



Reference: *Nadeau Poultry Farm Ltd. v. Groupe Westco et al.*, 2008 Comp. Trib. 15

File No.: CT-2008-004

Registry Document No.: 0069

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

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

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

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
Presiding Judicial Member: Blanchard J.
Date of Order: June 26, 2008
Order signed by: Mr. Edmond P. Blanchard

CONFIDENTIALITY ORDER - ON CONSENT OF THE PARTIES

INTRODUCTION

[1] FURTHER TO an application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited (“Nadeau”) for an Order pursuant to section 75 of the *Competition Act*, R.S.C. 1958, c. C-34, as amended (the “Act”), and an interim application by Nadeau for an Order pursuant to section 104 of the Act (together, the “Proceedings”);

[2] AND FURTHER TO Groupe Westco Inc.’s (“Westco”) request for a confidentiality order;

[3] AND FURTHER TO the confidentiality order filed on consent by the parties;

THE TRIBUNAL ORDERS THAT:

[4] For purposes of this order,

(a) “Document” means any document whatsoever or any part thereof, whether in physical or electronic form, including the things defined as “records” in subsection 2(1) of the Act;

(b) “Protected Document” means any Document produced in these Proceedings, including Documents listed in expert reports, pleadings, affidavits, submissions or affidavits of documents, and information contained in those Documents:

- i) with respect to which a party claims confidentiality; or
- ii) that the Tribunal has determined is confidential.

[5] Disclosure of Documents containing any of the following types of information could cause specific and direct harm:

(a) Information relating to prices (to the extent that such prices have not been published or made generally known to customers), specific output or revenue data or market shares, or negotiations with customers on prices, rates and incentives;

(b) Lists of existing, prospective, and former customers;

(c) Confidential contracts, arrangements or agreements between a party and its customers or between a party and a third party in connection with a commercial transaction;

(d) Business operational information;

(e) Financial data and reports;

- (f) Business plans, strategic plans, budgets, forecasts, reviews and other similar commercially confidential or sensitive information;
- (g) Internal market studies and analyses; and
- (h) Other competitively sensitive and/or proprietary information of the parties.

[6] There shall be two levels of confidentiality, as defined in paragraph 13 of this Confidentiality Order:

- (a) Confidential - Level A; and
- (b) Confidential - Level B.

[7] The confidentiality level applicable to Documents previously received by the Tribunal shall be as follows:

- (a) The following documents shall be designated as Confidential Level A:
 - (i) portions of paragraphs 30(c), 50(a), 77, 80, 81 and 82(c) and Exhibits “X” and “Y” of the Affidavit of Thomas Soucy sworn May 29, 2008,
 - (ii) portions of paragraph 70 of the “Représentations écrites de la défenderesse Groupe Westco inc. relativement à la demande d’ordonnance provisoire de la demanderesse en vertu de l’article 104 de la Loi sur la concurrence”; and
 - (iii) portions of pages 89 and 90 of the transcript from the cross-examination of Anthony Tavares on his affidavits sworn March 14, 2008 and June 8, 2008, taken June 13, 2008.
- (b) All other Documents previously filed shall not be treated as confidential.

[8] With regard to Documents yet to be filed in these Proceedings, the confidentiality level applicable to a Document shall be determined in the following manner:

- (a) At the time of production of a Document, or as soon thereafter as possible, a party that claims confidentiality over a Document shall provide counsel for the other parties with written notice identifying what confidentiality level, if any, the party claims applies to the Document;
- (b) All Documents designated as Protected Documents shall, on a preliminary basis, be afforded the highest confidentiality level designation claimed by any of the parties pending further determination of the confidentiality level;

- (c) Following the exchange of Documents, the parties shall use their best efforts to agree on appropriate levels of confidentiality for the Protected Documents, or portions thereof;
- (b) If agreement cannot be reached, the parties may apply to the Tribunal to determine the confidentiality or level of confidentiality of any Protected Document or portion thereof.

