

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:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT	
December 18, 2008	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	#371

**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 MOTION RECORD

Date: December 12, 2008

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Tab 1

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Registry Document No.:.....

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Respondents

AFFIDAVIT OF DENISE BOUCHER

I, **DENISE BOUCHER**, of the Town of Fort Kent, in the State of Maine, **MAKE OATH AND SAY AS FOLLOWS:**

Background

1. I am the Office Manager for the Applicant, Nadeau Poultry Farm Limited ("Nadeau"). I am also responsible for assembling financial data, and am familiar with the records and the operations of the St- François plant.
2. I have read the Affidavit of Thomas Soucy, sworn November 5, 2008 (the "Soucy Affidavit"), and make this affidavit, in part, to respond thereto.

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General Response to the Soucy Affidavit

3. It is true that quotas:
 - (a) are allocated to the provinces and producers in kilograms; and
 - (b) vary from period to period, depending on the demands of the Canadian market.

4. However, neither one of those assumptions changes the fact the Respondents were fully capable of complying with the terms of the June 26, 2008 interim supply order (the "Interim Order").

5. Further, neither one of the assumptions in paragraph 3 changes the fact that:
 - (a) all of the parties used the 2 kg./chicken weight estimate for the purposes of the s.104 hearing;
 - (b) all of the parties accepted the averages used for the purposes of the s.104 hearing (namely, 186,230 birds/week for Westco, 26,450 birds/week for Dynaco and 58,670 birds/week for Acadia);
 - (c) none of the information contained in the Soucy Affidavit is new information; and
 - (d) the 2 kg./chicken weight estimate was used as exactly that, an estimate, and that same estimate was used by all of the parties.

6. The real problem in this case has nothing to do with the fluctuating quotas or the quota allocations for the periods A-87, A-88 or A-89. The real problem is that the Respondent, Groupe Westco Inc. ("Westco"), changed its production to meet Olymel's requirements

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as a priority, to the detriment of Nadeau. More specifically, commencing in period A-87, Westco changed its production from an average size bird of 2.05 kg. to 2.3 kg.

7. Further, at no time did Westco provide Nadeau with advance notice that Westco had changed its production to meet Olymel's size requirements. Nadeau's first "notice" came with the delivery of Westco's production schedule for the period A-87.
8. Regardless of the fluctuating quotas for periods A-87, A-88 and A-89, the Respondents were/are still capable (perhaps not willing) of meeting the requirements of the Interim Order. Interestingly, Mr. Soucy does not state that the Respondents were unable to meet the requirements of the Interim Order in his affidavit.

Relevant Facts

The Interim Order

9. Attached hereto as **Exhibit "A"** is a copy of the Interim Order.
10. The Interim Order states:

[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.

11. By letter dated July 17, 2008, counsel for Nadeau advised counsel for the Respondents that Nadeau had begun receiving 25,000 additional birds per week from Nova Scotia.

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Attached as **Exhibit "B"** is a copy of a letter from counsel for Nadeau to counsel for the Respondents, dated July 17, 2008, advising them of the new supply.

12. By letter dated August 22, 2008, counsel for Nadeau advised counsel for the Respondents that Nadeau would begin receiving an additional 6,250 birds per week from Nova Scotia, starting on September 15, 2008. Attached as **Exhibit "C"** is a copy of the letter.
13. Taking into account the permitted reductions ($25,000 + 6,250 = 31,250$ chickens per week), the Respondents are required to supply Nadeau with 240,100 ($271,350 - 31,250 = 240,100$) chickens per week starting on September 15, 2008.

Quota Periods A-87, A-88 and A-89

14. Attached as **Exhibit "D"** is a copy of the schedule for the quota periods for the years 2008 and 2009. As can be seen from the schedule:
 - (a) quota period A-87 runs from September 14, 2008 to November 8, 2008;
 - (b) quota period A-88 runs from November 9, 2008 to January 3, 2009; and
 - (c) quota period A-89 runs from January 4, 2008 to February 28, 2009.
15. The total New Brunswick quotas for periods A-87, A-88 and A-89 are as follows:

Period(s)	Quota (Kg.)
A-87	5,495,216
A-88	5,224,019
A-89	5,716,109

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Attached as **Exhibit "E"** are copies of the documents issued by the Chicken Farmers of New Brunswick ("CFNB") in that regard.

16. The Respondents did not supply Nadeau with the correct number of chickens in period A-87, nor are the Respondents planning on supplying Nadeau with the correct number of chickens in period A-88 (based on the schedules delivered to Nadeau to date). The details of the shortfalls are outlined below.

Period A-87

17. The Respondents' quotas for period A-87 were the following:

Respondent(s)	Kg/Period	Heads/Week (based on 2 kg./chicken)
Westco	2,796,356	174,772
Acadia	880,745	55,047
Dynaco	341,496	21,343
Slipp Farm	55,248	3,453
Total	4,073,845	254,615

18. Attached hereto as **Exhibit "F"** is a chart prepared by Nadeau reflecting allocations by ownership and groups for the period A-87.
19. As I mentioned above, the Respondents did not supply Nadeau with the correct number of chickens for the period A-87 (240,100/week), despite the fact they were fully capable of doing so (254,615/week).
20. Our lawyers corresponded with the Respondents' lawyers on this issue to try to get the Respondents to come into compliance with the terms of the Interim Order, as follows:

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- (a) Attached as **Exhibit "G"** is a copy of a letter from Leah Price to counsel for the Respondents dated October 7, 2008;
 - (b) I am advised by our counsel, and verily believe, that they received a letter from counsel for Westco dated October 8, 2008. I am also advised by our counsel, and verily believe, that such letter is attached to the Affidavit of Mary Anderson (as Exhibit B) because some of the content is Confidential Level A;
 - (c) Attached as **Exhibit "H"** is a copy of a letter from counsel for Dynaco to Leah Price dated October 8, 2008;
 - (d) Attached as **Exhibit "I"** is a copy of an e-mail received by counsel for Nadeau from counsel for Acadia on October 8, 2008, along with a copy of Acadia's letter dated October 14, 2008 on this issue;
 - (e) Attached as **Exhibit "J"** is a copy of a letter from counsel for Westco to Mr. Justice Blanchard dated October 9, 2008; and
 - (f) Attached as **Exhibit "K"** is a copy of a letter from Leah Price to Mr. Justice Blanchard dated October 10, 2008 (without the attachments as they have already all been produced).
21. On October 16, 2008, the Tribunal issued a Direction to Counsel Regarding the Terms of the Interim Supply Order of June 26, 2008. Attached as **Exhibit "L"** is a copy of the Direction.

22. I am advised by Yves Landry, and verily believe, that on October 17, 2008, he sent an e-mail to Dynaco and Westco requesting that they provide him with a revised schedule for period A-87 showing the correct number of chickens to be delivered for the period. Attached as **Exhibit "M"** is a copy of the email. Yves Landry never received a revised schedule from the Respondents for the period A-87, nor did he receive any response to his email.
23. Attached as **Exhibit "N"** is a copy of a letter from Leah Price to counsel for the Respondents, dated October 28, 2008, along with a copy of a chart prepared by Nadeau with respect to the number of heads ordered, received, and projected to be received for the period A-87. I have since updated the chart to show the actual shortfall for the period A-87 [REDACTED] (attached as **Exhibit "O"**).
24. Attached as **Exhibit "P"** is a copy of a letter from counsel for Dynaco to Leah Price dated October 29, 2008.
25. Attached as **Exhibit "Q"** is a copy of a letter from counsel for Westco to the Tribunal dated October 29, 2008.
26. Attached as **Exhibit "R"** is a copy of a letter from Leah Price to the Tribunal dated October 30, 2008.
27. Attached as **Exhibit "S"** is a copy of a letter from counsel for Westco to the Tribunal dated October 30, 2008.
28. Attached as **Exhibit "T"** is a copy of a letter from counsel for Dynaco to the Tribunal dated October 31, 2008.

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29. Attached as **Exhibit "U"** is a copy of the Direction to Counsel from the Presiding Judicial Member dated October 31, 2008.

Period A-88

30. The Respondents' quotas for period A-88 are the following:

Respondent(s)	Kg/Period	Heads/Week (based on 2 kg./chicken)
Westco	2,659,696	166,231
Acadia	837,700	52,356
Dynaco	324,807	20,300
Slipp Farm	52,548	3,284
Total	3,874,751	242,171

31. Attached as **Exhibit "V"** is a chart prepared by Nadeau showing the allocations by ownership and groups for the period A-88.
32. Attached as **Exhibit "W"** is a chart prepared by Nadeau showing the actual deliveries for period A-88, along with the projected shortfalls for period A-88 [REDACTED] based on the schedules delivered to date.
33. As can be seen from the numbers above, the Respondents are fully capable of supplying Nadeau with the correct number of chickens (240,100) as required under the terms of the Interim Order.
34. Attached hereto as **Exhibit "X"** are copies of the delivery schedules Nadeau received from Westco for the periods A-87 and A-88. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] In short, Westco is making sure Olymel gets its birds before making sure Nadeau gets its birds under the terms of the Interim Order. This much is admitted in the letter dated October 29, 2008 from Ogilvy Renault LLP to the Competition Tribunal (Exhibit "Q") at page 10, paragraph 5.

