

THE COMPETITION TRIBUNAL

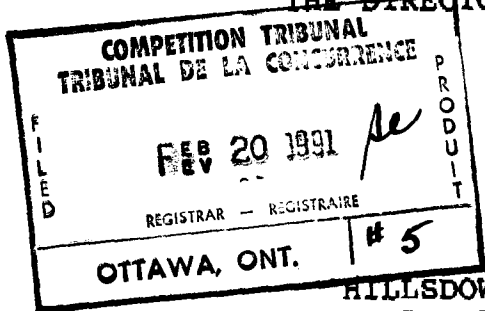
CT-91/1

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.

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

A F F I D A V I T

I, BRENT BALLANTYNE, of the Township of Woolwich, in the Regional Municipality of Waterloo, in the Province Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am employed as Group Vice-President and Director of Canada Packers Inc. and as such have knowledge of the matters hereinafter deposed to.

2. I have reviewed the Affidavits herein of Russell Hopcroft dated February 14, 1991 and Stephen Peters dated February 15, 1991. In this Affidavit, I shall not respond to the allegations in Mr. Peters' Affidavit set out in paragraphs 1 - 52 thereof dealing with the substance of the Director of Investigation and Research's ("Director") application for an Order pursuant to s. 92 of the Competition Act dated February 15, 1991. This Affidavit is made in support of the Respondents' response to the Director's application for an Interim Order pursuant to s. 104 of the Competition Act. I shall use the acronyms and abbreviations used in Mr. Peters' Affidavit.

Negotiations with the Director and/or his representatives

3. The transaction which is challenged herein is described in paragraphs 8 - 11 of Mr. Peters' Affidavit. At the time of the 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. The Rothsay Moorefield plant did not have the capacity to take the raw material formerly processed at the Rothsay Toronto plant, so the latter's operations had to be integrated with those of Orenco. The Director was aware of the need to relocate these Toronto operations to Orenco since at least July, 1990.

4. The Respondents have co-operated fully with the Director in his investigation from the outset. Pending the Director's investigation, they entered into the Hold-Separate agreement of July 4, 1990 which is marked as Exhibit "A" to Stephen Peters' Affidavit and subsequently extended it by Mr. Quinn's letter of August 15, 1990 which is appended as Exhibit "B" to the Peters' Affidavit.

5. Discussions between the Respondents and the Director and/or persons authorized to act on his behalf continued following the letter of August 15, 1990 as the Director continued his investigation. The Respondents made full production of all the information requested by the Director and co-operated in full.

6. On October 5, 1990, a meeting was convened which was attended by representatives of the Director including George Addy, Deputy Director, Merger Branch, Investigation and Research, Bureau staff including Stephen Peters and John Barker, and Mr. Randy Hughes, Bureau counsel. I and legal counsel attended for the Respondents. At that meeting, it was indicated that the Director's investigation was complete and Mr. Addy stated that the Merger Branch would recommend to the Director that a no action letter be given provided conditions could be worked out regarding monitoring of the Respondents' rendering operations for the next three years so that the Director could be satisfied that there was no substantial lessening in competition and, as well, that the Respondents not acquire any other rendering business without the Director's prior approval. References to Mr. Addy's statements are contained in Mr. Quinn's and Mr. Hughes' letters dated November 16, 1990 and Mr. Quinn's letter dated November 20, 1990, marked respectively as Exhibits "D", "E" and "F" of the Peters' Affidavit.

7. As a result of the October 5 meeting, I am informed by Mr. Joe Kosalle, an officer of Canada Packers Inc., and believe that he met with Messrs. Peters and Glenn Elder, representatives of the Director, in Ottawa on October 15, 1990 to work out the terms of the conditions agreed to in principle on October 5, 1990. The terms discussed at this meeting were the subject of a confirming letter by Jay Kendry, counsel to the Respondents, to Messrs. Peters and Elder dated October 25, 1990. The said letter is attached hereto and marked as Exhibit "A".

8. I am informed by Mr. Kendry and verily believe that he telephoned Mr. Peters shortly thereafter and asked him whether the terms expressed in the October 25, 1990 letter were satisfactory. Mr. Peters said that they were.

9. Having regard to the foregoing, and in particular that Mr. Addy had said that he would recommend a no action letter upon conditions which were then agreed to by the Director's staff, the Respondents understood that they were at liberty to take the steps necessary to close the Rothsay Toronto plant and combine its operations with those of Orenco. The Toronto plant was closed on November 30, 1990.

