

THE COMPETITION TRIBUNAL

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

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

**NOTICE OF APPLICATION
FOR A CONSENT ORDER**

1. **TAKE NOTICE THAT** the applicant, the Director of Investigation and Research (the "Director"), will make an application to the Competition Tribunal pursuant to sections 92 and 105 of the *Competition Act* (the "Act") for the following orders with respect to the acquisition by ADM Agri-Industries, Ltd. ("ADM") of the milling assets of Maple Leaf Mills Inc. ("MLM") ("merger"):

(1) an order under sections 92 and 105 of the Act in the form of the draft consent order attached hereto as Schedule "C"; and

(2) such further order as the applicant and the respondent, on consent, may advise and the Tribunal may consider appropriate.

2. **AND TAKE NOTICE THAT** in support of this application, the Director will rely upon the statement of grounds and material facts attached hereto as Schedule "A", the affidavit of John Pecman attached hereto as Schedule "B", the draft consent order attached hereto as Schedule "C", the consent order impact statement attached hereto as Schedule "D", the consent signed by the parties attached hereto as Schedule "E", this notice of application and such other material as may be filed or counsel may advise.

3. **AND TAKE NOTICE THAT** the Director and the respondent will request a protective order with respect to Schedule I appended to the draft consent order, which schedule is filed herewith on a confidential basis.

4. The name and address of the person with respect to whom a consent order is sought are ADM Agri-Industries, Ltd., 70 University Avenue, suite 250, Toronto, Ontario M5J 2M4.

5. The applicant and the respondent respectfully request that this application be heard in the English language.

6. The applicant and the respondent request, in accordance with rule 72 of the *Competition Tribunal Rules* and rule 6 of the *Federal Court Rules*, that the service requirements of the *Competition Tribunal Rules* be dispensed with.

Dated at Hull, Quebec, this day of March 1997.

Konrad von Finckenstein, Q.C.
Director of Investigation and Research

Address for service of the applicant:

McCARTHY TÉTRAULT
"Le Windsor"
1170 Peel Street
Montreal, Quebec
H3B 4S8

Attention: Mtre Yves Bériault
 Mtre Madeleine Renaud
 Counsel for the applicant

TO: Registrar, Competition Tribunal
 90 Sparks Street
 6th Floor
 Ottawa, Ontario
 K1P 5B4

AND TO: OGIIVY RENAULT
1981, McGill College Avenue
Suite 1100
Montreal, Quebec
H3A 3C1

Attention: Mtre Simon V. Potter
Mtre Denis Gascon
Counsel to ADM Agri-Industries, Ltd.

SCHEDULE "A"

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. INTRODUCTION

1. The Director brings this consent application on the grounds that the acquisition by ADM Agri-Industries, Ltd. ("ADM") of all milling assets of Maple Leaf Mills Inc. ("MLM") prevents or lessens, or is likely to prevent or lessen, competition substantially in the provision of bulk hard wheat flour used primarily in the production of bread and related bakery products in the Provinces of Quebec, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island (the "Quebec/Atlantic Canada market"). The Director, with the consent of the purchaser ADM, respectfully submits for approval a draft consent order which, if implemented, will eliminate the substantial lessening of competition which is likely to result from the acquisition in the Quebec/Atlantic Canada market.

2. The Director alleges certain material facts in this statement. ADM does not contest the facts herein for the purposes of this application, but nothing in this application shall be taken as an admission now or in the future by ADM of any facts or submissions which would support the allegation that the acquisition prevents or lessens, or is likely to prevent or lessen, competition substantially in any market.

II. THE PARTIES

3. The applicant is the Director appointed under section 7 of the *Competition Act* and is the sole person authorized to make this application to the Tribunal.

4. The Respondent ADM, which has its head office in Toronto, Ontario, is a wholly-owned subsidiary of Archer-Daniels-Midland Company, a U.S. corporation. ADM operates six wheat flour mills in Canada at the following locations:

LOCATION	CAPACITY ¹
Medicine Hat, Alberta	8,500
Winnipeg, Manitoba	3,005
Midland, Ontario	12,000
Mississauga, Ontario	7,025

¹ 1995 daily estimates in hundredweights (cwt.) based on a six day milling week.

Strathroy, Ontario	1,870
Montreal, Quebec	18,850 ²

5. ADM also operates four family flour packaging plants in Canada (Medicine Hat, Alberta; Winnipeg, Manitoba; Midland, Ontario; and Montreal, Quebec), as well as an oat flour milling facility (Midland, Ontario).

