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• (1630)

[English]

The Vice-Chair (Mr. Gerry Ritz (Battlefords—Lloydminster, CPC)): I'll call this meeting to order.

I understand that we have some housekeeping from the last meeting.

We apologize for our tardiness, gentlemen. We ended up with a vote. Of course, a government will try to put people in patronage positions at whatever stage they can do it, so we had to have a 30-minute bell and a vote on that.

We will continue on with this. Unfortunately, we're going to have to condense our meeting; we'll now only have an hour for the two-hour session, so we'll try to hold everything. We will attach what you're presenting, so could you just give us the very high points in five minutes? We'll then open up to questions, and then move to the in camera half of the meeting for the other half hour, if that's suitable to everyone.

Now, Mr. Bellavance.

[Translation]

Mr. André Bellavance (Richmond—Arthabaska, BQ): I'll keep it short, Mr. Chairman, as the witnesses have already been very patient.

At the last committee meeting, a portion of the proceedings took place in camera. I know it wasn't deliberate on anyone's part and I'm not accusing you, Mr. Chairman, of turning a blind eye to anything, but I neglected to realize that we were still in camera when I brought up my motion.

For the sake of transparency, if committee members agree to this unanimously, I'd like the portion of the proceedings that were in camera when they should really not have been deemed public. I think we continued in camera because no one requested that public proceedings resume.

If committee members were amenable to my request, I'd be most grateful.

[English]

The Vice-Chair (Mr. Gerry Ritz): All right. I'll open that up to the committee, with one speaker from the government side.

Hon. Wayne Easter (Malpeque, Lib.): I don't think we have a problem with that, Mr. Chair.

You're talking about the debate on the WTO?

The Vice-Chair (Mr. Gerry Ritz): On the motion and the amendments, and so on.

Hon. Wayne Easter: That's not a problem.

The Vice-Chair (Mr. Gerry Ritz): Mr. Anderson, do you have any comment?

Mr. David Anderson (Cypress Hills—Grasslands, CPC): I will once the motion is brought into public. That's fine.

The Vice-Chair (Mr. Gerry Ritz): You have the consent of everyone. So that will now become public and be moved out of the private, in camera session—except the meat packers report, of course, which was in camera to begin with. This was just a carry-over of that. So it's strictly all of the discussion and debate around the WTO, including your motion, the amendments, and so on.

All right. Good. Thank you.

Mr. Easter, I knew it was too good to be two bits.

Hon. Wayne Easter: No, no, I'm just wondering if Mr. Anderson is clear on that, because he made the point that we're just talking about the motion, whereas we're talking about the debate and the discussion surrounding it—just so that we're absolutely clear on that.

I have no problem with that.

The Vice-Chair (Mr. Gerry Ritz): Yes, thank you, Mr. Easter, for the clarification.

Gentlemen, welcome back today. We have Patrick Hughes, Gaston Jorré, and Richard Taylor, from the Competition Bureau.

We're talking about the sale or lack of sale of the Agricore United terminal, and the intervention of the Competition Bureau in that.

Could you give us about five minutes—if you can do it in that timeframe, Mr. Jorré?

[Translation]

Mr. Gaston Jorré (Senior Deputy Commissioner of Competition, Competition Bureau): Thank you, Mr. Chairman. *Je serai bref.*

We are pleased to be here to take part in your study. Joining me today are Richard Taylor, whom you heard from Monday, and Patrick Hughes, Major Case Director and Strategic Advisor, Mergers Branch.

[English]

I'll skip the paragraph about our purpose and go directly to the next one.

There are currently two agriculture-related cases before the Competition Tribunal. Before describing those matters, I should indicate that while I can provide the committee with some background regarding these matters, my ability to comment is limited due to the confidentiality provisions of the Competition Act and the fact that we are involved in litigation.

Turning to the first of those two matters, in early November we filed an application with the tribunal challenging a grain-handling joint venture between the Saskatchewan Wheat Pool and JRI in Vancouver. Our evidence indicates that the joint venture would increase concentration in the control of port grain terminals, which, combined with other market conditions, would likely result in a substantial lessening of competition and a reduction of competitive options for farmers and companies that ship grain to the port.

The second matter stems from the 2001 acquisition of the Agricore Cooperative by United Grain Growers, now known as Agricore United.

[*Translation*]

The acquisition gave rise to competitive issues both at the primary grain elevator level in the Prairies, as well as at the Port of Vancouver at the port terminal level.

