

THE COMPETITION TRIBUNAL

IN THE MATTER of an application for a consent order by the Commissioner of Competition pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an application for a consent interim order by the Commissioner of Competition pursuant to sections 92 and 104 of the *Competition Act*;

AND IN THE MATTER of the merger of Agricore Cooperative Ltd. and United Grain Growers Limited;

BETWEEN:

THE COMMISSIONER OF COMPETITION

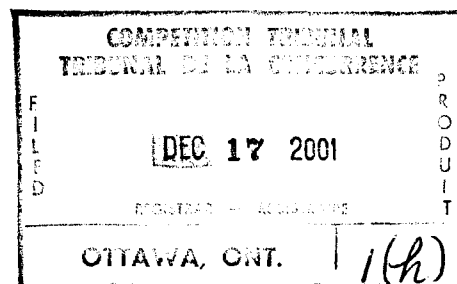
Applicant

- AND -

UNITED GRAIN GROWERS LIMITED

Respondent

DRAFT INTERIM CONSENT ORDER



- [1] **FURTHER** to the December 12, 2001 application of the Commissioner of Competition pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for a consent order directing the Divestiture of certain assets and certain other remedies in respect of the merger between Agricore Cooperative Ltd. and United Grain Growers Limited, the merged entities which have been carrying on business as "Agricore United" as of November 1, 2001;
- [2] **AND FURTHER** to the application of the Commissioner for an interim consent order pursuant to sections 92 and 104 of the Act directing that certain assets encompassed by the Merger be maintained and preserved pending the hearing and final determination of the application pursuant to sections 92 and 105 of the Act;
- [3] **AND UPON READING** the notice of application dated December 12th, 2001, the Applicant's Memorandum of Argument on Interim Relief, the draft interim consent order, the Affidavit of David Ouellet dated December 10, 2001, and the Consent of the parties, filed herein;
- [4] **AND UPON DETERMINING** that this is an appropriate case for the issuance of an interim consent order pursuant to sections 92 and 104 of the Act;
- [5] **AND UPON CONSIDERING THAT** the Commissioner and Agricore United have reached an agreement which is reflected in this interim order;
- [6] **AND IT BEING UNDERSTOOD** that the Commissioner has alleged certain material facts, and that, although Agricore United does not agree with all the facts alleged by the Commissioner and does not admit any substantial lessening or prevention of competition with respect to the Merger as alleged by the Commissioner, Agricore United does not contest the Statement of Grounds and Material Fact, the Consent Order Impact Statement or the affidavits of David Ouellet and Halldor Palsson for the purposes of this application or any proceeding relating to this order, including an application to vary or rescind this order under section 106 of the Act;

THE TRIBUNAL ORDERS THAT:

Definitions

- [7] For the purposes of this order, the following definitions shall apply:

- (a) "ADM" means Archer Daniels Midland Company, a company incorporated under the laws of the State of Delaware;
- (b) "Agricore" means Agricore Ltd., a corporation continued under the provisions of the *Canada Business Corporations Act* (Canada);
- (c) "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";
- (d) "CanAmera" means CanAmera Foods Limited Partnership, a limited partnership organized under the laws of the Province of Saskatchewan;
- (e) "Closing Date" means November 1, 2001;
- (f) "Commissioner" means the Commissioner of Competition appointed pursuant to section 7 of the Act;
- (g) "Divest" means to implement a Divestiture;
- (h) "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, any right, title, control, interest, liability or obligation in respect of any of the Primary Elevators to be Divested inconsistent with the intent of this order or the Draft Consent Order, other than obligations in respect of any representations, warranties and covenants included in any agreement between Agricore United and the Purchaser(s) of the Primary Elevators as permitted by the Draft Consent Order;
- (i) "Draft Consent Order" means the draft order filed at Appendix – to the Notice of Application filed in regard to this matter on December 12, 2001;
- (j) "Draft Interim Consent Order" means the order filed as Appendix 7 to the Notice of Application filed in regard to this matter on December 12, 2001;
- (k) "Merger" means the merger of the primary elevator operations of Agricore and UGG pursuant to the acquisition of Agricore by UGG, pursuant to the Merger Agreement dated as of July 30, 2001;

