of independent grain in the Port of Vancouver and information concerning the volume of grain shipped to the Port of Vancouver pursuant to such agreements. These agreements and the volumes of grain shipped to the Port of Vancouver pursuant to them are directly relevant to a determination of the issues arising in connection with the within Application. Accordingly, Agricore United is requesting an order from the Tribunal compelling the Commissioner to provide the Applicant with copies of all handling agreements in her possession between port terminal operators and Independent Grain Companies for the handling of independent grain in the Port of Vancouver that are or were in effect on or after August 1, 2001, for the purposes of the within Application, along with the volumes of grain shipped to the Port of Vancouver pursuant to such agreements on an annual basis since August 1, 2001 and such other relevant information as Agricore United may subsequently request.

70. **[CONFIDENTIAL].**

Total Volume of Independent Grain

71. As indicated in Schedule "A" to this Statement of Grounds and Material Facts, Independent Grain Companies shipped approximately **[CONFIDENTIAL]** of grain to the Port of Vancouver during the 2004/2005 crop year. (This figure for 2004/2005 does not include the volume of grain shipped to the port of Vancouver by ConAgra, which, as discussed below, was recently acquired by JRI.) However, for the reasons discussed below, a significant volume of this independent grain has proven to be unavailable to move to any purchaser of the UGG Terminal, even if the purchaser offers attractive terms to the Independent Grain Companies.
72. In addition to the independent grain shipped to the Port of Vancouver by the Independent Grain Companies identified in Schedule "A" of this Statement of Grounds and Material Facts, Agricore United understands that **[CONFIDENTIAL]** companies such as **[CONFIDENTIAL]** have shipped or arranged for the shipment of grain through the Port of Vancouver in the past and/or could ship or arrange for the shipment of grain through the Port of Vancouver in the future. There is, however, no guarantee that these

companies, or others like them, will in fact ship or arrange for the shipment of any grain through the Port of Vancouver in the future and, even assuming that they do so, that such grain would be available to any purchaser of the UGG Terminal.

**Long-Term Handling Agreements**

73. Since the Consent Agreement was executed in October 2002, a number of important Independent Grain Companies have secured for themselves long-term access to a Vancouver port terminal by means of an exclusive, long-term handling agreement with SWP, JRI or Cascadia. At the same time, because such agreements are exclusive and long-term, the Independent Grain Companies in question have committed to send all their Vancouver-destined grain to SWP, JRI and Cascadia, as the case may be, for the duration of these agreements.
74. As indicated in Schedule "A" to this Statement of Grounds and Material Facts, Agricore United estimates that the volume of independent grain committed to SWP, JRI and Cascadia under these exclusive, long-term handling agreements totalled approximately [CONFIDENTIAL] of the approximately [CONFIDENTIAL] shipped by Independent Grain Companies to the Port of Vancouver during the 2004/2005 crop year.
75. [CONFIDENTIAL]. As a result, a significant volume of independent grain is committed under these agreements and unavailable to a purchaser of a Port Terminal at least until these long-term agreements expire. [CONFIDENTIAL].

Cargill Joint Venture Agreements

76. In addition to the independent grain that is currently unavailable to a purchaser of a Port Terminal as a result of the exclusive, long-term handling agreements referred to above, a significant volume of independent grain is committed to Cargill [CONFIDENTIAL]. (Producer cars refer to rail cars allocated directly to farmers (who may load the grain on specified railway sidings) by the CGC, in conjunction with the CWB Monopoly, pursuant to section 87 of the *Canada Grain Act*.)
77. [CONFIDENTIAL]. The independent grain shipped to the Port of Vancouver [CONFIDENTIAL] appears to be unavailable to a purchaser of a Port Terminal at this time and for the foreseeable future.

[CONFIDENTIAL] – Producer Cars

78. [CONFIDENTIAL].
79. In any event, there should be no concern about access of producer cars to Vancouver port terminals as producer cars have guaranteed access to such terminals pursuant to section 87 of the *Canada Grain Act*.

Paterson

80. [CONFIDENTIAL].
81. [CONFIDENTIAL].
82. As indicated in Schedule "A" to this Statement of Grounds and Material Facts, Paterson shipped approximately [CONFIDENTIAL] of grain to the Port of Vancouver during the 2004/2005 crop year. [CONFIDENTIAL].

