

Competition Tribunal



Tribunal de la Concurrence

PUBLIC VERSION

CT-1997/002 – Doc # 13a

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 ORDER

Date of Hearing:

May 8, 1997

Members:

Rothstein J. (presiding)
Dr. Frank Roseman
Mrs. Christine Lloyd

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 ORDER

The Director of Investigation and Research

v.

ADM Agri-Industries, Ltd.

FURTHER TO the application of the Director of Investigation and Research ("Director") pursuant to sections 92 and 105 of the *Competition Act* ("Act") and further to the notice of application dated March 20, 1997 for a consent order directing the divestiture of certain assets and other remedies specified in the draft consent order;

AND ON READING the notice of application, the statement of grounds and material facts, the consent order impact statement and the consent of the parties;

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

AND ON CONSIDERING THAT the Director declares himself satisfied that, on the basis of the considerations outlined in the consent order impact statement, the remedies provided herein, if ordered, will be sufficient to avoid any substantial lessening or prevention of competition in the provision of bulk hard wheat bakery flour in the Quebec/Atlantic Canada market described in the statement of grounds filed with the notice of application;

AND IT BEING UNDERSTOOD THAT nothing in this application shall be taken as an admission now or in the future by the respondent 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;

AND IT BEING UNDERSTOOD THAT the respondent does not agree with the facts as alleged but does not contest the statement of grounds or the consent order impact statement for the purposes of this application and that nothing in this application shall be taken as an admission now or in the future by the respondent of any facts, submissions or legal arguments for any other purposes, including any future application under sections 92, 100, 104 or 106 of the Act;

AND ON HEARING counsel for the parties in respect of this application;

THE TRIBUNAL ORDERS THAT:

Definitions

1. For the purposes of this order, the following definitions shall apply:
 - (a) "ADM" shall mean ADM Agri-Industries, Ltd., a company engaged in wheat flour milling in Canada;
 - (b) "Director" shall mean the Director of Investigation and Research appointed pursuant to the Act, and shall include members of the Director's staff;

(c) "marketing information" shall mean competitively sensitive information not independently known to ADM Agri-Industries, Ltd. and shall include, but shall not be limited to, customer lists, price lists, marketing methods or other information related to the sale of wheat flour;

(d) "Oak Street mill" shall mean the mill owned by ADM Agri-Industries, Ltd. and located at 380 Oak Street, Montreal, Quebec;

(e) "Quebec/Atlantic Canada market" shall mean the geographic market comprised of the Provinces of Quebec, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island; and

(f) "purchaser" shall mean the person or entity who will purchase the Oak Street mill in accordance with the procedure for divestiture set out in this order.

Application

2. The provisions of this order shall apply to ADM and to:

(a) each division, subsidiary or other person controlled by ADM and each officer, director, employee, agent or other person acting for or on behalf of ADM with respect to any of the matters referred to in this order;

(b) ADM's successors and assigns, and all other persons acting in concert or participating with any of them with respect to the matters referred to in this order who shall have received actual notice of this order;

- (c) the trustee;
- (d) the purchaser and the purchaser's successors and assigns.

Divestiture of the Oak Street Mill

3. ADM shall promptly commence its efforts to divest and shall use best efforts to complete the divestiture of the Oak Street mill as soon as possible, but in any event no later than 15 months from the date of this order, in accordance with the procedure for divestiture set out herein. If the divestiture of the Oak Street mill is not completed by ADM within 15 months from the date of this order, the divestiture shall be carried out by a trustee in accordance with the procedure set out in paragraphs 4 to 11.

Divestiture Procedure

4. The divestiture of the Oak Street mill shall be completed on the following terms:
- (a) by sale, assignment of lease or sublease, assignment of contract, or other disposition necessary to ensure that, by completion of the divestiture, ADM has, directly or indirectly, no remaining right, title or interest in the Oak Street mill inconsistent with the intent of this order;
 - (b) by way of disposition of the Oak Street mill for use as a going concern;
 - (c) to an arm's length purchaser who will meet the following objective criteria:

- (i) effect the purchase with the expressed intention of carrying on the business of bulk hard wheat bakery flour milling in the Quebec/Atlantic Canada market;
 - (ii) have the managerial, operational and financial capability to produce and sell bulk hard wheat bakery flour in the Quebec/Atlantic Canada market;
 - (iii) is not, directly or indirectly, a historical purchaser nor proposes to become a purchaser of bulk hard wheat bakery flour;
- (d) by way of a commercially reasonable public tender, bidding or other procedure instituted in a manner to allow a fair opportunity to any bona fide prospective purchaser who receives notice of the prospective divestiture to make an offer to acquire the Oak Street mill; and
- (e) on usual commercial terms for transactions of the size and nature of those contemplated in this order.