- (l) "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity;
- (m) "Primary Elevators" means those primary elevators identified in Schedule "A" to this order and, in respect of any particular primary elevator, includes all rights, titles and interests in and to all assets and properties, used to operate that Primary Elevator in the ordinary course of business as a grain handling facility in accordance with past practice including: (i) all real property owned, leased or otherwise held by Agricore United and used to operate that Primary Elevator; (ii) all personal property, including supplies and parts, owned, leased or otherwise held by Agricore United and used to operate that Primary Elevator; (iii) all rights of Agricore United relating to that Primary Elevator under any contract entered into with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners; (iv) any transferable governmental approvals, consents, licenses, permits, waivers, or other transferable authorizations held by Agricore United and used to operate that specific Primary Elevator; (v) any transferable rights of Agricore United relating to that specific Primary Elevator under any warranty and guarantee, express or implied; and (vi) all books, records, and files held by Agricore United relating only to that Primary Elevator reasonably necessary to operate that Primary Elevator on a going forward basis; and (vii) all existing customer and vendor lists held by Agricore United and used in the operation of that Primary Elevator. A Primary Elevator ceases to be a "Primary Elevator" for the purposes of this order upon being Divested by Agricore United or the Trustee, as the case may be, whether or not such Divestiture occurs before or after the issuance of this order;
- (n) "Purchaser" means the Person(s) or entity(ies) who purchase(s) one or more of the Primary Elevators in accordance with the procedure for Divestiture set out in the Draft Consent Order; and
- (o) "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

- [8] The provisions of this order shall apply to:
 - (a) Agricore United;
 - (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 order; and

- (c) the successors and assigns of Agricore United and all other Persons acting in concert or participating with Agricore United with respect to any matter referred to in this order who shall have received actual notice of this order.

Maintenance of the Primary Elevators

- [9] During the term of this order, Agricore United shall take such steps as are necessary to maintain the competitive viability of the Primary Elevators, including providing 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 Primary Elevators in accordance with standards similar to those existing for the same time period for the previous three years.
- [10] Without limiting the generality of the foregoing, Agricore United shall, during the term of this order, take such steps as are necessary to ensure that the Primary Elevators have access to transportation services, and in particular rail cars, at levels similar to those existing for the same time period for the previous three years, having regard to market conditions and the corresponding demand for transportation services. If Agricore United provides transportation services at a level which is not similar to those existing for the same time period for the previous three years, it shall notify the Commissioner in writing within 7 days of the change in service levels. In its notice, Agricore United will set out the basis on which the service levels have been altered.
- [11] During the term of this order, 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 Primary Elevators, make any material changes to such operations, or terminate any current employment, salary or benefit agreements for any management personnel employed primarily in relation to the Primary Elevators.
- [12] Agricore United shall provide a copy of this order to each of the Regional Managers and the Territorial Managers responsible for the Primary Elevators, and Agricore United shall direct such managers and any servants or agents of Agricore United operating and managing the Primary Elevators to do so in accordance with the terms of this order.
- [13] During the term of this order, Agricore United may, with the approval of the Commissioner, Divest the Primary Elevators in accordance with the terms and provisions of the Draft Consent Order.

ADM and CanAmera

- [14] During the term of this order, Agricore United shall keep all non-public information in its possession regarding CanAmera obtained as a result of Agricore United's direct or indirect shareholdings in CanAmera confidential and separate from ADM (including the ADM nominees to Agricore United's board of directors).

- [15] During the term of this order, Agricore United shall not appoint any director, officer or employee of ADM as a nominee to the board of directors of CanAmara.
- [16] During the term of this order, the Agricore United Grain Operations Committee shall exclude canola oil seed processing from the scope of its mandate.

Compliance Inspection

- [17] For the purpose of determining or securing compliance with this order, 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 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 order; and
 - (b) upon a minimum of 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 order. Such directors, officers or employees may have counsel present at those interviews.

Notices

- [18] Notices, reports or other communications required or permitted pursuant to this order 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 L. Syme
 Arsalaan Hyder

Fax: (819) 953-9267
 - (b) If to Agricore United:

201 Portage Avenue
TD Centre
Winnipeg, MB
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, ON
M5X 1B1

Attention: Kent Thomson
John Bodrug

Fax: (416) 863-0871

General

- [19] If the Commissioner's approval is sought pursuant to this order 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.
- [20] In the event of a dispute as to the interpretation or application of this order, or breach of this order by Agricore United, the Commissioner or Agricore United shall be at liberty to apply to the Competition Tribunal for a further order.

Term of Interim Order

- [21] This order shall remain in effect until a further order of the Competition Tribunal or completion of the Divestitures contemplated by the Draft Consent Order, whichever occurs first.

DATED at Ottawa, this day of December, 2001.

SIGNED on behalf of the Competition Tribunal by the presiding judicial member.

by _____
Name

SCHEDULE "A"

Primary Elevators:

Manitoba

1. UGG elevator at Dutton Siding.

Alberta

2. UGG elevator at Gaudin.
3. UGG elevator at Killam.
4. Agricore elevator at Westlock.
5. Agricore elevator at Bawlf.

Peace River Area

6. Agricore United's choice of
 - (a) Agricore elevator at Rycroft, or
 - (b) UGG elevator at Rycroft and UGG elevator at Falher.

6.1 Once the Primary Elevator(s) in either 6(a) or 6(b) is Divested, the remaining elevator(s) cease(s) to be a "Primary Elevator" for the purpose of this order.