

Competition Tribunal



Tribunal de la Concurrence

CT-1997/002 – Doc # 3

IN THE MATTER OF an application by the Director of Investigation
and Research under sections 92 and 105 of the *Competition Act*,
R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the acquisition by ADM Agri-Industries, Ltd.
of the milling assets of Maple Leaf Mills Inc.

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

ADM Agri-Industries, Ltd.

Respondent



CONSENT INTERIM ORDER

Decided on the basis of the written record.

Member:

McKeown J. (presiding)

Counsel for the Applicant:

Director of Investigation and Research

Yves Bériault
Madeleine Renaud

Counsel for the Respondent:

ADM Agri-Industries, Ltd.

Simon V. Potter

Denis Gascon

COMPETITION TRIBUNAL
CONSENT INTERIM ORDER

The Director of Investigation and Research

v.

ADM Agri-Industries, Ltd.

FURTHER TO the application of the Director of Investigation and Research pursuant to sections 104 and 105 of the *Competition Act* ("Act") for a consent interim order directing that certain assets encompassed by the acquisition be held separate and apart and independently managed pending the hearing and determination of the application brought by the Director of Investigation and Research under sections 92 and 105 of the Act;

AND ON READING the notice of application for a consent interim order dated March 21, 1997, the affidavit of John Pecman, the draft interim order and consent of the parties, and the memorandum of argument, filed;

AND ON CONSIDERING THAT the Director of Investigation and Research and the respondent have reached an agreement which is reflected in the draft consent interim order;

THE TRIBUNAL ORDERS THAT:

Definitions

1. For the purposes of this order, the following definitions shall apply:

(a) "ADM" means ADM Agri-Industries, Ltd., a company engaged in wheat flour milling in Canada;

(b) "Director" means the Director of Investigation and Research appointed pursuant to the Act, and includes members of the Director's staff;

(c) "management" or "manage" means the conduct, control and administration of the production and marketing of wheat flour at the Oak Street mill;

(d) "marketing information" means competitively sensitive information not independently known to ADM Agri-Industries, Ltd. and includes, but is not limited to, customer lists, price lists, marketing methods or other information related to the sale of wheat flour;

(e) "merger" means the acquisition by ADM Agri-Industries, Ltd. of the milling assets of Maple Leaf Mills Inc. which closed on February 28, 1997;

(f) "Oak Street mill" means the mill formerly owned by Maple Leaf Mills Inc. and located at 380 Oak Street in Montreal, Province of Quebec;

(g) "Quebec/Atlantic Canada market" means the geographic market comprised of the Provinces of Quebec, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island.

Maintain Current Ownership

2. ADM shall not, without the consent of the Director, directly or indirectly alter its ownership of the Oak Street mill as of the date of the merger, except in accordance with the procedure for divestiture set out in the draft consent order attached to the Director's application pursuant to sections 92 and 105 of the Act.

Maintain Independent and Separate Business

3. ADM shall to the extent permitted by this order and except as required to carry out the duties and functions assigned to ADM pursuant to this order:
- (a) take all steps necessary to ensure that the Oak Street mill is managed as a separate and independent business;
 - (b) not take any steps toward integrating the assets, management, operations or books and records of the Oak Street mill with those of ADM or of its affiliates;
 - (c) in accordance with best industry practices, maintain and hold the Oak Street mill in good condition and repair and to standards at least equal to those existing at the date of the merger, until it has been divested in accordance with the procedure set out in the draft

consent order attached to the Director's application pursuant to sections 92 and 105 of the Act;

(d) not exercise direction or control over the operations of the Oak Street mill or influence directly or indirectly the marketing activities of the Oak Street mill;

(e) maintain, in accordance with generally accepted accounting principles, separate and complete records of material financial information for the Oak Street mill; and

(f) except as described in paragraph 4 below, not directly or indirectly receive, have access to, or use any marketing information relating to the Oak Street mill.

4. Nothing in this order shall restrict ADM from providing accounting services to the Oak Street mill and allowing access to confidential financial information, including without limitation marketing information if required, with respect to the Oak Street mill by independent auditors for the purposes of preparing ADM's standard financial reports.

5. Nothing in this order shall restrict ADM from:

(a) providing for and maintaining sufficient working capital to permit the Oak Street mill to continue to operate to standards at least equal to those existing at the date of the merger;

(b) providing for and authorizing all necessary capital improvements to the Oak Street mill required to enable it to continue to operate to standards at least equal to those existing at the date of the merger.

6. To the extent permitted by this order, ADM shall provide to the Oak Street mill, at ADM's cost and in accordance with standards at least equal to those existing at the date of the merger, the following: wheat sourcing, milling technology, millfeed and flour distribution services, and the personnel required to operate the Oak Street mill as an ongoing operation.

Maintain Independent Viability of the Assets

7. ADM shall not take any action which could foreseeably have the effect of materially inhibiting or unreasonably delaying the divestiture of the Oak Street mill, or in any way materially reduce the value of the assets, operations or financial status of the Oak Street mill, without the consent of the Director.

