

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

MOTION RECORD

**(Response to the Commissioner's Motion to Designate the Identities of
his Farmer Witnesses as Confidential)**

INDEX

TAB	DOCUMENT	PAGE
1.	P&H's Response	3
2.	Affidavit of Kevin Klippenstein sworn December 11, 2020 and the exhibits thereto	6
3.	Tribunal's emails validating documents received on December 9, 2020	19
4.	Commissioner's Farmer Witness Statements - PUBLIC	30
5.	P&H's Farmer Witness Statements - PUBLIC	77
6.	Excerpts from Read-In Brief of the Commissioner	106
7.	Email from Jonathan Hood to Annie Ruhlmann dated November 27, 2020 and the attachments thereto	109
8.	Excerpts from P&H's Read-in Brief	126

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PARRISH & HEIMBECKER, LIMITED

Respondent

**P&H'S RESPONSE TO THE COMMISSIONER'S MOTION TO DESIGNATE
THE IDENTITIES OF HIS FARMER WITNESSES AS CONFIDENTIAL**

PUBLIC

PART 1. GROUNDS ON WHICH THE MOTION IS OPPOSED

1. Parrish & Heimbecker, Limited ("**P&H**") opposes the Commissioner of Competition's (the "**Commissioner**") motion for an order designating the identities of his farmer witnesses as confidential.
2. The public's interest in open and accessible court proceedings should not be compromised except in exceptional circumstances.
3. There is a heavy onus on a party seeking a confidentiality order to show, based on strong and convincing evidence, that it is required by and compatible with the public interest in the proper administration of justice.
4. The Commissioner has not met that heavy onus.
5. His position on this motion is directly contrary to the relevant jurisprudence and rests on speculation, mischaracterization and baseless charges that could be interpreted as alleging witness tampering.
6. P&H has filed an affidavit from Kevin Klippenstein, the company's CFO, in which he confirms that P&H and its staff have no interest, incentive or intention to disturb their productive and positive relationships with the Commissioner's Farmer Witnesses and will not retaliate against any farmer because of his testimony in this case.

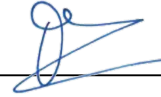
PART II. DOCUMENTARY EVIDENCE TO BE USED AT THE HEARING

7. The following documentary evidence will be used at the hearing of the motion:
 - (a) the Affidavit of Kevin Klippenstein sworn December 11, 2020 and the exhibits attached thereto;
 - (b) the pleadings and proceedings; and
 - (c) such further and other evidence as counsel may advise and the Tribunal may permit.

PART III. ORDER SOUGHT

8. P&H respectfully requests that the Commissioner's motion be dismissed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11th DAY OF
DECEMBER, 2020**



BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, 34th Floor
Toronto, ON M5H 4E3

Lawyers for the Respondent, Parrish
& Heimbecker, Limited

CT-2019-005

THE COMPETITION TRIBUNAL

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BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

PARRISH & HEIMBECKER, LIMITED

Respondent

AFFIDAVIT OF KEVIN KLIPPENSTEIN

(Commissioner's Motion to Designate the Identities of his Farmer Witnesses as Confidential)

I, Kevin Klippenstein, of the City of Winnipeg, in the Province of Manitoba, solemnly affirm that:

1. I am Chief Financial Officer of Parrish & Heimbecker, Limited (“P&H”).
2. I have personal knowledge of the matters set out herein.
3. I swear this affidavit in response to the Commissioner of Competition’s (the “**Commissioner**”) motion to designate the identities of his Farmer Witnesses as confidential.
4. I have read the Farmer Witnesses’ affidavits and the Commissioner’s Memorandum of Fact and Law and I disagree with many of the statements and allegations in those documents. Without intending to be exhaustive, I have the following comments.
5. I was pleased to read in the farmers’ affidavits that each of the Commissioner’s Farmer Witnesses has good relationships with P&H staff at the Virden and/or Moosomin Elevators and have continue to sell their wheat and canola to the Virden and/or Moosomin Elevators since the Transaction closed in December 2019.
6. [REDACTED] states that since November 2019, he has sold all his wheat and canola to the Viterra Fairlight Elevator. In fact, he sold some of his canola to the Virden Elevator in September and October of this year. Attached to my affidavit as Exhibit 1 is a copy of a P&H business record showing [REDACTED] canola sales to P&H at the Virden Elevator in September 2020 and October 2020.
7. As described in John Heimbecker’s Witness Statement dated October 13, 2020, [REDACTED]
[REDACTED] Consistent with the foregoing [REDACTED]
[REDACTED]

[REDACTED]

8. Having just spent [REDACTED] to build the Fraser Grain Terminal (“FGT”) and given [REDACTED]

[REDACTED]. In that context, we have no commercial interest or incentive to disturb productive and positive relationships with the Commissioner’s Farmer Witnesses or any of the farmers who supply wheat and canola to P&H Elevator.

9. More broadly, we understand and accept that the Commissioner’s Farmer Witnesses’ decision to testify in support of the Commissioner’s Application is purely a commercial matter, not a personal one. We understand that some farmer’s may not fully appreciate that the Transaction benefits competition within the grain industry and will ultimately be to their benefit. This proceeding has prevented P&H from actively engaging with the farmers as the Commissioner seems all too ready to suggest that P&H is trying to improperly influence witnesses, as alleged in the Commissioner’s Memorandum of Fact of Law. There is no merit whatsoever to this allegation. As a company, we have no intention to, and will not, retaliate against any farmer because of his testimony in this case.

10. Similarly, I am confident that our Elevator staff who have good and, in some cases, close personal relationships with the Commissioner’s Farmer Witnesses will have no interest in disturbing those relationships because of what might or might not be said in the proceeding. Apart from the personal value they ascribe to those relationships, [REDACTED]

[REDACTED] – mean they will have no desire to undermine or interfere with those relationships. They are incented to build strong relationships and increase the throughput of the Elevators.

11. P&H staff at the Virden Elevator and others at P&H have known since in or about

September 2019 that [REDACTED] gave very negative feedback. They know because, as Mr. Heimbecker stated in an answer to undertaking which appears in the Commissioner's Read-in Brief (see Tab E, page 577), [REDACTED] disclosed this to Andy Klippenstein, who was then the LDC manager of the Virden Elevator (and who P&H hired after the Transaction closed in December 2019).

5	81	647	244	18	[REDACTED]	[REDACTED]
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12. Despite this knowledge of [REDACTED] complaint to the Bureau and opposition to the Transaction, he continues to enjoy "a good relationship with the manager in Virden" (i.e., Andy Klippenstein) and continues to "actively do business with P&H".

13. With respect to my email dated September 21, 2019, to Brian Randles of LDC, the spin the Commissioner has put on this email is unfair and unwarranted. [REDACTED]

[REDACTED]

very quickly.

14. It was in that context that I sent Mr. Randles my email of September 21st. [REDACTED]

[REDACTED]

[REDACTED] The Commissioner seems far too ready to suggest that any contact with farmers by P&H is an attempt to intimidate or influence while at the same time the Commissioner has had free reign to discuss his theory of the case. There are over 350 farmers that supplied CWRS and/or canola to P&H Moosomin and LDC Virden in the crop year prior to the Transaction and yet only a very small number have indicated any concerns with the Transaction. P&H has always remained ready to engage with any concerns farmers may have. [REDACTED]

15. At paragraph 46 of his Memorandum of Fact and Law, the Commissioner discusses [REDACTED]

[REDACTED] The Commissioner has not produced the email he quotes, so I attach it to my affidavit as Exhibit 2. I also confirm, contrary to what the Commissioner asserts, that it was not only the “the farmers who the CSRs called” [REDACTED]

[REDACTED] As the Merchant (Mr. Beachell’s) email of 10:24 am and the P&H business record attached to my affidavit as Exhibit 3 confirms, (which shows [REDACTED]

16. Further, as stated by Mr. Heimbecker in his Witness Statement, it is P&H’s policy and practice to give all farmers in the area notice of limited tonne and limited time specials:

[82] When P&H has a special, the CSRs for the participating Elevators will send out an email or text message to all farms in the area who have previously consented to receiving texts or emails from P&H, letting them know that the Elevators are looking to purchase wheat or canola meeting certain specifications at a cash price above the posted cash price and are taking delivery until a specified date. CSRs may also call those farms who they know have wheat or canola in their storage bins that meets P&H requirements to see if they are interested in selling at the special price.

[83] Limited tonne and limited time specials are always posted for the Elevator(s) running the special, communicated via email or text blast to all farms for which the participating Elevators have contact information and, since August 1, 2019, via notification to all farms with the P&H mobile application who have activated the notification function and have an account at the Elevator running the special. An example of a push notification sent by the Virden Elevator is

set out below.

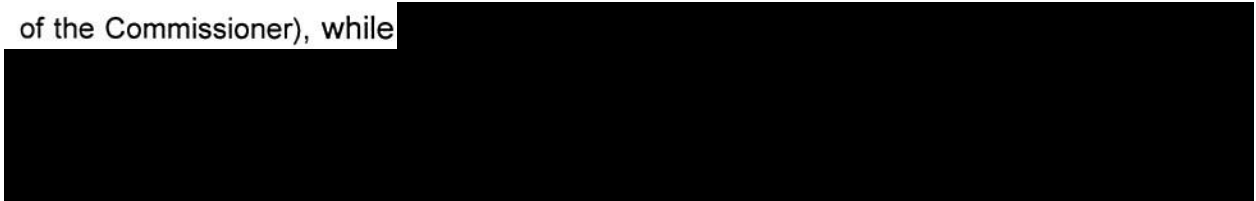
Seat Canola

Report 2020-02-01


Kayla Melmoth Reports List

We can currently offer \$5/m premium above posted price for Seat de very canola for a limited time. Please call the elevator for more details

17. Further, as Mr. Heimbecker testified on discovery (Tab I, #8, p. 635 of Read-in Brief of the Commissioner), while



SWORN before me in the City of Winnipeg
in the Province of Manitoba
on December 11th, 2020

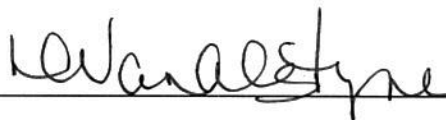

A Commissioner for taking Oaths


Kevin Klippenstein



This is Exhibit 1 to the Affidavit of
KEVIN KLIPPENSTEIN
Sworn on December 11, 2020





This is Exhibit 2 to the Affidavit of

KEVIN KLIPPENSTEIN

Sworn on December 11, 2020

To: Beachell, Scott[sbeachell@pandh.ca]; Beutler, Cassandra[cbeutler@pandh.ca]; Davis, Garret[gtdavis@pandh.ca]
Cc: Holmes, Craig[cholmes@pandh.ca]; Woywada, Cory[cwoywada@pandh.ca]; Kelly, Jason[jkelly@pandh.ca]
From: Wiebe, Melissa
Sent: Fri 2018-01-05 11:19:19 AM
Subject: RE: Canola Price comp

Melissa

From: Wiebe, Melissa
Sent: Friday, January 5, 2018 11:02 AM
To: Beachell, Scott <sbeachell@pandh.ca>; Beutler, Cassandra <cbeutler@pandh.ca>; Davis, Garret <gtdavis@pandh.ca>
Cc: Holmes, Craig <cholmes@pandh.ca>; Woywada, Cory <cwoywada@pandh.ca>
Subject: RE: Canola Price comp

From: Wiebe, Melissa
Sent: Friday, January 5, 2018 10:43 AM
To: Beachell, Scott <sbeachell@pandh.ca>; Beutler, Cassandra <cbeutler@pandh.ca>; Davis, Garret <gtdavis@pandh.ca>
Cc: Holmes, Craig <cholmes@pandh.ca>; Maycher, Rob <rmaycher@pandh.ca>; Mayo, Jeff <jmayo@pandh.ca>; Woywada, Cory <cwoywada@pandh.ca>
Subject: RE: Canola Price comp

Melissa

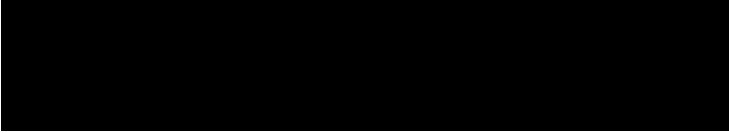
From: Beachell, Scott
Sent: Friday, January 5, 2018 10:24 AM
To: Beutler, Cassandra <cbeutler@pandh.ca>
Cc: Wiebe, Melissa <mwiebe@pandh.ca>; Holmes, Craig <cholmes@pandh.ca>; Maycher, Rob <rmaycher@pandh.ca>; Mayo, Jeff <jmayo@pandh.ca>; Woywada, Cory <cwoywada@pandh.ca>
Subject: RE: Canola Price comp

Scott Beachell
Parrish & Heimbecker Limited
Suite 1400 - 201 Portage Ave.
Winnipeg, MB
R3B 3K6
Bus: 204-987-4461
Cell: 204-296-9372
Bus. Email: sbeachell@pandh.ca



From: Beutler, Cassandra
Sent: Friday, January 05, 2018 10:20 AM

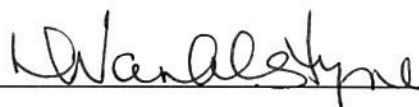
To: PHG Hedges
Cc: Holmes, Craig; Woywada, Cory
Subject: Canola Price comp



Thanks,
Cassandra Beutler
Customer Service Representative

Parrish & Heimbecker, Limited
Moosomin Elevator
#1 hwy, 1 Mile W
Moosomin, Saskatchewan S0G 3N0
Tel: 306-435-4905 ext 4 Cell: 306-434-7391 Fax: 306-435-4353 Email: cbeutler@pandh.ca