JRI's Acquisition of ConAgra

83. On May 18, 2005, JRI announced that it had acquired four high-throughput country elevators from ConAgra, which, prior to the acquisition, was a large Independent Grain Company as defined in the Consent Agreement.
84. JRI's acquisition of ConAgra further reduces the volume of independent grain available to any purchaser of the UGG Terminal. In this regard, ConAgra shipped approximately [CONFIDENTIAL] of grain to the Port of Vancouver during the 2003/2004 crop year.

*P&H's Acquisition of Mainline Terminal*

85. While P&H remains an Independent Grain Company, its acquisition of Mainline Terminal Ltd. earlier this year reflects further consolidation among Independent Grain Companies in Western Canada over the past three years, leaving fewer Independent Grain Companies available for a prospective purchaser of the UGG Terminal.

*Other Independent Grain*

86. [CONFIDENTIAL]. As indicated in Schedule "A" to this Statement of Grounds and Material Facts, these Independent Grain Companies shipped approximately [CONFIDENTIAL] of grain to the Port of Vancouver during the 2004/2005 crop year. Accordingly, it is now clear that a purchaser of a Port Terminal cannot be assured of obtaining any grain from these [CONFIDENTIAL] Independent Grain Companies.

*Available Grain*

87. [CONFIDENTIAL].
88. As indicated in Schedule "A" of this Statement of Grounds and Material Facts, these Independent Grain Companies shipped approximately [CONFIDENTIAL] of grain to the Port of Vancouver during the 2004/2005 crop year. There is, however, no guarantee that all of this independent grain would move to a purchaser of a divested Port Terminal.
89. The independent grain shipped to the Port of Vancouver by [CONFIDENTIAL] (producer cars) would also appear to be reasonably available to a purchaser of the UGG

Terminal. In this regard, [CONFIDENTIAL]. There is, however, no guarantee that all of this independent grain would move to a purchaser of a divested Port Terminal, especially given that the shipments of this grain are allocated by the CGC.

90. Moreover, as noted above, while Agricore United understands that [CONFIDENTIAL] companies such as [CONFIDENTIAL] have shipped or arranged for the shipment of grain through the Port of Vancouver in the past and/or could ship or arrange for the shipment of grain through the Port of Vancouver in the future, there is no guarantee that they will in fact ship or arrange for the shipment of any grain through the Port of Vancouver in the future and, even assuming that they do so, that such grain would be available to any purchaser of the UGG Terminal. In any event, none of these [CONFIDENTIAL] companies originate their own grain in Western Canada. Accordingly, any grain that these [CONFIDENTIAL] companies ship or arrange to be shipped through the Port of Vancouver would have to be obtained from grain handling companies in Western Canada.
91. Even assuming that all of the grain described in paragraphs 87 to 90 above is currently available to a purchaser of the UGG Terminal, it is significantly less grain than Agricore United and the Commissioner in October 2002 reasonably expected to be available to a prospective purchaser of a Port Terminal and is significantly less than the volume that would be required to operate the UGG Terminal on a sustainable basis going forward. [CONFIDENTIAL].

*Possible Handling Agreement with the CWB Monopoly*

92. In light of the foregoing, the only remaining realistic possibility for the UGG Terminal to be used for grain handling following a divestiture pursuant to the Consent Agreement would be an acquisition by a purchaser who enters into a handling agreement with the CWB Monopoly. While such an agreement may be beneficial for the purchaser and the CWB Monopoly, it would distort the market and adversely affect all grain handling companies in Western Canada, including Integrated Grain Companies and Independent Grain Companies, both of which would lose significant revenue. Further, such a

divestiture would not address the objective of the Consent Agreement, namely ensuring that Independent Grain Companies will have access to port terminal grain handling services in the Port of Vancouver at competitive rates, including diversion premiums. A divestiture into a CWB Monopoly handling agreement would also not provide an additional Vancouver port terminal to handle independent grain.

93. Integrated Grain Companies would lose the cleaning, elevation and storage revenue associated with handling grain that was destined to their port terminals but subsequently diverted by the CWB Monopoly to the purchaser of the UGG Terminal pursuant to a handling agreement with the CWB Monopoly.
94. Independent Grain Companies would lose the diversion premiums that they otherwise would have received from the Integrated Grain Companies in respect of grain that they originate which is diverted by the CWB Monopoly to a purchaser of the UGG Terminal. In this regard, as noted above, the Commissioner has previously determined, and stated in filings with the Tribunal, that the payment of diversion premiums to Independent Grain Companies by port terminal operators is important for the ability of Independent Grain Companies to compete for grain originations in the country. The Commissioner has also stated that the loss of diversion premiums would raise serious issues regarding the ongoing ability of Independent Grain Companies to compete for grain originations at country elevators in Western Canada.
95. Similarly, in its materials requesting leave to intervene in the Section 92 Application, the CWB Monopoly indicated that "[t]he ability of [an Independent Grain Company] to compete for the farmers' grain in Western Canada depends on ... the level of diversion payments paid out to [Independent Grain Companies] in return for the processing of their originations at port". The CWB Monopoly also indicated that it was concerned that there would be a "lessening of competition in the country if the diversion payments currently offered by terminals to [Independent Grain Companies] are reduced or eliminated".

