



PUBLIC VERSION

Reference: *Nadeau Poultry Farm Limited v. Groupe Westco Inc.*, 2010 Comp. Trib. 2

File No.: CT-2008-004

Registry Document No.: 0608

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: 20091102 to 20091106

Before Judicial Member: Blanchard J.

Date of Reasons and Order: January 22, 2010

Reasons and Order signed by: Justice Edmond P. Blanchard

**REASONS FOR ORDER AND CONTEMPT ORDER**

## I. INTRODUCTION

[1] This decision relates to a contempt hearing held in the week of November 2, 2009, following the issuance of a show cause order dated February 26, 2009, which directed the Respondent Groupe Westco Inc. (“Westco”) to appear before the Tribunal with respect to an alleged contempt and to be prepared to present any defence that it might have. The alleged contempt relates to an interim order issued in the context of an application filed pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”).

## II. BACKGROUND FACTS

[2] Nadeau Poultry Farm Limited (the “Applicant” or “Nadeau”) is a primary processor that slaughters live chickens and sells them to further processors and other customers. On May 12, 2008, having obtained leave from the Tribunal, Nadeau filed an application for an order under section 75 of the Act. It sought an order directing the Respondents to accept it as a customer and to supply it with live chickens. Nadeau also filed an application for interim relief.

[3] The Respondents Westco, Groupe Dynaco, Coopérative Agroalimentaire (“Dynaco”), Volailles Acadia S.E.C and Volailles Acadia Inc./Acadia Poultry Inc. (collectively, “Acadia”) had advised Nadeau in early 2008 that they would cease supplying it with live chickens. A complete description of the parties’ businesses appears in the Tribunal’s Reasons for Order and Order dated June 8, 2009 (see *Nadeau Poultry Farm Limited v. Groupe Westco Inc. et al.*, 2009 Comp. Trib. 6).

[4] On June 26, 2008, the Tribunal granted Nadeau’s application for interim relief and issued an interim order (the “Interim Order”) in which it ordered:

[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.

[[emphasis added]

[5] Counsel for the Applicant wrote to the Tribunal on October 14, 2008, alleging that the Respondents had supplied substantially fewer live chickens than the number required under the Interim Order. Counsel attached to her letter correspondence between the parties regarding this issue. It appeared from this correspondence that the Respondent Westco had increased the size of its chickens and had therefore supplied fewer chickens to the Applicant than the number required by the Interim Order.

[6] On October 16, 2008, the Tribunal issued a Direction to the parties directing that the “Respondents’ weekly supply of live chickens to be provided to the Applicant pursuant to paragraphs 57 and 58 of the Interim Supply Order will continue to be expressed in number of live chickens.” The Direction’s preamble provided that it was clear that the Respondents’ weekly supply of live chickens was to be provided in a number of live chickens and not in terms of the weight of the chickens (the Direction appears in Schedule A to these reasons).

[7] Counsel continued to write letters to the Tribunal and on October 31, 2008, the Tribunal, upon being satisfied that a proper record would be required in order to deal with the interpretation of the Interim Order or any alleged failure to comply with the said order, directed that any further request regarding the interpretation of the terms of the Interim Order or compliance therewith be raised by way of a motion.

[8] The Applicant filed a motion for a show cause order on November 4, 2008, and asked that its motion be expedited. The hearing of the main application had been scheduled to commence on November 17, 2008. The Tribunal refused the Applicant’s request to expedite the motion on November 5, 2008. On November 6, 2008, the Respondent Westco filed a motion for an order or direction regarding the interpretation of the Interim Order.

[9] The hearing on the section 75 application commenced on November 17, 2008 and ended on December 3, 2008, as scheduled.

[10] A hearing dealing with the show cause order took place on February 9 and 10, 2009. On February 26, 2009, the Tribunal dismissed the motion for a show cause order with respect to Acadia and Dynaco, but issued a show cause order with respect to Westco. It ordered Westco to appear before the Tribunal to hear proof of the act with which it was charged, 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.

[11] In its reasons, the Tribunal considered the Respondents’ positions separately and decided, based on the evidence provided during the hearing on the interim application and the prorating of the Respondents’ collective supply obligation under the Interim Order, that Westco had to supply 186,230 chickens per week to Nadeau.

[12] On June 8, 2009, the Tribunal dismissed Nadeau’s main application.

[13] The contempt hearing was held the week of November 2, 2009. It is clear from the evidence adduced at the hearing that Westco had been growing larger/heavier chickens and that it supplied those chickens, minus the reduction it was entitled to under paragraph 58 of the Interim Order, to the Applicant. Since it was delivering larger/heavier chickens to Nadeau, Westco delivered fewer chickens than those required by the Interim Order. However, it felt that Nadeau was receiving a weight in chickens equivalent to the weight of the number required by the Interim Order.

### III. POSITION OF THE APPLICANT

[14] The Applicant submits that there are two separate and continuing breaches of the Interim Order. The first breach is based on the shortfall in the number of chickens supplied by Westco. The second relates to a change in the usual trade terms as between the parties regarding the size of the chicken.

[15] The Applicant submits that Westco was in breach of the Interim Order during the period starting on September 14, 2008, and ending on June 8, 2009, the date of the Tribunal's order dismissing the main application. Under the chicken supply management system, chicken producers are limited to producing a certain quota amount, expressed in kilograms of live weight, for each eight week quota period. Nadeau submits that the alleged contempt concerns quota periods A-87, A-88, A-89, A-90, and the first six weeks of A-91.

#### (a) Shortfall in chickens supplied

[16] The first breach alleged by Nadeau is that Westco failed to provide the Applicant with the numbers of chickens which it was ordered to supply pursuant to the Interim Order. The Applicant submits that Westco was obliged to provide Nadeau with 154,980 live chickens, on average, per week under the Interim Order. This figure takes into account the replacement supply of chickens that Nadeau secured pursuant to paragraph 58 of the Interim Order ( $186,230 - 31,250 = 154,980$ ).

[17] The Applicant's evidence indicates that the average weekly number of chickens supplied by Westco for the relevant quota periods was as follows:

A-87	(Sep. 14 2008 to Nov. 8 2008)	125,690
A-88	(Nov. 9 2008 to Jan. 3 2009)	128,360
A-89	(Jan. 4 2009 to Feb. 28 2009)	130,028
A-90	(March 1 2009 to Apr. 25 2009)	134,498
A-91	(Apr. 26 2009 to June 20 2009)	134,540 (six weeks only)

[18] Nadeau asserts that given Westco's obligation to supply 154,980 chickens on a weekly basis, it clearly failed to comply with the Interim Order. According to Nadeau, the overall shortfall for the relevant period was 933,398 chickens.