****To unsubscribe from receiving emails from P&H, please reply to this email by indicating "Unsubscribe"*****



This is Exhibit 3 to the Affidavit of

KEVIN KLIPPENSTEIN

Sworn on December 11, 2020

FullContractNbr	ContractDate	ShipFromDate	ShipToDate	BasisPrice	FuturesPrice	ContractPrice	OriginalQty	Status	Type	PriceType	ProductNBR	ProductName	Commodity	Location	AcctNbr	AcctName	Addr1	Addr2	City	StateProvRegion	PostalCode	Phone
157679	05/01/2018	01/09/2018	30/09/2018	-28	NULL	NULL	2000	Closed	Purchase	Basis	700010	1CAN CANOLA W	CANOLA - WEST	Moosomin Grain	20332	606192 Saskatchewan Ltd.	C/O Murray Bruce	Box 145	Moosomin	Saskatchewan	S0G 3N0	(306)435-3616
157680	05/01/2018	01/09/2018	30/09/2018	-28	NULL	NULL	600	Closed	Purchase	Basis	700010	1CAN CANOLA W	CANOLA - WEST	Moosomin Grain	57634	Craig Roy	Box 486		Moosomin	Saskatchewan	S0G 3N0	(306)435-7513
157681	05/01/2018	01/09/2018	30/09/2018	-28	NULL	NULL	400	Closed	Purchase	Basis	700010	1CAN CANOLA W	CANOLA - WEST	Moosomin Grain	57634	Craig Roy	Box 486		Moosomin	Saskatchewan	S0G 3N0	(306)435-7513
157687	05/01/2018	01/09/2018	30/09/2018	-28	NULL	NULL	500	Closed	Purchase	Basis	700010	1CAN CANOLA W	CANOLA - WEST	Moosomin Grain	108696	New Generation Farms Ltd	Box 323	NULL	Moosomin	Saskatchewan	S0G 3N0	(306)435-8013
157688	05/01/2018	01/09/2018	30/09/2018	-28	NULL	NULL	400	Closed	Purchase	Basis	700010	1CAN CANOLA W	CANOLA - WEST	Moosomin Grain	49031	Jeff McMullen	Box 1512		Moosomin	Saskatchewan	S0G 3N0	(306)435-2904
157691	05/01/2018	01/09/2018	30/09/2018	-28	NULL	NULL	68.039	Closed	Purchase	Basis	700010	1CAN CANOLA W	CANOLA - WEST	Moosomin Grain	25424	Stephen Brownell	Box 457		Redvers	Saskatchewan	S0C 2H0	(306)452-6098
157692	05/01/2018	01/09/2018	30/09/2018	-28	NULL	NULL	160	Closed	Purchase	Basis	700010	1CAN CANOLA W	CANOLA - WEST	Moosomin Grain	30132	Doane Grain Farms	Box 1518		Moosomin	Saskatchewan	S0G 3N0	(306)435-3512
157700	05/01/2018	01/09/2018	30/09/2018	-28	NULL	NULL	200	Closed	Purchase	Basis	700010	1CAN CANOLA W	CANOLA - WEST	Moosomin Grain	48486	Tim McCarthy	Box 147		Moosomin	Saskatchewan	S0G 3N0	(306)435-4190
157710	05/01/2018	01/09/2018	30/09/2018	-28	NULL	NULL	200	Closed	Purchase	Basis	700010	1CAN CANOLA W	CANOLA - WEST	Moosomin Grain	40546	Ivey Farms Ltd.	c/o Fred Ivey	Box 344	Moosomin	Saskatchewan	S0G 3N0	(306)435-7525

Yu, Tina

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Competition Tribunal - Tribunal de la concurrence

Proceeding Information

Case Name: The Commissioner of Competition v. Parrish & Heimbecker, Limited

Case Number: CT-2019-005

Section of Act: SECTION 92 - MERGER

Date initially received: 2020-12-09, 07:48:36

The document submitted for filing on 2020-12-09 has been filed as of 2020-12-09.

OTHER - witness statement

Filed on behalf of Respondent in

Case Number: CT-2019-005

Proceeding: The Commissioner of Competition v. Parrish & Heimbecker, Limited

Proceeding Number: 1

Document Number:

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Registry of the Competition Tribunal

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Tribunal de la concurrence - Competition Tribunal

Information sur l'Instance

Intitulé de cause : The Commissioner of Competition v. Parrish & Heimbecker, Limited

Numéro de l'instance: CT-2019-005

Section de l'Acte : ARTICLE 92 - FUSIONNEMENT

Date initialement reçu : 2020-12-09, 07:48:36

Le document transmis le 2020-12-09 a été déposé en date du 2020-12-09.

AUTRE - witness statement

déposé par le défendeur dans l'affaire

Numéro de l'affaire : CT-2019-005

Nom de l'instance : The Commissioner of Competition v. Parrish & Heimbecker, Limited

Numéro de l'instance : 1

Numéro du document :

Veillez prendre note que les inscriptions comme nouveaux utilisateurs ainsi que les dépôts électroniques seront révisés pendant les heures d'affaires du Tribunal soit du lundi au vendredi de 8h à 17h (heure de l'est).

Greffe du Tribunal de la concurrence

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THE COMMISSIONER OF COMPETITION

Applicant

– and –

PARRISH & HEIMBECKER, LIMITED

Respondent

WITNESS STATEMENT OF 

I, [REDACTED], of the [REDACTED] in the Province of Manitoba state as follows:

1. I am a farmer in Manitoba, Canada. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
2. A map showing the location of the farms is attached as Exhibit 1.
3. I have personal knowledge of the matters in this Witness Statement, except where I have otherwise indicated that I am relying on information from others, in which case I believe such information to be true.

PURPOSE OF THIS WITNESS STATEMENT

4. I make this Witness Statement in connection with the Application by the Commissioner of Competition (the "**Commissioner**") against Parrish & Heimbecker, Limited ("**P&H**") in proceeding CT-2019-005, relating to the alleged anti-competitive conduct by P&H through the acquisition of Louis Dreyfus Company Canada ULC ("**Louis Dreyfus**") in Western Canada.
5. I am providing this witness statement because the Commissioner has served me with a subpoena.

WHEAT AND CANOLA SALES

6. I grow wheat and canola with each account for approximately 50% of my crops. I also grow a small amount of peas. I am able to store all of my produced grain during the year using a combination grain storage bins and grain bags. This gives me flexibility to sell my crop at any time during the year.
7. When selling wheat and grain, I regularly check the prices at the P&H elevator in Moosomin, SK, the Viterra elevator in Fairlight, SK, the elevator formerly

owned by Louis Dreyfus in Virden, the Richardson Pioneer elevator in Kemnay, MB and the G3 elevator in Bloom, MB.

8. Since 2018, I have sold wheat to the P&H elevator in Moosomin, the Louis Dreyfus elevator in Virden, the Richardson Pioneer elevator in Kemnay and the G3 elevator in Bloom. In that same period, I have sold canola to the Louis Dreyfus elevator in Virden, the Viterra elevators in Souris, MB and Fairlight, SK, the Cargill elevator in Oakner, MB, and the Richardson Pioneer Elevator in Kemnay.
9. I do not usually sell to canola crush plants. Canola crush plants cover their demand around 5 months in advance. I have found that I risk missing out on better sale opportunities if I book sales this far out. I have not sold canola to a crush plant since 2016.

TRANSPORTATION COSTS

10. I own a Super B truck that I use to haul crop to grain elevators. It costs me approximately 25 cents per bushel to get my crop to Virden, Moosomin, or Fairlight. Transportation costs increase if I sell my crops to elevators farther away. These extra costs can be the same or greater than my extra margin that I might make selling my crops at more distant elevators.
11. From time to time, opportunities and circumstances will allow me to make a profitable sale to a more distant elevator. For example, I recently sold 140,000 bushels of wheat to G3's elevator at Bloom. Bloom offered me a price that was 50 cents per bushel higher than what I could get from Virden, Moosomin, or Fairlight. In addition, my wheat was tough (which means high moisture) this year and Bloom was able to blend it with drier grain from the Bloom area.
12. I will hire a transport company to haul the wheat to Bloom. I estimate that it will cost me approximately \$0.50 cents per bushel to do so.

EFFECT OF THE ACQUISITION

13. Prior to the acquisition, I observed price differences of between \$0.40 to \$0.50 cent per bushel between what I can get for my crops from P&H at Moosomin and Louis Dreyfus at Virden.

14. I am concerned about losing Louis Dreyfus as a marketing option at Virden. This year I planted 6000 acres of wheat and 6000 acres of canola. Based on previous harvests, I expect this will yield approximately 462,000 bushels of wheat and 312,000 bushels of canola. If I receive \$0.20 cents less a bushel for my wheat and canola because of the loss of competition, this translates to approximately \$154,800 less income for my farm.

Signed this 25 day of August 2020.

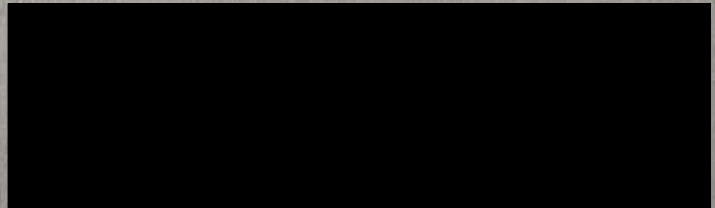
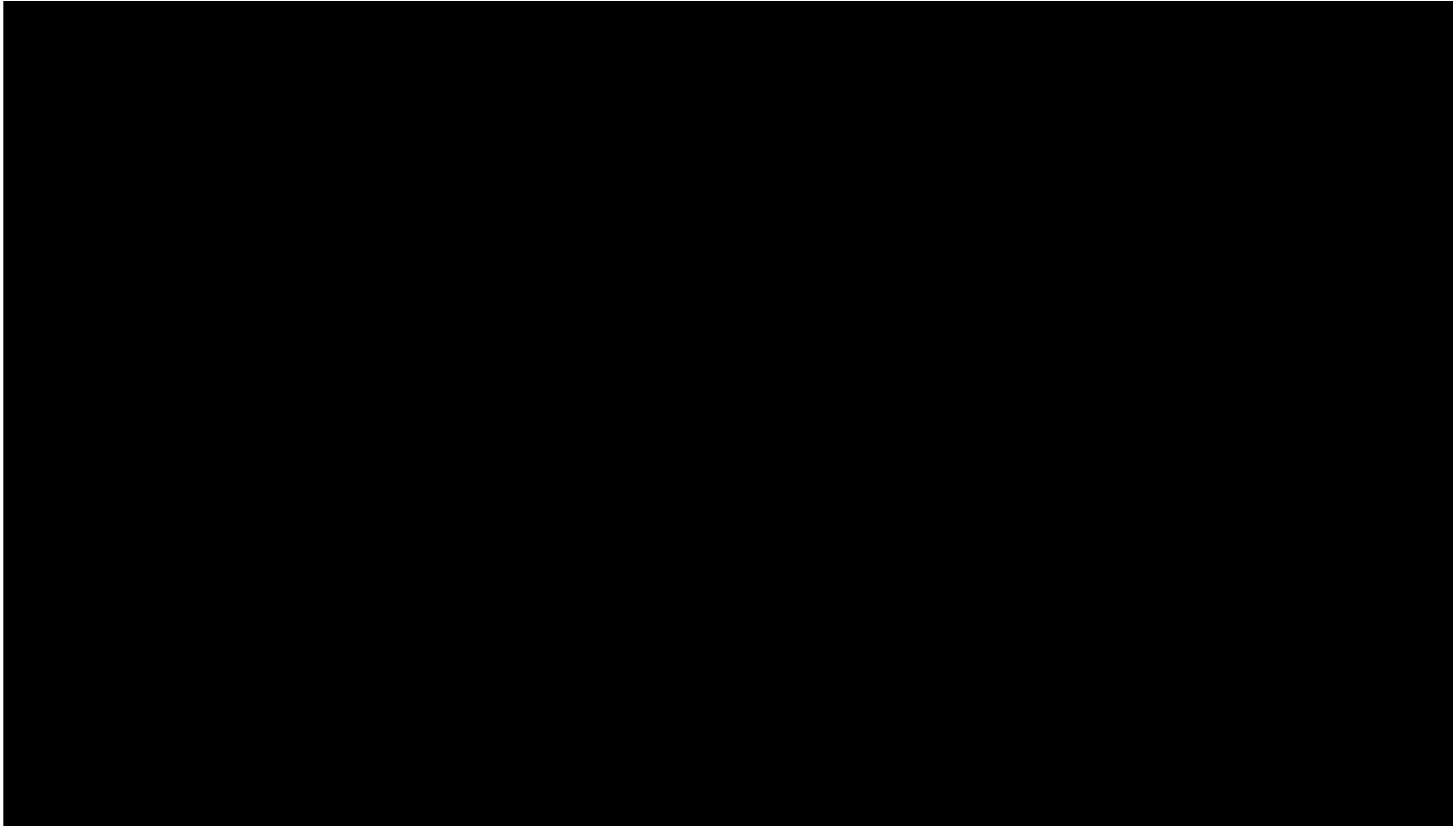


EXHIBIT 1



CT-2019-005

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

WITNESS STATEMENT OF 

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;

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BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

PARRISH & HEIMBECKER, LIMITED

Respondent

WITNESS STATEMENT OF [REDACTED]

I, [REDACTED], of the [REDACTED] Saskatchewan, Canada, state as follows:

1. I am a farmer in Saskatchewan, Canada. [REDACTED]
2. A map showing the location of my two farms is attached as Exhibit 1.
3. I have personal knowledge of the matters in this witness statement, except where I have otherwise indicated that I am relying on information from others, in which case I believe such information to be true.

PURPOSE OF THIS WITNESS STATEMENT

4. I make this witness statement in connection with the application by the Commissioner of Competition against Parrish & Heimbecker, Limited (“**P&H**”) in proceeding CT-2019-005, relating to the alleged anti-competitive conduct by P&H through the acquisition of Louis Dreyfus Company Canada ULC (“**Louis Dreyfus**”) in Western Canada.
5. I am providing this witness statement because the Commissioner has served me with a subpoena.

