

**THE COMPETITION TRIBUNAL**

**IN THE MATTER** of the  
*Competition Act*, R.S.C. 1985, c. C-34, as amended;

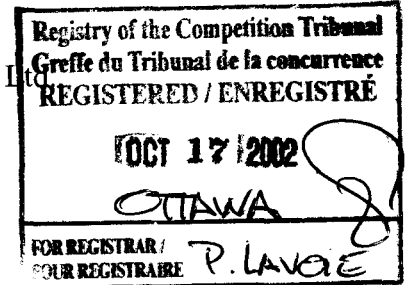
**AND IN THE MATTER** of an application for an order by the  
Commissioner of Competition under section 92 of the *Competition Act*;

# 105 A

**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:**

**COMMISSIONER OF COMPETITION**



Applicant

- AND -

**UNITED GRAIN GROWERS LIMITED**

Respondent

- AND -

**THE CANADIAN WHEAT BOARD**

Intervenor

**CONSENT AGREEMENT BETWEEN  
THE COMMISSIONER OF COMPETITION AND UNITED GRAIN GROWERS  
LIMITED IN RELATION TO THE ACQUISITION OF  
AGRICORE COOPERATIVE LTD. BY UNITED GRAIN GROWERS LIMITED**

**WHEREAS** United Grain Growers Limited ("UGG") acquired Agricore Cooperative Ltd. ("Agricore") on November 1, 2001 (the "Acquisition") and subsequently began carrying on business as Agricore United;

**AND WHEREAS** the Commissioner of Competition has alleged that the Acquisition is likely to result in a substantial lessening of competition ("SLC") in the provision of port terminal grain handling services at the Port of Vancouver and has filed an application before the Competition Tribunal under section 92 of the *Competition Act* (the "Act"), R.S.C. 1985, c. C-35, as amended, for an order requiring the divestiture by UGG of its interest in one of two port terminal facilities in the Port of Vancouver;

**AND WHEREAS** the UGG Terminal and the Pacific Complex are the subject of an interim consent order (the "Interim Consent Order") issued by the Competition Tribunal on January 14, 2002;

**AND WHEREAS** at the request of the Commissioner and UGG, the Competition Tribunal made certain findings and determinations on September 12, 2002, including that:

- (a) the Acquisition causes an SLC as alleged by the Commissioner and, for the purposes of this proceeding, not contested by the Respondent, without the need for further evidence to establish an SLC or elements of an SLC; and
- (b) the divestiture by the Respondent of either the UGG Terminal or the PEL Interest (as therein defined), as requested by the Commissioner in the Notice of Application, is sufficient to address the SLC;

**AND WHEREAS** the Commissioner declares himself satisfied that the Agreement set out herein will be sufficient to avoid the SLC in the provision of port terminal grain handling services at the Port of Vancouver resulting from the Acquisition;

**AND WHEREAS** in order to finally resolve the above-mentioned section 92 application, Agricore United and the Commissioner hereby agree as follows:

**Definitions**

1. For the purposes of this Agreement, the following definitions shall apply:
  - (a) "Acquisition" means the acquisition by UGG of the port terminal grain handling operations of Agricore in the Port of Vancouver pursuant to an agreement dated as of July 30, 2001;
  - (b) "Agreement" means this consent agreement entered into by UGG and the Commissioner;
  - (c) "Agricore" means Agricore Ltd., a corporation continued under the provisions of the *Canada Business Corporations Act* (Canada), R.S.C. 1985, c. C-44, as amended, and the successor to Agricore Cooperative Ltd.;
  - (d) "Agricore United" means, following the Closing Date, United Grain Growers Limited, a corporation existing under the provisions of the *United Grain Growers Act* (Canada), a Special Act of the Parliament of Canada, and affiliates thereof, and carrying on business as "Agricore United";
  - (e) "Closing Date" means November 1, 2001;
  - (f) "Commissioner" means the Commissioner of Competition appointed pursuant to section 7 of the Act;
  - (g) "Competition Tribunal" means the Competition Tribunal established pursuant to the *Competition Tribunal Act* (Canada), R.S.C. 1985, c. 19 (2nd Supp.), as amended;