Period A-89

35. The Respondents' quotas for period A-89 are the following:

Respondent(s)	Kg./Period	Heads/Week (based on 2 kg./chicken)
Westco	2,910,233	181,889
Acadia	916,608	57,288
Dynaco	355,403	22,213
Slipp Farm	57,498	3,593
Total	4,239,742	264,983

36. Attached as Exhibit "Y" is a chart prepared by Nadeau showing the allocations by ownerships and groups for the period A-89.

37. As can be seen from the numbers above, the Respondents are fully capable of supplying Nadeau with the correct number of chickens (240,100) as required under the terms of the Interim Order.

SWORN before me at the Town of Clair,
in the Province of New Brunswick, this
11th day of December, 2008.

Chantale B. Boutôt

A Commissioner for taking affidavits.

Denise Boucher

Denise Boucher

CHANTALE B BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20...13.....

This is Exhibit A referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20..13.....

PUBLIC

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*.

B E T W E E N:

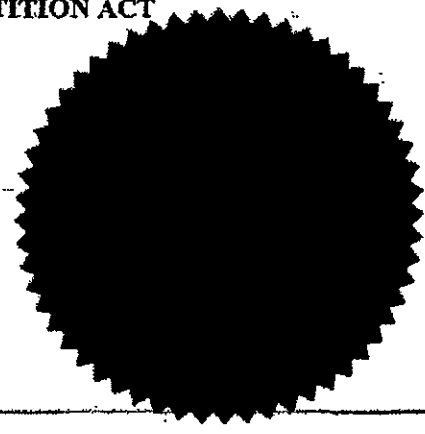
**Nadeau Ferme Avicole Limitée/
Nadeau Poultry Farm Limited**
(applicant)

and

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

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)(a). 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 ¾ 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 B referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS.

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20...13.....

PUBLIC



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Rubinoff
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Reply To: Andrea D. McCrae
Direct Dial: 416.365.3703
E-mail: amccrae@foglers.com
Our File No. 07/5264

July 17, 2008

VIA EMAIL

Éric Lefebvre
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Joli-Coeur, Lacasse, Geoffrion,
Jetté, St-Pierre
#600-1134 Grande Allée Ouest
Québec, QC G1S 1E5

Dear Sirs:

Re: **Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited ("Nadeau")**
CT-2008-004

We have learned that the extra 25,000 Nova Scotia chickens, which are referred to in the order of Justice Blanchard dated June 26, 2008 (the "Order"), which were scheduled to start arriving in September, 2008, have already begun arriving. This is because the Nova Scotia processor re-assigned this production to Nadeau earlier than expected.

We understand that the new quota period (A-86) commences on Monday, and we therefore suggest that, in accordance with the Order, the Respondents allocate amongst themselves a reduction of supply totaling 25,000 chickens per week, commencing on Monday.

Please confirm that the foregoing arrangement is satisfactory, and provide us with the details regarding the reduction in supply in order that we may advise our client.

Yours truly,

~~FOGLER, RUBINOFF-LLP~~

Andrea D. McCrae
ADM/jr

cc: Client
Leah Price, Fogler, Rubinoff LLP

This is Exhibit C referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt
A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20..13.....



Fogler,
Rubinoff
LLP

Fogler, Rubinoff LLP Barristers & Solicitors
95 Wellington Street West
Suite 1200, Toronto-Dominion Centre
Toronto, ON M5J 2Z9
Tel: 416.864.9700 Fax: 416.941.8852
www.foglers.com

August 22, 2008

Reply To: Andrea D. McCrae
Direct Dial: 416.365.3703
E-mail: amccrae@foglers.com
Our File No.: 07/5264

VIA E-MAIL

Éric Lefebvre
Ogilvy Renault LLP
#1100- 1981 McGill College Avenue
Montréal, QC H3A 3C1

Pierre Beaudoin
Lavery, De Billy
Barristers and Solicitors
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Québec, QC G1S 1C1

Olivier Tousignant
Joli-Coeur, Lacasse, Geoffrion,
Jetté, St-Pierre
#600-1134 Grande Allée Ouest
Québec, QC G1S 1E5

Dear Sirs:

Re: Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited ("Nadeau")
CT-2008-004

Further to our letter of July 17, 2008, we have learned that our client will begin receiving an additional 6,250 chickens per week from Nova Scotia commencing over three weeks from now, namely, on September 15, 2008.

The Respondents should allocate amongst themselves a reduction of supply totaling 6,250 chickens per week, commencing on September 15, 2008, and advise us immediately of the details regarding the reduction in supply in order that we may advise our client.

Yours truly,

FOGLER, RUBINOFF LLP

Andrea D. McCrae

ADM/jp

cc Leah Price, Fogler, Rubinoff LLP

This is Exhibit D referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20...13.....

PUBLIC



2008

For more information
 contact: 1-877-237-2377
 or 416-291-0000
 Fax 416-291-0000
 www.cfc.ca

A Suggested date to set allocation (14 full weeks prior to period)
 Date suggérée pour établir l'allocation (14 semaines avant la période)

	S/D	M/A	T/M	W/M	T/J	F/V	S	
Dec/Déc	9	10	11	12	13	14	15	1
	16	17	18	19	20	21	22	2
	23	24	25	A-82	27	28	29	3
	30	31	1	2	3	4	5	4
Jan/Janv	8	9	10	11	12	13	14	5
	15	16	17	18	19	20	21	6
	22	23	24	25	26	27	28	7
	29	30	31	1	2	3	4	8
Feb/Fév	5	6	7	8	9	10	11	9
	18	19	20	21	22	23	24	10
	25	26	27	A-83	29	30	31	11
	1	2	3	4	5	6	7	12
March/Mars	9	10	11	12	13	14	15	1
	16	17	18	19	20	21	22	2
	23	24	25	26	27	28	29	3
	30	31	1	2	3	4	5	4
April/Avril	6	7	8	9	10	11	12	5
	13	14	15	A-84	17	18	19	6
	20	21	22	23	24	25	26	7
	27	28	29	30	1	2	3	8
May/Mai	4	5	6	7	8	9	10	9
	11	12	13	14	15	16	17	10
	18	19	20	21	22	23	24	11
	25	26	27	28	29	30	31	12
June/Juin	1	2	3	4	5	6	7	1
	8	9	10	A-85	13	14	15	2
	15	16	17	18	19	20	21	3
	22	23	24	25	26	27	28	4
July/Juillet	29	30	1	2	3	4	5	5
	6	7	8	9	10	11	12	6
	13	14	15	16	17	18	19	7
	20	21	22	23	24	25	26	8
August/Août	27	28	29	30	31	1	2	9
	3	4	5	A-86	7	8	9	10
	10	11	12	13	14	15	16	11
	17	18	19	20	21	22	23	12
Sept	24	25	26	27	28	29	30	13
	31	1	2	3	4	5	6	14
	7	8	9	10	11	12	13	15
	14	15	16	17	18	19	20	16
Oct	21	22	23	24	25	26	27	17
	28	29	30	A-87	2	3	4	18
	5	6	7	8	9	10	11	19
	12	13	14	15	16	17	18	20
Nov	19	20	21	22	23	24	25	21
	26	27	28	29	30	31	1	22
	2	3	4	5	6	7	8	23
	9	10	11	12	13	14	15	24
Dec/Déc	16	17	18	19	20	21	22	25
	23	24	25	A-88	27	28	29	26
	30	1	2	3	4	5	6	27
	7	8	9	10	11	12	13	28



**Chicken Farmers
of Canada**
**Les Producteurs de
poulet du Canada**

2009

2009 Sales Order Form
Order Deadline: 10/31/2009
Tel: 1-877-221-1599
www.cfc.ca

A. Suggested date to set allocation (14 full weeks prior to period)
Date suggérée pour établir l'allocation (14 semaines avant la période)

