CT-96/2

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Director of Investigation and Research for orders pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER OF the merger whereby CP Containers (Bermuda) Limited acquired certain assets held by The Cast Group Limited and of the acquisition by 3041123 Canada Inc. of all the shares of Cast North America Inc. by way of agreements entered into between or among The Royal Bank of Canada, The Cast Group Limited, 3041123 Canada Inc. CP Containers (Bermuda) Limited and Canadian Pacific Limited.

RCT / GTC
FAXLINE # 0320

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
FEB / FEV 21 1997
REGISTRAR — REGISTRAIRE
OTTAWA, ONT. #29

BETWEEN:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

CANADIAN PACIFIC LIMITED, CANADA MARITIME LIMITED, C.P. CONTAINERS (BERMUDA) LIMITED, 3041123 CANADA INC., CAST NORTH AMERICA INC. and THE ROYAL BANK OF CANADA

Respondents

REPLY OF THE DIRECTOR OF INVESTIGATION AND RESEARCH TO THE RESPONSE OF CANADIAN PACIFIC LIMITED, CANADA MARITIME LIMITED, C.P. CONTAINERS (BERMUDA) LIMITED, 3041123 CANADA INC., CAST NORTH AMERICA INC.

Admissions and Denials

1. The Director admits the allegations in paragraphs 71 and 87 of the Response of Canadian Pacific Limited, Canada Maritime Limited, CP Containers (Bermuda) Limited, 3041123 Canada Inc. and Cast North America Inc. (collectively "CP") ("CP Response").

2. Except as other expressly admitted herein, the Director denies each and every other allegation in the CP Response.

Industry Context

3. In paragraphs 5 through 15, CP describes what is categorized as the "dynamic and changing environment" in which Canada Maritime and Cast compete. The Director states that CP's Response fails to account for the fact that the relevant market described in the Notice of Application is a niche market which is isolated from many of the trends described in those paragraphs.

4. The carriers operating out of the Port of Montreal enjoy very significant cost savings in respect of inland transportation and terminal costs which more than offset any economies of scale created by larger ships and consortia operating from ports on the United States' East Coast ("USEC") or Halifax. The carriers operating in the relevant market also have the lowest empty container repositioning costs of all carriers operating in the North Atlantic trade lanes.

5. The benefits described above are demonstrated by the fact that Canada Maritime has significantly outperformed the industry in general with a return on equity in excess of 30% in 1992 and in excess of 60% in 1993. This profitability was achieved notwithstanding the fact that, at this time, Canada Maritime operated ships that were on average 1,800 T.E.U. while other carriers operating out of ports on the USEC and Halifax were operating ships that were, on average, larger than 4,000 T.E.U. capacity.

6. With respect to paragraph 14 of CP's Response, the Director states that while "pro-competitive" aspects of alliances may, in some circumstances, be viewed favourably under various regulatory or statutory regimes, including the *Competition Act*, mere savings which are achieved only by reason of a redistribution of income between two or more persons are not economies of scale and are not regarded favourably by competition authorities or regulators in Europe, the United States or Canada.

7. In fact, competition authorities and regulators in Europe, Canada and the United States have become increasingly concerned with ensuring the competitiveness of ocean going containerized shipping services. The European Commission recently lifted the immunity from fines with respect to inland rate fixing by those carriers who are party to the Trans-Atlantic Conference Agreement ("TACA"). On November 25, 1995, the TACA parties notified the Commission of the "European Inland Equipment Interchange Agreement", an arrangement that had been made to set up a joint computerized reporting system for empty containers. This was alleged to likely reduce the number of movements of empty containers. The TACA parties argued this arrangement justified an exemption being granted for inland price fixing. On November 28, 1996 the immunity given automatically upon notification pending a decision by the European Commission was lifted by a negative decision regarding an anti-trust exemption.

8. Contrary to the assertions in paragraphs 16 and 17 of CP's Response, the Director states that the decision by Canada Maritime to acquire Cast was primarily motivated by a plan to: prevent Cast from completing its restructuring and thereby increasing its competitiveness; to prevent alternative purchasers from acquiring Cast and to prevent Canadian National Railways ("CN") from concluding a long-term rail contract with Cast which would have increased Cast's competitiveness and diverted a significant rail contract from Canadian Pacific Limited to CN.

