

PUBLIC VERSION

File No.: CT-2008-004
Registry Document No.:

COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 75 of the *Competition Act*;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Interim Order pursuant to section 104 of the *Competition Act*;

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT CT-2008-004 October 12, 2011	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	#729 & 730 part of record

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Applicant

AND

**GROUPE WESTCO INC. AND GROUPE DYNACO, COOPÉRATIVE
AGROALIMENTAIRE AND VOLAILLES ACADIA S.E.C. AND
VOLAILLES ACADIA INC./ACADIA POULTRY INC.**

Respondents

**RESPONDING RECORD OF THE APPLICANT
NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

**(Motion by the Respondent Groupe Westco Inc. Regarding the Enforcement
of an Undertaking as to Damages)**

Date: October 3, 2011

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File No.: CT-2008-004
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COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 75 of the *Competition Act*;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Interim Order pursuant to section 104 of the *Competition Act*;

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT CT-2008-004 October 12, 2011 <small>Jos LaRose for / pour</small> REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 729

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Applicant

AND

**GROUPE WESTCO INC. AND GROUPE DYNACO, COOPÉRATIVE
AGROALIMENTAIRE AND VOLAILLES ACADIA S.E.C. AND
VOLAILLES ACADIA INC./ACADIA POULTRY INC.**

Respondents

**RESPONSE TO THE NOTICE OF MOTION OF
GROUPE WESTCO INC., DATED SEPTEMBER 12, 2011**

TAKE NOTICE that Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited ("**Nadeau**") opposes the motion brought by the Respondent, Groupe Westco Inc. ("**Westco**").

NADEAU SEEKS THE FOLLOWING RELIEF:

- (a) An Order dismissing Westco's motion;

- (b) In the alternative, an Order adjourning the Respondents' motion to a date after the determination of Nadeau's application for leave to appeal to the Supreme Court of Canada, and if leave be granted, after the determination of the appeal and any subsequent proceedings;
- (c) Costs of this motion payable to Nadeau; and
- (d) Such further or other relief as counsel shall advise and this Tribunal may permit.

THE FOLLOWING ARE THE GROUNDS relied upon by Nadeau:

1. By an Application dated March 17, 2008, Nadeau sought an interim order pursuant to section 104 of the *Competition Act* (the "**Act**").
2. In support of its Application, Nadeau filed the Affidavit of Anthony Tavares, which contained the following paragraph: (the "**Undertaking**")

"Nadeau undertakes to abide by any order that may be made against it as a result of the granting by the Tribunal of the interim relief being requested by Nadeau."
3. Westco opposed the Application. It argued, among other things, that if any interim order were granted, Westco would suffer financial harm because:
 - (a) it would have to grow the smaller chickens required by Nadeau, instead of the larger chickens it wished to grow for its "partner", Olymel s.e.c. ("**Olymel**"); and
 - (b) it anticipated receiving additional profits from its "partnership" with Olymel.
4. As well, as part of its opposition to the Application, Westco gave false or misleading information to the Tribunal concerning its legal obligations *vis-à-vis* Olymel. Throughout the proceedings concerning the Application, Westco gave self-serving and inconsistent evidence, and did not deal with the issues in good faith.

5. On June 28, 2008, the Competition Tribunal (the "**Tribunal**") granted an interim order in favour of Nadeau (the "**Interim Order**").
6. The Interim Order provided that, subject to certain reductions as specified in the Interim Order, the Respondents were required to continue to supply Nadeau with "live chickens on the usual trade terms at the current level of weekly supply, namely 271,350 live chickens", pending the determination of Nadeau's application for an order under section 75 of the Act.
7. Despite the Interim Order, from and after August, 2008, Westco refused to deliver any of the smaller chickens required by Nadeau, and instead grew and shipped exclusively the larger chickens suitable for Olymel.
8. Despite the Interim Order, from and after September 14, 2008, Westco refused to supply Nadeau with the numbers of live chickens required to be supplied under the Interim Order.
9. Nadeau commenced contempt proceedings against all the Respondents on November 4, 2008, and sought an expedited hearing.
10. Westco deliberately delayed the determination of the contempt proceedings, which were ultimately not heard until November, 2009.
11. On February 26, 2009, the Tribunal found that Westco was in *prima facie* breach of the Interim Order, and required it to show cause as to why it should not be held in contempt (the "**Show Cause Order**").
12. Despite the Interim Order and the Show Cause Order, Westco continued to refuse to ship Nadeau either the required number or the required sizes of chickens throughout the period from and after September 14, 2008 until the termination of the Interim Order by reason of the dismissal of Nadeau's section 75 application on June 8, 2009. Westco refused to take any steps to ameliorate its conduct, and expressed no remorse whatsoever, nor any concern for the effects of its conduct on Nadeau.

13. In January, 2010, the Tribunal made a contempt order against Westco (the "**Contempt Order**"). It found that Westco was in contempt of the Interim Order, from and after September 14, 2008 until the termination of the Interim Order upon the determination of Nadeau's section 75 application on June 8, 2009.
14. The Tribunal found that Westco acted deliberately and with contumacious intent, and that it breached the Interim Order for the prospect of financial gain.
15. Westco appealed the Contempt Order, and the sentence imposed against it. The appeal from the Contempt Order was dismissed by the Federal Court of Appeal in March 2011. The appeal from sentence was subsequently discontinued.
16. Nadeau has at no time argued that the Tribunal has jurisdiction to award damages. Rather, it argued, in connection with the contempt sentencing, that the Tribunal has jurisdiction to order restitution, as part of its contempt powers.
17. Westco argued before the Tribunal, during the contempt sentencing proceedings, that the Tribunal has no jurisdiction to award damages.
18. The Federal Court of Appeal dismissed Nadeau's appeal from the dismissal of the section 75 application on June 2, 2011.
19. On June 3, 2011, Westco wrote directly to the Tribunal requesting direction as to the practice and procedure to be followed in order to enforce the Undertaking.
20. On August 5, 2011, the Tribunal directed that Westco file a formal motion (the "**Motion**"), and that it address the following two questions:
 1. Does the Tribunal have jurisdiction to enforce an undertaking as to damages? ("**Question 1**")
 2. Assuming the Tribunal does have jurisdiction, should leave be granted to Westco so that it can proceed with an application for a hearing relating to the enforcement of the undertakings as to damages? ("**Question 2**")

21. On August 25, 2011, Nadeau filed an application for leave to appeal to the Supreme Court of Canada from the dismissal of Nadeau's appeal from the dismissal of Nadeau's section 75 application.
22. Nadeau submits that the answer to Question 1 is "no", because the Tribunal is a statutory tribunal whose powers are limited to those granted to it under the *Competition Tribunal Act* and the Act, neither of which grant the Tribunal the power to award damages in connection with either section 75 or section 104 orders.
23. Nadeau submits that the answer to Question 2 is "no", because:
 - (a) the Motion is premature, in that Nadeau's application for leave to appeal is pending before the Supreme Court;
 - (b) Westco should be denied audience, because it took no steps to purge its contempt;
 - (c) Westco does not come to the Tribunal with "clean hands";
 - (d) the conduct of Westco in flouting the Interim Order disentitles it from the relief it seeks;
 - (e) "special circumstances" exist in this case, such that the Tribunal should refuse to exercise its discretion in Westco's favour; and
 - (f) in all the circumstances, it would be inequitable to enforce the Undertaking against Nadeau.
24. Such further and other grounds as counsel shall advise and this Tribunal permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Jessica Petrie and exhibits therein dated September 29, 2011;

2. Such further and other materials as counsel may advise and this Tribunal permit.

Date: October 3, 2011



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File No.: CT-2008-004
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COMPETITION TRIBUNAL

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OTTAWA, ONT	# 730

**NADEAU FERME AVICOLE LIMITÉE/
 NADEAU POULTRY FARM LIMITED**

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 VOLAILLES ACADIA INC./ACADIA POULTRY INC.**

Respondents

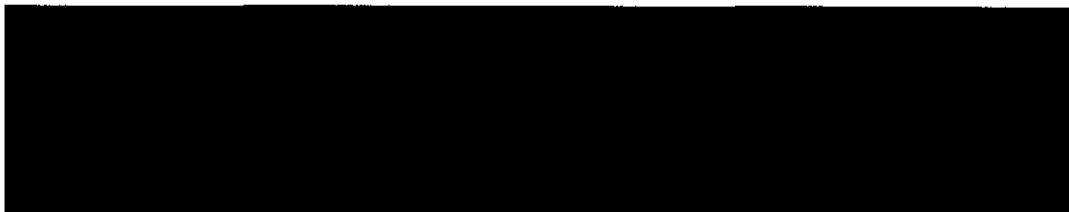
**AFFIDAVIT OF JESSICA PETRIE
 Sworn September 29, 2011**

I, JESSICA PETRIE, of the City of Mississauga in the Province of Ontario, MAKE OATH AND SAY:

- I am a legal assistant with the law firm of Fogler, Rubinoff LLP, co-counsel for the Applicant, Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited ("Nadeau"), and, as such, have knowledge of the matters contained in this affidavit.
- In August 2007, Olymel L.P. and Groupe Westco Inc. ("Westco") entered into a Term Sheet. Attached hereto as Exhibit "A" is a copy of the Term Sheet, which was indexed as Exhibit CA-114 in the Section 75 hearing before the Tribunal in November 2008 (the "Section 75 Hearing").

3. On May 29, 2008, Thomas Soucy ("**Mr. Soucy**") swore an affidavit in the Section 75 application before the Competition Tribunal (the "**Tribunal**"). Attached hereto as **Exhibit "B"** is a copy of paragraphs 75-86 of the confidential level A version of the affidavit. Also attached hereto as **Exhibits "C"**, and "**D"** respectively are copies of Exhibits "X" and "Y" to the affidavit. Exhibits "B", "C" and "D" were collectively indexed as Exhibit CA-115 in the Section 75 Hearing.
4. On June 12, 2008, Mr. Soucy was cross-examined on his affidavit sworn May 29, 2008. Attached hereto as **Exhibit "E"** are extracts from the transcript of the cross-examination.
5. On June 26, 2008, the Tribunal delivered the reasons and order in connection with the application brought by Nadeau under Section 104 of the *Competition Act*. Attached hereto as **Exhibit "F"** is a copy of the English Reasons for Order and Order Allowing an Application for Interim Relief Under Section 104 of the *Competition Act*.
6. On July 24, 2008, Mr. Soucy was examined for discovery in connection with the Section 75 Hearing. Attached hereto as **Exhibit "G"** are extracts from the confidential transcript of this examination for discovery. These extracts formed part of Exhibit CA-108 in the Section 75 Hearing.
7. In or around October 2008, Mr. Soucy made a declaration in connection with the Section 75 Hearing. Attached hereto as **Exhibit "H"** are extracts from the body of the confidential level A version of the Déclaration de Thomas Soucy. The Déclaration was filed as Exhibit CRW-100 in the Section 75 Hearing.
8. On October 16, 2008, Sunnymel GP Inc. was incorporated pursuant to the *Canada Business Corporations Act*. Attached hereto as **Exhibit "I"** is a copy of the Federal Corporation Information print-out of Sunnymel GP Inc.
9. On October 20, 2008, Sunnymel Limited Partnership/Sunnymel, Société en commandite was formed pursuant to the *Limited Partnership Act* of New Brunswick. Attached hereto as **Exhibit "J"** is a copy of a print-out regarding the partnership details.

10.



11.



12.



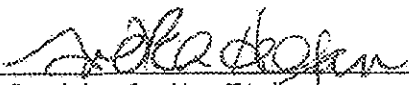
13. On November 4, 2008, Nadeau commenced formal contempt proceedings. Attached hereto as **Exhibit "N"** is a copy of Nadeau's Notice of Motion dated November 4, 2008.
14. On November 25, 2008, Mr. Soucy was cross-examined before the Tribunal during the Section 75 Hearing. Attached hereto as **Exhibit "O"** are extracts from Mr. Soucy's cross-examination from the in-camera hearing on that day.
15. On November 26, 2008, Mr. Soucy was cross-examined before the Tribunal during the Section 75 Hearing. Attached hereto as **Exhibit "P"** are extracts from Mr. Soucy's cross-examination from the in-camera hearing on that day.
16. On February 26, 2009, the Tribunal delivered its reasons and order in connection with the motion for a show cause order brought by Nadeau. Attached hereto as **Exhibit "Q"** is a copy of the English Reasons for Order and Order Regarding Applicant's Motion for a Show Cause Order.
17. On November 4, 2009, Mr. Soucy gave evidence before the Tribunal in connection with the contempt hearing held in November 2009 (the "**Contempt Hearing**"). Attached

hereto as **Exhibit "R"** are extracts from Mr. Soucy's evidence from the public hearing on that day.

18. On November 5, 2009, Mr. Soucy gave evidence before the Tribunal in connection with the Contempt Hearing. Attached hereto as **Exhibit "S"** are extracts from Mr. Soucy's evidence from the public hearing on that day.
19. On November 5, 2009, Mr. Soucy gave evidence before the Tribunal in connection with the Contempt Hearing. Attached hereto as **Exhibit "T"** are extracts from Mr. Soucy's evidence from the in-camera hearing on that day.
20. On January 22, 2010, the Tribunal delivered the reasons and order in connection with the Contempt Hearing. Attached hereto as **Exhibit "U"** is a copy of the English Reasons for Order and Contempt Order.
21. In or around March 2010, Mr. Soucy made a declaration in connection with the contempt sentencing hearing before the Tribunal (the "**Sentencing Hearing**"). Attached hereto as **Exhibit "V"** is a copy of the confidential level A version of the Déclaration de Thomas Soucy.
22. On July 6, 2010, Mr. Soucy gave evidence before the Tribunal in connection with the Sentencing Hearing. Attached hereto as **Exhibit "W"** are extracts from Mr. Soucy's evidence from the public hearing on that day.
23. On July 6, 2010, Mr. Soucy gave evidence before the Tribunal in connection with the Sentencing Hearing. Attached hereto as **Exhibit "X"** are extracts from Mr. Soucy's evidence from the in-camera hearing on that day.
24. Attached hereto as **Exhibit "Y"** are extracts from the oral submissions of Éric Lefebvre given on July 7, 2010, at the Sentencing Hearing.
25. On September 24, 2010, the Tribunal delivered its sentencing reasons and order. Attached hereto as **Exhibit "Z"** is a copy of the English Sentencing Order.

- 26. On October 25, 2010, Westco appealed the Sentencing Order to the Federal Court of Appeal. Attached hereto as Exhibit "AA" is a copy of the Notice of Appeal in Federal Court of Appeal File No. A-407-10.
- 27. On March 18, 2011, the Federal Court of Appeal delivered a Judgment in connection with Westco's consolidated appeal from the Contempt Order and the Order Dismissing Westco's Motion for an Order or Direction Regarding the Interpretation of the Tribunal's Interim Supply Order. Attached hereto as Exhibit "BB" is a copy of the Reasons for Judgment in Federal Court of Appeal File No. A-70-10 and A-133-10. Also attached hereto as Exhibit "CC" is a copy of the Judgment.
- 28. On April 18, 2011, Westco discontinued its appeal of the Sentencing Order. Attached hereto as Exhibit "DD" is a copy of the Notice of Discontinuance in Federal Court of Appeal File No. A-407-10.
- 29. On August 25, 2011, Nadeau commenced an application for leave to appeal to the Supreme Court of Canada from the decision of the Federal Court of Appeal, Court File No. A-342-09, dated June 2, 2011, which dismissed Nadeau's appeal from the dismissal by the Tribunal of Nadeau's Section 75 application. Attached hereto as Exhibit "EE" is a copy of the Notice of Notice of Application for Leave to Appeal in Supreme Court of Canada File No. 34401. No decision on the application has as yet been made by the Supreme Court.

SWORN before me at the City of Toronto, in the Province of Ontario, this 29th day of September, 2011.



 A Commissioner for taking affidavits.

} 

 JESSICA PETRIE

Andrea Gail Hogan, a Commissioner, etc.,
 Province of Ontario, for Fogar Rubinoff LLP,
 Barristers and Solicitors.
 Expires March 22, 2013.

This is Exhibit "A" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011

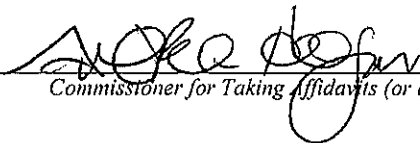


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "B" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011




Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubino LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "C" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011

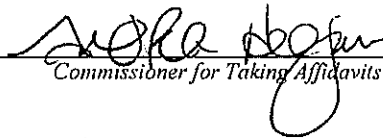
A handwritten signature in black ink, appearing to read "Andrea Hogan", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubincoff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "D" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011

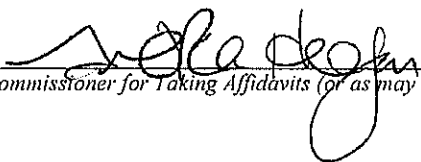


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubinoft LLP,
Barristers and Solicitors,
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "E" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011




Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubinoif LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "F" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

Competition Tribunal



Tribunal de la Concurrence

Reference: *Nadeau Poultry Farm Limited v. Groupe Westco Inc. et al.*, 2008 Comp. Trib. 16
File No.: CT-2008-004
Registry Document No.: 0070

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 75 of the *Competition Act*;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Interim Order pursuant to section 104 of the *Competition Act*.

BETWEEN:

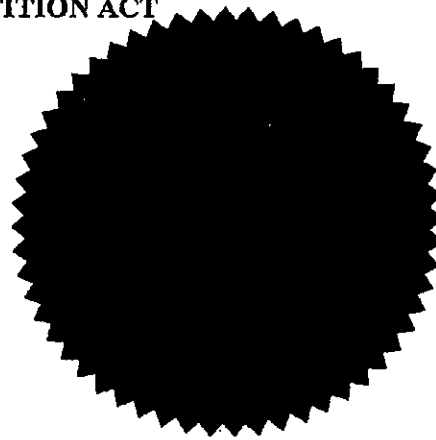
**Nadeau Ferme Avicole Limitée/
Nadeau Poultry Farm Limited**
(applicant)

and

Groupe Westco Inc. and Groupe Dynaco, Coopérative Agroalimentaire, and Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc.
(respondents)

Date of hearing: 20080623
Presiding Judicial Member: Blanchard J.
Date of Reasons and Order: June 26, 2008
Reasons and Order signed by: Justice Edmond P. Blanchard

**REASONS FOR ORDER AND ORDER ALLOWING AN APPLICATION FOR
INTERIM RELIEF UNDER SECTION 104 OF THE COMPETITION ACT**



I. INTRODUCTION

[1] Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited (the "Applicant") applies to the Competition Tribunal pursuant to section 104 of the *Competition Act*, R.S.C. 1985, c. C-34 as amended (the "Act"), for an order directing the Respondents to continue to deal with the Applicant and to supply it with live chickens on the usual trade terms, in the volumes previously supplied, pending the Tribunal's decision on the Applicant's main application under section 75 of the Act.

[2] The Applicant operates a chicken processing facility in Saint-François-de-Madawaska, New Brunswick (the "St-François Plant") and the Respondents currently supply approximately 46% of its live chickens.