	S/D	M/L	T/M	W/M	T/J	F/V	S	
Jan/Janv	4	5	6	7	8	9	10	1
	11	12	13	14	15	16	17	2
	18	19	20	A-91	22	23	24	3
	25	26	27	28	29	30	31	4
Feb/Fév	1	2	3	4	5	6	7	5
	8	9	10	11	12	13	14	6
	15	16	17	18	19	20	21	7
	22	23	24	25	26	27	28	8
March/Mars	1	2	3	4	5	6	7	1
	8	9	10	11	12	13	14	2
	15	16	17	A-92	19	20	21	3
	22	23	24	25	26	27	28	4
April/Avril	29	30	31	1	2	3	4	5
	5	6	7	8	9	10	11	6
	12	13	14	15	16	17	18	7
	19	20	21	22	23	24	25	8
May/Mai	26	27	28	29	30	1	2	1
	3	4	5	6	7	8	9	2
	10	11	12	A-93	14	15	16	3
	17	18	19	20	21	22	23	4
June/Juin	24	25	26	27	28	29	30	5
	31	1	2	3	4	5	6	6
	7	8	9	10	11	12	13	7
	14	15	16	17	18	19	20	8
July/Juillet	21	22	23	24	25	26	27	1
	28	29	30	1	2	3	4	2
	5	6	7	A-94	9	10	11	3
	12	13	14	15	16	17	18	4
August/Août	19	20	21	22	23	24	25	5
	26	27	28	29	30	31	1	6
	2	3	4	5	6	7	8	7
	9	10	11	12	13	14	15	8
Sept	16	17	18	19	20	21	22	1
	23	24	25	26	27	28	29	2
	30	31	1	A-95	3	4	5	3
	6	7	8	9	10	11	12	4
Oct	13	14	15	16	17	18	19	5
	20	21	22	23	24	25	26	6
	27	28	29	30	1	2	3	7
	4	5	6	7	8	9	10	8
Nov	11	12	13	14	15	16	17	1
	18	19	20	21	22	23	24	2
	25	26	27	A-96	29	30	31	3
	1	2	3	4	5	6	7	4
Dec/Déc	8	9	10	11	12	13	14	5
	15	16	17	18	19	20	21	6
	22	23	24	25	26	27	28	7
	29	30	1	2	3	4	5	8
Jan/Janv	6	7	8	9	10	11	12	1
	13	14	15	16	17	18	19	2
	20	21	22	A-97	24	25	26	3
	27	28	29	30	31	1	2	4
Jan/Janv	3	4	5	6	7	8	9	5
	10	11	12	13	14	15	16	6
	17	18	19	20	21	22	23	7
	24	25	26	27	28	29	30	8

This is Exhibit E referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20...13.....

JUL-18-2008 15:16

CHICKEN FARMERS OF NB

506 451 2121 P.01/01

Revised

ATT: Rojean

PERIOD(E) A-87 -

Sept. 14, 2008 to Nov 8, 2008
58 DAYS/JOURS

5,495,216

-1,970

	BROILER	ROASTER	TOTAL DOMESTIC	NET ALLOCATION	
Volaille Acadia 1	109,813	0	109,813	-39	109,574
Ferme Avicole Bolduc	198,153	0	198,153	-70	198,083
Ferme J.J.C. Bolduc	145,488	0	145,488	-52	145,413
Ferme Montagnaise.	265,365	0	265,365	-95	265,269
Ferme de la Riviere	141,018	0	141,018	-51	140,967
Ferme Avicole Boulay Ltee	282,744	0	282,744	-101	282,642
Ferme Du Moulin Ltee.	172,576	130,409	302,985	-109	302,876
Ferme Du Lac	64,018	130,409	194,427	-70	194,357
Ferme Frontiere Inc.	178,379	0	178,379	-64	178,315
Luc P. Nadeau	256,438	0	256,438	-82	256,344
Volaille Acadia 2	302,756	0	302,756	-109	302,648
Scott Broilers	236,547	0	236,547	-85	236,462
Samalex Inc.	139,859	198,681	338,340	-121	336,220
Volaille Acadia 3	287,209	0	287,209	-103	287,106
Ferme Alexam	265,331	0	265,331	-95	265,236
Volaille Acadia 4	37,016	0	37,016	-13	37,003
O58385 N-B Inc(Michel P)	2,675	81,778	84,451	-23	84,428
Volaille Acadia 5	56,838	0	56,838	-20	56,818
Louisele Bouchard	76,291	0	76,291	-27	76,263
Ferme Nordic inc	181,025	0	181,025	-65	180,960
Ferme Chapi Inc.	116,900	0	116,900	-42	116,858
Cormico Inc.	272,648	0	272,648	-98	272,548
503430 NB INC	181,337	0	181,337	-65	181,272
503431NB INC.	87,629	0	87,629	-31	87,598
Volaille Acadia 6	87,629	0	87,629	-31	87,598
Edgett Dianna	87,629	0	87,629	-31	87,598
Cormier La Ferme	236,855	0	236,855	-65	236,770
Ferme Avicole DMS	147,237	0	147,237	-53	147,184
Les Pares Trappistes	80,037	0	80,037	-29	80,009
Group Westco	78,963	0	78,963	-28	78,936
Nickerson Sterling L.	37,264	0	37,264	-13	37,251
Slipp Farms	39,173	16,095	55,268	-20	55,248
Veroco	105,857	0	105,857	-38	105,819
Couvoir Westco	4,770	0	4,770	-2	4,768
Jolly Farmer	802	0	808	1,970	2,776
	4,959,841	635,371	5,495,216	0	5,495,216

JIT. Rojeau

PERIOD(E) A-38

Nov 9, 2008 to January 3, 2009
56 DAYS/JOURS

	5,224,019		767		
	BROILER	ROASTER	TOTAL DOMESTIC	NET ALLOCATION	
Volaille Acadia 1	104,204	0	104,204	15	104,219
Ferme Avicole Bolduc	188,473	0	188,473	27	188,500
Ferme J.J.C.Bolduc	138,287	0	138,287	20	138,307
Ferme Montagnaise.	252,268	0	252,268	37	252,306
Ferme de la Riviere	134,058	0	134,058	20	134,078
Ferme Avicole Boulay Ltd	288,790	0	288,790	39	288,829
Ferme Du Moulin Ltee.	164,059	123,973	288,032	42	288,074
Ferme Du Lac	80,858	123,973	184,832	27	184,859
Ferme Frontiere inc.	189,576	0	189,576	25	189,601
Luc P. Nadeau	243,780	0	243,780	38	243,816
Volaille Acadia 2	287,815	0	287,815	42	287,857
Scott Broilers	224,873	0	224,873	33	224,906
Samalex Inc.	132,788	188,975	319,741	47	319,788
Volaille Acadia 3	273,034	0	273,034	40	273,074
Ferme Alexam	252,237	0	252,237	37	252,274
Volaille Acadia 4	35,189	0	35,189	5	35,194
O58385 N-B Inc(Michel P)	2,543	58,727	61,270	9	61,279
Volaille Acadia 5	54,031	0	54,031	8	54,039
Louiseffe Bouchard	72,528	0	72,528	11	72,536
Ferme Nordic Inc	172,091	0	172,091	25	172,116
Ferme Chapi Inc.	111,131	0	111,131	16	111,147
Cornico Inc.	259,190	0	259,190	38	259,226
503430 NB INC	172,387	0	172,387	25	172,413
503431NB INC.	83,305	0	83,305	12	83,317
Volaille Acadia 6	83,305	0	83,305	12	83,317
Edgett Dianna	83,305	0	83,305	12	83,317
Cornier La Ferme	225,168	0	225,168	33	225,199
Ferme Avicole DMS	139,971	0	139,971	21	139,991
Les Peres Trappistes	76,087	0	76,087	11	76,098
Group Westco	73,165	0	73,165	11	73,176
Nickerson Sterling L.	35,425	0	35,425	5	35,430
Slipp Farms	37,239	15,301	52,541	8	52,548
Veroco	100,633	0	100,633	15	100,648
Couvoir Westco	4,534	0	4,534	1	4,535
Jolly Farmer	763	0	767	-767	0
	4,715,065	508,950	5,224,019	0	5,224,019

AA Royce

PERIOD(E) A-88

January 4, to Feb 29 2009
56 DAYS/JOURS:

	5,716,109		838		
	BROILER	ROASTER	TOTAL DOMESTIC	NET ALLOCATION	
Volaille Acadia 1	114,019	0	114,019	17	114,038
Ferme Avicole Bolduc	204,038	0	204,038	30	204,068
Ferme J.J.C. Bolduc	151,313	0	151,313	22	151,335
Ferme Montagnaise	276,031	0	276,031	40	276,072
Ferme de la Riviere	146,686	0	146,686	22	146,708
Ferme Avicole Boulay Ltee	294,109	0	294,109	43	294,152
Ferme Du Moulin Ltee.	179,513	135,651	315,164	46	315,210
Ferme Du Lac	66,591	135,661	202,242	30	202,272
Ferme Frontiere Inc.	185,550	0	185,550	27	185,577
Luc P. Nadeau	266,744	0	266,744	39	266,783
Volaille Acadia 2	314,926	0	314,926	48	314,972
Scott Broilers	246,056	0	246,056	36	246,092
Samalex Inc.	145,273	204,588	349,861	51	349,911
Volaille Acadia 3	298,754	0	298,754	44	298,797
Ferme Alexam	275,997	0	275,997	40	276,037
Volaille Acadia 4	38,504	0	38,504	6	38,508
O58385 N-B Inc(Michel P)	2,783	64,269	67,042	10	67,052
Volaille Acadia 5	59,121	0	59,121	9	59,129
Louiselle Bouchard	79,357	0	79,357	12	79,389
Ferme Nordic Inc	188,302	0	188,302	28	188,329
Ferme Chapi Inc.	121,599	0	121,599	18	121,617
Cornico Inc.	283,605	0	283,605	42	283,647
503430 NB INC	188,626	0	188,626	28	188,654
503431 NB INC.	91,152	0	91,152	13	91,165
Volaille Acadia 6	91,152	0	91,152	13	91,165
Edgett Dianna	91,152	0	91,152	13	91,165
Cormier La Ferme	246,376	0	246,376	36	246,412
Ferme Avicole DMS	153,156	0	153,156	22	153,178
Les Peres Trappistes	83,255	0	83,255	12	83,267
Group Westco	80,057	0	80,057	12	80,089
Nickerson Sterling L.	38,762	0	38,762	6	38,768
Slipp Farms	40,747	16,742	57,490	8	57,498
Veroco	110,113	0	110,113	16	110,129
Couvoir Westco	4,962	0	4,962	1	4,962
Jolly Farmer	834	0	838	-838	0
	5,159,243	556,892	5,716,109	0	5,716,109

This is Exhibit F referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20..B.....