Cast's Alleged Financial Decline

9. The Director specifically denies the allegations found in paragraphs 18 to 34 of the CP Response that Cast suffered from a continuous financial decline since its restructuring in 1990. The Director states that, beginning in 1994, Cast began to experience a significant increase in cashflow which would have continued had Cast been able to complete its restructuring including its conversion to a fully containerized fleet and its negotiation of a more favourable rail contract with CN.

10. The Director states that Cast's increase in cashflow would have increased throughout 1995 were it not for the impact of several unusual and non-recurring factors. In paragraph 26 of its Response, CP alleges that it is particularly striking that Cast experienced difficulties during Cast's 1995 fiscal year given the increase in freight rates and an increase in traffic volumes. In fact, the financial difficulties experienced by Cast during Cast's 1995 fiscal year referred to in paragraph 25 of CP's response can be traced to two non-recurring factors:

(a) during Cast's 1995 fiscal year, a labour strike occurred at the Port of Montreal and at Cast's rail carrier, CP, resulting in a significant disruption in Cast's operations; and

(b) during Cast's 1995 fiscal year, Cast was impacted by unfavourable foreign currency exchange rate fluctuations, particularly the strengthening of the Belgian franc.

11. After eliminating the combined effect of the strike and foreign currency fluctuations, Cast's operating profit reflects the positive impact of increasing traffic volumes and better freight rates alleged by CP in paragraph 26 of its Response.

12. At paragraph 28, CP alleges that Cast suffered a major financial penalty as a result of chartering vessels thereby further exacerbating Cast's difficulties. The Director admits that Cast suffered a U.S. $8 million penalty arising from the vessel charters. Despite this significant penalty however, the earning before interest, taxes, depreciation and amortization ("EBITDA") for Cast's 1995 fiscal year, adjusted to reverse the impact of foreign currency fluctuations discussed above, were comparable to those of 1994.

13. At paragraph 29 of its Response, CP alleges that Cast was committed to a fifteen year agreement at the Port of Zeebrugge. The Director states that in fact, Cast had begun to re-negotiate its agreement with the Port of Zeebrugge prior to the Merger.

14. At paragraph 32 of its Response, CP alleges that, during the alleged financial decline of Cast, Cast management was providing false predictions concerning Cast's EBITDA for its 1995 fiscal year. As noted above, foreign currency fluctuations, which had not been predicted by analysts, resulted in an EBITDA which was lower than predicted.

15. The Director denies the allegation found in paragraph 34 of CP's Response that Cast would have ceased carrying on business in the event that CP did not purchase Cast. In alleging that Cast would have ceased to carry on business were it not purchased by CP, CP fails to take into account that other potential purchasers submitted proposals to acquire Cast as discussed below.

16. In any event, it is unlikely that The Royal Bank of Canada ("RBC") would have forced Cast to cease carrying on business as this would have significantly reduced the resulting recovery on Cast's debt for RBC. As admitted in paragraph 34 of CP's Response, forcing Cast to cease carrying on business would have resulted in a serious disruption of Cast's business, including: the loss of Cast's customers, a reduction in the goodwill of Cast and the seizure of cargos and vessels. Such disruptions would have substantially reduced the recovery available to RBC on the debt owed by Cast.

17. The Director specifically denies the allegations found in paragraph 35 of the CP Response that, apart from CP, no other purchaser was willing and able to acquire Cast. The Director states that, at the time of the Merger, there were several potential purchasers who displayed an interest in purchasing Cast and whose purchase would have likely resulted in a materially higher level of competition in the Market. These groups of purchasers, which are outlined in paragraph 123 of the Director's Application and discussed more fully below, submitted proposals to purchase Cast indicating that they were willing and able to pay a price which, net of costs associated with making the sale, would have been greater than the proceeds which would flow from either a break-up liquidation or a going concern liquidation of Cast.

The Net Price Above Liquidation Value

18. In or about February of 1993, the firm of Coopers & Lybrand was retained by RBC to provide advice with respect to Cast. Coopers & Lybrand reported to RBC that, in the event of a liquidation of Cast, the total net realization to RBC on a break-up basis would be in the range of U.S. $45 million to U.S. $50 million. However, the estimated net realization on the assets of Cast to RBC determined by Coopers & Lybrand includes the value of three conbulkers and excludes consideration of professional fees.

