

CT-91/1

THE COMPETITION TRIBUNAL

COMPETITION TRIBUNAL		P R O D U I T
TRIBUNAL DE LA CONCURRENCE		
MAR 18 1991 <i>RB</i>		
REGISTRAR - REGISTRAIRE		
OTTAWA, ONT.		#15

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

B W E E N:

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.

RESPONSE

I. STATEMENT OF GROUNDS UPON WHICH THE APPLICATION IS OPPOSED

The Respondents Hillsgdown Holdings (Canada) Limited ("Hillsgdown"), Maple Leaf Mills Limited ("MLM"), Canada Packers Inc. ("Canada Packers") and Ontario Rendering Company Limited ("Orenco") oppose the Notice of Application (the "Application") of the Director of Investigation and Research (the "Director") on the following grounds:

- 2 -

1. The relevant product and geographic markets as set out in the Statement of Grounds and Material Facts filed with the Application (the "Statement") are improperly defined for the purpose of analyzing any competitive implications of the merger in issue.

2. In those areas in respect of which the businesses carried on by Orenco and Rothsay (formerly the rendering division of MLM and now of Canada Packers) compete, the combined firm will continue to face vigorous and effective competition.

3. The acquisition by Hilldown of 56% of the common shares of Canada Packers (the "Acquisition") has not resulted, nor is it likely to result, in a substantial lessening of competition in any relevant market in Canada. On the contrary, it will preserve the viability of Rothsay's Quebec plant as described in paragraphs 12 and 13 hereof. Without that, the Couture Group ("Couture") will be the only renderer in the Province of Quebec.

4. Furthermore, the Acquisition has brought about, or will likely bring about, efficiency gains that will be greater than and that will offset any lessening of competition that has resulted, or is likely to result, from the Acquisition. Moreover, such efficiency gains will not likely be attained if the orders sought by the Director herein are granted.

- 3 -

5. Although the Respondents deny that the Acquisition has resulted in, or is likely to result in, a substantial lessening of competition, the divestiture remedy sought by the Director would be ineffective were any such lessening of competition to occur.

6. In any event, the merger provisions of the Competition Act and the relevant provisions of the Competition Tribunal Act infringe Sections 2, 7, 11 and 15 of the Charter of Rights and are not saved by Section 1 thereof, and violate Sections 1 and 2 of the Canadian Bill of Rights, and are ultra vires Parliament as contrary to Sections 96 to 101 of the Constitution Act, 1867.

II. ADMISSIONS, DENIALS AND MATERIAL FACTS
UPON WHICH THE RESPONDENTS RELY

7. The Respondents admit the allegations in paragraphs 13 to 16, 18, 19, 21, 22, 29 and 30 of the Statement.

8. Except as otherwise expressly admitted, the Respondents deny each and every other allegation in the Statement.

- 4 -

A. The Parties

9. The Respondents accept as substantially correct the description of the Acquisition and the parties as set out in paragraphs 2-10 of the Statement, except that Canada Packers and MLM were amalgamated by Articles of Amalgamation dated December 31, 1990, under the name "Canada Packers Inc." Accordingly, MLM is no longer a subsidiary of Canada Packers as alleged in paragraph 9 of the Statement. Rothsay is operated as a division of Canada Packers, and Orenco is operated as a wholly-owned subsidiary of Nine Five Investments Ltd., which is in turn a wholly-owned subsidiary of Canada Packers.

10. Prior to November 30, 1990, Rothsay, the rendering division of (then) MLM, now of Canada Packers, operated rendering facilities in both Toronto and Moorefield, Ontario. However, with respect to its Toronto plant, a plan of expropriation had been registered by the Corporation of the City of Toronto on July 15, 1988, to the effect that this facility had to be closed by the end of 1990. Rothsay thus presently operates only the Moorefield plant in Ontario.

11. With respect to paragraph 4 of the Statement, Rothsay also operates a rendering facility in Cote Ste. Catherine,

- 5 -

Quebec under the trade name Laurengo. This facility principally services the Quebec market and is an effective competitor to Couture, presently by far the largest renderer in Quebec. There is a distinct possibility that this facility would have to close without the Acquisition, for the following reasons.