[9] If information from a Protected Document is incorporated into any other Document, that portion of the Document shall be a Protected Document having the same level of confidentiality as the level applicable to the Protected Document from which the information came.

[10] Any information contained in a Protected Document that has been, or is subsequently, made public by the party claiming confidentiality, or a related party, shall thereupon and to that extent only be treated as not confidential.

[11] Nothing in this order prevents any party from having full access to information and documents in the public domain, and any such information and documents shall be treated as not confidential.

[12] This order shall apply to all persons, to the extent that they acquire access to Protected Documents through these Proceedings.

[13] No one who obtains a Protected Document through these Proceedings shall disclose it, except as required by law or as set out below:

(a) Protected Documents designated as “Confidential - Level A” may be disclosed:

- (i) to counsel for the parties;
- (ii) counsel’s staff directly involved in these Proceedings; and
- (iii) independent experts and external accountants or auditors (as the case may be) retained by the parties who have executed Confidentiality Undertakings in the form of Schedule A hereto;

(b) Protected Documents designated as “Confidential - Level B” may be disclosed to:

- (i) counsel for the parties;
- (ii) counsel's staff directly involved in these Proceedings;
- (iii) independent experts and external accountants or auditors (as the case may be) retained by the parties who have executed Confidentiality Undertakings in the form of Schedule A hereto; and
- (iv) the representatives of the parties who have been designated pursuant to paragraph 14 of this order and have executed Confidentiality Undertakings in the form of Schedule A hereto.

[14] The parties may each designate up to four (or such further other number as counsel may agree or the Tribunal may permit) individuals as their representatives who will be permitted access to Protected Documents designated as Confidential - Level B. Such designation shall be made by written notice to the Tribunal, with copies sent to the other parties. Any party may make a motion to the Tribunal objecting to such a designation.

[15] Prior to gaining access to Protected Documents referred to in this order, independent experts and designated representatives shall execute a Confidentiality Undertaking in the form attached as Schedule A. Confidentiality Undertakings shall be served upon the other party and filed promptly with the Registrar of the Tribunal.

[16] If a party is required by law to disclose a Protected Document, or if a party receives written notice from a person who has signed a Confidentiality Undertaking pursuant to this order that they are required by law to disclose a Protected Document, that party shall give prompt written notice to the party that claimed confidentiality over the Protected Document so that the party that claimed confidentiality may seek a protective order or other appropriate remedy.

[17] Counsel for a party may make such copies as they require in connection with these Proceedings.

[18] Nothing in this order prevents a party from having full access to Protected Documents that originated from that party.

[19] For greater certainty, all persons who obtain access to Documents through the discovery process in these Proceedings are subject to an implied undertaking to use the Documents and information for the purposes of these Proceedings (including any application or proceedings to enforce any order made by the Tribunal in connection with these Proceedings, and any application under section 106 of the Act, to vary or rescind any order made by the Tribunal in connection with these Proceedings) and any related appeals only.

[20] Parties shall provide the Tribunal with redacted versions of all confidential expert affidavits, affidavits, pleadings, and memoranda of argument or similar Documents, at the time of filing for the public record.

[21] At any hearing of the applications in these Proceedings,

(a) Protected Documents referred to in the Proceedings or tendered as evidence shall be identified as such and clearly marked as "Confidential - Level A" or "Confidential - Level B" as the case may be;

(b) The Tribunal may determine whether the Document should be treated as confidential and what level of confidentiality is appropriate;

(c) Protected Documents, including information contained in those Documents and references to testimony made *in-camera* shall not form part of the public record unless the party or parties claiming confidentiality waives the claim, or the Tribunal determines that the Document is not confidential;

(d) At the time Protected Documents are tendered as evidence, or as soon as possible thereafter, where possible, parties shall provide the Tribunal with redacted versions for the public record unless otherwise directed by the Tribunal.