19. On or about February 4, 1994, Coopers & Lybrand provided a report to the Board of Directors of Cast estimating that the liquidation value on a break-up basis of Cast's assets was U.S. $68.3 million. However, this estimate was comprised of U.S. $39.75 million for Cast's three conbulker vessels and excluded the costs of liquidation and severance payments which would have to made to terminated employees. Therefore, the liquidation value on a break-up basis for the assets of Cast, excluding the proceeds from the sale of the three conbulker vessels is U.S. $28.5 million excluding costs of liquidation and severance payments.

20. During the negotiations with RBC with respect to the purchase of Cast, CP retained the services of The Blackstone Group, an investment banker, to assist CP with the

negotiations. Similar to the Coopers & Lybrand estimate outlined above, The Blackstone Group estimated that the total liquidation value on a break-up basis of the assets of Cast was U.S. $62.8 million including the proceeds from the sale of the three conbulker vessels. This liquidation value was composed of U.S. $42 million for the three vessels and U.S. $20.8 million for all tangible assets of Cast. As a result, the liquidation value for the assets on a break-up basis of Cast excluding the three conbulker vessels, according to The Blackstone Group was U.S. $20.8 million.

21. The Director states that the liquidation value of the assets of Cast on a break-up basis was significantly lower than the value estimated for the assets by Coopers & Lybrand and The Blackstone Group.

Competitively Preferred Purchasers of Cast

22. The Director denies the allegations found in paragraphs 35 to 41 of the CP Response that there was no competitively preferred purchaser of Cast at the time of the Merger. The Director states that, as discussed more fully below, there were several competitively preferred potential purchasers whose purchase would likely have resulted in a materially higher level of competition and who would have paid a price which was greater than the proceeds from the liquidation of Cast.

23. As noted in paragraph 123(a) of the Director's Notice of Application, on or about February 7, 1994, a proposal was made to RBC by a group consisting of Helix Investments Limited, CN and various U.S. investors in which RBC would recover U.S. $80 million, based on U.S. $20 million at closing, a U.S. $20 million note to RBC to be repaid over a four year period and U.S. $40 million from the sale of three conbulker vessels.

24. In or about March of 1994, the Bridgeford Group along with Helix Investments, Vestar Equity Partners Limited, Cast management and CN made a proposal to RBC to acquire Cast for U.S. $40 million excluding the proceeds from the sale of the three conbulker vessels.

25. In March and April, 1994, RBC received a proposal from a group consisting of Chase Manhattan Capital Corporation, Advent International Corporation, Smith McDonnell Stone & Co., Helix Investments Limited, CN and Cast management to purchase Cast for $30 million in cash, 50% of the proceeds of the sale of the three vessels and $15 million in distressed preferred shares which would have entitled RBC to receive 50% of Cast's free cash flow until paid in full.

26. On or about June 1, 1994 a group consisting of Vitran Corporation Inc., Helix Investments Limited, CN and Cast management (the "Vitran Group") proposed to acquire Cast for U.S. $40 million, excluding the three vessels, with payment consisting of U.S. $30 million on closing, plus a U.S. $10 million note repayable over 5 years. The Vitran Group also indicated its willingness to provide the deposit required by RBC.

27. On or about June 15, 1994, two weeks after submitting the June 1, 1994 proposal, the Vitran Group increased its offer to U.S. $40 million plus a participation in cash flow for RBC above a certain level of achievement. This participation in cash flow feature was included at the suggestion of Coopers & Lybrand acting on behalf of RBC due to the significant improvement in cash flow of Cast and the positive forecast of Cast's financial performance for the next 12 months.

28. RBC declined to continue negotiations with the Vitran Group and on or about June 16, 1994, RBC accepted CP's offer.

29. On June 21, 1994, the Vitran Group increased its offer to U.S. $50 million, payable in cash on closing. In a letter dated June 21, 1994 Vitran stated that "We will provide RBC

with a non-refundable deposit at that time to demonstrate that AcqCo will proceed in a responsible and serious way to close the transaction. It will be our expectation to close on or before August 15, 1994.". RBC rejected this further offer of the Vitran Group.

30. A meeting of the Board of Directors of Cast was held on June 21, 1994 to consider the Vitran Group and CP proposal. At that meeting, RBC presented the CP proposal which it had already accepted. The Board of Directors of Cast, responding to significant pressure from RBC and a concern that RBC would enforce its security over Cast, accepted the CP proposal.

31. The Director states that the proposals of the investor groups noted above contradict the allegation of CP that there was no competitively preferred purchaser. The proposals noted above, were all substantially higher than the estimates of Cast's liquidation value.

