

**FILED / PRODUIT**

Date: February 17, 2020  
CT-2019-005

Andrée Bernier for / pour  
REGISTRAR / REGISTRAIRE

**CT-2019-005**

OTTAWA, ONT.

# 24

**THE COMPETITION TRIBUNAL**

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

**AND IN THE MATTER OF** the acquisition by Parrish & Heimbecker, Limited of certain grain elevators and related assets from Louis Dreyfus Company Canada ULC;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

**– and –**

**PARRISH & HEIMBECKER, LIMITED**

**Respondent**

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**REPLY OF THE COMMISSIONER OF COMPETITION**

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## I. OVERVIEW

1. Local competition between Elevators<sup>1</sup> matters when farmers sell their wheat or canola. P&H's response ignores the impact of local competition to justify its anticompetitive Acquisition. Although the price P&H pays to farmers in the Relevant Markets for their wheat and canola may be impacted by non-local factors, the Acquisition has eliminated the local competition between the Moosomin Elevator and the Virden Elevator. That elimination of competition will allow P&H to decrease the price it pays to farmers increasing the price for Grain Handling Services.
2. Contrary to P&H's assertions, prior to the Acquisition, the Virden Elevator and Moosomin Elevator competed with one another to make sales to farmers in the Relevant Markets. P&H and Louis Dreyfus's internal documents show the Moosomin Elevator and the Virden Elevator closely tracking, monitoring and reporting each others prices.
3. The importance of local competition means the inescapable effect of acquiring control of the only two elevators along a 180-km stretch of the TransCanada Highway is a likely SLC in the Relevant Markets resulting in farmers receiving less money for their wheat and canola. Moreover, any cognizable efficiencies that may be obtained through the Acquisition and that would be lost if the order sought were made will not be greater than or offset the anticompetitive effects of the Acquisition.
4. The Commissioner denies the allegations in P&H's Response, except paragraphs 5-8, 10, and 12. In addition to repeating and relying on the facts pleaded in the Application, the Commissioner makes two additional points in this Reply.

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<sup>1</sup> Unless otherwise indicated, defined terms in this Reply have the meaning ascribed to them in the Commissioner's Notice of Application and Statement of Grounds and Material Facts (together the "Application").

**II. REGARDLESS OF WHETHER THE RELEVANT PRODUCT MARKET IS GRAIN HANDLING SERVICES OR THE PURCHASE OF GRAIN FROM FARMERS THE ACQUISITION CAUSES OR IS LIKELY TO CAUSE AN SLC**

5. As the Application acknowledges in paragraph 2 of the Concise Statement of Economic Theory, a component of the price paid to farmers is influenced by non-local factors such as global supply and demand, or the individual grain company's need for grain to meet its supply agreements.
6. However, another component in the price is the cost to the farmer of obtaining Grain Handling Services. Local competition between Elevators – competition to provide Grain Handling Services - impacts the price that Elevators offer farmers for their wheat and canola. P&H tracks, monitors and reports the prices offered by competing Elevators proximate to their own. Prior to completion of the Acquisition, LDC did the same; the Moosomin Elevator and the Virden Elevator, paid close attention to one another. Elevator operators offer and pay higher prices to farmers for their wheat and canola when faced with greater local competition.
7. The Acquisition has caused, or is likely to cause, an SLC in the provision of Grain Handling Services to farmers in the Relevant Markets. However, even if the relevant product market is more broadly the purchase by Elevators of wheat and canola from farmers, which is denied, the Acquisition has caused, or is likely to cause, an SLC in this product market. The ability to decrease the price of wheat and canola paid to famers is material.

**III. ANY EFFICIENCIES DO NOT OUTWEIGH OR OFFSET THE ANTICOMPETITIVE EFFECTS OF THE ACQUISITION**

8. The Acquisition will not generate cognizable gains in efficiencies to the extent alleged by P&H.
9. This Application seeks the divestiture of just one Elevator leaving P&H with an additional nine Elevators as a result of the Acquisition. If the order sought is granted, it would not impact P&H's ability to achieve the alleged efficiencies being claimed.
10. In any event, any cognizable efficiencies that may be obtained through the Acquisition and that would be lost if the order sought were made will not be greater than or offset the anticompetitive effects of the Acquisition.

**DATED AT** Gatineau, Quebec, this 17th day of February, 2020

Matthew Boswell

Commissioner of Competition  
Competition Bureau  
Place du Portage, Phase I  
50 Victoria Street  
Gatineau, Quebec  
K1A 0C9

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**REPLY OF THE COMMISSIONER OF COMPETITION**

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