As for the issues arising in the Prairies, a number of concerns were identified and a settlement was reached whereby Agricore was required to divest itself of certain elevators within a set period of time. Agricore subsequently sold five of its elevators within the allotted time period. However, it did not sell the one remaining elevator within that allotted time frame. That period was extended on several occasions by the Commissioner to allow Agricore additional time to complete the sale. Ultimately a trustee was appointed and completed the sale of the elevator in question.

[*English*]

In terms of the issues at the Port of Vancouver, the bureau entered into a consent agreement with Agricore in October 2002, requiring it to sell one of its grain terminals in Vancouver. Agricore subsequently decided to sell the UGG terminal. Under the terms of the consent agreement, Agricore had until the end of October 2004 to divest the terminal. It did not do so within the time period. This initial sales period was extended ten times because Agricore had indicated to the bureau that it was close to finalizing agreement with a potential buyer.

•(1635)

In August of this year, the commissioner refused a further extension, at which point Agricore filed an application with the tribunal to rescind the agreement, arguing they should not have to sell the terminal, as conditions had changed. As a result of subsequent negotiations and legal proceedings, the commissioner agreed that the period during which Agricore can sell the terminal should be extended until the litigation currently before the tribunal is complete.

Since October 17, 2002, Agricore has been in a position to find a buyer for the UGG terminal. It continues to be in that position today. Any purchaser would have to be approved by the Commissioner of Competition on the basis of the terms set out in the consent agreement. Specifically, the commissioner must be satisfied that the

purchaser is at arm's length, that it will continue to use the terminal for grain handling, and that it has the managerial, operational, and financial capability to operate the plant. In addition, the bureau must consider the impact of the divestiture to that purchaser on competition in the relevant market.

[*Translation*]

The Competition Bureau is greatly concerned about the state of competition in the grain industry, as demonstrated by these two recent cases. The Bureau is prepared to take actions in appropriate circumstances.

[*English*]

We'd now be happy to answer your questions.

The Vice-Chair (Mr. Gerry Ritz): Thank you, Mr. Jorré. That was concise.

Taking the chairman's prerogative, I have one question. One of your last statements in closing was that "the Competition Bureau is concerned about the state of competition in the grain industry". As the elevators are basically agents of the Canadian Wheat Board, are you concerned about the monopoly buying power of the Wheat Board? Is that the statement you're making?

Mr. Gaston Jorré: The Wheat Board is a statutory body created by Parliament, and of course we take the laws of the country as they are.

The Vice-Chair (Mr. Gerry Ritz): Okay. All right. I found that a bit odd, in that you were concerned about the state of competition when there really isn't any.

Thank you.

Hon. Wayne Easter: A point of order, Mr. Chair: that is not correct, and you know it.

The Vice-Chair (Mr. Gerry Ritz): Thank you for that, Mr. Easter.

Mr. Anderson.

Mr. David Anderson: Mr. Easter must have had something in his cornflakes this morning.

Anyhow, I'd just like to address this. Over the last year, a group called Terminal One has been trying to make an agreement with Agricore on this facility. I understand the holdup has been that they have not been able to get the grain commitments they need to be able to make the terminal function properly.

Both Agricore and Terminal One came to you and requested an extension in order to try to work that out. The Competition Bureau denied that. They've actually come back, I understand, with a longer-term agreement—an option to buy over time and a ten-year handling agreement and that kind of thing—yet they don't seem to be able to work with you folks on that. I'm just wondering if you can tell me why.

Actually, I understand that ITAC, which is the Inland Terminal Association of Canada, is in favour of the proposal—backed it strongly—and Agricore as well seems to be comfortable with it. As a person who lives in an area with these independent terminals... Farmers need them; they need them operating well. And it looks to me like this would be a good deal. I'm wondering why it isn't.

Mr. Gaston Jorré: I can't get into the details of negotiations.

There has been interest in the terminal. There have been a number of extensions. As I say, under the current order, the terminal can still be sold by UGG if it meets the criteria in the order. That will continue until the end of the decision of the Competition Tribunal on the current application. So it can be sold.

We look at any proposal that comes forward—and I'm talking generically now, because, as I say, I can't get into the specifics. Whenever anything comes forward, we look at it in terms of the criteria set out for the sale and whether it will meet those criteria, as well as whether it would be satisfactory in its competitive impact. As I say, if UGG reaches an acceptable deal, it's still possible now.

• (1640)

Mr. David Anderson: You've given a number of deadline extensions. I'm just wondering why you finally refused to continue to do that. Did you give ten of them or eleven of them or something, and on the twelfth one you decided not to?