- (h) "Confidential Information" means competitively sensitive or proprietary information relating to the Port Terminals not independently known to Persons other than Agricore United, including, without limiting the generality of the foregoing, customer lists, price lists, marketing methods or other trade secrets that relate to the Port Terminals;
- (i) "CWB" means the Canadian Wheat Board, an organization established under *The Canada Wheat Board Act* (Canada) R.S.C., c. C-12, as amended;
- (j) "Divest" means to implement a Divestiture;
- (k) "Divestiture" means the sale, transfer, assignment, redemption or other disposition (including, with the approval of the Commissioner, an asset swap arrangement), necessary to ensure that Agricore United does not retain, directly or indirectly, except as permitted herein or upon the consent of the Commissioner, any right, title, control, interest, liability or obligation in respect of any of the assets to be Divested inconsistent with the intent of this Agreement, other than obligations in respect of any representations, warranties and covenants included in any agreement between Agricore United and the Purchaser of the relevant Port Terminal as permitted by this Agreement;
- (l) "Full Capacity Operation" means a circumstance where terminal authorizations issued by the relevant terminal, which permit a Person to deliver grain to that terminal, equal available capacity at that terminal;
- (m) "Independent Grain Companies" means those grain handling companies with no ownership interest in a port terminal in Vancouver and with no affiliation with an

owner of a port terminal in Vancouver. For the purpose of this definition, a grain handling company is affiliated with a port terminal owner if it has a 20% or more direct or indirect shareholding or ownership interest in the port terminal owner, or if a port terminal owner, other than Agricore United, has a 20% or more direct or indirect shareholding or ownership interest in the grain handling company;

- (n) "Interim Consent Order" means the interim consent order issued by the Competition Tribunal on January 14, 2002;
- (o) "Pacific Complex" means the Pacific Elevators Limited port terminal facility located at 1803 Stewart Street, Vancouver B.C. V5L 5G1 and more particularly described in Schedule "A";
- (p) "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity;
- (q) "Port Terminal Divestiture Option" has the meaning set out in Schedule "A";
- (r) "Port Terminal Initial Sale Period" has the meaning set out in Confidential Schedule "B";
- (s) "Port Terminals" means, subject to Schedule "A", the UGG Terminal and the Pacific Complex and "Port Terminal" means either one of them;
- (t) "Purchaser" means the Person(s) or entity(ies) who purchase(s) a Port Terminal pursuant to this Agreement;
- (u) "Trustee" means the Person appointed trustee pursuant to paragraphs 14 or 15 of this Agreement to effect the Divestiture of a Port Terminal, if necessary;

- (v) "UGG Terminal" means the UGG port terminal located at 1155 Stewart Street, Vancouver, BC V6A 4H4; and
- (w) "UGG" means, prior to the Closing Date, United Grain Growers Limited, a corporation existing under the provisions of the *United Grain Growers Act* (Canada), a Special Act of the Parliament of Canada.

### **Application**

2. The provisions of this Agreement shall apply to:
- (a) Agricore United (including United Grain Growers Limited and Agricore Ltd.);
  - (b) each division, subsidiary or other Person controlled by Agricore United and each officer, director, employee, agent or other Person acting for or on behalf of Agricore United with respect to any matter referred to in this Agreement;
  - (c) the successors and assigns of Agricore United, and all other Persons acting in concert or participating with them with respect to any matter referred to in this Agreement who shall have received actual notice of this Agreement;
  - (d) the Trustee and each employee, agent or other Person acting for or on behalf of such Trustee with respect to any matter referred to in this Agreement; and
  - (e) a proposed Purchaser and each employee, agent or other Person acting for or on behalf of such proposed Purchaser with respect to any matter referred to in this Agreement.

### **Port Terminal Divestiture Option**

3. Agricore United shall offer to Divest one of the Port Terminals within the Port Terminal Initial Sale Period.

4. If a Port Terminal has not been Divested within the Port Terminal Initial Sale Period, then the Divestiture of a Port Terminal shall be carried out by the Trustee in accordance with the procedure set out herein.

**Divestiture Procedure**

5. Divestiture of the Port Terminal, whether by Agricore United or the Trustee, shall be completed on the following terms:

- (a) by way of disposition of the Port Terminal for use as a going concern;
- (b) to one or more arm's length Purchasers who:
  - (i) shall use the Port Terminal for the same purpose it was used prior to the Closing Date; and
  - (ii) shall have the managerial, operational and financial capability to operate the Port Terminal as contemplated in sub-paragraph 5(b)(i) above.

