

**FILED / PRODUIT**

Date: January 4, 2021

CT- 2019-005

Annie Ruhlmann for / pour  
REGISTRAR / REGISTRAIRE

File No. CT-2019-005

OTTAWA, ONT.

Doc. # 209

**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*.

**B E T W E E N :**

**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**PARRISH & HEIMBECKER, LIMITED**

Respondents

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**AGREED STATEMENT OF FACTS**

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**The Commissioner of Competition**

1. The Commissioner is an officer appointed by the Governor in Council pursuant to section 7 of the Competition Act ("Act") and is responsible for the administration and enforcement of the Act.

**P&H**

2. Parrish & Heimbecker, Limited ("**P&H**") buys grain from farms for its own account.
3. P&H buys wheat and canola from farms for its own account.
4. P&H buys grain from farms throughout the crop year.
5. The crop year is from August 1<sup>st</sup> to July 31<sup>st</sup> of the following year.
6. In western Canada, P&H buys wheat and canola from farms through its network of 29 primary grain elevators ("**Elevators**").
7. Pre-Transaction, P&H had 19 Elevators across Western Canada.

8. P&H's grain business sells many varieties of grains, including wheat and canola.
9. P&H sells that grain to its customers.
10. P&H's grain business sells to customers in Asia, South America, Europe, and Canada.
11. P&H's Milling Group sources Canadian wheat to produce flour and cereal products.
12. P&H moves wheat and canola sold to its overseas customers by rail from its Elevators in Western Canada to its export facilities located on the West Coast and in Thunder Bay.
13. P&H's export customers pay for wheat and canola at the Canadian port [REDACTED].
14. P&H moves wheat supplied to its Milling Group by rail or truck from P&H's Elevators to P&H's mills in both Western and Eastern Canada.
15. Across all of its lines of businesses, P&H's audited consolidated financial statements indicate that it generated consolidated revenues of approximately [REDACTED].
16. Across all of its lines of businesses, P&H's audited consolidated financial statements indicate that it generated [REDACTED].

## LDC

17. Louis Dreyfus Company Canada ULC ("**LDC**") is an indirectly wholly owned subsidiary of Louis Dreyfus Company B.V., which is headquartered in The Netherlands.
18. The grain volumes purchased through the former LDC Elevators (including the Virden Elevator) in the last full crop that they were owned and operated by LDC was [REDACTED].
19. The grain volumes purchased through the former LDC Elevators (including the Virden Elevator) historically was in the range of [REDACTED].
20. Pre-Transaction, LDC had 10 Elevators across Western Canada.
21. LDC exported wheat and canola through the Kinder Morgan ("**KM**") Vancouver Wharves facility.

## Elevators

22. P&H's 29 Elevators are the entry points to its grain network in Western Canada.
23. The storage capacity of P&H's Elevators range from 22,000 MT at the Glossop Elevator (in Glossop, Manitoba) to 106,000 MT at the Weyburn Elevator (in Weyburn, Saskatchewan).
24. P&H's Elevator staff are responsible for pulling samples from the farms' trucks with a probe, assessing for dockage as needed, grading the grain, unloading the trucks delivering the grain, elevating the grain to the appropriate storage bins, storing the grain and keeping it in condition, blending grain as appropriate, assisting with weighover (i.e., inventory counts), drying grain as needed, preparing cash settlements for farms and loading grain into railcars for shipment to a port terminal or a P&H mill.
25. "Rail car spots" at an elevator is the number of railcars that can be accommodated for loading on a sidetrack (or siding) off the main track line.
26. The Moosomin Elevator has a 56-car spot.
27. The Virden Elevator has a 112-car spot.
28. Rail car supply complicates both Elevator and port terminal planning when cars are not available to move grain that are required to meet sales commitments by P&H to its Grain Customers.
29. There are two major (Class 1) railways in Canada – Canadian National ("CN") and Canadian Pacific ("CP").
30. A turn rate is calculated as the purchases of grain by an Elevator in a given period divided by the storage capacity.
31. The Moosomin Elevator has 26,000 MT of storage.
32. The Moosomin Elevator has had annual throughput capacity [REDACTED].
33. The Virden Elevator has 46,000 MT of storage.
34. The Virden Elevator has had annual throughput capacity [REDACTED].