Allocations by Ownerships and Groupes

A-87

Ferme Avicole Bolduc 196,083
 Ferme Avicole J.J.C Bolduc 145,413
341,496 8.21%

Luc P Nadeau 256,344
 Scott Broilers 236,462
 Michel P (058386NB Inc) 64,428
557,234 10.14%

Volaille Acadia 1 109,574
 Volaille Acadia 2 302,648
 Volaille Acadia 3 287,106
 Volaille Acadia 4 37,003
 Volaille Acadia 5 58,818
 Volaille Acadia 6 87,598
880,748 16.03%

Cornico Inc. 272,548
 Ferme Cormier 236,770
 Avicole DMS 147,184
658,502 11.95%

Montagnaise 265,269
 De la Riviere 140,967
 Avicole Boulay 282,642
 Du Moulin 302,876
 Du Lac 194,357
 Frontiers 178,315
 Samalex 336,220
 Alexam 265,236
 Louiselle Bouchard 76,263
 Nordic 180,960
 Chapl 116,858
 MJ Michaud(503430NBInc.) 181,272
 MJ Michaud(503431NBInc.) 87,598
 Group Westco 76,936
 Veroco 105,819
 Couvoir Westco 4,768
2,796,356 50.89%

Dianna Edgett 87,598 1.59%
 Les Peres Trappistes 80,009 1.46%
 S. Nickerson (Hugh Harmon) 37,251 0.68%
 Slipp Farm 55,248 1.01%
 Jolly Farmer 2,776

Total net allocation 6,495,215 A-87

Old ownership

Note: Acadia 1 Ferme Anima
 Acadia 2 Ferme Monique Ouellet
 Acadia 3 Avicole J-P Ouellet
 Acadia 4 Marc Ouellet(052641 NB Inc)
 Acadia 5 Ferme Avicole Marc Ouellet
 Acadia 6 Entreprise JPO

This is Exhibit G referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20.13.....

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit G only appears in the Confidential Version of the Responding Motion Record (filed).

This is Exhibit H referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008


A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20.13.....

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit H only appears in the Confidential Version of the Responding Motion Record (filed).

This is Exhibit I referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt
A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20..13.....

Price, Leah

From: vbelleisle@lavery.qc.ca
Sent: October 8, 2008 1:48 PM
To: McCrae, Andrea; Price, Leah
Cc: alain.gameau@lacoop.coop
Subject: RE : Nadeau v. Westco
Sensitivity: Confidential

Ms Price,
Ms McCrae,

We have received your letter dated October 7th. However, Pierre Beaudoin and myself are currently attending a hearing in Montreal and won't be able to respond before Friday.

Regards,

Valérie Belle-Isle

De: McCrae, Andrea [mailto:amccrae@foglers.com]
Date: mar. 2008-10-07 10:48
À: paul.routhier@jolicoeurlacasse.com; abourbonnais@ogilvyrenault.com; dgascon@ogilvyrenault.com; elefebvre@ogilvyrenault.com; gconrad@ogilvyrenault.com; louis.masson@jolicoeurlacasse.com; Martha A. Healey; Olivier Tousignant; paul.michaud@jolicoeurlacasse.com; Beaudoin, Pierre; Belle-Isle, Valérie
Cc: Price, Leah; Freeman, Joshua R.
Objet : Nadeau v. Westco

Please see attached letter from Leah Price.

Yours truly,
FOGLER, RUBINOFF LLP

Andrea McCrae

Please note that my new email address effective July 1, 2008 is amccrae@foglers.com and our website is www.foglers.com. Please update your Outlook address book.

95 Wellington Street West
Suite 1200
Toronto-Dominion Centre
Toronto, ON M5J 2Z9

Direct Line: 416-365-3703
Main Line: 416-864-9700
Facsimile: 416-941-8852
Email: amccrae@foglers.com

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LAVERY, DE BILLY
BARRISTERS AND SOLICITORS

Me Valérie Belle-Isle
Suite 500
925 Grande Allée Ouest
Quebec, Quebec G1S 1C1
Direct Line: 418 266-3069
E-mail address: vbelleisle@lavery.de.ca

Quebec City, October 14, 2008

Ms. Leah Price
Fogler, Rubinoff LLP
95, Wellington Street West, suite 1200
Toronto-Dominion Center
Toronto (Ontario)
M5J 2Z9

By email: lprice@foglers.com

**Re: Nadeau Poultry Farm Limited
v. Group Westco Inc. et al.
CT: 2008-004
Our file: 415153-00001**

Ms. Price:

We are in receipt of your letter dated October 7th, 2008. You allege that the Respondent Acadia has deliberately breached the terms of the Interim Order under §104 of the *Competition Act*.

As you know, Acadia's live chicken production may vary at times to meet its allocated quota. This being said, please note that Acadia has always complied with the Interim Order by supplying Nadeau with its whole live chicken production.

Therefore, our client would appreciate that you do not jump to conclusions about its motives without having verified the facts.

Regards,

LAVERY, DE BILLY

Me Valérie Belle-Isle

VBI/jro

c.c. **Me Éric C. Lefebvre (Ogilvy, Renault)**
Me Alexandre Bourbonnais (Ogilvy, Renault)
Me Olivier Tousignant (Joli-Cœur, Lacasse, Geoffrion, Jetté, St-Pierre)

Quebec City
Suite 500
925 Grande Allée Ouest
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Fax: 418 688-3458

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Montreal, Quebec H3B 4M4
Telephone: 514 871-1522
Fax: 514 871-8977

Montreal
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600 De La Gauchetière West
Montreal, Quebec H3B 4L8
Telephone: 514 871-1822
Fax: 514 871-8977

Laval
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3080 boul. Le Carrefour
Laval, Quebec H7T 2R5
Telephone: 450 978-8100
Fax: 450 978-8111

Ottawa
Suite 1810
360 Albert Street
Ottawa, Ontario K1R 7X7
Telephone: 613 594-4938
Fax: 613 594-8783

This is Exhibit J referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008.

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 2013.....

**OGILVY
RENAULT**

119 / S.F.N.C.L. s.r.l.

Direct Dial: (514) 847-4891
Direct Fax: (514) 286-5474
elefebvre@ogilvyrenault.com

SENT BY EMAIL

Montréal, October 9, 2008

Honourable Justice Blanchard
Competition Tribunal
Thomas D'Arcy McGee Building
#600-90 Sparks Street
Ottawa, ON K1P 5B4

Dear Mr. Justice Blanchard:

**Re : Nadeau Poultry Farm Limited ("Nadeau") v. Groupe Westco Inc.
("Westco") et al.,
Tribunal File No. CT-2008-004**

We are in receipt of Nadeau's letter to the Tribunal of earlier today regarding the issue of costs.

With respect, we do not believe that directions from the Tribunal are warranted at this juncture. Indeed, further to the prior correspondence to which Nadeau's letter refers, we were in the process of preparing our final response in respect of costs when Westco, together with the rest of the Respondents, received an unfounded letter from Nadeau dated October 7, 2008 alleging an intentional breach of the Tribunal's interim order regarding supply.

What's more, Nadeau threatened to take the matter up before the Tribunal if it did not receive a response within 24 hours, knowing full well that the Respondents are presently engaged in the busy task of preparing witness statements, lists of documents and expert reports, which must all be communicated to Nadeau on October 20, 2008. Faced with such an abusive and artificial deadline, we were forced to set aside the issue of costs and respond to Nadeau's letter as soon as possible.

In light of these extenuating circumstances which, we might add, are directly attributable to Nadeau, we were unable to provide it with our response as to the issue of costs within the timeframe it had initially requested. However, we will be finalizing our position over the course of the weekend and be providing Nadeau, as well as the Tribunal, with a full response on the

Avocats, agents de brevets
et agents de marques de commerce

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DOCSMPL-30160641



Page 2

issue before 5:00 p.m. on Tuesday, October 14, 2008. We trust that such a delay will be satisfactory.

Yours very truly,

Éric C. Lefebvre

Eric Lefebvre

c.c. Leah Price, *Fogler Rubinoff LLP*
Olivier Tousignant, *Joli-Coeur, Lacasse, Geoffrion, Jetté, St-Pierre*
Pierre Baudoin, *Lavery De Billy*

This is Exhibit K referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20..13.....

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit K only appears in the Confidential Version of the Responding Motion Record (filed).

This is Exhibit L referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20...13.....

PUBLIC

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.*

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.

