

COMPETITION TRIBUNAL

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

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

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

BETWEEN:

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

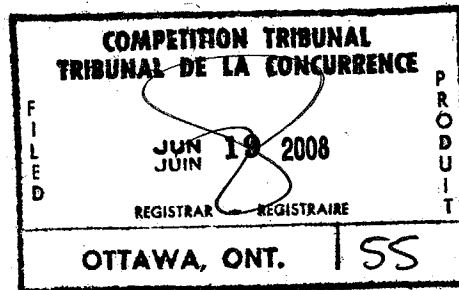
Applicant

AND

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

Respondents

**REPLY SUBMISSIONS OF THE APPLICANT
PURSUANT TO SECTION 104 OF THE *COMPETITION ACT***



Fogler, Rubinoff LLP
Barristers & Solicitors
95 Wellington Street West
Suite 1200
Toronto, ON M5J 2Z9

Leah Price
lprice@foglerrubinoff.com

Andrea McCrae
amccrae@foglerrubinoff.com

Solicitors for the Applicant

TO: COMPETITION TRIBUNAL
The Thomas D'Arcy McGee Building
#600-90 Sparks Street
Ottawa, ON K1P 5B4

The Registrar

Tel: 613 957 7851

Fax: 613 952 1123

AND TO: OGIPLY RENAULT, S.E.N.C.R.L., s.r.l
#1100-1982 McGill College Street
Montreal, QC H3A 3C1

Denis Gascon

Eric C. Lefebvre

Alexandre Bourbonnais

Geoffrey Conrad

Tel: 514 847 4747

Fax: 514 286 5474

Solicitors for Groupe Westco Inc.

AND TO: JOLI-COEUR, LACASSE, GEOFFRION, JETTE, ST-PIERRE
#600-1134 Grande Avenue West
Quebec, QC G1S 1E5

Paul Routhier

Paul Michaud

Louis Masson

Tel: 418 681 7007

Fax: 418 681 7100

Solicitors for Groupe Dynaco, Co-operative agroalimentaire

AND TO: LAVERY, DE BILLY s.e.n.c.r.l.
#500-925 Grande Avenue West
Québec, QC G1S 1C1

Pierre Beaudoin

Valérie Belle-Isle

Tel: 418-266-3068

Fax: 418-688-3458

Solicitors for Volailles Acadia s.e.c.

TABLE OF CONTENTS

<u>Tab</u>		<u>Page No.</u>
1.	REPLY SUBMISSIONS OF THE APPLICANT	1 - 28
I	Overview	1
II	The Test for Interim Relief	2
III	Serious Issue to be Tried	4
	(a) Substantial Effect on Nadeau's Business (s. 75(1)(a))	4
	(b) Unable to Obtain Adequate Supplies on Usual Trade Terms (s. 75(1)(a))	5
	(c) Insufficient Competition Among Suppliers (s. 75(1)(b))	8
	(d) Willingness to Meet Usual Trade Terms (s. 75(1)(c))	11
	(e) The Product is in Ample Supply (s. 75(1)(d))	11
	(f) Effect on Competition (s. 75(1)(e))	14
IV	Irreparable Harm	16
	(a) Applicable Law	16
	(b) Application to the Facts of this Case	18
V	The Balance of Convenience	23
VI	Other Issues Raised by the Respondents	26
2.	LIST OF AUTHORITIES	29
3.(a)	Exhibit 1 to Cross-examination of Thomas Soucy	30
(b)	Exhibit 2 to Cross-Examination of Thomas Soucy	32
(c)	Exhibit 3 to Cross-Examination of Thomas Soucy	34

COMPETITION TRIBUNAL

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

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

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

BETWEEN:

**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

REPLY SUBMISSIONS OF THE APPLICANT PURSUANT TO SECTION 104 OF THE *COMPETITION ACT*

I OVERVIEW

1. The Respondents (or their predecessors) have been supplying live chicken to the Applicant ("Nadeau") for over a decade. The issue before the Tribunal on this application for an

interim order, is whether they should be required to continue doing so for a few more months, pending the Tribunal's decision on the main application under section 75 of the *Competition Act* (the "*Act*").

2. The hearing of the main application has been scheduled for two weeks, commencing November 17, 2008.

3. The Respondent Groupe Westco Inc. ("Westco") has set an arbitrary deadline for supply, of July 20, 2008. It now refuses to supply its chicken to Nadeau for a single day after July 20, 2008. Assuming the Tribunal's decision is handed down by the end of January, 2009, the period at issue for Westco is six months.

4. In the case of the other two Respondents, whose Notices of Termination are effective September 15, 2008, the period of time at issue is about four months.