WHEAT AND CANOLA SALES

6. I grow wheat and canola on the two farms that I operate. Last year I grew 3100 acres of canola and 4300 acres of wheat.
7. My farms currently have capacity to store 80-85% of my grain which allows me to sell my wheat and canola throughout the year. When I sell my grain is dependant on when cash flow is required, for example, I need a positive cash flow after each year end (December 31), so I will haul from December to March.

8. Since harvesting my crops in November 2019, I have sold all of my crop to Viterra's elevator in Fairlight, SK. In 2018, I sold 20% of my commodity crop to Louis Dreyfus' elevator in Virden and the balance of my commodity crop to Viterra in Fairlight. I also grew some Nexera canola which I sold to Louis Dreyfus/Richardson's crush plant in Yorkton, SK.
9. When I sell my wheat and canola I usually consider three elevators: Richardson's elevator in Whitewood, SK, Viterra's elevator in Fairlight, SK, and Louis Dreyfus in Virden, MB. Whitewood is approximately 110 km or a one hour and fifteen minute drive from [REDACTED] and approximately 70 km or a 45 minute drive from [REDACTED]. Virden is 40 km and 25 minutes from [REDACTED] and 100 km and a one hour drive from [REDACTED].
10. Occasionally I will contact Ceres' elevator in Northgate, SK but it is located approximately 1-1.5 hours south of the farm. I also cannot sell my crop from last year because it does not meet Ceres' moisture requirements.
11. The elevator owned by Cargill in Oakner is also not an option because it requires taking secondary roads with a 23 tonne weight limit that is in effect all year. As described in more detail below, I haul my grain in a semi-truck with a 30 tonne capacity. Transportation costs mean that Oakner is not a viable option for me.
12. Depending on the price of commodity canola, I will also consider selling my grain to the Yorkton and Harrowby canola crush plants but have not sold any of my commodity canola to these plants in the past two years.
13. I will sometimes call P&H's elevator at Moosomin but my experience has been that the Moosomin elevator has not offered competitive prices. Since P&H acquired the Virden elevator from Louis Dreyfus, I have been told to take

samples of my grain to P&H's elevator in Moosomin. Given my experience with P&H's prices, I am concerned about the loss of competition caused by P&H owning both the Virden and Moosomin Elevator.

Transportation costs

14. I haul my wheat and canola to the elevators myself in a semi truck that has a capacity of 30 tonnes per load. My cost to get to the closest elevator to my farm, Viterra in Fairlight, is 8 cents per bushel. Any additional 15 minutes of driving, round trip, costs approximately one additional cent. As I produced 13,000 tonnes of grain last year it will take me 433 trips to deliver all of my grain.
15. Given the time and cost associated with hauling my grain, more distant elevators would have to offer a higher price for me to consider selling to them. For example, the Moosomin Elevator would have to offer me 10 cents a bushel above what the Fairlight Elevator offered for it to be worthwhile to drive past Fairlight.
16. If I were to lose ten cents per bushel, this would cost my farm approximately \$45,000 (using the figures in paragraph 6, 70 bushels of wheat per acre for 4300 acres is 301,000 bushels and 50 bushels of canola per acre for 3100 acres is 155,000 bushels. Ten cents per bushel for 456,000 bushels is \$45,600). We need every penny to be able to hit the profitability levels that we need to operate our farm. This is money we use to support four families and is a material amount for me.

Signed this 11 day of August 2020.

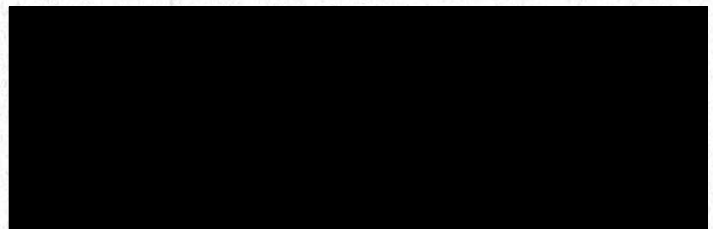
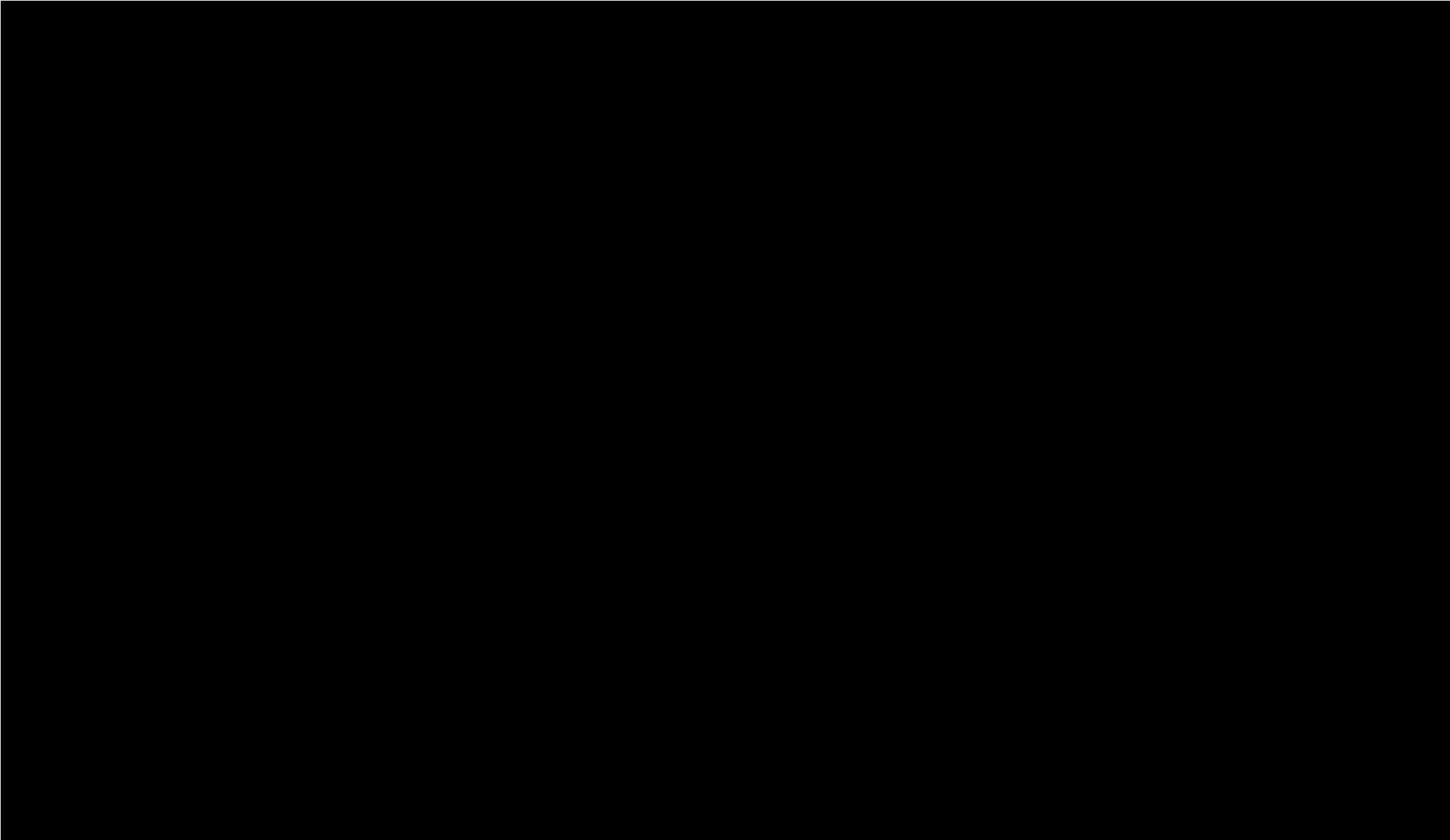


EXHIBIT 1



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

WITNESS STATEMENT OF 

THE COMPETITION TRIBUNAL

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

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BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

PARRISH & HEIMBECKER, LIMITED

Respondent

WITNESS STATEMENT OF [REDACTED]

I, [REDACTED], of the [REDACTED] in the Province of Manitoba state as follows:

1. I am a wheat and canola farmer in Manitoba, Canada. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
2. A map showing the location of the farms is attached as Exhibit 1. [REDACTED]
[REDACTED]
3. I have personal knowledge of the matters in this Witness Statement, except where I have otherwise indicated that I am relying on information from others, in which case I believe such information to be true.

PURPOSE OF THIS WITNESS STATEMENT

4. I make this Witness Statement in connection with the Application by the Commissioner of Competition (the “**Commissioner**”) against Parrish & Heimbecker, Limited (“**P&H**”) in proceeding CT-2019-005, relating to the alleged anti-competitive conduct by P&H through the acquisition of Louis Dreyfus Company Canada ULC (“**Louis Dreyfus**”) in Western Canada.
5. I am providing this witness statement because the Commissioner served me with a subpoena.

WHEAT AND CANOLA SALES

6. Over the past three years, I have exclusively sold grain to the Louis Dreyfus elevator in Virden, MB, the P&H elevator in Moosomin, SK, and the Viterra elevator in Fairlight, SK.
7. Generally, I sell more grain to Louis Dreyfus' Virden elevator because it is located only ■■■km from my farm and the price for grain has historically been better for me. Prior to the acquisition, I sold approximately 90% of my grain to LDC Virden. In particular, during harvest I will send approximately 75% of my crop directly from the field to LDC Virden so that I can avoid buying additional grain storage bins for my farm.
8. P&H Moosomin is located further from my farm, approximately ■■■km. On average, I found that P&H Moosomin's prices were 25 cents a bushel lower than LDC Virden. However, sometimes, P&H Moosomin would offer a better price in which case I would sell to P&H. I do not have a preference for either company and I will sell where I can get the best price for my crop.
9. Viterra Fairlight is located approximately ■■■km from my farm, however between March and June there are weight restrictions on Road 60 making transportation more expensive. To keep under the weight restrictions, I would have to haul half of a load. There is much more enforcement of the weight restrictions close to the elevators than there is close to farms, so it is better when an elevator is located on a primary road. The trip to Fairlight would not be direct, as I would have to take routes that avoid bridges where I can.
10. I do not use Cargill's elevator in Oakner/Hamiota. You have to take the 259 highway past Lenore/Kenton and then meet up with the highway to Oakner. The 259 highway is not a high grade road, it has weight restrictions and it is tough on my truck. It would take an hour and half each way to get to Cargill if I took roads without weight restrictions. To get to Oakner, I need to cross the

Assiniboine Valley which is a steep and dangerous road to drive on with my semi-truck.

11. Other elevators that are farther away such as in Brandon, Souris, or Portage la Prairie are less preferable options for me because of the extra time and cost of bringing my grain to these locations. For me to sell to these elevators, they have to offer higher prices to cover the extra transportation costs.
12. I do not sell to canola crush plants as it generally means that the quality of the canola isn't good.

PRICE SETTING

13. Prior to the acquisition, I used the "MyLDC" application to receive daily updates on prices for grain and compare the prices to P&H Moosomin. P&H's price sheet comes by e-mail, and the prices are updated once or twice a week.
14. When arriving at the grain elevators, they generally grade and give a quality check on-site. P&H Moosomin and LDC Virden have different approaches to grading the grain. P&H has stricter grain grading, where they check the falling number. The falling number is a scale that they use to measure the quality of the grain, but it's for milling purposes. I had a good relationship with the people at LDC as they were familiar with my grain and would not grade it as strictly as P&H.

TRANSPORTATION COSTS

15. I haul approximately 95% of my crop on my own but on occasion have hired a third party to haul grain. I use a semi-truck to haul my grain. One load can hold approximately 1200 bushels of wheat or canola. It takes me approximately ■ minutes to haul to Virden, ■ minutes to Moosomin, and ■ minutes to Fairlight. When hauling to these locations I can do 10 – 12 trips in a day. The number of

trips in a day I can do is an important factor. During harvest season I can have up to 100 visits to elevators.

16. If I haul to elevators farther away then I can't do as many trips in a day. For example, if I wanted to haul my grain to G3 in Bloom, I could only do one or two loads a day. In addition, the further I go increase the risk of being pulled over by the DOT and have my truck searched. These types of searches will cost me time and possibly money if there's anything to report. As well, I don't want to have to leave my local area to start new relationships with different elevators that are a higher cost to get service from.
17. Occasionally I have hired Paul Langways to truck my grain to elevators that are farther away than the three I normally sell to. For example, it costs me an additional \$0.30 cents per bushel to send my grain to Brandon.

EFFECT OF THE AQUITION

18. Prior to the acquisition, I used to play LDC Virden against P&H Moosomin. I would get calls from Louis Dreyfus who would be in a rush to fill a train at Virden. In this situation I would call P&H Moosomin and use the two to negotiate a higher price than the current market price for the commodity. These negotiations have allowed me to obtain an additional \$0.50 cents to \$1 per bushel. Since both elevators are on the same rail line, they are usually trying to fill rail cars at the same time, so they are more likely to compete for grain. Viterra Fairlight would not do this as much because they are further away from me.
19. I have lost the ability to benefit from the competition between LDC Virden and P&H Moosomin. As a result of the acquisition, I will no longer be able to play these two elevators off one another in negotiations. Any money I leave on the table because of this is very important to me. Over the past few years I have invested in machinery to improve my farming operations. At the same time, the

price of wheat and canola has been decreasing. As a result, unlike when I started farming, I have been operating on lines of credit with my future as a farmer at risk.

Signed this 19 day of August 2020.