#### (b) Increase in the average size of the chicken

[19] Nadeau submits that as a separate matter, there has been a change in the usual trade terms in respect of the size of the chickens. It asserts that the purpose of the Interim Order was to preserve the status quo. Nadeau submits that Westco was required under the Interim Order to supply chickens in accordance with the usual trade terms in place; that is, in a range of sizes averaging about 2 kg.

[20] In that regard, Mr. Landry, General Manager of Nadeau, testified that at the beginning of 2007, he had approached Westco to see if Westco could increase its supply to Nadeau of

chickens weighing around 1.79 kg for Nadeau's "nine-cut customers". Mr. Landry stated that Westco had agreed to increase its supply of lighter chickens and that it had supplied Nadeau with a sufficient amount of chickens weighing 1.79 kg or less prior to the Interim Order.

[21] Mr. Landry testified that chickens weighing 1.79 kg or less are generally pullets (female chickens) grown in a single gender (sexed) flock and that they are slaughtered at approximately 34 days of age. Mr. Landry further testified that in the first week of July 2008, Nadeau received Westco's supply schedule for period A-86 (July 20 to September 13) and according to this schedule, Westco would provide Nadeau with 37-day mixed flocks as of week 3 of period A-86. Mr. Landry stated that Nadeau believed that Westco would no longer be supplying it with lighter chickens as of week 3 of period A-86 because the schedule indicated that Westco would be supplying 37-day mixed flocks instead of 34-day sexed flocks. Consequently, Nadeau contacted Westco in order to obtain lighter chickens so that Nadeau could "get the right size for one" of its customers. Mr. Landry testified that Westco did not supply Nadeau with lighter chickens.

[22] Ms. Boucher, Office Manager at Nadeau, testified that from September 14, 2008 onward there was not a single flock with an average weight of 1.79 kg or less and that there were very few with an average weight of 2.0 kg or less. Ms. Boucher stated that from period A-87 to A-91, the size of the chickens delivered by Westco to Nadeau increased. The average size of Westco's production for the relevant quota periods was as follows:

A-87	2.233 kg.
A-88	2.288 kg.
A-89	2.217 kg.
A-90	2.295 kg.
A-91	2.326 kg. (six weeks only)

[23] Nadeau submits that given Westco's evidence at the hearing of the interim application, Westco understood that it would have to maintain Nadeau's size requirements if an interim order was issued by the Tribunal. Its failure to do so is a breach of the Interim Order.

[24] Nadeau also called Dr. Rachel Ouckama at the contempt hearing. She works as a General Manager of the Hatchery Division of the Maple Lodge Farms group of companies. She was recognized by the Tribunal as an expert in veterinary medicine, in poultry medicine and in flock management. She addressed the question of whether Westco could have supplied the Applicant with smaller chickens.

[25] Dr. Ouckama explained that pullets are generally smaller and lighter than cockerels (males) and that therefore there tends to be less weight variation among chickens in sexed flocks, as opposed to mixed flocks. She expressed the view that at 34 days of age, chickens in a female flock would weigh, on average, approximately 1.7 kg and chickens in a male flock would weigh, on average, approximately 2.0 kg.

[26] She explained that the "Cobb 500" breed of chickens, one of the breeds used by Westco, includes both "fast feathered" and "slow feathered" strains. "Slow feathered" chickens can be grown as a single gender (sexed) flock because the gender of each chick can be ascertained at

hatch. The male's wing feathers are shorter than the female's wing feathers. The gender of fast-feathered chickens must be ascertained by a slower process.

[27] Dr. Ouckama further testified that growers of Cobb 500 chickens in mixed flocks can expect that birds processed at 32 days should weigh approximately 1.749 kg, birds processed at 34 days should weigh approximately 1.929 kg, and birds processed at 38 days should weigh approximately 2.282 kg. She also provided evidence with respect to the administration of a vaccine used by Westco.

[28] She opined that "without any change to its breeding or its vaccination programs, Westco was capable of shipping mixed gender flocks at an average age of 33-34 days and thus with an average weight of about 1.838 kg-1.928 kg."

#### **IV. POSITION OF THE RESPONDENT**

[29] Westco submits that it has complied with the Interim Order based on its interpretation. It also asserts that if its interpretation of the Interim Order is incorrect, it should not be held in contempt because the Interim Order is ambiguous and is open to multiple interpretations. However, if the Tribunal finds that the Interim Order is clear, Westco submits that it should not be found in contempt because it is in substantial compliance with the Interim Order and at all times complied with the spirit of the Interim Order. Finally, Westco submits that even if the Tribunal finds that the Interim Order is clear, Westco could not have complied with the terms of the Interim Order.

##### **(a) Westco's Interpretation of the Interim Order**

[30] Westco asserts that it has complied with the Interim Order because, since the issuance of the Interim Order, it has shipped to Nadeau, in each period, all of its production, as allowed under its production quota, except for the reduction allowed by the Interim Order. The reduction relates to the volume of replacement chickens obtained by Nadeau from other sources. Westco stresses that chicken production quotas are allocated in kilograms of live chicken per period and not in number of chickens.

[31] Westco submits that the number of chickens to be supplied under the Interim Order (i.e. 271,350) was merely a notional figure based on assumptions made by Mr. Tavares at the hearing of the application for interim relief. Mr. Tavares was the Chief Executive Officer of Maple Lodge Holding Corporation, the parent company of the Applicant. He assumed that the total production allocation for New Brunswick in period A-83, the production period during which his affidavit was sworn, was 5,853,076 kg, and Westco's allocation was 2,979,968 kg. He also assumed that each chicken weighed about 2 kg and therefore assumed that Westco was supplying Nadeau with about 186,230 chickens per week ( $2,979,968 \div 2 = 1,489,984$  ;  $1,489,984 \div 8 \approx 186,230$ ). Westco submits that in actual fact, the average weight of chicken sent from Westco to Nadeau has never been exactly 2 kg and that the average number of chicken per week sent from Westco to Nadeau was generally significantly less than 186,230 chickens. Accordingly, the number of live chickens was a notional figure used to simplify the data at the hearing on the

application for interim relief. Westco submits that Nadeau's interpretation of the Interim Order would require Westco to deliver to Nadeau more chickens per period than it had ever produced prior to the bringing of Nadeau's application. Also, Westco's supply of chickens to Nadeau depended on Westco's production quota which might vary from period to period.

