

Competition Tribunal



Tribunal de la Concurrence

CT - 1991 / 001 – Doc # 157

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

AND IN THE MATTER OF the acquisition by Hillsdown Holdings (Canada) Limited of 56% of the common shares of Canada Packers Inc.

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

Hillsdown Holdings (Canada) Limited
Maple Leaf Foods Inc.
Nine-Five Investments Limited
Ontario Rendering Company Limited

Respondents



CORRECTION TO REASONS AND ORDER

**COMPETITION TRIBUNAL
CORRECTION TO REASONS AND ORDER**

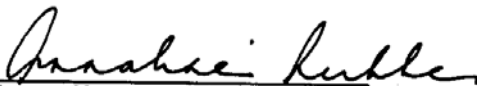
The Director of Investigation and Research

v.

Hillsdown Holdings (Canada) Limited et al.

Please replace page 86 in the Reasons and Order issued on March 9, 1992, with the attached corrected page. You will note that the corrected second sentence in line 7 of the Conclusion reads: The Tribunal does not accept that argument.

DATED at Ottawa, this 13th day of March, 1992.


Annaline Lubbe
Registrar

Pound) to a charge being levied for pick-up. In any event, given the Tribunal's finding elsewhere it is not necessary to express any conclusions with respect to this analysis.

(4) Conclusion

It is first necessary to address the question of the burden of proof which must be met by respondents when alleging efficiency gains. Counsel for the respondents seemed to argue that once they had established the claimed efficiency gains on a *prima facie* basis, that was sufficient to transfer the onus of disproving them to the Director. He argued that if on the balance of probabilities there was uncertainty, the doubt should be resolved in the respondents' favour. The Tribunal does not accept that argument. The respondents have the onus of proving the existence of the efficiencies claimed, or the likelihood of their existence when the merge has not been consummated, on the balance of probabilities in the normal way. Many of the claimed efficiency gains in this case, as has been noted, have not been proven to have arisen out of the merger as opposed to having arisen as a result of the restructuring caused by the expropriation. More importantly, however, the respondents based their trade-off analysis on a legal interpretation of section 96 which the Tribunal does not think is correct. That interpretation will be discussed below.