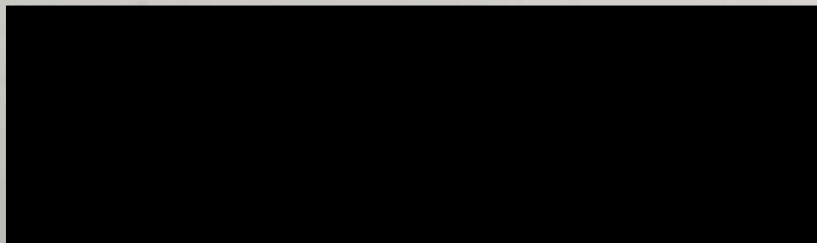
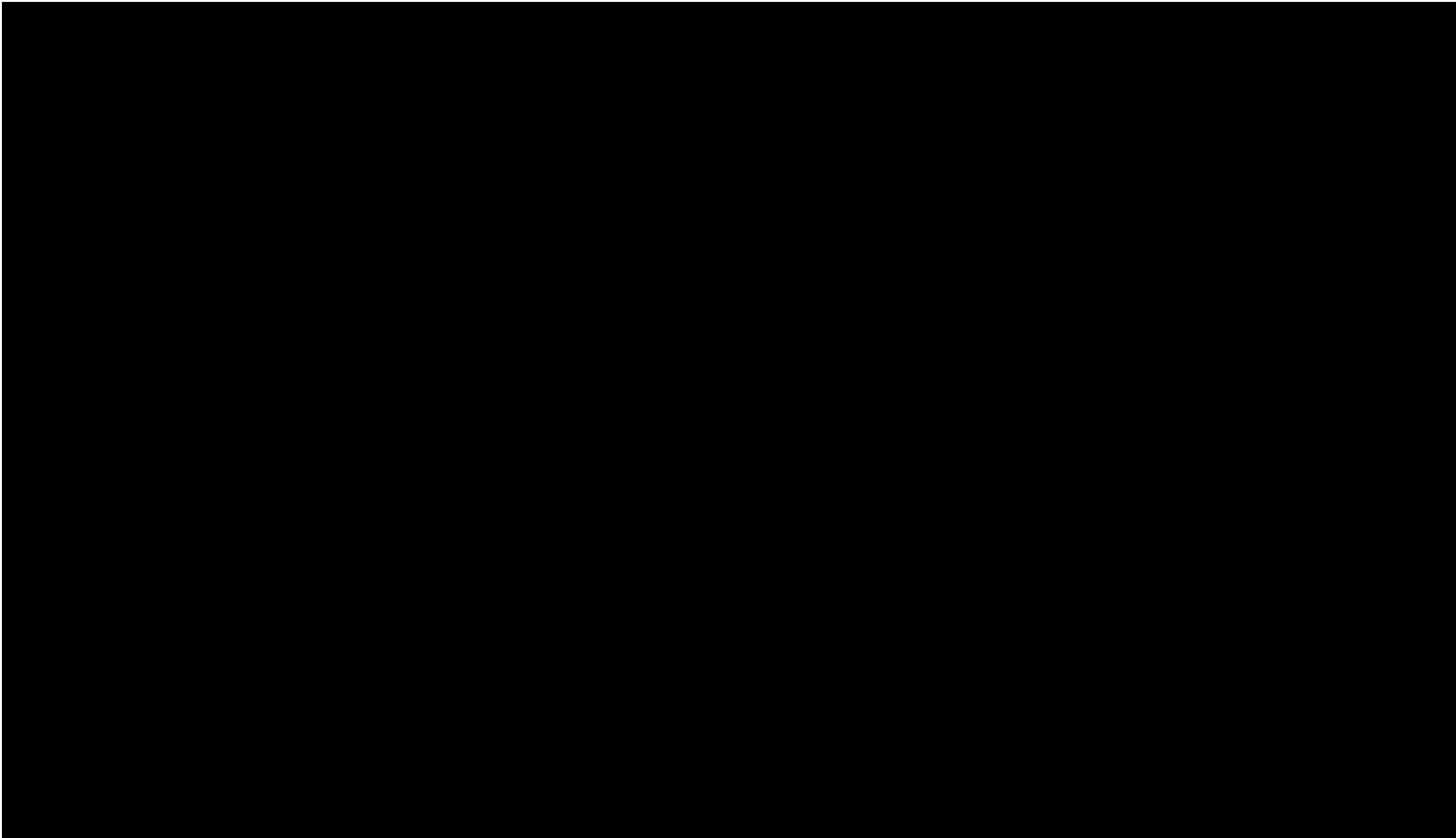


EXHIBIT 1



CT-2019-005

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

WITNESS STATEMENT OF [REDACTED]

THE COMPETITION TRIBUNAL

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BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

PARRISH & HEIMBECKER, LIMITED

Respondent

WITNESS STATEMENT OF [REDACTED]

I, [REDACTED], of the [REDACTED] in the Province of Manitoba state as follows:

1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
2. [REDACTED]
[REDACTED]
[REDACTED] A map showing the location of the farm is attached as Exhibit 1.
3. We mainly grow wheat and canola on our farm but we also grow soybeans, oats and hay along with other specialty crops some years.
4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
5. I have personal knowledge of the matters in this Witness Statement, except where I have otherwise indicated that I am relying on information from others, in which case I believe such information to be true.

PURPOSE OF THIS WITNESS STATEMENT

6. I make this Witness Statement in connection with the Application by the Commissioner of Competition (the “**Commissioner**”) against Parrish & Heimbecker, Limited (“**P&H**”) in proceeding CT-2019-005, relating to the

alleged anti-competitive conduct by P&H through the acquisition of Louis Dreyfus Company Canada ULC (“**Louis Dreyfus**”) in Western Canada.

7. I am providing this witness statement because the Commissioner of Competition has served me with a subpoena.

WHEAT AND CANOLA SALES

8. While every year is different depending on many factors, on average, over the past three years, we have sold approximately 35% of our wheat to Viterra at its elevator in Fairlight, SK (■■ km away). Another 35% of our wheat has been sold to the P&H elevator in Moosomin (■■ km away). The remaining 30% has been split between the Louis Dreyfus elevator in Virden (■■ km away) and the Ceres elevator in Northgate (■■■ km away).
9. Over the last three years on average 30-40% of our canola sales have been split between Fairlight and Moosomin with the remaining canola being sold to the Louis Dreyfus crush plant in Yorkton, Saskatchewan (■■■ km away).
10. The exception to this was last year when we grew a specialty canola crop – non-genetically modified Clearfield nexera canola - for the European market. This high leonic acid non-GMO canola was produced through a contract with Viterra. Viterra paid to have this crop shipped to its St. Agathe facility (■■■ km away).

HOW I DETERMINE WHERE I WILL SELL MY CROP

11. There are four main factors that I consider when making sales of my crop.
12. The first, and most obvious, is price. Everyday most elevators will email or text pricing so that we can compare the different bids and weigh them against the cost to deliver to that particular location. I have attached as Exhibit 2 to my

witness statement an example from P&H's app of the pricing available for 1CWRS 13.5 (that is grade 1 Canadian Western Red Spring Wheat with a 13.5 percent protein content). For example, Ceres has direct access to a US rail line and with currency exchange they can sometimes offer a stronger bid than Viterra or P&H. However, the extra distance to Ceres means a higher transportation cost, so the bid has to be high enough to justify the extra delivery cost.

13. The next factor is when an elevator can accept the grain. Often we will sell our grain on a forward contract. For example, I will sell grain in December to move in February so that I can pay bills in March. If the elevator will not accept the grain until April, that can put me in a tight cash spot. In addition, if an elevator will not accept grains until April I must consider factors such as spring weight restrictions that will drive up my costs. Finally, we do not have enough storage on farm for our entire crop. This means we must sell part of our crop to elevators that can take delivery during harvest time.
14. The next factor is the grade of grain that I have to sell. The Canadian Grain Commission sets standards for grading of grains. However, these standards are still open to some interpretation. Sometimes an elevator will offer a higher grade on a borderline case. For example, one elevator may grade wheat a good 2CW while another one is willing to grade it as 1CW with the latter grade being worth more. Another related issue is moisture. With the past two harvests being very wet we have had little to no dry grain to market. This means that elevators that have driers are easier to sell to.
15. Finally, the last factor we consider is the distance we have to travel to the elevator. This is self-explanatory. The closer elevators cost less to haul to so an elevator further away needs a higher bid to cover the freight costs. We also consider the road conditions to get to the elevator.

16. As I discuss in more detail below, the Virden and Moosomin elevators are located along highway one and easy for me to access whereas Fairlight is located on a secondary highway that has weight restrictions during part of the year. Given the location of my farm, I have observed at times in the past that the price of wheat at Moosomin and Virden were lower than Fairlight. Depending on the circumstances, sometimes the better price from Fairlight was not enough to outweigh the convenience of delivering to either Moosomin or Virden.

TRANSPORTATION COSTS

17. We are fortunate to own our own super b trailers so we can haul our own grain. The only exception is when we have sold our grain to a distant location and the buyer is covering the transportation cost – our contract to grow the specialty canola crop for Viterra last year is an example of this.
18. The super b trailers allow us to haul 44 tonnes at a time which is the same that a commercial carrier can haul. Typically it costs around \$2 per km to run a truck locally. A spreadsheet showing the these costs is attached as Exhibit 3. It costs us approximately \$140 a trip to send our grain to Moosomin and \$280 a trip to send our grain to Virden. Fairlight is located off the main highways which means that from March 15th to June 15th we have to reduce the weight we can send in a trip – from 44 to 35 tonnes. When the weight restrictions are in place it costs approximately \$240 a trip. During the rest of the year it costs more per tonne. Finally, if we sell our canola to the crush plant in Yorkton it costs approximately \$640 per load.

PRICING AND COMPETITION BETWEEN ELEVATORS

19. As I said above, an elevator's pricing information is easy to access. This price is known as the basis which is essentially the amount deducted from the futures price to account for the elevator's costs of handling and shipping the

grain to market. The elevator will also adjust its basis to reflect its need for grain. A wide basis (a greater discount and hence a lower price for my grain) means that the elevator does not need as much grain. If an elevator needs grain it can narrow its basis (a smaller discount and hence a better price for my grain) to prompt me to sell. In addition to adjusting basis, elevators can offer other incentives for me to sell my grain. As I described above, an elevator may offer me a better grade on borderline grain. Occasionally, a grain buyer from an elevator may email or text with special pricing if they need to obtain grain fast.

20. I rely on competition between elevators to get the best price I can for my grain. Because basis prices are transparent I have played elevators off against each other to get a better price for my grain. I also will set target prices with elevators to take advantage of prices that I may miss. Of course, elevators are also aware of each other's prices. It has been my experience that if an elevator knows that another elevator is currently competing for grain (for example, because they both have trains to fill) I will get a better price for my grain. Conversely, if an elevator knows it has the market to itself then I will not get as good a price for my grain.
21. Prior to the acquisition, it appeared to me that Louis Dreyfus at Virden would push P&H at Moosomin to bid higher. I am concerned about the loss of competition now that both elevators are owned by P&H.

Signed this 3rd day of September 2020.

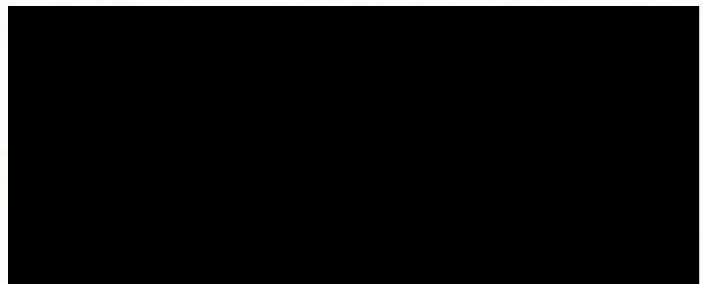


EXHIBIT 1

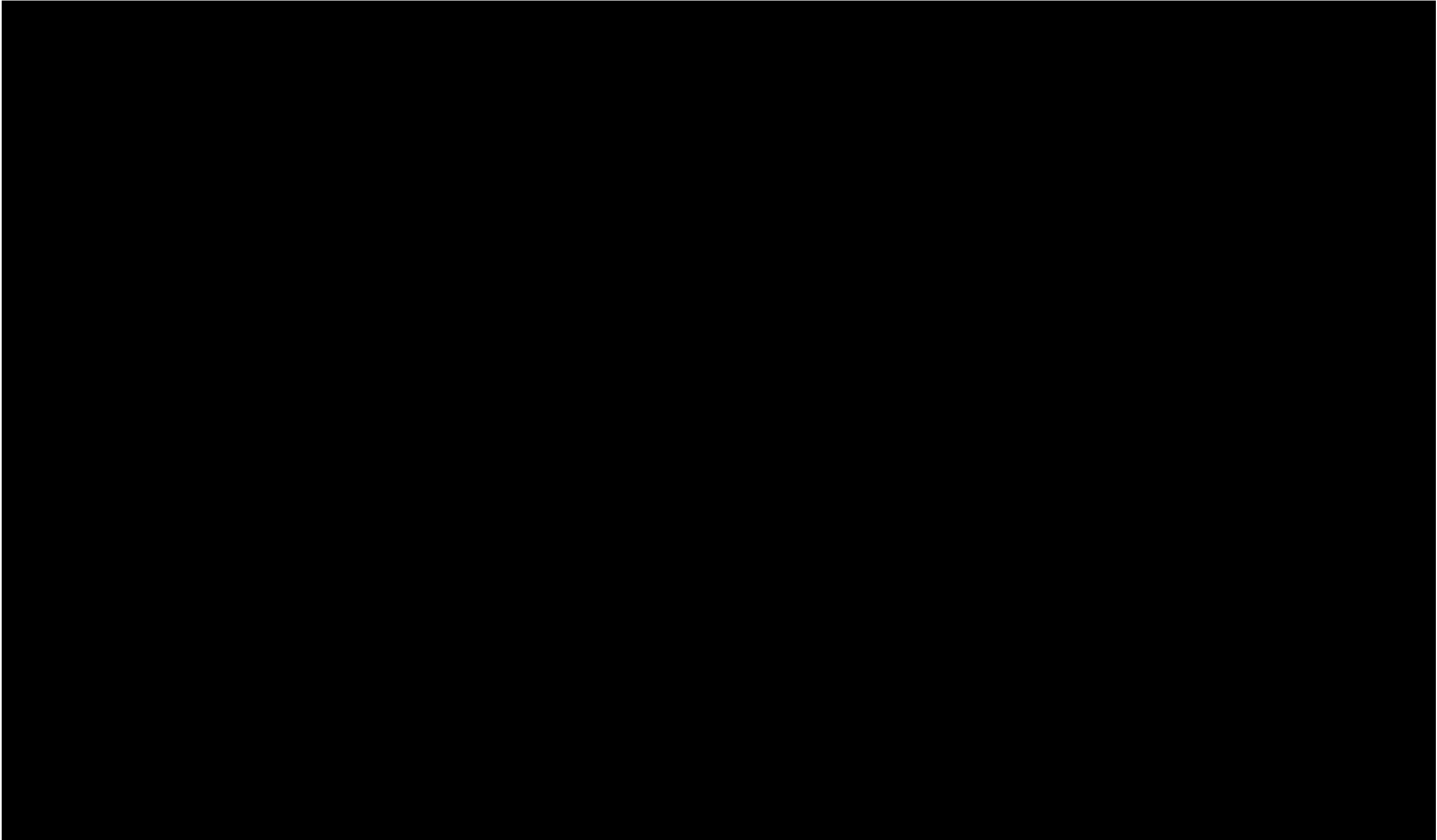


EXHIBIT 2



[VIEW DETAIL](#)

