

CT-91/1

THE COMPETITION TRIBUNAL

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCUSSION	
FILED	FEB 15 1991 <i>fe</i>
REGISTRAR	REGISTRARE
OTTAWA, ONT.	#1

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.

BETWEEN:

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

NOTICE OF APPLICATION

**TAKE NOTICE** that the Applicant, the Director of Investigation and Research (the "Director"), will make an application to the Competition Tribunal pursuant to section 92 of the Competition Act for the following orders:

- 1) pursuant to subparagraph 92(1)(e)(ii) of the Competition Act, with respect to the merger whereby the Respondent Hillsgdown Holdings (Canada) Limited ("Hillsgdown"), acquired 56% of the common shares of the Respondent Canada Packers Inc. ("CP") which controls as a subsidiary the Respondent Ontario Rendering Company Limited ("Orenco"):
  - a) an order directing Hillsgdown and CP to dispose of the business of Orenco; or

- b) an order directing Hillsgdown, the Respondent Maple Leaf Mills Limited ("MLM") or CP to dispose of such assets as may be designated by this Tribunal.
- 2) pursuant to subparagraph 92(1)(e)(iii) and section 105 of the Competition Act, any other order that the Tribunal considers appropriate to which the Respondents and the Director consent.

**AND TAKE NOTICE** that if you do not file a response with the Registrar of this Tribunal within thirty days of the date on which this application is served upon you, the Tribunal may, upon the ex parte application of the Director, make such order as it considers appropriate.

**AND TAKE NOTICE** that in support of this application the Director will rely upon the Statement of Grounds and Material Facts attached hereto.

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

AND TO: Hillsgdown Holdings (Canada) Limited  
40 Holly Street  
Suite 301  
Toronto, Ontario  
M4S 3C3

AND TO: Maple Leaf Mills Limited  
40 Holly Street  
Suite 301  
Toronto, Ontario  
M4S 3C3

AND TO: Canada Packers Inc.  
30 St. Clair Avenue West  
Toronto, Ontario  
M4V 3A2

AND TO: Ontario Rendering Company Limited  
880 Highway No. 5  
Dundas, Ontario  
L9H 5G1

## STATEMENT OF GROUNDS AND MATERIAL FACTS

### I. INTRODUCTION

1. The Director submits that the Respondents have effected a merger which prevents or lessens, or is likely to prevent or lessen, competition substantially in the rendering of non-captive material in Ontario within the meaning of section 92 of the Competition Act (the "Act").

2. On July 4, 1990, Hillsdown acquired 56% of the common shares of CP (the "Acquisition"). The Acquisition was completed in two mutually-contingent parts, as described below:

- a) Hillsdown took up and paid for 4,523,859 shares and CP took up and paid for 2,694,456 common shares of CP. The shares taken up and paid for by CP were cancelled and a corresponding number of shares were issued to Hillsdown at the subscription price of \$16.50 per share.
- b) CP issued 29,529,470 common shares from treasury to Hillsdown in exchange for all of the common shares of MLM, an indirectly wholly-owned subsidiary of Hillsdown.

3. Prior to the Acquisition, CP controlled, directly or indirectly, Orenco. Orenco operates a rendering business in Ontario from facilities located at Dundas, Ontario.

4. Prior to the Acquisition, Hillsdown, through its wholly-owned subsidiary MLM, operated, as a division of MLM, a rendering business under the name Rothsay. Rothsay operates from facilities located at Moorefield, Ontario.

5. This application is concerned with the Acquisition, whereby which Hillsdown has acquired direct or indirect control of Orenco such that Hillsdown now controls, directly or indirectly, the operations of the two largest renderers in Ontario.

### II BACKGROUND

#### A. The Parties

6. The Director is the person appointed under section 7 of the Act and is the sole person authorized to make this application to the Tribunal.

