



Registry Doc. No.: 229

**Date:** January 26, 2021

**Matter:** CT-2019-005 – *The Commissioner of Competition v Parrish & Heimbecker, Limited*

**Direction to Counsel (from Mr. Justice Gascon, Chairperson)**

**Re:** Final Oral Argument

Further to the completion of the evidentiary portion of the hearing, below is a list of questions that the Tribunal invites counsel for both parties to address, as part of their final written and oral submissions in this matter. This list is not meant to be exhaustive and it is expected that counsel will address all elements of the tests under sections 92 and 96 of the *Competition Act* (“Act”) in their submissions.

**Relevant product market**

1. Are there legal precedents (e.g., in Canada, the United States, Europe or Australia) in which a court or a tribunal considered situations where it was proposed that an implicit price for the merging firms’ specific contribution to the value of a product should be used to determine the SSNIP and the relevant market?
2. Are there legal precedents (e.g., in Canada, the United States, Europe or Australia) in which a court or a tribunal considered situations where, in applying the Hypothetical Monopolist Test and in defining the relevant market, a SSNIP smaller or larger than 5% should be used, and/or considered the factors to take into account in determining the appropriate level of the SSNIP?
3. How do the Act and the Competition Bureau’s Merger Enforcement Guidelines – as opposed to the US Horizontal Merger Guidelines – reflect the proposed approach of the Commissioner to the application of the Hypothetical Monopolist Test and the choice of the price of grain handling services for market definition purposes?
4. What is the evidence supporting the product markets advanced by each party?

### Substantial lessening of competition

5. How does the evidence support, or fail to support, the proposition that a lessening of competition is, or is likely to be, “substantial”?
6. What evidence of non-price aspects of competition are relevant to the Tribunal’s determinations in this matter?
7. How does the evidence support, or fail to support, that Virden was a vigorous and effective competitor before it was acquired by P&H?
8. What evidence supports the existence, or absence, of barriers to entry into, or expansion within, the relevant markets proposed by each party?

### Efficiencies

9. What is the evidence supporting each of the efficiencies claimed by P&H?
10. Do firm-wide synergies/efficiencies of the overall transaction have to be allocated to the merger at issue in order to be considered as cognizable efficiencies in the present proceeding? If so, how should that be done for qualitative/non-quantified efficiencies claimed in this case?

In the questions above, “evidence” refers to evidence in the record.

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