6. Any Person making a *bona fide* inquiry of Agricore United, its agent or the Trustee regarding the possible purchase by that Person or its principal of a Port Terminal shall be notified that the sale is being made pursuant to this Agreement and provided with a copy of this Agreement, with the exception of the provisions hereof which are confidential as set out in Confidential Schedule "B".

7. Following the Port Terminal Initial Sale Period and subject to paragraph 12 below, any prospective Purchaser that demonstrates its *bona fide* interest in purchasing a Port Terminal shall:

- (i) be furnished with all pertinent information regarding the relevant Port Terminal; and
- (ii) be permitted to make such reasonable inspection of the relevant Port Terminal and of all financial, operational or other documents and information as may be relevant to the Divestiture, except for any documents which shall in the future be made the subject of an order of confidentiality of the Competition Tribunal.

8. Agricore United shall not, without the consent of the Commissioner, provide financing for all or any part of any Divestiture under this Agreement which would permit Agricore United to influence or control, directly or indirectly, the relevant Port Terminal after the Divestiture.

9. **[Confidential].**

10. Agricore United shall allow the Purchaser of a Port Terminal an opportunity to employ those persons employed primarily in relation to the Port Terminal (the "Employees") as follows:

- (a) not later than 14 days, or such other period as may be agreed upon by the Purchaser and Agricore United, before the date of the Divestiture of the Port Terminal, Agricore United shall, to the extent permissible under applicable laws,
  - (i) provide to the Purchaser a list of all the Employees, (ii) allow the Purchaser an



opportunity to interview the Employees for purposes of determining whether or not to offer them employment, and (iii) allow the Purchaser to inspect the personnel files and other documentation relating to the Employees; and

- (b) Agricore United shall, to the extent permissible under applicable laws, (i) not offer any incentive to any Employee to decline employment with the Purchaser, (ii) remove any contractual impediments with Agricore United that may deter any Employee from accepting employment with the Purchaser, including, but not limited to, any non-compete or confidentiality provisions of employment relating specifically to the Port Terminal that would affect the ability of the Employee to be employed by the Purchaser, (iii) not interfere with the employment by the Purchaser of any Employee, and (iv) continue employee benefits offered by Agricore United until the Divestiture has been completed, including regularly scheduled raises and bonuses, and regularly scheduled vesting of all pension benefits.

11. Nothing in paragraph 10 of this Agreement is intended to diminish any of Agricore United's or a Purchaser's obligations under any applicable labour laws or relevant collective bargaining agreements.

12. Access by a prospective Purchaser to the information and assets identified in paragraph 7 of this Agreement shall be conditional on the execution of a customary confidentiality agreement containing, among other things, non-solicitation terms relating to personnel and suppliers.

13. Agricore United shall advise the Commissioner in writing every 60 days during the Port Terminal Initial Sale Period of the progress of its efforts to accomplish the implementation of a Port Terminal Divestiture Option, including a description of contacts or negotiations and the identity of all parties contacted and prospective Purchasers who have come forward, all with reasonable detail. The Commissioner has the right to request additional information from Agricore United regarding the progress of its efforts to implement a Port Terminal Divestiture Option and Agricore United shall respond to any such requests within a reasonable time having regard to the nature of the request.

**Trustee Sale**

14. If a Port Terminal Divestiture Option has not been implemented within the Port Terminal Initial Sale Period, the Commissioner shall appoint a trustee. The Commissioner shall select a trustee, subject to the consent of Agricore United (which shall not be unreasonably withheld), at least 120 days before the expiry of the Port Terminal Initial Sale Period, and the Trustee shall, upon the expiry of the Port Terminal Initial Sale Period, be responsible for implementing a Port Terminal Divestiture Option in accordance with the requirements set out in this Agreement, including Confidential Schedule "B". If Agricore United and the Commissioner fail to agree on the selection of a trustee, the Competition Tribunal, on the application of the Commissioner or Agricore United, shall appoint the trustee.

15. If the Commissioner reasonably concludes that any Trustee appointed pursuant to this Agreement has ceased to act or failed to act diligently or otherwise in accordance with this Agreement, the Commissioner shall, subject to the consent of Agricore United (which shall not be unreasonably withheld), forthwith appoint a substitute Trustee. If Agricore United reasonably concludes that any Trustee appointed pursuant to this Agreement has ceased to act or failed to act

diligently or otherwise in accordance with this Agreement, and the Commissioner has not appointed a substitute Trustee, Agricore United may apply to the Competition Tribunal for the appointment of a substitute Trustee. If Agricore United and the Commissioner fail to agree on the selection of a substitute Trustee, the Competition Tribunal, on the application of the Commissioner or Agricore United, shall appoint a substitute Trustee.

