

Competition Tribunal



Tribunal de la Concurrence

Citation: *Canada (Commissioner of Competition) v Parrish & Heimbecker, Limited*, 2021 Comp Trib 1

File No.: CT-2019-005

Registry Document No.: 210

IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*, RSC 1985, c C-34 as amended.

BETWEEN:

The Commissioner of Competition
(applicant)

and

Parrish & Heimbecker, Limited
(respondent)



Date of case management conference: January 4, 2021

Before: D. Gascon J. (Chairperson)

Date of order: January 5, 2021

ORDER ON THE HEARING FORMAT FOR THE SECOND PART OF THE HEARING

[1] **FURTHER TO** the application filed by the Commissioner of Competition on December 19, 2019 against the Respondent Parrish & Heimbecker, Limited, pursuant to section 92 of the *Competition Act*, RSC 1985, c C-34, with respect to the acquisition by the Respondent of a primary grain elevator located in Virden, Manitoba (“**Application**”);

[2] **AND FURTHER TO** the Order on the Hearing Format issued by the Tribunal on December 9, 2020 (“**Hearing Order**”), in which the Tribunal determined the hearing format to be retained for the first two weeks of the evidentiary portion of the hearing, when the fact witnesses are scheduled to testify;

[3] **AND WHEREAS**, in the Hearing Order, the Tribunal determined that the hearing format for the first two weeks of the evidentiary portion of the hearing will be entirely virtual, with the panel members, the fact witnesses and counsel for the parties joining remotely via the Zoom video conferencing platform to be used by the Tribunal;

[4] **AND WHEREAS**, in the Hearing Order, the Tribunal also determined that the hearing format for the testimony of expert witnesses (scheduled for January 19-21, 2021) and for the final oral argument (scheduled for February 3-4, 2021) would remain as it was further to the Tribunal Order of November 13, 2020 but that, in the event that public health restrictions are modified or that governments issue new orders or recommendations regarding the COVID-19 pandemic, alternative arrangements might have to be made to the hearing format for the testimony of expert witnesses and/or for the final oral argument;

[5] **AND WHEREAS** the Tribunal once again recognizes the importance of reducing the spread of COVID-19 and prioritizes the health and safety of all Tribunal participants, including panel members, Registry officers, other Tribunal staff, legal counsel, witnesses, stenographers and security personnel;

[6] **AND UPON** considering the most recent developments in the COVID-19 pandemic and noting that, for the immediate future and until a vaccine against COVID-19 is widely distributed across Canada, or until public health officials otherwise relax the current gathering and travel restrictions, the Tribunal hearings will preferably have to be conducted remotely using the appropriate, available technology;

[7] **AND UPON** determining that, for the following reasons, the hearing format retained for the first part of the hearing shall be extended to the rest of the hearing of this Application:

- (a) The COVID-19 pandemic has continued to worsen in Canada, with the number of cases reaching unprecedented record levels in most Canadian provinces, including Ontario;
- (b) The health authorities across Canada expect that the situation will continue to worsen in the early months of 2021;
- (c) The severe restrictions imposed by the Ontario health authorities will remain in effect in Ottawa and in Toronto until at least January 23, 2021;

- (d) The Federal Court has again reemphasized, on January 4, 2021, its practice of scheduling hearings by video conference by default and reminded that, in the foreseeable future, in-person hearings shall remain the exception;
- (e) According to the most recent directives from the Administrative Tribunals Support Service of Canada (“ATSSC”), the government agency responsible for providing support services to the Tribunal, in-person hearings shall be avoided and can only be considered if a virtual option is not possible;
- (f) In light of the recent guidance from the federal health authorities, the recent federal government’s recommendations and measures, and the recent directions from the Federal Court and the ATSSC to limit in-person hearings in the foreseeable future, the Tribunal has determined that the panel members as well as the Tribunal Registry staff, stenographers and security personnel shall not be present in person in the Tribunal hearing room in Ottawa in the coming weeks;
- (g) Furthermore, as a federal quasi-judicial body, the Tribunal acts in compliance with the directions and recommendations of the federal public health authorities, which continue to strongly advise against any form of public gatherings;
- (h) On balance, the evolving situation of the COVID-19 pandemic, the current health considerations and the governments’ orders, recommendations and measures now in place across Canada no longer justify that the second part of the hearing be held partly or totally in person and instead require that the whole hearing shall be held entirely remotely by way of video conference;
- (i) As explained in the Hearing Order, the Tribunal is satisfied that proceeding remotely by way of video conference will offer a fair, effective and equitable process to all parties in this Application;

[8] **AND WHEREAS** the Tribunal is satisfied that the hearing format set out herein respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, RSC 1985, c 19 (2nd Supp) and will allow it to deal with the Application as informally and expeditiously as the circumstances and considerations of fairness permit.

THE TRIBUNAL ORDERS THAT:

[9] The format of the hearing for the testimony of expert witnesses (i.e., on January 19-21, 2021) and for final oral argument (i.e., on February 3-4, 2021) will be entirely virtual, with the panel members, the witnesses and counsel for the parties joining remotely via the Zoom video conferencing platform to be used by the Tribunal.

DATED at Ottawa this 5th day of January 2021

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Denis Gascon

COUNSEL OF RECORD:

For the applicant:

The Commissioner of Competition

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For the respondent:

Parrish & Heimbecker, Limited

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