5. Any person making a bona fide inquiry of ADM or its agent regarding the possible purchase by that person or its principal of the Oak Street mill shall be notified that the divestiture is being made pursuant to this order and provided with a copy of this order, excluding confidential Schedule A. Any bona fide prospective purchaser shall be furnished, subject to the execution of a customary confidentiality agreement, with all pertinent information regarding the Oak Street mill; such information to be provided to the Director on request. Any bona fide prospective purchaser shall be permitted, subject to an appropriate confidentiality agreement, to make such inspection of the Oak Street mill and of all financial, operational or other documents

and information as may be relevant to the divestiture, except for all documents which have been or will be made the subject of an order of confidentiality of the Tribunal.

6. ADM shall use its best efforts to accomplish the divestiture of the Oak Street mill within the time period specified.

7. ADM shall advise the Director every 30 days in writing of the progress of its efforts to accomplish the divestiture of the Oak Street mill, including a description of contacts or negotiations and the identity of all parties contacted and prospective purchasers who have come forward, all with reasonable detail.

8. If the divestiture of the Oak Street mill is not completed by ADM within 15 months from the date of this order, the parties shall agree on the nomination of a trustee to be appointed for the sale of the Oak Street mill (the "trustee"); should the parties fail to agree, the Tribunal, on the application of the Director, shall appoint the trustee. The trustee shall carry out the sale of the Oak Street mill on the following terms (the "trustee sale"):

(a) the Oak Street mill shall be sold by the trustee within three months of the trustee's appointment at the most favourable price and on the most favourable terms and conditions available;

(b) the trustee sale shall be accomplished in accordance with paragraph 4;

- (c) the trustee sale shall be considered to have been completed when the purchaser has signed a binding agreement that has not been the subject of objection by the Director pursuant to paragraph 15 or by ADM pursuant to paragraph 17;
- (d) after the appointment of the trustee becomes effective, only the trustee shall have the right to effect the divestiture of the Oak Street mill;
- (e) the trustee shall have the full power and authority to effect the trustee sale and shall use all reasonable efforts to accomplish it;
- (f) ADM shall use its reasonable best efforts to assist the trustee in accomplishing the trustee sale. In connection therewith, the trustee shall have full and complete access as is reasonable in the circumstances, subject to an appropriate confidentiality agreement, to the personnel, books, records and facilities of ADM relating to the Oak Street mill, who shall take no action to interfere with or impede the trustee's accomplishment of the trustee sale;
- (g) after appointment, the trustee shall, every 30 days, file reports with the Director and ADM, setting forth the trustee's efforts to accomplish the trustee sale;
- (h) all expenses reasonably and properly incurred by the trustee in the course of the trustee sale shall be paid by ADM and the proceeds of the trustee sale shall be paid to ADM; and

(i) the trustee shall have such other powers as the Tribunal deems appropriate.

9. ADM shall not object to the trustee sale on any grounds other than the trustee's malfeasance, gross misconduct or breach of this order and any such objection shall be made in accordance with the provisions of paragraph 17.

10. If the trustee has not accomplished the trustee sale within three months of appointment, the trustee shall thereupon promptly file with the Tribunal, on a confidential basis, a report setting forth: (1) the trustee's efforts to accomplish the required sale, and (2) the reasons, in the trustee's judgment, why the required sale has not been accomplished.

11. If the trustee has not accomplished the trustee sale within three months of appointment, ADM shall comply with the alternative backstop remedy described more fully in confidential Schedule A.

Director's Approval

12. The divestiture of the Oak Street mill by ADM or the trustee is subject to the approval of the Director, which shall be based on the criteria outlined in paragraph 4 and shall be obtained in accordance with the notification procedure set out in paragraphs 13 to 16. If the proposed purchaser is a current participant in the Quebec/Atlantic Canada market for bulk hard wheat bakery flour, the Director shall also take into account, as a consideration in approving the divestiture, the likely impact of the divestiture on competition in that market.