16. Agricore United shall assist the Trustee in accomplishing the Divestiture. Consistent with Confidential Schedule "B" hereto, in connection therewith, following the Port Terminal Initial Sale Period, Agricore United shall provide any prospective Purchaser that demonstrates its *bona fide* interest in purchasing a Port Terminal with full access to all information and assets as set out in paragraph 7 of this Agreement. The Trustee shall have full and complete access, as is reasonable in the circumstances, to the personnel, books, records and facilities of the relevant Port Terminal and Agricore United shall take no action to interfere with or impede the Trustee's accomplishment of the Divestiture.

17. Agricore United shall not object to a Divestiture proposed by the Trustee on any grounds other than the Trustee's malfeasance, gross negligence, bad faith or breach of this Agreement.

18. Agricore United shall hold the Trustee harmless against any losses, claims, damages or liabilities arising out of, or in connection with, the performance of the Trustee's duties under this Agreement except to the extent that such liabilities, losses, damages or claims result from the Trustee's malfeasance, gross negligence, bad faith or breach of this Agreement.

19. The Trustee shall have such other powers as the Competition Tribunal may grant to the Trustee upon the application of Commissioner or Agricore United.

20. All expenses reasonably and properly incurred by the Trustee in the course of the Trustee sale shall be paid by Agricore United and the proceeds of any Trustee sale shall be paid to Agricore United or as Agricore United may direct.

21. The Trustee shall implement a Port Terminal Divestiture Option at the price and on the terms and conditions most favourable to Agricore United then reasonably available.

**[Confidential]**

22. The Trustee shall execute a customary confidentiality agreement and shall not communicate any Confidential Information except to the extent required by this Agreement.

23. After the expiry of the Port Terminal Initial Sale Period and until the end of the term of the Trustee's appointment, only the Trustee shall have the full power and authority to implement the relevant Port Terminal Divestiture Option on such terms as are required by this Agreement.

24. The Trustee shall have the full power and authority to retain, on usual and reasonable commercial terms, financial, legal and other professional advisers, including investment bankers, that may be reasonably necessary or advisable in advising and assisting the Trustee in implementing a Port Terminal Divestiture Option.

25. After the Trustee's appointment becomes effective, the Trustee shall, every 30 days, file reports with the Commissioner and Agricore United, setting forth the Trustee's efforts to accomplish the Divestiture, all with reasonable detail. The Commissioner has the right to ask for additional information from the Trustee regarding the Divestiture and the Trustee shall respond within a reasonable time having regard to the nature of the request.

**Commissioner's Approval**

26. The implementation of a Port Terminal Divestiture Option is subject to the approval of the Commissioner in writing, which shall be based on the criteria outlined in paragraph 5 of this Agreement and shall be obtained in accordance with the notification procedure set out in paragraphs 28 to 31 of this Agreement.

27. The Commissioner may, in addition to the criteria set out in paragraph 5 of this Agreement, also take into account the likely impact of the Divestiture on competition in that market in deciding whether or not to approve the Divestiture.

**Notification**

28. Agricore United or the Trustee, whichever is then responsible for effecting the Divestiture required herein, shall notify the Commissioner in writing of any proposed Divestiture. If the Trustee is responsible, it shall similarly notify Agricore United. Such notice shall be given at or before the time a binding offer that is acceptable to Agricore United or the Trustee, as the case may be, is received and the notice shall include:

- (a) the identity of the proposed Purchaser;
- (b) the details of the proposed transaction;
- (c) information concerning whether the proposed Purchaser would satisfy the terms of paragraphs 5 and 27 of this Agreement;
- (d) an update of the last report provided pursuant to paragraph 13 of this Agreement or paragraph 25 of this Agreement, as the case may be; and

- (e) the agreement of the proposed Purchaser that it will respond as soon as possible to a request by the Commissioner for additional information regarding the proposed Divestiture.