[3] The Respondent Groupe Westco Inc. ("Westco") possesses approximately 51% of New Brunswick's chicken production and supplies 31.5% of the Applicant's live chickens. As of July 20, 2008, Westco will cease supplying live chickens to the Applicant by reason of its decision to have its live chickens processed by Olymel, a Quebec based processor, pursuant to a partnership agreement.

[4] The Respondents Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc. ("Acadia") supply approximately 10% of the Applicant's live chickens and the Respondent Groupe Dynaco, Coopérative Agroalimentaire ("Dynaco"), supplies 4.5%. As of September 15, 2008, Acadia and Dynaco will cease supplying live chickens to the Applicant.

[5] On March 17, 2008, the Applicant applied to the Tribunal for leave to seek an order under section 75 of the Act and for an interim supply order under section 104. Leave was granted on May 12, 2008, as the Tribunal concluded that it had reason to believe that the Applicant is directly and substantially affected in its business by a practice referred to in section 75 that could be subject to an order under that section. A complete description of the parties' businesses, their business plans and all the relevant facts appear in that decision (see *Nadeau Poultry Farm Limited v. Groupe Westco Inc. et al.*, 2008 Comp. Trib. 7) and will not be repeated here.

[6] After the filing of further written submissions with regard to the application for interim relief and cross-examinations by the Applicant and Westco on their opponent's affidavits, the submissions of counsel for all parties on this application for an interim supply order were heard in Ottawa on June 23, 2008.

II. THE TEST FOR INTERIM RELIEF

[7] Section 104 of the Act sets out the test to be applied on an application for an interim order. It reads:

<p>104. (1) Where an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75 or 77, may issue such interim order as it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.</p> <p>(2) An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.</p> <p>[...]</p>	<p>104. (1) Lorsqu'une demande d'ordonnance a été faite en application de la présente partie, sauf en ce qui concerne les ordonnances provisoires en vertu des articles 100 ou 103.3, le Tribunal peut, à la demande du commissaire ou d'une personne qui a présenté une demande en vertu des articles 75 ou 77, rendre toute ordonnance provisoire qu'il considère justifiée conformément aux principes normalement pris en considération par les cours supérieures en matières interlocutoires et d'injonction.</p> <p>(2) Une ordonnance provisoire rendue aux termes du paragraphe (1) contient les conditions et a effet pour la durée que le Tribunal estime nécessaires et suffisantes pour parer aux circonstances de l'affaire.</p> <p>[...]</p>
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[8] The Tribunal has consistently applied the principles found in the decision of the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, when considering an application for an interim supply order. The Supreme Court of Canada held in that decision that to issue an order for injunctive relief, a court must first be satisfied that there is a serious issue to be tried. Second, it must be determined whether the applicant would suffer irreparable harm if the injunction were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

III. ANALYSIS

A. Serious Issue to be tried

[9] I will turn to the first part of the test: whether the evidence before the Tribunal is sufficient to satisfy it that there is a serious issue to be tried.

[10] The Applicant submits that, leave having been granted, it has demonstrated that there is a serious issue to be tried. In the alternative, it asserts that the evidence adduced demonstrates that there is a serious issue to be tried and that the requirements of section 75 of the Act have been met.

[11] The Respondents contend that the Applicant has failed to establish, even on a *prima facie* basis, that it meets all of the criteria set out in section 75. They assert in their written submissions that there is insufficient evidence showing that the Applicant is “substantially affected in [its] business [...] due to [its] inability to obtain adequate supplies of a product anywhere in a market on usual trade terms” (para. 75(1)(a) of the Act). The Respondents submit that the expression “substantially affected in his business” (“sensiblement gênée dans son entreprise”) is synonymous with being unable to continue to carry on business (“être incapable de continuer à exploiter son entreprise”. See Hearing Transcript, p. 107). To conclude otherwise, argue the Respondents, would mean that each time the Applicant loses supply and revenue, it is substantially affected. As the Applicant’s own evidence shows that it can carry on business with a weekly supply of 300,000 live chickens, the Applicant has failed to establish that it is substantially affected in its business.

[12] The Respondents further contend that the Applicant has failed to provide sufficient evidence that it is unable to obtain (“se procurer”) adequate supplies of live chickens anywhere in a market on usual trade terms. They say that the Applicant has not made any attempt to replace the Respondents’ supply whereas the evidence indicates that other sources of supply are available in the market on usual trade terms. They stress that the definition of “trade terms” set out in subsection 75(3) of the Act explicitly excludes price. So even if the Applicant’s assertion that it would have to pay higher premiums to replace the Respondents’ live chickens proves to be true, the Applicant still failed to establish, even on a *prima facie* basis, that it is unable to obtain adequate supplies on usual trade terms.

[13] The Respondent Westco further submits that the Applicant’s inability to obtain adequate supplies of live chickens is in no way linked to “insufficient competition among suppliers in the market” as is required by paragraph 75(1)(b). Rather, it is the result of Westco’s legitimate business decision to add chicken processing to its business plan. The Respondents also contend in their written submissions that there is no evidence indicating that there is insufficient competition among chicken producers in the market.

[14] Finally, the Respondent Westco refers to the Tribunal’s decision in *Quinlan’s*, above, to assert that live chickens are not in ample supply under paragraph 75(1)(d). Westco asserts that as of July 20, 2008, Westco’s live chickens are to be processed in Quebec pursuant to its partnership agreement with Olymel. As Westco has no excess supply given the national supply management scheme in place, it should be free to select the customers to whom it will sell the product. Since Westco has chosen that customer, the Tribunal cannot conclude that the product in question is in ample supply.

[15] In *RJR-MacDonald*, above, the Court described the consideration of a serious issue to be tried as follows (at pp. 337-338):

What then are the indicators of “a serious question to be tried”? There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case. [...] Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the

opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

[16] The Tribunal has applied this test in respect of a private application pursuant to section 104 of the Act. An interim supply order was granted by the Tribunal in *Quinlan's of Huntsville Inc. v. Fred Deeley Imports Ltd.*, 2004 Comp. Trib. 28. In describing the standard for granting such an order, Madam Justice Simpson stated at paragraph 24 of her reasons:

One of the principles applied by Superior Courts in dealing with interim orders requires the Judge to have regard for all the circumstances of the case, including its practical and statutory context. In that regard, it seems wrong to conclude that a private applicant, who has just been granted leave on the basis of the fact that the Tribunal "could" find the facts necessary to prove a section 75 case, must show a strong *prima facie* case in a subsequent motion for an interim order. In my view, the demonstration of a serious issue (in the sense that it is not frivolous or vexatious) is most consistent with the statutory scheme which sets a relatively low threshold for leave. It is also the case that, in the context of an application under section 75, a mandatory order is not an extraordinary remedy. Rather, it is what the section is all about and it seems to me that, in this context, orders which preserve or resume supply should not be viewed as exceptional.

[17] I have carefully reviewed the Respondents' submissions relating to the factors to be met in order to obtain relief under section 75 of the Act. Those arguments raise complex questions of fact and law which may require assessing the credibility of evidence and considering expert evidence. Such questions are ill suited for determination in an application for interim relief where a prolonged examination of the merits is generally neither necessary nor desirable. Having reviewed the evidence and arguments of the parties, I am of the opinion that the application is neither vexatious nor frivolous. I therefore conclude, in view of the principles set out in *RJR-MacDonald* and based on the record before me, that the Applicant has raised serious issues to be tried on the merits of its case under section 75 of the Act. This is not to suggest that I am in any way satisfied that the case has been met under section 75. I remind the reader of the low threshold that must be met at this stage.

B. Irreparable Harm

[18] I will now turn to the second part of the test, the question of irreparable harm.

[19] The Applicant asserts that the St-François Plant is the Applicant's only business and that it would suffer irreparable harm if an interim order were refused. The Applicant's affiant, Mr. Anthony Tavares, formerly the Chief Executive Officer of Maple Lodge Holding Corporation, the Applicant's parent company, attests that the Applicant will suffer the following irreparable harm should 46% of its supply of live chickens be lost:

1. a massive loss of revenue estimated at \$20,000,000 and profits estimated at \$3,336,000 over the six month period from July, 2008, to the end of January, 2009,

would result from the loss of supply by Westco only. The Applicant contends that this loss of profits represents over 50% of its annual profits which will not be recoverable.

2. an immediate inability to fulfill the needs of its customers which would cause immediate damage to the relationships the Applicant has built with its customers over the last 18 years. More specifically, this would result in: a loss of confidence, a loss of goodwill, a potential loss of market share, and a potential loss of customers.

3. an immediate impact on the viability of the St-François Plant. The Applicant asserts that it has developed long term supply relationships with New Brunswick producers which allowed it to develop stable and profitable markets for its products. It contends that it depends on live chickens supplied by the Respondents without which the St-Francois Plant will only be able to operate at 40% capacity or just over ¾ of one shift per day. The Applicant claims that the majority of the 340 jobs at the plant will be lost if supply from the Respondents is cut off, and the viability of the whole plant would be severely compromised.

[20] Mr. Tavares' affidavit further attests that the Applicant "requires a guarantee of 350,000 chickens per week to stay viable." However, on cross-examination, he stated that a weekly supply of 300,000 live chickens would allow the Applicant to get by and that "getting by" referred to "viability in the long term" and that "[d]epending on the markets, it could mean losing a lot of money." He also stated that after the Respondents cut off supply, the Applicant will have a supply of 294 450 live chickens.

[21] During the hearing, counsel for the Applicant confirmed that the Applicant had secured, since the filing of its initial affidavit, an additional 25,000 live chickens to be supplied from Nova Scotia. This volume would apparently be available to the Applicant sometime early this fall. The only dispute between the parties relating to the volume concerns the number of live chickens to be supplied by the Respondent Dynaco after September 15, 2008. The Respondent Westco contends that an additional 3 679 chickens would continue to be supplied to the Applicant by Dynaco via Slipp Farm whereas counsel for the Applicant denied that allegation.

[22] The Respondents contend that the Applicant adduced no clear and tangible evidence that the Respondents' refusals will result in irreparable harm to the Applicant before a hearing on the merits. The Respondents assert that irreparable harm, if any, which would result from a loss of supply, can only be that harm attributable to a loss of supply which would cause the Applicant to fall below its viability threshold. In the Respondents' submissions, the Applicant's own evidence suggests that threshold to be at 300,000 live chickens per week, a threshold which is not in jeopardy in the circumstances of this case. The Respondents consequently argue there can be no irreparable harm. The Respondents further maintain that the Tribunal would not have jurisdiction to make an order beyond the Applicant's viability threshold since it could not then be said that the Applicant is "substantially affected in his business", a prerequisite of paragraph 75(1)(a) of the Act.

[23] The Respondents stress that the Applicant has operated the St-François Plant for 15 years with less than 350,000 live chickens per week and that it is only recently that the Applicant's

weekly supply has increased. The Respondents also contend there are other sources of supply of live chickens in the market on usual trade terms and that the Applicant has failed to make any efforts to access this supply.

[24] The Applicant's affiant, Mr. Tavares, in his supplementary affidavit, affirms that since chicken supply is controlled in Canada by the supply management system, alternative sources of supply could only be obtained with great difficulty and only if the Applicant paid "extortionate" prices and diverted existing supplies from other processors. He further attests that it is difficult to transport live chickens from Quebec or Ontario and that the Applicant has already had problems in the winter with respect to the transportation of live chickens from Nova Scotia including attrition rates in transit and concerns raised under laws governing livestock handling.

[25] The Supreme Court of Canada held in *RJR-MacDonald*, above, at p. 341, that "irreparable" refers to the nature of the harm suffered rather than its magnitude; it is harm which either cannot be quantified in monetary terms or which cannot be cured. It would include instances where one party will be put out of business by the court's decision.

[26] Normally, proof of irreparable harm cannot be inferred and evidence establishing irreparable harm must be clear and not speculative. However, here, there can be no direct evidence of harm because the Respondents are still supplying the Applicant with live chickens. The evidence relating to loss resulting in irreparable harm must, of necessity, be inferred. The relief sought in this application is akin to a *quia timet* injunction. The jurisprudence teaches that an applicant seeking a *quia timet* injunction may establish that it will suffer irreparable harm through inferences that can reasonably be drawn from the evidence. See: *Ciba-Geigy Canada Ltd. v. Novopharm Ltd.* (1994), 83 F.T.R. 161 at paras. 117-120. While the drawing of inferences that logically follow from the evidence is permitted in such circumstances, there must nevertheless be clear evidence showing how such harm will occur and why it will be irreparable. In the absence of such evidence, there is nothing on which inferences of irreparable harm can reasonably and logically be based. See: *Bayer HealthCare AG and Bayer Inc. v. Sandoz Canada Inc.*, 2007 FC 352 at para. 35.

[27] The Respondents Dynaco and Acadia contend that because of the small number of live chickens they respectively supply to the Applicant, there can be no irreparable harm as a result of their supplies being cut off. I continue to be of the view that there is sufficient evidence of ties between the Respondents which allows me to consider, for the purposes of this application for interim relief, the Respondents' supply collectively.

[28] I reject the Respondents' argument that irreparable harm, if any, can only be sustained for losses which result from a reduction of supply below the Applicant's self declared viability level. The Applicant's evidence is that it can be viable at 350,000 live chickens per week and in September 2008, it will have almost this number of live chickens. However, viability is not the starting point for an analysis of irreparable harm. In my view, companies can suffer irreparable harm long before they hit the point where they are no longer viable.

[29] The most compelling evidence adduced by the Applicant about irreparable harm is the evidence regarding the loss of profits that would be suffered by the Applicant should supply

from the Respondents be terminated. Mr. Tavares, the Applicant's affiant, attests that "each 100,000 chickens represent approximately 150,000 kg of saleable product with a selling value of approximately \$3/kg or \$450,000." The profit on this volume would be approximately 50¢/kg or \$75,000. Accordingly, the removal of "Westco's 186,230 birds alone would cause revenue loss of over \$830,000 per week, and loss of profits of more than \$139,000 per week." Mr. Tavares states that "[b]ecause of the high level of fixed costs, loss of the Westco birds alone would reduce profits by about 50% on an annualized basis." This evidence is not contested by the Respondents. It is clear evidence showing how the harm alleged will occur. It is irreparable because the Tribunal has no authority to award damages should the Applicant meet with success on the underlying application. Further, the Respondents have not provided an undertaking to compensate for the stated losses, should they not be successful on the application.

[30] The Applicant also asserts irreparable harm concerning the damage to its customer base over the past 18 years, including loss of confidence and goodwill and potential loss of market share and customers. Given the significant volume of live chickens involved, 46% of the Applicant's total current supply, the impact on the Applicant of such a disruption of supply is, in my view, overwhelming. I am prepared to infer that irreparable harm can reasonably and logically result to the Applicant's customer base in such circumstances. This inference can be drawn because a reduction in supply of this magnitude necessarily implies that the Applicant will be unable to continue to provide its customers with the level of service it currently provides, since it will simply not have sufficient supply of live chickens to do so. The Applicant may be able to replace some of its live chickens from other suppliers, essentially from outside New Brunswick, as recent experience indicates. However, I am prepared to infer, based on the record, that such efforts are unlikely to sufficiently address the very significant deficiency in supply in the short term.

[31] The Applicant has failed to adduce any direct evidence that it would default in its contractual commitments to its customers. There is only the affidavit evidence of Mr. Tavares who asserts that "[i]nterruption of supply would create an immediate inability to fulfill the needs of Nadeau's customers." There is, nevertheless, sufficient evidence on the record upon which the inference of irreparable harm to the Applicant's customer base can reasonably and logically be based, and I so find.

[32] It can also be inferred, based on the record before me, that a reduction of supply of this magnitude will have a significant impact on the operational efficiencies of the St-François Plant. Reducing operations to $\frac{3}{4}$ of one shift per day cannot be as efficient or as profitable as operating at one or two shifts per day, since the fixed overhead costs remain the same.

[33] Finally, the record shows that the Applicant has not, historically, relied on producers from outside New Brunswick. The current supply from Nova Scotia and Prince Edward Island is recent and results from a shortage of processing capacity in Nova Scotia, which apparently, is a short term situation. Also, there is evidence of a recent contract for 25,000 live chickens to be supplied from Nova Scotia. Further, the evidence does clearly establish that there is a benefit to the Applicant in accessing its supply of live chickens from its nearest suppliers. This is not an insignificant component of the cost of doing business, particularly given the recent increases in fuel costs. There is also evidence to establish other difficulties associated with transporting live

chickens long distances, such as the Canadian climate, the condition of the birds upon arrival and transportation requirements. On the evidence, I can infer that live chickens supplied from Nova Scotia or from more distant suppliers will generally cost more to the Applicant than those obtained through its traditional New Brunswick supply.

[34] The Respondents argue that the Applicant has a duty to mitigate by purchasing live chickens from other producers. This would necessarily entail accessing supply outside New Brunswick since the Respondents collectively produce almost 75 % of New Brunswick's total quota. There would simply be insufficient supply left in New Brunswick to replace the Applicant's lost volume. Additionally, this would involve extra costs for the Applicant.

[35] The Applicant relies on *Quinlan's*, above, in support of its contention it has no duty to mitigate. In *Quinlan's*, the Tribunal had this to say at paragraph 25:

In my view, when bringing a case under section 75 of the Act, there is no duty to mitigate damages by entering into supply arrangements to replace the items at issue in the case. *Quinlan's* was a H-D [Harley-Davidson] dealer and, if it can prove its case, it may continue to be a H-D dealer. It is unrealistic to suggest that, pending a final ruling on its access to H-D products, it is required to make supply agreements with other motorcycle manufacturers. It may choose to do so, but to require it to do so is contrary to the scheme of section 75.

[36] In my view *Quinlan's* does not stand for the general proposition that there is no duty to mitigate in refusal to deal cases. The case can be distinguished on the facts and finds no application here. In *Quinlan's*, the Tribunal was saying that on an interim basis no duty to mitigate is present when mitigation involves a fundamental change to the nature of an applicant's business. In *Quinlan's*, the Applicant was an exclusive Harley-Davidson dealer. It could not be expected to mitigate the loss of supply of Harley-Davidson motorcycles by attempting to secure supply from another manufacturer.

[37] Here the Applicant is dealing in a commodity, live chickens. On the evidence, there is nothing exclusive about the live chickens the Applicant requires in order to operate. Save for the complications and additional costs associated with the transportation of live chickens from longer distances, which may be significant, a chicken is a chicken. I reject the Applicant's contention that it had no duty to mitigate. It could not sit idly by and make no attempt to secure additional live chickens when faced with the loss of about half of its supply. However, what is adequate mitigation will turn on the circumstances of each case.

[38] In this case, the Applicant's failure to mitigate is of little or no consequence. This is so because of the magnitude of the lost supply. On the record before me, it can be inferred that even if the Applicant had been diligent in its efforts to mitigate, such efforts could not have resulted in the replacement of the lost supply of live chickens in the short or medium term.

[39] In this case, the volume of live chickens at issue is very significant. It represents 46% of the Applicant's current supply, most of which is from New Brunswick. The impact of the loss of

such a volume would be overwhelming to any processor. I am therefore satisfied on the record before me and for the above reasons, that interruption of the stated supply from the Respondents constitutes irreparable harm to the Applicant for the purposes of this application.