7. Hillsdown was incorporated under the laws of Ontario and is an indirectly wholly-owned subsidiary of Hillsdown Holdings plc, a United Kingdom company. Hillsdown Holdings plc is the largest food processing company, by sales, in the United Kingdom. The registered office of Hillsdown is located at 40 Holly Street, Suite 301, Toronto, Ontario M4S 3C3.

8. CP was incorporated under the laws of Canada and its registered office is located at 30 St. Clair Avenue West, Toronto, Ontario M4V 3A2. CP is the largest food processing company in Canada with a diversified portfolio of food related and agricultural businesses including the production and marketing of grocery products, processed meats, food service and dairy products as well as fresh beef, pork, poultry, salmon aquaculture, edible oils, oil seed processing, animal feeds, pet foods and animal health products.

9. MLM was incorporated under the laws of Ontario and continued under the laws of Canada. It is currently a wholly-owned subsidiary of CP. Its registered office is located at 40 Holly Street, Suite 301, Toronto, Ontario M4S 3C3. "Rothsay" is a name or style registered by MLM to carry on the business of the production of tallow and protein meals, otherwise known as rendering. Rothsay is a division of MLM with operations located at Moorefield, Ontario.

10. Orenco was incorporated under the laws of Ontario and is a wholly-owned subsidiary of CP. Its registered office is located at 880 Highway No.5, Dundas, Ontario L9H 5G1. "Orenco" is also a name or style registered by CP to carry on a rendering business.

## **B. The Rendering Industry**

11. The rendering business involves the processing of a wide variety of livestock, poultry and fish by-products into commercial products. The basic input materials include, but are not limited to, trim fat, trim bones, fresh packinghouse/slaughterhouse material (namely beef and pork heads, feet, offal, bones, fat and blood), deadstock and poultry material such as offal and feathers.

12. There are two distinct types of renderers in the industry. The first is the "non-integrated renderer" the sole (or main) business of which is to collect and process renderable material from unaffiliated operations. The second type, the "integrated renderer", is part of a vertically integrated business which processes "captive" material produced in the slaughtering, packing or processing activities of affiliates in the vertical operation. These integrated renderers may, or may not, be involved in competing for supply of renderable material that is not captive.

13. Both Orenco and Rothsay are integrated renderers that also compete for non-captive material.

14. For those renderers that collect non-captive material from unaffiliated suppliers, specially equipped trucks are used to pick up the renderable material from suppliers which include, but are not limited to, slaughterhouses/packhouses, poultry processing plants, abattoirs, restaurants, grocery stores and butcher shops. The renderer either pays the supplier for renderable material or charges the supplier for the collection of it depending on the type of renderable material and the volume of such material acquired from a particular supplier.

15. The material is then sorted, graded and dumped into receiving pits at the rendering facility. The material in the pits is then processed through a continuous or batch rendering system that cooks and presses the material to produce a variety of saleable output products, many of which are sold on commodity markets.

16. For those integrated renderers that render only captive material produced on-site, the material is normally fed directly to the rendering operations without the need for receiving pits and trucks.

17. Fatty material from the pressing operation is used to produce tallow, while the solid material is ground to produce meal. Material such as feathers, blood and raw grease are processed independently and are used to produce, respectively, feather meal, blood meal and yellow grease.

18. The output products of the rendering process are eventually used in the production of a wide variety of products. Tallow is used in the production of soaps, animal feeds, cosmetics, paints, rubbers and other items. Protein products in the form of meat meal, poultry meal, feather meal, bone meal and blood meal (animal meal), are used primarily in animal feed, fertilizer and pet food manufacturing.

19. Meat and poultry processors in Canada are licensed by federal and provincial authorities under regulations made pursuant to the Meat Inspection Act (Canada), R.S. 1985, c.25 (1st Supp.) and similar provincial legislation, in particular, in Ontario, the Dead Animal Disposal Act, R.S.O. 1980, c.112. The regulations require processors to dispose of renderable material only to licensed renderers. Both Orenco and Rothsay, as a division of MLM, are licensed renderers.