29. Within ten (10) days after receipt of the notice referred to in paragraph 28 above, the Commissioner and, where the notice has been provided by the Trustee, Agricore United, may request additional information concerning the proposed Divestiture, the proposed Purchaser and any other potential Purchaser. Where the Commissioner requests additional information, Agricore United, the Trustee or the proposed Purchaser, as the case may be, shall provide the additional information within ten (10) days of the receipt of the request, unless the Commissioner agrees in writing to extend the time. Where Agricore United requests additional information, the Trustee shall provide the additional information within ten (10) days of the receipt of the request, unless Agricore United agrees in writing to extend the time.

30. Within fifteen (15) days after receipt of the notice pursuant to paragraph 28 of this Agreement or, if the Commissioner and/or Agricore United have requested additional information pursuant to paragraph 29 above, within fifteen (15) days after receipt of the said information:

- (a) the Commissioner shall notify, in writing, Agricore United and, where appropriate, the Trustee, if the Commissioner objects to the proposed Divestiture on one or more of the grounds set out in paragraphs 5 and/or 27 of this Agreement; and
- (b) in the case of a Divestiture proposed by the Trustee, Agricore United shall notify, in writing, the Commissioner and the Trustee if Agricore United objects to the

proposed Divestiture on one or more of the grounds set out in paragraph 17 of this Agreement.

31. If:
- (a) the Commissioner fails to object as contemplated by paragraph 30 of this Agreement or if the Commissioner notifies, in writing, Agricore United and, where appropriate, the Trustee, that the Commissioner does not object; and
  - (b) Agricore United fails to object as contemplated by paragraph 30 of this Agreement or if Agricore United notifies, in writing, the Commissioner and, where appropriate, the Trustee, that Agricore United does not object,

then the Divestiture may be completed.

32. Where the Commissioner or Agricore United has objected to a proposed Divestiture, that Divestiture shall not be completed without the approval of the Competition Tribunal.

33. Agricore United or the Trustee, as the case may be, shall notify the Commissioner forthwith after a Divestiture required by this Agreement has been completed.

#### **Maintenance of the Port Terminals**

34. The Commissioner confirms, that based on all the information currently available to him, that he has no reason to believe that Agricore United has violated any provision of the Interim Consent Order, including those provisions regarding the maintenance of the UGG Terminal and the Pacific Complex. Agricore United agrees that, until the implementation of a

Port Terminal Divestiture Option by Agricore United or the Trustee, Agricore United shall take such steps as are necessary to maintain the competitive viability of both the UGG Terminal and the Pacific Complex and shall not dispose of any material assets of the UGG Terminal or the Pacific Complex.

35. Without limiting the generality of the foregoing, until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, Agricore United shall provide such sales, managerial, administrative, operational and financial support as is necessary in the ordinary course of business to promote the continued effective operation of the UGG Terminal and the Pacific Complex in accordance with standards similar to those existing prior to the Closing Date.

36. Except as set out in paragraphs 39 to 43 below, until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, Agricore United shall not, without prior approval from the Commissioner (such approval not to be unreasonably withheld), enter into or withdraw from any material contracts or arrangements relating to the UGG Terminal or the Pacific Complex, make any material changes to such operations, or terminate any current employment, salary or benefit agreements for any management personnel employed in relation to either the UGG Terminal or the Pacific Complex.

37. For greater certainty, notwithstanding paragraphs 34 to 36, Agricore United may temporarily shut down the UGG Terminal or the Pacific Complex and may temporarily lay-off personnel employed in relation to either the UGG Terminal or the Pacific Complex in response to material changes in shipments through the Port of Vancouver caused by drought, poor crop quality, labour disputes, acts of God, action or failure to act of any government or governmental



regulatory authority, accident, fire, flood, or other event beyond the control of Agricore United or for the purpose of performing routine maintenance on either the UGG Terminal or the Pacific Complex. Notice of any temporary shut-down or lay-off shall be provided to the Commissioner in writing.

38. Until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, Agricore United shall honour all existing contracts for the handling of grain for Independent Grain Companies. In addition, Agricore United shall offer to handle for Independent Grain Companies in the aggregate a minimum of 125,000 tonnes of grain per month (1.5 million tonnes per year), by way of contracts, through either the UGG Terminal or the Pacific Complex or through terminal arrangements entered into by Agricore United with other terminals. Where Agricore United enters into a terminal arrangement for the handling of an Independent Grain Company's grain with a third party, there shall be no additional cost to the Independent Grain Company as a result of the use of such third party's facility beyond that contemplated in paragraph 40 below.