This is Exhibit M referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20..13.....

PUBLIC

1 of 1 047

From: Yves Landry [mailto:yves.landry@nadeaupoultry.com]
Sent: Friday, October 17, 2008 12:03 PM
To: (patrick.noel@dynaco.coop); (westco_gus@hotmail.com)
Subject: Cédule révisée A-87

Bonjour Daniel et Patrick,

Pourriez-vous S.V.P. me faire parvenir une cédule révisée nous démontrant que nous recevrons de Dynaco, Westco et Acadia 240,100 poulets par semaine pour la période A-87.

Merci,
Yves

17/10/2008

This is Exhibit N referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20...*B*.....

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit N only appears in the Confidential Version of the Responding Motion Record (filed).

This is Exhibit O referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20...13.....

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit O only appears in the Confidential Version of the Responding Motion Record (filed).

This is Exhibit P referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20*13*.....

McCrae, Andrea

From: Tousignant Olivier [olivier.tousignant@jolicoeurlacasse.com]
Sent: October 29, 2008 10:52 AM
To: Price, Leah; McCrae, Andrea; Freeman, Joshua R.
Cc: Masson Louis; Michaud Paul; Routhier Paul; pbeaudoin@lavery.qc.ca; ebeaudet@lavery.qc.ca; vbelleisle@lavery.qc.ca; Lefebvre, Eric; Bourbonnais, Alexandre; Healey, Martha A.; Gascon, Denis; Conrad, Geoffrey
Subject: Re: Letter dated October 28th 2008
Attachments: Lettre Price - 29 octobre 2008.pdf



**Joli-Cœur, Lacasse
 Geoffrion, Jetté, St-Pierre
 AVOCATS**

Dear colleagues,

Please see the attached letter.

Regards,

Olivier Tousignant
 Avocat / Lawyer
 Tél. : (418) 681-3060, poste 2628
 Fax : (418) 681-7100
 olivier.tousignant@jolicoeurlacasse.com

Montréal
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 ☎ (514) 871-2800 ☎ (514) 871-3933

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 Trois-Rivières (Québec) Q9A 6E6
 ☎ (819) 379-4331 ☎ (819) 379-3624

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Si vous êtes en désaccord avec l'utilisation de ce mode de communication veuillez également nous le faire savoir et nous établirons ensemble le mode de communication le mieux adapté à nos situations respectives.

*Avis à l'intention du lecteur
 qui n'est pas le destinataire de ce courriel*

Le présent message peut renfermer des renseignements protégés et confidentiels à l'intention exclusive de la personne précitée. Si vous avez reçu le présent message par erreur, veuillez en aviser immédiatement l'expéditeur par téléphone (frais vus) ou lui renvoyer le message par courrier électronique. Votre collaboration à cet égard sera vivement appréciée.

This is Exhibit Q referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20.13.....

**OGILVY
RENAULT**

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SENT BY EMAIL

Montréal, October 29, 2008

Mr. Patrice Lavoie
Competition Tribunal
Thomas D'Arcy McGee Building
#600-90 Sparks Street
Ottawa, ON K1P 5B4

Dear Mr. Lavoie:

**Re : Nadeau Poultry Farm Limited ("Nadeau") v. Groupe Westco Inc.
("Westco") et al.,
Tribunal File No. CT-2008-004**

We are writing further to Justice Blanchard's direction of October 16, 2008 ("**Direction**") and to the Order of June 26, 2008, allowing the Applicant's application for interim relief under section 104 of the *Competition Act* (the "**Interim Supply Order**").

We also received yesterday further communication from counsel to the Applicant, attached hereto as Attachment A. In view of the content of that letter, Westco seeks to confirm that its interpretation and application of the Interim Supply Order is consistent with that Order. If Westco's interpretation is not maintained by the Tribunal, Westco seeks further direction as to the precise nature of its supply obligations in this interim period. Westco does not seek, at this point, to vary the Interim Supply Order, merely to ensure the application of that Order is consistent with the facts and assumptions that led to its terms.

I Background and Source of Reference Figure of 271,350 Birds per week

As discussed in greater detail below, Westco's understanding of the Interim Supply Order is that the level of supply to Nadeau was to be maintained at prior levels (100% of Westco's allowed production pursuant to the applicable period's quota) with allowance for a reduction in the supply of chicken as Nadeau obtained replacement chicken.

Paragraphs 57 and 58 of the Interim Supply Order provide as follows:

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[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]

The "current level of weekly supply" represented, at the time the Interim Supply Order was issued, all of Westco's and the other Respondents' production as allowed under their respective production quotas (which are allocated in kilograms of live chicken per period). The number of 271,350 birds referenced in the Interim Supply Order to reflect this current level of supply was a fictional figure put forward by Nadeau based on the following assumptions:

- Westco was deemed to be supplying Nadeau with roughly 186,230 birds at the time the application for interim relief under section 104 of the *Competition Act* was filed by Nadeau, using an hypothetical average weight of 2kgs/bird;
- At the same time, Dynaco was deemed to be supplying Nadeau with approximately 26,450 birds, using the hypothetical average weight of 2kgs/bird; and
- At the same time, Acadia was deemed to be supplying Nadeau with approximately 58,670 birds, using the hypothetical average weight of 2kgs/bird.

Nadeau's representative for the hearing of Nadeau's application for interim relief, Mr. Tavares, clearly stated that the numbers used to reference the weight of chicken were approximate while the quotas, expressed in kilograms, were exact numbers (the 2kgs/bird measure, therefore, was not an exact number):

Attached hereto and marked as Exhibit "D" to this my 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. The chart shows the nominal quota-holder (for example, "Montagnaise"), as well as the controlling producer groups.

(Emphasis added)

(Tavares Affidavit, March 14, 2008, paragraph 28)

The 2kgs/bird assumption was also explained by Mr. Soucy during the interim order proceedings:

Poids moyen d'un poulet : 2 kilogrammes.

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 rôtir 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.

(Emphasis added)

(Soucy Affidavit dated May 29, 2008, Exhibit C, "Formule de Conversion et Détails des Calculs Effectués par Monsieur Thomas Soucy")

Exhibit C, referred to above contains the basis and the explanations for all statistics and comparisons used by Mr. Soucy in his affidavit that was before the Tribunal.

The production quotas allocated to Westco and to other producers are established in terms of kilograms and not in number of chickens, and the approximate figure of 186,230 birds used to reflect the "current level of weekly supply" was thus only arrived at on the basis of a 2kgs/bird assumption made by Mr. Tavares. Indeed, the levels of Westco's actual supply to Nadeau vary considerably and have never reached, in any given week, the exact figure of 186,230 chickens. Over the last year, Westco has actually supplied a weekly average of 2kgs/birds only twice (both times in January, 2008).

II Current Supply of Birds to Nadeau from Westco

As the attached charts confirm, if the numbers of birds that have been supplied by Westco are expressed in the same manner and using the same assumptions made for the purposes of the Interim Supply Order, Westco has met or exceeded its supply obligation, taking into account the replacement birds obtained by Nadeau which have, to date, been applied against Westco's supply obligation.

Period A-86

PERIOD	WEEK	BEGINNING DATE	HEADS DELIVERED	WEIGHT DELIVERED	AVERAGE WEIGHT	PAID WEIGHT
A-86	1	Jul. 20 2008	186 486	395 046 kg	2,12 kg	387 514 kg
	2	Jul. 27 2008	151 106	298 615 kg	1,98 kg	295 240 kg
	3	Aug. 3 2008	109 840	241 746 kg	2,20 kg	238 630 kg
	4	Aug. 10 2008	120 648	261 071 kg	2,16 kg	254 688 kg
	5	Aug. 17 2008	248 200	536 863 kg	2,16 kg	529 416 kg
	6	Aug. 24 2008	117 362	253 201 kg	2,16 kg	250 670 kg
	7	Aug. 31 2008	207 230	472 800 kg	2,28 kg	465 912 kg
	8	Sept. 7 2008	122 100	271 021 kg	2,22 kg	266 284 kg
Total (period)			1 262 972	2 730 362 kg	2,16 kg	2 688 354 kg
Weekly average			157 872	341 295 kg		
Total production allowed by the provincial board (live weight)						2 929 168 kg

For the period A-86, Westco's supply obligation was 161,230 birds at an assumed average weight of 2kgs/bird (that is, 186,230 less the replacement supply of 25,000 obtained by Nadeau). This translates into 2,579,680 kgs over the period. Hence, the totality of Westco's weekly production, except for said 25,000 birds has been supplied to Nadeau during period A-86. The "paid weight" column refers to the weight declared by Nadeau to the provincial authorities and used by Nadeau to pay Westco on a per kg basis.

As indicated above, Westco supplied a total of 2,730,362 kgs in live weight to Nadeau which, if expressed using the 2kgs/bird assumption, means that Westco effectively supplied 1,365,181 chickens (an average of 170,648 chickens per week for the period). Said otherwise, over the period A-86, Nadeau received a larger volume of chicken than it was entitled to under the Interim Supply Order.