### **III. COMPETITION ANALYSIS**

#### **A. The Acquisition**

20. Prior to the Acquisition, Hillsdown, through its subsidiary MLM, and CP were direct competitors in the Ontario rendering business through their respective operations, Rothsay and Orenco.

21. Through the Acquisition, Hillsdown acquired control, directly or indirectly, of Orenco, the operations of which it proposes to integrate with those of Rothsay (the "Rendering Merger").

22. The Director therefore submits that the Acquisition constitutes a "merger" within the meaning of section 91 of the Act. The focus of the competition analysis is properly that part of the Acquisition comprising the Rendering Merger.

#### **B. Relevant Market**

23. The Director submits that the relevant product market for the purposes of analyzing the effects on competition of the Rendering Merger is all non-captive renderable material, excluding poultry material, supplied to renderers in the relevant geographic market, as defined below. This material includes, but is not limited to, trim fat, trim bones, fresh packinghouse/slaughterhouse material (namely beef and pork heads, feet, offal, bones, fat and blood) and deadstock.

24. The Director submits that the relevant geographic market for the analysis of the Rendering Merger is that part of the Province of Ontario which can be served by the Ontario rendering facilities of Rothsay and Orenco. This area is considered to be confined to a 200 mile radius from the rendering facility because of the perishable nature of the renderable material. This radius is further limited by natural geographic boundaries, such as the Great Lakes, and by the Canada-United States border.

25. The relevant product market and the relevant geographic market together comprise the "Market" for the purposes of the competition analysis.

#### **C. Nature of the Application**

26. The Director submits that the Acquisition prevents or lessens, or is likely to prevent or lessen, competition substantially in the Market.

## **D. Pre-Merger Competition**

### Market Participants

27. Orenco is an integrated renderer operating in the Market from facilities located at Dundas, Ontario. Prior to the Acquisition, approximately 30% of the material it rendered came from affiliated CP operations (captive material). The remaining 70% was supplied by a large number of suppliers that were not affiliated with Orenco (non-captive material). Orenco renders the full range of material set out above in the description of the relevant product market.

28. Rothsay is an integrated renderer operating in the Market from facilities located at Moorefield, Ontario. Until November 30, 1990, Rothsay operated a rendering facility located at Toronto, Ontario. The land on which that facility was located was expropriated by the City of Toronto and the plant closed on November 30, 1990. Prior to the Acquisition, approximately 14% of material it rendered came from affiliated MLM operations (captive material). The remaining 86% was supplied by a large number of suppliers that were not affiliated with Rothsay (non-captive material). Rothsay renders the full range of material set out above in the description of the relevant product market.

29. Darling & Company ("Darling") is a non-integrated renderer currently operating in the Market from facilities located at Toronto, Ontario. Darling is controlled by Darling-Delaware, a U.S. company, which also operates non-integrated rendering facilities in Detroit, Michigan and elsewhere in the United States. Darling currently renders the full range of material set out above in the description of the relevant product market.

30. Banner Packing Ltd. ("Banner") is a non-integrated renderer operating in the Market from facilities located at Toronto, Ontario. Banner renders almost exclusively beef bone and beef fat which are used in its pet food operations.

31. F.W. Fearman Company Limited ("Fearman") operates an integrated rendering operation in the Market from facilities located at Burlington, Ontario. Fearman renders exclusively material supplied from its own on-site pork slaughtering operations. Fearman also is involved in a joint venture blood drying operation and receives blood supplies from non-affiliated suppliers.

32. J.M. Schneider Inc. ("Schneider") operates an integrated rendering facility in the Market from facilities located at Kitchener, Ontario. Schneider renders, almost exclusively, material supplied from its own on-site operations. Schneider does, however, augment its tallow production by purchasing some edible grade bone material from non-affiliated suppliers.

33. Renderers with facilities in the Province of Quebec collect material as far west as Kingston, Ontario. These renderers operate on the eastern fringe of the relevant geographic market.