Notification

13. ADM or the trustee, whichever is then responsible for effecting the divestiture of the Oak Street mill, shall notify the Director of any proposed divestiture. If the trustee is responsible, the trustee shall similarly notify ADM. The notice shall include:

- (a) the identity of the proposed purchaser;
- (b) the details of the proposed transaction;
- (c) information concerning whether the proposed purchaser would satisfy the terms of paragraph 4(c) of this order;
- (d) an update to the last report provided pursuant to paragraph 7 or 8(g); and
- (e) the agreement of the proposed purchaser that it will respond within seven days to a request by the Director for additional information regarding the proposed divestiture.

14. Within seven days after receipt of the notice referred to in paragraph 13, the Director and, in the case of a trustee sale, ADM, may request additional information concerning the proposed divestiture, the proposed purchaser and any other potential purchaser. ADM, the trustee or the proposed purchaser, as the case may be, shall provide the additional information within seven days of the receipt of the request, unless the Director agrees in writing to extend the time.

15. Within 15 days after receipt of the notice pursuant to paragraph 13 or, if the Director has requested additional information pursuant to paragraph 14, within 21 days after receipt of the said notice, the Director shall notify ADM and the trustee, if there is one, in writing if he objects to the proposed divestiture on the ground that it does not conform to the terms of this order, and the reasons for his objection. If the Director objects, ADM may apply to the Tribunal for an order approving the proposed divestiture.

16. If the Director fails to object within the period set out in paragraph 15 and on the grounds set out in paragraph 12, or if the Director notifies ADM and the trustee, if there is one, in writing that he does not object, then the divestiture of the Oak Street mill shall be completed, subject to paragraph 17.

17. Within seven days after receipt of the notice of a proposed trustee sale, ADM shall notify the Director and the trustee in writing if it objects to the proposed trustee sale pursuant to paragraph 9, and set out the grounds for its objections. Upon objection by ADM pursuant to paragraph 9, the proposed trustee sale shall not be completed unless approved by the Tribunal.

18. ADM or the trustee, as the case may be, shall notify the Director forthwith after the divestiture of the Oak Street mill required by this order has been completed.

Supply Agreement

19. Following the divestiture of the Oak Street mill in accordance with the procedure set out in paragraph 4, the purchaser shall have the right to purchase from ADM 3,500 hundredweights of bulk hard wheat bakery flour per calendar day, in accordance with the terms of the agreement

set out in Schedule B ("supply agreement"), for a period of three years from the acquisition of the Oak Street mill by the purchaser from ADM.

20. The purchaser shall have the option of extending the supply agreement for an additional period of up to 18 months, upon the purchaser's undertaking, to be made at least six months before the expiry of the supply agreement, to expand the capacity of the Oak Street mill by at least 1,500 hundredweights per calendar day, in accordance with the terms of the supply agreement; should this option be exercised by the purchaser, the supply agreement shall expire at the earliest of:

- (a) the end of the 18-month period;
- (b) the date on which the additional capacity of the Oak Street mill comes on stream.

Compliance Inspection

21. ADM shall, 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, permit any duly authorized representatives of the Director, which representatives shall be subject to an appropriate confidentiality agreement by statute or contract, access during office hours and, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda or other records and documents in the possession or control of ADM, relating to compliance with this order.

Continuation of Consent Interim Order

22. The terms of the consent interim order dated March 25, 1997 are hereby continued until the date of acquisition of the Oak Street mill by the purchaser from ADM.

Notice

23. Notices and reports required to be given pursuant to any of the terms of this order shall be considered given if dispatched by personal delivery, registered mail or facsimile transmission to the parties listed in Schedule C.

Interpretation

24. In the event of a dispute as to the interpretation of this order, the Director, the trustee or ADM or its nominee shall be at liberty to apply to the Tribunal for a further order interpreting any of the provisions of this order.

Statement by Director

25. Once divestiture has taken place in accordance with this order, the Director shall file with the Registrar of the Tribunal a statement identifying the purchaser and setting out the date on which the divestiture was accomplished.

