

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 Hillsgdown 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 MILLS LIMITED, CANADA PACKERS
INC. and ONTARIO RENDERING COMPANY LIMITED

Respondents

MEMORANDUM OF ARGUMENT OF THE RESPONDENTS

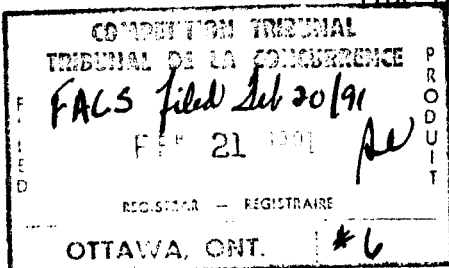
PART I - FACTS

1. This is an application by the Director of Investigation and Research ("Director") pursuant to s. 104 of the Competition Act for an Interim Order in terms set out in his Notice of Application herein.

2. At the time of the impugned Acquisition, Rothsay operated two plants, one in Toronto and one in Moorefield, Ontario and Orenco operated one plant in Dundas, Ontario. The Rothsay Toronto plant was subject to an expropriation notice from the City of Toronto which, to the Director's knowledge, required closure of that plant by the end of 1990. Because the Moorefield plant did not have the processing capacity to assume the Toronto operations, the latter had to be integrated with those of Orenco. The Director was aware of this requirement since at least July, 1990.

Affidavit of Brent Ballantyne, sworn February 19, 1991, paragraph 3

3. The Respondents co-operated fully with the Director in his investigation from the outset, producing extensive information as requested. On October 5, 1990, a meeting was convened which was attended by George Addy, Deputy Director, Mergers Branch, Investigation and Research, Bureau staff including Stephen Peters and John



Barker, and Randy Hughes, Bureau counsel. Brent Ballantyne and legal counsel attended for the Respondents. At that meeting, the Director's people indicated that the investigation was complete. Mr. Addy stated that the Mergers Branch would recommend to the Director that a no action letter be given provided certain conditions could be worked out.

Affidavit of Brent Ballantyne, sworn February 19, 1991, paragraphs 4, 5 and 6

4. As a result, representatives of Canada Packers Inc. and the Director met in Ottawa on October 15, 1991 to work out the terms of the conditions agreed to in principle on October 5, 1990. The terms were then the subject of a confirming letter dated October 25, 1990. Mr. Peters indicated to counsel for the Respondents that the terms expressed in the October 25, 1990 letter were satisfactory. On that basis, the Respondents understood that they were at liberty to close the Rothsay Toronto plant and combine its operations with those of Orenco. The Toronto plant was closed on November 30, 1990.

Affidavit of Brent Ballantyne, sworn February 19, 1991, paragraphs 8, 9 and 10

5. The Director has taken no steps since then to obtain a Hold-Separate Agreement or Order.

Affidavit of Stephen Peters, sworn February 15, 1991, paragraphs 56 - 59

6. To operate a rendering business, it is necessary to have trucks, a processing plant, administrative personnel, and suppliers of raw materials. The trucks routinely go out on routes, which can vary, pick up raw product from suppliers and bring it back to the processing plant. The raw product is then processed and sold. The pick up and delivery routes can be changed quickly as required, and can be changed back quickly into their original state.

Affidavit of Brent Ballantyne, sworn February 19, 1991, paragraph 13

7. Rothsay is operated through MLM, a Hillsdawn subsidiary. Some of its former routes have been transferred to Orenco, which operates out of a separate Canada Packers Inc. subsidiary. Conversely, some former Orenco routes have been transferred to Rothsay's

operations. These changes were made because the Rothsay Toronto plant was closed on November 30, 1990 for the reasons described above, and because it does not make economic sense to continue to direct, say, Rothsay trucks to do certain "Rothsay" routes and bring raw product back to the Rothsay plant if efficiencies can be gained by redirecting routes or raw product to the Orenco plant. The same is true with Orenco vis a vis Rothsay.

Affidavit of Brent Ballantyne, sworn February 19, 1991, paragraph 14

8. Because the business records are kept separate, the Orenco operations could easily be separated later.

Affidavit of Brent Ballantyne, sworn February 19, 1991, paragraph 15

PART II - LAW

9. It is submitted that the Director bears the onus of proving that i) irreparable harm is likely to result in the absence of an Interim Order, and ii) the balance of convenience favours the Director.

Attorney General of Manitoba v. Metropolitan Stores MTS Ltd., [1987] 1 S.C.R. 110

American Cyanamid v. Ethicon, [1975] A.C. 396

Yule v. Atlantic Pizza (1977), 17 O.R. (2d) 505 (Div. Ct.)

i) Irreparable Harm

10. It is submitted that there is no evidence that irreparable harm will result in the absence of an Interim Order. The Director has known since November 16, 1990 that the Respondents were going to close the Rothsay Toronto plant and rationalize the operations (see Exhibit D to the Affidavit of Stephen Peters). He has done nothing until now. The sum total of all of the evidence before this Tribunal with respect to irreparable harm is contained in paragraph 7 of Mr. Hopcroft's Affidavit:

From my experience with Orenco, I believe that if Hillsdown completely integrates the operations of Rothsay and Orenco, including the elimination of separate records of the Orenco routes, customers and equipment, and disposes of Orenco trucks and other equipment used in its business, it will be very difficult, if not impossible, to restore the Orenco business to its state at the time of the Acquisition.

Affidavit of Russell Hopcroft, sworn February 14, 1991, paragraph 7

11. It is submitted that the foregoing paragraph says is that it will be difficult to restore the business of Orenco as it existed at the time of the Acquisition unless separate Rothsay and Orenco records are kept. It does not say anything specific about reallocation of routes, raw product, or processing. The Interim Order which is sought herein thus goes far beyond that very limited evidence. There is no evidence that any broader Order is necessary or that irreparable harm will result if a broader Order is not made.

12. The evidence of Mr. Ballantyne is that the businesses can easily be divided and Orenco restored to its original form provided that the records which are being presently kept are continued.

Affidavit of Brent Ballantyne, supra

ii) Balance of Convenience

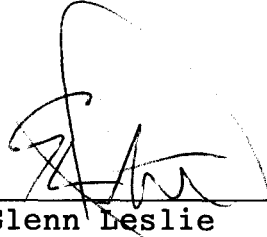
13. There is no evidence beyond that in the Hopcroft Affidavit of any inconvenience which would be suffered by the Director in particular or the public interest generally if the Interim Orders were not issued.

PART IV - ORDER REQUESTED


14. It is submitted that this Application should be dismissed.

15. In the alternative, if any Interim Order is issued, it should be limited to that sought in paragraph 1(b) of the Application herein, with leave to any party to seek further directions if it thinks fit.

All of which is respectfully submitted this 20th
day of February 1991.



Glenn Leslie
(416) 863-2672



Neil Finkelstein
(416) 83-3050

BLAKE, CASSELS & GRAYDON
Barristers and Solicitors
Box 25
Commerce Court West
Toronto, Ontario.
M5L 1A9

Of Counsel for the Respondents

0733I