PUBLIC

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. INTRODUCTION

1. The Commissioner of Competition (the "Commissioner") brings this application pursuant to sections 92 and 104 of the *Competition Act* (the "Act") on the grounds that the acquisition by United Grain Growers Limited ("UGG") of Agricore Cooperative Ltd. ("Agricore") on November 1, 2001 (the "Acquisition") is likely to prevent or lessen competition substantially in the market for port terminal grain handling services in the Port of Vancouver.

2. UGG and Agricore have been carrying on business as Agricore United since November 1, 2001 (hereinafter the Respondent will be referred to as "Agricore United"). On December 17, 2001 a separate application relating to this same transaction was brought pursuant to section 92 and 105 of the Act to remedy the substantial lessening or prevention of competition alleged by the Commissioner in: (1) the purchasing and handling of grain in certain local markets in Western Canada; and (2) canola oil-seed purchasing and processing in Canada.

II. THE PARTIES

3. The Applicant is the Commissioner, appointed under section 7 of the Act and charged with the administration of the Act.

4. The Respondent, Agricore United, which has its head office in Winnipeg, Manitoba, provides a wide range of goods and services to farmers in Western Canada and also markets agricultural commodities domestically and internationally.

5. Prior to the Acquisition, UGG operated four distinct but related businesses: (1) grain handling and marketing at both the port terminal and primary grain elevator level, (2) agro-business (crop inputs) supplies and services, (3) farm business publications and (4) livestock services.

6. Prior to the Acquisition, Agricore provided a wide range of goods and services to farmers in Western Canada. Specifically, Agricore operated four distinct but related businesses: (1) grain handling and marketing at both the port terminal and primary grain elevator level, (2) agro-business (crop inputs) supplies and services, (3) farm business publications and (4) agri-food processing. Agricore was a one hundred percent farmer owned cooperative.

III. THE TRANSACTION

7. 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 ("Plan of Arrangement") under section 192 of the *Canada Business Corporations Act.* The Plan of Arrangement provided that UGG would acquire control of all business assets of Agricore. These assets included:

   (a) whole or partial interests in port terminal facilities in Vancouver, Prince Rupert and Thunder Bay;

   (b) whole or partial interests in Western Canadian primary grain elevator facilities;

   (c) agro-business interests (crop inputs supplies and services); and

   (d) a 16.67% interest in CanAmera Foods Limited Partnership ("CanAmera").

8. As noted above, the transaction was completed on November 1, 2001.

IV. DETAILS OF THE INQUIRY

9. On or about June 11, 2001, the parties advised the Commissioner of the proposed merger transaction. However, examination of the transaction, pursuant to section 92 of the Act did not commence until July 30, 2001, when the matter was made public by the parties.

10. The statutory pre-merger long-form notification filings of the parties, pursuant to section 114 of the Act, were completed on August 9, 2001.

11. An inquiry into this merger was commenced by the Commissioner on September 6, 2001, pursuant to section 10 of the Act. On the same day Bureau staff met with counsel for UGG to re-iterate that the merger raised serious competitive concerns. The Bureau's concerns had initially been expressed to UGG in a letter dated August 3, 2001.

12. The Acquisition combines the two largest grain handling companies in Alberta and Manitoba and resulted in Agricore United having market shares in primary elevator grain handling in excess of 50% in several markets in Manitoba and Alberta. In port terminal grain handling services at the Port of Vancouver, the merged entity will have a market share with approximately 63% of the licensed storage capacity.

13. The preliminary examination and the inquiry into the Acquisition has included the following:

    (a) a review of pre-merger long-form notification information provided by UGG and Agricore under section 114 of the Act;

    (b) a review of information provided voluntarily by UGG and Agricore, including competitive analyses;

    (c) members of the investigative team meeting with and obtaining information from competitors and government agencies in Western Canada, as well as touring both primary and port grain handling facilities;

(d) over 30 interviews, either in person or by telephone, with market participants, including customers, farmers, competitors, suppliers and government departments and agencies;

(e) a review of written submissions and reports from various third parties, including market participants;

(f) meetings and discussions with UGG counsel as well as representatives of both UGG and Agricore, either in-person or by telephone, to provide and obtain information about the Acquisition and to discuss emerging issues;

(g) through the Federal Court of Canada, the issuance of orders for the production of records and written return of information to the parties to the Acquisition;

(h) through the Federal Court of Canada, the issuance of orders for the production of records and/or written return of information to 18 third-party competitors in, or suppliers to, the Western Canadian grain-handling industry; and

(i) telephone discussions with representatives of the US Federal Trade Commission who had reviewed mergers in the grain handling industry in the United States.