DATED at Ottawa, this 8th day of May, 1997.

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

(s) Marshall Rothstein
Marshall Rothstein

SCHEDULE A
(CONFIDENTIAL)

SCHEDULE B

FLOUR SUPPLY AGREEMENT

THIS FLOUR SUPPLY AGREEMENT is made this ____ day of _____, 199__, by and between ADM Agri-Industries, Ltd., an Ontario corporation ("ADM"), and _____, a (an) _____ ("purchaser").

W I T N E S S E T H:

WHEREAS purchaser has acquired that certain flour mill located at 380 Oak Street in Montreal, Province of Quebec (the "Oak Street mill") from ADM;

WHEREAS, in conjunction with the acquisition of the Oak Street mill and in accordance with the consent order issued by the Competition Tribunal on _____, 1997, ADM has agreed to supply purchaser with bulk straight-run hard wheat bakery flour (the "product") pursuant to the terms of this flour supply agreement ("agreement"); and

WHEREAS the purpose of this agreement is to allow purchaser to acquire additional product over and above its production capacity, that purchaser can resell on the market as a competitor;

NOW, THEREFORE, in consideration of the premises and the mutual covenants as set forth herein, it is agreed as follows:

1. SUPPLY OF FLOUR

- (a) ADM shall make available to purchaser up to 3,500 cwt of bulk straight-run hard wheat bakery flour per calendar day, F.O.B. at either of ADM's flour mills located at 3800 Notre-Dame Street East or at 960 Mill Street, both in Montreal, Province of Quebec (the "ADM mill"). The selection of the ADM mill shall be at the option of ADM. Title to and risk of loss of the product shall pass to purchaser at the time of delivery.
- (b) Prior to the 15th day of each calendar month during the term of this agreement, purchaser shall notify ADM in writing of the quantity and specifications of the product and desired shipping schedule for the following calendar month. The product specifications submitted by purchaser are subject to the availability of proper wheat type within the category of the product.
- (c) Purchaser shall book with ADM all of the non-manufacturing components (futures, basis, feed, grade, protein and inbound wheat freight) of the product cost prior to or at the time of submitting the notice to ADM pursuant to section 1(b) of this agreement.

(d) Purchaser shall be responsible for all costs, losses and damages incurred by ADM arising from cancellation of orders submitted pursuant to section 1(b) of this agreement.

(e) Purchaser may not defer or roll shipments of the product, that is purchaser loses the 3,500 cwt per calendar day if it does not use it, and once it has committed to shipments of the product, it cannot defer the delivery of such shipments to a later date.

2. PRICE

The product shall be priced per cwt according to the following formula:

(a) the price of wheat, which shall reflect actual costs incurred by ADM and conform to the terms specified by the Canadian Wheat Board ("CWB"), which currently include: the Minneapolis futures in the corresponding time period, the cash basis, and any grade or protein spread established by the CWB for wheat required to meet the purchaser's specifications for the product; plus

(b) the cost of wheat freight, which shall reflect actual costs incurred by ADM; plus

(c) ADM's average costs of manufacturing at the Notre-Dame Street mill, including depreciation, which costs shall be reviewed every six months to reflect the average costs during the immediately preceding six-month period; plus

(d) \$0.50 to cover overhead and administrative costs.

3. PAYMENT

(a) ADM shall invoice purchaser weekly for the product delivered during the immediately preceding week. Purchaser shall make full payment of each invoice to ADM, without set-off, within 30 days following the date of each invoice. Interest shall accrue on past due accounts at an annual rate of 2% over the prime rate charged by the Canadian Imperial Bank of Commerce from time to time to its commercial customers for domestic loans.

(b) For purposes of determining the quantity and quality of the product delivered pursuant to this agreement, ADM's origin weights and laboratory analysis shall govern. Disputes regarding ADM's laboratory analysis shall be handled according to industry standards.

(c) In the event purchaser's account becomes in arrears, ADM shall give notice thereof to purchaser. If full payment of the amount in arrears is not made by purchaser within five days of receipt of such notice, and if no notification has been sent by purchaser pursuant to section 5 of this agreement with respect to the invoice(s) in arrears, ADM may, without prejudice to any other remedies at law or in equity, cancel this

agreement, cancel or suspend shipments until the account is current or modify the payment terms as set forth in section 3(a).