Period A-87

PERIOD	WEEK	BEGINNING DATE	HEADS DELIVERED	WEIGHT DELIVERED	AVERAGE WEIGHT	PAID WEIGHT
A-87	1	Sept. 14 2008	116 838	261 429 kg	2,24 kg	257 965 kg
	2	Sept. 21 2008	142 740	317 742 kg	2,23 kg	314 673 kg
	3	Sept. 28 2008	116 260	250 640 kg	2,16 kg	246 908 kg
	4	Oct. 5 2008	199 830	444 936 kg	2,23 kg	440 214 kg
	5	Oct. 12 2008	105 870	239 791 kg	2,26 kg	235 913 kg
	6	Oct. 19 2008	-	- kg	- kg	- kg
	7	Oct. 26 2008	-	- kg	- kg	- kg
	8	Nov. 2 2008	-	- kg	- kg	- kg
Total (period)			681 538	1 514 537 kg	2,22 kg	1 495 673 kg
Weekly average			136 308	302 907 kg		
Total production allowed by the provincial board (live weight)						2 796 359 kg

For the period A-87, with the additional 6,250 birds obtained by Nadeau and again applied against Westco's supply obligation, the required supply obligation of Westco was 154,980 birds at an assumed average weight of 2kgs/bird (that is, 186,230 birds less the replacement supply of 31,250 birds obtained by Nadeau). This translates into 2,479,680 kgs over the period, or 309,960 kgs. per week for the period A-87.

For the period A-87, to date, Westco has supplied 1,514,537 kgs in live weight to Nadeau in the first 5 weeks of the period which, if expressed using the 2kg /bird assumption, means that Westco has supplied 757,269 chickens for the five weeks beginning September 14, 2008 (an average of 151,454 chickens per week). For the reasons explained hereunder, the total delivery for period A-87 (all 8 weeks) will confirm that Westco in fact will, again, meet or exceed the supply level of 154,980 heads of chicken for the period, when expressed using a 2kgs/bird assumption.

Therefore, over the periods A-86 and A-87, Nadeau will have received a volume of chicken at least equal to the supply level set in the Interim Supply Order.

As the charts below will show, the levels of actual supply to Nadeau have varied considerably over time. We have set out below charts showing the level of actual supply from Westco to Nadeau over the last year.

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The level of actual production by Westco and sales to Nadeau vary from a low of 159,401 kgs (period A-82, Week 8) to a high of 554,875 kgs (period A85, Week 6), which translate in an actual number of 86,255 chickens (period A-82, Week 8) to a high of 254,510 chickens (period A85, Week 6). These numbers vary depending on the quota levels (which are allocated by period), on the average weight of the birds delivered and on the levels of production (i.e. whether all barns are in operation for the week, etc). It should be noted that, prior to period A-86 and the consideration of replacement chicken, all of Westco's production was shipped and delivered to Nadeau.

PERIOD	WEEK	BEGINNING DATE	HEADS DELIVERED	WEIGHT DELIVERED	AVERAGE WEIGHT	PAID WEIGHT
A-79	1	06-24-2007	207 494	409 965 kg	1,98 kg	404 486 kg
	2	07-01-2007	188 484	395 674 kg	2,12 kg	391 043 kg
	3	07-08-2007	173 814	352 288 kg	2,03 kg	349 508 kg
	4	07-15-2007	154 354	320 601 kg	2,08 kg	317 587 kg
	5	07-22-2007	175 044	339 698 kg	1,94 kg	336 621 kg
	6	07-29-2007	201 078	419 864 kg	2,09 kg	407 443 kg
	7	08-05-2007	138 952	274 624 kg	1,98 kg	271 703 kg
	8	08-12-2007	179 348	349 884 kg	1,95 kg	345 870 kg
Total (period)			1 416 548	2 862 598 kg	2,02 kg	2 824 361 kg
Weekly average			177 069	357 825 kg		
Total production allowed by the provincial board (live weight)						2 972 668 kg

PERIOD	WEEK	BEGINNING DATE	HEADS DELIVERED	WEIGHT DELIVERED	AVERAGE WEIGHT	PAID WEIGHT
A-80	1	08-19-2007	202 874	420 973 kg	2,08 kg	415 917 kg
	2	08-26-2007	178 638	359 236 kg	2,03 kg	355 138 kg
	3	09-02-2007	173 958	364 063 kg	2,09 kg	360 589 kg
	4	09-09-2007	166 522	332 019 kg	1,99 kg	329 519 kg
	5	09-16-2007	180 024	371 363 kg	2,06 kg	367 004 kg
	6	09-23-2007	183 964	391 757 kg	2,13 kg	386 807 kg
	7	09-30-2007	160 128	330 987 kg	2,07 kg	327 234 kg
	8	09-07-2007	199 272	426 038 kg	2,14 kg	420 645 kg
Total (period)			1 443 178	2 896 436 kg	2,08 kg	2 962 651 kg
Weekly average			180 397	374 554 kg		
Total production allowed by the provincial board (live weight)						2 914 073 kg

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PERIOD	WEEK	BEGINNING DATE	HEADS DELIVERED	WEIGHT DELIVERED	AVERAGE WEIGHT	PAID WEIGHT
A-81	1	10-14-2007	189 748	385 286 kg	2,03 kg	381 152 kg
	2	10-21-2007	167 974	352 594 kg	2,10 kg	348 003 kg
	3	10-28-2007	179 256	370 074 kg	2,06 kg	361 633 kg
	4	11-04-2007	182 214	379 826 kg	2,08 kg	375 237 kg
	5	11-11-2007	220 899	438 460 kg	1,98 kg	432 435 kg
	6	11-18-2007	129 964	244 111 kg	1,88 kg	241 745 kg
	7	11-25-2007	210 672	435 639 kg	2,07 kg	431 143 kg
	8	12-02-2007	152 544	306 135 kg	2,01 kg	301 655 kg
Total (period)			1 433 271	2 912 125 kg	2,03 kg	2 873 002 kg
Weekly average			179 159	364 016 kg		
Total production allowed by the provincial board (live weight)						2 868 760 kg

PERIOD	WEEK	BEGINNING DATE	HEADS DELIVERED	WEIGHT DELIVERED	AVERAGE WEIGHT	PAID WEIGHT
A-82	1	12-09-2007	158 190	319 917 kg	2,02 kg	314 566 kg
	2	12-16-2007	216 819	428 454 kg	1,98 kg	423 576 kg
	3	12-23-2007	117 022	218 327 kg	1,87 kg	216 088 kg
	4	12-30-2007	189 242	396 356 kg	2,09 kg	391 783 kg
	5	01-06-2008	222 034	443 446 kg	2,00 kg	439 074 kg
	6	01-13-2008	188 468	392 447 kg	2,08 kg	387 167 kg
	7	01-20-2008	153 215	305 980 kg	2,00 kg	301 625 kg
	8	01-27-2008	86 255	159 461 kg	1,85 kg	158 194 kg
Total (period)			1 331 245	2 664 391 kg	2,00 kg	2 632 073 kg
Weekly average			166 406	333 049 kg		
Total production allowed by the provincial board (live weight)						2 670 611 kg

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UP/SENCRL, etc

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PERIOD	WEEK	BEGINNING DATE	HEADS DELIVERED	WEIGHT DELIVERED	AVERAGE WEIGHT	PAID WEIGHT
A-83	1	02-03-2008	158 675	335 779 kg	2,12 kg	332 397 kg
	2	02-10-2008	176 290	359 571 kg	2,04 kg	357 401 kg
	3	02-17-2008	177 435	378 342 kg	2,13 kg	373 583 kg
	4	02-24-2008	238 739	488 189 kg	2,04 kg	483 088 kg
	5	03-02-2008	182 590	383 718 kg	2,10 kg	379 378 kg
	6	03-09-2008	203 309	413 330 kg	2,03 kg	409 088 kg
	7	03-16-2008	143 408	303 538 kg	2,12 kg	300 844 kg
	8	03-23-2008	247 924	519 672 kg	2,10 kg	513 120 kg
Total (period)			1 528 370	3 182 140 kg	2,08 kg	3 148 898 kg
Weekly average			191 046	397 767 kg		
Total production allowed by the provincial board (live weight)						2 979 968 kg

PERIOD	WEEK	BEGINNING DATE	HEADS DELIVERED	WEIGHT DELIVERED	AVERAGE WEIGHT	PAID WEIGHT
A-84	1	03-30-2008	177 562	368 776 kg	2,08 kg	364 993 kg
	2	04-06-2008	193 507	404 050 kg	2,09 kg	399 258 kg
	3	04-13-2008	154 184	336 449 kg	2,18 kg	331 579 kg
	4	04-20-2008	221 135	456 167 kg	2,06 kg	450 783 kg
	5	04-27-2008	164 909	339 745 kg	2,06 kg	335 358 kg
	6	05-04-2008	203 307	419 589 kg	2,06 kg	413 459 kg
	7	05-11-2008	223 708	468 613 kg	2,09 kg	460 533 kg
	8	05-18-2008	140 387	305 190 kg	2,17 kg	299 957 kg
Total (period)			1 478 699	3 098 581 kg	2,10 kg	3 055 920 kg
Weekly average			184 837	387 323 kg		
Total production allowed by the provincial board (live weight)						3 051 954 kg