Mr. Gaston Jorré: There were a total of ten. After the initial sales period you have a second period where a trustee can sell the asset, and we concluded that it was appropriate to let the whole process move to that phase.

Mr. David Anderson: At some point you decided that you were no longer going to allow that to continue?

Mr. Gaston Jorré: We decided it was appropriate to move to the second phase. That's common in agreements that are reached, to allow parties a certain amount of time. As you can see, there has been an ample amount of time, and we concluded that it was appropriate to move to this second phase.

Mr. David Anderson: In your opinion, what has the Canadian Wheat Board's role been in this affair?

Mr. Gaston Jorré: I'm not in a position to comment. As I say, I can't go into confidential matters.

Mr. David Anderson: Have they requested intervenor status?

Mr. Gaston Jorré: They have.

Mr. David Anderson: And what's their risk—

Mr. Gaston Jorré: In front of the Competition Tribunal, they have requested intervenor status, and the Competition Tribunal issued an order giving them intervenor status.

Mr. David Anderson: What would be the reason for giving intervenor status to the Wheat Board?

Mr. Gaston Jorré: We have the order here. There is an interest test. If you don't mind, I'll take a moment....

Mr. David Anderson: Maybe I'll ask another question, then. If you were brought a proposal that basically said they were negotiating the sale to an organization without a handling agreement, would you approve that?

Mr. Gaston Jorré: Sorry, if...?

Mr. David Anderson: If Agricore came with a proposal that they wanted to sell their facility to an organization without a Canadian Wheat Board handling agreement, is it likely that you would approve it?

Mr. Gaston Jorré: I don't want to speculate on what terms precisely would or would not be acceptable. As I said, the—

Mr. David Anderson: I'm getting a little frustrated. We've come here today to try to find out information about this, and I keep getting these answers that you're not going to talk about the specifics. There's really no point in us being here if we can't talk about what's going on with this situation.

Mr. Gaston Jorré: There are criteria in the order that have to be met. In addition, there is an overarching criterion that we have to be satisfied that the end result will be satisfactory from a competitive point of view.

Mr. David Anderson: What kinds of criteria do you need to make you satisfied?

Mr. Gaston Jorré: Generally speaking—and I'm only talking in generic terms—it has to be a result that will maintain competition in the market.

The Vice-Chair (Mr. Gerry Ritz): Thank you, Mr. Anderson.

Mr. Lapierre.

[*Translation*]

Mr. Réal Lapierre (Lévis—Bellechasse, BQ): Based on current market conditions, is the order given to Agricore to sell one of its elevators still relevant, since independent parties have long-term grain handling contracts?

Mr. Gaston Jorré: That is the issue currently before the Competition Tribunal. We believe the order is still necessary.

Mr. Réal Lapierre: If that's the case, why not release all parties from long-term contracts? That would free up the market, facilitate the sale of the UGG terminal and pave the way for a restructuring of the market.

Mr. Gaston Jorré: Private parties make contract choices. Our role is to intervene as little as possible to maintain competition, while allowing the market to operate normally. It's possible to resolve the problem with the current order. Therefore, it would not be appropriate to rescind or vary the order. It is for that very reason that we oppose the application under section 106.

• (1645)

Mr. Réal Lapierre: Are we not seeing a deliberate attempt to block the sale of the UGG terminal?

Mr. Gaston Jorré: In our opinion, it is entirely possible that the sale of the terminal will go forward. If the order is maintained, we believe the sale will take place.

[*English*]

The Vice-Chair (Mr. Gerry Ritz): Thank you, Mr. Lapierre.

Mr. Easter, for five minutes, please.

Hon. Wayne Easter: Thank you, Mr. Chair.

Welcome, gentlemen.

You've talked about Agricore's efforts to sell the terminal, and the number of extensions that have been given in terms of trying to sell it. I know I've had discussions with Agricore, and I certainly believe they're making every attempt to sell. It's not an easy seller's market out there.

What happened? Basically I want to know how the system works. How do you determine whether or not there is a legitimate buyer out there? Certainly from where I sit, one of the difficulties is a lot of the money that built these terminals in the first place came from the farm sector at one point or another. At the end of the day, if losses are incurred in terms of the sale, they will fall back on the primary producers, one way or another. That's the way the system works.

So how do you judge if it's a legitimate sale? What happens if there isn't a buyer?

Mr. Gaston Jorré: Well, how we judge in terms of a sale is whether it is an effective remedy from a competitive point of view. There are the criteria we just discussed, both in the order and an overarching competition criterion. That's what we have to judge in looking at a proposal.