12. Prior to the Acquisition, Rothsay collected 50-60,000 lbs of raw material per week from Eastern Ontario (essentially east of Oshawa to the Quebec border). This material was sent to Rothsay's Toronto plant. For its part, Orenco sent material collected in Eastern Ontario (approximately 90,000 lbs) to its Burlington facility. The Acquisition has made it possible to rationalize these operations and to send the combined raw material of 150,000 lbs to Rothsay's Quebec plant.

13. Rothsay's Quebec plant had been losing money because of low volumes. This additional throughput from Eastern Ontario could have a very significant impact upon its long term viability. If Orenco is divested, these shipments will cease in their entirety because it is not economical to ship only 50-60,000 lbs of raw materials from Eastern Ontario to Quebec. The loss of these shipments would represent a severe blow to Rothsay's Quebec plant and could well force its closure.

This would leave Couture as the sole rendering operator in Quebec.

B. Overview Of Rendering Industry

14. The Respondents agree with paragraph 11 of the Statement, but further state that there are two aspects to the rendering business: the processing of raw material into finished products and the collection of raw materials from suppliers.

15. Renderers face vigorous and effective competition for finished products from both domestic and foreign suppliers and from suppliers of close substitutes. Consequently, Ontario renderers have no market power with respect to finished products, and competition with respect to these products is, therefore, not an issue in this Application.

16. As for the processing of raw material, the Respondents agree with the allegation in paragraph 12 of the Statement that there are two distinct sources of supply to renderers: "captive" and "non-captive". The Respondents further agree that the supply of captive material is not an issue in this Application.

- 7 -

17. As to non-captive raw materials, renderers obtain such supplies directly from customers using their own collection equipment and from independent licensed collectors. Both renderers and independent collectors remove animal waste material and grease from meat packing plants, abattoirs, slaughterhouses, butcher shops, grocery stores and restaurants, thereby providing an important service to these businesses.

18. The major source of non-captive raw materials in Southern Ontario is the Ontario meat processing industry. The demand for rendering services is, therefore, a function of the demand for the products produced by these meat processors. The Ontario meat processing industry faces vigorous competition from other Canadian and U.S. processors and a declining demand for its products. Therefore, it cannot pass on increases in input costs (such as the cost of rendering services) to its customers. Any attempt to pass on such increases would result in a loss of customers to non-Ontario processors and a shift of processing to areas outside Ontario. This would lead to a decrease in the supply of raw materials available to Ontario renderers. These considerations impose a disciplinary constraint on the pricing that renderers operating in the Ontario market (as defined *infra*, at paragraph 24) can charge for their services.

- 8 -

19. The prices which renderers pay to suppliers of raw materials are heavily influenced by processing costs and the market prices for finished products. The market prices for finished products fluctuate frequently and significantly. In addition, each individual supplier is distinct in terms of the type, quality and quantity of raw materials that it supplies and the cost of collecting its materials. These factors will, in turn, influence the price which each supplier will receive from renderers for its raw materials. In certain cases, the cost of collecting and processing raw materials exceeds the value which renderers can derive from these materials. In these instances, renderers will charge a collection fee to the suppliers involved.

20. Virtually all suppliers of raw material in Ontario operate by way of ad hoc arrangements with rendering firms or independent collectors. There are virtually no long-term contracts between suppliers and renderers in the industry and suppliers frequently switch renderers based on price and service offerings.

21. The fixed costs of processing raw materials are high and are increasing. The introduction of continuous processing (as opposed to batch processing) and the imposition of stricter environmental protection standards have substantially increased the amount and cost of equipment which renderers must install.

- 9 -

These high fixed processing costs represent an incentive to renderers to maximize throughput at their facilities through vigorous price competition.

22. In contrast to processing costs, collection costs are highly variable. Trucks and trailers can be readily acquired and disposed of and drivers can be employed as required. Accordingly, renderers and independent collectors can easily adjust their collection capacity to accommodate new sources of supply and customer switching.

C. Market Definition

(i) Relevant Geographic Market

23. The Respondents state that the Director has incorrectly defined the relevant geographic market in paragraph 24 of the Statement. An area bounded by a 200-mile radius represents the minimum collection area for a rendering facility. A renderer will travel more than 200 miles to collect material from certain accounts. In addition, a renderer can extend the 200-mile boundary for all types of materials through the use of depots. Darling & Company ("Darling") has established such a depot in Lambeth, Ontario. The Respondents further deny that the Canada-U.S. border represents a natural geographic boundary. The nature and

- 10 -

extent of U.S. competition is described in paragraphs 40-42 and 57-60 herein.