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PERIOD	WEEK	BEGINNING DATE	HEADS DELIVERED	WEIGHT DELIVERED	AVERAGE WEIGHT	PAID WEIGHT
A-85	1	06-25-2008	220 900	457 792 kg	2,07 kg	451 514 kg
	2	06-01-2008	185 852	385 806 kg	2,08 kg	381 524 kg
	3	06-08-2008	198 818	423 581 kg	2,13 kg	418 734 kg
	4	06-15-2008	181 746	381 589 kg	2,10 kg	378 045 kg
	5	06-22-2008	163 036	335 229 kg	2,06 kg	330 789 kg
	6	06-29-2008	254 510	554 875 kg	2,18 kg	548 716 kg
	7	07-06-2008	149 962	304 208 kg	2,03 kg	298 919 kg
	8	07-13-2008	185 202	406 125 kg	2,19 kg	397 495 kg
Total (period)			1 540 026	3 249 205 kg	2,11 kg	3 205 736 kg
Weekly average			192 503	406 151 kg		
Total production allowed by the provincial board (live weight)						3 027 776 kg

This constant weekly variation further demonstrates that Westco cannot be considered to be in breach of its obligation to deliver a certain weekly quantity of chickens before the end of a specific period which, in the case of period A-87 is November 8, 2008.

When Westco's production numbers of chickens are expressed using the rationale set out above – which is the only interpretation consistent with the terms and objectives of the Interim Supply Order (that is, to maintain the supply at the levels previously provided to Nadeau and subtracting the replacement chicken) – , Westco meets, and for the period A-86 in fact exceeded, the terms and intent of the Interim Supply Order.

We ask that the Tribunal issue an order confirming Westco's approach to the continued supply of chicken.

III Current Supply to Nadeau from Westco and Impact of Quota Reductions in A-86 and A-87

The Interim Supply Order was issued on June 26, 2008 during period A-85 (period ending July 19, 2008) at which time the quota allocated to Westco was 3,027,776 kgs for the period. Westco's quota was reduced for periods A-86 and A-87 by a total of 7.8% (3.26% for period A-86 and by an additional 4.53% for period A-87). The fact that quotas tend to vary from period to period was clearly established by Nadeau and the representative of Westco (see Soucy Affidavit at par. 10(e) and paragraph 34 of the Reply submissions filed by Nadeau on June 19, 2008).



Westco's maximum production, therefore, has equally been reduced by 7.8%, which means that Westco would simply be unable to produce the same quantity of chicken as it produced at the time the order was issued.

Consistent with the Interim Supply Order, however, and notwithstanding this quota reduction, Westco has continued and will be able to continue to meet or exceed its supply obligation when its supply is expressed in number of heads of chicken using the assumptions that were in place at the time the Interim Supply Order was issued.

In fact, when the quota reduction is factored into the supply obligation, using the 2kgs/bird assumption, Westco would be exceeding its obligations by an average of 11,000 chickens per week. A 7.8% reduction of the 186,230 average weekly supply corresponds to a reduction of 14,526 chickens per week, for a total of 171,704 chickens per week. This number has to be reduced by the replacement chickens obtained by Nadeau from other sources (31,250 chickens per week), which leaves a total obligation of 140,454 chickens per week. As explained above, the current supply provided by Westco to date in period A-87 is 151,454 chickens per week (or, an excess supply of 11,000 chicken per week)

IV Alternative Resolution

As is clear from the analysis set out above, Westco has never, over the past year, supplied Nadeau with 186,230 birds per week (the closest single week would be in July, 2007, period A-79, week 2, when Westco supplied 186,464 birds). This number is a fictional figure based on an assumed average weight of 2kgs/bird, used to reflect the "current level of weekly supply" at the time of the Interim Supply Order.

Westco had understood that the terms and intent of the Interim Supply Order were to permit Westco and the other Respondents to sell to customers other than Nadeau a certain portion of their "current level of weekly supply" when Nadeau was able to secure replacement chicken, namely a proportion of their production quotas which is now equal to 31,250 birds. Westco has indeed been proceeding on this basis and has subtracted from its weekly supply to Nadeau a volume equal to what was represented by those replacement birds. Hence, the totality of Westco's production, except for said 31,250 birds has been supplied to Nadeau during period A-87.

In the attached letter, Nadeau's counsel expresses the view that each Respondent is accountable for the chicken produced by its co-respondents. This is an untenable position. Westco does not control the numbers of chicken produced by either Dynaco or Acadia and the reverse is equally true. That being said, it is Westco's understanding that Dynaco and Acadia have supplied, and continue to supply, 100% of their production to Nadeau. That is, they continue to ship to Nadeau their "current level of weekly supply", as per the terms of the Interim Supply Order.

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In the circumstances, if the Tribunal determines that Westco's interpretation of the Interim Supply Order cannot be sustained, the only possibility left for Westco would be for it to supply all of its current production volume to Nadeau on a per week, as produced basis, up to the maximum allowed to be produced under its quota. As it indeed did prior to July 20, 2008. Even in such a case, production numbers would continue to vary by period and by week in accordance with Westco's quota and its production schedule. While such an approach would in fact erase those provisions of the Interim Supply Order dealing with the impact of replacement chicken (par. 57-58), it would, for the duration of the interim period, have the benefit of avoiding any further debate on the issue of Westco's, and the other Respondents', compliance with the Interim Supply Order.

Fixing the number of chickens that must be delivered by Westco every week based on a fictional average without considering the quota variations would lead to an interpretation of the Interim Supply Order that would not only be inconsistent with either Nadeau's obligation to obtain replacement supply or the reality of a market in which production levels are never static and in which quota allocations are being reduced, but that would have the effect, in certain periods, of forcing Westco to be in violation of its own quota allocation.

We would be pleased to respond to any questions the Tribunal may have.

Yours very truly,

Éric C. Lefebvre

Eric Lefebvre

c.c. Leah Price, *Fogler Rubinoff LLP*
Andrea McCrae, *Fogler Rubinoff LLP*
Joshua Freeman, *Fogler Rubinoff LLP*
Olivier Tousignant, *Joli-Coeur, Lacasse, Geoffrion, Jetté, St-Pierre*
Valérie Belle-Isle, *Lavery De Billy*

This is Exhibit R referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20.13.....

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit R only appears in the Confidential Version of the Responding Motion Record (filed).

This is Exhibit S referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 2013.....

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SENT BY EMAIL

Montréal, October 30, 2008

Mr. Patrice Lavoie
Competition Tribunal
Thomas D'Arcy McGee Building
#600-90 Sparks Street
Ottawa, ON K1P 5B4

Dear Mr. Lavoie:

**Re : Nadeau Poultry Farm Limited ("Nadeau") v. Groupe Westco Inc. ("Westco") et al.
Tribunal File No. CT-2008-004**

We are in receipt of Ms. Price's letter of even date.

In our letter of October 29, 2008, we outlined the approach Westco had taken to comply with the Interim Supply Order. This letter confirmed that Westco was acting in accordance with the terms and intent of the Order and that Westco intended to continue to so comply.

In these circumstances, and given the extreme seriousness of the accusation of non-compliance made by Nadeau's counsel and the potential penalties for Westco and the other Respondents, if Nadeau intends to raise an alleged failure to comply with the Interim Supply Order, this can only fairly be done on the basis of a proper record and materials prepared in accordance with the *Federal Courts Rules*.

That being said, as we indicated in our October 29 letter, if Westco's confirmation is not considered acceptable compliance by the Tribunal – a conclusion that Westco most vehemently disagreed (and disagrees) with – Westco also raised a possible alternative resolution for the duration of the interim period; an alternative to which Ms. Price does not refer in her letter. The effect of the alternative resolution would result in Nadeau receiving all of Westco's weekly production which would then be combined, as we understand it, with all of the weekly production of Dynaco and Acadia.

Yours very truly,

Éric C. Lefebvre

Eric Lefebvre

Avocats, agents de brevets
et agents de marques de commerce

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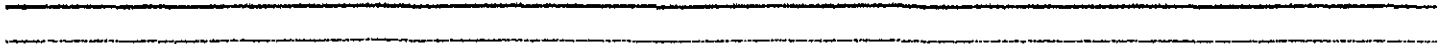
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c.c. Leah Price, *Fogler Rubinoff LLP*
Olivier Tousignant, *Joli-Coeur, Lacasse, Geoffrion, Jetté, St-Pierre*
Valérie Belle-Isle, *Lavery De Billy*



This is Exhibit T referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008


A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20.13.....

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit T only appears in the Confidential Version of the Responding Motion Record (filed).

This is Exhibit U referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20. 13.....

DIRECTION TO COUNSEL FROM THE PRESIDING JUDICIAL MEMBER**File No.:** CT-2008-004**Date:** Friday, October 31, 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.*

[1] FURTHER TO the Tribunal's Interim Supply Order of June 26, 2008, which provides as follows:

[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.