32. At paragraph 40 of its Response, CP alleges that it had the financial resources to acquire Cast and sustain its operations. The Director states that the Vitran Group had the financial resources to complete the acquisition. On November 15, 1994, shortly following RBC's rejection of the Vitran Group's proposal, Vitran Corporation Inc., by itself and without the resources of the other members of the Vitran Group, acquired the Overland Group of Companies for approximately $35 million (Cdn.).

Purchase of Cast by CP

33. The purchase of Cast by CP allowed RBC to recover a total of U.S. $86 million, an amount which is substantially in excess of Cast's liquidation value. The proceeds from the sale consisted of U.S. $55 million for the assets of Cast excluding the three conbulker vessels. The proceeds from the sale of the three conbulker vessels were approximately U.S. $31 million resulting in total proceeds of approximately U.S. $86 million.

34. The allegation found in paragraph 40 of the CP Response suggests that CP purchased and revived Cast. In fact, CP only purchased certain assets of Cast, free and clear of the debt owing to RBC. Based on Cast's cash flow, another purchaser who received the same terms regarding the waiver of the RBC debt which was provided to CP by RBC could have ensured that Cast's assets were deployed in the market as a vigorous competitor to Canada Maritime.

35. Throughout the alleged shop of Cast and during its negotiations with the other potential purchasers noted above, RBC remained primarily focussed upon selling Cast's assets to CP. On or about October 1, 1993, CP and The Blackstone Group entered into a confidentiality agreement with RBC and Cast which allowed for the exchange of information relating to Cast. At this time, CP began intensive negotiations, discussions and information exchanges concerning Cast. Over the course of the next three months, CP and RBC discussed the concept of a "synthetic bankruptcy" wherein RBC would force Cast into receivership thereby allowing certain assets to be sold to CP. These negotiations were codenamed "Flyrod" by CP.

36. On or about January 19, 1994, an agreement in principle was reached between CP and RBC wherein CP would pay $32.5 million for certain assets of Cast and $5 million for a right to share in any accounts receivable. The agreement provided for an incentive payment based on the share of Cast volume retained by CP, up to a maximum of $7 million. The transaction was targeted to close in March, 1994.

37. The proposed closing of the transaction in March, 1994 did not proceed as RBC became concerned with the dramatic improvement in Cast's financial results. In particular, RBC was concerned that it could be found to be in breach of its fiduciary duty to Cast if it placed Cast into receivership and sold its assets to CP rather than selling Cast as a going concern. In addition, RBC was concerned that, due to the improving financial condition of Cast, it would be much more difficult to obtain the approval of the Competition Bureau for the proposed transaction.

38. During the alleged search for alternative purchasers, RBC focussed on CP, the one potential purchaser who had a strategic interest in eliminating Cast as a principal competitor to its subsidiary, Canada Maritime. CP was willing to purchase Cast at a price significantly in excess of the net liquidation value in recognition of the substantial strategic gains arising from the elimination of Cast as a competitor.

39. In addition to purchasing certain assets of Cast, CP purchased the shares of Cast North America Inc. Given the appropriate tax structure, such a purchase would allow CP to take advantage of the significant tax losses accrued by Cast to reduce CP's taxable income or gains thereby significantly reducing the effective price paid by CP.

The Alleged Search for Competitively Preferred Purchasers

40. Contrary to the allegation found in paragraph 144 of the CP Response, Cast was not thoroughly and extensively shopped for a period of 18 months. The Director states that there was no good faith search for a competitively preferred purchaser. Although R.K. Johns & Associates ("R.K. Johns") were retained on February 4, 1993 for a 6-month term, they did not assemble a briefing package until the middle of 1993.

41. In addition, the alleged shop conducted by R.K. Johns would not have taken into account Cast's improving financial condition during 1994. The Director states that the improving financial condition of Cast resulted in a number of investor groups becoming interested in Cast, such as those competitively preferred purchasers discussed above.

42. The shop conducted by R.K. Johns was also defective because investors were expected to offer a purchase price for Cast's assets in excess of U.S. $35 million, excluding the three conbulker vessels. Such a price was significantly in excess of the liquidation value of Cast. As a result, the alleged shop discouraged purchasers who may have been prepared to offer more than the net liquidation value for Cast's assets but fell short of RBC's expected price.