39. Until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, new contracts for the handling of Independent Grain Companies' grain shall be based on reasonable commercial terms consistent with past practice, and shall include: (1) a contract term that ends on a date certain, provided that the Independent Grain Company shall have an option to terminate the contract upon either (i) a Trustee being appointed pursuant to this Agreement to Divest one of the Port Terminals, or (ii) a Divestiture of one of the Port Terminals, (2) a commitment by the Independent Grain Company that Agricore United will handle all of its Vancouver volume for the duration of the contract, and (3) renegotiation or arbitration in the event of major regulatory change. Agricore United may terminate such an

agreement if the Independent Grain Company does not ship all of its Vancouver volume during the term of the contract through Agricore United.

40. Until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, prices for the handling of Independent Grain Companies' grain under any new contract shall be based on Agricore United's tariffs as filed with the Canadian Grain Commission under the *Canada Grain Act* (Canada) and Agricore United shall pay a diversion premium of at least \$2 per tonne. Diversion premiums negotiated between Agricore United and an Independent Grain Company shall remain confidential. Any non-CWB tariff increase or any diversion premium decrease (CWB or non-CWB grain) from these initial levels must be commercially reasonable.

41. In the event that bottlenecks, bountiful crop production or other causes create a situation of Full Capacity Operation at a port terminal facility designated to handle Independent Grain Companies' grain in respect of a given period (the "Relevant Period"), a terminal authorization for any given Independent Grain Company's grain will be issued in an amount equal to  $(A \div B) \times C$

**where:**

**A** = the relevant Independent Grain Company's shipment of grain through the Port of Vancouver for the last three completed months before the Relevant Period;

**B** = the total shipments of grain through the Port of Vancouver for the last three completed months before the Relevant Period; and

**C** = the available capacity at the designated port terminal facility for the Relevant Period.

In the event that an Independent Grain Company's terminal authorizations are reduced pursuant to this provision, all shippers to that terminal will have their terminal authorizations reduced on the same basis.

42. Until the implementation of a Port Terminal Divestiture Option by Agricore United or the Trustee, any disputes as to compliance with the commitments in paragraphs 38 to 41 as to price, tariffs, diversion premiums or other terms shall be settled by way of an arbitration procedure as outlined in Schedule "C" that is consistent with existing commercial practice and with terms of reference that have regard to market conditions and structure, capacity utilization, costs of operation, reasonable rate of return on investment and regulatory framework. During any arbitration procedure, Agricore United shall continue to provide port terminal services to the Independent Grain Company that initiated the arbitration.

43. Notwithstanding any other provision of this Agreement, Agricore United shall have no obligation to deal with an Independent Grain Company that defaults in payment or breaches other material terms of its contract with Agricore United.

44. Agricore United shall provide a copy of this Agreement to the Manager of Vancouver Operations and Agricore United shall direct such manager and any servants or agents of the parties operating and managing the UGG Terminal and the Pacific Complex to do so in accordance with the terms of this Agreement.

### **Compliance Inspection**

45. 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, Agricore United shall permit any duly authorized representative of the Commissioner:

- (a) upon a minimum of two (2) business days notice to Agricore United, access during office hours of Agricore United to inspect and copy all relevant books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Agricore United relating to compliance with this Agreement; and
- (b) upon a minimum of five (5) business days notice to Agricore United, and without restraint or interference from Agricore United, to interview relevant directors, officers or employees of Agricore United on matters in the possession or under the control of Agricore United relating to compliance with this Agreement. Such directors, officers or employees may have counsel present at these interviews.

**Notices**

46. Notices, reports or other communications required or permitted pursuant to this Agreement shall be in writing and shall be considered to be given if dispatched by confirmed personal delivery or facsimile transmission to the address or facsimile number below:

- (a) If to the Commissioner:

The Commissioner of Competition  
Competition Bureau  
Industry Canada  
Place du Portage  
Phase I, 50 Victoria Street  
Hull, Quebec  
K1A 0C9

Attention: John Campion  
John L. Syme  
Melanie Aitken  
Arsalaan Hyder

Fax: (819) 953-9267

(b) If to Agricore United:

Agricore United  
201 Portage Avenue  
TD Centre  
Winnipeg, Manitoba  
R3C 3A7

Attention: Christopher Martin

Fax: (204) 944-2299

With a copy to:

Davies Ward Phillips & Vineberg LLP  
Suite 4400  
1 First Canadian Place  
Toronto, Ontario  
M5X 1B1

Attention: Kent Thomson  
Sandra Forbes  
John Bodrug

Fax: (416) 863-0871

### **Term of Consent Agreement**

47. This Agreement shall remain in effect until a Divestiture contemplated by this Agreement has occurred or is no longer required hereunder.