1CWRS 13.5

Date	Bid	Basis
Aug20	6.01	0.68
Sept20	6.01	0.68
Oct20	6.07	0.74
Nov20	6.07	0.74
Dec20		
Jan21		
Feb21		
Mar21		
Apr21		
May21		
Jun21		

[VIEW DETAIL](#)

2CW OATS W

EXHIBIT 3

Trucking cost breakdown

	20,000	per year
fuel		13000
maintenance		1200
repairs		4000
tires		4500
labour		10000
insurance and plates		1200
Depreciation on equipment		7000
Total		40900
total per km		2.045

Assumptions

4 oil changes per year plus any additional maintenance

Repairs including safety inspection twice a year plus any additional repairs

30 tires on a super b average tire price \$450 average 3 yrs outta a set (\$4500/yr)

Wages paid at \$25/hr plus deductions avg 50km/hr

Plates and insurance \$1200/yr (farm use only)

Fuel average per litre \$1.00

Average fuel consumption 65litres/100km

Assuming 20,000km/yr

CT-2019-005

THE COMPETITION TRIBUNAL

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

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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

WITNESS STATEMENT OF [REDACTED]

THE COMPETITION TRIBUNAL

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

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BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

PARRISH & HEIMBECKER, LIMITED

Respondent

WITNESS STATEMENT OF ████████████████████

I, [REDACTED], of the [REDACTED] in the Province of Manitoba state as follows:

1. I am a wheat and canola farmer in Manitoba, Canada. [REDACTED]
[REDACTED]
[REDACTED]
2. A map showing the location of my farm is attached as Exhibit 1.
3. I have personal knowledge of the matters in this witness statement, except where I have otherwise indicated that I am relying on information from others, in which case I believe such information to be true.

PURPOSE OF THIS WITNESS STATEMENT

4. I make this witness statement in connection with the Application by the Commissioner of Competition (the "**Commissioner**") against Parrish & Heimbecker, Limited ("**P&H**") in proceeding CT-2019-005, relating to the alleged anti-competitive conduct by P&H through the acquisition of Louis Dreyfus Company Canada ULC ("**Louis Dreyfus**") in Western Canada.
5. I am providing this witness statement because the Commissioner has served me with a subpoena.

WHEAT AND CANOLA SALES

6. I can harvest around 100,000 bushels of red spring wheat and canola a year from my farm. I also raise cattle on my farm. I am able to store approximately 60,000 to 70,000 bushels in storage bins on my farm. This means I have to sell approximately 25-30% of my crop at harvest time.
7. In the past two years I have sold most of my canola and wheat to P&H's Moosomin elevator and Louis Dreyfus' Virden elevator. The majority of the

crop went to LDC & a only small amount t P & H, as they were not as competitive on price. I have also sold to G3 at Portage and Richardson at Kemnay.

8. I receive daily prices from P&H Moosomin, (prior to the acquisition LDC Virden), Richardson at Kemnay and Cargill at Oakner. Post acquisition, if I am unable to sell my crop to P&H, I would have to drive at least an hour further to the next available elevator.
9. I grow a variety of canola which is contracted through a crushing plant and they arrange “pick up” off farm as part of the contract.

TRANSPORTATION COSTS

10. I have a straight trailer that can only haul 26 tonnes at a time so it is not a good use of my time to haul my crop to more distant elevators. For example, I can haul approximately 4 loads a day in my trailer to Virden. By contrast, I could only haul 1 load per day to G3’s elevator at Bloom.
11. Last year because most of my sales were either to Moosomin or Virden I hauled all of the grain myself. Based on my experience, it would cost me twice as much to hire someone to haul my crops to elevators. We have hired a trucker when we have had a break down and it is twice the cost of me trucking the grain myself. The rates are to Portage \$22/MT, to Kemnay \$12.10/MT and Oakner \$11.50/MT.
12. I also prefer selling to elevators that are a located close to Highway 1 as it is harder on my truck and a slower drive to reach elevators on secondary roads.
13. Due to the time and cost of hauling crop, I need an additional \$0.25 - \$0.30 cents a bushel to haul my crop an extra hour.

EFFECT OF THE AQUITION

14. After P&H acquired Virden, I have noticed that the price for lower protein wheat has been lower. When Louis Dreyfus owned Virden the discount for lower protein wheat was \$0.01 - \$0.02 cents. P&H at Virden now applies a \$0.05 cent discount. So for example, from 13.5% protein to 11.5% protein = 0.60c/bushel discount.

15. I grow approximately 70,000 bushels of wheat. The difference in the discount between Louis Dreyfus and P&H means I have foregone approximately \$14,000 to \$21,000 (plus extra trucking costs of having to go further) in revenue. My wheat may be ten points below the protein level that P&H wants, which means that I would lose \$0.50/bushel through discounting. As well, they are not as competitive on other commodities. Worse case scenario would be a personal loss of income of \$40,000.

Signed this 7 day of August 2020.

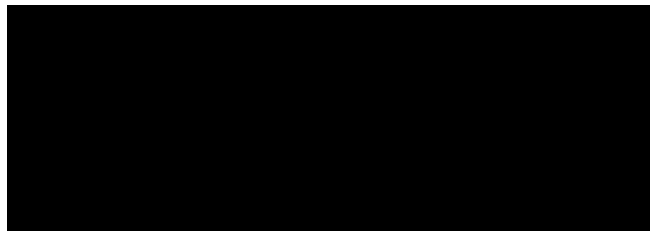
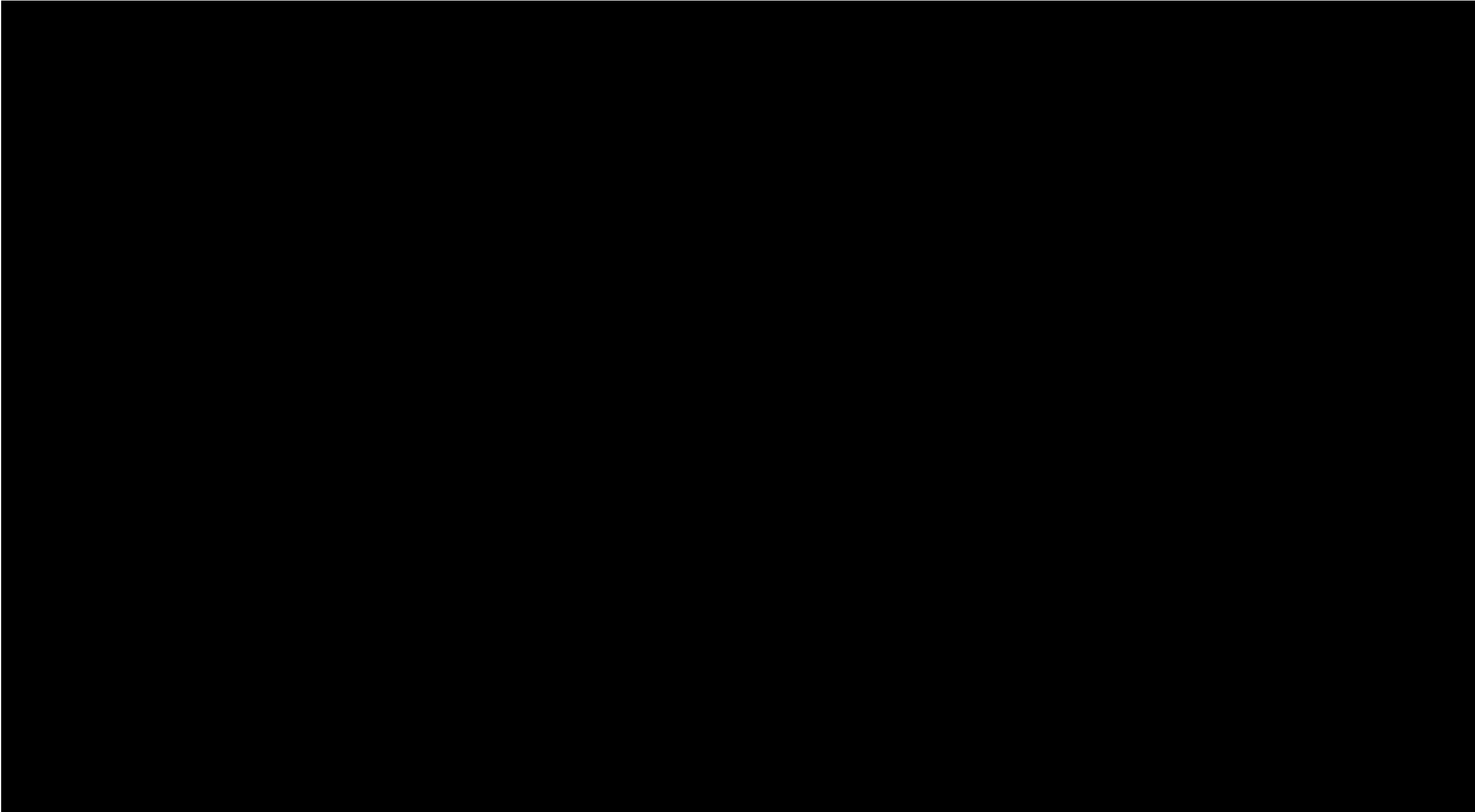


EXHIBIT 1



Includes anticipated items as of October 3, 2019

CT-2019-005

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

WITNESS STATEMENT OF [REDACTED]

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

WITNESS STATEMENT OF ED PAULL

I, Ed Paull, of the Town of Elkhorn in the Province of Manitoba state as follows:

1. I own and operate an approximately 3,400 acre farm. My farm is located 4.5 miles outside of Elkhorn. I operate my farm through Paull Family Farm Limited. A map showing the location of my farm is attached as Exhibit 1.
2. I have been farming since 1975.
3. I have personal knowledge of the matters in this Witness Statement, except where I have otherwise indicated that I am relying on information from others, in which case I believe such information to be true.

PURPOSE OF THIS WITNESS STATEMENT

4. I make this witness statement in connection with the Application by the Commissioner of Competition (the "**Commissioner**") against Parrish & Heimbecker, Limited ("**P&H**") relating to P&H's acquisition of the primary grain elevator in Virden, Manitoba formerly owned by Louis Dreyfus Company Canada ULC ("**LDC**").

CROPS AND STORAGE

5. I grow wheat and canola every year. This year I also grew flax. In the past, but not for the last two years, I've also grown soybeans. Over the last 3 years, on average, I have grown approximately 1,500 acres of wheat per year and approximately 1,500 acres of canola. I harvested 400 acres of flax this year.
6. I have grain storage bins and grain baggers – these are long white grain bags – that allow me to store 100% of my grain. As a result, I can sell my wheat and canola throughout the year and at the time of my choosing, when I can get the best price for it.

PRICE FOR WHEAT AND CANOLA

7. When I sell my wheat or canola to a primary grain elevator ("**Elevator**") or a canola crusher, the Elevator or crusher pays me the "net price" (i.e., the futures

- price in the relevant delivery period plus or minus the basis in the same period) for the commodity they are buying from me.
8. When I sell my grain to an Elevator or a crusher there are no separate charges levied for elevating, grading, cleaning, blending or storing the grain they purchase from me. Drying is a service for which a charge may be levied. I do not generally need or use drying at Elevators.
 9. Most grain companies publish their net prices daily and they have a mobile application or website where you can check their net prices. Every day, I receive emails, texts or instant messages from different grain companies, including P&H, Richardson at Kemnay, Viterra at Brandon, Souris and Fairlight, G3 at Bloom, Bunge Altona and Harrowby and Cargill at Oakner showing their net prices. I also use the P&H's mobile application – P&H Direct – as well as Viterra's app to check their net prices. The net price is the price that I compare when deciding to whom I will sell my grain.
 10. Because it is the amount I receive when I sell my grain to an Elevator or a crusher, the net price is what matters to me and what drives my decision to sell to a given Elevator or crusher.
 11. In my experience, crushers offer high net prices for canola making it worthwhile for me to sell to crushers even though they are farther away. For the last four crop years, I have sold most of my canola to the Bunge crusher in Altona MB, which is about 350km or a three and half hour drive from my farm. I hire a commercial truck to haul my canola to Altona. Factoring in those trucking costs (which are very reasonable), I make more money going to Altona than to the Elevators that are closer by or even to Bunge's crusher at Harrowby MB, which is only an hour from my farm.
 12. I can sell my wheat or canola for immediate delivery in the "spot" market at the posted net price in effect at the time I contact the elevator or I can enter into a fixed price contract for deferred delivery. Under this type of contract, I agree to deliver a specified quantity and quality of grain at an agreed net price within a prescribed delivery window in the future. Elevators post net prices for immediate and future deliveries, so I can see the price I will receive for the

contracted quality of grain if I enter into a forward fixed price contract with an Elevator now for a future delivery.