4. AUDITS

(a) If there is a question or dispute regarding section 2 or 3 of this agreement, the following procedure shall apply. Either party may, within 10 days of a question or dispute regarding section 2 or 3, notify the other party of such question or dispute. Within 15 days of receipt of such notification, the party receiving the notification shall provide the other party with a written explanation, including supporting documents where appropriate, of the matters questioned or in dispute. If the party receiving the written explanation is not satisfied and the question(s) or dispute is not otherwise resolved between ADM and purchaser, such party, within 15 days following receipt of the written explanation, may submit the matter to KPMG (the "independent auditor") for resolution. The decision of the independent auditor shall be issued within 30 days and be binding upon the parties. The cost of the audit shall be borne by the party that loses the audit, unless otherwise determined by the independent auditor.

(b) With respect to pricing, the independent auditor shall only have the authority to consider questions or disputes relating to sections 2(a), (b) and (c) of this agreement. If the question or dispute submitted to the independent auditor relates to any of these sections, no cost information submitted by ADM to the independent auditor shall be made available to purchaser.

5. TERM

(a) This agreement shall be in effect for an initial term of three years commencing upon the acquisition date of the Oak Street mill by purchaser from ADM.

(b) Purchaser shall have the option to extend this agreement for an additional term of up to 18 months provided purchaser notifies ADM within 30 months of the date of this agreement that purchaser has firm expansion plans of at least 1,500 cwt per calendar day for the Oak Street mill which have been or will be commenced prior to the end of the initial term of this agreement and such project is diligently pursued until completion. The additional term shall end upon the completion of the expansion of the Oak Street mill or the expiration of 18 months, whichever is first to occur.

6. WARRANTIES; DISCLAIMER; LIMITATION OF LIABILITY

(a) ADM warrants that the product shall meet the applicable specifications at the time of delivery of the product by ADM to purchaser.

(b) ADM makes no other representations or warranties relative to the product, express or implied, and hereby expressly disclaims the implied warranties of merchantability and fitness for a particular purpose.

(c) All claims relative to the quantity and quality of the product delivered pursuant to this agreement must be made within five days of the date of delivery of the product by ADM to purchaser.

(d) ADM's liability for any claim of any kind, whether in contract, tort or otherwise, for any loss or damage arising out of, connected with or resulting from the sale, delivery, use or non-delivery of the product shall in no case exceed the cost of the product for which the claim is made. In no event shall ADM be liable for any special, incidental, punitive, exemplary or consequential damages.

7. INDEMNITY; INSURANCE

(a) Purchaser shall defend, indemnify and hold ADM, its affiliated companies, and their respective directors, officers, employees and agents harmless from and against any and all third party claims, actions, causes of actions, arbitrations, lawsuits, judgments and awards, including costs and fees (including attorneys' fees), arising out of or connected with the product sold by purchaser.

(b) Purchaser shall maintain throughout the term of this agreement general liability insurance in commercially reasonable amounts. ADM shall be named as an additional insured party and all policies effecting such coverage shall state they are primary to any insurance maintained by ADM. Purchaser shall provide ADM with certificates of insurance upon request.

8. RELATIONSHIP BETWEEN THE PARTIES

This agreement shall not create any agency, joint venture or partnership relationship between ADM and purchaser. ADM and purchaser shall be deemed supplier and customer, respectively. Purchaser is not authorized or empowered under this agreement to act as agent for ADM for any purpose and will not on behalf of ADM enter into any contract, undertaking or agreement of any kind whatever.

9. FORCE MAJEURE

Neither party will be liable for its failure to perform hereunder caused by occurrences reasonably beyond its control, including but not limited to acts of God, fire, flood, wars, sabotage, accidents, labor disputes (whether or not such disputes are within the power of such party to settle), government actions (including but not limited to import or export prohibitions or

priorities, laws and regulations, requisitions, allocations and price adjustment restrictions), inability to obtain power, materials, equipment, transportation or any other similar occurrence.

10. ASSIGNMENT

(a) Any assignment of this agreement without the prior written consent of the other party shall be void, except that either party may assign its rights and obligations hereunder to an affiliate. For purposes of the foregoing sentence, the term "affiliate" shall mean any corporation or business entity which directly or indirectly controls, is controlled by, or is under common control with, a party.