10. Thus, contrary to the allegations in Mr. Peters' Affidavit, there was no breach of the Hold-Separate undertakings. On the contrary, the Respondents were under the impression that they could take steps to rationalize the Rothsay and Orenco operations.

Hopcroft dismissal

11. Mr. Hopcroft implies in his Affidavit that he was dismissed without notice. In fact, I am informed by Mr. Pat Jones and verily believe that Mr. Hopcroft approached Mr. Jones on September 8, 1990 to say that both he and his wife, who also worked for Canada Packers Inc., wanted to leave the company. He suggested a severance package. I am further advised by Mr. Jones and believe that Mr. Hopcroft communicated with Mr. Jones three times about this on September 8th and 9th, once on September 26th and then was called in by Mr. Jones on November 7, 1990. On November 7, 1990, Mr. Hopcroft and his wife's employment was terminated. Mr. Hopcroft was given one year's severance. He is presently operating a competing business to that of the Respondents, acting as a broker in Ontario dealing with some of Canada Packers' former customers.

Proposed Interim Order

12. At paragraph 7 of his Affidavit Mr. Hopcroft says that he believes:

"... 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."

13. In order to operate a rendering business, it is necessary to have trucks, a processing plant, and administrative personnel. As well, there must be 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. It is incorrect to say that the routes and operations cannot be separated or reconstituted if they become "integrated".

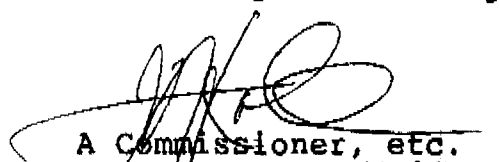
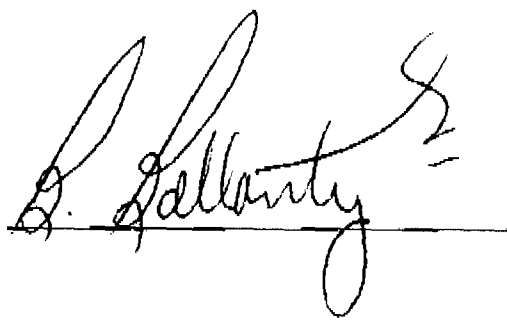
14. In this case, following the closure of the Rothsay Toronto plant and since the beginning of December, 1990, the Rothsay and Orenco operations have been operated as follows. Rothsay is operated through MLM, a Hillsdown subsidiary. Some of its former routes have been transferred to Orenco, which operates 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 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. Efficiencies are greatest where routes and production are rationalized properly.

15. Such rationalization would not create a problem should the Orenco operations have to be separated later, because the business records are kept separate. Records are kept for these transfers between Rothsay and Orenco which keep track of routes, suppliers, and product on an ongoing basis. Inter-company payments are made in respect

of re-directed routes, raw product and processing. The businesses are thus operated separately. It would be a very simple matter to physically re-divide those operations up again to the state that they were in prior to being integrated having regard to the records which are kept. Contrary to Mr. Hopcroft's Affidavit, it would be a very simple matter to restore the Orenco business to its state at the time of the Acquisition, subject to recognizing that assets must be retired or acquired in the ordinary course of business; as they become old or otherwise inefficient or unusable, they have to be replaced.

16. For the foregoing reasons, the Interim Order sought by the Director is unnecessarily restrictive, inefficient and, in practical terms, unworkable. All that is required to provide for the operation of the businesses of Rothsay and Orenco in a manner that will not hinder the divestiture of the Orenco business should that be necessary is a requirement that the Respondents continue to maintain separate records of: i) routes, ii) suppliers of renderable material, iii) equipment, and iv) financial information pertaining to the Orenco business as it existed at the time of the Acquisition. Such an Interim Order should be subject to the Respondents being able to redirect routes, raw product, processing and operations, and deliveries and sales as long as records are kept which permit the Respondents to restore the Orenco business to its state at the time of the Acquisition if the Competition Tribunal ultimately orders them to do so. As well, the order could prohibit the Respondents from disposing of trucks, trailers and other material assets that comprised part of the Orenco business at the time of the Acquisition outside the ordinary course of business.