6. Prior to the Merger, MLM, an Ontario corporation established in 1992 and owned equally by Maple Leaf Foods Inc. and ConAgra Limited. ("ConAgra"), was the second largest flour miller in Canada; under the terms of a management services agreement, the daily operations of MLM were managed by ConAgra.

III. THE MERGER

7. Pursuant to an Asset Purchase Agreement dated February 28, 1997, ADM purchased from MLM its four flour milling facilities at the following locations:

LOCATION	CAPACITY ³
Calgary, Alberta	13,100
Port Colborne, Ontario	14,500
Montreal, Quebec	11,300
Notre-Dame St.	8,300
Oak St.	3,000

8. ADM also purchased MLM's bakery mix facility located at Port Colborne, Ontario.

² Includes a dedicated durum semolina unit with capacity of 4,700 cwt./day.

³ 1995 daily estimates in hundredweights (cwt.).

IV. DESCRIPTION OF THE INDUSTRY

A. The Flour Milling Industry

9. In the flour milling industry, different varieties of wheat and other ingredients are blended to produce different types of flour used for particular purposes, with millers aiming to meet the specifications of their buyers. Bread and rolls are generally made from hard wheat flour, while soft wheat flour is normally used for baking cakes, crackers, biscuits and pastry. Durum wheat is generally milled into a coarser meal called semolina, as well as into flour, both used for making pasta. Approximately 93% of the wheat flour produced in Canada is used in commercial and industrial applications, with the balance being sold as family flour, that is flour identical to the industrial flour but packaged and marketed in one to ten kilogram packages and sold for household use. The by-products of the wheat milling process are referred to as millfeeds, which are normally sold as animal feeds.

10. Canada produces ample supplies of high-quality wheat, with strict grade standards maintained by the Canadian Grain Commission. Wheat grown in Western Canada consists mainly of the hard variety, high in protein and gluten contents, and of the durum variety, which has an even higher protein level. Soft wheat is grown primarily in Ontario, and has a lower protein level. Hard wheat accounts for approximately 80 percent of wheat milled in Canada, followed by soft wheat at 12 percent, and durum wheat at 8 percent.

11. The Canadian market for flour has been stable, with moderate increase in per capita consumption in recent years. The *per capita* consumption in Canada has gone from an average of 54 kg in 1981 to 60 kg in 1995.

12. The current level of capacity utilization in the wheat flour industry in Canada for all types of flour is approximately 90%, based on a six-day milling week which is the standard in the industry.

13. Shipments of industrial or commercial wheat flour are made predominantly by truck, with very few shipments by rail. Direct rail shipments to bakers are not common, because most bakers cannot accept rail delivery due to lack of rail sidings and have limited inventory capacity. Truck shipments are more widely used as they can more readily accommodate the just-in-time inventory requirements of bakers. Flour is shipped in bulk to those larger bakery facilities that have the necessary handling equipment (vacuum systems, bulk storage facilities); it is shipped in commercial bags, largely in the 40-kg size, to those small bakers who cannot accommodate bulk delivery and to bulk customers for use in emergency situations. Family flour sold at the retail level is shipped in small bags.

14. There are four basic types of wheat flour mill design: dedicated hard wheat flour, dedicated soft wheat flour, dedicated durum semolina, and dual-purpose -- also known as "swing mill". The swing mill can grind either hard or soft wheat, but is inherently less efficient than a dedicated mill in terms of extraction rates, production rates and flour quality. A dedicated hard mill can also mill soft and durum flours (not durum semolina), but at a greater efficiency loss than swing mills. Likewise,

a dedicated soft mill can also produce hard flour, but in a less efficient manner. However, only a dedicated durum semolina mill is capable of producing durum semolina, and such a mill cannot be used for producing other wheat flours.

15. In terms of packaging, all wheat flour milling facilities can produce flour to be shipped in bulk; however, only those mills with appropriate packaging facilities can produce commercial-bagged and family flour. That is suppliers of the family flour market can also supply the industrial and commercial markets, but suppliers of the industrial and commercial markets must install bagging facilities and have an adequate distribution network in order to serve the family market.

B. Canadian Flour Millers

16. There are currently 27 wheat flour and durum mills operating in Canada, including two mills affiliated with pasta and breakfast cereal manufacturers, with total daily milling capacity of 172,540 cwt. in 1995. Before the merger, the three largest millers, ADM, MLM and Robin Hood Multifoods, Inc. ("Robin Hood"), operated 13 milling facilities representing approximately 70% of the total Canadian milling capacity.