14. Concerns expressed through the Commissioner's market contacts regarding the Acquisition include:

(a) the likelihood of a substantial increase in the handling costs of grain at primary elevators in local markets with high post-merger market shares;

(b) the likelihood of a substantial increase in farmers' transportation costs realized through a decrease in hauling allowances offered to farmers for the delivery of grain to primary elevators in local markets with high post-merger market shares;

(c) the likelihood of a substantial decrease in the prices offered for non-Canadian Wheat Board grains at primary elevators in local markets with high post-merger market shares;

(d) the likelihood of a substantial increase in the handling costs of grain at port terminal facilities at the Port of Vancouver realized in part through a reduction in the diversion premiums (described in paragraph 35) offered to third party grain handling companies for port terminal grain deliveries;

(e) the likelihood of a substantial decrease in the prices offered for canola seed; and

(f) the likelihood of a substantial increase in the price of products derived from canola oil seed processing.

V. COMPETITIVE EFFECTS OF THE MERGER

SUMMARY

15. The Acquisition is likely to substantially lessen or prevent competition in the following markets:

(a) port terminal grain handling services in Vancouver, British Columbia;

(b) local primary grain handling services in certain local markets in Alberta and Manitoba; and

(c) domestic canola seed purchasing and processing.

16. The issues raised in paragraph 15 (b) and (c) are addressed in the Consent Application that the Commissioner filed with the Tribunal on December 17, 2001. This application is limited to the issue raised in the paragraph 15 (a).

PORT OF VANCOUVER GRAIN TERMINALS

Industry Overview

Introduction

17. The grain industry in Western Canada has a number of elements and various participants. They include:

(a) farmers, who produce grain;

(b) grain handling companies such as Agricore United (and prior to the Acquisition, UGG and Agricore) who purchase grain from farmers, either as agents of the Canadian Wheat Board ("CWB") or on their own account, at the grain handling companies' primary grain elevators which are located across the Prairies. There are two kinds of primary elevators - traditional wooden elevators and high through-put elevators ("HTPs"). HTPs have substantially greater capacity than traditional elevators.

(c) the CWB, which is, by law, the only purchaser of wheat and barley, that is either to be exported from Canada or used for domestic human consumption. Grain meeting that description is referred to as "CWB grain", while all other grain is referred to as "non-CWB grain" (hereinafter, where no distinction is required between CWB grain and non-CWB grain, it will be referred to simply as "grain"). Grain handling companies merchandise all non-CWB grain;

(d) the railways (i.e., Canadian National Railway and the Canadian Pacific Railway) both of which transport CWB and non-CWB grain from primary elevators to, among other places, port terminals located in Vancouver, Prince Rupert and Thunder Bay;

(e) port terminals, where grain from the Prairies is delivered for storage, in some cases "cleaning," and ultimately, shipping. Certain grain handling companies, such as Agricore United, have ownership interests in primary elevators and port terminals in Vancouver. These companies are hereinafter called "Integrated Graincos". Other grain handling companies own only primary elevators. These companies are hereinafter called "Non-Integrated Graincos"; and

(f) ocean-going vessels onto which grain is loaded for export.

18. Grain from Western Canada that is to be exported outside of North America is shipped to ports at Vancouver, British Columbia; Prince Rupert, British Columbia; Thunder Bay, Ontario; and Churchill, Manitoba. Largely due to transportation costs and the location of customers, each port constitutes a relevant geographic market. In the 1998-99 and 1999-00 crop years the Port of Vancouver received approximately 55% of total grain exports received at all Canadian ports.

19. Western Canadian farmers produced approximately 48 million tonnes of grains, oilseeds and specialty crops in the 1999-00 crop year. Approximately 33.125 million tonnes of these crops were brought to markets in Canada and offshore through primary elevators owned by grain handling companies. Approximately 25 million tonnes were exported from Canada in the 1999-00 crop year. Of that 25 million tonnes, approximately 3 million tonnes were shipped by rail to the US, and the balance was shipped through Canadian ports.

20. The size of the draw area for a port grain terminal is much larger than for primary elevators. The draw areas for port terminals are determined primarily by relative freight costs as between different ports and the location of export demand. The dividing line between east and west moving grain has tended to shift eastward in recent years in response to the increase in export demand from Asian countries. In certain circumstances, the CWB and grain companies ship grain to Vancouver from as far away as Manitoba.

Canadian West Coast Port Terminal Facilities

21. On the West Coast, there are five port grain terminals in Vancouver and one at Prince Rupert. In Vancouver the terminals are as follows:

    (a) Cascadia terminal with 282,830 tonnes of licensed storage capacity. Cargill Limited ("Cargill") and Agricore United each own 50% of Cascadia;

    (b) Pacific Elevators Limited terminal ("Pacific") with 199,150 tonnes of licensed storage capacity. Agricore United has a 70% interest in Pacific while Saskatchewan Wheat Pool ("SWP") owns 30% of Pacific;

    (c) SWP terminal, with a licensed storage capacity of 237,240 tonnes, is wholly owned and operated by SWP;

    (d) James Richardson International Limited ("JRI") terminal, with licensed storage capacity of 108,000 tonnes, is wholly owned and operated by JRI; and

    (e) UGG terminal, with licensed storage capacity of 102,070 tonnes, is wholly owned and operated by UGG.