13. I also use grain purchase orders or “GPOs” pretty regularly. Under a GPO, I set the target net price at which I am willing to sell a certain amount of my grain. If the Elevator’s posted net price hits my target price, the GPO is automatically triggered and the Elevator has to buy the agreed quantity and quality of grain from me at my target price.
14. At any time before it is triggered, I can cancel the GPO or amend it by changing the target price, the grade or quantity of wheat or canola to be delivered and/or the delivery month. I also choose the expiry date for the GPO – it can be in effect for days, weeks or months. At any time before the GPO expires, I can agree to extend or “roll” the GPO to a future delivery period.
15. I sometimes enter into basis contracts. A basis contract is a type of deferred delivery contract. I agree with the Elevator or crusher on the quantity and quality of the grain to be delivered by me as well as the future delivery month. I also lock in the posted basis for the delivery month while leaving the futures price to be set later. I can agree to the futures price at any time of my choosing before the agreed delivery month. I use this type of contract when I want to book a delivery window with an Elevator but believe that there is room for improvement in futures prices.
16. I sell very little of my wheat and canola in the “spot” market. I generally only do so in a few circumstances. One of those circumstances is when I have a few additional tonnes of grain in the storage bins I am emptying to fulfill a grain purchase contract. I refer to those additional tonnes as “overage”. In that situation, when I deliver my grain to the Elevator in fulfillment of the purchase contract, I receive the net price stipulated in the contract for the contracted amount of grain and I’ll sell the grain company the “overage” at the posted net price in effect when I arrive at the Elevator.
17. Similarly, at the end of the crop year, I may find myself holding onto a few “speculative bushels”; that is, bushels I’ve held in reserve because I was thinking there might a late season futures rally as we near the end of the crop

season. I might sell those bushels on the “spot”.

18. Although it is rare, I may also sell on the spot market when I know in advance about an event (such as the release of a US Department of Agriculture report on crop yields and productions) which I think could have a favourable impact on futures prices. In those situations, once that event occurs, if the Elevator’s posted net price moves as I expected, I can contact the Elevator to make a spot sale. In other cases, I’ll put in a GPO so I don’t have to worry about watching the markets and calling the Elevator in time. If the Elevator’s posted net price moves as I expected it would and hits my target price, I automatically get the benefit of that market peak.
19. In an average year, I’ll sell 30 to 40% of my crop before the harvest using deferred delivery fixed price contracts. This year, in March and April, I pre-sold close to 60% of my wheat and canola harvest for delivery in September. Sometimes I’ll forward sell in advance of the harvest as early as January.
20. I’ll normally aim to sell approximately 90% of my crop each year using a combination of deferred delivery fixed price contracts and GPOs. While I may enter into contracts in September or October for delivery as far out as May or June, I typically try to sell and deliver about 90% of my crop before the end of March of each crop year so I can focus on seeding in the spring and also avoid seasonal weight restrictions.
21. All of the grain companies and crushers that I deal with use GPOs, fixed price contracts and basis contracts.

MY WHEAT AND CANOLA SALES

22. In the last four years, I have sold my wheat to Richardson at Kemnay (91km from my farm), G3 at Bloom (210km from my farm), Viterra at Fairlight (50km from my farm) and Souris (99km from my farm), Cargill Oakner (76km from my farm) and the Virden Elevator (19km from my farm). Last year, I sold most of my wheat to Richardson at Kemnay and the year before that I sold most of my wheat to G3 at Bloom.
23. In the same timeframe, I’ve sold my canola to Bunge Altona (350km from my

farm), Viterra Brandon (117km from my farm), Cargill Oakner (76km from my farm) and Elva (106km from my farm), G3 Bloom (210km from my farm), and the Virden Elevator (19km from my farm).

24. I haven't sold wheat or canola to Moosomin (42km from my farm) but I have sold soybeans to that Elevator in the past. I've also bought fertilizer from the Moosomin Elevator. P&H has never offered me a better price for my grain if I bought crop inputs from them, or vice versa.
25. I sell a lot of my wheat and canola to Elevators and crushers that are farther a way from me than the Virden Elevator because they consistently offer posted net prices that are high enough cover my hauling costs and make it worthwhile for me to sell to them. As I mentioned above, when I want to hire a commercial truck, I've got lots of options to choose from and the rates are very reasonable.

NO CONCERNS ABOUT P&H'S ACQUISITION OF VIRDEN

26. I am not concerned by the fact that P&H now owns the Virden and Moosomin Elevators.
27. Virden's net prices have been very competitive since P&H bought that Elevator in December of last year. For example, Virden's net prices for wheat are quite a bit better than Kemnay's. Some days, they've been \$0.15 to \$0.20/bu higher than Richardson Kemnay, whereas in the past Kemnay would be above Virden by about \$0.10 to \$0.15/bu.
28. If P&H were to attempt to pay me less for my wheat or canola at the Virden Elevator, I could and will easily switch to any of the Elevators and crushers mentioned above without any negative financial impact on me.

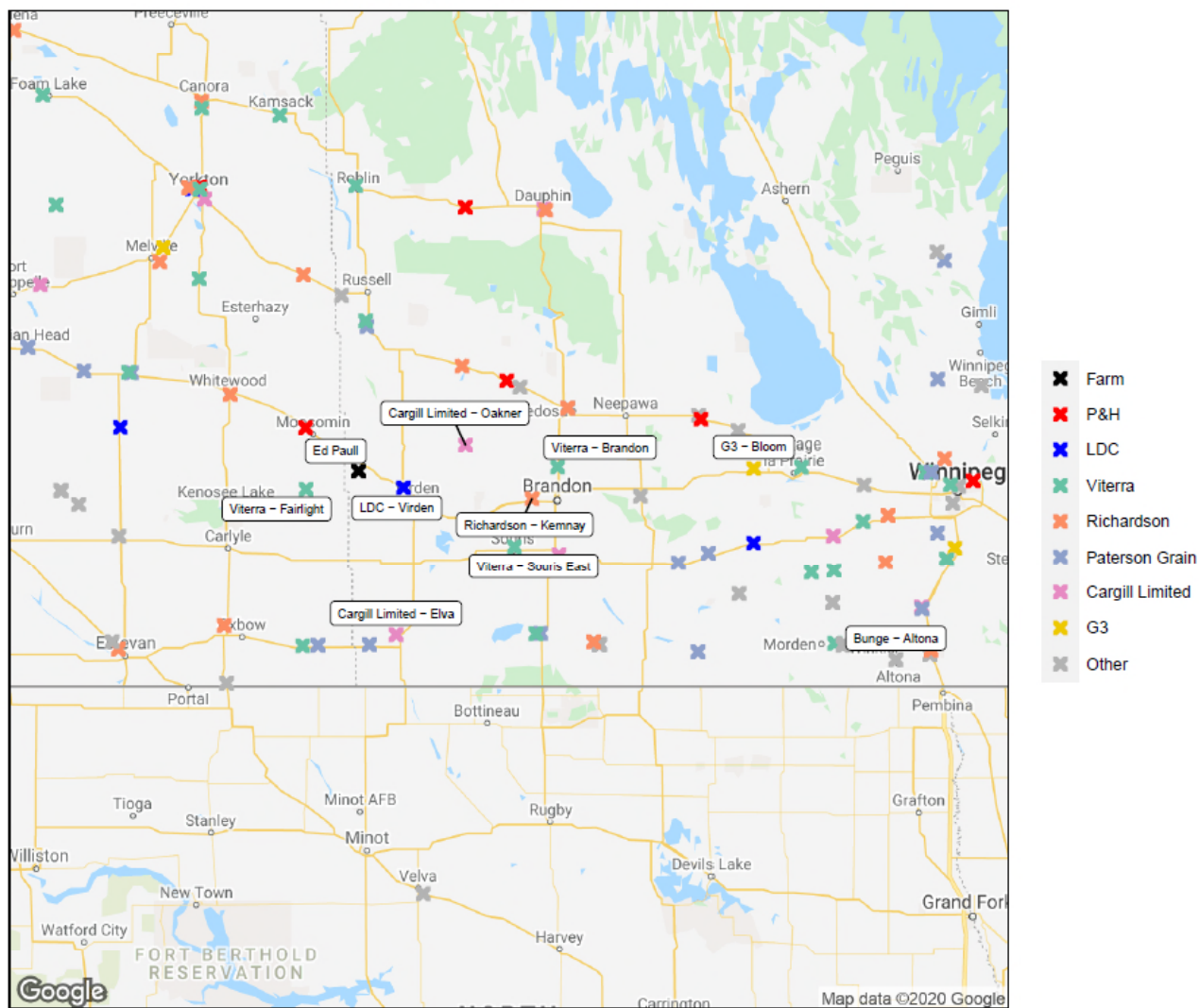
Signed this 8th day of October, 2020

E-SIGNED by Ed Paull
on 2020-10-08 21:08:38 GMT

Ed Paull

EXHIBIT 1

Ed Paull Farm Location and Nearby Elevators and Crushers



Notes:
 [1] Elevators and crushers with labels are locations where Ed Paull sold wheat or canola in the last 4 years.

T-2019-005

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

WITNESS STATEMENT OF ED PAULL

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

WITNESS STATEMENT OF KRISTJAN HEBERT

I, Kristjan Hebert, of the Town of Moosomin in the Province of Saskatchewan state as follows:

1. I own and operate a 22,000 acre farm located at Fairlight SK. I operate my farm through Hebert Grain Ventures. A map showing the location of my farm is attached as Exhibit 1.
2. I've been running Hebert Grain Ventures for 11 years but I've been involved in farming all my life. Before I founded Hebert Grain Ventures, I spent five years as a CPA with MNP.
3. I work with my dad and we have eight full time employees, five part-time employees and three trucks that are on the road pretty consistently.
4. In 2020, I received the Top Producer of the Year Award, sponsored by BASF, Case IH and Rabo AgriFinance. This is a North American award and I was the first Canadian farmer to receive it.
5. I have personal knowledge of the matters in this Witness Statement, except where I have otherwise indicated that I am relying on information from others, in which case I believe such information to be true.

PURPOSE OF THIS WITNESS STATEMENT

5. I make this witness statement in connection with the Application by the Commissioner of Competition (the "**Commissioner**") against Parrish & Heimbecker, Limited ("**P&H**") relating to P&H's acquisition (the "**Acquisition**") of the primary grain elevator in Virden, Manitoba formerly owned by Louis Dreyfus Company Canada ULC ("**LDC**").

CROPS AND STORAGE

6. I grow wheat and canola as well as malt barley, hybrid rye and yellow peas. Over the last 3 years, on average, I have grown approximately 300,000 bushels of wheat per year, approximately 450,000 bushels of canola per year, approximately 350,000 bushels of malt barley per year and, in aggregate, approximately 150,000 bushels per year of hybrid rye and yellow peas.

7. I have capacity to store 100% of my grain. We put 2/3 in bins and the balance in grain bags. This storage capacity allows me to sell my wheat and canola at the time of my choosing, when I can get the best possible price. The flexibility I get from my storage capacity also means that seasonal weight restrictions aren't a factor for me in deciding who I will sell to.

PRICE FOR WHEAT AND CANOLA

8. When I sell my wheat or canola to a primary grain elevator ("**Elevator**") or canola crusher, the Elevator or crusher pays me the net or the cash price for the commodity they are buying from me.
9. When I sell my grain to an Elevator or a crusher there are no separate charges levied for elevating, grading, cleaning, blending or storing the grain they purchase from me. Drying is a service for which a charge may be levied. A very small percentage of my grain has ever needed drying at an Elevator.
10. The net price is the price that I compare when deciding to whom I will sell my grain. Every day, I receive emails and texts from P&H, Richardson, Bunge, Viterra, G3, Ceres and others showing their net prices. P&H and Bunge have mobile Apps and G3 and Viterra have websites which I can check for the most up-to-date net prices.
11. Because it is the amount I receive when I sell my grain to an elevator or a crusher, the net price is what matters to me and what drives my decision to sell to a given Elevator or crusher.
12. Crushers offer high net prices for canola making it worthwhile for me to sell to crushers even though they are farther away. Also, the dockage taken by the crushers is more favourable than the Elevators, meaning that I get paid on a higher net quantity if I sell to the crushers. The extra money I earn on a load of canola from that dockage advantage pays my trucking costs (whether I self-haul or hire a commercial truck) to haul it to the crush plant.

13. I can sell my wheat or canola for immediate delivery in the “spot” market at the posted net price in effect at the time I contact the Elevator or I can enter into a fixed price contract for deferred delivery. Under this type of contract, I agree to deliver a specified quantity and quality of grain at an agreed net price within a prescribed delivery window in the future. Elevators post net prices for immediate and future deliveries, so I can see the net price I will receive for the contracted quality of grain if I enter into a fixed price contract with an Elevator now for a future delivery.
14. I also use grain purchase orders or “GPOs” regularly. Under a GPO, I set the target net price at which I am willing to sell a certain amount of my grain. If the Elevator’s posted net price hits my target price, the GPO is automatically triggered and the Elevator has to buy the agreed quantity and quality of grain from me at my target price.
15. At any time before it is triggered, I can cancel the GPO or amend it by changing the target price, the grade or quantity of wheat or canola to be delivered and/or the delivery month. I also choose the expiry date for the GPO – it can be in effect for days, weeks or months. At any time before the GPO expires, I can agree to extend or “roll” the GPO to a future delivery period.
16. I also enter into basis contracts. A basis contract is a type of deferred delivery contract. I agree with the Elevator or crusher on the quantity and quality of the grain to be delivered by me as well as the future delivery month. I also lock in the posted basis for the delivery month while leaving the futures price to be set later. I can agree to the futures price at any time of my choosing before the agreed delivery month.
17. I sell less than 1% of my wheat and canola on the “spot” market. I only do so when I have a few additional tonnes of grain in the storage bins I am emptying to fulfill a grain purchase contract. I refer to those additional tonnes as “overage”. In that situation, when I deliver my grain to the Elevator in fulfillment of the purchase contract, I receive the net price stipulated in the contract for the contracted amount of grain and I’ll sell the grain company the “overage” at the posted net price in effect when I arrive at the Elevator.