43. The process carried out by R. K. Johns and RBC did not treat all of the potential purchasers equally. Prior to submitting its proposal in June of 1994, CP had been engaged in extensive due diligence and information exchange with RBC and Cast. The investor groups discussed above, however, were only given an opportunity to meet with RBC on a few occasions and had not been given the same opportunities for due diligence and information exchange as CP received.

44. The Director states that RBC actively discouraged other potential purchasers from pursuing an acquisition of Cast. In early 1994, CP was actively pursuing "strategies" with RBC and the Port of Montreal to overcome the "objection of the Canadian Competition Bureau and the NTA". In a letter dated March 4, 1994 from Ray Miles of Canadian Maritime to Jim Anderson of the RBC, Mr. Miles asked for RBC's "continued co-operation" to develop the "failing firm argument as well as our defence on the ability of competitors to freely enter the trade through the Montreal Gateway". The Director states that RBC did not conduct a shop with the *bona fides* objective of finding a competitively preferred purchaser but rather for the purposes of developing a strategy for overcoming anticipated objections from the NTA and the Competition Bureau with respect to the transaction. This level of co-operation between the RBC, CP and the Port of Montreal began months in advance of the agreement reached between RBC and CP in June of 1994 and prior to a number of approaches by alternative purchasers.

National Transportation Agency Decision

45. The Director states that paragraphs 1(a), 1(b), 42 through 58 constitute argument and are not pleadings of material fact. The Director disputes and denies the arguments put forward by CP.

46. The Director states that the *National Transportation Act, 1987* ("NTA Act") has a distinct and separate statutory mandate from that of the *Competition Act* and the Competition

Tribunal. An acquisition under Part VII of the NTA Act is not approved *per se*, but may be "disallowed" pursuant to section 247 or, alternatively, "not disallowed", as was determined by the NTA in respect of the acquisition of Cast by CP. Section 265 of the NTA Act states:

> **Operations of Other Acts**
>
> 265. Nothing in or done under the authority of this Part affects the operation of any other Act of Parliament that applies to or in respect of the acquisition of any interest in a transportation undertaking.

47. The NTA Act was assented to on August 28th, 1987, following the enactment of the *Competition Act* in 1986. The Director states that Parliament intended, by virtue of section 265 of the NTA Act and the fact that the *Competition Act* was already in force, that the provisions of Part VIII of the *Competition Act* were applicable to transactions that may also be reviewed under Part VII of the NTA Act.

48. Following the review of the acquisition of Cast, the jurisdiction of the NTA to review acquisition of transportation undertakings under Part VII of the NTA Act has been revoked by Parliament.

49. The Director states that Parliament intended the Competition Tribunal to constitute a specialized tribunal with the jurisdiction to hear and determine all applications made under Part VIII of the *Competition Act*. The Director states that Parliament enacted the *Competition Act* as legislation dealing specifically with competition matters and it is the Competition Tribunal which should be shown deference in respect of competition matters.

The Relevant Market

50. With respect to paragraph 62 of the CP Response, the Director agrees that break-bulk service is not a close substitute for the transportation of non-time sensitive, low-value products

that require container shipment. The Director, however, denies that break-bulk service is a close substitute for such shipments that do not require containerization. Break-bulk shipments is, in many cases, more costly than container shipment due to the labour-intensive method of handling the cargo. Also, there are currently very few break-bulk services available to shippers in the relevant market due to the declining demand for this mode of transportation.

51. The Director specifically denies that the relevant geographic market is the "Trading Area" as defined in paragraphs 65 to 72 of the CP Response. While the Director agrees that Cast and Canada Maritime sell containerized transportation services to U.S. shippers and consignees and Canadian shippers and consignees outside of Ontario and Quebec, the pricing of these services depends on competitive conditions that are distinct from those facing shippers and consignees in Ontario and Quebec.

52. The Director states that, as with other types of transportation services, containerized transportation services are priced based on the origin point where the carrier obtains the cargo and the destination point where the cargo leaves the carrier's possession. Consequently, pricing is potentially distinct for each origin-destination pair and reflects competitive conditions that uniquely affect traffic from that origin to that destination. Cargo transported between Ontario and Quebec and Northern Europe and the United Kingdom is priced distinctly from cargo transported between other markets in North America to points in Europe and the United Kingdom, U.S. and Europe.

53. Prices which prevail in Ontario and Quebec for such services are significantly different for comparable shipments in other geographic areas primarily due to the different competitive forces affecting each of the areas. The combined area of Ontario and Quebec is the geographic area in which a merged Cast and Canada Maritime could initiate and sustain a significant, non-transitory price increase and is therefore the relevant geographic area to be considered.