C. Balance of Inconvenience

[40] Finally, I turn to the last part of the test: balance of inconvenience.

[41] The Applicant asserts that the inconvenience it will suffer, should interim relief be withheld, is more substantial than the inconvenience the Respondents will suffer if interim relief is granted. It contends that it will suffer a massive loss of revenue and profits, that it will have to lay off employees, and that it will lose customers, confidence, and goodwill.

[42] The Respondent Westco asserts that the balance of inconvenience favours Westco. Westco's affiant attests that Westco's profits from the sale of its live chickens to Olymel, pursuant to the partnership agreement, would be superior to those resulting from its dealings with the Applicant. According to Westco's evidence, Olymel will also share with Westco a percentage of the profits generated by the processing of the live chickens. Westco further submits that an interim supply order will delay the implementation of its decision to integrate chicken processing in its business plan which will also lead to delay in the construction of the new processing facility.

[43] All three Respondents contend in their submissions that an interim order by the Tribunal would limit their freedom to choose to whom to sell their live chickens.

[44] In the balance of inconvenience test, the Tribunal must determine which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits. See: *RJR-MacDonald*, above, at p. 342.

[45] I am of the view that the balance of inconvenience in this case weighs in favour of the Applicant and is not offset by the harm that the Respondents will suffer if relief is granted. The evidence adduced by the Applicant establishes that without the Respondents' live chickens, there will be a significant loss of profits, a significant impact on the operational efficiencies of the Applicant's St-François Plant, and a significant harm to the Applicant's customer base. I have accepted, for the purposes of this application, that irreparable harm on this basis has been established.

[46] The Respondent Westco has tendered evidence of the quantum of financial losses it will allegedly incur should the order for interim relief be granted. In the circumstances of this case, the inconvenience associated with harm to the Applicant's existing enterprise outweighs the inconvenience that would flow from delaying the implementation of the Respondent Westco's business plan or partnership agreement. In the Applicant's case, what is at stake is more than a loss of profits, but also a significant impact on its customer base and on the operational efficiencies of its existing plant, while the Respondent Westco's losses are limited to reduced profits in the interim.

[47] Further, the evidence in respect of the major project contemplated by the partnership, namely the new processing plant in New Brunswick, is uncertain as the project has not yet advanced to the point where evidence regarding, for example, the location of the new processing facility and the commencement of construction, is readily available. The Respondent Westco has not adduced its partnership agreement with Olymel or any other agreement regarding the partnership or the construction of the new processing plant.

[48] In the circumstances of this case, I am satisfied that the inconvenience to the Applicant, should interim relief be withheld, outweighs the inconvenience the Respondents will suffer if interim relief is granted.

D. Tribunal's Discretion to Issue Interim Relief

[49] The Respondent Westco contends that the Tribunal should refuse to exercise its discretion to grant an order. An interim order would, according to the Respondents, be contrary to the spirit of the *Competition Act* because it would guarantee the Applicant's dominant position in the New Brunswick chicken processing market. The Respondents should be able to select the customers to whom they wish to sell their live chickens.

[50] The Respondents also refer to a bill recently passed by the New Brunswick legislature; Bill 81, *An Act to Amend the Natural Products Act* (2d Sess., 56th Leg., New Brunswick, 2008) which gives the New Brunswick Minister of Agriculture the power to designate the plants where chickens may be processed. The Respondents indicate that the New Brunswick legislature has therefore exercised its constitutional power to address the situation at issue and that the Tribunal, in such circumstances, should refuse to exercise its discretion to grant interim relief. The Respondents do not explicitly assert that the Tribunal does not have jurisdiction to issue the relief sought, they merely contend that out of "caution", the Tribunal should "read down" the powers it has pursuant to section 104 ("il est prudent et constitutionnellement préférable de donner, aux importants pouvoirs que la loi [...] accorde [au Tribunal] en vertu de l'article 104, une interprétation atténuée de manière à éviter un éventuel conflit constitutionnel". See : Hearing Transcript, p. 185).

[51] Subsection 104(1) of the Act provides that the Tribunal "may" issue such interim order as it considers appropriate. Such an order shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

[52] I am not convinced that the Tribunal should refuse to exercise its discretion to grant an interim order by reason of the passage of Bill 81. The debates surrounding Bill 81 indicate that the Minister of Agriculture was aware of the proceedings before the Competition Tribunal and that the power set out in Bill 81 is meant to constitute a temporary measure. Further, the Bill has not yet been proclaimed in force and, in my view, the alleged conflicts, constitutional or otherwise, are speculative at this stage.

[53] The Tribunal's power to grant interim relief pursuant to section 104 of the Act in no way conflicts with the spirit of the *Competition Act*. The provision provides for a temporary measure pending a final disposition of the matter on its merits.

IV. CONCLUSION

[54] In the circumstances, I am satisfied that the Applicant has satisfied the tripartite conjunctive test for the granting of an interlocutory injunction.

[55] In consequence, an order granting the interim relief sought will be granted.

FOR THESE REASONS THE TRIBUNAL ORDERS THAT:

[56] The Application for Interim Relief is granted.

[57] The Respondents are to continue to supply the Applicant with live chickens on the usual trade terms at the current level of weekly supply, namely 271,350 live chickens.

[58] This requirement to supply will last until a final decision is made on the merits of the application under section 75 of the Act. This volume of supply is to be reduced by 25,000 live chickens per week upon the first delivery of the live chickens to the Applicant expected from Nova Scotia in September, 2008, and further reduced by any other supply of live chickens the Applicant may secure during this interim period.

[59] Absent agreement between the Respondents, the reductions in supply contemplated above shall be prorated on the basis of the current level of supply of each Respondent to the Applicant.

[60] The Applicant shall have its costs on the application.

DATED at Ottawa, this 26th day of June 2008.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Edmond P. Blanchard

APPEARANCES:

For the applicant:

Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited

Leah Price
Andrea McCrae

For the respondents:

Groupe Westco Inc.

Éric C. Lefebvre
Denis Gascon
Martha A.Healey

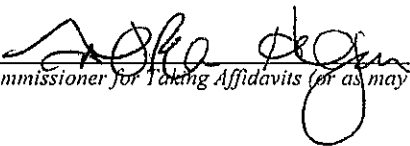
Groupe Dynaco, Coopérative Agroalimentaire

Paul Routhier
Olivier Tousignant

Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc.

Pierre Beaudoin
Valérie Belle-Isle

This is Exhibit "G" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011

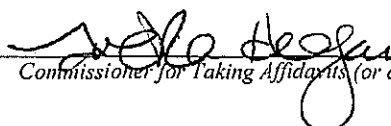


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "H" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "I" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubino LLP,
Barristers and Solicitors.
Expires March 22, 2013.



Canada

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Corporations Canada

Federal Corporation Information

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Corporation Number

7062389

Business Number (BN)

836101295RC0001

Governing Legislation

Canada Business Corporations Act -
2008-10-16

Corporate Name

SUNNYMEL GP INC.

Status

Active

Registered Office Address

9 Westco Road
 Saint-François-de-Madawaska NB E7A 1A5
 Canada

Active CBCA corporations are required to update this information within 15 days of any change.

Directors

Minimum Maximum

1 10

Directors

THOMAS SOUCY

Bertin Cyr

Denis Guay

Denis Richard

Rodrigue Nadeau

Réjean Nadeau

Email or fax Corporations Canada to obtain addresses of directors.

Active CBCA corporations are required to update this information within 15 days of any change.

Annual Filings

Anniversary Date (MM-DD)

10-16

Date of Last Annual Meeting

2009-12-09

Annual Filing Period (MM-DD)

10-16 to 12-15

Type of Corporation

Non-distributing corporation with 50 or fewer shareholders

Status of Annual Filings

2011 - Not due

2010 - Filed

2009 - Filed

Corporate History

Corporate Name History

2008-10-16 to Present

SUNNYMEL GP INC.

Certificates Issued

Certificate of Incorporation

2008-10-16

Date Modified: 2011-08-17

This is Exhibit "J" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.



General Information

Reference Number: 641002
Name: Sunnymel Limited Partnership/
Sunnymel, Société en commandite
Registration Date: 2008-10-20
Category Code: 53
Category: limited partnership - Limited Partnership Act
Status Code: A
Status: Active
Last Status Change Date: 2008-10-20

Renewal Information**Business Address**

Address: 9 Westco Road St-Francois de Madawaska NB E7A 1H5

General Partners

Name: Sunnymel GP Inc.
Address: 9 Westco Road St-Francois de Madawaska NB E7A 1H5

This is Exhibit "K" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011

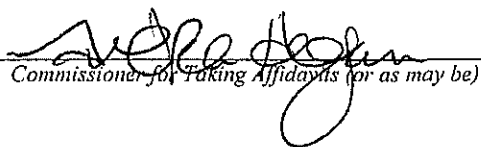


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Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubinoff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "L" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011




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Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A


This is Exhibit "M" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors,
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "N" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubinfeld LLP,
Barristers and Solicitors.
Expires March 22, 2013.

File No.: CT-2008-004

COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 75 of the *Competition Act*.

BETWEEN:

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Applicant

AND

**GROUPE WESTCO INC. AND GROUPE DYNACO, COOPÉRATIVE
AGROALIMENTAIRE AND VOLAILLES ACADIA S.E.C. AND
VOLAILLES ACADIA INC./ACADIA POULTRY INC.**

Respondents

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant, Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited ("Nadeau"), will make an urgent motion to the Competition Tribunal (the "Tribunal"). Nadeau respectfully requests that the within motion be disposed of based on the written record, pursuant to Rule 84(1) of the *Competition Tribunal Rules*.

THE MOTION IS FOR:

1. An Order pursuant to section 8 of the *Competition Tribunal Act* requiring the Respondents, Groupe Westco Inc. ("Westco"), Groupe Dynaco, Coopérative Agroalimentaire ("Dynaco"), Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc. (collectively, "Acadia"), to forthwith show cause why they should not be held in contempt of the Tribunal's Order dated June 26, 2008;

2. In the alternative, an Order pursuant to section 8 of the *Competition Tribunal Act* requiring Westco to forthwith show cause why it should not be held in contempt of the Tribunal's Order dated June 26, 2008, based on the admissions contained in a letter from counsel for Westco dated October 29, 2008;
3. An Order pursuant to Rules 2 and 5 of the *Competition Tribunal Rules* setting an expedited schedule for the hearing of this motion, and in particular:
 - (a) an Order requiring the Respondents to deliver their responding materials, if any, within two (2) days of receipt of the Applicant's Motion Record;
 - (b) an Order requiring the parties to deliver supplementary evidence, if any, two (2) days thereafter;
 - (c) an Order dispensing with Memoranda of Fact and Law;
4. The costs of this motion, payable forthwith; and
5. Such further or other Order as this Honourable Tribunal may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. By Order dated June 26, 2008 (the "Interim Order"), the Competition Tribunal (the "Tribunal") ordered that:

[57] The Respondents are to continue to supply the Applicant with live chickens on the usual trade terms at the current level of weekly supply, namely 271,350 live chickens.

[58] This requirement to supply will last until a final decision is made on the merits of the application under section 75 of the Act. This volume of supply is to be reduced by 25,000 live chickens per week upon the first delivery of the live chickens to the Applicant expected from Nova Scotia

-3-

in September, 2008, and further reduced by any other supply of live chickens the Applicant may secure during this interim period.

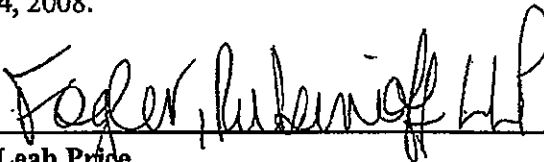
2. By letter dated July 17, 2008, counsel for Nadeau advised counsel for the Respondents that Nadeau had begun receiving an extra 25,000 chickens (sometimes referred to as "heads") per week from Nova Scotia;
3. By letter dated August 22, 2008, counsel for Nadeau advised counsel for the Respondents that Nadeau would begin receiving another 6,250 heads per week, commencing on September 15, 2008 (quota period A-87);
4. Under the terms of the Interim Order, taking into account the permitted reductions set out above, the Respondents are required to supply Nadeau with a collective total of 240,100 heads per week, from and after September 15, 2008;
5. The Respondents have breached, and are continuing to breach, the Interim Order. There have been, and will continue to be, significant short deliveries of chickens from the Respondents, as follows:
 - (a) *Actual* deliveries for the first 7 weeks of quota period A-87 have been short by 172,088 heads; and
 - (b) *Scheduled* deliveries for the last week of quota period A-87 (week 8) are projected to be short by another 74,600 heads;
6. In total, Nadeau will be short 246,688 chickens for period A-87;
7. Counsel for Nadeau has requested that the Respondents reinstate compliance with the terms of the Interim Order;

8. The Respondents have refused to reinstate compliance with the terms of the Interim Order;
9. Counsel for Westco, in a letter dated October 29, 2008, has:
 - (a) Confirmed that Westco has taken 100% of the benefit of the reduction from 271,350 to 240,100 heads per week;
 - (b) Admitted that Westco is sending far fewer heads than are required under the terms of the Interim Order; and
 - (c) Admitted that Westco is supplying, *as its first priority*, 31,250 heads to Olymel;
10. The Respondents have delivered schedules for projected deliveries for the period A-88, which continue to show significant projected shortfalls;
11. The Respondents' conduct is deliberate, contumelious and intentional; and
12. Section 8(3) of the *Competition Tribunal Act*, and Rules 2, 5, 84(1), 85 and 87 of the *Competition Tribunal Rules*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Yves Landry, sworn November 4, 2008.

Dated at Toronto this 4th day of November, 2008



Leah Price

Andrea McCrae

Joshua Freeman

FOGLER, RUBINOFF LLP

Barristers and Solicitors

-5-

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Solicitors for the Applicant

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Denis Gascon
Eric C. Lefebvre
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Tel: 514 847 4747
Fax: 514 286 5474

Solicitors for Groupe Westco Inc.

AND TO: JOLI-COEUR, LACASSE, GEOFFRION, JETTE, ST-PIERRE
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Paul Routhier
Paul Michaud
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Solicitors for Groupe Dynaco, Coopérative Agroalimentaire

AND TO: LAVERY, DE BILLY s.e.n.c.r.l.
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Pierre Beaudoin
Valérie Belle-Isle
Tel: 418-266-3068
Fax: 418-688-3458

Solicitors for Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc.

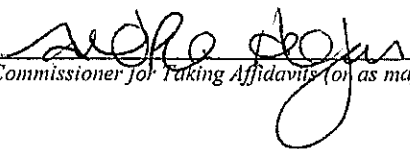
This is Exhibit "O" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubino LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

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sworn September 29, 2011


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubino LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

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sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

Competition Tribunal**Tribunal de la Concurrence**

Reference: *Nadeau Poultry Farm Limited v. Groupe Westco Inc. et al.*, 2009 Comp. Trib. 3

File No.: CT-2008-004

Registry Document No.: 0455

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 75 of the *Competition Act*;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Interim Order pursuant to section 104 of the *Competition Act*;

AND IN THE MATTER of a Motion by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for a Show Cause Order;

AND IN THE MATTER of a Motion by the Respondent Groupe Westco Inc. for an Order or Direction regarding the Tribunal's Interim Supply Order.

B E T W E E N:

**Nadeau Ferme Avicole Limitée/
Nadeau Poultry Farm Limited**
(applicant)

and

**Groupe Westco Inc. and Groupe Dynaco, Coopérative Agroalimentaire, and Volailles
Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc.**
(respondents)

Dates of hearing: 20090209 to 20090210

Presiding Judicial Member: Blanchard J.

Date of Reasons and Order: February 26, 2009

Reasons and Order signed by: Justice Edmond P. Blanchard

**REASONS FOR ORDER AND ORDER REGARDING APPLICANT'S MOTION FOR A
SHOW CAUSE ORDER**

[1] The Applicant, Nadeau Ferme Avicole Limitée/Nadeau Poultry Farms Limited (the "Applicant"), brings a motion for an Order pursuant to section 8 of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.) requiring the Respondents, Groupe Westco Inc. ("Westco"), Groupe Dynaco, Coopérative Agroalimentaire ("Dynaco"), Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc. (collectively, "Acadia"), to show cause why they should not be held in contempt of the Tribunal's Interim Order dated June 26, 2008 ("Interim Order"). It seeks in the alternative, the aforementioned Order against the Respondent Westco only.

[2] The test to be followed on a motion for a show cause order was set out by Justice Pratte in *R. v. Perry*, [1982] 2 F.C. 519 at 525 (F.C.A.), wherein he stated the following:

This decision is, in my view, ill founded. The Judge below did not have to determine whether the air controllers had displayed "an attitude of defiance and public disrespect" towards the injunction previously pronounced by Mr. Justice Walsh. He did not have, either, to try and anticipate what would be the ultimate judgment of the Court if the show cause order were issued. His duty was to determine whether the affidavit evidence filed in support of the application for a show cause order established, prima facie, that the persons or some of the persons mentioned in Schedule A to the notice of motion had breached the injunction pronounced by Mr. Justice Walsh. If the evidence established a prima facie breach of the injunction, the Judge had to issue the show cause order sought unless the evidence showed clearly that the violation of the injunction was so unimportant or had taken place in such circumstances that it be absolutely certain that it did not deserve to be punished.

(my emphasis)

[3] This test articulated by Justice Pratte in *Perry* was subsequently adopted by the Tribunal in *Canada (Director of Investigation and Research) v. Chrysler Canada Ltd.* (1992), 44 C.P.R. (3d) 430, [1992] C.C.T.D. No. 9 (QL).

[4] The obligations as set out in the Interim Order are clear. The Respondents are to supply the Applicant with 271,350 live chicken per week save for any replacement supply of live chicken the Applicant may secure during the interim period.

[5] The Applicant asserts that given the wording of the Interim Order, the Respondents are collectively responsible to supply Nadeau with the weekly amount of 271,350 live chicken. In this regard, it is recognized that none of the Respondents could be fully liable under the terms of the Interim Order. And, the Tribunal in its Interim Order explicitly contemplates a prorated approach in the eventuality that the Respondents fail to agree on the apportionment of the reduction:

[59] Absent agreement between the Respondents, the reductions in supply contemplated above shall be prorated on the basis of the current level of supply of each Respondent to the Applicant.

[6] For these reasons, it is appropriate to consider the parties' positions and obligations separately. Given the evidence provided during the hearing on the interim application, the prorating of their collective obligation would be as follows:

- (a) 186,230 chickens per week from the Respondent Westco;
- (b) 26,450 chickens per week from the Respondent Dynaco; and
- (c) 58,670 chickens per week from the Respondent Acadia.

[7] In the circumstances and given the Respondents' admissions that they have not supplied the required numbers of chicken, there is *prima facie*, a breach of the Interim Order by all Respondents.

[8] However, it does not necessarily follow that a show cause order will issue against all the Respondents. I have concluded that Acadia and Dynaco should not be the subject of such an order because their failure to comply is largely explained by the reduction in quota. The Tribunal is of the opinion that both parties would have been in compliance with its Interim Order but for the reduction. The Tribunal has thus concluded that the violation took place in circumstances in which it is "absolutely certain that it did not deserve to be punished."

