

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act* R.S.C. 1985, c. C-35 as amended;

AND IN THE MATTER OF joint ventures between Saskatchewan Wheat Pool Inc. and James Richardson International Limited in respect of port terminal grain handling in the Port of Vancouver;

AND IN THE MATTER OF filing and registration of a Consent Interim Agreement, pursuant to section 105 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

- AND -

SASKATCHEWAN WHEAT POOL INC.

-AND-

JAMES RICHARDSON INTERNATIONAL LIMITED

CONSENT INTERIM AGREEMENT

| | | |
|----------------------------|----------------------------------|---------------------------------|
| COMPETITION TRIBUNAL | | P R O D U I T |
| TRIBUNAL DE LA CONCURRENCE | | |
| FILED | CT- 2005-008 JUL 5 2005 CE | |
| REGISTRAR - REGISTRAIRE | | |
| OTTAWA, ON | 000(a) | |

| |
|---|
| Registry of the Competition Tribunal Greffé du Tribunal de la concurrence REGISTERED / ENREGISTRÉ |
| JUL 5 2005 |
| FOR REGISTRAR / POUR REGISTRAIRE |

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 (collectively, the "JV") dated April 6, 2005 creating joint ventures in connection with the Marketing of grain handling services to Third Party Graincos and the operation of their respective port terminal grain handling terminals in the Port of Vancouver;

AND WHEREAS SWP and JRI have requested an advance ruling certificate from the Commissioner of Competition in connection with the JV;

AND WHEREAS the Commissioner of Competition has not yet completed her inquiry in respect of the JV;

AND WHEREAS the object of this Consent Interim Agreement is to provide the

Commissioner of Competition with adequate time to complete her inquiry and to ensure that, prior to the completion of that inquiry, Saskatchewan Wheat Pool Inc. and James Richardson International Limited take no action that would impair the ability of the Competition Tribunal to remedy the effect of the JV on competition for port terminal grain handling services under section 92 of the *Competition Act* because that action would be difficult to reverse;

AND WHEREAS the Commissioner of Competition and Saskatchewan Wheat Pool Inc. and James Richardson International Limited agree that upon the signing of this Consent Interim Agreement, it shall be filed with the Tribunal for immediate registration;

NOW THEREFORE Saskatchewan Wheat Pool Inc. and James Richardson International Limited and the Commissioner of Competition have agreed to the terms of this Consent Interim Agreement as follows:

I. DEFINITIONS

1. For the purposes of this Agreement, the following capitalized terms have the following meaning:
 - (a) "Affiliate" has the meaning given to it in subsection 2 (2) of the Act;
 - (b) "Agreement" means this Consent Interim Agreement entered by Saskatchewan Wheat Pool Inc. and James Richardson International Limited and the Commissioner of Competition pursuant to section 105 of the Act;
 - (c) "Commissioner" means the Commissioner of Competition appointed pursuant to section 7 of the *Act* (Canada);
 - (d) "Hold Separate Monitor" means the Person appointed pursuant to Part IV of the Agreement, and any employees, agents or other persons acting for or on behalf of the Hold Separate Monitor;
 - (e) "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;
 - (f) "JV" means the joint ventures 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, pursuant to which JRI and Saskatchewan Wheat Pool Inc. have agreed to coordinate the Marketing of grain handling services to Third Party Graincos. and the operation of their grain handling

terminals in the Port of Vancouver;

- (g) "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;
- (h) "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- (i) "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;
- (j) "Third Party Graincos" means all Persons, who do not have an interest in port terminal grain handling facilities in the Port of Vancouver, in which neither JRI or SWP have any interest, who, in the past, currently, or in the future, have been, are, or will be, provided with any grain handling services by JRI and/or SWP in the Port of Vancouver;
- (k) "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 Agreement, "Confidential Information" means competitively sensitive or proprietary information pertaining to the provision of grain handling services to Third Party Graincos including, without limiting the generality of the foregoing, with respect to the provision of grain handling services to Third Party 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 Agreement 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 Agreement, who shall have received actual notice of this Agreement;

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

III. HOLD SEPARATE

- 4. SWP and JRI shall, during the term of this Agreement, take all necessary steps to ensure they operate independently in respect of the Marketing of grain handling services to Third Party Graincos at the Port of Vancouver and at the Prince Rupert Terminal.
- 5. SWP and JRI shall, during the term of this Agreement:
 - (a) maintain and hold such physical assets, including computer systems and databases used in connection with the Marketing of grain handling services to Third Party 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 Agreement;
 - (b) take all commercially reasonable steps to maintain quality and service standards for Third Party Graincos at the level that existed prior to the date of this Agreement, 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, 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 Third Party Graincos as they existed prior to the date of this Agreement, except as may be necessary to comply with the terms of this Agreement 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 Third Party Graincos, to any material extent, save as required by prudent management.