[2] AND FURTHER TO a letter filed by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited (the "Applicant") on October 14, 2008, (the "October Letter") in which it asserts that the Respondents are not complying with the Tribunal's Interim Supply Order;

[3] AND FURTHER TO the October Letter and the following documents attached to that letter:

- (a) Letter dated October 7, 2008, from counsel for the Applicant to counsel for the Respondents requesting written confirmation that the Respondents will comply with the Interim Supply Order;
- (b) Letter dated October 8, 2008, from counsel for the Respondent Westco Groupe Inc. ("Westco") to counsel for the Applicant responding to the letter dated October 7, 2008, with the following attachments:
 - (i) Letter dated July 17, 2008, from counsel for the Applicant to counsel for the Respondents;
 - (ii) Letter dated July 18, 2008, from counsel for Westco to counsel for the Applicant;
 - (iii) E-mail message dated July 18, 2008, from Yves Landry to Tom Soucy;

- (iv) Letter dated July 18, 2008, from counsel for Westco to counsel for the Applicant;
 - (v) Letter dated July 23, 2008, from counsel for the Applicant to counsel for Westco;
 - (vi) Letter dated August 1, 2008, from counsel for Westco to counsel for the Applicant;
 - (vii) Letter dated August 19, 2008, from counsel for the Applicant to counsel for Westco;
 - (viii) Letter dated September 2, 2008, from counsel for Westco to counsel for the Applicant;
 - (ix) Letter dated October 7, 2008, from counsel for the Applicant to counsel for the Respondents;
 - (x) Letter dated October 9, 2008, from counsel for Westco to the Tribunal regarding costs;
- (c) Letter dated October 8, 2008, from counsel for the Respondent Groupe Dynaco, Coopérative Agroalimentaire ("Dynaco"), to counsel for the Applicant advising the Applicant that Dynaco's entire production of live chickens was and will be sent to the Applicant in accordance with the terms of the Interim Supply Order;

[4] **AND FURTHER TO** the Tribunal's Direction of October 16, 2008, stating that the Respondents' weekly supply of live chickens to be provided to the Applicant was and will continue to be expressed in number of live chickens;

[5] **AND FURTHER TO** a letter filed by Westco on October 30, 2008, in which it seeks further direction as to the precise nature of its supply obligations under the Interim Supply Order;

[6] **AND FURTHER TO** a letter filed by the Applicant on October 30, 2008, in which it asserts that the Respondents "have clearly demonstrated their unwillingness to abide by the Interim Supply Order" and in which the Applicant makes a request for an urgent hearing to deal with matter;

[7] **AND FURTHER TO** a letter filed by Westco on October 31, 2008, in which it reiterates its position that if the Tribunal determines that Westco's interpretation of the Interim Supply Order cannot be sustained, Westco will supply all of its current production volume to the Applicant on a per week, as produced basis;

[8] **AND FURTHER TO** a letter filed by Dynaco on October 31, 2008, asserting that it has complied with the terms of the Interim Supply Order;

[9] **AND UPON** the Tribunal being satisfied that a proper record would be required in order to deal with the interpretation of the June 26 Interim Supply Order or any alleged failure to comply with the said order;

THE TRIBUNAL DIRECTS THAT :

[10] Pursuant to Subrule 81(2) of the *Competition Tribunal Rules*, SOR/2008-141, any further requests regarding the interpretation of the terms of the Interim Supply Order or compliance therewith shall be raised by way of motion by the parties.

This is Exhibit V referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt
A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20... ..

Allocations by Ownerships and Groupes

A-88

Ferme Avicole Bolduc	186,500	
Ferme Avicole J.J.C Bolduc	138,307	
	<u>324,807</u>	5.22%
Volaillie Acadia 1	104,219	
Volaillie Acadia 2	287,857	
Volaillie Acadia 3	273,074	
Volaillie Acadia 4	35,194	
Volaillie Acadia 5	54,039	
Volaillie Acadia 6	83,317	
	<u>837,700</u>	16.04%
Montagnaise	252,305	
De la Riviere	134,078	
Avicole Boulay	268,829	
Du Moulin	288,074	
Du Lac	184,859	
Frontiere	169,601	
Samalex	319,788	
Alexam	252,274	
Louisele Bouchard	72,536	
Nordic	172,116	
Chapi	111,147	
MJ Michaud(503430NBInc.)	172,413	
MJ Michaud(503431NBInc.)	83,317	
Group Westco	73,176	
Veroco	100,648	
Couvoir Westco	4,535	

Luc P Nadeau	243,816	
Scott Broilers	224,906	
Michel P (058385NB Inc)	61,279	
	<u>530,001</u>	10.15%
Cornico Inc.	259,228	
Ferme Cormier	225,199	
Avicole DMS	139,991	
	<u>624,418</u>	11.95%

Dianna Edgett	83,305	1.59%
Les Peres Trappistes	78,098	1.46%
S. Nickerson (Hugh Harmon)	35,430	0.68%
Slipp Farm	52,548	1.01%
Jolly Farmer		

Total net allocation	<u>5,224,003</u>	A-88
		5,495,215 A-87.
		271,212
		5.19%

2,859,696	50.91%
	<u>0.00%</u>

Old ownership

Note:

Acadia 1	Ferme Anima
Acadia 2	Ferme Monique Ouellet
Acadia 3	Avicole J-P Ouellet
Acadia 4	Marc Ouellet(052641 NB Inc)
Acadia 5	Ferme Avicole Marc Ouellet
Acadia 6	Entreprise JPO

This is Exhibit W referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008



A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20..13.....

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit W only appears in the Confidential Version of the Responding Motion Record (filed).

This is Exhibit X referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt
A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20.13.....

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit X only appears in the Confidential Version of the Responding Motion Record (filed).

This is Exhibit Y referred to in the affidavit of
Denise Boucher, sworn before me this 11th day of
December, 2008

Chantale B. Boutôt

A COMMISSIONER FOR TAKING AFFIDAVITS

CHANTALE B. BOUTÔT
Commissaire aux serments
Ma nomination expire
le 31 décembre 20..13.....

Allocations by Ownerships and Groupes

A-89

Ferme Avicole Bolduc	204,068	
Ferme Avicole J.J.C Bolduc	<u>151,335</u>	
	355,403	6.22%
Volaille Acadia 1	114,036	
Volaille Acadia 2	314,972	
Volaille Acadia 3	298,797	
Volaille Acadia 4	36,509	
Volaille Acadia 5	59,129	
Volaille Acadia 6	<u>91,165</u>	
	916,608	16.04%
Montagnaise	276,072	
De la Riviere	146,708	
Avicole Boulay	294,152	
Du Moulin	315,210	
Du Lac	202,272	
Frontiere	185,577	
Samalex	349,911	
Alexam	276,037	
Louiselle Bouchard	79,369	
Nordic	188,329	
Chapi	121,617	
MJ Michaud(503430NBInc.)	188,654	
MJ Michaud(503431NBInc.)	91,165	
Group Westco	80,069	
Veroco	110,129	
Couvoir Westco	<u>4,962</u>	

Luc P Nadeau	266,783	
Scott Broilers	246,092	
Michel P (058385NB Inc)	<u>67,052</u>	
	579,927	10.15%

Cornico Inc.	283,647	
Ferme Cormier	246,412	
Avicole DMS	<u>153,178</u>	
	683,237	11.95%

Dianna Edgett	91,165	1.59%
Les Pares Trappistes	83,267	1.46%

S. Nickerson (Hugh Harmon)	38,768	0.68%
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Slipp Farm	57,498	1.01%
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Jolly Farmer

Total net allocation 5,716,106 A-89

2,910,233 50.91%

0.00%

Old ownership

Note:

Acadia 1	Ferme Anima
Acadia 2	Ferme Monique Ouellet
Acadia 3	Avicole J-P Ouellet
Acadia 4	Marc Ouellet(052641 NB Inc)
Acadia 5	Ferme Avicole Marc Ouellet
Acadia 6	Entreprise JPO

Tab 2

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.**

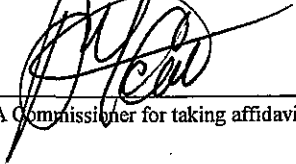
Respondents

AFFIDAVIT OF MARY ANDERSON

I, **MARY ANDERSON**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am assistant to Leah Price, counsel for the Applicant ("**Nadeau**") herein. Accordingly, I have knowledge of the matters to which I hereinafter depose.
2. I am advised by Leah Price, and verily believe, that Leah Price received the following letters from Ogilvy Renault LLP concerning these proceedings:
 - (a) letter dated September 23, 2008, attached hereto as **Exhibit "A"**; and
 - (b) letter dated October 8, 2008, attached hereto as **Exhibit "B"**.

SWORN before me at the City of
Toronto, in the Province of Ontario, this
10th day of December, 2008.



A Commissioner for taking affidavits.

} _____
Mary Anderson
Mary Anderson

Exhibit A

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit A only appears in the Confidential Version of the Responding Motion Record (filed).

Exhibit B

Pursuant to the Confidentiality Order dated June 26, 2008, Exhibit B only appears in the Confidential Version of the Responding Motion Record (filed).