34. There are two small deadstock collectors that operate in the eastern part of the relevant geographic market. "Phil's Rendering" collects and delivers material to the Quebec renderers while "Ray Bowering" collects and renders a relatively small amount of deadstock material.

### Market Structure

35. The market shares of the renderers operating in the Market at approximately mid-1990, as provided by the Respondents, are as outlined below for all non-captive renderable material processed in thousands of pounds per week:

	<b>Material (1,000 lbs)</b>	<b>Material (%)</b>
Orenco	3547	29
Rothsay	3624	30
Darling	2180	18
Banner	1500	12
Fearmans	250	2
J.M. Schneider	145	1
Ray Bowering	25	<1
Phil's Rendering	150	1
Quebec Renderers	<u>855</u>	<u>7</u>
<b>Total</b>	<b><u>12276</u></b>	<b><u>100</u></b>

36. Rothsay and Orenco are, respectively, the largest and second largest renderers in the Market. They jointly account for approximately 59% of the non-captive material acquired for rendering.

37. The third largest renderer in the Market, Darling, accounts for approximately 18% of the non-captive material acquired for rendering.

38. The fourth largest renderer in the Market, Banner, accounts for approximately 12% of the non-captive material acquired for rendering. All of the remaining renderers together account for approximately 12% of the Market.

39. The Acquisition would allow Hillsgdown to increase its share of the Market to approximately 59%. This would represent an increase of approximately 29% over its pre-merger market share.

40. The Director submits that Hillsgdown would, as a result of the Acquisition, be able to exercise increased market power in the Market in that it



could sustain, for two years or more in a substantial part of the Market, a material decrease in the price it pays for renderable material or a material increase in the price it charges to remove such material.

#### **E. Statutory Factors - Section 93 of the Act**

##### **Foreign Competition**

41. Foreign competition does not provide, nor is it likely to provide, effective competition in the Market to a combined Rothsay and Orenco. Currently, renderable material is not transported across the Canada-United States border to rendering facilities in the United States that are located within 200 miles of the Rothsay and Orenco facilities. The Director submits that it is unlikely that this will occur in the future because of the distance of the suppliers from the United States rendering facilities, delays in crossing the border, customs and other regulations and additional transportation costs. Further, suppliers of renderable material require dependable and reliable service from renderers as their renderable material must be collected regularly to permit them to carry on their operations. Such suppliers in the Market perceive renderers operating from facilities in the United States to be less reliable and dependable than renderers in the Market that are not required to transport renderable material across the Canada-United States border.

##### **Acceptable Substitutes**

42. Various federal and provincial laws require that producers of renderable material dispose of such material only to a licensed renderer. Therefore, the only existing alternatives for the services of Rothsay and Orenco are those licensed renderers currently operating in the Market. These firms, however, do not have sufficient available capacity nor are they likely to increase their capacities in order to ensure that a material price decrease or a material increase in collection charges imposed by a combined Rothsay and Orenco cannot be sustained for two years.

##### **Barriers to Entry**

43. The Director submits that the barriers to entry into the Market are significant such that entry is unlikely to occur within two years of the Rendering Merger on a sufficient scale to offset the market power of Hillsgate.

44. A significant non-regulatory barrier to entry exists due to the proportion of the investment in a rendering business that is comprised of sunk costs. Prospective entrants will likely be unwilling to commit those sunk costs because of the significant risk that they will not recover their investment together with an acceptable profit.

45. In this industry, viable unintegrated entry is extremely difficult since processing capacity will not be efficiently utilized until a substantial volume of renderable material can be procured. Effective procurement requires a collection system (trucks and routes) and available suppliers. Furthermore, it is difficult to organize a collection system without existing processing capacity due to the reluctance of suppliers to commit themselves to a “prospective” renderer. For these reasons, entry has historically been confined to the acquisition of existing businesses.

46. A significant regulatory barrier to entry exists since the establishment of a rendering facility requires the approval of the Ontario Ministry of the Environment (MOE). Prospective entrants must file detailed applications with the MOE that relate to air and water emissions. This process is costly and time consuming with no assurance of final approval.