54. In paragraphs 64 to 72, CP overstates and oversimplifies the geographic market by including carriers operating from the USEC and Halifax. Carriers operating out of the Port of Halifax and the USEC do not effectively compete for shippers and consignees located in Ontario and Quebec. In the definition of geographic market, CP also includes shippers and consignees located in areas where Cast and Canada Maritime do not effectively compete, in particular, the U.S. Eastern Seaboard, which is primarily captive to the USEC ports and provinces east of Quebec, which are primarily captive to the Port of Halifax.

55. With respect to paragraph 80 of the CP Response, the Director states that formal tariffs are frequently discounted through informal independent action or non-compliance. Also, while a formal tariff may be specified, Halifax and U.S. based carriers are generally unable or unwilling to provide a guarantee of container availability for Ontario and Quebec shippers and consignees. Guaranteed container supply is a crucial part of the service required by shippers and consignees. Shippers and consignees commonly arrange inland transportation at a price significantly less than the conference tariff for inland transportation. In addition, carriers operating at Halifax and the USEC do not aggressively market their services to shippers and consignees located in Ontario and Quebec.

56. The market shares set out by CP in paragraphs 99 to 108 of the CP Response are incorrect as these market shares are based on the overly broad geographic market set out in paragraphs 64 to 85 of the CP Response.

57. The Director states that contrary to paragraph 102 of the CP Response, Canada Maritime and CP Rail are vertically integrated. Canada Maritime and CP Rail are affiliates and, as a result, it is very unlikely that Canada Maritime would contract with another railway for its rail services. The Director also states that Canada Maritime has benefitted from special pricing by CP Rail for rail services which may not have been available to Canada Maritime's competitors. The Merger allows both Cast and Canada Maritime to benefit from such a vertical relationship to the detriment of other competitors. CP Rail's competitor for rail

services in the Market, CN, may also be denied access to a critical mass of container shipping customers.

58. On or about December 9, 1991, Ray Miles of Canada Maritime, M. Reeves of ACL and Peter Robinson of the Conference met with representatives of BOLT to secure their agreement to price no lower than 10% below Conference tariff. BOLT was coerced into accepting to negotiate with the Conference or face the consequences of rate war reprisals. Ray Miles had initiated a plan whereby the Conference carriers agreed to reduce their capacities, cancelled special rates and instituted new rate policies. This plan allowed BOLT to significantly increase its market share. The Conference members solicited BOLT's membership in the Conference but were unsuccessful. The Conference members then threatened rate reprisals which would amount to "a blood-bath on the North Atlantic". This led to a "10 Percent Agreement" which expressed BOLT's intent to price at no less than 10% of the Conference tariff. Such arrangement or understanding has persisted to at least the end of 1996.

59. The Director denies the characterization of barriers to entry set out by CP in paragraphs 125 to 127. In alleging that barriers to entry are low, CP has concentrated on events in an overly broad geographic market. Entry at the Port of Montreal is more difficult as it is a niche market. The larger vessels referred to in paragraph 133 of the CP Response cannot be accommodated at the Port of Montreal. Effective entry by any competitor would require the acquisition of smaller ice strengthened ships. Terminal facilities would also have to be arranged or established. Both Cast and Canada Maritime are vertically integrated with respect to the terminal facilities at the Port of Montreal.

60. The Director denies that carriers operating from the USEC or Halifax would have an incentive to enter the Market. Existing U.S. carriers have little motivation to establish a service at the Port of Montreal as they are already competing for U.S. origin cargo from their U.S. based operations and, as admitted in paragraph 69 of the CP Response, Ontario and Quebec cargo alone does not justify service at existing levels. Further, those carriers operating

from the USEC which are TACA members would be legally prevented under U.S. law from pricing at the same discount to U.S. conference tariff as applied by the carriers currently operating out of the Port of Montreal.

61. Further, the Director states that Canada Maritime and the other SLCS members have engaged in discussions with TACA members who operate from USEC and Halifax, a group referred to as the Interested Carriers Group, to discuss, among other things, pricing in respect of containerized shipping services from points to and from the United States to Europe and the United Kingdom.

62. Canada Maritime and the other SLCS members avoid discounting beyond a 10% discount off U.S. conference tariff in an effort to avoid precipitating retaliatory action by TACA carriers.

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