### **General**

48. The Commissioner and Agricore United may, by way of mutual agreement, extend any of the time periods applicable herein.

49. If 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 Competition Tribunal for approval.

50. In the event of a dispute as to the interpretation or application of this Agreement, the Commissioner, the Trustee or Agricore United shall be at liberty to apply to the Competition Tribunal for an order interpreting any of the provisions of this Agreement.

51. It is understood that Agricore United does not agree with all of the allegations by the Commissioner in relation to this proceeding.

52. This Agreement constitutes the entire agreement between the Commissioner and Agricore United with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. Registration of this Agreement, in accordance with section 105 of the Act, terminates the Interim Consent Order.

53. 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** this 17th day of October, 2002.

**UNITED GRAIN GROWERS LIMITED**

(signed) Konrad von Finckenstein  
Commissioner of Competition

by (signed) Brian Hayward

**SCHEDULE "A"**

**Port Terminal Divestiture Option:** means, at Agricore United's option, the Divestiture of one of the following:

Option 1: all of the issued and outstanding shares of Pacific Elevators Limited ("PEL") and all of the issued and outstanding shares in Western Pool Terminals Ltd. ("WPTL") or all of the assets owned by PEL and WPTL; or

Option 2: the UGG Terminal.

If Agricore United has not implemented one of the Port Terminal Divestiture Options before the expiry of the Port Terminal Initial Sale Period, the Trustee may choose to Divest either Option 1 or Option 2 unless, prior to the expiry of the Port Terminal Initial Sale Period, Agricore United gives notice, at least 90 days before the expiry of the Port Terminal Initial Sale Period, that it elects that the Port Terminal in Option 1 or 2 as the case may be, be Divested by the Trustee, in which case the Trustee shall Divest the Port Terminal selected by Agricore United. If Agricore United selects Option 1, Agricore United can specify whether the Divestiture will occur by way of a share or asset sale.

Once a Divestiture is implemented, or the Trustee has obtained the right to Divest a Port Terminal in accordance with paragraph 14 of this Agreement, the remaining Port Terminal ceases to be a "Port Terminal" for the purposes of this Agreement.



**CONFIDENTIAL SCHEDULE "B"**

**SCHEDULE "C"**

**ARBITRATION PROCEDURES**

**1. Initiation of Arbitration Proceedings**

- (a) If any party to a port terminal handling agreement (the "PTH Agreement") wishes to have any matter under the PTH Agreement arbitrated in accordance with the provisions of the PTH Agreement, it shall give notice to the other party hereto specifying particulars of the matter or matters in dispute and proposing the name of the person it wishes to be the single arbitrator. Within 15 days after receipt of such notice, the other party to the PTH Agreement shall give notice to the first party advising whether such party accepts the arbitrator proposed by the first party. If such notice is not given within such 15 day period, the other party shall be deemed to have accepted the arbitrator proposed by the first party. Failing agreement of the parties on a single arbitrator within such 15 day period, either party may apply to a judge of the Manitoba Queen's Bench for the appointment of a single arbitrator. The arbitrator, whether agreed on by the parties or appointed by the Court (the "Arbitrator"), shall have the qualifications set out in paragraph (b).
- (b) The Arbitrator shall be at arm's length from all parties and as to the five year period prior to the Arbitration shall not be a member of any accounting or legal firm or firms who advise or who have advised any of the parties, nor shall the Arbitrator be an individual who has been retained by any of the parties.

**2. Submission of Written Statements**

- (a) Within 15 business days of the appointment of the Arbitrator, the party initiating the Arbitration (the "Claimant") shall send to the other party (the "Respondent") a Statement of Claim setting out in sufficient detail the facts and any contentions of law on which it relies, and the relief that it claims.
- (b) Within 15 business days of the receipt of the Statement of Claim, the Respondent shall send to the Claimant a Statement of Defence stating in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies on what grounds and on what other facts and contentions of law the Respondent relies.
- (c) Within 10 business days of receipt of the Statement of Defence, the Claimant may send the Respondent a Statement of Reply.
- (d) All Statements of Claim, Defence and Reply shall be accompanied by copies of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and (where practicable) by any relevant samples.