    Appendix "A" to this Statement identifies the locations of the foregoing port grain terminals. Figure I in Appendix "A" is a map of Burrard Inlet where all five terminals are located, while Figure II shows the terminal locations in relation to the Greater Vancouver Region.

22. The Prince Rupert Grain Ltd. ("PRG") terminal, with licensed storage capacity of 209,510 tonnes, is operated under a co-tenancy agreement wherein pre-merger Agricore had a 30.3% interest, SWP had a 31.3% interest, UGG had a 14.6% interest, Cargill had a 12.9% interest and JRI had a 10.9% interest. The interests held by the co-tenants are reviewed and adjusted annually, if required, to reflect the volumes each "tenant" ships through the terminal. Although the PRG

terminal is modern and highly efficient, in recent years it has only been open a portion of the year. This, in large part, is due to the fact that its owners all have an equity interest in Vancouver terminals and earn greater revenues on grain moving through their Vancouver facilities where they are not required to split revenues with a number of other facility owners. As a result, the PRG terminal is generally used as an overflow facility for the Vancouver grain terminals.

Regulatory Environment

23. The grain handling industry is regulated by the Canadian Grain Commission ("CGC") and the Canadian Wheat Board ("CWB") pursuant to the *Canada Grain Act* and the *Canadian Wheat Board Act*, respectively.

Canadian Grain Commission

24. The CGC is responsible for ensuring that grain produced in Canada meets certain quality standards. CGC inspectors monitor grain quality and enforce standards in respect of the grain delivered to port grain terminals. In order to respond to different customer demands for specific quality characteristics of grain (primarily wheat) the CGC has, pursuant to section 16 of the *Canada Grain Act*, established in excess of 100 "segregations", each of which must be handled and stored separately. Segregations are made on the basis of factors such as: the type of grain, the grade of grain and its protein content.

25. Pursuant to section 50 of the *Canada Grain Act*, tariffs for each service offered at any port grain elevator must be filed annually with the CGC. However, the CGC is not required to approve the tariffs before they come into force and there is no complaint mechanism under the *Canada Grain Act* which would permit shippers to challenge tariffs filed with the CGC. The CGC does not have any regulatory oversight relating to the payment of diversion premiums.

26. Pursuant to subsection 69(1) of the *Canada Grain Act*, licensed terminal elevators, including those

at the Port of Vancouver, are required to "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." Subsection 69(2) of that Act empowers the CGC to require the operator of a licensed terminal elevator to receive grain offered for storage or transfer at the elevator. However, the issue of available storage accommodation is one that can be difficult to assess at any given time.

Canadian Wheat Board

27. The CWB is by law the sole purchaser and seller of CWB grains (i.e., wheat and barley for export and domestic human consumption). Grain handling companies purchase CWB grains from farmers as agents of the CWB at prices fixed periodically by the CWB. The majority of all non-CWB grains (i.e., grains such as canola, peas and lentils) are purchased at primary elevators by grain handling companies on their own accounts at market prices.

28. The CWB recently adopted a tendering system pursuant to which grain handling companies can tender to supply grain and ship it to a specified port grain terminal destination. Rail cars are provided to the grain company that submits the "winning" tender. During the current crop year, the CWB will put out to tender a minimum of 25% of its grain handling requirement to grain handling companies, rising to a minimum of 50% for the 2002-03 crop year. The allocation of rail cars for CWB non-tendered requirements among the grain handling companies is based on: (1) an 18-week running average of CWB grain through-put at each primary elevator; and (2) the balance of outstanding CWB quota from farmers who last delivered to the grain company's elevators and are assumed to continue to do so.

Car Pooling

29. Prior to October 2000, there was "rail car pooling" ("pooling") at the Port of Vancouver. Pooling, which involved the co-mingling of grain cars shipped to Vancouver by grain handling companies, was introduced in the 1970s. At that time, a train load of grain arriving at the Port could have been made up of rail cars that had been shipped by various grain handling companies. Rather than requiring the railway to make multiple stops at various port grain terminals, pooling allowed the railway to deliver or "spot" the entire train at a single terminal.

30. In April 2000, the grain companies terminated the pooling arrangement with regard to canola and in October 2000, pooling with respect to CWB grain was terminated at the request of the railways in order to increase the efficient use of their rail cars.

Terminal Authorization

31. Currently, prior to the loading of rail cars at a primary elevator for delivery to a port, grain handling companies must obtain terminal authorization from a port grain terminal. The railway delivers rail cars to the terminal specified in the terminal authorization. However, in unforseen circumstances when the authorized terminal cannot accept the grain, alternative arrangements may be made to have the grain delivered to an alternative terminal. Terminal authorization to ship product to port may be denied if the port grain terminal is at capacity and is unable to accommodate further "unloads" of grain.