**C. Continued Excess Capacity**

96. The port terminals in the Port of Vancouver are characterized by chronic, long-term excess capacity. In this regard, it was widely predicted 10 to 15 years ago that the Canadian West Coast (Vancouver and Prince Rupert) export volumes would grow to about 25 million tonnes per year, with approximately 18 million to 20 million of this amount expected to be shipped through the Port of Vancouver. Following these predictions, port terminal operators on the Canadian West Coast took a number of steps to enable their terminals to handle greater volumes, including making technological improvements to increase the speed of unloading grain from rail cars and loading vessels and negotiating a seven-day work week with the relevant labour unions.
97. The projected volumes did not materialize. Instead, according to the CWB Monopoly, annual Canadian West Coast grain export projections are now at about 15 million to 18 million tonnes, with annual grain exports through the Port of Vancouver projected to be about 12 million to 15 million tonnes. These projections are significantly below the volumes of grain that the port terminals in the Port of Vancouver are capable of handling on an annual basis.
98. In addition, assuming that the Commissioner allows the proposed SWP/JRI JV to proceed, the excess capacity in the Port of Vancouver will likely increase further in the future. In this regard, in their press release announcing the proposed SWP/JRI JV, SWP and JRI indicated that "[t]he joint venture ... will improve operating efficiencies and increase productivity and throughput potential through specialization of each facility, which will result in better rail car utilization and shipping capacity".
99. Excess capacity creates a strong incentive for port terminal operators to vigorously compete for any available independent grain. The vigorous competition for any available independent grain is reflected by, among other things, the fact that Integrated Grain Companies have entered into long-term handling agreements with Independent Grain Companies and the fact that the terminal diversion premiums being paid to Independent Grain Companies under such agreements have increased since the Consent Agreement was executed in October 2002.

**PART VI – THE PARTIES WOULD NOT HAVE ENTERED INTO THE CONSENT AGREEMENT UNDER CURRENT CIRCUMSTANCES**

100. In the circumstances that now exist, Agricore United would not have entered into the Consent Agreement or any consent agreement contemplating the divestiture of a Port Terminal. Given the lack of independent grain available to a prospective purchaser, [CONFIDENTIAL], and the prospects for challenging the Commissioner's alleged substantial prevention or lessening of competition are greatly enhanced in light of subsequent market developments. Moreover, given the likely inability of a purchaser to secure a sufficient volume of independent grain and the fact that Independent Grain Companies have secured long-term access to port terminals in the Port of Vancouver, in Agricore United's submission the Commissioner would not, on any reasonable basis, have entered into a consent agreement contemplating the divestiture of a Port Terminal. In other recent cases in which a divestiture was apparently not feasible, the Commissioner accepted behavioural remedies, such as the consent agreement between the Commissioner, British Columbia Railway Company and Canadian National Railway Company relating to rail service in certain parts of British Columbia, including the Port of Vancouver, and filed with the Tribunal on July 2, 2004. Accordingly, Agricore United requests that the Tribunal rescind the Consent Agreement pursuant to section 106 of the Act.

**PART VII – EXTENSION OF THE PORT TERMINAL INITIAL SALE PERIOD**

**A. Background**

101. The Consent Agreement requires that Agricore United offer to divest a Port Terminal within the Port Terminal Initial Sale Period, which is currently scheduled to expire at 12:00 noon (Winnipeg time) on August 15, 2005. Therefore, absent Agricore United and the Commissioner agreeing to a further extension or an order of the Tribunal, a Trustee will be appointed at 12:00 noon (Winnipeg time) on August 15, 2005 to seek to implement a divestiture of the UGG Terminal pursuant to the Consent Agreement. The Commissioner granted the extension to August 15, 2005, and a number of earlier

extensions, to permit Agricore United to seek to complete a proposed transaction with Terminal One. As noted above, Terminal One is a consortium of five farmer-owned inland grain terminals, each of which is an Independent Grain Company and a member of ITAC. In this regard, paragraph 48 of the Consent Agreement provides that "[t]he Commissioner and Agricore United may, by way of mutual agreement, extend any of the time periods applicable [in the Consent Agreement]".