47. Rendering operations suffer from adverse public reaction which makes the establishment of such a facility the object of substantial public concern. Many municipalities in the relevant geographic market restrict the establishment of rendering facilities and public hearings may be held in respect of any rendering application.

#### Effective Competition Remaining

48. The remaining sources of competition in the Market would not likely provide effective competition to the market power of a combined Rothsay and Orenco.

49. A combined Rothsay and Orenco would have more than three times the share of the Market of any of the remaining competitors.

50. Rothsay, Orenco, Darling and Banner are the only renderers involved to any significant extent in the acquisition of non-captive renderable material in the relevant geographic market defined above.

51. The current and future effectiveness of Darling as a competitor is questionable, particularly in light of a recent decision by the Toronto Harbour Commissioners to decline to renew Darling's lease of its Toronto facilities. The ability of Darling to compete from its existing facilities in Buffalo, New York and Detroit, Michigan is constrained by the distance of these facilities from the major Ontario suppliers, border crossing delays, customs and other regulations and additional transportation costs. As well, Darling has recently closed its Buffalo facility and it is unlikely that it will re-open. Further, Darling is subject to suppliers' concerns relating to reliability and dependability which are described in paragraph 41 herein.

52. The Director submits that Banner and other smaller renderers in the Market have neither the rendering capacity nor the financial resources to provide effective competition to the market power of a combined Rothsay and Orenco.

#### Removal of a Vigorous and Effective Competitor

53. The Director submits that the Acquisition results in the removal, by Hillsdown, of a vigorous and effective competitor in Orenco. Orenco has approximately the same share of the Market as Rothsay and has close to twice that of the third largest renderer in the Market, Darling. From time to time, Orenco has engaged in aggressive price competition with other renderers to obtain suppliers. The removal of Orenco will also eliminate its constraining influence in the Market such that a combined Rothsay and Orenco would be in a position to materially reduce the prices paid for renderable material or materially increase the charges to remove such material and to impose other terms on suppliers of renderable material.

#### Change and Innovation

54. The Director submits that there has been little or no technological change or innovation in the rendering industry in the Market.

55. There has been some decline in the available amount of renderable material in the Market over the past five years. The main reason for this decline is the reduced beef slaughtering activity in Ontario. To the extent that there is any continued decline in the supply of renderable material, the Director submits that this will not have a significant effect on competition in the Market except to the extent that it will further discourage entry.

#### **F. Efficiencies**

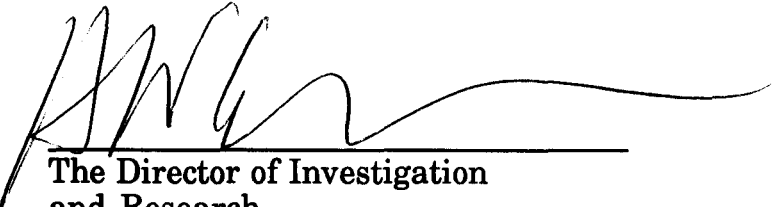
56. The Director submits that the Rendering Merger has not brought about, nor is likely to bring about, gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or will likely result from the Rendering Merger.

**IV. RELIEF SOUGHT**

57. In order to remedy the substantial lessening or prevention of competition in the market brought about by the Acquisition, the Director seeks the following orders pursuant to subsection 92 of the Competition Act:

- 1) pursuant to subsection 92(1)(e)(ii) of the Competition Act,
  - a) an order directing Hillsdown and CP to dispose of the business of Orenco; or
  - b) an order directing Hillsdown, MLM or CP to dispose of such assets as may be designated by this Tribunal.
- 2) pursuant to subparagraph 92(1)(e)(iii) and section 105 of the Competition Act, any other order that the Tribunal considers appropriate to which the Respondents and the Director consent.

DATED at Hull, Quebec, this 15th day of February, 1991.



The Director of Investigation  
and Research