Incentives/Rebates

Rail Rebates and Demurrage

32. In the Prairies, a Multi-Car Incentive ("MCI") rebate is offered by the railways to grain handling companies in order to maximize the efficiency of the rail transport by encouraging the use of 25, 50 or 100 rail car units. MCI rebates are offered by the railways to grain handling companies

based on their ability to provide the railways, within a set period of time following the delivery of empty rail cars, loaded blocks of 25, 50 or 100 rail cars for transport from individual primary elevators. In order to obtain the rebate, the loaded block of cars, whether 25, 50 or 100, must also be unloaded at the designated port within a fixed period of time following delivery. Since the supply of grain cars can be a bottleneck in the system, the loading and unloading time limits are intended to expedite the handling of rail cars so as to minimize their turnaround time. The MCI rebate scheme is set out in the following table:

Rail Incentives		**Incentive Conditions**	
Rail Car Block	Rail Incentive	Load Time	Unload Time
25 to 49	$1 per tonne	10 Hours	48 Hours
50 to 99	$4 per tonne	10 Hours	48 Hours
100	$6 per tonne	24 Hours	48 Hours

33. If rail cars delivered to a port grain terminal are not unloaded within a specified time period, grain terminal operators risk being charged demurrage by the railways.

34. Rail car demurrage was contractually established by the railways several years ago, but has only recently been more strictly enforced. Terminal operators are now penalized for any failure to unload cars (for which it has issued a terminal authorization) within 48 hours of the railway delivering the cars to the terminal. A demurrage charge of $50 per day per car is assessable for delays.

Diversion Premiums

35. The Integrated Graincos (i.e., grain handling companies that have an ownership interest in a port terminal) offer per tonne payments which can be referred to as “diversion premiums”, to Non-Integrated Graincos. These diversion premiums are confidential and range from approximately $1 to $4 per tonne. The amount of the port terminal diversion premiums offered in the Port of Vancouver has tended to fluctuate over the years, however during the last crop year they have

declined significantly.

36. If Integrated Graincos do not have sufficient grain in their "pipeline" (i.e., from farmers, through their primary elevators on the Prairies and in transit by rail to Vancouver), to optimize their potential handle at their port grain terminals, they can use diversion premiums to attract grain shipped to Vancouver by Non-Integrated Graincos and earn the elevation, storage and cleaning (when required) fees on that grain. Since an increasing number of primary grain elevators on the Prairies have cleaning facilities, port grain terminals currently only clean approximately 50% of the total grain volume received for shipping.

37. [ ]

38. For Non-Integrated Graincos to compete effectively with Integrated Graincos, especially under the new CWB tendering regime, it is essential that they have regular and predictable access to a port terminal. As noted above, access 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 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 also important that Non-Integrated Graincos have access to all the revenue streams associated with grain handling, such as, country elevation, cleaning, MCI rebates and terminal diversion premiums.

Product Market

39. The relevant product market is port terminal grain handling services.

40. Port terminal grain handling services is a distinct product market without practical substitutes for the shipment of grain to international customers. Port grain terminals differ from other port off-loading facilities in their physical characteristics, means of production, uses and pricing.

Geographic Market

41. The relevant geographic market is the Port of Vancouver, British Columbia.

42. Since the mid-1980s, Canada's traditional grain markets have shifted from Europe to Asia, which has resulted in a larger portion of grain shipments going through Canadian West Coast terminals, as opposed to Thunder Bay and Churchill. Largely due to transportation costs and the location of customers, each port constitutes a relevant geographic market. Due to shifting demand in recent years, increasing amounts of Western Canadian grain have been shipped to the West Coast for export. Vancouver became Canada's main grain export port in the early 1990s. Today the level of port shipments at Vancouver is approximately twice the level at Thunder Bay.

43. The terminal at Prince Rupert is not in the same geographic market as the Vancouver terminals. The additional 300 kilometre distance which must be travelled to reach Prince Rupert as compared to Vancouver is reflected in higher rail costs. The net rail transportation cost to Prince Rupert is approximately \$2 to \$3 per tonne higher than for Vancouver. The cost of rail transportation to Vancouver ranges from about \$28-\$45 per tonne. Therefore the cost of transporting grain from the Prairies to Prince Rupert is 6% to 9% higher than to Vancouver.