[9] That said, I must note that neither party made any effort to come into compliance with the Interim Order after quotas were reduced. Reasonable simple steps could have been taken to avoid being in contempt such as seeking a variation in the Interim Order or relief from quota obligations. Tribunal orders are important and should not be ignored. Concerns regarding a party's ability to comply with the terms of an order should be addressed to the Tribunal as soon as they arise.

[10] The Respondent Westco has asserted, during the hearing of the show cause motion, that quota reductions are not the only reason why it cannot comply with the Interim Order:

LE PRÉSIDENT: Alors, essentiellement, ce que vous avancez, Maître Lefebvre, c'est que c'est les quotas. On ne peut se conformer à l'ordonnance telle qu'elle est écrite en raison des ajustements de quotas, si je comprends bien?

Me LEFEBVRE: Pas en ce qui concerne Westco, de deux choses: l'une, le quota fait en sorte qu'on doit inévitablement réduire la production et Westco doit -- Nadeau doit accepter, comme par le passé, que quand la production est réduite, elle va recevoir moins de poulets. Deuxième volet, Westco -- et c'est clairement indiqué dans notre mémoire -- ne peut pas, comme l'a suggéré Nadeau, tout simplement élever plus de poulets et les sortir plus tôt pour qu'ils aient un poids moyen plus petit et ça en raison du fait que le type génétique de poulet que Westco élève fait en sorte qu'elle doit être vaccinée à un moment précis et, après le vaccin, le poulet doit passer un certain nombre de jours avant d'être abattu.

There is important evidence to suggest that Westco is the only party to significantly change its supply of chicken to the Applicant in relation to its historic practices. Westco has been involved in increasing the size of chicken since September of 2008 thereby significantly reducing the

numbers of chicken delivered to Nadeau. The increase in size is problematic for Nadeau because of its customers' specifications. Nadeau contends that Westco has had ample time to adjust its production size to meet the terms of the Interim Order. It is recognized and acknowledged by Nadeau that both Acadia and Dynaco have continued to supply chicken in acceptable sizes and in accordance with past practice.

[11] I find that the Applicant has established, *prima facie*, that Westco has breached the Interim Order and that it is not "absolutely certain that it did not deserve to be punished". Whether Westco is indeed in contempt of the stated order or whether it can justify their activities are issues which would be better left for determination at a contempt hearing with a fulsome record.

FOR THESE REASONS, THE TRIBUNAL ORDERS THAT:

[12] The motion is dismissed with respect to Acadia and Dynaco without costs.

[13] The motion is granted with respect to Westco and a show cause hearing is hereby ordered.

[14] The Respondent Westco shall appear before the Tribunal on a date to be subsequently determined to hear proof of the act with which it is charged (to use the wording of Rule 467(1)(b) of the *Federal Courts Rules*, SOR/98-106), namely:

That commencing on or about September 15, 2008 and continuously thereafter, it has failed to supply live chicken to the Applicant in the numbers stipulated in the Tribunal's Interim Order, dated June 26, 2008.

[15] The Respondent Westco shall be prepared to present any defence that it may have at the contempt hearing.

[16] A case management conference will be held at a time and place to be determined in order to set a date for the contempt hearing.

DATED at Vancouver, this 26th day of February, 2009.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Edmond P. Blanchard

COUNSEL:

For the applicant

Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited

Leah Price
Joshua Freeman

For the respondents

Groupe Westco Inc.

Éric C. Lefebvre
Geoffrey Conrad
Martha Healey

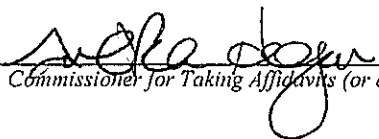
Groupe Dynaco, Coopérative Agroalimentaire

Olivier Tousignant

Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc.

Valérie Belle-Isle

This is Exhibit "R" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

File No. / Dossier no.: CT-2008-004

Competition Tribunal

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended

IN THE MATTER OF an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 103.1 granting leave to make application under section 75 of the *Competition Act*.

AND IN THE MATTER OF an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Interim Order pursuant to section 104 of the *Competition Act*.

BEFORE / DEVANT :

The Honourable Justice Blanchard

Chairperson

BETWEEN / ENTRE :

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Applicant

- AND -

**GROUPE WESTCO INC. AND GROUP DYNACO, COOPÉRATIVE
AGROALIMENTAIRE AND VOLAILLES ACADIA S.E.C. AND
VOLAILLES ACADIA INC./ACADIA POULTRY INC.**

Respondents

TENU À / HELD AT :

Competition Tribunal
Suite 600
90 Sparks Street
Ottawa (Ontario)

Tribunal de la concurrence
Suite 600
90, rue Sparks
Ottawa (Ontario)

November 4, 2009

Le 4 Novembre 2009

1 de poulets à Nadeau?

2 M. SOUCY: J'ai compris cette ordonnance-là
3 comme étant une ordonnance de continuer ce que je faisais
4 dans le passé.

5 Me LEFEBVRE: À savoir?

6 M. SOUCY: Ce que je veux dire, j'ai pas
7 pris cette ordonnance-là comme le passé c'est-à-dire si je
8 m'explique bien, le passé était que je fournissais toute ma
9 production à Nadeau.

10 Me LEFEBVRE: Oui.

11 M. SOUCY: C'était pas un nombre de têtes,
12 c'était toute ma production. Ma production est exprimée en
13 kilos. Et Monsieur Tavares a probablement induit la Cour
14 en erreur un peu en essayant de mettre ça par têtes de
15 poulets.

16 Me LEFEBVRE: Soit ça ou il voulait
17 simplifier ça pour ---

18 M. SOUCY: Ou peut-être qu'y voulait
19 simplifier ça, mais il a exprimé en têtes de poulets, on va
20 dire à raison de simplification. Mais le quota n'est pas
21 établi en têtes de poulets, le quota est établi en kilos.
22 Et je ne produis pas des têtes de poulets, je produis des
23 kilos. Mon but ultime c'est de produire ma production et
24 ma production est donnée et allouée en kilos.

25 Alors quand j'ai lu ce jugement, la façon

1 que moi je l'ai interprété c'est que la Cour me demandait
2 de produire toute ma production et me donnait une
3 permission, que si Nadeau avait du quota excédentaire de
4 d'autres fournisseurs autre que sa base, que j'étais
5 capable de déduire ça. Alors, on connaissait dans le temps
6 qui avait 25,000 poulets qui rentraient on connaissait pas
7 ce qu'y n'avait d'autre.

8 Alors ma façon, parce que le quota est
9 établi en kilos, ma façon était de dire si la Cour
10 interprète qui a 186,000 poulets et que j'ai le droit de
11 sortir, exemple 13,000 poulets -- 25,000 poulets, ben y a
12 un pourcentage de 13 pourcent qui peut aller ailleurs à mon
13 choix. Et y a 87 pourcent qui doit rester dans la province
14 avec le quota qui va me revenir, y a 87 pourcent de ce
15 quota que je vais continuer à fournir à Nadeau et y a 13
16 pourcent de ce quota que c'est à mon gré de fournir à qui
17 que je veux qui est une représentation de 25 186^{ième}.

18 Me LEFEBVRE: À cet égard, Monsieur Soucy,
19 vous avez le temps de prendre une autre gorgée d'eau. Nous
20 allons vous distribuer à vous, au Tribunal et à nos
21 confrères copie d'un document, lequel est intitulé:
22 "Groupe Westco Inc. Sommaire des livraisons".

23 M. SOUCY: Oui.

24 Me LEFEBVRE: Alors, Monsieur Soucy est-ce
25 que vous reconnaissez ce document?

1 M. SOUCY: Oui.

2 Me LEFEBVRE: Et quel est le montant de
3 kilogrammes ou le nombre devrais-je dire de kilogrammes
4 livré à Nadeau pour cette période A86?

5 M. SOUCY: On voit les livraisons par
6 semaine, de semaine 1 à semaine 8, qui dit que j'ai livré
7 ce qu'on regarde à la ligne 107, "sommaire période", j'ai
8 livré 2,688,354 kilos à Nadeau pendant cette période.

9 Me LEFEBVRE: Parfait. Passons à la page
10 suivante, A87 cette fois-ci.

11 M. SOUCY: Oui.

12 Me LEFEBVRE: Je comprends que c'est la --
13 vous avez raison de penser que c'est la même opération de
14 mathématique qui est effectuée au bas de page.

15 M. SOUCY: Exactement, c'est toute la même
16 opération de mathématique, exceptée la ligne 151. Et la
17 ligne 151 que là on a eu un autre notice de Nadeau auquel
18 il nous disait que il recevrait du poulet additionnel de la
19 Nouvelle-Écosse de raison de 6,250.

20 Alors là notre formule changeait un peu,
21 parce que là je devenais 31 186^{ième} ou 16.78 pourcent de mon
22 allocation pouvait aller chez un abatteur de mon choix et
23 83.22 pourcent était ordonné d'aller chez Nadeau.

24 Me LEFEBVRE: Donc, le nombre de kilogrammes
25 que vous deviez, si on interprète l'ordonnance comme ça été

1 tous ces facteurs-là, je n'étais pas capable de lui
2 produire ce qu'il me demandait et j'étais pas capable de
3 produire un poulet sexé non plus comme y voulait avoir ou
4 comme y avait dans le passé. C'est plus la génétique.
5 C'est plus la race. C'est plus ça que je faisais.

6 La meilleure comparaison que je peux vous
7 donner sur ça, Maître Lefebvre, c'est que j'avais des
8 pommiers et je produisais des pommes pour Nadeau. Et en
9 2007, j'ai fait une entente avec Olymel et à mesure que mes
10 pommiers -- à mesure que j'avais cultivé mes pommes, je
11 changeais mes pommiers pour des orangers parce que
12 l'oranger, le "tip" est bon. Et Olymel est un
13 transformateur de jus et Nadeau aussi.

14 J'ai tout coupé mes pommiers puis je les ai
15 tous remplacés avec des orangers. Rendu en juin, la Cour
16 m'ordonne de continuer à donner ma production à Nadeau. Je
17 peux continuer à fournir à Nadeau des oranges, mais j'ai
18 plus de pommes. Des pommes, j'en ai plus. C'est des
19 oranges.

20 Nadeau peut commencer à faire du jus
21 d'orange s'il veut mais moi c'est des oranges que j'ai. Et
22 si je veux revenir avec des pommiers, si je veux revenir
23 avec du poulet fast -- avec du "slow feather", si je veux
24 revenir avec du poulet plus petit, y faut que je change mes
25 pratiques. Y faut que je coupe mes orangers puis que je

1 replante des pommiers.

2 Me LEFEBVRE: Merci.

3 Vous avez entendu ce matin, Monsieur Soucy,
4 la Docteure Ouckama dire que les producteurs ou les
5 éleveurs de poulets peuvent acheter des œufs sur le marché
6 s'ils sont en pénurie.

7 Vous, n'auriez-vous pas pu tout simplement
8 acheter des œufs pour vous plier aux demandes de Nadeau
9 telles qu'elles ont été formulées lors de cette rencontre
10 de juillet 2008?

11 M. SOUCY: Mon expérience à acheter des œufs
12 d'un compétiteur n'est pas terriblement bonne. C'est pas
13 un succès déterminé.

14 Me LEFEBVRE: Maintenant, vous avez été
15 présent ici depuis lundi. Vous comprenez quelle est la
16 position de Nadeau quant à vos obligations de livraison aux
17 termes de l'Ordonnance intérimaire rendue le 28 juin 2008.

18 Expliquez-nous en quoi cette vision de
19 l'ordonnance, celle que prône Nadeau, est conforme ou non à
20 la relation d'affaire que vous aviez avec Nadeau avant
21 l'ordonnance et avec les normes de l'industrie.

22 M. SOUCY: Ben je crois que la façon que
23 Nadeau interprète l'ordonnance, y se donne des droits.
24 Notre relation avec Nadeau dans le passé était que je
25 fournissais 100 pourcent de ma production à Nadeau, mais je

This is Exhibit "S" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011


Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

File No. / Dossier no.: CT-2008-004

Competition Tribunal

IN THE MATTER of the Competition Act, R.S.C. 1985, c. C-34, as amended

IN THE MATTER OF an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 103.1 granting leave to make application under section 75 of the Competition Act.

AND IN THE MATTER OF an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Interim Order pursuant to section 104 of the Competition Act.

BEFORE / DEVANT :

The Honourable Justice Blanchard

Chairperson

BETWEEN / ENTRE :

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Applicant

- AND -

**GROUPE WESTCO INC. AND GROUPE DYNACO, COOPÉRATIVE
AGROALIMENTAIRE AND VOLAILLES ACADIA S.E.C. AND
VOLAILLES ACADIA INC./ACADIA POULTRY INC.**

Respondents

TENU À / HELD AT :

Competition Tribunal
Suite 600
90 Sparks Street
Ottawa (Ontario)

Tribunal de la concurrence
Suite 600
90, rue Sparks
Ottawa (Ontario)

November 5, 2009

Le 5 Novembre 2009

1 Si vous maintenez que je dois absolument faire des poulets
2 de 2 kilos, je maintiens que je peux "shipper mon poulet"
3 n'importe quand dans la semaine.

4 MR. FOLKES: Okay. I think my question was
5 a little different. I'm sorry if there was a problem with
6 the translation.

7 I'm asking you whether you want to maintain
8 your position that all of the changes listed on Exhibit R-
9 58 for the periods A89, A90 and A91 were done at Nadeau's
10 instance?

11 M. SOUCY: La plupart.

12 MR. FOLKES: All right. Thank you. Well we
13 may come back to that, sir.

14 Now, as of August 2007, I understand that
15 Westco entered into a partnership with Olymel. Am I
16 correct?

17 M. SOUCY: Oui.

18 MR. FOLKES: And from November 2007, I
19 believe you have already told me that Olymel was scheduling
20 the birds to Nadeau on behalf of Westco.

21 M. SOUCY: Oui.

22 MR. FOLKES: And I believe if I understood
23 your evidence yesterday, and please correct me if I'm wrong
24 because it could have been issues with the speed, that
25 after you formed that partnership, that is Westco and

1 Olymel, that Westco did everything it could to advance the
2 interests of the partnership.

3 Did I understand that evidence correctly?

4 M. SOUCY: Oui.

5 MR. FOLKES: And in fact, notice was served
6 on Nadeau that the supply to Nadeau was to be terminated on
7 July 20th of that year -- sorry, of '08; is that correct?

8 M. SOUCY: En janvier 2008, j'ai avisé
9 Nadeau pour juillet 2008, pour le 20 juillet.

10 MR. FOLKES: All right. And I believe I
11 understood your evidence yesterday to be that, from the
12 time you entered into the partnership with Olymel, it was
13 the intention of Westco to increase the size of its birds
14 they had shipped to accommodate Olymel's requests.

15 M. SOUCY: J'ai dit qu'on avait pris cette
16 décision-là avant, après avoir pris un enlignement avec
17 Olymel, oui.

18 MR. FOLKES: Okay. And I understand, and
19 correct me if I'm wrong, that the average weight that
20 Westco shipped starting in quota period A82 right up to A88
21 increased from an average weight per head of 2 kilograms up
22 to 2.29 kilograms; am I correct?

23 M. SOUCY: J'ai pas les chiffres devant moi.
24 Je peux dire qu'y a une augmentation mais j'aimerais voir
25 pour confirmer les chiffres.

1 THE CHAIRPERSON: Because the reason I ask
2 is these numbers are in another document, if my memory
3 serves me right, were not marked as confidential.

4 MR. FOLKES: I believe you're correct Your
5 Honour.

6 THE CHAIRPERSON: So that's why I asked.
7 Thank you.

8 MR. LEFEBVRE: If we give the time to the
9 witness ---

10 THE CHAIRPERSON: Yes.

11 MR. LEFEBVRE: --- to take a look at the
12 document, we'll get the information.

13 THE CHAIRPERSON: So let's mark it CR- --
14 I'm CA, what was it?

15 THE REGISTRAR: CA-74.

16 THE CHAIRPERSON: Seventy four (74) and
17 subject to Maître Lefebvre getting back to me.

18 MR. LEFEBVRE: Thank you.

19 --- EXHIBIT NO./PIÈCE NO. CA-74 (A-74):

20 Package of excerpts of three pages
21 attached to the Westco Memorandum of
22 Fact and Law

23 MR. FOLKES: Now, you were in the courtroom
24 when Mr. Landry gave evidence a few days ago; were you not,
25 Mr. Soucy?

1 M. SOUCY: Oui.

2 MR. FOLKES: And you heard him give evidence
3 that he required a continuing supply of smaller birds so
4 that he could serve the KFC or cut nine trade and the
5 barbecue trade; do you remember that evidence?

6 M. SOUCY: Oui.

7 MR. FOLKES: And I believe he also stated
8 that up until the issues arose between Westco and Nadeau
9 that led to these proceedings, that Westco provided between
10 30 and 50 percent of Nadeau's supply destined for the KFC
11 or cut nine markets; is that your recollection of his
12 evidence?

13 M. SOUCY: C'était son témoignage.

14 MR. FOLKES: Okay. Do you agree with that?

15 M. SOUCY: Ben, je sais pas c'est quoi qu'y
16 était son total. C'est du moins tu me demandes de faire un
17 pourcentage des numéros que je connais pas.

18 MR. FOLKES: Well. Perhaps I didn't make
19 myself clear. I'm talking about 30 to 50 percent of
20 Westco's production was directed to supply Nadeau for that
21 purpose. I'm sorry if I confused you.

22 MR. LEFEBVRE: --- of the supply to Nadeau,
23 that's why ---

24 MR. FOLKES: By Westco to Nadeau, I'm sorry.

25 M. SOUCY: Peut-être 30 pourcent.

1 THE CHAIRPERSON: I'm sorry. What was the
2 answer?

3 M. SOUCY: Peut-être 30 pourcent.

4 MR. FOLKES: All right. Thank you. So
5 would it not be reasonably clear that Nadeau relied upon
6 Westco to supply the live birds in the size that was
7 required by KFC which I'll call roughly the 1.75 kilograms
8 per head live stock; is that not reasonable?

9 M. SOUCY: Ben, on avait quand même donné
10 une notice à Nadeau de six mois que à partir du 20 juillet
11 qu'on les fournirait pas aucun poulet.

12 Fait que je pense que c'était un peu
13 déraisonnable d'eux autres de penser que -- de prendre pour
14 garantie que la Cour leur donnerait le 104.

15 Et nous, avant le jugement du 104, les
16 décisions qu'on a faites, on avait le droit de le faire.
17 Parce qu'y avait pas personne dans le passé qui nous avait
18 imbrimé nos droits de faire ça.

19 MR. FOLKES: All right. Well, Nadeau
20 applied to the Competition Tribunal on March 17th, 2008; do
21 you remember that?

22 M. SOUCY: Oui.

23 MR. FOLKES: And in that application, Nadeau
24 requested an interim order that supply -- sorry, Nadeau
25 requested and in the interim order that the supply from

1 Westco continue to Nadeau for slaughter.

2 M. SOUCY: Oui.

3 MR. FOLKES: And did you take any measures
4 to slow down or stop your program to increase the sizing of
5 your production after you got that notice?

