

CT-91/1

THE COMPETITION TRIBUNAL

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 Hillstown Holdings (Canada) Limited of 56% of the common shares of Canada Packers Inc.

BETWEEN:

I hereby certify this to be a true copy of the document.

Je certifie par la présente que ce document conforme au document original.

this / Fait ce 2nd day of /
 April 19 91

[Signature]

Registrar, Competition Tribunal /
 registraire, Tribunal de la concurrence

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

-and-

HILLSDOWN HOLDINGS (CANADA) LIMITED,
 MAPLE LEAF MILLS LIMITED,
 CANADA PACKERS INC. and ONTARIO RENDERING
 COMPANY LIMITED

Respondents

COMPETITION TRIBUNAL
 TRIBUNAL DE LA CONCURRENCE

proof of service

APR 2 1991

REGISTRAR -- REGISTRAIRE

OTTAWA, ONT. #22

COMPETITION TRIBUNAL
 TRIBUNAL DE LA CONCURRENCE

APR 2 1991

REGISTRAR -- REGISTRAIRE

OTTAWA, ONT. #21

REPLY

1. The Director admits the grounds and the material facts relevant to such grounds set out in paragraphs 9, 10, 29 and 47 of the Response.
2. The Director denies each of the other grounds and the material facts relevant to such grounds set out in the Response. In particular, the Director states the following in reply to certain of the assertions set out in the Response.

3. With respect to paragraphs 3, 11, 12 and 13 of the Response, the Director states that the state of competition in the rendering industry in Quebec is irrelevant to the analysis of competition in the geographic market that is the subject of this Application, namely that part of Ontario which can be served by the Ontario rendering facilities of Rothsay and Orenco.

4. With respect to paragraphs 50 and 53 of the Response, the fact is that the data set out in paragraph 35 of the Application is the Respondents' own data and was used by them as a measure of market share to be considered by the Director in his review of the Acquisition.

5. With respect to paragraphs 57 and 58 of the Response, the Director states that there are significant regulatory restrictions on the movement of renderable material from Ontario to the United States. Among these restrictions are those contained in the Meat Inspection Act, R.S.C. 1985, c.17, as amended, and the Regulations thereunder, the Meat Inspection Act, R.S.O. 1980, c.260, as amended, and the Regulations thereunder, the Dead Animal Disposal Act, R.S.O. 1980, c.112, as amended, and the Regulations thereunder and the United States Code of Federal Regulations, Title 9 - "Animals and Animal Products".


6. With respect to paragraphs 75, 76 and 77 of the Response, the Director submits that divestiture of the Orenco business will be an effective remedy to address the substantial lessening or prevention of competition in the market resulting from the Acquisition. In any event, should it be determined at the hearing of this Application that this remedy will not be wholly effective, this Tribunal may order the Respondents to dispose of other designated assets. In that regard, and with respect to paragraph 16 of the Response, while captive material is not within the relevant market as defined in the Application, the supply of captive material may be an issue in determining an effective remedy.

7. With respect to paragraph 6 of the Response, the Director submits that:

- a) the Respondents, as corporations, do not have standing to allege an infringement of sections 7 or 15 of the Canadian Charter of Rights and Freedoms (the "Charter");

- b) the Competition Tribunal, when considering an application under section 92 of the Competition Act, is not subject to section 11 of the Charter; and
- c) if the merger provisions of the Competition Act and the relevant provisions of the Competition Tribunal Act infringe any of sections 2, 7, 11 or 15 of the Charter, which infringement is denied, these provisions are reasonable limits which are demonstrably justified in a free and democratic society.

DATED at Hull, Quebec, this 2nd day of April, 1991.



The Director of Investigation and
Research

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

AND TO: Blake, Cassels & Graydon
Barristers & Solicitors
Box 25
Commerce Court West
Toronto, Ontario
M5L 1A9

G.F. Leslie (416) 863-2672
J.J. Quinn (416) 863-2648
N. Finkelstein (416) 863-3050

Counsel to the Respondents