[32] Westco further argues that the purpose and intent of the Interim Order was not to impose specific production requirements on the Respondents, but rather to ensure that the level of supply that Nadeau had previously enjoyed was maintained. Since Nadeau could not impose size restrictions on the chickens delivered by Westco prior to the issuance of the Interim Order, it would be incongruous that it be allowed to do so as a result of the Interim Order. Such an interpretation of the order would confer upon Nadeau a commercial advantage which it would not have otherwise enjoyed.

[33] In Westco's view, the words "current level of weekly supply" therefore represented, at the time the Interim Order was issued, all of Westco's, and the other Respondents' production as allowed under the production quotas.

(b) The Interim Order gives rise to several possible interpretations

[34] In the alternative, Westco asserts that the Interim Order was not sufficiently clear to give rise to a committal for contempt. Westco argues that when considered in light of the premises and evidence on which it was based; Westco would not have understood the Interim Order to entail an obligation on the part of the Respondents to supply 271,350 live chickens each week to Nadeau during the duration of the Interim Order.

[35] Westco further argues that it does not necessarily flow from the literal terms of the Interim Order that Westco should be held to supply a specific number of chickens to Nadeau rather than a volume of kilograms of chickens because paragraph 58 of the Interim Order uses the term "volume", which denotes a quantity of chicken in kilograms.

(c) Technical breach not constituting contempt

[36] If, however, the Tribunal concludes that the Interim Order was clear, Westco submits that it should not be found in contempt because it complied at all times with the spirit of the order by continuing to supply 100% of its production to Nadeau throughout the interim period (save for a reduction representing the volume of replacement chicken obtained by Nadeau). In Westco's view, any breach of the Interim Order was technical in nature and ought not to give rise to a committal for contempt.

[37] Westco submits that any shortfall between the number of chickens actually delivered to Nadeau by the Respondents and the number required under the Interim Order is largely explained by two factors: (1) the quota allocations to which Westco was subject; (2) the reference weight of 2 kg used as the basis for expressing Westco's supply obligation. In the beginning of 2008, the average weight of Westco's chickens was 2.06 kg. Westco asserts that if one takes into account the average weight of 2.06 kg, quota reductions and the chickens Westco supplied to Nadeau after the issuance of the Interim Order, Westco supplied slightly less than

99% of the number of chickens required under the Interim Order. This, in Westco's view, constitutes substantial compliance in an industry in which the Chicken Farmers of New Brunswick recognize a margin of error of 2% in assessing compliance with quota allocations. Westco further notes that this number does not take into account the decrease in numbers of chickens delivered by Westco that is directly attributable to Nadeau's requests that deliveries be postponed.

(d) Westco could not comply with the literal terms of the Interim Order

[38] Finally, Westco argues that it could not comply with the Interim Order. It states that its ability to comply was constrained by the genetic flock shift it began to implement in 2006 and by the decision it made in 2007 to grow bigger chickens.

[39] In 2006, Westco decided to change the genetic type of the chickens it produced from slow feathered to fast feathered chickens. As a result, it could no longer raise sexed flocks. Mr. Soucy, President of Westco, testified that this change is a very lengthy process for a vertically-integrated producer such as Westco. Mr. Soucy testified that as of June 2008, most of the eggs which were entering the Westco hatcheries were fast feathered. Westco asserts that given the steps involved, it would have been impossible for Westco to implement a reversal of such a flock shift to accommodate Nadeau's requirements.

[40] Westco further states that concomitantly with the implementation of its shift to fast-feathered chickens, it decided in 2007 to increase the size of chickens that it would, in the future, produce and sell because of its partnership with Olymel S.E.C. ("Olymel"), a Quebec chicken processor. Westco submits that larger chickens better suited the needs of the partnership and were therefore more profitable for Westco to produce. Westco submits that this is not a short term change. In that regard, it notes that in order to ensure that the correct volume of chickens is produced; a producer must effectively work backwards from an anticipated slaughter bird weight in order to place the correct number of chicks in the barn.

[41] Responding to Nadeau's argument that it could have simply grown smaller chickens by supplying them at a younger age, Westco states that if its chickens were released at a lower weight, it would not have met its quota. Mr. Soucy testified that non-compliance with quota allocations can give rise to severe penalties. Westco further submits that in many cases it will be impossible to move up the slaughter date on short notice because of Westco's medication regime which is precisely planned according to the anticipated slaughter date of its chickens, in keeping with the withdrawal dates associated with such medications. Further, Westco states that its production had been planned long in advance in order to meet its quota and that it did not have excess supply of eggs in order to meet Nadeau's demand. Mr. Soucy testified that Westco did not have enough eggs to produce more chickens, that it lacked barn space and that it could not alter its vaccination/medication protocols.



## V. CONTEXT OF THE SECTION 104 APPLICATION

[42] Before turning to an analysis of the evidence, it is useful to review the context within which the application for interim relief was brought.

[43] On May 12, 2008, the Applicant filed a notice of application pursuant to section 104 of the Act for interim orders “requiring the Respondents to accept Nadeau as a customer and to supply live chickens to Nadeau on the usual trade terms, in the numbers previously provided to Nadeau by the Respondents, pending the hearing of the main application”. Both Westco and Nadeau submitted affidavit evidence to substantiate their respective positions *vis-à-vis* the application. Nadeau relied on the affidavit of Anthony Tavares to support its request for interim relief. Mr. Tavares’ affidavit indicated that Nadeau was being supplied with the following numbers of chickens on a weekly basis:

Westco	186,230
Acadia	58,670
Dynaco	26,450
New Brunswick, other	94,450
(Total New Brunswick)	365,800
P.E.I.	40,000
Nova Scotia	160,000

[44] The basis upon which the abovementioned calculations were made was provided at paragraph 28 of Mr. Tavares’ affidavit wherein he indicated the following:

Attached hereto and marked as Exhibit “D” to this my [sic] affidavit is a chart prepared by Yves Landry, General Manager of Nadeau (“Mr. Landry”), the contents of which I verily believe are true. It shows all of New Brunswick’s chicken quotas, by kilograms, for the quota period A83, which covers the 8-week period from February 3, 2008 to March 29, 2008. As each chicken weighs about 2 kilograms, the chart represents a total for New Brunswick of about 365,800 chickens per week.

