

Competition Tribunal



Tribunal de la Concurrence

Reference: The Commissioner of Competition v. United Grain Growers Limited, 2002 Comp. Trib. 21
File no.: CT2002001
Registry document no.: 0032

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

AND IN THE MATTER of an application by the Commissioner of Competition under section 92 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.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

United Grain Growers Limited
(respondent)

and

Saskatchewan Wheat Pool
(applicant for leave to intervene)



Date of hearing: 20020514 to 20020515
Member: McKeown J. (Chairman)
Date of order: 20020529
Order signed by: McKeown J.

REASONS AND ORDER REGARDING REQUEST FOR LEAVE TO INTERVENE

[1] On January 2, 2002, following the acquisition by United Grain Growers Limited (“UGG”) of Agricore Cooperative Ltd. (“Agricore”), the Commissioner of Competition (the “Commissioner”) filed an application pursuant to section 92 of the Competition Act, R.S.C. 1985, c. C-34 (the “Act”) for: (a) an order or orders against the respondent pursuant to section 92 of the Act requiring the respondent to divest, at the respondent’s option: (i) all of its interests in the Pacific Elevators Limited (“Pacific”) grain terminal at the Port of Vancouver (as more fully described in paragraph 21 of the Statement of Grounds and Material Facts dated December 19, 2001) (“Statement of Grounds and Material Facts”), Western Pool Terminals Limited (“WPTL”) and the Loan Agreement between Pacific, WPTL and Alberta Wheat Pool dated January 11, 1996; or (ii) UGG’s grain terminal at the Port of Vancouver (as more fully described in paragraph 21 of the Statement of Grounds and Material Facts); and (b) such further orders as may be appropriate.

[2] While the Commissioner’s position is that there are two options: either the divestiture of the UGG facility or the divestiture of the respondent’s 70 percent interest in the Pacific terminal as a whole, the respondent submits that there should be a third option; namely, the divestiture of the so-called Pacific 1 terminal.

[3] The existence of a substantial lessening of competition (“SLC”) in the market for port terminal grain handling services in the Port of Vancouver has been agreed to by the parties for the purpose of this proceeding and is not in issue in this application. The sole substantive issue in this proceeding is to determine what divestiture will effectively address this SLC; specifically whether the divestiture of the Pacific 1 terminal would satisfy the four conditions set out in paragraph 77 of the Statement of Grounds and Material Facts. Both parties agree that a divestiture that satisfies these four conditions would be sufficient to remedy the SLC.

[4] A request for leave to intervene in the proceedings was filed by the Saskatchewan Wheat Pool (“SWP”) on February 19, 2002.

[5] SWP has a 30 percent interest in the Pacific terminal facilities in Vancouver. Therefore, its economic interests could be affected by the respondent’s decision regarding divestiture. However, if the respondent were to divest the UGG facility or reach an agreement with SWP concerning the divestiture either of its 70 percent interest in the Pacific terminal facility or concerning divestiture of the Pacific 1 facility, SWP would not need to appear before the Tribunal to make representations about its contractual or proprietary interests.

[6] In light of the possibility that SWP may be affected by the respondent’s divestiture, the parties agree to have SWP intervene in this proceeding and make submissions and, if necessary, adduce evidence as to why certain options should not be available to the respondent. The interest of the SWP is to make sure that its proprietary or contractual interests in the Pacific terminal are not affected adversely by an order that this Tribunal might make.

FOR THESE REASONS THE TRIBUNAL ORDERS THAT:

[7] In the event that the respondent decide to exercise a “divestiture option” that affects SWP, SWP shall be granted leave to intervene on the following issue:

(a) its contractual or proprietary interests in relation to the Pacific terminal facility in the Port of Vancouver.

SWP shall be allowed to participate in the proceedings and permitted:

(a) to review any discovery transcripts and access any discovery documents of the parties to the application but not direct participation in the discovery process, subject to confidentiality orders;

(b) to call viva voce evidence on the following conditions and containing the following information: (1) the names of the witnesses sought to be called; (2) the nature of the evidence to be provided and an explanation as to what issue within the scope of the intervention such evidence would be relevant; (3) a demonstration that such evidence is not repetitive, that the to be facts proven have not been adequately dealt with in the evidence so far; and (4) a statement that the Commissioner had been asked to adduce such evidence and had refused;

(c) to cross-examine witnesses at the hearing of the application to the extent that it is not repetitive of the cross-examination of the parties to the application;

(d) to submit legal arguments at the hearing of the application that are non-repetitive in nature and at any pre-hearing motions or pre-hearing conferences; and

(e) to introduce expert evidence which is within the scope of its intervention in accordance with the procedure set out in the Competition Tribunal Rules, SOR/94-290, and case management.

DATED at Ottawa, this 29th day of May, 2002.

SIGNED on behalf of the Tribunal by the presiding judicial member

(s)W.P. McKeown

APPEARANCES:

For the applicant:

John Syme
Arsalaan Hyder

For the respondents:

Kent E. Thomson
Sandra A. Forbes

For the applicant for leave to intervene:

The Saskatchewan Wheat Board

Reginald A. Watson