Hon. Wayne Easter: Is there anywhere we can go, and documentation we can look at, to determine that?

Mr. Gaston Jorré: I'll repeat the criteria in the order, which cover part of it. The purchaser has to be arm's length; it has to continue operating the port terminal for grain handling—there's no point if they want to shut it down; it has to have the managerial, operational, and financial capacity; finally, one has to look at the impact of the divestiture in terms of competition in the relevant market. If the purchaser is not going to be a competitor, then that doesn't help.

So those are the criteria. You look at the proposal and ask, will it meet the requirements of—

Hon. Wayne Easter: What happens if no buyer comes along that meets those criteria? I mean, there have been eleven extensions.

Mr. Gaston Jorré: The way the order is structured is after the initial sales period of Agricore, you move to a trustee sale. A trustee then has the opportunity to sell the terminal.

Hon. Wayne Easter: I agree we need the competition, but what worries me, whether we like it or not, is in this system if there's a loss in the sale of the terminal, I guarantee you that mostly likely those losses are going to fall back on the farm community. So what concerns me is that if the trustee has a fire sale in terms of the terminal, that would be a burden the primary producers would pick up on, or end up carrying, at the end of the day. That concerns me.

I know where you're trying to get to. I don't disagree with the principle that we need the competition. We dearly need the competition out there. It would be nice if competition were moving prices up instead of down. But I am concerned about a forced sale, which would end up having farmers carry the burden. I want to know if there's any way to get around that.

• (1650)

Mr. Gaston Jorré: Let me observe two things. The first is that by its nature, when a party enters into a merger or an acquisition, if there are competition problems and if there need to be remedies, that party may have costs related to those remedies. But that's something

parties know when they're bringing a transaction for us to review. And if we raise issues, they know there may be consequences.

The second thing I observe is the reason for having an initial sales period, typically in the hands of the purchaser, is to give the purchaser an opportunity to try to sell. That's one way of addressing that. But a natural part of having competition remedies is that what will happen on the sale might not be ideal from the purchaser's point of view.

Mr. Richard Taylor (Deputy Commissioner, Civil Matters Branch, Competition Bureau): Just to add one thing, I'm not quite sure I understand.

In the competitive market, if they were to recover their losses from the sale by trying to raise prices for farmers to use those terminals, surely the new competitor would be there to keep those prices lower. So in a competitive market, which is our role, I'm not sure they can recover losses. I'm not sure Ford or GM can recover their losses in the automotive market. In competitive markets, it's not at all clear that they could. It's in anti-competitive markets where there's one monopoly.

What we're trying to do is make sure there are enough terminals so they can't raise prices to farmers or demand unreasonable terms from farmers.

Hon. Wayne Easter: The problem is, whether it's competitive or a monopoly, the farmers carry the burden.

The Vice-Chair (Mr. Gerry Ritz): All right, thank you, Mr. Easter.

We'll go to the second round. Just make it two minutes, so we're a little quicker.

Mr. Miller.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): I just have one question, and I'd like to hear Agricore too.

I hear that the Wheat Board is buying cars, and with their intervention it makes you wonder if they're manoeuvring to buy the terminal. My question, really, is has the Wheat Board shown any interest at this point in buying the terminal?

And Mr. Jorré, in regard to the criteria that you mentioned before, in your opinion, would they meet those criteria?

Mr. Gaston Jorré: I can't get into what discussions we have with whom. The act says that we will conduct inquiries in private, and section 29 has very strong limitations on what we can say.

Mr. Larry Miller: You must know the first part of the question, whether they've shown any interest, and on the second part, you have the criteria. I think you know enough about them. Would they meet those criteria? It's pretty dang simple.

Mr. Gaston Jorré: It would not be appropriate for me to speculate here on possible buyers and our analysis, which would have to be done knowing exactly what is proposed.

Mr. Larry Miller: It makes you wonder, Mr. Chairman, why we got them here, then.

The Vice-Chair (Mr. Gerry Ritz): Thank you, Mr. Miller.

Mr. Lapierre, do you have any redirect?

Gentlemen, ladies?

Okay, then we're all done.

Thank you so much, gentlemen. We're sorry to have compressed you the way we have, but voting calls. Thank you so much.

The second half of our meeting is in camera, so I would ask everyone other than MP staffers and necessary staff to please exit the room.

We'll suspend for two minutes while we make those adjustments.

[Proceedings continue in camera]

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