[45] In his affidavit, Mr. Tavares also stated that the Applicant required a full range of sizes of chickens to meet the needs of its customers. He indicated the following at paragraphs 84 and 85 of his affidavit:

84. Nadeau supplies reliable and predictable amounts of chicken to its customers, in a timely manner that meets specific weight requirements for each individual customer. Nadeau requires a full range of chickens (with different sizes and weights, etc) to be able to continue to meet volume and size requirements.

85. Interruption of supply would create an immediate inability to fulfill the needs of Nadeau’s customers. This would cause immediate damage to the relationship Nadeau has built with its customers over the last 18 years.

[46] Westco relied on the Affidavit of Mr. Soucy at the hearing of the interim application. Mr. Soucy indicated that he also used the hypothetical average weight of 2.0 kg. Mr. Soucy asserted the following in Exhibit C to his affidavit:

Poids moyen d'un poulet: 2 kilogrammes. Source : Affidavit Tavares, para. 28  
Ce poids moyen est utilisé afin de simplifier les données et les rendre comparables à celles utilisées dans l'Affidavit Tavares. Cependant, le commerce du poulet et le calcul des quotas se fait généralement par kilogrammes et non par nombre de poulets en raison du fait que certains types de poulets comme les poulets à rôti peuvent avoir un poids moyen supérieur à deux kilos. Il ne s'agit donc pas de données exactes lorsque nous mentionnons le nombre de poulets par année ou par semaine. Toutefois, le nombre de kilogrammes, lui, est exact.

[47] The Respondent Westco asserted at the hearing on the application for interim relief that the balance of inconvenience favoured Westco. It referred to Mr. Soucy's affidavit in which he attested 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. He indicated the following at paragraph 78 of his affidavit:

Contrairement à la situation de Nadeau pour qui les poulets jeûnent chez Westco pendant 12 heures avant d'être pesés et livrés, Olymel prendra livraison des poulets sans que ceux-ci n'aient jeûné, et les poulets auront donc un poids supérieur lorsqu'on procédera à leur pesée à la sortie des installations de Westco. Au surplus, en vertu de leur entente, Olymel requerra que les poulets fournis par Westco soient plus gros à leur arrivée à l'abattoir que ne le sont les poulets présentement vendus par Westco à Nadeau. Puisque, en raison de ces deux facteurs, les poulets vendus par Westco à Olymel seront en conséquence plus lourds, Westco augmentera sa rentabilité. En effet, Westco pourra atteindre son quota de production annuel en élevant moins de poulets, ce qui générera d'importantes économies de coûts. Les calculs me permettant d'évaluer cette perte sont communiqués au soutien des présentes à la pièce « X ».

[emphasis added]

[48] The following calculations appeared in Exhibit X to Mr. Soucy's affidavit:

Situation 1: Vente à Nadeau

Nadeau requiert des poulets qui pèsent 2,07 kg lors de l'abattage;  
Le temps de transport entre les fermes Westco et l'Abattoir St-François est très court;  
Le jeûne des poulets s'effectue donc sur les fermes Westco;  
Afin de calculer le prix de vente des poulets, les poulets sont pesés lorsqu'ils quittent les fermes Westco, soit après avoir jeûné;  
Les poulets pèseront environ 2,07 kg au moment de leur pesée;

Pour peser environ 2,07 kg après avoir jeûné, les poulets doivent être engraisés jusqu'à 2,19kg;

#### Situation 2 : Vente à Olymel

Olymel requiert des poulets qui pèsent 2,13kg lors de l'abattage;

Le temps de transport entre les fermes Westco et les abattoirs d'Olymel est plus long;

Le jeûne des poulets s'effectue donc lors du transport;

Afin de calculer le prix de vente des poulets, les poulets sont pesés lorsqu'ils quittent les fermes Westco, soit avant d'avoir jeûné;

Les poulets pèseront environ 2,25 kg au moment de leur pesée;

Pour peser environ 2,25 kg avant d'avoir jeûné, les poulets doivent être engraisés jusqu'à 2,25 kg;

[...]

Économies dues à l'utilisation de moins de moulée et de poussins

[...]

Économies de coûts variables

[...]

Économies totales (annuelles)

[CONFIDENTIAL]

Économies totales (hebdomadaires)

[CONFIDENTIAL]

[49] In its Interim Order, the Tribunal addressed Westco's argument as follows:

[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.

## VI. THE LAW

[50] The fundamental purpose of the Court's contempt power is to ensure respect for the judicial process so as to, in turn, secure the proper and effective functioning of the judicial system (*Louis Vuitton Malletier, S.A. v. Bags O'Fun Inc.*, 2003 FC 1335, 242 F.T.R.75). In *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, [1992] 2 S.C.R. 394, the Supreme Court of Canada concluded that the Competition Tribunal has power over civil contempt for breaches of its orders.

[51] The constituent elements of contempt must be proved beyond a reasonable doubt and the onus of proof is on the party alleging contempt (*Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217).

[52] The Tribunal has, to date, applied the *Federal Courts Rules*, SOR/98-106, to these contempt proceedings by applying Rule 34 of the *Competition Tribunal Rules*, SOR/2008-141. Rule 466(b) of the *Federal Courts Rules* states that a person is guilty of contempt if he disobeys a process or order of the Court.

[53] In *Louis Vuitton Malletier*, Justice Dawson held that in the case of disobedience of an order of the Court, the elements which must be established are the “existence of the Court order, knowledge of the order by the alleged contemnor and knowing disobedience of the order.” Further, the alleged contemnor need not present evidence to the Court.

[54] The order must be clear (*Merck & Co. v. Apotex Inc.*, 2003 FCA 234, 241 F.T.R. 160, at para. 50). Ambiguity in an order should be resolved to the benefit of the alleged contemnor (*Québec (Commission des valeurs mobilières) c. Lassonde*, [1995] R.J.Q. 21 (Qc. C.A.) at para. 19).