44. As noted in paragraph 25, the operators of grain terminals are required to file tariffs with the CGC. The licensed terminal tariffs for receiving, elevating and loading out wheat (including Durum) in Vancouver are:

Crop Year	UGG	JRI	Pacific	SWP	Cascadia
	($ per tonne)	($ per tonne)	($ per tonne)	($ per tonne)	($ per tonne)
1993-94	5.80	5.80	5.80	5.80	5.80
1994-95	5.91	5.80	6.15	5.92	6.15
1995-96	6.33	6.04	6.33	6.33	6.33
1996-97	6.58	6.71	6.57	6.58	6.57
1997-98	6.80	6.85	6.71	6.78	6.71
1998-99	7	7.00	7.00	6.78	6.95
1999-00	7.00	7.00	7.00	7.00	7.00
2000-01	7.00	7.00	7.14	7.00	7.14
2001-02	7.2	7.25	7.28	7.28	7.28

Note: Tariffs are subject to change during the crop year.

45. In addition to the elevation charges, cleaning fees are approximately $3.50/tonne and storage fees are approximately 6¢/day per tonne. Since the five terminals' current tariffs are virtually identical, price competition amongst port grain terminals is primarily through diversion premiums given to Non-Integrated Graincos.

46. The tariff for the 2001-02 crop year for elevation of wheat (including durum) at the PRG terminal is $7.28 per tonne. To be price competitive with Vancouver, PRG terminal would have to offer a discount of $2 to $3 per tonne (to account for the rail cost differential), and match any diversion premium offered in Vancouver. This circumstance makes it difficult for PRG terminal to be price competitive with the Vancouver terminals.

47. The amount of grain shipped through the PRG terminal in the 2000-01 crop year was approximately 2.2 million tonnes, which represents a decrease in grain volume of 33% from the previous year.

48. The co-owners of PRG terminal are the same five terminal companies that own the 5 terminals in the Port of Vancouver. They prefer to use their Vancouver facilities because they earn greater revenues there relative to revenues earned at Prince Rupert. In addition, the opening of the PRG terminal requires unanimous approval from all 5 owners. Over the past three crop years, the facility

has been closed approximately one third of the time.

49. For all these reasons, PRG terminal cannot be relied upon to discipline a small but significant price increase for port grain terminal grain handling services in Vancouver.

Market Shares/ Concentration

50. At each of the 5 Vancouver port grain terminals, there is a high correlation between the amount of licensed storage capacity and the volume of grain handled. The capacity and handle for the 5 terminals in the 1999-00 crop year, as well as relative market shares, is presented in the table below:

Terminals	Ownership Interests	Shipments		Storage Capacity	
		Tonnes	Market Share	Tonnes	Market Share
Cascadia	**50%- Agricore 50%- Cargill**	**[ ]**	**[ ]**	**282,830**	**30.4%**
UGG	**100%-UGG**	**[ ]**	**[ ]**	**102,070**	**11%**
Pacific	**70%- Agricore 30%-SWP**	**[ ]**	**[ ]**	**199,150**	**21.4%**
SWP	100%- SWP	[ ]	[ ]	237,240	25.5%
JRI	100%- JRI	[ ]	[ ]	108,000	11.6%
Total		13,233,754	100%	929,290	100%
Combined UGG/Agricore		**[ ]**	**[ ]**	**584,050**	**62.8%**

51 Absent a divestiture, Agricore United would have a post-merger market share of over [ ]%. In the Vancouver port terminal grain handling market, the top four port grain terminals (i.e. Cascadia, Pacific, SWP and JRI) account for [ ]% of the total grain handling volume, with the UGG terminal

handling the remaining [ ]% of the volume. The post-merger levels of concentration in the Vancouver port terminal grain handling market are well above the thresholds for concerns relating to both unilateral and interdependent exercise of market power as set out in the Commissioner's *Merger Enforcement Guidelines*.

52. Pre-merger, through its UGG port terminal, the Respondent owned approximately 11% of the available grain terminal storage capacity at the Port of Vancouver. With the acquisition of the Pacific and Cascadia port terminals, the Respondent will have a whole, or at least 50% ownership interest in three of the five existing Vancouver port grain terminal facilities.

53. In the view of the Commissioner, Agricore United's 70% interest in Pacific provides it with *de jure* control of the terminal. Agricore United's 50% interest in Cascadia, while bordering on *de jure* control, clearly meets the "significant interest" test as outlined in the *Merger Enforcement Guidelines*. In light of these interests, pre-merger Agricore's market share at the Port of Vancouver was approximately 50%, [ ] measured by [ ] storage capacity.

54. If Agricore United is permitted to keep the UGG, Pacific and Cascadia terminals, it will control about 63% of the total available grain handling capacity at the Port of Vancouver.

55. The approximate post-merger Herfindahl-Hirschman Index ("HHI") for port terminal grain handling in Vancouver would be about 2,868, with an increase in the HHI of 760 points resulting from the Acquisition. An assessment of the market shares and concentration is only the starting point in an examination of the likely effects of a merger on competition, other relevant factors must also be considered.

Section 93 Factors

<u>Acceptable Substitutes</u>

PRG

56. The terminal facility at Prince Rupert, British Columbia is not in the same geographic market as the five terminals in Vancouver. The net rail transportation cost to Prince Rupert is approximately $2 to $3 per tonne higher than for Vancouver.