18. All of the grain companies and crushers that I deal with use GPOs, fixed price contracts and basis contracts.

MY WHEAT AND CANOLA SALES

19. In the last four years, I have sold my wheat to Richardson at Whitewood and Kemnay (82km and 122km, respectively, from my farm), G3 at Bloom (244km from my farm), the Moosomin Elevator (32km from my farm), Ceres Northgate (150km from my farm), Viterra at Fairlight (5km from my farm) and the Virden Elevator (55km from my farm). In that time, I've sold roughly 75 to 80% of my wheat to Richardson at Whitewood and, especially, Kemnay. Another approximately 15% has gone to Fairlight and the balance has been split between G3 Bloom, Ceres Northgate and the Moosomin Elevator.
20. I also buy crop inputs from the Moosomin Elevator. P&H has never offered me a better price for my grain if I bought crop inputs from them, or vice versa.
21. I could also easily switch my wheat purchasers and sell to Viterra Carnduff (92km from my farm), Viterra Souris (129km from my farm), Paterson at Binscarth (129km from my farm), Viterra Grenfell (129km from my farm), Viterra Brandon (144km from my farm), G3 Melville (180km from my farm) and Cargill Oakner (115km from my farm) and Elva (91km from my farm).
22. In the past four years, I've sold my canola to ADM Velva (256km from my farm), the Moosomin Elevator (32km from my farm), Richardson at Yorkton (193km from my farm), LDC at Yorkton (193km from my farm), Viterra Fairlight (5km from farm), Richardson at Kemnay and Whitewood (129km and 52km, respectively, from my farm) and Bunge Harrowby (121km from my farm).
23. The crushers don't buy poor quality canola; they only buy No. 1 Canada Canola.
24. The distribution of my canola sales among competing Elevators and crushers varies from year to year. In the most recent crop year, more than 60% of my canola went to the LDC and Richardson crushers in Yorkton, with Richardson getting more of it. Viterra Fairlight bought about 25% and the balance was split between Richardson Whitewood and Kemnay, with a little bit going to the

Moosomin Elevator. In another year, I sold over 60% of my canola to Viterra Fairlight, around 25% to ADM Velva and the balance to the Moosomin Elevator.

25. I could also easily sell my canola to Viterra Carnduff (92km from my farm), Viterra Souris (129km from my farm), Paterson at Binscarth (129km from my farm), Viterra Grenfell (129km from my farm), G3 Melville (180km from my farm), the Virden Elevator (56km from my farm), Bunge Altona (458km from my farm), Ceres Northgate (150km from my farm), Viterra Brandon (144km from my farm), Cargill Oakner (115km from my farm) and Elva (91km from my farm) and G3 Bloom (244km from my farm).
26. I sell a lot of my wheat and canola to Elevators and crushers that are farther away from me than the Moosomin and Virden Elevators because those competing Elevators and crushers consistently offer posted net prices that are high enough to cover my hauling costs and make it worthwhile for me to sell to them.
27. I don't play Elevators and/or crushers off against each other. Either they want my grain or they don't. It's not my job to find other prices and tell them to match.
28. I have good relationships at each of the Elevators and crushers to which I sell my grain. I know people at lots of Elevators and crushers in the area. I have never found it to be a problem starting new relationships with different Elevators or crushers. The farming community is a small one. Employees move between grain companies and crushers and, of course, over time the employees at the Elevators and crushers you sell to will change, so it's inevitable that I'll have to start new relationships. The time, cost or effort associated with starting new relationships has never been a factor in my decision whether to sell to a new Elevator or crusher. I'm running a business and, at the end of the day, I'm going to go where I can get the highest and best price for my grain.

NO CONCERNS ABOUT P&H'S ACQUISITION OF VIRDEN

29. I have no concerns about P&H's acquisition of the Virden Elevator. I sell to many competing Elevators and crushers and have access to many more. Also, I like the fact that Virden is now owned by a Canadian company.

30. If P&H were to attempt to pay less for my wheat or canola at the Virden and/or Moosomin Elevators, I would switch my sales to any of the many alternative purchasers I mentioned above without any negative financial impact on me.

Signed this 8th day of October, 2020

E-SIGNED by Kristjan Hebert
on 2020-10-09 03:08:23 GMT

Kristjan Hebert

EXHIBIT 1

CT-2019-005

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

WITNESS STATEMENT OF KRISTJAN HEBERT

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

WITNESS STATEMENT OF TIM DUNCAN

I, Tim Duncan, of the Town of Cromer in the Province of Manitoba state as follows:

1. I own and operate an approximately 3,000 acre farm located west of Cromer. A map showing the location of my farm is attached as Exhibit 1.
2. I have been farming for 22 years.
3. I have personal knowledge of the matters in this Witness Statement, except where I have otherwise indicated that I am relying on information from others, in which case I believe such information to be true.

PURPOSE OF THIS WITNESS STATEMENT

4. I make this witness statement in connection with the Application by the Commissioner of Competition (the "**Commissioner**") against Parrish & Heimbecker, Limited ("**P&H**") relating to P&H's acquisition (the "**Acquisition**") of the primary grain elevator in Virden, Manitoba formerly owned by Louis Dreyfus Company Canada ULC ("**LDC**").

CROPS AND STORAGE

5. I grow wheat, canola and oats and, from year-to-year, I may also grow barley, peas and/or soybeans. Over the last 3 years, on average, I have grown approximately 40,000 bushels of wheat per year, approximately 40,000 bushels of canola per year and approximately 35,000 bushels of oats per year.
6. I have capacity to store 60-70% of my grain (depending on how big the crop is). I sell some of my grain off the combine at harvest under deferred delivery fixed price contracts or grain purchase orders (if a good pricing opportunity presents itself), and the rest of my crop over the balance of the year. The flexibility I get from my storage capacity means that seasonal weight restrictions aren't a factor for me in deciding who I will sell to.

PRICE FOR WHEAT AND CANOLA

7. When I sell my wheat or canola to a primary grain elevator ("**Elevator**") or canola crusher, the Elevator or crusher pays me the net or cash price for the

commodity they are buying from me.

8. When I sell my grain to an Elevator or a crusher there are no separate charges levied for elevating, grading, cleaning, blending or storing the grain they purchase from me. Drying is a service for which a charge may be levied. I do not generally need or use drying at Elevators.
9. The net price is the price that I compare when deciding to whom I will sell my grain. Every day, I receive emails and texts from P&H, Richardson and others showing their net prices. P&H has a mobile application that shows me their net prices across Western Canada and allows me to check for the most up-to-date net prices from P&H.
10. Because it is the amount I receive when I sell my grain to an elevator or a crusher, the net price is what matters to me and what drives my decision to sell to a given Elevator or crusher.
11. Crushers offer high net prices for canola making it worthwhile for me to sell to crushers even though they are farther away. I use commercial trucking to haul to Richardson's crusher at Yorkton. The net prices Richardson pays me leave me better off than selling to an Elevator that may be closer by, even accounting for my trucking costs. I don't have trouble sourcing commercial trucks when I need them.
12. Grain purchase orders or "GPOs" are one of my main sales tools. Under a GPO, I set the target net price at which I am willing to sell a certain amount of my grain. If the Elevator's posted net price hits my target price, the GPO is automatically triggered and the Elevator has to buy the agreed quantity and quality of grain from me at my target price.
13. At any time before it is triggered, I can cancel the GPO or amend it by changing the target price, the grade or quantity of wheat or canola to be delivered and/or the delivery month. I also choose the expiry date for the GPO – it can be in effect for days, weeks or months. At any time before the GPO expires, I can agree to extend or "roll" the GPO to a future delivery period.
14. I sell less than 1% of my wheat and canola on the "spot" market. I only do so

when I have a few additional tonnes of grain in the storage bins I am emptying to fulfill a grain purchase contract. I refer to those additional tonnes as “overage”. In that situation, when I deliver my grain to the Elevator in fulfillment of the purchase contract, I receive the net price stipulated in the contract for the contracted amount of grain and I’ll sell the grain company the “overage” at the posted net price in effect when I arrive at the Elevator.

15. In an average year, I’ll sell 10 to 20% of my crop before the harvest using deferred delivery fixed price contracts. I’ll forward sell three to five months in advance of the harvest.
16. For the balance of my crop, depending on net price levels, I’ll enter into GPOs and deferred delivery fixed price contracts anywhere from one month to eight months before delivery.

MY WHEAT AND CANOLA SALES

17. In the last four years, I have sold mywheat to the Virden Elevator (34km from my farm), Richardson at Kemnay (100km or an 80 to 90 minute drive from my farm) and Viterra Fairlight (30km from my farm).
18. I could also easily switch my wheat purchasers and sell to a number of other Elevators, including Cargill Oakner (106km from my farm) and Elva (160km from my farm), Viterra Souris (95km from my farm), Viterra Carnduff (102km from my farm), Viterra Brandon (124km from my farm) and G3 Bloom (229km from my farm). I had a falling out with Elevator staff at Fairlight over how they graded some of my malt barley, so I haven’t sold to Fairlight in the last two years. However, that wouldn’t affect my willingness to sell to other Viterra Elevators.
19. In the past four years, I’ve sold my canola to Richardson at Kemnay (100km from my farm), Richardson at Yorkton (223km from my farm), Viterra Fairlight (30km from my farm) and the Virden Elevator (34km from my farm).
20. I could also easily switch my canola purchasers and sell to a number of other Elevators and crushers, including Cargill Oakner (106km from my farm) and Elva (160km from my farm), Viterra Souris (95km from my farm), Viterra

Carnduff (102km from my farm), Viterra Brandon (124km from my farm), G3 Bloom (229km from my farm), LDC Yorkton (223km from my farm), Bunge Harrowby and Altona (144km and 428km, respectively, from my farm) and the Viterra St. Agathe crusher (354km from my farm).

21. I sell my wheat and canola to Elevators and crushers that are farther away from me than the Virden Elevator because those competing Elevators and crushers consistently offer posted net prices that are high enough cover my hauling costs and make it worthwhile for me to sell to them.

NO CONCERNS ABOUT P&H's ACQUISITION OF VIRDEN

22. I have access to and can and do sell to many competing Elevators and crushers. I am not concerned by the fact that P&H now owns the Virden and Moosomin Elevators. I am quite happy that Virden is now owned by a Canadian company.
23. When it was owned by LDC, Virden bought mainly 1 CWRs 13.5 and canola. They didn't buy any other commodities like oats, barley or soybeans. P&H is now buying all of those commodities at Virden. This is a real benefit to me and other farms.
24. So far this year, I've sold 350 MT of canola and 550 MT of wheat to P&H Virden for delivery in October 2020 and March 2021. I entered into the contracts for October delivery in August and the contract for March delivery in July of this year.
25. If P&H were to attempt to pay less for my wheat or canola at the Virden Elevator, I could and will easily switch to the Elevators and crushers mentioned above without any negative financial impact on me.

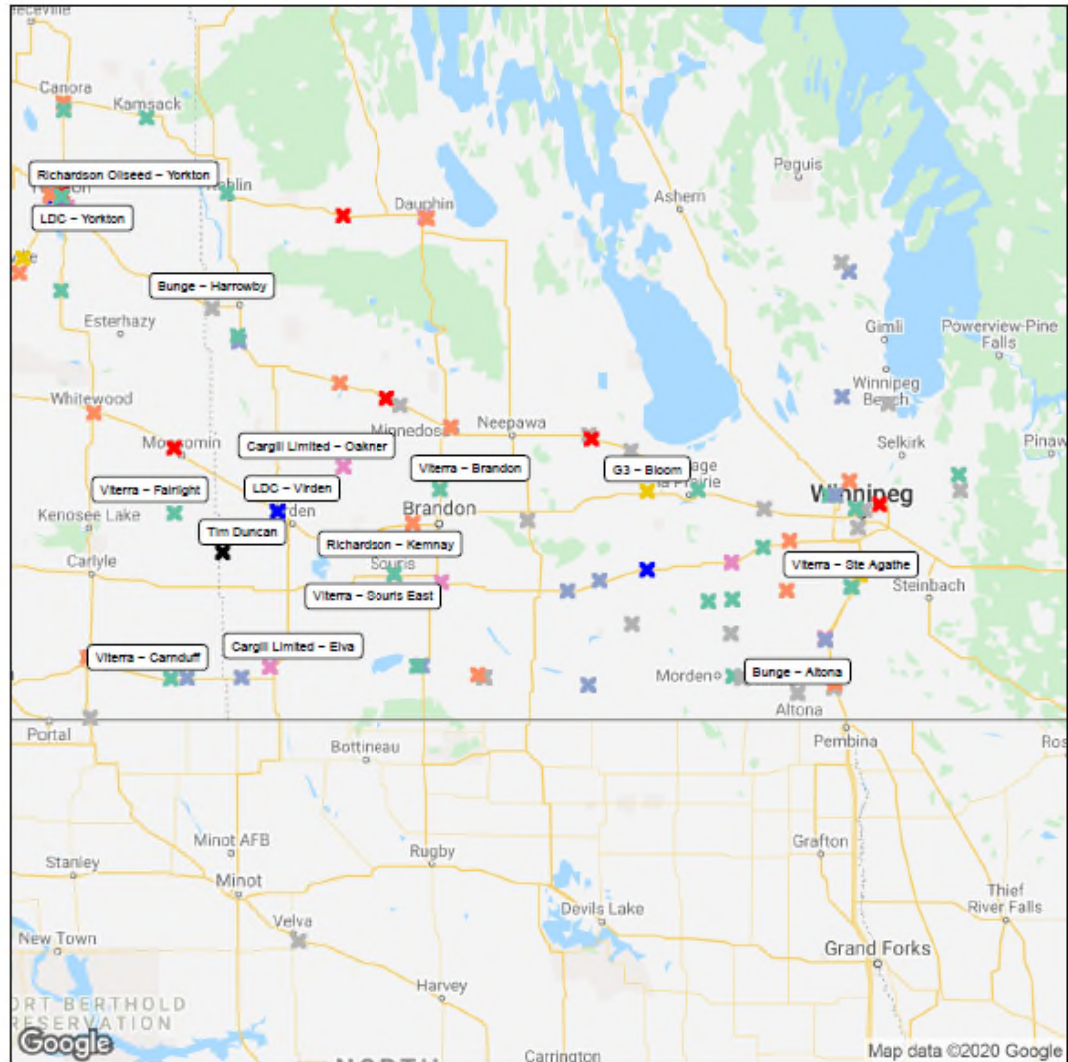
Signed this 8th day of October, 2020

E-SIGNED by Tim Duncan
on 2020-10-08 22:21:42 GMT

Tim Duncan

EXHIBIT 1

Tim Duncan Farm Location and Nearby Elevators and Crushers



Notes:
[1] Elevators and crushers with labels are locations where Tim Duncan sold wheat or canola in the last 4 years, or where he could easily switch to.