102. **[CONFIDENTIAL].**
103. Agricore United has made diligent and good faith efforts to divest a Port Terminal since the Consent Agreement was executed in October 2002. As part of these efforts, Agricore United has, among other things, taken all reasonable steps to conclude a sale of the UGG Terminal to Terminal One on or before 12:00 noon (Winnipeg time) on August 15, 2005. The fact that Agricore United is unable to meet this deadline stems not from any actions or inactions on the part of Agricore United, **[CONFIDENTIAL]**.
104. **[CONFIDENTIAL].** Given that the Terminal One group represents a significant portion of the uncommitted independent grain, the Commissioner's decision to refuse to approve the requested further extension jeopardizes the prospects for a sale of the UGG Terminal that satisfies the rationale behind the Consent Agreement. For the reasons discussed above, and particularly if Terminal One is unable to complete a transaction, there can be no assurance that any prospective purchaser will be able to obtain sufficient grain commitments to operate the UGG Terminal on a sustainable basis as contemplated by and in a manner consistent with the purposes of the Consent Agreement.

**B. Request for Extension Pending Decision on Section 106 Application**

105. On the morning of August 11, 2005, Agricore United's counsel contacted the Commissioner's counsel and indicated that, in light of the Commissioner's August 10, 2005 refusal to further extend the Port Terminal Initial Sale Period for the purposes of a possible sale to Terminal One, Agricore United intended to, among other things, apply to the Tribunal for an order rescinding the Consent Agreement pursuant to section 106 of

the Act. Agricore United's counsel also requested that the Commissioner extend the Port Terminal Initial Sale Period pursuant to paragraph 48 of the Consent Agreement pending the final determination of the within Application. A letter formally requesting such an extension was sent to the Commissioner's counsel shortly thereafter.

106. The Commissioner's counsel declined to agree to any further extension of the Port Terminal Initial Sale Period in connection with the section 106 application at that time. This was confirmed in a letter to Agricore United's counsel, dated August 11, 2005.
107. In light of the circumstances described herein, it is unreasonable for the Commissioner to withhold or continue to withhold her agreement to the requested extension pending the determination of the section 106 application. Agricore United is therefore applying to the Tribunal pursuant to paragraph 49 of the Consent Agreement for approval to extend the Port Terminal Initial Sale Period pending the final determination of the within Application. In this regard, paragraph 49 of the Consent Agreement provides that "[i]f the Commissioner's approval is sought pursuant to this Agreement and such approval is not granted, or if a decision of the Commissioner is unreasonably delayed or withheld, Agricore United may apply to the Tribunal for approval".
108. The merits of Agricore United's section 106 application are relevant to the request for an extension. The test that will be applied on a contested section 106 application to rescind a consent agreement was discussed by the Tribunal in its recent decision in *RONA Inc. v. The Commissioner of Competition*. The facts set out in this Statement of Grounds and Material Facts satisfy the test set out in *RONA*. The Tribunal therefore has the jurisdiction to rescind the Consent Agreement. In this regard, for the reasons discussed above, the circumstances that led to the making of the Consent Agreement have changed significantly since the Consent Agreement was executed in October 2002. Moreover, in the circumstances that now exist, Agricore United would not have entered into the Consent Agreement. Similarly, Agricore United submits that, in the circumstances that now exist, the Commissioner also would not, on any reasonable basis, have entered into the Consent Agreement.

109. In addition, the Commissioner has, at least to date, not challenged the proposed SWP/JRI JV, effectively a merger of their respective grain handling terminals in the Port of Vancouver. The proposed SWP/JRI JV was announced on April 6, 2005 and apparently at least partially implemented in July 2005 without objection by the Commissioner, as disclosed in an article published in *The Western Producer* on July 21, 2005. As noted above, any further restraints on the ability of SWP and JRI to complete the implementation of the proposed SWP/JRI JV pursuant to the SWP/JRI Consent Interim Agreement are currently scheduled to expire on September 3, 2005. Failure by the Commissioner to challenge the proposed SWP/JRI JV would imply a lack of current grounds to require a divestiture in connection with the Acquisition as the proposed SWP/JRI JV represents further consolidation in the same market. The Applicant expressed its views in this regard in letters to counsel to the Commissioner and the Bureau dated June 15 and May 30, 2005, respectively, dealing in part with the implications of the proposed SWP/JRI JV.
110. If the Consent Agreement is rescinded, the Trustee will have no status or power to perform any functions under the Consent Agreement, including to sell the UGG Terminal. Given the strength of Agricore United's case for rescission of the Consent Agreement, it would be unreasonable for the Commissioner not to agree to extend the Port Terminal Initial Sale Period pending the final determination of the within Application to avoid the appointment of a trustee whose functions, duties and powers will be eliminated if Agricore United's section 106 application is successful.
111. Moreover, allowing the Trustee to be appointed at a time when his very legitimacy under the Consent Agreement and his power to sell the UGG Terminal is subject to serious challenge, and at best is uncertain, will discourage potential purchasers. **[CONFIDENTIAL]**. While Agricore United intends to seek an expedited schedule for disposition of the within Application, a final determination by the Tribunal may still not occur until after the Trustee Sale Period has expired, at which time the Trustee would have no authority to make a sale in any event.