SWORN before at the City of)
Toronto, in the Municipality)
of Metropolitan Toronto this)
19th day of February, 1991)



A Commissioner, etc.
JOHN ANDREW KOLADA
STUDENT-AT-LAW, a Commissioner, etc., in and
for the PROVINCE OF ONTARIO for Blake, Cassels
& Graydon, Barristers and Solicitors.
07421 Expires September 4, 1993.

This is Exhibit "A" to the Affidavit of

Brest Ballantyne
sworn before me this *9th* day of *Oct* 19*91*

[Signature]
A Commissioner

October 25, 1990

VIA FACSIMILE

Direct Fax: (416)863-4251
Reference: 37444/00027

Mr. Steven Peters
Mr. Glenn Elder
Bureau of Competition Policy
Merger Branch
Place du Portage 1
Ottawa-Hull
K1A 0C9

Dear Sirs:

Re: Canada Packers Inc.

Further to your meeting in Ottawa on Monday, October 15th, 1990 with Joe Kosalle of Canada Packers Inc., this letter summarizes Canada Packers Inc.'s proposals for responding to the Bureau's request for information to monitor the merger of Rothsay Rendering's Ontario operations with those of Ontario Rendering. The proposals are based on information available from the books, records and knowledge of Rothsay. It is Canada Packers' understanding that, once the merger is authorized and company representatives have had an opportunity to review what information is available from Ontario Rendering, modifications will be negotiated with the Bureau as warranted to account for limitations in the availability of relevant information from Ontario Rendering.

The monitoring issues you raised are summarized into four categories and the information Canada Packers Inc. proposes to supply the Bureau in regard to those issues are set forth below.

I. SALES OF FINISHED PRODUCTS

- A. Provide copies of the weekly market letter produced by "Eastern Brokers".

Proposal:

Copies be provided as requested on a quarterly basis.

- B. Provide copies of Rothsay's Weekly Price Lists for products produced from "free market raw material" highlighted.

Proposal:

Copies to be provided as requested on a quarterly basis.

- C. Provide data on sales of finished products made from relevant raw material.

Proposal:

The processing of raw material classified as red meat free market material produces two basic finished products, namely, meat and bone meal, and bleachable fancy tallow.

Meat and bone meal is sold to the feed and petfood industries. The price of the product is set weekly and sales are virtually always made at the posted market price.

Due to the number of individual transactions, the time and cost involved in capturing every transaction and the few transactions that vary from the posted price, it is suggested that the following information be provided to the Bureau on a quarterly basis:

1. the total number of tonnes of meat and bone meal sold during the quarter;
2. the average selling price per tonne of meat and bone meal sold during the quarter;
3. the average posted market price per tonne for meat and bone meal for the quarter (simple average); and
4. a listing of any sales made which varied from the posted price. The listing will include customer name, quantity sold, invoiced price per tonne and posted market price per tonne.

The tallow produced from red meat free market raw material is classified as bleachable fancy tallow. The designation indicates that because of its quality, it is able

to be "bleached or refined" and made into a specialty tallow product. Rothsay produces custom-blended specialty tallows in its refinery for sale to end users. The selling price of these specialty tallows is based on the market price at the time for the imports plus a negotiated increment based on the requirements and refining process necessary. As a result, the selling prices between customers are not directly comparable. In 1990 to date, Rothsay has sold approximately 5,000 mt of this type of tallow in Ontario. The bleachable fancy tallow not refined and sold domestically must be accumulated and exported. Export sales are made on a commodity trade basis which is beyond the control of the company.

In order to provide the Bureau with relevant sales information for tallow products, Canada Packers proposes to provide the Bureau in its initial submission a list of its specialty tallow customers and data on each customer including formulae for each customer's blending requirements. In addition, the company proposes to provide the following information on a quarterly basis:

1. the total volume of specialty tallows sold for the quarter to each customer;
2. the total value received and the average selling price per tonne for each customer for the quarter; and
3. a listing of export sales of bleachable fancy tallow giving customer location, quantity and net selling price received.

II. RAW MATERIAL SUPPLIERS AND ROUTING

- A. Provide market share percentages by renderer in a form similar to that provided in Canada Packers' original submissions to the Bureau.

Proposal:

Data be provided on quarterly basis.

- B. Provide routing maps for truck routes servicing free market raw material suppliers.