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

IV. MONITOR

7. 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 and SWP with this Agreement. If JRI and SWP have not opposed, in writing, including the reasons for opposing, the selection of the Hold Separate Monitor within 10 days after notice by the Commissioner to JRI and SWP of the identity of the Hold Separate Monitor, JRI and SWP shall be deemed to have consented to the selection of the Hold Separate Monitor.
8. If the Hold Separate Monitor ceases to act or fails to act diligently and consistent with the purposes of this Agreement, the Commissioner may appoint a substitute Hold Separate Monitor consistent with the terms of paragraph 7 of this Agreement. This Agreement shall apply to any substitute Hold Separate Monitor appointed pursuant to this paragraph.
9. 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 Agreement, in connection with the execution or performance of the Hold Separate Monitor's duties under this Agreement.
10. The Hold Separate Monitor shall have full and complete access to all personnel, books, records, documents and facilities of SWP and JRI that pertain, directly or indirectly to the Marketing of port terminal grain handling services to Third Party Graincos. SWP and JRI shall cooperate with any reasonable request of the Hold Separate Monitor. Neither SWP nor JRI shall take any action to interfere with or impede the Hold Separate Monitor's ability to discharge his/her duties and responsibilities.
11. 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 Agreement. 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.

12. 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.
13. The Hold Separate Monitor shall report in writing to the Commissioner: (i) every 20 days after being appointed until this Agreement is terminated; and (ii) at any other time as requested by the Commissioner or her staff, concerning SWP and/or JRI compliance with this Agreement.
14. Neither SWP nor JRI shall exert or attempt to exert any influence, direction or control over a Hold Separate Monitor which may adversely affect the discharge of the Hold Separate Monitor's duties under the terms of this Agreement.
15. This Agreement shall not be construed as providing the Hold Separate Monitor with ownership, management, possession, charge or control of SWP or JRI.
16. 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.
17. If the Hold Separate Monitor considers that SWP and/or JRI is in default of any of the terms of this Agreement, he/she shall immediately notify the Commissioner of the breach, who shall forthwith give notice to SWP and JRI setting out the particulars of such default.
18. If the Hold Separate Monitor advises the Commissioner that SWP and/or JRI is in default of any of the terms of this Agreement, or if the Commissioner otherwise believes such to be the case, then for the purpose of determining or securing compliance with this Agreement, subject to any valid claim to a legally recognized privilege, and upon written request, SWP and/or JRI shall permit any duly authorized representative of the Commissioner:
 - (a) upon a minimum of 3 days notice to SWP and JRI, 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 and/or JRI relating to compliance with this Agreement; and

- (b) upon a minimum of 8 days notice to SWP and/or JRI, and without restraint or interference from SWP and/or JRI, to interview directors, officers or employees of SWP and/or JRI on matters in the possession or under the control of SWP and/or JRI relating to compliance with this Agreement.

V. NOTIFICATION

- 19. Each of SWP and JRI shall provide a copy of this Agreement to each of their officers, employees, or agents having managerial responsibility for any obligations under this Agreement, no later than 5 days from the date this Agreement is registered.
- 20. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement, shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the parties:

1. If the Commissioner

The Commissioner of Competition
Competition Bureau

Place du Portage, 21st floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Attention: Senior Deputy Commissioner (Mergers)
Fax: (819) 954-0998

With a copy to:

Director, Competition Law Division
Competition Law Division
Department of Justice
Place du Portage, 22nd floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Director of Competition Law Division
Fax: (819) 953-9267

2. If to SWP:

Address 2625 Victoria Avenue, Regina, SK
Attention: Ray Dean, General Counsel/Corporate Secretary

Tel: (306) 569-4200
Fax: (306) 569-5133

2. If to JRI

Address 2800 One Lombard Place
Winnipeg, MB R3B 0X8
Attention: Jean-Marc Ruest
Tel: (204) 934-5488
Fax: (204) 943-2574

VI. GENERAL

21. 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 Agreement.
22. This Agreement shall remain in effect for 60 days from the registration of this Agreement with the Tribunal. The Commissioner hereby covenants to JRI and SWP to forthwith register this Agreement with the Tribunal upon execution and delivery of this Agreement by all parties hereto.
23. SWP and JRI agree to the registration of this Agreement by the Tribunal, on usual terms, covering the matters agreed to herein. The Commissioner may extend any of the time periods contemplated by this Agreement, other than the time period in paragraph 22 of this Agreement.
24. SWP and JRI and the Commissioner may mutually agree to amend this Agreement in any manner pursuant to subsection 106(1) of the Act.
25. The computation of any time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21 as amended.
26. This Agreement constitutes the entire agreement between the Commissioner, SWP and JRI with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral.
27. In the event of a dispute as to the interpretation or application of this Agreement, including any decision by the Commissioner pursuant to this Agreement or breach of this

Agreement by the Respondents, the Commissioner, SWP or JRI shall be at liberty to apply to the Tribunal for a further order interpreting any of the provisions of this Agreement.

- 28. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.

DATED at Winnipeg, Manitoba, this 30th day of June, 2005.

FILED AND REGISTERED BY the Tribunal, this day of mm/dd/yy.

Murdan Walsh
Commissioner of Competition

July 4, 2005

SASKATCHEWAN WHEAT POOL INC.

per _____

JAMES RICHARDSON INTERNATIONAL LIMITED

per Walter N. Fox

WALTER N. FOX
VICE PRESIDENT

June 30, 2005

Agreement by the Respondents, the Commissioner, SWP or JRI shall be at liberty to apply to the Tribunal for a further order interpreting any of the provisions of this Agreement.

- 28. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.

DATED at Regina, Saskatchewan this 30 day of June, 2005.

FILED AND REGISTERED BY the Tribunal, this day of mm/dd/yy.

Murdoch Leck
 Commissioner of Competition
 July 4, 2005

June 30, 2005
 SASKATCHEWAN WHEAT POOL INC.
 per James Richardson
 Key
 JAMES RICHARDSON INTERNATIONAL LIMITED
 per