Management

8. Within 10 business days of the undertaking executed by ADM on February 25, 1997, ADM has appointed Léo Denis as production manager ("manager") to manage and maintain the Oak Street mill independently of the management of ADM's other mills, in compliance with the terms of this order. The appointment of Mr. Denis has been approved by the Director and the appointment of his replacement, if need be, shall be subject to the approval of the Director.

9. ADM shall instruct the manager to carry on the business of the Oak Street mill as an independent competitor in the market, to the extent permitted by this order and in accordance with the generally prevailing industry standards, to use best efforts to enhance the competitiveness of the Oak Street mill and to maintain its customer base at least to the level existing at the time of the merger.

10. Within 15 business days of the undertaking executed by ADM on February 25, 1997, ADM has appointed Gilles Beaumont as full-time salesperson ("salesperson") who shall work exclusively on the marketing of wheat flour produced at the Oak Street mill and shall report directly and exclusively to the manager. In the event that the salesperson is unable to perform his duties under the terms of this order, ADM shall appoint a new salesperson within 10 business days of the date on which the salesperson becomes unable to exercise his functions.

11. All remuneration and expenses of the manager and the salesperson shall be paid by ADM.

12. In addition to the salesperson's salary, ADM shall pay to the salesperson, at the time of the divestiture of the Oak Street mill, a bonus equivalent to 20% of the salary received from the time of his or her appointment, provided that the salesperson succeeds in maintaining the customer base of the Oak Street mill at least to the level existing at the time of the merger and remains in his or her functions until the divestiture of the Oak Street mill.

13. Except to the extent permitted by this order and as required to carry out the duties and functions assigned to ADM pursuant to this order, and except for the manager and the salesperson involved in the Oak Street mill, ADM shall not permit any other ADM employee, officer or director to be involved in the management and marketing of the Oak Street mill.

14. ADM shall instruct the manager and the salesperson involved in the Oak Street mill not to be involved in any other ADM business and not to communicate any marketing information to ADM or any other person.

15. ADM shall provide a copy of this order to the manager and the salesperson and shall direct them to act in accordance with the terms thereof; ADM shall also provide a copy of this order to Loren Urquhart, Vice-President, Sales for the Canadian flour milling operations, and shall instruct him to act in accordance with the terms thereof.

Monitor

16. Within 15 business days of the undertaking executed by ADM on February 25, 1997, ADM has appointed John Neufeld to act as monitor for the Oak Street mill ("monitor") who shall be responsible for monitoring the operation of the Oak Street mill as necessary to ensure compliance with this order. The appointment of Mr. Neufeld has been approved by the Director.

17. In the event that the monitor is unable to perform monitoring duties under the terms of this order, ADM shall appoint, subject to the Director's approval, a new monitor within 15 business days.

18. If, in the Director's opinion, the monitor is not fulfilling the obligations contemplated herein, the Director may request that ADM appoint a new monitor, subject to the Director's approval.

19. All remuneration and expenses of the monitor shall be paid by ADM.

20. The monitor shall be permitted to perform his or her regular duties in addition to his or her duties as monitor to the extent permitted by this order.

21. ADM and the manager shall give the monitor unlimited access to:

- (a) the premises of the Oak Street mill;
- (b) any information relating to the operations and marketing of the Oak Street mill;
- (c) meetings of the management of the Oak Street mill;

as required by the monitor to fulfill the monitor's obligations pursuant to the terms of this order. Except as required to carry out the duties and functions assigned to ADM pursuant to this order, ADM shall not exert or attempt to exert any influence, direction or control over the monitor which could affect the discharge of the monitor's duties under the terms of this order.

22. ADM shall direct the monitor to discharge his or her responsibilities on the following terms:

- (a) the monitor shall notify the Director in the event that ADM is in default of any of the terms of this order;
- (b) the monitor shall not consult with other employees of ADM in connection with his or her responsibilities hereunder, except as is necessary to ensure compliance with this order;
- (c) the monitor shall not communicate marketing information about the Oak Street mill to any person, except to the extent required by the terms of this order;
- (d) the Director shall have the right to request from the monitor from time to time and within 5 business days of such request the monitor shall provide to the Director a written report relating to compliance with the terms of this order;
- (e) the monitor shall not be subject to personal liability for any breach by the monitor or by ADM of any of the terms of this order.

General

23. For the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to ADM, ADM shall permit any duly authorized representatives or representative of the Director access during office hours and, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of ADM relating to compliance with this order.

24. Notices, reports or other communications required or permitted by this order shall be in writing and shall be given by personal delivery or by registered mail or by facsimile to the address or facsimile number below:

Director of Investigation and Research
Competition Bureau
Industry Canada
Place du Portage, Phase 1
50 Victoria Street
Hull, Quebec
K1A 0C9
Facsimile no.: (819) 953-6169

25. In the event that the Director's approval is sought pursuant to this order and such approval is not granted, or if a decision of the Director is unreasonably delayed or withheld, ADM may apply to the Tribunal for directions.

26. The terms of this order are in effect until the Tribunal approves the draft consent order filed with the Director's application pursuant to sections 92 and 105 of the Act.

DATED at Ottawa, this 25th day of March, 1997.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) W.P. McKeown
W.P. McKeown