[55] Courts on a motion for contempt should not unduly concern themselves only with the letter of the order. The particular context in which an order was rendered and the intent and spirit of an order must be considered in order to determine compliance. In *Canada (Director of Investigation and Research) v. Chrysler Canada Ltd.* (1992), 44 C.P.R. (3d) 430, the Tribunal states that “a breach of the spirit of the order is equally contemptuous as a breach of the literal terms thereof” (at p. 435). The Tribunal offered the following (at p. 436):

The Tribunal is concerned that the implementation of its orders, especially those dealing with the re-establishment of business relationships, be approached with an attitude aimed at attempting to implement their intent and spirit, not one aimed at attempting to chip away at the edges so as to render them in practical terms ineffectual. The decision of the Supreme Court of Canada which held that the Tribunal had jurisdiction to entertain contempt proceedings with respect to the enforcement of its orders indicated that one of the Court’s reasons for so finding was that the Tribunal had some expertise in the matters in issue. This includes of course an awareness on the Tribunal’s part of the difficulties which are bound to exist in effectively enforcing orders such as that which is in issue in this application. Defences which are based on the strict wording of a specific order without regard to the intent thereof are not likely to meet with much acceptance.

[56] In *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, [1992] 2 S.C.R. 394, Justice Gonthier, writing for the majority, recognized the importance of effective enforcement of orders issued in the context of competition law (at p. 419) :

In the context of competition law, particularly of Part VIII CA, where the subject-matter lies largely in the realm of contractual relationships, effective enforcement of orders is essential, for fear of seeing these orders circumvented through elaborate relational arrangements which, although on the surface innocuous, effectively

create the same obstacles that the orders sought to remove. Only a specialized tribunal such as the Tribunal can properly ensure the enforcement of the orders it makes.

[57] Even in cases where disobedience of a Court order has been established, the Court may examine the circumstances surrounding the non-compliance to determine whether the respondent was able to comply with the order (*Metaxas v. Galaxias* (1988), 19 F.T.R. 104). It follows that in exceptional cases, non-compliance may not necessarily lead to a finding of contempt. However, it is not a defence to an allegation of contempt that it is impossible for the contemnor to comply with the court order where such impossibility is the result of the contemnor's own conduct. (*Sussex Group Ltd. v. Fangeat* (2003), 42 C.P.C. (5<sup>th</sup>) 274 (Ont. Sup. Ct.)). The alleged contemnor must establish that serious attempts have been made to comply with the order.

## VII. ANALYSIS

[58] As stated above, to establish contempt of a Court order, the elements which must be established are the existence of the Court order, knowledge of the order by the alleged contemnor and knowing disobedience of the order. These elements must be proven beyond a reasonable doubt and the party alleging contempt has the burden of proving such contempt.

[59] There is no dispute between the parties as to the existence of the Interim Order and knowledge of that order by the Respondent Westco. On the latter point, Mr. Soucy testified that he saw the Interim Order on June 26, 2008. The first two elements of contempt are established.

[60] As stated above, the jurisprudence has established that in order to ground a contempt finding, an order must be clear. Contempt cannot be found where the order could be open to various interpretations. Any ambiguity in an order is to be resolved to the benefit of the alleged contemnor. It is also clear that a defendant cannot hide behind a restrictive and literal interpretation to circumvent the order (*Zhang v. Chau*, 229 D.L.R. (4<sup>th</sup>) 298 (Qc.C.A.), leave to appeal to S.C.C. refused, [2003] 3 S.C.R. v). The context in which the order was issued must be considered in deciding whether the defendant could have reasonably been aware that its acts or omissions fall under the order. Further, once knowledge of the order is established, one is obliged to obey not only the letter of the order but also its spirit (*Watchcraft Shop Ltd. v. L & A Development (Canada) Ltd.* (1996), 49 C.P.C. (3d) 17 (Ont. Ct. J. (Gen. Div.)).

[61] I now turn to the arguments made regarding the interpretation of the Interim Order.

[62] As detailed above, the Respondent Westco argues that the underlying rationale and purpose for the Interim Order allow for a different interpretation than that advocated by Nadeau. Westco contends the Interim Order did not intend to confer upon Nadeau a commercial advantage or benefit, namely the delivery of chickens of a specific weight, which it would not otherwise have enjoyed. Nor was the Interim Order intended to impose specific production constraints on the Respondents but was intended to ensure that the level of supply that Nadeau had previously enjoyed be maintained.

[63] Westco further contends that the Interim Order was based on maintaining the “current level of weekly supply” as allowed under production quotas which are expressed in kilograms of live chickens per quota period. The numbers of live chickens expressed in the Interim Order, and agreed to by the parties at the time of the Interim Order, were notional figures used to express the level of supply of live chicken to Nadeau. In an effort to simplify the data used in the proceedings, an average weight of 2 kg was used.

[64] However, these submissions do not paint a complete picture of the context in which the Interim Order was issued. At the outset, I note that the application for interim relief specifically sought an order “requiring the Respondents to ... supply live chickens to Nadeau on the usual trade terms in the numbers previously provided...” (emphasis added). Relief to be granted in terms of numbers of chickens would necessarily impact on the size of chickens to be supplied. This is so because the production quotas limit the total number of kilograms of chickens that may be produced per quota period. In my view, the Respondent Westco appreciated the significance of an order expressed in terms of numbers of chickens since in its submissions on the interim application, it also dealt with numbers of chickens (see Westco’s written submissions, at paragraph 185, page 54).

[65] While the Interim Order did not expressly provide that chickens of a given weight be supplied to Nadeau, weight was nevertheless an important factor in determining the number of chickens to be supplied weekly in the Interim Order. As stated earlier in these reasons, this number was computed based on Westco’s allocation for production period A-83 divided by the average weight of chickens delivered to Nadeau, namely 2 kg. This average weight, which is now disputed, was not disputed by the parties at the time of the Interim Order. Nor was there any dispute relating to the average number of chickens then being delivered to Nadeau on a weekly basis. At the time, it was also understood by Westco that size of chickens mattered to Nadeau. The evidence establishes that Westco was very much aware that Nadeau required chicken which had an average weight of 2.07 kilograms. At the time of the application for interim relief, the Respondent Westco argued that, if the relief was granted, it would suffer significant losses as a result of having to continue to supply Nadeau with smaller chickens. It argued that Olymel required chickens that weighed an average of 2.25 kilograms as opposed to a 2.07 kilogram average required by Nadeau at the time of slaughter. Westco argued that it would suffer a weekly loss of [CONFIDENTIAL] if it were ordered to continue to supply Nadeau with smaller chickens (see the Affidavit of Mr. Soucy, at paragraph 78 and exhibit X to his affidavit; and paragraph 70 of Westco’s written submissions on the application for interim relief.) It is therefore clear that Westco was aware that the size of the chickens to be delivered to Nadeau mattered at the time of the Interim Order.