24. The relevant geographic market includes at least Southern Ontario, Northern New York State and South-Eastern Michigan, all of which are within a 200-mile radius of the Rothsay and Orenco facilities. This geographic area is referred to throughout this Response as the Ontario market.

(ii) Relevant Product Markets

25. With respect to paragraph 23 of the Statement, the Respondents state that different types of raw materials are processed separately using specialized equipment.

26. There are four categories of non-captive raw materials: (i) red meat by-products (trim fat, trim bones and fresh packinghouse/slaughterhouse material, as defined in paragraph 11 of the Statement); (ii) deadstock; (iii) grease; and (iv) poultry by-products (offals and feathers).

27. Not every renderer in the Ontario market has the necessary equipment to process each of these four types of material. For example, Orenco has never processed poultry by-products. On the other hand, poultry by-products account

for approximately 50% of the renderable material processed by Rothsay.

28. The Respondents state that each of the four categories of non-captive materials referred to in paragraph 23 herein constitutes a separate relevant product market. Because Rothsay and Orenco do not compete with respect to poultry by-products, the Director has correctly concluded that competition in respect of these products is not at issue in this Application.

29. The Respondents admit paragraph 17 of the Statement, except that blood can either be rendered with other red meat by-products or separately.

D. Competition In The Relevant Markets

(i) Market Trends

30. The non-captive Ontario rendering industry, as elsewhere throughout North America, is in decline. This decline is due, in part, to a continuing decrease in the availability of non-captive raw materials, particularly high quality red meat by-products. Meat packers are integrating their processing operations with rendering facilities which

- 12 -

reduces the amount of non-captive by-products available from this source. Three of the four major pork packers in Ontario already utilize captive rendering facilities.

31. Further, there has been a shift of beef processing capacity from Ontario to Western Canada. Moreover, Western Canadian beef processors are now shipping meat in boxed form rather than as whole carcasses which further limits the amount of trim bone and fat available in the Ontario market. Finally, consumers are eating less red meat which also reduces the production and availability of waste materials.

32. The supply of deadstock and grease in the Ontario market is stable or in decline.

33. A decline is also foreseen in future demand for the finished products produced by the Ontario rendering industry, again in response to changing consumption patterns. The growing demand for lower cholesterol edible oils, such as canola and soya bean oil, is decreasing the demand for beef tallow. Moreover, animal meal is facing increasing competition from vegetable-based meal products.

34. While both the supply of high quality, non-captive raw materials to the rendering industry and the demand for the

finished products which the industry produces are diminishing, the processing costs incurred by Ontario renderers are increasing, as alleged in paragraph 21 of this Response.

35. In the United States, the reduced supply of non-captive, high quality raw materials, the concomitant increase in processing costs and the inability of renderers to recover these higher costs because of declining finished product prices, have already led to a significant rationalization of the non-captive rendering industry. The same conditions that have resulted in the contraction of the non-captive U.S. rendering industry are now present in Ontario. The Acquisition is a direct reaction to these economic conditions and will facilitate the rationalization of the Ontario rendering industry.

(ii) Participants in the Relevant Markets

(a) Processors

36. In the Ontario rendering industry, the measure of normal operating capacity is based on 2 eight hours shifts per day, 5 1/2 days of operation per week. Actual capacity may be higher or lower than the standard measure depending on the type

and quantity of raw materials processed. Normal operating capacity can be expanded by adding a third shift.

37. The Respondents agree with the description of Orenco set forth in paragraph 27 of the Statement. The Orenco facility has the capacity to render approximately 4,000,000 lbs per week of non-captive, red meat by-products and deadstock material under normal operating conditions. It also has grease rendering facilities. Red meat by-products, deadstock and grease accounted for an estimated 61%; 23%; and 15%, respectively, of the approximately 4.4 million lbs per week of material rendered by Orenco at the time of the Acquisition.