17. The Canadian flour milling industry is regionally concentrated. Some 70% of establishments are located in Ontario and Quebec, 22% in the Prairie Provinces, 5% in British Columbia and 3% in Atlantic Canada. Ontario milling capacity is situated in southern and central Ontario, while Quebec's industry is located in or around Montreal.

18. Prior to the merger, ADM was the largest Canadian miller, operating six flour mills with a combined daily wheat flour milling capacity of 51,250 cwt., and four family flour packaging plants. MLM had a total daily wheat flour milling capacity of 38,900 cwt. and operated four wheat flour mills, three packaging plants, two bakery mix⁴ manufacturing plants and one durum wheat flour mill. Robin Hood operated three wheat flour mills (Port Colborne, Ontario; Montreal, Quebec, and Saskatoon, Saskatchewan) with a daily combined milling capacity of 35,700 cwt., two bakery mix manufacturing plants (Burlington, Ontario, and Saskatoon, Saskatchewan), and two oat flour mills (Port Colborne, Ontario and Saskatoon, Saskatchewan).

19. The fourth largest miller operating in Canada is Dover mills Ltd. ("Dover"), which operates two wheat flour mills (Halifax, Nova Scotia, and Cambridge, Ontario) having a combined daily wheat flour milling capacity of 10,000 cwt., two family flour packaging plants at the same locations, and a mix manufacturing plant in Halifax.

⁴ Bakery mixes are mixes of flour and other baking ingredients such as sugar, yeast and dehydrated milk which are sold to bakers of products such as donuts, pizza and cakes.

20. Other significant flour milling operations⁵ in Canada include, by province: British Columbia - Rogers Foods Ltd. (Armstrong); Alberta - Ellison Milling Co. (Lethbridge); Saskatchewan - CSP Foods (Saskatoon); and Ontario - Halton Flour Milling, Inc. (Acton), New-Life Mills Ltd. (Hanover), Reid Milling, Div. of Nabisco (Mississauga), and Hayhoe Mills Ltd. (Woodbridge).

C. Customers

21. Flour millers supply two types of customers, industrial users or bakers on the one hand, and retail accounts on the other.

22. Retail accounts are supermarkets or other retail outlets which sell family flour. This segment of the market accounts for approximately 7% of the total flour market in Canada, and has been declining for many years. The decline in home baking and the increased popularity of low-fat, low-calorie foods are factors behind the decline in family flour consumption.

23. There are several segments of industrial users, the largest being bakery customers, which account for about 50% of total flour consumption. In addition, there are pasta manufacturers, who purchase mostly durum wheat flour and durum semolina, representing about 8 % of all flour sold in Canada. A third category of industrial users, biscuit makers and other food processors, account for about 15% of total flour consumption. The remaining segment, accounting for about 15% of flour sales, comprises a variety of wheat starch and wheat gluten manufacturers, as well as manufacturers of food products such as cake mixes, batters, pizza dough and frozen dough products.

V. COMPETITIVE ANALYSIS

A. Summary

24. The merger involves the purchase by ADM of MLM's milling assets throughout Canada, and involves direct overlap of business between ADM and MLM in the production, marketing and sales of wheat flour. After an extensive study of the flour milling industry and wide consultation with industry participants and experts, both in Canada and the United States, the Director identified the relevant product market as hard wheat bakery flour supplied in bulk format, and identified three relevant geographic markets: the Provinces of British Columbia, Alberta, Saskatchewan and Manitoba (the "Western Canada market"), the Province of Ontario combined with the Greater Buffalo area in New York State (the "Ontario/Buffalo market"), and the Quebec/Atlantic Canada market. The Director concluded that the transaction does not and is not likely to substantially prevent or lessen competition in the supply of bulk hard wheat bakery flour in the Western Canada and Ontario/Buffalo markets.

⁵ Daily wheat flour milling capacity greater than 2,000 cwt.

25. With respect to the Western Canada market, ADM will account, after the merger, for approximately 48% of the bulk hard wheat bakery flour market, based on milling capacity. However, there are 7 other hard wheat flour millers in this market, including Robin Hood, the second largest miller in Western Canada, which are in a position to constrain any significant and non-transitory price increase by ADM post-merger. The Director's finding is also based in part on the planned expansion of two non-ADM mills located in Western Canada, as well as potential competition from U.S.-based mills, such as Fisher Mills Inc. in Seattle, Washington, which is currently supplying two truckloads a week of bulk hard wheat bakery flour to the Vancouver area.