5. The evidence before the Tribunal establishes that, despite the protestations of the Respondents in their legal submissions, there would be no real prejudice suffered by any of them if they were required to continue supplying Nadeau. By contrast, if the order sought is denied, Nadeau would suffer irreparable harm, and might even cease to exist. In such circumstances, the cases clearly establish that an interim order should be granted.

II THE TEST FOR INTERIM RELIEF

6. The test to be met under section 104 is well established – the Tribunal is to consider and apply the principles applicable to injunctive relief, as laid down by the Supreme Court of Canada in *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

See, for example, B-Filer Inc. v The Bank of Nova Scotia, ("B-Filer") 2005 Comp. Trib. 52, at para. 4.

7. The Respondents argue that Nadeau should be required to meet a higher test. They say the order sought is in the nature of a "mandatory" injunction. However, as explained by Madam Justice Simpson:

"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 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."

Ref: *Quinlan's of Huntsville Inc. v. Fred Deeley Imports Ltd.*, 2004 Comp. Trib. 28 ("*Quinlan's*"), para. 24.

8. It is submitted therefore that the applicable test requires that the Tribunal be satisfied:

- (a) that there is a serious issue to be tried;
- (b) that Nadeau will suffer irreparable harm if the order is not granted; and
- (c) that the balance of convenience favours Nadeau.

Ref: *RJR – MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 312, p. 334.

III SERIOUS ISSUE TO BE TRIED

9. Contrary to the position taken by the Respondents in their Submissions, the established test as set out in *Quinlan's* (above) does equate the threshold for leave under s. 103.1 of the *Act* to the "serious issue" element of the interlocutory injunction test. It is submitted that, leave having been granted, Nadeau has demonstrated that there is a serious issue to be tried.

10. In any event, the low threshold of a "serious issue" to be tried under section 75 can be easily met in this case, even on the assumption that the granting of leave is somehow irrelevant.

(a) Substantial Effect on Nadeau's Business (s. 75(1)(a))

11. It is undisputed that the Respondents account for 271,350 chickens per week, or a full 46% of Nadeau's total current supply (inclusive of the "new" Nova Scotia birds). It is submitted that the withdrawal of this much of Nadeau's only raw material, without more, raises a "serious issue" that Nadeau would suffer substantial detriment.

Ref: Supplementary Affidavit of Anthony Tavares, para. 22.

Ref: Cross-examination of Thomas Soucy, Transcript, p. 95.

12. Further, the uncontradicted evidence of Nadeau is that the removal by Westco of its 186,230 birds alone would cause revenue loss of over \$830,000 *per week*. Because of the high level of fixed costs, loss of the Westco birds alone would reduce profits by about 50% on an annualized basis. This is clearly a "substantial effect".

Ref: Affidavit of Anthony Tavares, para. 79.

13. As submitted in detail below, the refusal of an order would in fact result in irreparable harm. As such, it is submitted that there is no question that Nadeau has shown a serious issue to be tried under s. 75(1)(a) of the *Act*.

(b) Unable to Obtain Adequate Supplies on Usual Trade Terms (s. 75(1)(a))

14. Nadeau's evidence is that Nadeau cannot obtain adequate replacement supplies because:

"the supply management system creates monopoly production rights for producers and all production is already allocated to other processing plants"

Ref: Affidavit of Anthony Tavares, para. 80.

15. The Respondents do not contest either the proposition that the supply management system creates monopoly rights for producers, or the fact that all production is already allocated to other processing plants. Rather, Mr. Soucy says that Nadeau could, "en raison de sa marge de profit" offer "un prix concurrentiel" (presumably, a *higher* price) to producers in Québec and Ontario in order to *divert* supplies from other processors ("s'approprier des volumes de poulets vivants qui sont présentement vendus à d'autres abattoirs")

Ref: Affidavit of Thomas Soucy, paras 18, 60.

16. It appears Mr. Soucy believes that all producers are as disloyal as Westco, and are equally willing to abandon long-term supply relationships (and to destroy processors), for short-term gain. This hypothetical availability of replacement supplies through diversion from other processors is a centrepiece of the Respondents' Submissions. However, there is no actual evidence that adequate replacement supplies for the Respondents' 271,350 birds per week could

be obtained, even if Nadeau were to pay the "competitive" prices suggested by Mr. Soucy in his Affidavit.

17. In the almost six months since receiving Westco's Notice of Termination in January, Nadeau has only obtained new supplies from Nova Scotia, and only 25,000 birds per week, and this only because the remaining Nova Scotia plant cannot handle them. As well, Nova Scotia chickens must travel long distances to the St-François Plant. This causes major concerns, as is explained by Mr. Tavares in his Supplementary Affidavit. Nova Scotia and PEI birds are by no means an adequate replacement for the Respondents' chickens.