38. Rothsay's Moorefield plant is presently operating 3 shifts per day, and has the capacity to render approximately 4,000,000 lbs per week of non-captive red meat by-products and deadstock under these operating conditions. Both before and after the Acquisition, of the three types of material at issue, red meat by-products were the only raw material of any significance processed by Rothsay at the Moorefield plant. Moreover, Rothsay has instituted a policy of steadily reducing its already minimal use of deadstock material. This policy was initiated prior to the Acquisition and has been maintained since then. In 1990, deadstock material accounted for approximately 1% of the renderable material processed by Rothsay. Rothsay's Moorefield facility did not render grease

- 15 -

prior to the Acquisition, nor does it do so now.

39. Prior to its expropriation, Rothsay's Toronto facility had the capacity to render approximately 3.5 million lbs per week of raw materials, which consisted primarily of red meat by-products together with some grease. The loss of the Toronto facility substantially reduced Rothsay's overall capacity to render red meat by-products and eliminated its grease rendering capacity. Accordingly, for reasons unrelated to the Acquisition, Rothsay has ceased to be a competitive factor with regard to the purchase of grease.

40. Darling is the largest rendering firm in North America, with more than 40 plants throughout the United States. Darling is capable of servicing the Ontario market from its Toronto, Buffalo and Detroit facilities. Darling's Toronto facility processes red meat by-products, deadstock and grease, and has total available capacity to render approximately 3.2 million pounds of red meat by-products and deadstock per week.

41. Darling's Detroit facility also renders red meat by-products, deadstock and grease. This plant has available excess capacity to render approximately 1.5 million pounds of

- 16 -

material per week from Ontario. Darling recently suspended operations at its Buffalo facility because of insufficient supply. It is now processing renderable material from the Buffalo area at its Toronto facility and at various U.S. plants. Darling's Buffalo plant can render red meat by-products, deadstock and grease and has the capacity to render approximately 3.6 million pounds of material per week from Ontario. Darling's Buffalo plant can be brought back into production on short notice.

42. In all, Darling currently has the weekly capacity to process approximately 8.3 million pounds of renderable material from Ontario. This represents approximately 60% of the relevant non-captive red meat by-products, deadstock and grease available in Ontario at the time of the Acquisition.

43. The Respondents admit that the description of Banner Packing Ltd. ("Banner") set out in paragraph 30 of the Statement is substantially correct. The Respondents further state that Banner collects red meat by-products from packing-houses, slaughterhouses, abattoirs, butcher shops and grocery stores. Banner collects approximately 1.5 million pounds of raw material per week, which represents just under 15% of non-captive red meat by-product supplies in the Ontario market at the time of the Acquisition. Banner can be expected to

- 17 -

continue to compete vigorously to maintain the current level of raw materials which it collects, notwithstanding the diminishing availability of such materials in the Ontario market, because Banner requires these raw materials to manufacture pet food, which is its principal business.

44. The Respondents further admit the allegations in paragraph 31 of the Statement with respect to F.W. Fearman Company, Limited ("Fearman"), which Canada Packers recently acquired. Fearman is not a significant competitor for non-captive renderable material in the Ontario market because, with the exception of Fearman's small joint venture blood drying operation, Fearman obtains its raw material supplies exclusively from its own hog slaughtering and meat processing operations.

45. With respect to paragraph 32 of the Statement, the Respondents state that since J.M. Schneider ("Schneider") closed down its integrated beef packing plant in 1989, it has become a much more aggressive competitor for non-captive red meat by-products in Ontario. Schneider has available capacity to render approximately 800,000 pounds of non-captive red meat by-products per week, which represents over 7% of the total supply of non-captive red meat by-products available in the Ontario market at the time of the Acquisition.

- 18 -

46. With respect to paragraph 33 of the Statement, Couture currently renders approximately 5% of the renderable red meat by-products, 10% of the grease and approximately 10% of the deadstock material available in the Ontario market.

47. Ray Bowering ("Bowering") is a licensed renderer with operations situated in Strathroy, Ontario. Bowering collects and renders approximately 25,000 lbs of deadstock per week.

48. Oxford Deadstock, an established collector of deadstock in Ontario, is currently constructing a rendering facility in Hickson, Ontario in partnership with Atwood Rendering Supplies. This facility will have the capacity to render approximately 880,000 lbs of material per week. This amount represents approximately 60% of the deadstock material in Ontario at the time of the Acquisition. The construction of this facility will increase the overall excess capacity in the Ontario market and, in particular, will heighten competitive pressures on current deadstock renderers, including Orenco.