35. P&H also operates a crop inputs business out of the Moosomin Elevator's location.
36. The Virден Elevator does not currently operate a crop inputs business.

### Export Terminals

37. The vast majority of grain exported by P&H moves through its export terminals located on the West Coast and in Thunder Bay.
38. Export terminals are used to receive grain from rail, segregate grain by type and quality attribute, store grain by type and quality attribute, clean grain when required, blend grain and load grain onto vessels.
39. Grain of the same grade that is received by rail from different P&H Elevators across Western Canada is comingled at the terminals.
40. Vessels are loaded from the comingled inventory at the terminal.
41. P&H has an interest in the Alliance Grain Terminal ("**AGT**").
42. North West Terminal also has an interest in AGT.
43. Paterson Grain Limited ("**Paterson**") also has an interest in AGT.
44. AGT is an export terminal located on the South Shore of the Burrard Inlet in the Port of Vancouver.
45. P&H exports wheat, barley, canola, and soybeans through AGT.
46. AGT has grain cleaning and blending capacity.
47. AGT has an 80 rail-car spot.
48. AGT has a storage capacity of 102,000 MT.
49. AGT's average annual throughput capacity is [REDACTED] of grain.
50. P&H [REDACTED] of AGT's average annual throughput capacity.
51. P&H operates a standing grain berth and storage facility at the Fraser Surrey Docks ("**FSD**").
52. P&H operates FSD in partnership with DP World.
53. FSD is located in the Greater Vancouver area.
54. P&H exports canola meal pellets, wheat, barley, peas, alfalfa, and lentils from FSD.
55. FSD has a storage capacity of [REDACTED].

56. FSD has an average annual throughput capacity of [REDACTED].
57. P&H invested [REDACTED] in the construction of the Fraser Grain Terminal (or “FGT”).
58. The Fraser Grain Terminal is located on the Fraser River in Surrey, British Columbia.
59. GrainsConnect Canada (“GrainsConnect”) also has an interest in the Fraser Grain Terminal.
60. FSD’s vessel loading system will be replaced by a three-tower shiploader.
61. [REDACTED]
62. [REDACTED]
63. P&H has an interest in the Superior Terminal in the Port of Thunder Bay on Lake Superior.
64. P&H exports wheat, canola, lentils, malt barley, and soybeans through the Superior Terminal.
65. The Superior Terminal has blending and cleaning capacity.
66. The Superior Terminal has a 100-railcar spot.
67. The Superior Terminal has a storage capacity of 176,020 MT of grain.
68. The Superior Terminal has an annual throughput capacity of approximately [REDACTED] of grain.

**P&H Market Position**

69. Primary storage capacity refers to the Elevator storage capacity as licensed by the Canadian Grain Commission (“CGC”).
70. Annual primary handle refers to the total amount of grain received from farms at Elevators.

**P&H’s Growth Strategy**

71. [REDACTED]
72. 2018-2019 was the last fiscal year before the Transaction closed.

### The Transaction

73. P&H agreed to acquire ten Elevators (and related assets) in Western Canada from LDC pursuant to an Asset Purchase Agreement dated September 3, 2019 (previously defined as the “**Transaction**”).
74. P&H acquired LDC’s Elevator in Virden MB as part of the Transaction.
75. The Transaction closed on December 10, 2019.

### Crop Inputs

76. P&H’s Crop Inputs and Services (“**CI**”) business supplies fertilizer, seed, and pesticides to farms through dual CI/grain facilities at its Elevators across Canada.
77. P&H’s CI business also supplies agronomic services, including crop planning, soil sampling, crop scouting, and farm credit services.
78. P&H has a “one-stop-shop” CI retail and grain purchase business model.
79. The LDC Elevators were pure grain facilities.
80. The former LDC Elevators do not currently offer CI.