Direct Rail Exports to the US

57. Direct grain shipments to the US by rail are a potential substitute for port grain terminals in Vancouver. Shipments to the US include durum and milling wheat for processing in US mills. In the period from 1993-94 to 1999-00 these shipments fluctuated from approximately 1.9 million tonnes to 3.4 million tonnes. For the 1999-00 crop year it was approximately 3 million tonnes. These shipments represented a maximum of 15% of total grain volumes for those grain types. A significant increase in rail shipments to the US cannot be relied upon to discipline the anti-competitive effects arising from the Acquisition in the Port of Vancouver because of the overall transportation cost disadvantage that Western Canada suffers relative to local US producers. In addition, the purchase decisions of these US buyers are based on factors over and above small but significant changes in grain prices, such as supply and demand conditions in their selling markets.

US Port Terminals

58. U.S. port grain terminals in the Pacific North West are not an acceptable substitute for port grain terminal services in Vancouver. Rail rates are approximately $20 per tonne higher from Western Canada to Portland or Seattle as compared to Vancouver. In addition, there are significant differences between Canadian and U.S. ports with respect to grading, cleaning and inspection requirements. There is also an issue of losing quality control when shipping through US ports.

Canada's reputation for grain is based not only on high quality but also the consistency of quality. Canadian grain exported from domestic ports must pass federal inspection (CGC export standards) with respect to quality.

59. In addition to the foregoing, using US port terminals raises a second issue. As noted above in paragraph 24, Canadian grain is segregated by grade, protein and other factors. US port terminals do not employ the same number of segregations and therefore are not fully capable of handling Canadian grain exports.

Neptune Bulk Terminals and Vancouver Wharves

60. There are two bulk handling terminals at the Port of Vancouver, namely, Neptune Bulk Terminals ("Neptune") and Vancouver Wharves. Neptune has to date been providing limited grain handling services at the Port of Vancouver and in 2001 completed the conversion of one of their berths to better able them to handle specialty crops and other grains. Vancouver Wharves opened its facility for specialty crops in 2000. Neither of these terminals are dedicated grain facilities since both handle a variety of commodities. With respect to grain products they primarily handle specialty crops, and have the potential this year to handle approximately [ ]% of the total grain volume received at the Port of Vancouver. However, they still face operational limitations in that they can only receive grain on a direct hit basis (i.e. from rail cars directly on to vessels) due to very limited storage capacity and an inability to blend and clean grains. As a result of the precise logistics required in such an operation (i.e. 'just in time delivery', vessel availability, etc.), these facilities are not regarded as acceptable substitutes as evidenced by their low market share.

Barriers to Entry

61. The barriers to entry into port terminal grain handling services market in Vancouver are very high.

62. Capital costs for construction of a new terminal facility are estimated to be in the range of $100-

$300 million, depending on the size of the terminal. The numerous wheat segregations established by the CGC in response to demands for specific protein content and other quality measures, impose a need for considerable storage capacity which is costly to construct.

63. There is little or no land available upon which a new grain handling terminal could be built in Vancouver. Although Roberts Bank (located south of Vancouver) has been considered as a possible location for a grain handling terminal, its poor soil conditions would significantly increase the cost of construction. Concern has also been raised over the potential for grain contamination from the nearby coal terminal.

64. As a result of the lack of suitable land in Vancouver and the need for rail and ocean vessel berth access, the potential for new entry is very remote. Entry in the foreseeable future (i.e. 3 to 5 years) is very unlikely.

65. Regulation is also a barrier to entry. It would take approximately 2 years to obtain the approvals required to construct a terminal in the Port of Vancouver.

Removal of a Vigorous and Effective Competitor

66. Agricore has been a strong competitor to UGG in providing grain handling services at the Port of Vancouver.

67. Absent a divestiture, the Acquisition will result in significantly less choice for Non-Integrated Graincos to ship their grain. This would allow Agricore United to exercise market power, resulting in higher handling fees and lower diversion premiums.

Effective Remaining Competition

68. If UGG is permitted to retain Agricore's interests in port grain terminals at the Port of Vancouver, the only non-Agricore United terminals available for use by Non-Integrated Graincos will be the

JRI and SWP terminals. In light of the post-merger market share of Agricore United in the Port of Vancouver the two remaining terminals would not have sufficient capacity to be effective competitors for the purposes of eliminating the substantial lessening of competition arising from the Acquisition.

Foreign Competition

69. As discussed in paragraph 57, direct rail shipments to US markets are not effective competition for the purposes of eliminating the anti-competitive effects arising from the Acquisition. Furthermore, US port grain terminal facilities do not compete effectively for Canadian export grain shipments for the reasons set out in paragraph 58 and 59.