[22] Upon completion or final disposition of the applications in these Proceedings and any appeals, all Protected Documents and any copies of Protected Documents shall be destroyed or returned to the party that produced them (at the election of the party that produced the document), provided that counsel may keep one set of Protected Documents in their files.

[23] The termination of these Proceedings shall not relieve any person to whom Protected Documents were disclosed pursuant to this order from the obligation of maintaining the confidentiality of such Protected Documents in accordance with the provisions of this order and any confidentiality agreement.

[24] This order shall be subject to further direction of the Tribunal and may be varied by order of the Tribunal.

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

SIGNED on behalf of the Tribunal by the Presiding Judicial Member.

(s) Edmond P. Blanchard

SCHEDULE "A"
Confidentiality Undertaking

IN CONSIDERATION of being provided with information or documentation in connection with the proceedings before the Competition Tribunal, File Number CT-2008-004, between Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited and Groupe Westco Inc., Groupe Dynaco, Coopérative Agroalimentaire, Volailles Acadia S.E.C. and Volailles Acadia Inc. (the "Proceedings"), over which claims for confidentiality have been advanced ("Protected Documents"), I, (*insert name*), in the Province of (*insert province*), hereby undertake and agree to maintain the confidentiality of any Protected Document I obtain, and in particular:

1. I will not copy or disclose a Protected Document to any other person, except to a person permitted to receive it under the Confidentiality Order of the Competition Tribunal (the "Tribunal") dated (*insert date of Confidentiality Order*), or such further order as the Tribunal may make.
2. I will not use the information or documentation so obtained for any purpose other than in connection with the Proceedings (including any application or proceedings to enforce any order made by the Tribunal in connection with these Proceedings, and any application under s. 106 of the *Competition Act*, to vary or rescind any order made by the Tribunal in connection with the Proceedings), and any related appeals only.
3. Upon completion of these Proceedings and any related appeals, I agree that all Protected Documents in my possession shall be dealt with in accordance with instructions from counsel for the party (*I am retained by or that I represent*) or as prescribed by order of the Tribunal. (*Experts only:*) I may retain in my confidential files, subject to the requirements of confidentiality imposed by this undertaking, materials prepared by me, such as my expert report, as well as study results and materials of a general nature which do not replicate any confidential information from a Protected Document.
4. I have read the Confidentiality Order, a copy of which is attached to this agreement, and agree to be bound by it. I acknowledge that any breach of this undertaking by me will be considered to be a breach of the said order of the Competition Tribunal.
5. I acknowledge and agree that Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited, Groupe Westco Inc., Groupe Dynaco, Coopérative Agroalimentaire, Volailles Acadia S.E.C. and Volailles Acadia Inc., or any other owner of a Protected Document may not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this undertaking are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that any one or more of Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited, Groupe Westco Inc., Groupe Dynaco, Coopérative Agroalimentaire, Volailles Acadia S.E.C. and Volailles Acadia Inc. or any other owner shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.

6. In the event that I am required by law to disclose any Protected Document that is subject to this undertaking, I will provide (*insert name of retaining or employing party*) with prompt written notice so that the person that claimed confidentiality over such information or documentation may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the Protected Document that is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded it.

7. I will promptly, upon the request of the person providing a Protected Document, advise where it is kept by me.

8. I hereby attorn to the jurisdiction of the Competition Tribunal and/or the Federal Court to resolve any disputes arising under this agreement.

SIGNED, SEALED AND DELIVERED before a witness this _____ day of _____ 2008.

(*Witness Signature*)

(*Signature*)

COUNSEL:

For the applicant:

Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited

Leah Price
Andrea McCrae

For the respondents:

Groupe Westco Inc.

Denis Gascon
Éric C. Lefebvre

Groupe Dynaco, Coopérative Agroalimentaire

Paul Routier
Paul Michaud
Louis Masson

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

Pierre Beaudoin
Valérie Belle-Isle