6 M. SOUCY: C'est un peu difficile pour nous
7 autres de faire ça. Hier, je vous ai expliqué les genres
8 de cycle qu'on avait, les longueurs de cycle.

9 Et puis, j'aurais jamais pu anticiper la
10 façon que le jugement aurait sorti. C'était imprévisible
11 pour tout le monde.

12 C'était dur pour nous autres de changer une
13 planification qui était financièrement bonne pour Westco,
14 de la changer du jour au lendemain.

15 MR. FOLKES: All right.

16 Now, on June 26th, 2008, His Honour granted
17 an Order compelling Westco to supply Nadeau on an interim
18 basis. You're familiar with that Order; are you not?

19 M. SOUCY: Oui.

20 MR. FOLKES: So that is more than three
21 months after you had notice of Nadeau's application;
22 correct?

23 M. SOUCY: Oui.

24 MR. FOLKES: After you got that Order, what
25 changes did you make in your organization to accommodate

1 the requirements of that Order to supply Nadeau?

2 M. SOUCY: On a -- c'est un procédé à long
3 terme, puis je peux pas me rappeler quand après qu'on a eu
4 la motion, quand on l'a fait, mais on a commencé à -- on a
5 cancellé certaines ordres de breeder à Cobb, puis on a
6 remis dans nos livres de commandes des breeders Ross, mais
7 ça prend quand même une période de temps à faire avant que
8 les breeder rentrent et qu'ils soient en production.

9 Mais présentement on va avoir des œufs de
10 des poulettes Ross qui vont rentrer chez nous dans à peu
11 près cinq mois. On a des poulettes en cycle.

12 MR. FOLKES: All right.

13 Now, let me ask you a question about the
14 short term. I understand your evidence that you're
15 implementing a plan to change your operations with the Ross
16 birds, and I'll ask you a little bit about that later.

17 But I'm asking on a short-term basis, sir.
18 After June 26, 2008, what steps did you take to change this
19 continually increasing of the average size of your
20 production to accommodate the Order?

21 M. SOUCY: C'est -- je vous ai dit hier j'ai
22 -- c'est difficile -- on a de la difficulté pour nous à
23 changer du jour au lendemain. Monsieur Landry a admis que
24 pour changer ses producteurs de Nouvelle-Écosse, pour
25 changer ses producteurs du sud, ça prend au moins quatre

1 mois.

2 Chez nous ça se fait pas vite comme ça,
3 première chose.

4 Deuxième chose, on n'a pas l'espace
5 nécessaire pour le faire.

6 Et la troisième chose, on a des programmes
7 instaurés chez nous en tant que moulée et vaccins qui nous
8 permettent pas de se virer sur un 10 sous.

9 Et une chose très importante, c'était dur
10 pour nous autre de dire que la façon, même aujourd'hui, que
11 Nadeau interprète la motion -- la bonne motion -- est-ce
12 que je suis prêt à changer -- et j'ai même déjà commencé à
13 long terme à le faire parce que jamais que j'ai assumé --
14 j'ai jamais pris pour granted que je gagnerais le 75,000.
15 J'avais pas pris pour granted que je gagnerais le 104 non
16 plus. Alors j'ai commencé à faire des changements.

17 Mais ça me laisse pas croire non plus ou je
18 veux pas vous laisser croire que j'acceptais
19 l'interprétation de Nadeau telle qu'elle est écrite.

20 Moi, mon interprétation c'était que je
21 fournissais 100 pourcent des quotas à Nadeau, 100 pourcent
22 de mes kilos à Nadeau, moins un pourcentage alloué par la
23 Cour, et c'est ça que j'ai fait. J'ai donné 100 pourcent
24 de mes kilos à Nadeau, moins un pourcentage alloué par la
25 Cour, et j'ai même pas respecté ce pourcentage-là à la

1 limite de ce que j'avais le droit.

2 Et puis quand j'ai su que Nadeau m'apportait
3 en outrage, j'ai dit à Nadeau, «Je te donne tout mon
4 poulet.» Puis ils ont pas encore accepté ça.

5 MR. FOLKES: Well, we'll get to that later,
6 Mr. Soucy.

7 Do I understand from your answer that for
8 the short term, you made no changes in your organization to
9 accommodate the Order?

10 M. SOUCY: J'avais pas l'espace pour le
11 faire, non.

12 MR. FOLKES: Okay. So am I understanding
13 the answer is you didn't make any changes because you
14 didn't have the space to do it?

15 M. SOUCY: Non, je t'ai -- tantôt j'ai donné
16 quatre raisons. Je tiens à mes quatre raisons. Tu peux
17 pas me faire choisir une envers l'autre. Il y a plusieurs
18 raisons. Je peux les répéter pour votre bénéfice, si vous
19 voulez.

20 MR. FOLKES: Are those the ones you told us
21 about earlier?

22 M. SOUCY: Oui.

23 MR. FOLKES: All right. Then I won't make
24 you repeat them.

25 Now, there is an email which is an exhibit

1 LE PRÉSIDENT: Maître Lefebvre?

2 Me LEFEBVRE: L'ordonnance dit ce qu'elle
3 dit. Elle parle d'elle-même. Le témoin n'a pas à relire -
4 - on peut lui demander de relire, si on le souhaite,
5 l'ordonnance. Ce qu'il en a compris c'est une autre
6 question, mais l'ordonnance parle elle-même au paragraphe
7 8.

8 LE PRÉSIDENT: Oui. Et la question? Your
9 view, Mr. Folkes?

10 MR. FOLKES: My view is that I just want the
11 witness -- I'll rephrase my question, but would the witness
12 please read paragraph 8 into the record?

13 M. SOUCY: "The Respondents' weekly supply
14 of live chickens to be provided to the
15 Applicant pursuant to paragraphs 57 and
16 58 of the Supply Order will continue to
17 be expressed in number of live
18 chickens."

19 MR. FOLKES: All right.

20 And when you saw that Order previously and
21 today, did you feel you understood that provision?

22 M. SOUCY: Oui.

23 MR. FOLKES: All right.

24 And you were aware that if the order to
25 supply Nadeau was granted, that Westco would have to make

1 arrangements to continue to supply smaller birds than those
2 required by Olymel; were you not?

3 M. SOUCY: Non.

4 MR. FOLKES: All right.

5 If I could draw your attention and if
6 Exhibit CR-66 could be put before the witness, please?

7 (SHORT PAUSE/COURTE PAUSE)

8 MR. FOLKES: Do you have that before you,
9 sir?

10 M. SOUCY: Oui.

11 MR. FOLKES: I would draw your attention to
12 paragraph 78, please, and particularly the second sentence
13 of that paragraph, and the third sentence.

14 M. SOUCY: Oui.

15 MR. FOLKES: All right.

16 And were you then aware that if the Interim
17 Supply Order was granted, you would have to sell smaller
18 birds to Nadeau than you were planning to sell to Olymel?

19 M. SOUCY: Ma compréhension -- ma
20 compréhension de comment ça fonctionnait n'était pas ça.
21 Moi je croyais que -- oui, je suis d'accord que la Cour
22 peut me forcer à vendre à Nadeau ou pas, mais c'était
23 seulement ma compréhension. Je croyais pas que la Cour me
24 brimerait de mes autres droits au niveau de la grosseur de
25 poulets, et cetera.

1 Et aussi, je ne croyais pas que la Cour
2 empiéterait sur d'autres peut-être règlements auxquels un
3 certain niveau ou un certain pilier du gouvernement tel que
4 la Cour m'ordonne de produire un certain nombre de poulets
5 et qu'un autre pilier tel que CFC ou le Ministère de
6 l'agriculture, si on veut, me demande de produire un autre
7 nombre de poulets, et puis que là si je produis ce que la
8 Cour me demande, je suis contre ce que mes licences me
9 permettent. Pis si je produis ce que mes licences me
10 demandent, je suis contre ce que la Cour me permet. Je ne
11 croyais pas ça.

12 Alors, c'est sûr que j'étais mélangé.

13 MR. FOLKES: All right.

14 Well, this affidavit that we're reading from
15 was sworn May 29th, 2008. Am I correct?

16 M. SOUCY: Oui.

17 MR. FOLKES: And that's a little short of a
18 month before the Interim Supply Order was made; correct?

19 M. SOUCY: C'est sûr à ce moment-là je
20 croyais que j'avais le droit de faire ce que je fais. Y a
21 pas un autre producteur au Canada qui fait pas ça.

22 MR. FOLKES: All right.

23 But my reading -- and again, maybe it's my
24 poor French, but my reading is that you're complaining here
25 in this affidavit that if the Order is granted, you're

1 going to have to sell smaller birds to Nadeau instead of
2 the heavy birds that you want to sell to Olymel. You're
3 trying to persuade the Tribunal that that's the reason why
4 the order should not be granted. Am I not correct?

5 M. SOUCY: Oui.

6 MR. FOLKES: Yes. And you go on to say that
7 if you have to sell the smaller birds to Nadeau, that
8 you're going to suffer a loss of profit, do you not?

9 M. SOUCY: Oui.

10 MR. FOLKES: Thank you.

11 Now, the sizing that you were shipping to
12 Nadeau as of the date of the Order was 2.08 kilograms in
13 quota period 85, and in quota period 86, it was 2.16
14 kilograms per head. Correct?

15 M. SOUCY: Je crois que c'est ça que j'ai lu
16 ce matin, oui, par collection.

17 MR. FOLKES: Yes, and if you need to see
18 that exhibit again, I can show it to you but I believe
19 that's what it says.

20 And you understood that Nadeau needed a
21 variety of birds, some lighter, some heavier, with that
22 average; correct?

23 M. SOUCY: Ben c'est correct puisque c'est
24 ça Nadeau disent qu'y avaient besoin. Mais moi, pour vous
25 mettre en contexte, à partir du 20 juillet quand ce

1 document-là a été fait, en mai, j'envoyais pus de poulet à
2 Nadeau à partir du 20 juillet.

3 MR. FOLKES: July of what year, sir?

4 M. SOUCY: Après juillet 2008, dans ma tête,
5 moi, jusqu'au rendement du jugement, je ne croyais plus que
6 j'étais obligé de vendre à Nadeau.

7 MR. FOLKES: I understand. You weren't
8 expecting the Order?

9 M. SOUCY: Exactement. Fait que je
10 m'attendais pas d'avoir une commande.

11 MR. FOLKES: Okay. All right. But when the
12 Order was granted, did you take any steps to try to reverse
13 this trend of making the birds heavier?

14 MR. LEFEBVRE: Objection. That was asked
15 and answered before lunch.

16 MR. FOLKES: This is a cross-examination
17 Your Honour, and I think I have the right to probe these
18 issues.

19 THE CHAIRPERSON: I'll allow the question.

20 MR. FOLKES: Thank you.

21 Is that correct, Mr. Soucy?

22 M. SOUCY: Ben, j'ai dit ce matin les
23 raisons pourquoi que j'étais pas capable de changer la
24 façon que Nadeau voulait que je change.

25 MR. FOLKES: All right.

1 Unfortunately, we get involved in the heat
2 of the moment.

3 **THE CHAIRPERSON:** Thank you.

4 **MR. FOLKES:** All right. Going back to A91,
5 Mr. Soucy, it appears that in your chart, you have included
6 deliveries for weeks seven and eight of A91; correct?

7 **M. SOUCY:** Oui.

8 **MR. FOLKES:** But the actual order terminated
9 in week six of A91; am I correct?

10 **M. SOUCY:** Non.

11 **MR. FOLKES:** No? When did it terminate?

12 **M. SOUCY:** Ben, ce que j'assume c'est que ça
13 s'est par terminé avant qu'on ait le jugement le 8. Puis,
14 le 8 était dans la semaine sept.

15 **MR. FOLKES:** Okay.

16 **M. SOUCY:** Puis j'assume que, en dedans
17 d'une semaine, c'est impossible de vendre à n'importe qui
18 d'autre que Nadeau. On n'a pas le choix d'inclure ce
19 volume-là.

20 Y était presque lié au 104. Y continuait --
21 tu sais je peux pas en dedans d'une semaine prendre 200,000
22 poulets pis envoyer ça dans un autre abattoir. Mais la
23 semaine sept, c'est la semaine du jugement.

24 **MR. FOLKES:** All right. Well, first of all,
25 you knew that a decision had been made before the order was

1 released. Is that not correct?

2 M. SOUCY: Pas du tout, non.

3 MR. FOLKES: No. All right.

4 And you would agree with me that the week of
5 June 7th, if the order was June the 8th, -- June the 8th was
6 what; a Monday?

7 M. SOUCY: C'était lundi soir, oui.

8 MR. FOLKES: All right. And you're saying
9 that you assumed that Nadeau should get credit -- or sorry,
10 that Westco should get credit for that entire week's
11 deliveries?

12 M. SOUCY: J'assume que si que j'avais donné
13 six mois de notice à Nadeau avant de changer, que Nadeau
14 comprend que je peux pas changer dans 24 heures ou même
15 dans une semaine.

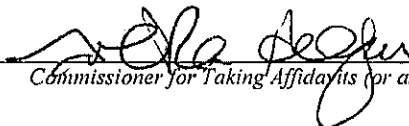
16 MR. FOLKES: All right. I would submit that
17 that's a subject for argument between the solicitors at a
18 different time in this hearing, Mr. Soucy.

19 But our calculations show that the first six
20 weeks of A91, you, being Westco, delivered 807,238 heads to
21 Nadeau. Is that correct?

22 M. SOUCY: J'ai pas fait le calcul, mais si
23 tu veux vraiment, vraiment, être précis, t'as pas le choix
24 d'additionner les chiffres de lundi.

25 MR. FOLKES: All right.

This is Exhibit "T" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "U" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "V" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011

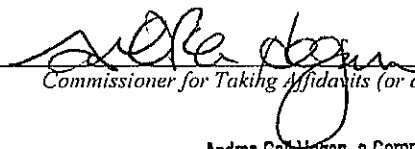
A handwritten signature in black ink, appearing to read "Andrea Hogan", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubinoff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "W" referred to in the Affidavit of Jessica Petrie sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gal-Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubinoff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

File No. / Dossier no. CT-2008-004

Competition Tribunal**IN THE MATTER** of the Competition Act, R.S.C. 1985, c. C-34, as amended;**AND IN THE MATTER** of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 75 of the Competition Act;**AND IN THE MATTER** of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 104 of the Competition Act;**AND IN THE MATTER** of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for a Show Cause Order;**AND IN THE MATTER** of a Motion by the Respondent Groupe Westco. Inc. for an Order or Direction regarding the Tribunal's Interim Supply Order;**BEFORE / DEVANT :**

The Honourable Justice Blanchard

Presiding Judicial Member**BETWEEN / ENTRE:****NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED****Applicant****- and -****GROUPE WESTCO INC. AND GROUPE DYNACO, COOPÉRATIVE
AGROALIMENTAIRE AND VOLAILLES ACADIA S.E.C. AND
VOLAILLES ACADIA INC./ACADIA POULTRY INC.****Respondents****HELD AT / TENU À :**600-90 Sparks Street
Ottawa, Ontario
on Tuesday, July 6, 2010 at 9:03 a.m.600-90 rue, Sparks
Ottawa, Ontario
mardi, le 6 juillet, 2010 à 9 h 03**A.S.A.P. Reporting Services Inc. © (2010)**200 Elgin Street, Suite 1105
Ottawa, Ontario K2P 1L5
(613) 564-2727333 Bay Street, Suite 900
Toronto, Ontario M5H 2T4
(416) 861-8720

1 l'ordonnance aurait été --

2 C'est la façon que j'ai interprété l'ordonnance.

3 Je n'ai pas fait ça en aucune fonction
4 pour désobéir la loi. Il faut même dire que même
5 avant ça, j'essayais de travailler avec Nadeau, et
6 j'ai essayé de faire un partenariat avec Nadeau.

7 Ça n'a pas fonctionné. On s'est retrouvé
8 dans ça ici. Tout ce que j'ai fait dans le passé, mon
9 intégration a toute été fait en respectant les lois.

10 Cette ordonnance, je l'ai mal interprétée.
11 C'était ma compréhension, la façon que je l'ai
12 interprétée, mais je ne l'ai pas fait pour défier la
13 loi ou je ne l'ai pas fait pour être contrarié à cette
14 Cour ou contrarier la loi, et pas du tout.

15 Je l'ai respectée du mieux que j'ai pu, de
16 ma connaissance. Quand je l'ai fait, je croyais que
17 je le faisais --

18 Tu sais, que je la respecte ou que je ne
19 la respecte pas, j'ai quand même -- C'est de ma
20 connaissance de la loi que j'ai essayé de la
21 respecter.

22 **Me LEFEBVRE:** Quant aux poulets qui ont
23 été élevés et vendus par Westco à Olymel pendant la
24 période intérimaire, j'aimerais que vous me disiez, ce
25 poulet vendu par Westco à Olymel pendant la période

1 intérimaire, donc entre les périodes A87 et A91, il a
2 été vendu à quel prix?

3 M. SOUCY: Le poulet vendu à Olymel a été
4 vendu au même prix que le poulet vendu à Nadeau, qui a
5 été vendu au prix de la « Board » du Nouveau-
6 Brunswick.

7 Me LEFEBVRE: O.K. Vous avez d'ailleurs
8 joint un document à votre déclaration de témoin, la
9 pièce TS-1.

10 LE PRÉSIDENT: Je m'excuse, Maître.
11 C'était quelle pièce?

12 Me LEFEBVRE: TS-1.

13 LE PRÉSIDENT: Merci.

14 Me LEFEBVRE: Alors Monsieur Soucy, il
15 s'agit d'une lettre qui vous est adressée par France
16 Ringuette en date du 25 mars 2010.

17 Est-ce que vous reconnaissez ce document?

18 M. SOUCY: Oui.

19 Me LEFEBVRE: Pouvez-vous nous dire de
20 quoi il s'agit?

21 M. SOUCY: C'est un document qui confirme
22 le prix que Westco a reçu pour les poulets vendus chez
23 Nadeau et pour les poulets vendus chez Olymel pendant
24 la période intérimaire.

25 Me LEFEBVRE: Si vous allez à l'annexe

1 « A » de cette lettre-là, pouvez-vous juste expliquer
2 au tribunal qu'est-ce qu'on y retrouve?

3 M. SOUCY: Qu'est-ce qu'on y retrouve,
4 c'est qu'il y a une firme indépendante qui est venue
5 chez-nous auditer pendant la période, bien chacune des
6 périodes de A87 à A91, auditer un nombre de poulets
7 vendus chez Nadeau et un nombre de poulets vendus chez
8 Olymel, et qui confirme que le prix vendu à Olymel est
9 le même que le prix vendu à Nadeau.

10 Me LEFEBVRE: Alors Monsieur le juge
11 Blanchard, j'aimerais que l'on --

12 Est-ce qu'il y a quelque chose de
13 confidentiel dans ce document, Monsieur Soucy?

14 M. SOUCY: Non.

15 Me LEFEBVRE: J'aimerais faire poser une
16 cote sur ce document comme étant une lettre adressée
17 ou qu'on pourrait décrire comme étant une lettre
18 adressée au Groupe Westco par France Ringuette, en
19 date du 25 mars 2010.