### Price of Wheat and Canola

81. There are 36.744 bushels of wheat to the metric tonne (MT).
82. There are 44.0920 bushels of canola to the MT.
83. P&H buys wheat or canola at its Elevators by paying farms the “flat” or “net” or “bid” or “cash” price for their grain (the “**cash price**”).
84. The cash price is the cash received by a farm for the net quantity of grain delivered and sold at an Elevator.
85. The net quantity is the amount of grain delivered minus any dockage.
86. P&H posts its cash prices for grain for each of its Elevators.
87. The Moosomin Elevator sends daily prices to any farm that has provided an email address or mobile number.
88. Pre-Transaction, the Virden Elevator communicated its cash prices through its mobile application “MyLDC” and via text message.
89. P&H has a mobile application called P&H Direct.

90. Farms can use P&H Direct to see the cash prices at each of P&H's Elevators across Western Canada.
91. The cash price is shown as the "bid" on P&H Direct.
92. P&H uses 1CWRS as its base grade for wheat.
93. Other grain companies use 1CWRS as their base grade for wheat.
94. P&H uses 1CAN CANOLA as its base grade for canola.
95. Other grain companies use 1CAN CANOLA as their base grade for canola.
96. P&H manages its grain purchases centrally.
97. [REDACTED]
98. P&H's cash prices are "live" and change instantaneously with movements in the futures prices and/or the exchange rate when the futures markets are open.
99. For CWRS, P&H uses the Minneapolis Hard Red Spring wheat futures contract price.
100. The Minneapolis Hard Red Spring wheat futures contract price trades in USD per MT on the Minneapolis Grain Exchange.
101. P&H uses the Intercontinental Exchange futures price for canola in Saskatchewan.
102. The Intercontinental Exchange price is in CAD/MT.
103. Rail freight costs from P&H Elevators to Thunder Bay vary.
104. [REDACTED]  
[REDACTED]
105. [REDACTED]  
[REDACTED]
106. [REDACTED]  
[REDACTED]  
[REDACTED]
107. When P&H has a special, CSRs at the participating Elevators may also call those farms who they know have wheat or canola in their storage bins that meets P&H requirements to inform them of the special.

**Grain Purchase Contracts with Farms**

108. P&H uses fixed price contracts to purchase wheat and canola from farms.

109. Under a fixed priced contract, the cash price to be paid to the farm is fixed.
110. In P&H's fixed price contracts, the cash price appears as the "net price".
111. Under a fixed price contract, the futures price is fixed.
112. Under a fixed price contract, the basis is fixed.
113. Under a fixed price contract, the quantity and quality of grain to be delivered are set.
114. Under a fixed price contract, the delivery period is set.
115. P&H's fixed price contracts are similar to those used by other grain companies.
116. Fixed price contracts are used for forward or deferred delivery purchase transactions.
117. Fixed price contracts are also used for spot purchase transactions.
118. Forward or deferred delivery refers to some point in the future, beyond "spot".
119. Farms can enter into forward or deferred delivery contracts to deliver a specific quantity and quality of grain to an Elevator for an agreed cash price within a prescribed delivery window in the future.
120. Farms can sell a portion of their crop even before it is harvested.
121. Selling a portion of ones crop before it is harvested is referred to as "forward selling".
122. Farms can sell and deliver their crop at different times throughout the year.
123. P&H uses grain pricing order agreements to purchase wheat and canola from farms.
124. Grain pricing order agreements are also known as grain pricing orders ("**GPOs**").
125. Grain pricing order agreements are also known as grain purchase orders ("**GPOs**").
126. Grain pricing order agreements are also known as target contracts ("**GPOs**").
127. A GPO is a contract wherein a farm sets a cash price above the cash price posted by an Elevator (the "**target cash price**" or "**ask price**") at which it will sell and deliver to that Elevator a specified quantity and quality of grain in a specified delivery month.
128. If P&H's posted cash price reaches a farm's target cash price, the GPO is automatically triggered and the Elevator is required to purchase the agreed quantity and quality of grain from the farm at that price.