[66] The record also establishes that at the time of the Interim Order, Westco was in the midst of implementing changes to its production process which it had initiated in 2006 and 2007. Westco was aware that these changes would ultimately result in the production of larger chickens for Olymel. The changes in Westco’s production took effect during the period of the Interim Order resulting in Westco producing larger chickens and not the smaller chickens it had delivered to Nadeau in the past. Because production quotas set limits on the number of kilograms of chickens Westco could produce in a production period, producing heavier chickens necessarily meant that it could not produce as many chickens in any given production period. This in turn meant that Westco would have greater difficulty being able to deliver the

same number of chickens it had been delivering to Nadeau, without exceeding its quota, since the chickens being produced were heavier.

[67] As noted above, Westco interpreted its obligation under the Interim Order to supply Nadeau with the “current level of weekly supply” in kilograms of live chickens as opposed to numbers of live chickens. Westco argues that to require it to continue to deliver the number of live chickens that a literal reading of the Interim Order would require, would have the effect of requiring it to deliver more chickens to Nadeau than it had ever produced prior to the bringing of the application for interim relief. Further, Westco contends to do so would cause it to exceed its production quotas per period exposing it to significant fines.

[68] However, these arguments were not advanced by the Respondents at the time the application for interim relief was argued and are not now persuasive. It does not necessarily follow that strict compliance with the Interim Order would have had the effect of delivering more chickens. It may be that more kilograms of chickens would have been delivered, if the required numbers of chickens were larger chickens. To avoid this problem, Westco had only to supply smaller chickens as it had in the past. To accept Westco’s interpretation, would be to totally ignore that the size of chickens to be delivered was important. As stated above, Westco was well aware of Nadeau’s production requirements at the time of the Interim Order. The evidence of Mr. Tavares confirms that Nadeau required a full range of chickens (with different sizes and weights, etc.) to be able to continue to meet the volume and size requirements of its customers. This included the smaller chickens it had been receiving from the Respondents prior to the Interim Order. This is the context in which the Interim Order was issued. In the circumstances, Westco could have reasonably been aware that compliance with the order required it to continue to supply Nadeau with chickens within the range of sizes it had been delivering prior to the Interim Order. This would have maintained the status quo.

[69] Delivering smaller chickens would also have allowed Westco to deliver the required number of chickens without exceeding its quota. Instead, it knowingly supplied fewer heavier chickens, arguing that it met its obligation under the Interim Order, because it delivered the equivalent volume of chickens in kilograms. This allowed Westco to continue with the implementation of changes to its long term production plan which resulted in the production of larger chickens for Olymel. The record indicates that the average size and weight of chickens produced by Westco continued to increase from the time of the Interim Order to the bringing of the contempt application, and afterward. In my view, Westco knowingly failed to supply the number of chickens required in the Interim Order.

[70] I also reject Westco’s argument that it at all times complied with the spirit of the order. As acknowledged by Westco, the underlying rationale of the Interim Order was to ensure that the level of supply that Nadeau had previously enjoyed be maintained. In the context discussed above, particularly in respect to Nadeau’s size requirements, Westco cannot be said to be in compliance with the spirit of the Interim Order. Westco was aware of these requirements and nevertheless pursued its business plan to produce larger chickens; thereby failing to supply the number and size of chickens it had been supplying to Nadeau prior to the Interim Order. In the result, Westco failed to maintain the status quo or respect the spirit of the Interim Order.

[71] Westco further argues that the Interim Order is ambiguous because it is susceptible to at least two interpretations: (i) Westco had to deliver the same number of live chickens every

week to Nadeau; or (ii) in order to determine compliance, one looks at the weekly average of chickens delivered by Westco to Nadeau, based on a quota period. I also reject this argument. While the average number of chickens delivered weekly to Nadeau during a quota period and the average weight of chickens delivered were factors considered by the Tribunal in crafting the terms of the Interim Order as it did, these considerations were not expressly incorporated in the order, nor can they be read in. The order did not provide for the delivery of a number of kilograms of chickens in lieu of the stated number of chickens; nor did it provide for an average weekly number of chickens. There is no ambiguity, the Interim Order is clear. Compliance required that the Respondents continue to supply the Applicant weekly, with a specific amount of live chickens expressed in numbers, “namely 271,350 live chickens.”

[72] There is also no ambiguity caused by paragraph 58 of the Interim Order when reference is made to “[t]his volume” regarding the reduction to be applied by reasons of the Nova Scotia deliveries. The “volume” clearly refers to the volume expressed in numbers of live chickens mentioned in paragraph 57 of the Interim Order. Further, the reduction itself is expressed in numbers of live chickens and not optionally in kilograms. There is nothing in the wording of the Interim Order that would allow for an inference that the volume of chickens to be delivered by the Respondents could be delivered in kilograms of live chickens, as opposed to numbers of live chickens. I turn now to Westco’s arguments in defence.

[73] Westco advances essentially two further arguments in defence of the contempt charge. First, it contends that it is in substantial compliance with the Interim Order and that any breach is technical not constituting contempt. Second, it says that its circumstances did not allow it to comply with the literal terms of the Interim Order. I will deal with each submission in turn.

[74] Westco’s main argument on substantial compliance with the Interim Order is premised on two factors; first the reduction in quotas and second the reference weight of 2 kg used by the Tribunal as the basis for expressing Westco’s supply obligation under the Interim Order.

[75] In essence, Westco argues that taking into account the variation in quota and the true average weight of Westco’s chickens for the beginning of 2008, which is 2.06 kg; it supplied 95.49 % of the required number. Westco contends that taking into account its supply for Week 7 of Period A-91, which is outside the interim supply period and not included in Nadeau’s calculation, further increases its supply to over 98 % of the required number.

[76] The difficulty with Westco’s submissions and assumptions in terms of average weight is that they are not provided for in the Interim Order. The Interim Order was crafted based on the evidence and arguments made at the hearing for interlocutory relief. The Order does not state that the number of chickens to be supplied by the Respondents may be adjusted in accordance with a different calculation in respect to average weight or by any of the other factors argued, after the fact, by Westco. The Interim Order provides for only two adjustments, namely that the volume of supply may be reduced by 25,000 chickens per week when received from Nova Scotia and further reduced by any other supply the Applicant may secure during the interim period.