20 LE PRÉSIDENT: Oui, la pièce sera marquée,
21 cotée quoi, Monsieur LaRose?

22 LE GREFFIER: La lettre telle que décrite
23 du 25 mars va être la pièce R-1.

24 PIÈCE R-1: Lettre adressée au Groupe
25 Westco par France Ringuette en date

1 du 24 mars 2010

2 Me LEFEBVRE: Alors Monsieur Soucy --

3 MS PRICE: I believe that this is a
4 continuation of the main hearing, and for ease of
5 reference in all procedures, if it's possible to
6 continue the numbering from the original hearing?
7 Otherwise, it is treated separately. That's what my
8 understanding was.

9 I have no strong feeling about it, but
10 this is a continuation of the contempt hearing. I
11 therefore assume the numbers would continue.

12 If there is a difficulty with that, I'm
13 content to start again.

14 THE CHAIRPERSON: The exhibit is marked R-
15 1.

16 Maître Lefebvre?

17 Me LEFEBVRE: Alors Monsieur Soucy, dans
18 le cadre de votre partenariat avec Olymel, qu'est-ce
19 qui était prévu au niveau du partage des profits
20 provenant de la transformation de poulets vendus par
21 Westco au partenariat?

22 M. SOUCY: Ce qui était prévu, c'est que
23 le partenariat Olymel achetait toute la production de
24 Westco, et le partenariat faisait transformer chez
25 Olymel pour une période intérimaire son poulet,

1 pendant la construction de son abattoir.

2 Suite à ça, que Olymel processerait le
3 poulet dans la région, et puis le profit serait
4 partagé 50/50 entre les deux propriétaires, qui
5 étaient Westco et Olymel.

6 Me LEFEBVRE: Le profit serait partagé
7 50/50 entre Olymel et Westco à compter de quand?

8 M. SOUCY: Aussitôt que Olymel
9 commencerait à faire du « processing », soit « custom
10 kill » chez Olymel ou dans sa propre usine.

11 Me LEFEBVRE: Et est-ce que le poulet que
12 vous avez vendu, vous Westco, à Olymel, pendant la
13 durée de l'ordonnance intérimaire, a permis à Westco
14 de réaliser ce profit lors de la revente du poulet
15 transformé?

16 M. SOUCY: Non.

17 Me LEFEBVRE: Pourquoi?

18 M. SOUCY: Bien, deux choses.

19 Premièrement, notre partenariat avec Olymel était pour
20 100 pourcent des poulets, la totalité de nos poulets.
21 C'était le « memorandum of understanding ».

22 Et pour que ça vaille la peine pour Olymel
23 de faire un tel « move » ou une chose de cette façon-
24 là, ça prenait quand même des volumes assez
25 importants.

1 Quand on regarde que j'ai envoyé à Olymel
2 environ 29 000, 30 000 poulets semaine, je devenais un
3 producteur normal.

4 J'étais comme plusieurs autres producteurs
5 au Nouveau-Brunswick ou au Québec ou en Ontario.
6 J'étais seulement un petit producteur.

7 Le meilleur exemple que je peux donner,
8 Monsieur Lefebvre, c'est si je me construis une grosse
9 bâtisse puis que je vais dans une usine puis je
10 demande d'avoir 10 voyages de « van » de 2 par 4, ils
11 vont vous coter un prix.

12 Si je reviens deux semaines après et je
13 dis : « Bien, je ne construis plus mon édifice, mais
14 ça me prendrait trente 2 par 4 pour me construire un
15 cabanon en arrière de la maison, bien probablement
16 qu'ils ne pourront pas me faire le même prix que si
17 j'avais acheté 10 « van » d'eux comme ils avaient
18 fait la première semaine, ça fait qu'Olymel, c'est la
19 même chose.

20 Si on leur envoie 271 000 poulets semaine
21 à travers Olymel, ils étaient prêts à faire du
22 « custom kill ».

23 Si je suis rendu un producteur normal et
24 j'envoie 29 000 poulets semaine, ce n'est pas plus que
25 n'importe -- Je ne peux pas être traité différent que

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1 n'importe quel autre producteur au Québec ou en
2 Ontario.

3 Me LEFEBVRE: Alors pour que ce soit très
4 clair pour le tribunal, si vous aviez envoyé toute
5 votre production de poulets à Olymel pendant la
6 période intérimaire, votre lettre d'intention ou votre
7 « memorandum of understanding » prévoyait quoi?

8 M. SOUCY: Que j'aurais eu 50 pourcent des
9 profits.

10 Me LEFEBVRE: Or dans les faits, vous
11 n'avez envoyé qu'une fraction de ça, de la totalité de
12 votre production, ce qui a fait en sorte que vous avez
13 reçu quoi comme partage de profit lors de la revente
14 du poulet transformé par Olymel?

15 M. SOUCY: Rien du tout.

16 Me LEFEBVRE: O.K. Qu'en est-il du --

17 LE PRÉSIDENT: Maître, si vous voulez,
18 permettez-moi de vous interrompre.

19 Me LEFEBVRE: Absolument.

20 LE PRÉSIDENT: Quand vous dites que M.
21 Soucy nous dit que c'est 50 pourcent des profits, est-
22 ce qu'on parle de la totalité des revenus ou des
23 profits d'Olymel, ou de quels profits? 50 pourcent de
24 quoi?

25 Me LEFEBVRE: Alors Monsieur Soucy, vous

1 avez peut-être compris la question du tribunal.

2 Vous avez fait allusion à un partage 50/50
3 en terme de pourcentage des profits réalisés lors de
4 la revente de poulets transformés.

5 Si j'ai bien compris la question du
6 tribunal, c'est à savoir quels poulets transformés?

7 Est-ce que c'est limité à votre poulet ou
8 c'est toutes les ventes d'Olymel de poulets
9 transformés pendant la période intérimaire?

10 Pourriez-vous nous aider à mieux cerner
11 quelle était l'entente?

12 M. SOUCY: Oui.

13 La façon que c'était supposé fonctionner,
14 c'est qu'on avait fait une compagnie qu'on appelait
15 Sonymel.

16 Sonymel, ce que Sonymel faisait, c'est que
17 Sonymel achetait les poulets vivants de Westco au prix
18 du marché, et Sonymel de son propre gré, pendant une
19 période intérimaire, faisait abattre son poulet chez
20 Olymel pendant la construction de notre abattoir.

21 Alors si on recule et on dit : « Sonymel
22 achète mon poulet, et Sonymel fait un contrat avec
23 Olymel pour abattre à forfait. »

24 Alors il paye les coûts variables à Olymel
25 et les coûts fixes, avec aucune marge de profit.

1 Suite à ça, Sonymel a ses coûts de
2 transformation. Il a ses coûts de matières premières,
3 et il vend son produit sur le marché et la différence
4 entre ses coûts et la vente devient le profit qui
5 reste dans Sonymel.

6 Et vu que Sonymel appartient et à Olymel
7 et à Westco, les profits de la S.E.C. était distribué
8 dans les deux parties, 50/50 à chacune.

9 Pour déclencher ça, ça prenait la totalité
10 de mon volume, alors pendant la période intérimaire,
11 quand j'envoyais seulement 29 000 poulets, on n'a pas
12 formé la compagnie Sonymel. On vendait directement à
13 Olymel.

14 Alors c'est pour ça qu'il n'y a pas eu le
15 partage de produit de Sonymel. Sonymel n'a pas opéré.

16 Me LEFEBVRE: Alors merci de cette
17 précision, Monsieur Soucy, et en vous écoutant, je
18 réalise que -- .

19 Surtout en voyant le livreur arriver, je
20 réalise que je ne vous avais pas demandé de nous
21 signaler la divulgation d'information qui est
22 confidentielle pour Westco, dans la mesure où vous
23 êtes appelé à en divulguer en répondant à mes
24 questions.

25 Alors je vous invite dès maintenant à

1 signaler au tribunal si vous êtes appelé à divulguer
2 de l'information confidentielle pour répondre à mes
3 questions ou à celles du tribunal.

4 Il faut le signaler avant afin que l'on
5 puisse passer à huit-clos.

6 M. SOUCY: Quand ça vient au... Merci
7 beaucoup, Monsieur Lefebvre, et quand ça vient aux
8 choses, je ne sais pas qui a le droit de rester ou
9 pas.

10 Quand ça vient aux choses de mon
11 partenariat entre Westco et Sonymel et Olymel, je
12 préférerais que les gens Nadeau ne sachent pas le
13 fonctionnement de notre entreprise.

14 MS PRICE: We have in the courtroom Mr.
15 Yves Landry, who is with Nadeau, and if it is
16 confidential, he would be the one to leave.

17 We also have Mr. Grant Robinson, who is an
18 expert and who has been permitted to remain throughout
19 and has access to confidential material, and that has
20 not been a problem in the past.

21 So if there is an issue, if you let us
22 know, we will ask Mr. Landry to leave.

23 THE CHAIRPERSON: Well, as Me Lefebvre
24 indicated, the issue will have to be raised before we
25 seek to close the courtroom.

1 Me LEFEBVRE: Maintenant, qu'en est-il du
2 profit que vous aviez anticipé réaliser du fait que
3 les poulets seraient vendus à Olymel -- les poulets
4 vendus à Olymel devraient être pesés avant qu'il n'ait
5 jeuné?

6 M. SOUCY: Est-ce qu'on peut aller
7 confidentiel sur ça?

8 Me LEFEBVRE: Absolument, avec la
9 permission du tribunal.

10 LE PRÉSIDENT: Oui.

11 So the individuals who have been
12 identified by Ms Price will leave the courtroom.

13 Si je comprends bien, Maître, les
14 individus qui ont été identifiés par Me Price sont les
15 individus en cause?

16 Me LEFEBVRE: En effet.

17 LE PRÉSIDENT: C'est bien.

18 Me LEFEBVRE: Denise Boucher était
19 présente plus tôt ce matin, mais --

20 LE PRÉSIDENT: C'est bien.

21 Me LEFEBVRE: -- elle n'y est plus.

22 THE CHAIRPERSON: Very good. So the
23 remaining individuals in the courtroom are counsel, Ms
24 Price?

25 As I understand the circumstances, the

1 individuals that remain in the courtroom, they are
2 counsel with you?

3 MS PRICE: They are counsel, and also Mr.
4 Robinson, an expert who had --

5 THE CHAIRPERSON: Yes.

6 MS PRICE: -- signed the undertaking and
7 has been present throughout, whenever there have been
8 confidential matters.

9 THE CHAIRPERSON: Very good. Maitre?

10 MS PRICE: I understand that is
11 satisfying.

12 Me LEFEBVRE: Monsieur Soucy?

13 M. SOUCY: Est-ce que vous pouvez re-poser
14 la question, s'il vous plaît?

15 Me LEFEBVRE: Oui. Vous avez anticipé un
16 profit du fait que le poulet livré à Olymel serait
17 pesé dans vos fermes avant d'avoir jeuné.

18 M. SOUCY: Oui.

19 Me LEFEBVRE: Qu'en est-il de ce profit
20 que vous aviez estimé au moment de votre affidavit au
21 mois de mai 2008?

22 M. SOUCY: On avait -- Si on fait
23 référence à une économie de moulée parce que le poulet
24 ne jeunait pas ou que le poulet serait plus pesant, si
25 on se met en contexte, le poulet que j'envoie à Olymel

1 est plus pesant parce que je n'ai pas besoin de le
2 jeûner, ou le poulet jeûne dans le camion.

3 Cela étant dit, bien c'est parce que je me
4 trouve à vendre un peu le fumier parce qu'au lieu de
5 jeuner dans ma bâtisse, et quand le poulet se vide, il
6 se vide dans la bâtisse, bien le poulet est chargé
7 avec les intestins pleins, et il jeune pendant la
8 trajectoire pour aller chez Olymel.

9 Le jeûnage représente une économie au
10 producteur d'environ 4 sous le kilo, alors pour le
11 producteur, quand t'envoies ton poulet à l'extérieur
12 de la région et que tu peux te permettre de jeûner à
13 l'intérieur du camion, t'as un avantage d'environ 4
14 sous le kilo.

15 Alors c'est ça qui faisait un avantage
16 d'envoyer chez Olymel.

17 Ce qui n'avait pas été anticipé, parce
18 qu'on pensait que c'était un peu égal, c'est la
19 condamnation du poulet.

20 Quand on envoie du poulet chez Nadeau, on
21 avait une condamnation qui se situait tout près
22 d'environ 1.2, 1.3 pourcent de moyenne, qui est la
23 condamnation moyenne pour Westco chez Nadeau.

24 Le poulet qu'on envoie chez Olymel a une
25 condamnation fort supérieure à ça. C'est une

1 condamnation qui va jouer dans les 2.4 à 2.5, alors le
2 poulet a une plus grosse condamnation. Alors ça
3 laisse un différentiel d'environ 1.2 pourcent, que je
4 condamne de plus haut chez Olymel.

5 À cause de ça, sur un prix de vente, ça
6 c'est directement déduit de mon prix de vente.

7 Alors à cause de ça, ça l'a un impact
8 d'environ 1.8 sous le kilo, parce que j'ai la 1.50 \$
9 total, j'ai 1.2 pourcent de ma 1.50 \$ qui va condamner
10 entre 1.2 et 1.3 pourcent, alors ça va me causer
11 une perte de profit de 1.8 pourcent -- 1.8 sous.

12 Alors j'expliquais tantôt que le retrait
13 de jeûne me donne environ 4 sous, mais la condamnation
14 m'en coûte environ 1.8, alors j'ai une différence d'à
15 peu près 2.3, 2.4 sous de différence sur les poulets
16 que j'ai envoyés à Olymel versus les poulets que j'ai
17 envoyés à Nadeau.

18 Mais à cause encore que c'était des
19 petites quantités et que je pesais chez nous, j'ai dû
20 embaucher d'autres gens.

21 Quand on regarde sur le 2.3, 2.4 sous, ça
22 représente environ 1 600 \$ semaine sur la quantité de
23 poulets que j'envoyais chez Olymel, qu'était le
24 différentiel.

25 Avec ce 1 600 \$-là, il a été comblé quand

1 même assez vite parce que j'ai dû embaucher -- Quand
2 j'envoyais chez Nadeau, je n'avais pas personne -- On
3 utilisait la « scale » Nadeau dans le passé.

4 Quand on envoie le poulet chez Olymel, le
5 poulet est pesé à Saint-François. C'est ça qui fait
6 les économies de 4 sous.

7 Parce qu'il est pesé à Saint-François, je
8 suis obligé d'avoir quelqu'un qui est à Saint-François
9 qui pèse les poulets, qui est à la « scale ». On
10 appelle ça notre « scale guy ».

11 Ça fait que là, j'ai une personne là qui
12 me coûte environ 600 \$ semaine, et j'ai aussi dû
13 engager des agents de sécurité et les agents de
14 sécurité, j'ai dû me mettre un autre 84 heures, des
15 gens de sécurité de nuit.

16 J'ai 12 heures par nuit. Ils font une
17 rotation, 4 jours / 4 jours, alors j'ai sept jours par
18 semaine à 12 heures par jour, alors j'ai 84 heures que
19 je dois avoir des agents de sécurité sur place, ce qui
20 me coûte environ un autre 1 200 \$, 1 300 \$.

21 Ensuite de ça, bien il y a la
22 certification de la « scale », etc., et notre prime --
23 Parce qu'on envoie notre poulet à l'extérieur, notre
24 prime d'assurance a augmenté.

25 Alors s'il y a quelque chose, à cause du

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1 petit volume de poulets qu'on envoie chez Olymel, ça
2 nous coûtait des sous au lieu de nous donner des sous.

3 Me LEFEBVRE: Donc Monsieur Soucy, si vous
4 n'avez pas réalisé d'économies relativement au jeûne,
5 si vous n'avez pas participé au partage des profits
6 lors de la revente de votre poulet une fois transformé
7 par Olymel, si vous avez été payé le même prix à
8 l'achat pour le poulet vivant que si vous l'aviez
9 vendu à Nadeau, la question qui me vient à l'esprit et
10 peut-être à l'esprit du tribunal est à savoir pourquoi
11 vous n'avez pas tout simplement envoyé votre poulet à
12 Nadeau, tout votre poulet?

13 M. SOUCY: Bien, c'est sûr que je vais te
14 dire, c'est quelque chose que je leur ai offert à
15 partir du mois de novembre, mais revenons avant ça.

16 C'est sûr qu'Olymel est mon « partner »
17 d'affaires. C'est avec eux que je développe une
18 relation, et les tensions avec Nadeau étaient quand
19 même très, très fortes.

20 Puis la façon que j'avais compris la
21 motion intérimaire, de ne pas -- Je n'ai pas essayé
22 d'envoyer plus à Olymel qu'à Nadeau.

23 De ma compréhension, il fallait que
24 j'envoie 154 000 à Olymel et 31 000 à Nadeau, et je ne
25 pouvais pas faire ça et j'ai envoyé peut-être 140 000

1 à Nadeau -- je ne connais pas les chiffres par cœur -
2 - et 29 000 à Olymel.

3 Les deux ont été coupés, mais je n'avais
4 pas pris la motion --

5 Et c'est mon erreur, mais je n'ai pas pris
6 la motion comme --

7 Me LEFEBVRE: Quand vous dites « la
8 motion » là, vous faites référence à quoi?

9 M. SOUCY: La motion intérimaire d'envoyer
10 le poulet chez Nadeau.

11 Me LEFEBVRE: L'ordonnance?

12 M. SOUCY: L'ordonnance. L'ordonnance.
13 L'ordonnance de cour.

14 Dans cette ordonnance-là, je n'avais pas
15 pris que Nadeau était prioritaire chez Olymel ou
16 qu'Olymel était prioritaire chez Nadeau.

17 Pour moi, si j'ai une ordonnance qui me
18 permettait de faire et ça et ça, c'était mon
19 interprétation.

20 Je sais qu'elle est mal aujourd'hui. La
21 Cour a dit que mon interprétation n'était pas bien,
22 mais dans le temps, c'était ça.

23 J'envoyais mon poulet chez Olymel à une
24 proportion réduite aussi parce que c'était mon
25 « partner » d'affaires, c'était les gens avec qui

1 j'allais investir dans le futur.

2 Je voulais leur démontrer aussi mon
3 intérêt de travailler avec eux, et en même temps
4 c'était quand même dur pour moi de continuer à faire
5 affaires avec Nadeau quand eux utilisent ce gain, le
6 gain d'apât, pour me faire une guerre commerciale.

7 Ils font une guerre commerciale avec
8 Westco depuis quand même trois ans, alors tu sais, moi
9 je voulais démontrer à Olymel que je les supportais
10 dans ce dossier, puis un peu de cette façon-là.

11 Tu sais, je n'ai pas priorisé un ou
12 l'autre.

13 Me LEFEBVRE: Je vais vous montrer
14 l'annexe « B » de la décision du tribunal, en date du
15 22 janvier 2010, intitulé : « Westco's supply to
16 Nadeau during the interim period ».