(b) Collectors

49. There are approximately 30 independent licensed collectors of rendering raw materials in the Province of Ontario including: B & D Deadstock Service Ltd., Oxford Deadstock, Paconi Deadstock Removal, Machabee Animal Food Ltd.,

- 19 -

B.R.T. Trading Inc., Atwood Rendering Supplies and Edward Peconi and Son Ltd.

(iii) Competition in the Relevant Markets

50. The Respondents deny that the Acquisition will enable the combined firm to exercise increased market power in the Ontario rendering markets as alleged in paragraph 40 of the Statement. The Respondents further deny the accuracy and relevance of the data set out in paragraph 35 of the Statement and, therefore, dispute the conclusions drawn by the Director from that data, as set out in paragraphs 36 to 39 of the Statement.

51. The installed plant capacity available in the Ontario market to process non-captive raw materials far exceeds the available supply of such materials. This excess capacity is broadly distributed among current and potential participants in the Ontario market and is likely to increase as the supply of non-captive raw materials declines, for the reasons outlined in paragraphs 30-31 of this Response.

52. The excess rendering capacity and declining availability of non-captive raw materials in the Ontario market together provide powerful incentives to market participants to compete vigorously for raw material supplies, and further

- 20 -

ensure that the switching of rendering firms by raw material suppliers can be readily accommodated. These two factors also explain why the data set out in paragraph 35 of the Statement do not adequately reflect the relative strengths possessed by participants in the Ontario market.

53. The Respondents further dispute the relevance and accuracy of the data set out in paragraph 35 of the Statement in that the Director has not distinguished among the three relevant product markets, as described in paragraph 25 herein. Although the Respondents deny that historical capacity utilization figures represent a relevant measure of relative market strength, the correct figures for capacity utilization of market participants at or about the date of the Acquisition, by relevant product type, are:

Non-Captive Raw Material Volumes

('000 lbs/week)

<u>Participant</u>	<u>Red Meat By-Products</u>	<u>Deadstock</u>	<u>Grease</u>
Orenco	2710	1030	675
Rothsay (Moorefield and Toronto)	4020	100	295
Darling	1905	160	115
Banner	1350		
Fearman	210		
Schneider	500		
Ray Bowering		25	
Couture	560	175	120

- 21 -

54. Since the closure of its Toronto facility, Rothsay has sent most of the raw materials that were processed at that plant to Orenco. These materials are being sent to the Orenco facility rather than to Rothsay's Moorefield plant because Orenco has substantial excess capacity. Orenco now renders 3.2 million lbs of red meat by-products, 0.28 million lbs of deadstock and approximately .825 million lbs of grease per week. Rothsay currently renders approximately 1.6 million lbs of non-captive red meat by-products and 0.18 million lbs of deadstock per week.

55. The Respondents repeat the allegations in paragraphs 38 and 39 of this Response that Rothsay is not a significant renderer of deadstock material and that Rothsay has ceased to be a competitor for grease in the Ontario market for reasons unrelated to the Acquisition.

56. With respect to the processing of non-captive red meat by-products, the Respondents state that subsequent to the Acquisition there will be four significant renderers of such material remaining in the Ontario market, in addition to the combined firm. Accordingly, the combined firm will continue to face vigorous and effective competition for the acquisition of red meat by-products. The Respondents repeat the allegation that the market share data set forth in paragraphs 35 to 39 of

- 22 -

the Statement are irrelevant and specifically plead and rely upon section 94 of the Competition Act.

(iv) Section 93 Factors

(a) Foreign Competition

57. The Respondents deny the allegation in paragraph 41 of the Statement with respect to the ineffectiveness of foreign competition. There are no significant tariff or non-tariff barriers preventing U.S.-based renderers, particularly the two Darling facilities located in Detroit and Buffalo, from competing for animal by-products produced in Ontario.

58. The only non-tariff barrier faced by U.S.-based renderers is a prohibition against the importation of deadstock material into Canada. As already stated, the Acquisition will not have any material effect on competition with respect to deadstock material. The Respondents further deny that cross-border delays are a material consideration as alleged in paragraph 41 of the Statement. The only issue is inspection of material and this can be pre-arranged to avoid delay.