26. With respect to the Ontario/Buffalo market, the post-merger market share of ADM based on bulk hard wheat bakery flour capacity in this market will be approximately 42%. There are 6 other hard wheat millers operating in Ontario capable of serving this market, including Robin Hood which operates the second largest mill in Ontario. The Director's conclusion that there is no substantial lessening of competition in this market is also based, *inter alia*, on the fact that the U.S. Milling Company, a flour mill located in Buffalo, New York, jointly owned by ConAgra and Maple Leaf Foods Inc., would be able to constrain any significant and non-transitory price increase by ADM post-merger. The U.S. Milling Company is operated by ConAgra, a U.S. public corporation headquartered in Omaha, Nebraska and the second largest wheat flour miller in North America on a capacity basis. As ConAgra was part-owner of MLM prior to the merger, it chose not to sell flour in the Ontario market from its U.S. mills. The merger has changed this situation and the U.S. Milling Company will now be in a position to supply bulk hard wheat bakery flour into Ontario from its Buffalo mill.

27. The Director has concluded from the inquiry that the merger would likely prevent or lessen competition substantially in the supply of bulk hard wheat bakery flour in the Quebec/Atlantic Canada market.

B. Relevant Market

(1) Product Market

28. There are no acceptable substitutes for wheat flour. As described above, the common types of wheat flour products, hard, soft and durum, are not functionally interchangeable due to the major differences in their physical characteristics and end-use applications. Both customers and suppliers of flour distinguish between these three separate products. As a result, there are three separate product markets, namely hard wheat flour, soft wheat flour, and durum semolina and durum flour.

29. In the Quebec/Atlantic Canada market, as in the other two relevant geographic markets, the merger has a limited impact on the soft and durum semolina and durum flour markets, since there are significant shipments from other areas of these products in bulk and bagged form, and of the finished

goods (i.e. pasta and biscuits⁶). Imports of the finished goods constitute direct competition for Canadian pasta producers and biscuit makers, and indirect competition for millers of soft wheat and durum semolina and durum flour. Approximately 25% of pasta and biscuits products consumed domestically in 1995 were imported⁷, whereas, primarily for reasons of perishability, bread and rolls produced from hard wheat flour are imported, but in less significant quantities. There is no issue with respect to family flour, as MLM did not produce this type of flour at the time of the merger. For the reasons explained below, the Director concluded that the relevant product market is the supply of bulk hard wheat bakery flour.

30. The majority of hard wheat bakery flour shipments in Canada are in bulk form by specialized tanker truck to large high-production bakers. Bulk hard wheat bakery customers have indicated that truck transportation is a reliable mode of assuring just-in-time deliveries. Smaller bakers which cannot accommodate bulk delivery are supplied hard wheat flour in commercial 40 kg bags, which are sold at prices approximately 10% higher than bulk hard wheat bakery flour. As a result, bakers will not switch between bulk and bag, given the significant costs involved. In contrast to bulk flour, the national flour millers distribute commercial-bagged flour primarily through third party brokers. Unlike bulk flour, which requires specialized transportation equipment, bagged flour is shipped in general purpose trucks and railcars. Empty backhauls are avoidable and thus bagged product can be shipped longer distances. There are significant differences between bagged and bulk hard wheat bakery flour in the area of price, shipment patterns, distribution and the nature of the end-user. The Director has concluded that the geographic market for commercial-bagged flour is much broader and likely national, as distant mills could constrain a significant and non-transitory price increase by ADM post-merger, thereby reducing ADM's post-merger market power in this segment of the transaction.

31. As a result, the Director has concluded that the relevant product market of concern is the supply of bulk hard wheat bakery flour.

(2) Geographic Market

32. As explained hereafter, the Director has concluded that Quebec and the Atlantic Canada Provinces constitute the relevant geographic market.

⁶ Biscuits include: biscuits (plain and fancy), packaged cookies, crackers, graham wafers, ice cream cones, fruit bars (biscuits), mallows (biscuits), sandwich biscuits, Snaps (biscuits), soda biscuits, sugar wafers and wafers.

⁷ Source: Statistics Canada/Industry Canada Business Integrated database.