17 Monsieur Soucy, est-ce que vous
18 reconnaissez ce document?

19 M. SOUCY: Oui.

20 Me LEFEBVRE: Parfait. Qu'est-ce que vous
21 avez conclu à la lecture de ce document?

22 M. SOUCY: J'ai conclu de la lecture de ce
23 document-là que la Cour démontrait le nombre de
24 poulets que Westco devrait fournir à Nadeau, et puis
25 que la Cour a pris le nombre de kilos que j'avais à

1 MR. FOLKES: Mr. Soucy, we are going to go
2 through the same process we have undergone in previous
3 hearings, and if the answers to any of the questions
4 that I ask you involve confidential information,
5 please advise us so that we can go in-camera.

6 M. SOUCY: Merci.

7 MR. FOLKES: Thank you. So Mr. Soucy, on
8 behalf of Nadeau, we're grateful to hear today for the
9 very first time an apology tendered to Nadeau for not
10 supplying the numbers of chicken required under the
11 Order of Justice Blanchard.

12 However, I am sure you are aware from
13 Nadeau's standpoint, there are two very significant
14 problems involved in this problem.

15 The problem of sizing of chicken I note is
16 remarkably absent from your constraint comments this
17 morning.

18 The document which is schedule B to His
19 Honour's Order has been put before you, which is the
20 chart showing the average size of the birds shipped to
21 Nadeau by Westco from quota period A87 through the
22 first six weeks of quota period A91. I believe you
23 have that chart in front of you, sir. Correct?

24 M. SOUCY: Oui.

25 MR. FOLKES: Do you agree with me that the

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1 average weights on that chart are correct?

2 M. SOUCY: Oui.

3 MR. FOLKES: So you knew that Nadeau
4 wanted birds for what we will call the cut-9 trade.
5 Correct?

6 M. SOUCY: Oui.

7 MR. FOLKES: You had been supplying those
8 birds since 2007 at Westco. Correct?

9 M. SOUCY: Oui.

10 MR. FOLKES: So when I look at the
11 schedule B to the order, I see in quota period A87,
12 which I believe started September 15th, 2008, you
13 shipped birds at an average weight of 2.233 kilograms
14 per head. Correct?

15 M. SOUCY: Oui.

16 MR. FOLKES: A88, the average weight was
17 2.288 kilograms per head. Correct?

18 M. SOUCY: Oui.

19 MR. FOLKES: A89, the average weight was
20 2.217 kilograms per head. Correct?

21 M. SOUCY: Oui.

22 MR. FOLKES: A90, it was 2.295 kilograms
23 per head. Correct?

24 M. SOUCY: Oui.

25 MR. FOLKES: And for the first six weeks

1 of A91, it was 2.236 kilograms per head. Correct?

2 M. SOUCY: Oui.

3 MR. FOLKES: I would suggest to you that
4 Westco had a monetary incentive for shipping the
5 heavier birds, and I would suggest to you that the
6 reason for that is clearly set out in your affidavit
7 of May 29, 2008, which was marked in these proceedings
8 as exhibit number CR66.

9 M. SOUCY: Oui.

10 MR. FOLKES: And we have an extra copy of
11 the affidavit, and we will put a copy in front of you,
12 sir, in a moment, as well as supply them to your
13 counsel.

14 We can supply you with an extra copy, if
15 that is more convenient, Your Honour.

16 I would like to take your attention to
17 paragraph 78 on page 40 of that affidavit, please, Mr.
18 Soucy.

19 M. SOUCY: Oui.

20 MR. FOLKES: I would ask you to read
21 paragraphs 77, 78, 79 and 80, to refresh your memory,
22 please.

23 M. SOUCY: Quand vous dites le lire, vous
24 voulez que je le lise fort, ou --

25 MR. FOLKES: No, just read it to yourself.

1 I want to make sure that you understand my questions,
2 and they are going to be based upon these paragraphs.

3 --- (A Short Pause)

4 M. SOUCY: Oui.

5 MR. FOLKES: Yes. And you swore that
6 affidavit on the 29th day of May, 2008, did you not,
7 sir?

8 Look at page 42 if you don't remember the
9 date, please.

10 M. SOUCY: Oui.

11 MR. FOLKES: And I take it that those
12 paragraphs were true at the time?

13 M. SOUCY: Oui.

14 MR. FOLKES: And that set out the business
15 plan that you had in terms of shipping live birds at
16 that time. Correct?

17 M. SOUCY: Oui.

18 MR. FOLKES: And you pursued that business
19 plan throughout the period of the order from September
20 15th, 2008 until June of 2009, when the Order was
21 released. Correct?

22 M. SOUCY: C'est correct. Encore une
23 fois, c'est la façon que j'ai interprété.

24 J'avais interprété que c'était un nombre
25 d'oiseaux dans ce jugement ou l'ordonnance. Je

1 n'avais pas vu que c'était relié au poids. C'était
2 aux oiseaux.

3 Encore une fois, je me suis excusé à
4 Nadeau. Je n'ai pas vu dans ça -- Moi je produisais
5 des oiseaux. Je produisais des kilos annuels, des
6 kilos par période.

7 C'est sûr que si j'avais pris les poulets
8 que j'ai envoyés à Olymel puis je les aurais envoyés à
9 Nadeau, j'aurais rencontré mon ordonnance, mais je ne
10 voyais nul part dans l'ordonnance que ça requérait des
11 poids spécifiques.

12 MR. FOLKES: Thank you for that
13 explanation, however, Mr. Soucy, you went on in
14 further detail in the same affidavit, and more
15 specifically exhibit "X" to your affidavit of May
16 29th, 2008, and I will put a copy of that before you.

17 There are going to be copies to your
18 counsel. This has been marked as Exhibit CA-77 in
19 these proceedings, Your Honour.

20 Me LEFEBVRE: Sans vouloir interrompre mon
21 confrère, la preuve laisse entendre qu'il s'agit
22 d'informations confidentielles.

23 Peut-être serait-il opportun de rappeler
24 au témoin que dans la mesure où il prévoit en traiter,
25 nous devrions peut-être passer en session à huit clos?

1 S'il est l'intention de M. Folkes de --

2 THE CHAIRPERSON: If you propose to deal
3 with confidential information, we will let you advise
4 the Court that you will.

5 MR. FOLKES: Yes, thank you, sir.

6 Now Mr. Soucy, I'm sure you are familiar
7 with this document, and dare I say you authored this
8 document, is that correct?

9 M. SOUCY: Oui.

10 MR. FOLKES: And this document says that
11 had your plans to ship to Olymel come to pass, you had
12 an arrangement where you were selling birds to Olymel
13 at a target weight of 2.25 kilograms per head, farmed
14 weight, with no fee withdrawal. Correct?

15 M. SOUCY: Oui.

16 MR. FOLKES: And that was extremely
17 lucrative, because had you sold all your birds to
18 Olymel, you would have made an extra \$27,525.52 per
19 week.

20 Me LEFEBVRE: Votre Seigneurie, je
21 m'excuse là, mais ce n'est pas parce qu'on demande pas
22 au témoin de divulguer de l'information confidentielle
23 que l'on prend sur soi de la divulguer dans le
24 contexte de la question que l'information n'est pas,
25 par ailleurs, confidentielle.

1 j'étais en défaut.

2 Je ne sais pas comment le dire plus que
3 ça. Je ne sais pas si que la Cour me reconnaît d'être
4 en défaut de 933 000 poulets ou de 293 000 poulets,
5 mais la Cour m'a reconnu comme défaut.

6 Je ne peux pas me mettre ici et vous dire
7 que je suis bien. La Cour m'a reconnu en défaut. Je ne
8 sais pas quoi vous dire plus que ça, Monsieur Folkes.

9 **MR. FOLKES:** Thank you, Mr. Soucy.
10 Perhaps you can just answer my questions.

11 Have you, since January 22, 2010, made any
12 efforts to assist Nadeau in replacing these birds,
13 whether there are 250,000 or 933,000? Have you made
14 any efforts to assist Nadeau to replace those birds?

15 **M. SOUCY:** Ce que je peux vous dire, c'est
16 qu'entre le 6 ou entre le 8 de juin 2009 jusqu'au mois
17 de septembre, même après que j'avais gagné le 75, j'ai
18 donné plus que ces quantités de poulets là à Nadeau
19 parce que j'ai continué à fournir Nadeau tout le mois
20 de juin, tout le mois de juillet et tout le mois
21 d'août 2009.

22 Je crois réellement que j'ai même donné
23 plus que le 933 000 poulets pendant cette période de
24 12 semaines.

25 **MR. FOLKES:** And that was because your

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1 partner Olymel was not able to process them yet.

2 Correct?

3 M. SOUCY: C'est parce qu'on ne peut pas
4 se virer sur un 10 cents dans cette industrie-là, oui.

5 MR. FOLKES: So have you made any efforts
6 to assist Nadeau in buying birds in Quebec to replace
7 these?

8 M. SOUCY: Non. Et même l'ordonnance dit
9 que c'était une des possibilité que j'aurais dû
10 regarder, de remplacer le poulet.

11 Ils le mentionne dans ça. Je ne l'ai pas
12 fait. Probablement c'est pour ça que vous me trouvez
13 en « contempt ».

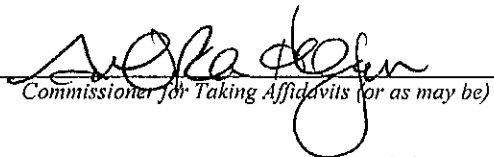
14 MR. FOLKES: And it was your witness, Ms
15 Sanderson, who concluded that Nadeau would be able to
16 replace this lost supply at modest premiums in Quebec.
17 Do you remember that?

18 M. SOUCY: Je m'excuse. Je n'étais pas
19 privilégié d'avoir l'information à Mme Sanderson et
20 quand elle témoignait ou qu'elle était ici, j'ai été
21 obligé d'être exclu de cette Cour.

22 MR. FOLKES: Have you not read the
23 reasons, the judgment?

24 M. SOUCY: Peut-être, la mémoire me
25 faillit.

This is Exhibit "X" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

CONFIDENTIAL A

This is Exhibit "Y" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.

File No. / Dossier no. CT-2008-004

Competition Tribunal**IN THE MATTER** of the Competition Act, R.S.C. 1985, c. C-34, as amended;**AND IN THE MATTER** of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 75 of the Competition Act;**AND IN THE MATTER** of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 104 of the Competition Act;**AND IN THE MATTER** of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for a Show Cause Order;**AND IN THE MATTER** of a Motion by the Respondent Groupe Westco. Inc. for an Order or Direction regarding the Tribunal's Interim Supply Order;**BEFORE / DEVANT :**

The Honourable Justice Blanchard

Presiding Judicial Member**BETWEEN / ENTRE:****NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED****Applicant****- and -****GROUPE WESTCO INC. AND GROUPE DYNACO, COOPÉRATIVE
AGROALIMENTAIRE AND VOLAILLES ACADIA S.E.C. AND
VOLAILLES ACADIA INC./ACADIA POULTRY INC.****Respondents****HELD AT / TENU À :**600-90 Sparks Street
Ottawa, Ontario
on Wednesday, July 7, 2010 at 9:01 a.m.600-90 rue, Sparks
Ottawa, Ontario
mercredi, le 7 juillet, 2010 à 9 h 01**A.S.A.P. Reporting Services Inc. © (2010)**200 Elgin Street, Suite 1105
Ottawa, Ontario K2P 1L5
(613) 564-2727333 Bay Street, Suite 900
Toronto, Ontario M5H 2T4
(416) 861-8720

1 SUBMISSIONS RENDERED BY MR. LEFEBVRE:

2 Me LEFEBVRE: Alors, Monsieur le Juge
3 Blanchard, ce que je vous propose c'est de procéder en
4 deux temps.

5 D'abord hier soir, Me Bourbonnais,
6 Conrad et moi-même avons colligé un espèce de résumé
7 de la preuve qui a été offerte pendant la journée.

8 Je n'ai pas eu le temps de le consigner
9 dans une forme qui me permettrait de vous le remettre,
10 mais je vais vous l'énoncer dans la plaidoirie orale
11 et dans un deuxième temps, on reviendra sur les
12 principes de droit applicable, et on va diviser ça en
13 trois sous-sections, soit la détermination de la
14 peine, quel est le niveau de sévérité qu'on doit
15 appliquer.

16 Dans un deuxième temps, nous allons
17 traiter de la réclamation de dommages de Nadeau et
18 dans un troisième temps, dans un dernier temps,
19 traiter du mémoire ou des mémoires de frais soumis par
20 Nadeau.

21 D'entrée de jeu, première section,
22 résumé de la preuve.

23 Vous l'aurez deviné, j'ai également
24 divisé cette section-là en sous-sections, soit Thomas
25 Soucy, Grant Robinson et Yves Landry.

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1 nous vous soumettons qu'une peine monétaire, si on
2 doit en imposer une à Westco, elle ne doit pas
3 dépasser 10 000 \$.

4 Au-delà de 10 000 \$ constituerait selon
5 nous une punition trop sévère et injustifiée à la
6 lumière des circonstances du dossier.

7 J'en serais maintenant à la deuxième
8 sous-section portant celle-ci sur la réclamation en
9 dommages.

10 Je me demande si ça serait opportun
11 peut-être de prendre là pause du matin à ce moment-ci?

12 LE PRÉSIDENT: Oui, nous pouvons
13 procéder. On est un peu d'avance, mais je pense que
14 c'est un temps opportun. 15 minutes.

15 Me LEFEBVRE: Merci.

16 THE CHAIRPERSON: We stand ajourned.

17 GREFFIER: Le tribunal prend une pause
18 de 15 minutes.

19 --- Upon recessing at 10:21 a.m./

20 L'audience est suspendue à 10h21

21 --- Upon resuming at 10:39 a.m./

22 Lors de la reprise à 10h39

23 LE GREFFIER: L'audience est reprise.

24 LE PRÉSIDENT: Maître?

25 Me LEFEBVRE: Merci.

1 Alors nous en étions à la deuxième, je
2 crois, sous-section, soit celle qui portait sur les
3 dommages réclamés par Nadeau.

4 Vous aurez sans doute pris connaissance
5 dans nos représentations écrites du fait que nous
6 contestons la réclamation de dommages aux motifs,
7 d'abord et avant tout, qu'elle ne repose sur aucune
8 assise juridique.

9 Comme vous le savez sans doute, la Loi
10 sur la concurrence ne confère pas à cet honorable
11 tribunal le pouvoir de prononcer des condamnations en
12 dommages et intérêts.

13 Tout au plus, cette loi, qui a été
14 amendée au fil des années, permet maintenant au
15 tribunal de contraindre certaines parties à payer ce
16 qu'on appelle des sanctions administratives
17 pécuniaires, en anglais des « imperceptible »,
18 lesquelles sanctions ou « imperception » sont versés à
19 l'état, pas à une autre partie.

20 Vous savez sans doute aussi qu'au mois
21 de mars 2009, la Loi sur la concurrence a été amendée
22 et que l'article 74.1(1)(d) confère maintenant le
23 pouvoir au tribunal d'ordonner au contrevenant de
24 payer une somme au consommateur victime de fausses
25 représentations, et ce jusqu'à concurrence du montant

1 que les consommateurs ont payé pour le produit
2 défaillant.

3 Mais c'est la seule brèche, c'est la
4 seule exception qui permet au tribunal d'ordonner le
5 paiement d'une somme d'argent à une tierce partie.

6 La Loi ne comporte aucune autre
7 disposition semblable et cet honorable tribunal n'a
8 tout simplement pas le pouvoir de rendre les
9 ordonnances de restitution autrement qu'en vertu de
10 l'article 74.1(1)(d), lequel article ne s'applique
11 absolument pas aux circonstances de notre dossier.

12 Cependant, la Loi, comme nous le savons
13 tous, prévoit maintenant à l'article 36 un droit
14 d'action privé en faveur d'une partie qui aurait
15 souffert notamment des dommages résultant du défaut
16 par une autre partie de se conformer à une ordonnance
17 rendue par ce tribunal.

18 Mais fait absolument déterminant, cet
19 article-là prévoit que la réclamation du dommage, et
20 bien elle doit être présentée devant une Cour de
21 juridiction compétente.

22 Ce tribunal n'est pas cette Cour de
23 juridiction compétente pour réclamer des dommages et
24 intérêts, bien que le dommage allégué puisse découler
25 d'une contravention, une ordonnance rendue par le

1 tribunal.

2 En somme, et au risque de me répéter,
3 je vous sou mets que la réclamation en dommages de
4 Nadeau, laquelle est jointe aux procédures dans le
5 cadre de cette audition, et bien elle devra,
6 éventuellement, faire l'objet d'une procédure dite
7 habituelle, une procédure dans le cadre de laquelle il
8 y aura une divulgation complète, comme il se doit, de
9 la preuve, une procédure dans laquelle il y aura des
10 interrogatoires au préalable, une procédure à laquelle
11 il y aura un procès qu'on prévoit raisonnablement sera
12 plus long que 12 heures, un procès lors duquel il y
13 aura des expertises de part et d'autre, et surtout un
14 procès lors duquel Nadeau devra faire une preuve
15 complète précise quant à la période intérimaire de la
16 perte de profit qu'elle a prétendument subie.

17 Évidemment, elle devra également
18 démontrer le lien de causalité avec la non-conformité
19 à l'ordonnance.

20 Et nous vous soumettons que cette
21 audition, celle d'hier et aujourd'hui, Nadeau ne peut
22 s'en saisir pour passer tout droit et y réclamer de
23 façon, je vous sou mets respectueusement, détournée et
24 déguisée, de façon incomplète, une somme d'argent
25 artificiellement gonflée, et ce sans avoir à se

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1 Niagara ou les optométristes, où les contrevenants ont
2 continué à agir sachant que leur comportement était en
3 tous points illégaux.

4 Maintenant sur la compétence du
5 tribunal, je crois avoir compris que Me Price tente de
6 vous convaincre que le tribunal de la concurrence a
7 compétence pour rendre une ordonnance, sinon d'octroi
8 de dommages, à tout le moins une ordonnance de
9 restitution ou de compensation pour un montant
10 équivalent aux dommages qu'elle a subis, qui ont été
11 quantifiés par M. Robinson.

12 LE PRÉSIDENT: Je pense que pour être
13 précis, Me Price a indiqué qu'elle était d'accord,
14 qu'il n'y avait pas question de réclamation pour
15 dommages et intérêts.

