

Competition Tribunal



Tribunal de la Concurrence

Reference: *Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited. v. Groupe Westco Inc. et al.*, 2008 Comp. Trib. 28
File No.: CT-2008-004
Registry Document No.: 0321

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*.

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)

Decided on the basis of the written record.
Date of Order: November 5, 2008
Order signed by: Madam Justice Sandra J. Simpson



ORDER RELATING TO NADEAU'S MOTION FOR A SHOW CAUSE ORDER.

[1] **UPON** the Applicant's motion, which was served and filed on November 4, 2008 (the "Motion") seeking an order requiring the Respondents to show cause why they should not be held in contempt of the Tribunal's Interim Supply Order dated June 26, 2008 (the "Order") because they have failed to supply the number of chickens specified in the Order;

[2] **AND UPON** the Applicant's motion for an order that the Motion be expedited and:

- That the Respondents file their responding material, if any, by end of day Thursday, November 6, 2008;
- That supplementary evidence, if any, be filed by end of day Monday, November 10, 2008;
- That the Motion be considered on the basis of the written record without a hearing;
- That memoranda of fact and law need not be filed for the Motion.

[3] **AND UPON** reviewing the affidavit of Yves Landry sworn on November 4, 2008 in support of the Motion and noting that the Motion does not appear to be urgent because:

- (i) The problem with shortfalls in numbers of chickens supplied began in mid-September 2008 and no motion has been brought until now;
- (ii) The Applicant's allegations of harm caused by the shortfalls are vague and not supported by any document in evidence.

[4] **AND UPON** observing that the hearing of this matter on the merits (the "Hearing") is scheduled to begin in six working days (on Monday, November 17, 2008);

[5] **AND UPON** noting the submissions from counsel for Groupe Westco Inc. received this morning which indicate, *inter alia*, that they wish to cross-examine Yves Landry, that they oppose the procedures proposed by the Applicant and that they intend to file today their own motion (the "Pending Motion") for an interpretation of the Order;

[6] **AND UPON** concluding that show cause motions require careful consideration and should not be dealt with in writing and without memoranda of fact and law;

NOW THIS TRIBUNAL ORDERS THAT, for the reasons described above:

[7] The Motion will not be expedited.

[8] The Motion will not be considered on the written record.

[9] Memoranda of fact and law will be required.

[10] The Tribunal will schedule a hearing date for the Motion and, if filed, for the Pending Motion which will be a date following the Hearing.

[11] A pre-hearing schedule for the Motion and, if filed, for the Pending Motion, will be discussed during the conference call with Justice Blanchard tomorrow.

DATED at Ottawa, this 5th day of November, 2008.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited

Leah Price
Andrea McCrae
Joshua Freeman

For the respondents:

Groupe Westco Inc.

Éric C. Lefebvre
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Martha A. Healey
Alexandre Bourbonnais

Groupe Dynaco, Coopérative Agroalimentaire

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

Pierre Beaudoin
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