(b) This agreement shall be binding upon and enure to the benefit of and be enforceable by ADM, purchaser, their respective successors and permitted assigns, and any person who subsequently acquires substantially all of the assets of the Oak Street mill.

11. NOTICES

All notices or other communications required hereunder shall be in writing and shall be deemed given on the date of receipt thereof, if delivered by hand or by facsimile transmission, or if sent by registered or certified mail, postage prepaid, return receipt requested, on the date of the mailing thereof as shown by the date on the Post Office receipt, and addressed to the other party at the address set forth below:

(a) To ADM:
c/o ADM Milling Co.
Administrative and Sales Office
8000 West 110th Street
Overland Park, KS 66210-2312
Facsimile No.: (913) 491-6507
Attention: C. Hamlin

with a copy to:

Archer-Daniels-Midland Company
P.O. Box 1470
4666 Faries Parkway (62526)
Decatur, Illinois 62525
Facsimile No.: (217) 424-6196
Attention: General Counsel

and to:

ADM Milling Co.
950 Mill Street
Montreal, Quebec
H3C 1Y4
Facsimile No. (514) 933-3802
Attention: J. Neufeld

(b) To purchaser:

Facsimile No.: _____
Attention: _____

and such other persons and addresses as either party shall have specified in writing to the other.

12. HEADINGS

The headings contained in this agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this agreement.

13. CHOICE OF LAW

This agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein and shall be treated in all respects as a Quebec contract.

14. LANGUAGE

The parties hereto acknowledge that they have requested and are satisfied that this agreement will be drawn up in the English language. Les parties aux présentes reconnaissent qu'elles ont exigé que la présente convention soit rédigée et exécutée en anglais et s'en déclarent satisfaites.

15. CONFIDENTIALITY

During the term of this agreement and for a period of three years following the expiration or termination hereof, the parties shall maintain all information furnished by either party to the other confidential and shall not, except as required by law, disclose such information to any third parties. Within ADM's and purchaser's respective organizations, such information shall only be

furnished to those persons who require the same to perform their duties and who have a confidentiality obligation to ADM or purchaser.

16. ARBITRATION

(a) Any dispute arising under this agreement, other than questions or disputes contemplated by section 4 of this agreement, shall be definitively resolved and settled by arbitration, to the exclusion of the courts, in accordance with the provisions of Title I of Book VII of the Quebec Code of Civil Procedure in force at the time this agreement is executed and to which the parties declare they have adhered. Any such arbitration shall be held in Montreal and conducted in English. The decision of the arbitrator shall be final and without appeal.

(b) Any arbitration must be commenced within 60 days of the circumstances or events giving rise to the dispute.

17. ENTIRE AGREEMENT

This agreement contains all of the representations and agreements between the parties hereto with respect to the matters covered by this agreement and supersedes all previous communications, either oral or written, between the parties hereto. No modifications of this agreement or waiver of the terms and conditions thereof shall be binding upon either party unless approved in writing by an authorized representative of such party, or will be effected by the acknowledgement or acceptance of purchase order forms or releases containing other or different terms or conditions whether or not signed by an authorized representative of such party.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

ADM AGRI-INDUSTRIES, LTD.

By: _____

Its: _____

By: _____

Its: _____

SCHEDULE C

If to the Director:

The Director of Investigation and Research
Competition Bureau
Industry Canada
Place du Portage, Phase I
50 Victoria Street
Hull, Quebec
K1A 0C9

Fax: (819) 953-6169

If to ADM:

ADM Agri-Industries, Ltd.
c/o ADM Milling Co.
Administrative and Sales Office
8000 West 110th Street
Overland Park, KS 66210-2312
Attention: C. Hamlin

Fax: (913) 491-6507

with a copy to:

Archer-Daniels-Midland Company
P.O. Box 1470
4666 Faries Parkway (62526)
Decatur, Illinois 62525
Attention: General Counsel

Fax: (217) 424-6196

and to:

Ogilvy Renault
Barristers & Solicitors
1981 McGill College Avenue
Montreal, Quebec
H3A 3C1
Attention: Me Denis Gascon
Fax: (514) 286-5474