16 Me LEFEBVRE: Oui.

17 LE PRÉSIDENT: C'était elle --

18 Me LEFEBVRE: Mais c'était --

19 LE PRÉSIDENT: C'est ça.

20 Me LEFEBVRE: -- une restitution,
21 compensation.

22 LE PRÉSIDENT: C'est ça. Elle le
23 formule d'une façon différente.

24 Me LEFEBVRE: Oui.

25 LE PRÉSIDENT: Pour être clair.

This is Exhibit "Z" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011




Commissioner for Taking Affidavits (or as may be)

**Andrea Gall Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors.
Expires March 22, 2013.**

CONFIDENTIAL A

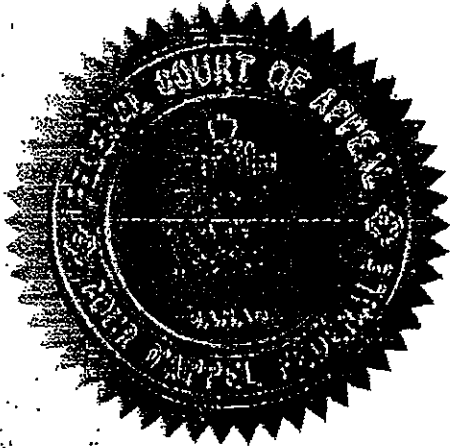
This is Exhibit "AA" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

**Andrea Gall Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubino LLP,
Barristers and Solicitors.
Expires March 22, 2013.**

Court No. A-4107-10

FEDERAL COURT OF APPEAL**GROUPE WESTCO INC.**Appellant
(Respondent),

AND:

NADEAU FERME AVICOLE LIMITEE/ NADEAU POULTRY FARM LIMITEDRespondent
(Applicant).**NOTICE OF APPEAL****TO THE RESPONDENT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellant. The relief claimed by the Appellant appears on the following pages:

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Appellant. The Appellant request that this appeal be heard at Montréal in the Province of Québec.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the Appellant's solicitors, WITHIN TEN (10) DAYS of being served with this Notice of Appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the Order appealed from, you must serve and file a Notice of Cross-appeal in Form 341

prescribed by the *Federal Courts Rules* instead of serving and filing a Notice of Appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

October 25, 2010.

Issued by:

L'ORIGINAL A ETÉ SIGNÉ PAR
MAXIM DIDKOVSKI
 HAS SIGNED THE ORIGINAL
 (Registry Officer)

Address of
 local office:

30 McGill St.
Montreal, Québec H2Y 3Z7
Tel.: (514) 283-4820
Telecopier: (514) 283-6004

TO : The Judicial Administrator
 Federal Court of Appeal

AND TO : The Attorney General of Canada

AND TO: Registrar
 Competition Tribunal
 The Thomas D'Arcy McGee Building
 600-90 Sparks Street
 Ottawa ON K1P 5B4

AND TO: Nadeau Ferme Avicole Ltée
 222 Commerciale Street
 Saint-François-de-Madawaska, NB E7A 1B6

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the *Sentencing Order* rendered by the Competition Tribunal on September 24, 2010 (the "Sentencing Decision").

THE APPELLANT ASKS that:

1. this Appeal be allowed and the Sentencing Decision be set aside with costs;
2. in the alternative, this Appeal be allowed and the Sentencing Decision be referred back to the Tribunal with directions, with costs; and
3. such further and other order that this Court deems appropriate.

THE GROUNDS OF APPEAL are as follows:

1. On or about January 22, 2010, the Competition Tribunal rendered the *Reasons for Order and Contempt Order* ("Contempt Order") finding Groupe Westco Inc. ("Westco") in contempt of the Interim Supply Order that had been issued by the Competition Tribunal. The Contempt Order is the subject of an appeal in Court File No. A-70-10.
2. In advance of the hearing that led to the *Reasons for Order and Contempt Order*, Westco had also filed a motion seeking clarification of the Interim Supply Order. That motion was dismissed by the Tribunal in its *Order Dismissing Westco's Motion for An Order or Direction Regarding the Interpretation of the Tribunal's Interim Supply Order* dated March 18, 2010 (the "Interim Order Decision"). The Interim Order Decision is the subject of appeal in Court File No. A-133-10.
3. The appeals in Court File Nos. A-70-10 and A-133-10 have been consolidated by the Court and will be heard together.
4. The Tribunal erred in law or in mixed fact and law in the Sentencing Decision in concluding that a "finding of non-contumacious conduct" was "not open to" the Tribunal in view of the Tribunal's interpretation of the Interim Supply Order.

5. The Tribunal erred in law or in mixed fact and law in the standards it employed in its assessment of the *bona fides* of Westco's belief that its conduct did not constitute contempt.

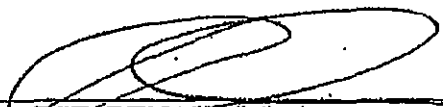
6. The Tribunal erred in law or in mixed fact and law in failing to consider or to have regard to the evidence before the Tribunal on the matter of the offer made by Westco to supply all of the chicken it produced to Nadeau; an offer refused by Nadeau.

7. Properly considered, Westco's offer should have had a determinative impact on the Tribunal's assessment of the quantum of shortfall, if any, in the numbers of chickens Westco supplied.

8. *Competition Act*, R.S.C. 1985, c. 34, section 104; *Competition Tribunal Act*, R.S.C. 1985, c. 19, sections 8.1 and 13; *Competition Tribunal Rules*, SOR/2008-141; *Federal Courts Act*, R.S.C. 1985, c. F-7, sections 27 and 52; and *Federal Courts Rules*, SOR/98-106, Parts 6 and 12.

9. Such further and other grounds as counsel may advise and this Court may consider appropriate.

October 25, 2010



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Counsel to Groupe Westco Inc.

Served to Nadeau Poultry Farm
Date Oct 23 2010 Time 2:30 PM
Per / By [Signature]

Bertrand G. Lefebvre
Hulstet / Process Server

[Signature]

NO: A-	
FEDERAL COURT OF APPEAL	
GROUPE WESTCO INC.,	
Appellant (Respondent)	
AND	
NADEAU FERME AVICOLE LIMITÉE/NADEAU POULTRY FARM LIMITED	
Respondent (Applicant)	
NOTICE OF APPEAL	
ORIGINAL FOR: REGISTRAR – COMPETITION TRIBUNAL The Thomas D'Arcy McGee Building 600-90 Sparks Street Ottawa, Ontario K1P 5B4	
BO-0042	# 01010715-0010
Mtre Eric C. Lefebvre OGILVY RENAULT LLP / Barristers & Solicitors Suite 2500 1 Place Ville Marie Montréal, Québec H3B 1R1 CANADA Telephone: 514.847.4891 Fax: 514.286.5474	

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the _____

day of OCT 25 2010 AD. 20

Dated this OCT 25 2010

[Signature]

This is Exhibit "BB" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
Province of Ontario, for Fogler Rubloff LLP,
Barristers and Solicitors
Expires March 22, 2013

Federal Court
of Appeal



Cour d'appel
fédérale

428

Date: 20110318

Docket: A-70-10
A-133-10

Citation: 2011 FCA 106

CORAM: BLAIS C.J.
NOËL J.A.
TRUDEL J.A.

BETWEEN:

GROUPE WESTCO INC.

Appellant

and

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Respondent

Heard at Ottawa, Ontario, on March 15, 2011.

Judgment delivered at Ottawa, Ontario, on March 18, 2011.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**BLAIS C.J.
NOËL J.A.**

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110318

Docket: A-70-10
A-133-10

Citation: 2011 FCA 106

CORAM: BLAIS C.J.
NOËL J.A.
TRUDEL J.A.

BETWEEN:

GROUPE WESTCO INC.

Appellant

and

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Respondent

REASONS FOR JUDGMENT

TRUDEL J.A.

[1] This is a consolidated appeal from two decisions of the Competition Tribunal (the Tribunal or the Judge). Under File A-70-10, Groupe Westco Inc. (the appellant or Westco) appeals from a decision dated January 22, 2010 (2010 Comp. Trib. 2, Blanchard J.) finding it in contempt of a previous order of June 26, 2008 (the Interim Supply Order or ISO). File A-133-10 concerns a decision dated March 18, 2010 (2010 Comp. Trib. 5, Blanchard J.) dismissing Westco's motion for directions regarding the interpretation of the ISO.

[2] Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited (the respondent or Nadeau) is a primary chicken processor whose chicken supplies come from different chicken producers (together the producers), Westco being Nadeau's main supplier.

[3] In early 2008, the producers advised Nadeau that they would cease supplying it with live chickens in order to favour a new business partner (Olymel). Ensued Nadeau's application under section 75 of the *Competition Act*, R.S.C. 1985, c. C-34 (the Act) for an order requiring the producers to continue to supply Nadeau with live chickens (the application was eventually dismissed by the Tribunal, 2009 Comp. Trib. 6 (app'd: matter under reserve)). Pending the Tribunal's decision on the section 75 application, Nadeau sought an order pursuant to section 104 of the Act requiring the producers "to supply it with live chickens on the usual trade terms, in the volumes previously supplied". On June 26, 2006, the Tribunal granted the interim relief sought in order to maintain the status quo between the parties and protect Nadeau's business pending the hearing on the merits.

[4] The ISO's key passages are found at paragraphs 57 and 58. In their relevant parts, they read:

57. The Respondents are to continue to supply the Applicant with live chickens on the usual trade terms at the current level of weekly supply, namely 271,350 live chickens.

58. ... This volume of supply is to be reduced by 25,000 live chickens per week upon the first delivery of the live chickens to [Nadeau] expected ... in September, 2008, and further reduced by any other supply of live chickens [Nadeau] may secure during this interim period [from other sources]. [I underline.]

[5] Following the issuance of the ISO, a dispute arose between the parties as to its interpretation and implementation. Briefly stated, Westco took the position that its obligation under the ISO was defined by reference to the total weight of the chickens delivered rather than by the number of heads. Adopting this view, Westco, without prior authorization by the Tribunal, took it upon itself to change the pattern of supply by supplying Nadeau with fewer chickens having a greater weight. Faced with this change, and after requesting without success that Westco continue to supply it as it had in the past, Nadeau initiated the contempt proceeding. In response, Westco filed a motion alleging that the ISO was ambiguous and had to be clarified.

[6] At the contempt hearing, there was no dispute as to the existence of the ISO and knowledge of that order by Westco, two of the constitutive elements of contempt that Nadeau needed to establish beyond a reasonable doubt. The evidence surrounding the third and final element of contempt, Westco's knowing disobedience of the ISO, was the focus of that hearing.

[7] Westco argued that the ISO was ambiguous and open to multiple interpretations. It submitted that it had complied with the ISO by offering to supply Nadeau with all of its production of heavier chickens, as permitted under its production quota, except for the reduction contemplated by paragraph 58 of the ISO for supplies secured by Nadeau from other sources. In the extreme, the position of Westco is illustrated by one of its witnesses who testified that Westco's requirement would be met if Westco could produce and deliver to Nadeau one chicken weighing 2,730,000 kgs.

[8] In my view, Westco's contention that the ISO was ambiguous only holds if one forgets that the purpose of the ISO was to maintain the status quo between the parties. Westco was well aware of the supply pattern at the time of the ISO and the importance to Nadeau of maintaining this pattern in terms of size of the chickens supplied and the total weight delivered to it. Instead, Westco took it upon itself to unilaterally change the pattern of supply because, as the Judge found, it wanted to pursue its plan to produce larger chickens in the context of a more lucrative venture with Olymel. In so doing it ceased to comply with the ISO in so far as it relates to the size of the chickens.

[9] I can detect no error in the judge's conclusion that the ISO was clear and that Westco deliberately breached its terms. Therefore, there is no need to address the other issues raised by Westco, as they would not change the final outcome.

[10] These reasons dispose of both appeals which I propose to dismiss with one set of costs assessed on a solicitor and client basis in relation to Appeal A-70-10. A copy of these reasons will be filed in appeal A-133-10 as reasons therein.

“Johanne Trudel”

J.A.

“I agree
Pierre Blais C.J.”

“I agree
Marc Noël J.A.”

FEDERAL COURT OF APPEAL**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

DOCKET: A-70-10
A-133-10

STYLE OF CAUSE: Groupe Westco Inc. v. Nadeau
Ferme Avicole Limitée/Nadeau
Poultry Farm Limited

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: March 15, 2011

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: BLAIS C.J.
NOËL J.A.

DATED: March 18, 2011

APPEARANCES:

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Alexandre Bourbonnais

Leah Price FOR THE RESPONDENT
Andrea M. Marsland
Ron E. Folkes


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This is Exhibit "CC" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

Andrea Gail Hogan, a Commissioner, etc.,
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Barristers and Solicitors
Expires March 22, 2013

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110318

Docket: A-70-10

Ottawa, Ontario, March 18, 2011

CORAM: BLAIS C.J.
NOËL J.A.
TRUDEL J.A.

BETWEEN:

GROUPE WESTCO INC.

Appellant

and

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

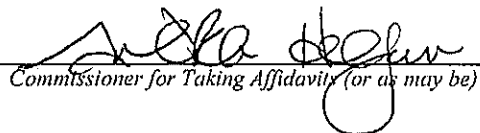
Respondent

JUDGMENT

The appeal is dismissed with costs assessed on a solicitor and client basis.

"Pierre Blais"
Chief Justice

This is Exhibit "DD" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

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Expires March 22, 2013.

Court No. A-407-10

FEDERAL COURT OF APPEAL

BETWEEN:

GROUPE WESTCO INC.

Appellant
(Respondent)

- and -

NADEAU FERME AVICOLE LIMITÉE/ NADEAU POULTRY FARM LIMITED

Respondent
(Applicant)

NOTICE OF DISCONTINUANCE

The Appellant, by its solicitors, discontinues its within appeal.

Date: April 18, 2011

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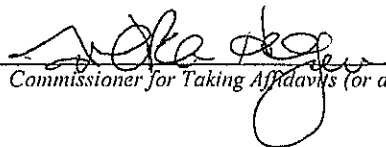
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This is Exhibit "EE" referred to in the Affidavit of Jessica Petrie
sworn September 29, 2011



Commissioner for Taking Affidavits (or as may be)

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Barristers and Solicitors.
Expires March 22, 2013.

Court File No.

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Applicant
(Appellant)

- AND -

**GROUPE WESTCO INC. AND GROUPE DYNACO, COOPÉRATIVE
AGROALIMENTAIRE AND VOLAILLES ACADIA S.E.C. AND
VOLAILLES ACADIA INC./ACADIA POULTRY INC.**

Respondents
(Respondents)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

(NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED, APPLICANT)
(Pursuant to Sections 40 and 43 of the *Supreme Court Act* and
Rule 25 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited hereby applies for leave to appeal to the Court, pursuant to sections 40 and 43 of the *Supreme Court Act*, R.S.C. 1985 c.S-26, as amended, and Rule 25 of the *Rules of the Supreme Court of Canada*, from the judgment of the Federal Court of Appeal, Court File No. A-342-09, made June 2, 2011, or for such further or other order that the Court may deem appropriate;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. This case is of national and public significance for several reasons. First, it raises the difficult problem of reconciliation of two important national legislative schemes. Second, this case deals with the interpretation of important provisions of the *Competition Act*, which have never been considered by this Court. Third, the Federal Court of Appeal incorrectly refused to consider or apply amendments to a Regulation, on the basis that the new law was merely a "question of fact" of which it could "decline to take judicial notice." Finally, the Federal Court of Appeal held that causation is always a "question of fact", and refused to examine or opine upon the proper test for causation under the relevant provisions of the *Competition Act*. These latter two issues, involve the analysis and characterization of the nature of "questions of fact", as opposed to "questions of law", and are of significance to all appellate courts in their day-to-day work.

2. The case at bar deals with two complicated national legislative schemes. On one side is the supply management system, which supports agricultural prices by limiting competition, and has long played a significant role in Canadian agricultural policy. On the other side is the *Competition Act* (the "*Act*"), which sets its face against arrangements which have the effect of fixing prices and limiting competition.

3. If the decision of the Federal Court of Appeal in this case is allowed to stand, supply management will always "trump" competition law. This is because the court below has interpreted subsections 75(1)(b) and 75(1)(d) of the *Act* in such a way as to immunize producers under the supply management system from scrutiny under the *Act*.

4. The case arises out of an application by the Applicant ("**Nadeau**") for an order requiring the Respondents to supply it with live chickens pursuant to subsection 75(1) of the *Act*. Nadeau is a chicken processor. The Respondents are producers of live chickens, who own or control almost 80% of the total chicken quota in New Brunswick. Under Canada's supply management system, quota holders have a monopoly on the production of live chickens, and both quantities and prices are regulated.

5. The Tribunal examined the statutes and regulations governing the supply management system, and found that they were "not *intended* to limit competition" (emphasis added). Despite these precatory remarks, however, the Tribunal found that Nadeau could *not* meet the requirements of subsection 75(1)(b) because "the limit on aggregate supply which results from the supply management system is essentially the reason why the applicant is unable to obtain adequate supplies of live chickens." Similarly, the Tribunal held that Nadeau could not meet the requirements of subsection 75(1)(d), because, under the supply management system, chicken can never be in "ample supply." The Federal Court of Appeal agreed with the Tribunal.

6. This result was not inevitable. The Tribunal and the Federal Court of Appeal could have defined the relevant criteria ("insufficient competition", "because", "ample supply") in such a way as to permit scrutiny, through the lens of competition law and policy, of abusive conduct by producers in the supply management system.

7. Given the importance of these two national legislative schemes, it is submitted that a purposive and contextual analysis of their scope and application, including the question of whether one should "trump" the other, is an issue of public importance warranting the granting of leave to appeal.

8. Further, the criteria set out in subsection 75(1) of the *Act* have never been considered by this Court. The following issues of interpretation of this subsection arise in the case at bar:

- (a) the meaning to be given to the words "insufficient competition" in subsection 75(1)(b) of the *Act*;
- (b) the meaning to be given to the word "because" in subsection 75(1)(b) of the *Act* (that is, the applicable legal test to be met for causation under this subsection);
- (c) the meaning of the words "ample supply" in subsection 75(1)(d) of the *Act*;
- (d) the meaning to be given to the words "a market" in subsection 75(1)(e) of the *Act*, and in particular, whether that subsection is limited to the "downstream" market; and

- (e) the meaning of the words "adverse effect" in subsection 75(1)(e), and in particular, whether that subsection requires a showing of "competitive disadvantage" of "significance" to the "market as a whole", as found by the Tribunal.

9. In addition, the Federal Court of Appeal incorrectly characterized the following issues as pure questions of *fact*:


- (a) the applicability of an amendment to a Regulation, which amendment was passed after the decision of the Tribunal was handed down; and
- (b) the test for causation under subsection 75(1)(b).

10. There are now only two standards of review on applications for judicial review and statutory appeals from administrative tribunals, namely, "correctness", and "reasonableness." Decisions of the Tribunal on "questions of law" are subject to a "correctness" standard, while decisions on questions of "mixed fact and law" are subject to a "reasonableness" standard of review. However, questions of pure fact cannot be challenged without special leave, pursuant to subsection 13(2) of the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd supp.). Accordingly, there is in this case a "bright line" between questions of fact, on the one hand, and questions of law or mixed fact and law, on the other. Only the latter two are reviewable upon appeal. It is submitted that the proper analysis and characterization of such questions, in the context of an appeal from this Tribunal, is an issue of public importance that should be considered by this Court.

11. Such further or other grounds as counsel may advise and this Honourable Court permit.

Dated at the City of Toronto, in the Province of Ontario, this 25th day of August, 2011.

Signed by:



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NOTICE TO THE RESPONDENT: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the *Supreme Court Act*.

(A notice of application for leave to appeal must be accompanied by the certificate in Form 25B and, if applicable, by the certificate in Form 25C.)

SOR/2006-203, s. 43, SOR/2011-74, s. 41.