CT-2019-005

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

WITNESS STATEMENT OF TIM DUNCAN

No.	Tab	Question Number	Page	Line	Specific Question	Answer
50	35	630	238	7	[REDACTED]	[REDACTED]
51	35	631	238	18	[REDACTED]	[REDACTED]
52	25	658	248	23	[REDACTED]	[REDACTED]

No.	Tab	Question Number	Page	Line	Specific Question	Answer
						[REDACTED]
53	22	698	264	16	[REDACTED]	[REDACTED]
54						
56						
57	19	716	276	3	[REDACTED]	Laranda Bailey ceased to be an employee of P&H as of Ma
58						

					<p>[REDACTED]</p>	<p>[REDACTED]</p>
--	--	--	--	--	-------------------	-------------------

8. Item #3 in my letter to you of August 20, 2020, is revised as follows:

[REDACTED]

Yours truly,



Davit Akman

Yu, Tina

From: Hood, Jonathan (IC) <jonathan.hood@canada.ca>
Sent: November-27-20 2:27 PM
To: Ruhlmann, Annie
Cc: Russell, Robert S.; Akman, Davit; Wong, Carolyn; Nekiari, Elle (IC); Kelly, Andrew (IC)
Subject: Commissioner of Competition v. Parrish & Heimbecker (CT-2019-005)
Attachments: Re: P&H - Witness Statement; Re: P&H - Witness Statement; Re: P&H - Witness Statement; Re: Witness Statement; Re: P&H - Witness statement

[This is an external email – be cautious of any links or attachments / Ceci est un courriel externe – méfiez-vous des liens ou des pièces jointes]

Ms. Ruhlmann:

Further to paragraph 1 of the direction from the Tribunal dated November 13, 2020, the Commissioner requests to designate as confidential “Level B Protected” any information that could identify the five farmers who have provided witness statements on behalf of the Commissioner.

After the direction, we canvassed each of the farmers to determine whether they were still concerned with their identities being disclosed to the public. In all cases, the farmer witnesses remained concerned about their identities becoming public. Following our calls with each of them, we summarized their concerns in their own words to ensure that their positions would be adequately considered by the Tribunal. For each of the farmers, please see the attached e-mail exchanges. The exchanges show that the farmers have legitimate concerns. In brief, the farmers do business at the elevators owned by P&H in Moosomin and now in Virden . They are concerned that testifying for the Commissioner will damage their relationship and ability to do business with P&H. For the farmers, as outlined in their witness statements, P&H is a significant source of their income. Taking a position in the application against P&H will give rise to significant risk of financial harm to the farmers.

The farmers’ concerns are valid and their identities should be protected. In granting the Confidentiality Order, the Tribunal has recognized that there is a public interest in the maintenance of confidentiality in this case which is balanced against the open court principle, important to fostering judicial accountability and the public confidence in the administration of justice. The impact on the open court principle of designating the farmers identities as confidential is narrow. As you can see from the public version of the witness statements filed with the Tribunal, the vast majority of the information provided by the farmers remains public. The Commissioner is also prepared to create public versions of the farmer’s testimony (redacting only identifying information) within 48 hours of being provided with the Level B versions of the transcripts. Like the witness statements, the Commissioner expects that most of the testimony in the transcripts will be public.

If the Tribunal is not prepared at this time to designate the farmers identities as confidential, then the Commissioner requests an opportunity to bring a formal motion to the Tribunal.

Regards,

Jonathan

Jonathan Hood
Counsel - Avocat

Cel: (647) 625-6782 | Fax: (416) 973-5131

jonathan.hood@canada.ca

Department of Justice - Ministère de la Justice

Services juridiques - Bureau de la concurrence

Competition Bureau - Legal Services

151 Yonge Street, 3rd Floor, Toronto, Ontario. M5C 2W7

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Yu, Tina

From: [REDACTED]
Sent: November-18-20 10:49 AM
To: Hood, Jonathan (IC)
Cc: [REDACTED] Kelly, Andrew (IC)
Subject: Re: P&H - Witness Statement

Thanks - this captures my concerns about being identified as a witness, as it confirms my fears about being looked at unfavourably by P & H in the future when trying to trade with them.

Regards

[REDACTED]

Sent from my iPhone

On Nov 17, 2020, at 8:31 AM, Hood, Jonathan (IC) <jonathan.hood@canada.ca> wrote:

Hi [REDACTED]

Thanks for taking the time to speak with us yesterday evening.

As you know, pursuant to the Confidentiality Order that is in place for the Commissioner's application against Parrish & Hiembecker, the Commissioner redacted information in your witness statement that could identify you as a witness. As we had previously discussed when we approached you about testifying, the Tribunal retains discretion over whether your identity as a witness remains confidential pursuant to the Confidentiality Order. The Tribunal has now asked the parties to identify witnesses who are reasonably concerned about public disclosure along with the grounds for the request. Our submissions to the Tribunal will be informed by the following which we understood from you on our call yesterday evening.

We understand that you have concerns about P&H being able to identify you as a witness for the Commissioner in these proceedings. You have told us that there are very few places that you can trade with and that you fear being blacklisted by P&H if they know you are a witness. In the event that you don't have the option to trade locally, you told us that you'll have to go further to find another grain company to transact with. You said that you need to be able to trade without any prejudice, which will not be possible if P&H knows that you are a witness for the Commissioner.

Please let us know if we have captured your comments accurately, and whether you have anything to add. We may rely on this email in our submissions to the Tribunal. Please don't hesitate to call us if you have any other questions.

Regards,
Jonathan

Jonathan Hood
Counsel - Avocat

Cel: (647) 625-6782 | Fax: (416) 973-5131

jonathan.hood@canada.ca

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Yu, Tina

From: [REDACTED]
Sent: November-18-20 3:22 PM
To: Hood, Jonathan (IC)
Cc: Giles, Karlyn (IC); Kelly, Andrew (IC)
Subject: Re: P&H - Witness Statement

This is fine. Thanks

[REDACTED]

On Wed., Nov. 18, 2020, 09:08 Hood, Jonathan (IC), <jonathan.hood@canada.ca> wrote:

Hi [REDACTED]

Thanks for taking the time to speak with us yesterday morning.

As you know, pursuant to the Confidentiality Order that is in place for the Commissioner's application against Parrish & Heimbecker, the Commissioner redacted information in your witness statement that could identify you as a witness. As we had previously discussed when we approached you about testifying, the Tribunal retains discretion over whether your identity as a witness remains confidential pursuant to the Confidentiality Order. The Tribunal has now asked the parties to identify witnesses who are reasonably concerned about public disclosure along with the grounds for the request. Our submissions to the Tribunal will be informed by the following which we understood from you on our call yesterday morning.

We understand that you have concerns about P&H being able to identify you as a witness for the Commissioner in these proceedings. As you explained to us, you actively do business with P&H and have concerns with more employees becoming aware of your testimony as you believe it may negatively impact your ability to do business. Additionally, you told us that you live and work in a small town and this type of news and information can come out and you have concerns with that as well.

Please let us know if we have captured your comments accurately, and whether you have anything to add. We may rely on this email in our submissions to the Tribunal. Please don't hesitate to call us if you have any other questions.

Regards,

Jonathan

Jonathan Hood

Counsel - Avocat

Cel: (647) 625-6782 | Fax: (416) 973-5131

jonathan.hood@canada.ca

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Yu, Tina

From: [REDACTED]
Sent: November-23-20 9:58 AM
To: Hood, Jonathan (IC)
Subject: Re: P&H - Witness Statement

Good morning
Yes that seems to have captured my concerns
Thanks, [REDACTED]

Sent from my iPhone

On Nov 18, 2020, at 9:12 AM, Hood, Jonathan (IC) <jonathan.hood@canada.ca> wrote:

[REDACTED]
Thanks for taking the time to speak with us yesterday.

As you know, pursuant to the Confidentiality Order that is in place for the Commissioner's application against Parrish & Hiembecker, the Commissioner redacted information in your witness statement that could identify you as a witness. As we had previously discussed when we approached you about testifying, the Tribunal retains discretion over whether your identity as a witness remains confidential pursuant to the Confidentiality Order. The Tribunal has now asked the parties to identify witnesses who are reasonably concerned about public disclosure along with the grounds for the request. Our submissions to the Tribunal will be informed by the following which we understood from you on our call yesterday.

We understand from our conversation yesterday that your preference is to testify *in camera*. You had mentioned that your primary concern is that, as [REDACTED], P&H would have quite a bit of clout to go after you. You told us that you have relationships with P&H that you'd like to maintain, and that you are concerned about the impact that your testimony would have on these relationships and your business if your name was made public as a witness for the Commissioner in this matter.

Please let us know if we have captured your comments accurately, and whether you have anything to add. We may rely on this email in our submissions to the Tribunal. Please don't hesitate to call us if you have any other questions.

Regards,
Jonathan

Jonathan Hood
Counsel - Avocat

Cel: (647) 625-6782 | Fax: (416) 973-5131

jonathan.hood@canada.ca

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Yu, Tina

From: [REDACTED]
Sent: November-23-20 10:31 AM
To: Hood, Jonathan (IC)
Cc: Kelly, Andrew (IC)
Subject: Re: Witness Statement

I confirm

Sent from my iPhone

On Nov 20, 2020, at 2:32 PM, Hood, Jonathan (IC) <jonathan.hood@canada.ca> wrote:

Hi [REDACTED]

Thanks for taking the time to speak with us yesterday morning.

As you know, pursuant to the Confidentiality Order that is in place for the Commissioner's application against Parrish & Heimbecker, the Commissioner redacted information in your witness statement that could identify you as a witness. As we had previously discussed when we approached you about testifying, the Tribunal retains discretion over whether your identity as a witness remains confidential pursuant to the Confidentiality Order. The Tribunal has now asked the parties to identify witnesses who are reasonably concerned about public disclosure along with the grounds for the request. Our submissions to the Tribunal will be informed by the following which we understood from you on our call yesterday morning.

You told us that you have concerns about negative kickback about being a witness for the Commissioner in this matter. You said that you deal with the elevator staff and would not feel comfortable with them knowing about your involvement in this matter, since you rely on them to purchase your grain particularly during harvest. If you are forced to travel further, you will either need to invest in very expensive bins to store your grain, and/or travel further during harvest when your time is most critical. Please let us know if we have captured your comments accurately, and whether you have anything to add. We may rely on this email in our submissions to the Tribunal. Please don't hesitate to call us if you have any other questions.

Regards,
Jonathan

Jonathan Hood
Counsel - Avocat

Cel: (647) 625-6782 | Fax: (416) 973-5131

jonathan.hood@canada.ca

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son destinataire est strictement interdite. Si vous avez reçu ce message par erreur, veuillez m'en informer immédiatement à l'adresse ci-dessus et l'effacer.
Merci.

Yu, Tina

From: [REDACTED]
Sent: November-25-20 3:15 PM
To: Hood, Jonathan (IC)
Subject: Re: P&H - Witness statement

Yes that works

[REDACTED]

On Nov 18, 2020, at 9:05 AM, Hood, Jonathan (IC) <jonathan.hood@canada.ca> wrote:

[REDACTED]

Thanks for taking the time to speak with us yesterday.

As you know, pursuant to the Confidentiality Order that is in place for the Commissioner's application against Parrish & Hiembecker, the Commissioner redacted information in your witness statement that could identify you as a witness. As we had previously discussed when we approached you about testifying, the Tribunal retains discretion over whether your identity as a witness remains confidential pursuant to the Confidentiality Order. The Tribunal has now asked the parties to identify witnesses who are reasonably concerned about public disclosure along with the grounds for the request. Our submissions to the Tribunal will be informed by the following which we understood from you on our call yesterday.

We understand from our conversation yesterday that you are definitely not interested in testifying publicly. We understand that this is for many reasons, but the most important reason is that you don't want to be penalized by P&H at a later date. You continue to do business with P&H, and them finding out that you have been a witness for the Commissioner could impact your ability to do business with them. You said that that you would have far more to lose than gain from being a witness if your identity is made public.

Please let us know if we have captured your comments accurately, and whether you have anything to add. We may rely on this email in our submissions to the Tribunal. Please don't hesitate to call us if you have any other questions.

Regards,
Jonathan

Jonathan Hood
Counsel - Avocat

Cel: (647) 625-6782 | Fax: (416) 973-5131

jonathan.hood@canada.ca

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Merci.

Appendix 3

Farmer name			Address	Town	Responsive to undertaking #1 (Day 1, July 22)	Responsive to undertaking #2 (Day 1, July 22)
[REDACTED]			[REDACTED]	[REDACTED]	Yes	Yes
[REDACTED]			[REDACTED]	[REDACTED]	Yes	Yes

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

MOTION RECORD

**(Response to the Commissioner's
Motion to Designate the Identities of
his Farmer Witnesses as Confidential)**

BORDEN LADNER GERVAIS LLP

Bay Adelaide Centre, East Tower
22 Adelaide Street West, 34th Floor
Toronto, ON M5H 4E3

Robert S. Russell
Davit Akman

Tel/Fax: 416.367.6000/6749

Lawyers for the Respondent, Parrish
& Heimbecker, Limited