129. A farm may cancel or amend a GPO at any time before it is triggered.
130. A farm may amend a GPO by changing the target cash price.
131. A farm may amend a GPO by changing the grade of the grain to be delivered.
132. A farm may amend a GPO by changing the delivery month.
133. The farm chooses the expiry date for the GPO.
134. A GPO may be in effect for days, weeks or months.
135. A farm may choose to extend or “roll” a GPO to a future delivery period at any time before it expires.
136. If a GPO is triggered, it becomes a fixed price contract.
137. P&H’s Merchants may authorize one or more Elevator to trigger GPOs at a given target cash price even though the cash price posted at those Elevators have not reached the target cash price.
138. P&H uses basis contracts to purchase wheat and canola from farms.
139. P&H’s basis contracts are similar to those used by other grain companies.
140. Under a basis contract, the basis is agreed and fixed.
141. Under a basis contract, the futures price is to be set at a later date by the farm.
142. Under a basis contract, the cash price is set once the farm sets the futures price.
143. Under a basis contract, the quantity and quality of grain to be delivered are set.
144. Under a basis contract, the delivery period is set.
145. A basis contract allows a farm to lock in what they consider to be a favourable basis.
146. A basis contract allows a farm to “play the [futures] market” with the opportunity to participate in a possible futures price rally.
147. When P&H buys canola and CWRS from farms it takes title to the grain at the time the farm delivers it to the Elevator.
148. At the time it delivers the grain to the Elevator, the farm receives the contracted cash price for its grain and ownership of the grain passes to P&H.
149. From the time at which the grain is delivered to and paid for by the grain company, the farm has no right or interest in the grain and bears no risk in relation to the purchase transaction.

**Grading Adjustments to Cash Prices at Time of Delivery**

150. At the time the farm delivers its grain to the Elevator, adjustments may be made to the cash price paid to the farm if the quality of the wheat or canola delivered differs from the quality that was contracted for in the grain purchase contract.
151. Grading (or quality) is part of the posted cash price structure.
152. Farms have access to the posted cash prices.
153. The CGC has set detailed grading standards and procedures to be followed by grain companies in applying those standards.
154. CGC grading standards and procedures are outlined in its Official Grain Grading Guide.
155. A grading factor is a physical condition of grain that indicates a change in quality.
156. Certain of those factors are “objective grading factors”.
157. Objective grade factors have numerical tolerances or minimums and maximums per grade.
158. P&H’s grade spreads can be obtained by farms by calling or emailing an Elevator.
159. Drying is a service for which a charge may be levied by an Elevator.
160. Certain P&H Elevators, such as Moosomin and Tisdale SK, have a dryer.
161. Certain P&H Elevators, such as Transcona MB and Hanover Junction SK, do not have dryers.
162. The Virden Elevator does not have a dryer and did not have one when it was owned by LDC.
163. In the case of wheat (but not canola), the protein content also affects the cash price.
164. The base protein content commonly used by grain companies, including P&H, is 13.5%.
165. Generally speaking, higher protein wheat (i.e., above 13.5%) has a higher cash price relative to CWRS 13.5.
166. Generally speaking, lower protein wheat (i.e., below 13.5%) has a lower cash price relative to CWRS 13.5.
167. Protein spreads showing the cash price adjustment (either up or down from the cash price for CWRS 13.5) based on protein content are posted in P&H’s

Elevators, are commonly shown on its daily cash price emails sent to farms and are otherwise available on request.

168. P&H may “upgrade” grain by purchasing grain of a marginally lower grade at the higher cash price for the next higher grade if that marginally lower grade grain can be blended at the Elevator or port terminal with higher-grade grain without risking the classification off the higher-grade grain.
169. Falling number (“**FN**”) is a world standard in the grain and flour milling industries for wheat, durum, triticale, rye, and barley.
170. A low FN indicates that wheat is not sound or satisfactory for most baking processes.

### **Road Restrictions**

171. Seasonal road restrictions are in effect for some part of March to June each year.