Proposal:

Route data be provided initially about existing routes and update maps be provided quarterly for significant changes to routes.

C. Provide data on changes in raw material suppliers.

Proposal:

Lists of suppliers gained and suppliers lost be provided quarterly.

D. Provide information on raw material pricing.

Proposal:

Free market raw material basically falls into four categories: packinghouse material, bone and fat material, deadstock, and grease.

Packinghouse material is secured by contract or agreement. The basis for payment is a gross value formula less a handling charge. The gross value is negotiated between the renderer and the supplier and is a result of the yield factor multiplied by the market price for product. The handling fee is set at the beginning of the contract or agreement period and normally adjust annually by a set factor.

The company will provide the bureau with a list of suppliers with which they have gross value contract or charge. In the first submission the company will provide the current handling charge and the basis for changing the charge. In subsequent quarterly submissions the company will indicate changes to the handling charge and any change to the yield factors stated in the contract or agreement.

Bone and fat material is normally secured on a month-to-month basis without benefit of a written contract or agreement. Prices paid to specific suppliers are based on a variety of factors including volume of material, frequency of service, type of service, type of material and quality of material.

Due to the volume of accounts serviced by the company, the frequency of service, the time and cost involved in capturing every transaction, the company proposes to provide in its initial submission a list of its then current handling charges and a list of suppliers. In following quarterly submissions it will provide the following information:

1. volume of material secured for this category of supplier;

2. a list of all suppliers to whom Rothsay makes any payment for raw material but to whom Rothsay did not previously make payments; and
3. information on any changes to its handling fees and suppliers affected.

For deadstock material the company proposes to provide in its initial submission a list of its then current handling charges and a list of suppliers. In following quarterly submissions it will provide the following information:

1. volume of material secured for this category of supplier and the average price of acquisition;
2. a list of suppliers to whom Rothsay makes any payment for raw material, but to whom Rothsay did not previously make payments; and
3. information on any changes to its handling fees and suppliers affected.

Grease is normally serviced with the benefit of a service contract. At present, Rothsay is not paying for grease.

For grease, the company proposes to provide in its initial submission a list of its then current handling charges and a list of suppliers. In following quarterly submissions it will provide the following information:

1. volume of material secured for this category of supplier and the average price of acquisition;
2. a list of suppliers to whom Rothsay makes any payment for raw material, but to whom Rothsay did not previously make payments; and
3. information on any changes to its handling fees and suppliers affected.

III. OPERATING INFORMATION

- A. Provide information on progress achieved in efficiencies in the areas of administration, specialization, and transportation.

Proposal:

Data requested be provided quarterly.

- B. Provide processing cost per pound of raw material. Provide monthly figures with explanation of any cyclical variations.

Proposal:

Data requested be provided quarterly.

IV. GENERAL INFORMATION

- A. Written undertaking to provide 30 days advance notice of the acquisition of a rendering facility in the Province of Ontario.
- B. Provide information known about the entry or exit of renderers in Ontario including integrated operations.
- C. Provide information known about significant changes in operating capacities of rendering facilities in Ontario.
- D. Provide information known about the acquisition of rendering facilities in Ontario.
- E. Provide any relevant general information, studies or reports known concerning the rendering industry in Ontario.

Proposal:

Rothsay complies with requests IV. A to IV. E.

Canada Packers submits that the above information will provide the Bureau with sufficient relevant information in all of the areas discussed Monday, October 15 in Ottawa. In areas where summary and sampling information are proposed rather than complete lists, Canada Packers has attempted to balance the value of the information with the volume of the information.

Canada Packers plans to make its initial submission for the quarter ended December 31, 1990 available to you by January 30th, 1991. Future submissions will be for each calendar quarter with submission 30 days after the completion of the quarter, unless otherwise arranged between Canada Packers and the Bureau. Canada Packers is agreeable to providing reports for three years from the date of this letter, however, this is not an admission by the company that the Bureau has any jurisdiction over this matter beyond the third

- 7 -

anniversary of the acquisition of Maple Leaf Mills Ltd. by
Canada Packers Inc.

In summary, Canada Packers hopes you will agree with
this proposal for meeting your monitoring requirements and
looks forward to receiving your approval in the very near
future.

Yours very truly,

Jay D. Kendry

JDK/pa

c: J. Kosalle, Jr.

bcc: J. J. Quinn, Esq.

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