[77] Further, factoring in the variation in quota and the true average weight of Westco's chickens at 2.06 kg, as argued, Westco's own calculations show that it is only 95.49% compliant with the Interim Order. This translates into a shortfall of 293,778 chickens over 46 weeks. In terms of actual numbers of birds delivered, the shortfall is far more significant over the interim period, namely 933,398 chickens. Given this latter shortfall, Westco cannot be said to be in substantial compliance with the Interim Order.

[78] Westco made reference to the reasons for which the Tribunal dismissed the show cause hearing against Acadia and Dynaco, arguing that the decision was based on adjustment in quotas and it deserved the same treatment. The circumstances that resulted in the decision to dismiss the show cause against Acadia and Dynaco are different from those that affect Westco. The Tribunal held that both Acadia and Dynaco had continued to supply chicken to Nadeau in acceptable sizes and that they would have been in compliance with the Interim Order but for the reduction in quota. It therefore concluded that the violation took place in circumstances in which it was absolutely certain that it did not deserve to be punished.

[79] Westco maintains that if its interpretation of the Interim Order is wrong, then the only alternative available to it was to offer Nadeau all of its chickens. The record shows that this offer was made and declined by Nadeau. Consequently, Westco argues that accepting this offer would have resulted in preserving the status quo and as such would have complied with the spirit of the Interim Order. I reject this argument. Delivering all of its chickens but not the range of sizes it had been supplying Nadeau prior to the Interim Order would not, in my view, preserve the status quo nor result in compliance with the Interim Order by Westco. Offering all of its chickens to Nadeau was not the only alternative open to Westco. It could have changed its production plan and produced smaller chickens, thereby allowing it to deliver the required numbers to Nadeau and comply with the Interim Order. If that was not possible, as alleged, it could have delivered the required numbers of the larger chickens or found other means to comply with the Interim Order, such as acquiring additional chickens elsewhere. It could also have returned to the Tribunal, explained why it was unable to comply and sought to have the order changed. Westco undertook no such initiative. It filed a motion to have the order interpreted, but only after Nadeau filed its application for a show cause in contempt. Westco made no efforts to otherwise comply with the Interim Order, save offering all of its chickens to Nadeau. It unilaterally decided to produce and supply fewer, but larger, chickens to Nadeau than required under the terms of the Interim Order; arguing that the weight of the larger chickens more than compensated for the shortfall in terms of numbers of chickens delivered. In so doing it breached its obligation to deliver the stated number of chickens in the Interim Order.

[80] I now turn to Westco's second reason for not complying with the order. There is no dispute that a defence to *prima facie* contempt is available for an order that is impossible to perform. However, such a defence is not available where the impossibility is the result of the contemnor's own conduct.

[81] Westco argues that due to changes in its production process it had begun to implement three years earlier, it simply could not have complied with the literal terms of the Interim Order. In 2006, Westco had decided to shift its production from slow feathered to fast

feathered chickens and in 2007, made the decision to increase the size of its chickens in contemplation of processing its own chickens in partnership with Olymel. Westco does not dispute that it is more profitable to supply larger birds to Olymel and contends that the decision to produce larger chickens necessarily meant that it would produce fewer chickens by reasons of quota limitations.

**[82]** Westco argues that the above decisions to change its process and the genetics of its flock resulted in a number of changes in its infrastructure and the way it administered medication to its chickens making it impossible to comply with the Interim Order. It states that by reason of its plan to grow larger chickens it was unable to release chickens earlier, because of withdrawal dates associated with medication contained in its feed. Westco also argues that even if it had been able to source a sufficient number of chicks to supplement its production to the extent required to meet Nadeau's needs, it no longer had sufficient barn space to raise those chickens.

**[83]** Finally, Westco contends that the shortfall in numbers of chickens delivered was in part due to Nadeau's own request to have deliveries postponed to accommodate its production schedule.

**[84]** The issue here is whether Westco's earlier decisions, in 2006 and 2007, to change the genetics of its flock and produce larger chickens, rendered compliance with the Interim Order impossible. The evidence establishes that it would have been more difficult for Westco to continue to supply Nadeau as ordered by reason of its earlier decisions to implement the above discussed changes. It is clear that by producing larger chickens, Westco would be producing fewer chickens by reason of production quotas which were expressed in kilograms and not in numbers of birds. It was open to Westco to make such a change as it was open to it to change the genetics in its flock. These changes were made long before the application for an interim injunction which resulted in the issuance of the Interim Order.

**[85]** For the following reasons, I am not persuaded that the changes made by Westco to its flock composition and size of its delivered chickens made it impossible for it to comply with the Interim Order.

**[86]** The vaccination arguments raised by Westco were addressed by Dr. Ouckama, whose expert evidence I accept. Based on her testimony, it is clear that there is no reason why chickens could not be removed from the barns earlier, at 34 days. This would allow for a supply of smaller chickens.

**[87]** I give little weight to the argument that a lack of barn space prevented the raising of more chickens. The issue of barn space was raised for the first time by Mr. Soucy at the hearing. No evidence was adduced of any efforts to seek out new space or re-arrange current space within existing barns to allow for more chickens to be raised.

**[88]** In the same vein, apart from the bald assertion by Mr. Soucy that it would be difficult to acquire eggs in order to produce additional chicks, no evidence as to any efforts made in this respect was adduced by Westco.

[89] With regard to the requests for postponement of deliveries by Nadeau, the evidence reveals that many of the adjustments complained of were the result of statutory holidays, and some were even shown to have resulted from scheduling changes initiated by Westco. The record simply does not support Westco's allegations in this respect. I am satisfied that the postponements did not have the impact on deliveries alleged by Westco.

[90] The record establishes that Westco was intent on pursuing its long term business plan, which it argued made it impossible to comply with the Interim Order. It made virtually no effort to adjust its production or make alternate arrangements in order to comply with the Interim Order. Further, and in any event, the evidence does not support Westco's allegation that it was unable to supply the numbers of chickens ordered by reason of quota reductions. Using the actual average weight of chickens supplied per quota period during the interim period, Westco could have met its supply obligations under the Interim Order by shipping fewer chickens to Olymel for quota periods A-87, A-89, A-90 and A-91. Based on the numbers of chickens actually produced by Westco during the interim supply period, except for quota period A-88, Westco had sufficient allocation to meet the requirements of the Interim Order. The relevant calculations are reproduced in Schedule B to these reasons.