59. The Respondents further deny that transportation costs represent a disadvantage to U.S. rendering facilities located

close to the Ontario-U.S. border. Virtually all of Darling's present major sources of supply in Ontario are located within a 200 mile radius of either Darling's Buffalo or Detroit facilities. Moreover, since the closure of its Buffalo plant, Darling has been shipping material from the Buffalo area to Toronto for rendering. Accordingly, the distance between Buffalo and Toronto is not a barrier to competition.

60. The Respondents have no knowledge with respect to the allegation that Ontario suppliers regard U.S. renderers to be less dependable. Darling has the size, plant capacity, operational ability and experience to adequately service and effectively compete for the business of raw material suppliers in the Ontario market.

(b) Acceptable Substitutes

61. With respect to paragraph 42 of the Statement, the Respondents state that vertical integration by non-captive suppliers is the principal substitute for non-captive rendering services. Vertical integration into rendering is a viable alternative for large processors, and the threat of integration has a disciplinary effect on the pricing behaviour of renderers, including Rothsay and Orenco, who rely on

- 24 -

non-captive supply for a substantial portion of their raw materials.

(c) Barriers to Entry

62. The Respondents deny the allegation in paragraph 44 of the Statement that comparatively high sunk costs are, in and of themselves, a significant barrier to entry into the rendering business in Ontario. Large scale "greenfield" investment in the rendering industry is unlikely, not because of high sunk costs, but because the industry is in decline. The trend in the Ontario rendering industry is towards contraction, not expansion.

63. However, other forms of entry are still viable. Smaller, specialized facilities which handle only certain types of renderable material, such as deadstock, blood or grease, face relatively low barriers to entry. Independent collectors, who have developed supply arrangements, are likely candidates for this type of entry. Both Oxford Deadstock and Ray Bowering have entered the processing side of the rendering business in this manner.

64. With respect to paragraph 46 of the Statement, the Respondents admit that Ontario Ministry of Environment ("MOE")

- 25 -

approval is required, but state that such approvals are granted in many cases. The risk of approval depends on a number of factors including the size, type and location of the facility in issue.

65. Meat processors with integrated rendering operations are also potential entrants into the non-captive rendering business. This source of potential competition is becoming increasingly more significant as the decline in the Ontario beef slaughtering industry results in growing excess rendering capacity among vertically integrated beef processors.

66. Barriers to entry are very low into the business of collecting raw materials. The initial investment is minimal, a licence to operate is easily obtainable and environmental approval is not required.

(d) Effective Competition Remaining

67. The Respondents state that substantial, vigorous and effective competition will remain in all of the relevant markets subsequent to the Acquisition. With respect to red meat by-products, Darling, Banner, Schneider and Couture are and will remain vigorous competitors in the Ontario market. As for deadstock, a number of Ontario firms including Darling, Ray Bowering and Oxford Deadstock, as well as Couture in Quebec,

- 26 -

represent continuing sources of competition. Darling and Couture will continue to compete for grease.

(e) Removal of a Vigorous and Effective Competitor

68. As stated in paragraph 38 of this Response, Rothsay has not been a vigorous competitor for deadstock. Accordingly, the Acquisition will not lead to the removal of a vigorous competitor in that market.

69. As stated in paragraph 39 of this Response, Rothsay ceased to be an effective competitor for grease supplies because of the closure of its Toronto facility. Accordingly, the Acquisition was not responsible for removing Rothsay as a competitor in this market.

(f) Change and Innovation

70. The principal elements of change and innovation which are affecting the Ontario rendering industry have been described in paragraphs 30-35 of this Response. The competitive implications of these developments are at least threefold. Competition for non-captive raw materials between and among industry participants will increase as the supply of such materials declines. If industry participants are to

- 27 -

remain viable in the face of declining demand for finished products and increasing processing costs, they must become more efficient. Finally, increasing efficiency in the rendering industry entails lowering the unit cost of production by maximizing plant utilization to ensure sufficient throughput to cover the high cost of sophisticated environmental protection machinery.