Other Factors

Interdependence

70. Pre-merger, there existed in the Port of Vancouver the potential for the exercise of interdependent market power as a result of the ownership linkages in 3 of the 5 terminals. However, post-merger, there is an even greater likelihood of exercise of interdependent market power because of the ownership structure in Vancouver's port grain terminals. As a result of the Acquisition, Agricore United is linked with Cargill by virtue of their joint ownership of the Cascadia terminal (50% Agricore, 50% Cargill) and SWP as a result of their respective interests in the Pacific terminal (70% Agricore United, SWP 30%). In other words, post merger, 4 of the 5 terminals owners in the Port of Vancouver are linked. JRI remains the only non-linked facility in the Port of Vancouver. However, JRI is linked with the other four companies through its ownership interest in the PRG terminal.

Impact on Competition at Primary Elevators

71. The horizontal competition concerns arising from the Acquisition with respect to the Prairies are

dealt with in the Commissioner's application of December 17, 2001. The Commissioner believes that the vertical relationship between primary elevators and port grain terminals can raise additional competition concerns on the Prairies.

72. Due to the relationship between grain handling in the country and grain handling at the Port of Vancouver, the ability of Agricore United to exercise market power in Vancouver will also have anti-competitive effects in local primary grain handling markets across Western Canada. Ultimately, by controlling terminal authorization at terminals representing 63% of total grain handling storage capacity in the Port of Vancouver or by reducing or eliminating diversion premiums, Agricore United would be able to have a direct impact on the competitiveness of Non-Integrated Graincos on the Prairies.

73. Prior to the introduction of the CWB tendering system (as discussed in paragraph 28), the CWB allocated its grain handling requirements among the grain handling companies based on their historical market shares. Under that system, port terminal access was guaranteed. However, given its historical orientation, the system made it difficult for integrated grain handling companies to increase their port grain terminal handle through an increase in their Prairie originations. To increase their port handle, the integrated companies had to pay Non-Integrated Graincos diversion premiums in order to attract their grain. There existed an incentive to pay diversion premiums in order to attract additional business to a port grain terminal because they have a high ratio of fixed to variable cost. Now, with the advent of CWB tendering, integrated companies are able to increase the volume of their own originations in the Prairies and increase their handle without obtaining additional volumes of grain from the Non-Integrated Graincos. As a consequence, the integrated companies may have relatively less incentive to provide the Non-Integrated Graincos with terminal authorization or to share in port grain terminal revenue (through diversion premiums).

74. If they are unable to obtain terminal authorizations for Vancouver, non-integrated companies will be unable to ship grain to that port. This would, in time, exhaust their primary elevator storage

capacity on the Prairies. As a result, they will no longer be able to compete for grain on the Prairies. In addition, if they are denied diversion premiums at the Port of Vancouver, Non-Integrated Graincos will lose the flexibility this revenue stream previously afforded them in competing for grain originations in the Prairies.

Anti-competitive Effects

75. The Respondent's acquisition of Agricore's interests in the Pacific and Cascadia port terminals at the Port of Vancouver will likely result in a substantial lessening of competition in the market for Vancouver port terminal grain handling services.

76. If Agricore United is permitted to retain all of Agricore's interests in port terminals, it will likely be able to exercise market power over port terminal grain handling services at Vancouver and over primary grain handling services on the Prairies. UGG's acquisition of Agricore's port grain terminals in Vancouver will substantially lessen competition for port terminal grain handling services by enabling Agricore United to unilaterally increase prices and/or lower diversion premiums. UGG's acquisition of Agricore will result in a substantial lessening of competition by making it more likely that the few port terminal grain handling companies remaining post merger will engage in interdependent behavior and will increase prices or depress diversion premiums.

VIII. RELIEF SOUGHT

77. In paragraph 78, the Commissioner requests that the Tribunal make a divestiture order to remedy the substantial lessening of competition otherwise likely to result from the Acquisition. The Commissioner submits that any divestiture that satisfies the following four conditions is sufficient to remedy the substantial lessening of competition otherwise likely to result from the Acquisition:

(a) the divestiture must be to an entity that does not have any direct or indirect interest in a Vancouver port grain terminal (other than Neptune or Vancouver Wharves);

(b) the acquiring entity must be independent of Agricore United;

(c) the facility divested must result in the acquiror being able to operate on a stand alone basis independent of the other port grain terminal operators similar to, for example, the stand alone basis on which UGG's Vancouver port grain terminal operates today; and

(d) the divestiture must enable the acquiror to handle at least 2.2 million tonnes of any combination of grain, oil seeds and specialty crops per annum in the Port of Vancouver on a commercially competitive basis.

78. The Commissioner further requests the following relief:

(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) its interest in Pacific and Western Pool Terminals Limited ("WPTL") and its interest in the Loan Agreement between Pacific, WPTL and Alberta Wheat Pool dated January 11, 1996 together which comprises all of Pacific; or

(ii) UGG's grain terminal in Vancouver; or

(b) such further and other orders as may be appropriate.