- (e) After submission of all the Statements, the Arbitrator will give directions for further conduct of the arbitration, which shall include meetings and hearings conducted in conformity with the Rules set forth below.

3. **Meetings and Hearings**

- (a) Meetings and hearings of the Arbitrator shall take place in the City of Winnipeg, Manitoba or in such other place as the Claimant and the Respondent shall agree upon in writing and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the Arbitrator. Subject to the foregoing, the Arbitrator may fix the date, time and place of meetings and hearings in the arbitration, and will give all the parties adequate notice of these provided the arbitration shall commence within 30 days after the exchange of the Statements. Subject to any adjournments, which the Arbitrator allows, the final hearing will be continued on successive working days until it is concluded.
- (b) All meetings and hearings will be in private unless the parties otherwise agree.
- (c) Any party may attend any meetings and hearings personally and/or be represented at any meetings or hearings by legal counsel or other representative.
- (d) Each party may examine, cross-examine and re-examine, as the Arbitrator shall deem appropriate, all witnesses at the arbitration.
- (e) The Arbitrator may appoint one or more experts to report to him or her on specific issues to be determined by the Arbitrator. The expert shall be at arm's length from all parties and as to the five year period prior to the arbitration shall not be a member of any accounting or legal firm or firms who advise or who have advised any of the parties, nor shall the expert be an individual who has been retained by any of the parties. The Arbitrator may require a party to give such expert(s) any relevant information, or to provide access to any relevant documents, goods, materials or other property for the expert's inspection. If a party so requests or if the Arbitrator considers it necessary, such expert(s) shall, after delivery of his or her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him or her and to present expert witnesses in order to testify on the points in issue.

4. **The Decision**

- (a) The Arbitrator will make a decision in writing and, unless both the parties otherwise agree, will set out reasons for his or her conclusions and findings in the decision.
- (b) The Arbitrator will send the decision to the parties as soon as practicable after the conclusion of the final hearing, but in any event no later than 60 days thereafter, unless that time period is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control.
- (c) The decision shall be final and binding on the parties and shall not be subject to any appeal or review procedure provided that the Arbitrator has followed these

Rules provided herein in good faith and has proceeded in accordance with the principles of natural justice.

5. **Jurisdiction and Powers of the Arbitrator**

- (a) By submitting to arbitration under these Rules, the parties shall be taken to have conferred on the Arbitrator the jurisdiction and powers set out in clause 5(b) below, each of which is to be exercised at the Arbitrator's discretion subject only to these Rules and the relevant law with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.
- (b) The Arbitrator shall have jurisdiction to:
  - (i) Determine any question of law arising in the arbitration;
  - (ii) Determine any question as to the Arbitrator's jurisdiction;
  - (iii) Determine any question of good faith, dishonesty or fraud arising in the dispute;
  - (iv) Order any party to furnish further details of that party's case, in fact or in law, or to produce any documents, goods, materials or other property relevant to any fact or law at issue in the arbitration;
  - (v) Proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
  - (vi) Receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
  - (vii) Make one or more interim awards, including without limitation, interim awards to secure all or part of any amount in dispute in the arbitration and injunctive relief;
  - (viii) Hold meetings and hearings, and make a decision (including a final decision);
  - (ix) Order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant; and
  - (x) Order the preservation, storage, sale or other disposal of any property or thing under the control of any of the parties.

- (c) In addition, the Arbitrator shall have such further jurisdiction and powers as may be allowed by the *Arbitration Act* of Manitoba, as amended or substituted from time to time.
- (d) Notwithstanding the parties' intention that the Arbitrator be able to act free of Court proceedings as set forth herein, the parties consent to the decision of the Arbitrator being entered in any Court having jurisdiction for the purposes of enforcement.

6. **Arbitration Costs**

The Arbitrator's fees and all expenses and disbursements incurred by the Arbitrator in the conduct of the arbitration shall be shared equally between the parties. Expenses and disbursements, including without limitation, legal fees and expenses, travel costs and photocopying incurred by a party for its own participation in the arbitration shall be for the account of such party. The Arbitrator shall not be empowered to award costs to either party.

7. **Confidentiality**

All statements and evidence submitted for the arbitration, the decision of the Arbitrator, the fact of the arbitration itself and all other aspects regarding the arbitration shall be kept strictly confidential except as otherwise required by applicable law.