E. The Acquisition Will Yield Substantial Efficiencies That Could Not Otherwise Be Attained

71. The combined ownership of Rothsay and Orenco will yield substantial efficiency gains which are directly attributable to the Acquisition, including:

- (a) The elimination of duplicate collection routes will yield an estimated \$440,000 a year in savings.
- (b) Savings in the order of \$250,00 per year will be obtained through reduced manufacturing costs.
- (c) Closure of Orenco's head office and termination of redundant employees will yield savings of approximately \$1,200,000 annually.

- 28 -

72. The total cost savings from combining the Rothsay and Orenco operations are, therefore, estimated to be at least \$1,900,000 annually. These cost savings will not be achieved if the orders sought by the Director are granted and the Rothsay and Orenco businesses are not permitted to be combined.

73. The Respondents state that these anticipated efficiencies will be greater than and will offset any lessening of competition that does occur as a result of the Acquisition.

F. No Substantial Lessening Of Competition

74. The Respondents deny that the Acquisition will result in a substantial lessening of competition in any relevant market, having regard to several factors, including:

- (a) The Acquisition will have little or no impact on competition with respect to the rendering of deadstock and grease. Rothsay was not a significant deadstock

- 29 -

processor prior to the Acquisition and its capacity to render grease was eliminated by the closure of its Toronto facility. In any event, the combined firm will continue to face vigorous and effective competition in both these markets.

- (b) The combined firm will continue to face vigorous and effective competition with respect to the rendering of red meat by-products. Because of the excess capacity in the rendering industry and the ease with which suppliers can switch between and among rendering firms, historical market share data do not adequately reflect the relative market strengths of the industry participants.
- (c) Pricing behaviour by Ontario renderers is constrained by the need for market participants to maximize plant utilization and by their inability to pass on price increases to meat processors without precipitating a decline in the availability of raw materials.
- (d) Any lessening of competition that may occur as a result of the Acquisition will be more than offset by gains in efficiency which will occur as a result of the Acquisition.

- 30 -

G. Divestiture Is Not An Adequate Or Appropriate Remedy

75. Divestiture of the Orenco assets will not remedy any potential lessening of competition in the Ontario market because in the event that divestiture is ordered, Rothsay will cease to be an effective competitor for the purchase of non-captive raw material, and Orenco will have substantially the same share of the non-captive raw material market as the combined firm would have possessed, had no divestiture order been made.

76. In the event of divestiture of the Orenco facility, virtually all of Rothsay's weekly processing capacity will be needed to process Moorefield's current volume and captive waste material from Canada Packers. Rothsay would therefore have very limited capacity to process other non-captive red meat material available in the Ontario market, including the volume from its former Toronto plant that is now processed, for the most part, by Orenco. Moreover, because of the anticipated rapid growth of Canada Packers' supply of captive poultry by-products, an increasing proportion of Rothsay's red meat by-products processing capacity will need to be converted for use in rendering poultry by-products, further reducing Rothsay's significance with respect to the processing of non-captive red meat by-products.

- 31 -

77. Rothsay is unable to expand processing capacity at its Moorefield facility because of the need for MOE approval which is not likely to be forthcoming. Further, Rothsay is already operating at 3 shifts per day.

III. RELIEF SOUGHT

78. The Respondents request that the Director's Application be dismissed.

IV. PROCEDURAL MATTERS

79. The name and business address of the Respondents' counsel is:

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

Counsel to the Respondents
G.F. Leslie (416) 863-2672
J.J. Quinn (416) 863-2648
Neil Finkelstein (416) 863-3050

DATED at Toronto, this 18th day of March, 1991.

MAR 18 '91 13:02 BLAKE TORONTO

- 32 -

Blake, Cassels & Graydon for N.F.
BLAKE, CASSELS & GRAYDON
Barristers and Solicitors
Box 25, Commerce Court West
Toronto, Ontario, M5L 1A9

Neil Finkelstein of Counsel
to the Respondents

TO: The Registrar
The Competition Tribunal

AND TO: Fraser & Beatty
Barristers and Solicitors
Box 100
1 First Canadian Place
Toronto, Ontario
M5X 1B2

R.T. Hughes
(416) 863-4446

P.J. Cavanagh
(416) 863-4459

Counsel to the Director of
Investigation and Research

8580D/1-32