79. In the Commissioner's view, the remedies described in paragraph 78 (a) (i) and (ii) meet the conditions set out in paragraph 77.

IX. PROCEDURAL

80. The Commissioner requests that the hearing of this application be held in Winnipeg, Manitoba, and that the proceeding be conducted in the English language.

81. For purposes of this application, service of all documents on the Commissioner can be served on:

Mr. John L. Syme
Mr. Arsalaan Hyder
Department of Justice
Competition & Consumer Law Division
Industry Canada
50 Victoria Street
Place du Portage
Phase I, 22nd Floor
Hull, Quebec
K1A 0C9
Telephone (819) 953-3901
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Counsel for the Commissioner of Competition

DATED at Hull, Quebec this day of December, 2001.

____

Konrad von Finckenstein, Q.C.
Commissioner of Competition
Place du Portage, Phase 1
21st Floor – 50 Victoria Street
Hull, Quebec
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APPENDIX "A"

Figure I

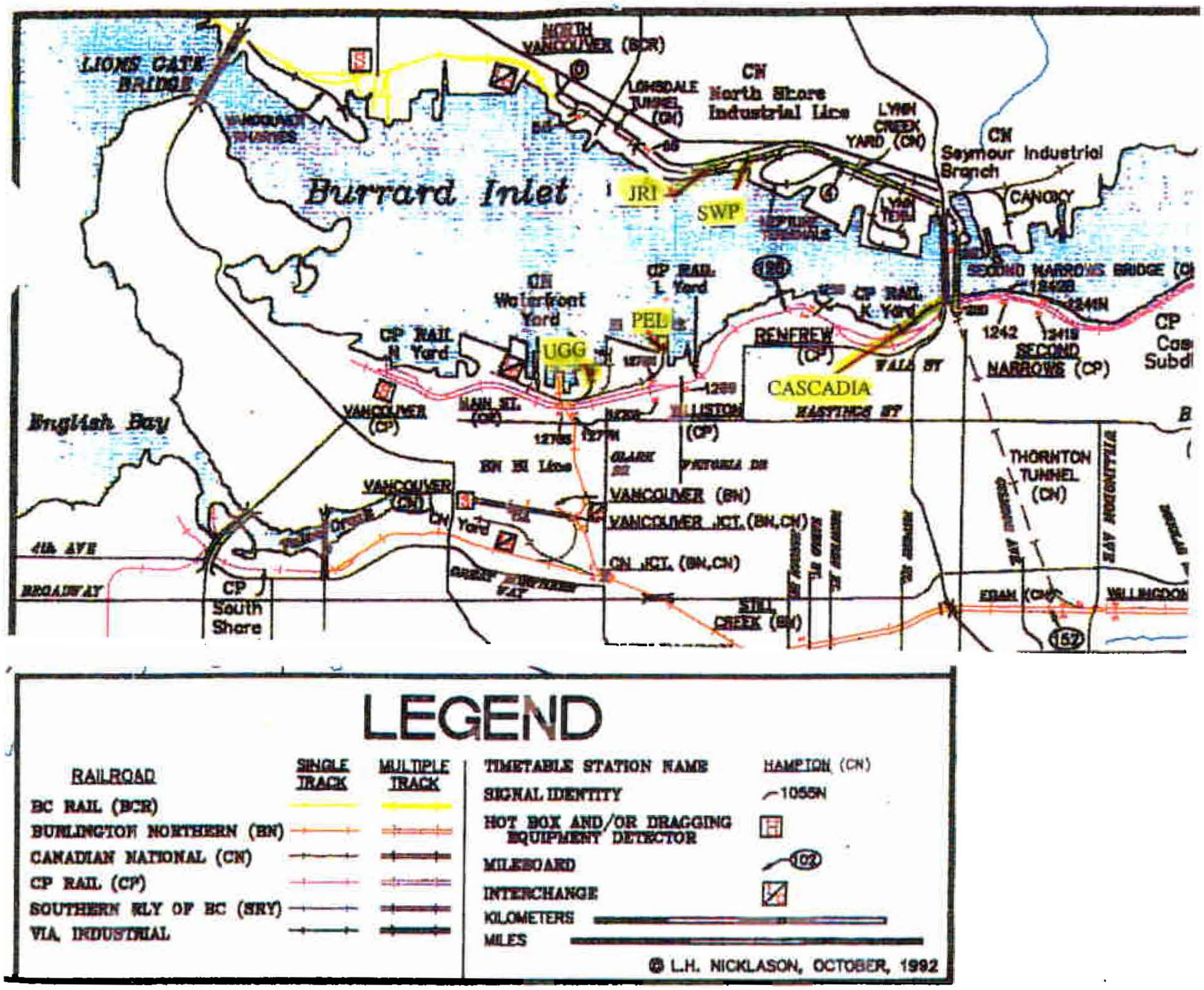

Figure II