33. There are no significant shipments of bulk hard wheat bakery flour into the Quebec/Atlantic Canada market from any other region in Canada, the United States or elsewhere. For example, in 1995, shipments of bulk hard wheat bakery flour to the Quebec/Atlantic Canada market from all Ontario mills represented only about 2.1% of the total production of bulk hard wheat bakery flour in Quebec/Atlantic Canada. Further, there were no bulk hard wheat bakery flour shipments in 1995 from the United States to the Quebec/Atlantic Canada market. Similarly, in 1996, shipments of bulk hard wheat bakery flour from the Quebec/Atlantic Canada market to the Province of Ontario were less than 1.3% of total production of the relevant product in the Quebec/Atlantic Canada market.

34. The Director's inquiry has shown that, taking into account production costs, including the cost of wheat and of transportation of flour from mills outside Quebec into the Province of Quebec, mills from the rest of Canada or the Northern tier of the United States could not constrain a significant and non-transitory price increase by ADM post-merger. For the same reasons, mills outside of the Quebec/Atlantic Canada market would not be able to constrain a significant and non-transitory price increase in Atlantic Canada.

35. The Atlantic Provinces are included in the same market as the Province of Quebec because there are significant shipments of bulk hard wheat bakery flour from Quebec-based mills to bakers in St. John's, Newfoundland and Moncton, New Brunswick. While there have been no significant shipments of flour to Halifax, Nova Scotia, rail shipments rates from Montreal to Halifax, are identical to those from Montreal to Moncton. Hence, ADM's and Robin Hood's mills in the Province of Quebec could constrain a significant and non-transitory post-merger price increase in the Atlantic Provinces.

C. Nature of Application

36. The Director brings this application on the grounds that the proposed acquisition by ADM of MLM's Quebec milling assets prevents or lessens, or is likely to prevent or lessen, competition substantially in the provision of bulk hard wheat bakery flour in the Quebec/Atlantic Canada market. The Director's conclusion is based on a number of factors, including ADM's high post-merger market share, the competitive structure of the market, the limited effectiveness of the remaining competitors within the Quebec/Atlantic Canada market, and the unlikelihood of entry into this geographic market by more distant mills.

D. Quebec/Atlantic Canada Market - Hard Wheat Bakery Flour

(1) Market Concentration

37. Prior to the merger, there were four hard wheat flour millers in the Quebec/Atlantic Canada market. The estimated market share of hard wheat flour production capacity (measured by the industry standard of daily hundredweights) for each market participant was as follows⁸:

Company	Mill Location	Production Capacity	Market Share
1. ADM	Montreal	14,150	33.7%
2. Robin Hood	Montreal	12,500	29.8%
3. MLM	Montreal:	11,300	27.0%
2 mills	Notre Dame St. Oak St.	8,300 3,000	
4. Dover	Halifax	4,000	9.5%
TOTALS		42,065	100%

38. Swing mills, which are designed to produce either hard or soft wheat flour can be readily dedicated to the production of hard wheat flour. Similarly, dedicated soft flour mills can produce hard wheat flour. The production capacity of both swing mills and dedicated soft flour mills is therefore included in the above market share estimates. Dedicated durum semolina mills are excluded as they cannot produce hard wheat flour.

39. The production capacity for commercial-bagged hard wheat bakery flour and hard wheat family flour is included in the above market share estimates as production could be switched by the miller from bag to bulk hard wheat bakery flour with no significant added cost in production.

40. ADM's post-merger market share, based on the aforementioned estimates, would exceed 60%, a very high market share in a highly concentrated market.

41. The post-merger four-firm concentration ratio in bulk hard wheat bakery flour for the Quebec/Atlantic Canada market would remain at 100%, and the post-merger Herfindahl-Herschman Index ("HHI") would be 4659.34, as compared to a pre-merger HHI of 2842.15.

⁸ Source: *Milling and Baking News*, 1996, confirmed by information from industry participants, with an adjustment for ADM's capacity to exclude the dedicated durum unit which is part of its Montreal mill.

(2) Section 93 Factors

(a) *Foreign Competition*

42. In 1991, pursuant to the Canada-U.S. Trade Agreement, import licensing requirements were removed on U.S. wheat and wheat products, including flour. This permitted American flour millers to export flour to Canada for the first time since the 1940's. Notwithstanding this change, there have been only insignificant bulk hard wheat bakery flour shipments from the U.S. to Canada, amounting to less than 1% of Canadian consumption annually, since the implementation of the trade agreement. Customers cite the need for just-in-time delivery and service as factors which considerably limit the extent to which more distant mills could constrain a significant and non-transitory post-merger price increase. The Director found that flour millers from the Northern tier of the United States do not ship bulk hard wheat bakery flour to the Quebec/Atlantic Canada market for reasons which include capacity constraints, unfavourable exchange rates, Canadian bakers' preference for hard wheat flour milled from Canadian wheat because of its consistent baking characteristics, and relatively high transportation costs for bulk hard wheat bakery flour, which place distant mills at a significant cost disadvantage against the flour mills located in the Quebec/Atlantic Canada market.