112. [CONFIDENTIAL].
113. Even if Agricore United's application under section 106 of the Act is unsuccessful, approval to extend the Port Terminal Initial Sale Period pending the final determination of the within Application would merely delay the appointment of the Trustee until that time. No prejudice to any of the Commissioner, Independent Grain Companies or the public interest would flow from such a delay in the appointment of the Trustee. In this regard, as noted above, Agricore United believes that every Independent Grain Company that ships grain to the Port of Vancouver has or will have a port terminal access contract or handling agreement covering at least the next crop year ending July 31, 2006 and in some cases many years. Moreover, the access provisions included in the Consent Agreement have been in place for almost three years and have addressed any possible concerns that the Commissioner may have regarding access to port terminals in the Port of Vancouver for the reasonably foreseeable future. In addition, as noted above, subsections 69(1) and (2) of the *Canada Grain Act* require that port terminal operators receive all grain shipped to the Port of Vancouver, without discrimination, subject to certain exceptions and conditions.
114. Further, in the absence of approval to extend the Port Terminal Initial Sale Period pending the final determination of the within Application, Agricore United would very likely incur significant additional and unnecessary costs following the appointment of the Trustee, costs that will prove unnecessary if the application is successful. For example, Agricore United is required by paragraph 20 of the Consent Agreement to pay all expenses reasonably and properly incurred by the Trustee in the course of a Trustee sale and the Trustee may retain financial, legal and other professional advisors, including investment bankers, pursuant to paragraph 24 of the Consent Agreement.
115. In light of the prejudice to a Trustee sale process in the midst of Tribunal proceedings seeking rescission of the very Consent Agreement pursuant to which the Trustee obtains his status and power, the considerable merit of the section 106 application, and the absence of prejudice from the requested extension, it is unreasonable for the

Commissioner to continue to withhold her agreement to the requested extension of the Port Terminal Initial Sale Period pending the final determination of the within Application, and the Tribunal should approve the requested extension.

**PART VIII – ORDER SOUGHT**

116. The Applicant respectively requests the following relief:

- (a) an order pursuant to section 106 of the Act rescinding the Consent Agreement;
- (b) approval pursuant to paragraph 49 of the Consent Agreement extending the Port Terminal Initial Sale Period pending the final determination of the within Application;
- (c) an order compelling the Commissioner to provide the Applicant with copies of all handling agreements in her possession between port terminal operators and Independent Grain Companies for the handling of independent grain in the Port of Vancouver that are or were in effect on or after August 1, 2001, for the purposes of the within Application, along with the volumes of grain shipped to the Port of Vancouver pursuant to such agreements on an annual basis since August 1, 2001 and such other relevant information as Agricore United may subsequently request;
- (d) an order awarding costs in favour of the Applicant; and
- (e) such further and other final or interim orders requested by the Applicant and as deemed just by the Tribunal.

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

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Schedule "A"

Independent Grain Companies Shipping to Vancouver	Tonnage		Vancouver Port Terminal
	2004/2005 Crop Year	Status***	
CMI Terminal	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Fill-More Seeds	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Gardiner Dam	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Great Northern Grain*	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Great Sandhills Terminal**	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Louis Dreyfus*	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Mid-Sask Terminal*	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
North East Terminal	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
North West Terminal*	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
P&H*	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Paterson	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Prairie West Terminal	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Providence Grain	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
South West Terminal (including Prod. Cars)	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Terminal 22	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
West Central Road & Rail (Prod. Cars)**	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Westlock Terminal	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Westmor Terminal	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Weyburn Inland Terminal	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
<b>Total</b>	[CONFIDENTIAL]		

\* Estimates by Agricore United.

\*\* [CONFIDENTIAL].

\*\*\* [CONFIDENTIAL].