[91] On the whole of the evidence, I find that it would have been possible for Westco to comply with the Interim Order at the current levels of quota allocation. Westco's long term plan for the vertical integration of all aspects of its business resulted in changes to the numbers and size of chickens it produced. The timing of the effect of these changes made it difficult for Westco to comply with the Interim Order, but not impossible.

## VIII. CONCLUSION

[92] The Interim Order was clear. It provided that the Respondents, including Westco continue to supply Nadeau with a specific number of live chickens on a weekly basis. Westco was aware of the existence of the Tribunal's Interim Order and knowingly disobeyed the Order. I have considered the arguments raised by Westco and the circumstances surrounding the non-compliance. For the reasons set out above, I reject Westco's arguments. I therefore find that the Applicant has met its onus and the constituent elements of contempt have been proved beyond a reasonable doubt.

[93] These reasons are confidential. To enable the Tribunal to issue a public version of these reasons, the parties shall meet and endeavour to reach agreement about any redactions needed to protect confidential evidence.

**NOW THEREFORE, FOR THESE REASONS, THE TRIBUNAL ORDERS THAT:**

- [94]
1. The Respondent Westco is found to be in contempt of the Tribunal's Interim Order of June 26, 2008;
  2. A sentencing hearing is to be scheduled at the earliest possible date. To that end, on or before Wednesday, February 10, 2010, the Applicant and the Respondent Westco are to provide their availability to the Tribunal for the months of February and March 2010;
  3. The Respondent Westco shall serve and file its written submissions on sentence including the question of costs of this proceeding, not to exceed 20 pages, no later than twenty days before the date to be set for the sentencing hearing;
  4. The Applicant shall serve and file its written submissions on sentence, including the question of costs of this proceeding, not to exceed 20 pages, no later than ten days before the sentencing hearing;
  5. The Respondent Westco shall serve and file any reply submissions, not to exceed 10 pages, no later than five days before the sentencing hearing;
  6. On or before Friday, January 29, 2010, the parties are to jointly correspond with the Tribunal setting out their agreement and any areas of disagreement concerning the redaction of these confidential reasons.

DATED at Ottawa, this 22<sup>nd</sup> day of January, 2010.

SIGNED on behalf of the Tribunal by Justice Blanchard.

(s) Edmond P. Blanchard

**DIRECTION TO COUNSEL REGARDING THE TERMS OF THE INTERIM SUPPLY ORDER OF JUNE 26, 2008 :**

**File No.:** CT-2008-004

**Date:** Thursday, October 16, 2008

**Subject:** *Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited v. Groupe Westco Inc., Groupe Dynaco, Coopérative Agroalimentaire, Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc.*

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- 1. FURTHER TO** the Competition Tribunal Order of May 12, 2008, granting Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited (the “Applicant”) leave to make an application under section 75 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “Act”);
- 2. AND FURTHER TO** the Competition Tribunal Order of June 26, 2008, allowing the Applicant’s application for interim relief under section 104 of the Act (the “Interim Supply Order”);
- 3. AND FURTHER TO** a letter filed by the Applicant on October 14, 2008, in which it alleges that the Respondents are no longer complying with the Tribunal’s Interim Supply Order and seeks an opportunity to bring this matter before the Tribunal on an urgent basis;
- 4. AND UPON** noting that the Interim Supply Order clearly expresses the level of weekly supply of chickens to be provided to the Applicant by the Respondents in number of live chickens and not in terms of weight of the said chickens;
- 5. AND UPON** noting that the Tribunal, at the hearing of the Applicant’s application for interim relief, was not seized with the argument that the Respondents’ weekly supply of live chickens or any reduction thereof is to be based upon the weight of the live chickens and not the number of chickens;
- 6. AND UPON** it being clear that the Respondents’ weekly supply of live chickens to be adjusted in accordance with the provisions of the Interim Supply Order is to be expressed in number of live chickens and not in terms of kilograms or weight of the chickens;
- 7. AND UPON** noting that if the Respondent Groupe Westco Inc. now believes that the circumstances that led to the making of the Interim Supply Order have changed to the extent that it would warrant the Tribunal to vary its order, the Respondent can bring an application pursuant to paragraph 106(1)(a) of the Act seeking an order to that effect;

**THE TRIBUNAL DIRECTS THAT:**

- 8.** The Respondents’ weekly supply of live chickens to be provided to the Applicant pursuant to paragraphs 57 and 58 of the Interim Supply Order will continue to be expressed in number of live chickens.

[96] Schedule B : Westco's Supply to Nadeau During the Interim Period

Quota Period	A-87 Sept. 14 2008-Nov. 8 2008	A-88 Nov. 9 2008 – Jan.3 2009	A-89 Jan. 4 2009 – Feb. 28 2009	A-90 Mar. 1 2009 – Apr. 25 2009	A-91 Apr. 26 2009 – June 20 2009
Number of chickens to be supplied by Westco to Nadeau per week under the Interim Order	154,980	154,980	154,980	154,980	154,980
Westco's Allocation	2,796,356 kg	2,659,696 kg	2,910,233 kg	2,913,332 kg	2,992,169 kg
Total number of live chickens delivered by Westco to Nadeau	1,005,522	1,026,880	1,040,220	1,075,982	807,238 (first 6 weeks)
Average weight of chickens delivered by Westco to Nadeau	2.233	2.288	2.217	2.295	2.326 (first 6 weeks)
Calculations – number of chickens Westco could have produced and delivered to Nadeau using actual average weight	2,796,356 kg ÷ 8 weeks = 349,544.5 kg/week  349,544.5 kg/week ÷ 2.233 kg = 156,535 chickens/week	2,659,696 kg ÷ 8 weeks = 332,462 kg/week  332,462 kg/week ÷ 2.288 kg = 145,306 chickens/week	2,910,233 kg ÷ 8 weeks = 363,779 kg/week  363,779 kg/week ÷ 2.217 kg = 164,086 chickens/week	2,913,332 kg ÷ 8 weeks = 364,166.5 kg/week  364,166.5 kg/week ÷ 2.295 kg = 158,678 chickens/week	2,992,169 kg ÷ 8 weeks = 374,021kg/week  374,021kg/week ÷ 2.326kg = 160,800 chickens/week

**COUNSEL:**

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