(b) *Acceptable Substitutes*

43. There are no acceptable substitutes for wheat flour. There are no acceptable substitutes for hard wheat flour used primarily in the production of bread: soft and durum flour products are also dedicated to their specific end-use applications and cannot be used to produce bread.

(c) *Removal of Vigorous and Effective Competitor*

44. There has been aggressive price competition from MLM in the supply of bulk hard wheat bakery flour in the Quebec/Atlantic Canada market. The merger removes a vigorous and effective competitor.

(d) *Barriers to Entry*

45. Significant *de novo* entry of a hard wheat flour mill is difficult and unlikely in Canada in the near future. There have been no new wheat flour mills built in Canada for approximately 30 years. As flour mills have no alternative uses, a large portion of mill construction costs are sunk, including the capital cost of the mill, rail sidings and storage facilities. Furthermore, a mill of significant scale would be required to compete against incumbents on price for bulk hard wheat flour business.

46. The Director found that the level of capacity utilization in the wheat flour industry in the Quebec/Atlantic Canada market for 1995/96 was approximately 88%. Post-merger, ADM will possess most of the excess capacity in this market. Dover mills in Halifax is in the process of

expanding capacity, but is planning to use this additional capacity primarily for export. Any additional entry into the hard wheat flour market in the Quebec/Atlantic Canada market is more likely to come from expansion of existing mills than *de novo* entry.

(e) *Effective Remaining Competition*

47. As a result of the merger, the only remaining competitor who could effectively service customers in the Province of Quebec is Robin Hood, which is currently operating at or near full capacity. The other miller in the relevant market, Dover, does not supply bulk hard wheat bakery flour to the Province of Quebec, because of transportation logistics. Hard wheat shipments in Canada generally move from the West, where the wheat is grown, to the East. For a miller in Atlantic Canada like Dover to ship bulk hard wheat bakery flour to the Province of Quebec, additional transportation costs incurred by comparison to a Montreal-based miller would include in-bound wheat shipment costs from Montreal to Halifax, out-bound bulk flour shipment costs from Halifax to Montreal, and an empty bulk back-haul to Halifax. As a result, Dover cannot effectively compete for bulk hard wheat bakery flour customers in the Province of Quebec.

48. The remaining bulk hard wheat bakery flour millers in the Quebec/Atlantic Canada market have additional practical impediments which lessen their ability to fully switch their mill capacity to the supply of bulk hard wheat bakery flour in reaction to a significant and non-transitory price increase by ADM post-merger. Dover currently directs a significant amount of hard wheat flour production to its bakery mix operations. Furthermore, neither Robin Hood nor Dover would redirect significant capacity from their family flour businesses, as they both have considerable investment in product differentiation in family flour for the retail market (e.g. brand name development, advertising, shelf space, sales force, etc.) which would be lost if they switched their businesses completely to bulk hard wheat bakery flour production. It should be noted that a very small portion of ADM's Montreal mill capacity is devoted to family flour.

(f) *Change and Innovation*

49. The flour milling industry is not characterized by dramatic technological advances, but rather by gradual improvements in mill design, equipment and material handling systems.

(g) *Other Factors*

50. As a result of the merger, the Director has concluded that the likelihood of interdependent behaviour between the remaining competitors for the sale of bulk hard wheat bakery flour in the Quebec/Atlantic Canada market is increased. The product is relatively homogeneous, the relevant market is highly concentrated, with the number of market participants reduced from four to three

(only two participants would remain in the Province of Quebec), the barriers to entry are high and there is a lack of significant shipments from other geographic markets.

VI. RELIEF SOUGHT

51. The Director has therefore concluded that the acquisition by ADM of MLM's milling assets in the Quebec/Atlantic Canada market prevents or lessens, or is likely to prevent or lessen, competition substantially in the provision of bulk hard wheat bakery flour. Nevertheless, it is submitted that this substantial lessening or prevention of competition will be eliminated by the implementation of the draft consent order, which will restore effective competition, as explained more fully in the consent order impact statement filed herewith as Schedule "D."

52. The Director therefore seeks, pursuant to subsections 92(1)(e) and section 105 of the Act, the issuance of the draft consent order attached hereto to avoid any substantial preventing or lessening of competition in the Quebec/Atlantic Canada market.