Ref: Supplementary Affidavit of Anthony Tavares, paras 14, 19.

18. Mr. Soucy, in an apparent effort to create an aura of easy availability of chicken, asserted that "many" producers "called" him after his press conference of March 19, 2008 (announcing the intention to build a new plant) and "offered" him "their chicken". He said: "And I can have producers from Nova Scotia as well as Québec and even the east of Ontario". However, Westco has produced evidence of only one producer who is actually willing to divert its production (and only if Westco offers a "prix compétitif"). That producer, Aliments Breton, has a production capacity of 74,000 chickens per (eight-week) quota period, or 9,250 chickens per week. In view of the foregoing, it is not surprising that Mr. Soucy was *not* prepared to agree to continue supplying Nadeau, and to get *his* chicken from elsewhere.

Ref: Cross-examination of Thomas Soucy, pp. 98-99, 100.

Ref: Letter from Aliments Breton, Exhibit "H" to Affidavit of Thomas Soucy.

19. In any event, as explained by Mr. Tavares, even if it were possible to divert supplies from other processors by paying higher prices, the other processors would undoubtedly retaliate.

"This would spark a price war that would increase costs for any processor that (unlike Olymel) does not have a "partner" who can guarantee supply. These additional costs would further erode profits, and would put Nadeau and other processors at further risk of collapse."

Ref: Supplementary Affidavit of Anthony Tavares, para. 16.

20. As stated by Mr. Tavares:

"Nadeau is totally dependent on the continuance of stable long-term supply relationships. The St-François Plant's operations require that the daily level of supply be maintained, or the operations will cease. The Respondents understand this very well."

Ref: Affidavit of Anthony Tavares, para. 20.

21. This view is shared by processors (including Olymel) in Québec:

"La Convention de mise en marché s'appuyant sur le Volume d'Approvisionnement Garanti (« VAG ») est une contrepartie juste et raisonnable au fait que les producteurs bénéficient de la gestion de l'offre au Canada. Le VAG constitue un outil important pour que les abattoirs puissent concentrer leurs efforts sur la qualité et la mise en marché des produits plutôt que sur leur propre approvisionnement."

Ref: Presentation by Quebec Processors' Association (AAAQ), Exhibit "D" to Supplementary Affidavit of Anthony Tavares, p. 11.

22. The Ontario processors' association agrees:

"We are aware that Nadeau has been given notice that 80% of the New Brunswick-grown live chicken supply to its plant is to be terminated by three large New Brunswick corporate farming

companies. We understand that the lost supply represents approximately 50% of Nadeau's total live chicken inputs. This situation is very concerning to the AOCF and in our view, is inconsistent with the ideals of the supply management system in Canada and its efficient and effective operation. We also find it to be a gross misuse of the privileged rights enjoyed by chicken farmers.

Our concerns flow from the absolute necessity for processors to have certainty and stability in their live supply base. Without this certainty processors are unable to in turn provide stability of supply to their customers, or reinvest with confidence in their businesses, or maintain any sense of continuity and stability in any element of their operations...."

**Ref: Letter from Association of Ontario Chicken Processors,
Exhibit "C" to Supplementary Affidavit of Anthony Tavares, p. 1.**

23. Further, it should be noted that the *Competition Act* does not contemplate that an applicant is required to offer to pay exorbitant prices to other suppliers in order to obtain replacement products. Subsections 75(a) and (c) emphasize that the relevant enquiry is whether adequate supplies can be obtained "on *usual* trade terms" (emphasis added). It is clear that Nadeau cannot obtain replacement supplies anywhere in the market on the usual and customary trade terms previously in effect between Nadeau and its suppliers.

**Ref: See, for example: *B.-Filer Inc. v. The Bank of Nova Scotia*,
2005 Comp. Trib. 38, para. 57.**

(c) Insufficient Competition Among Suppliers (s. 75(1)(b))

24. The Respondents refer to and rely upon the decision of the Supreme Court of Canada in *Québec v Pelland*. That decision upheld the constitutional validity of the Québec component of the federal-provincial chicken marketing scheme.

**Ref: *Fédération des producteurs de volailles du Québec v Pelland*,
[2005] S.C.J. No. 19.**

25. The Supreme Court noted (at para. 4) that the purpose of the chicken marketing scheme is to "ensure effective marketing and a dependable supply of chicken to Canadian consumers". The Court describes the function of the federal body (the Chicken Farmers of Canada) as being "to assess the national market and set a global production quota for each province" (at para. 7).

26. Since the scheme contemplates setting periodic supply quotas based on assessment of consumer need, the global amount of chicken that can be produced nationally (and hence provincially) is not subject to any *a priori* limitations. For this reason, chicken is, and will continue to be, in ample supply. As stated by the Supreme Court (at para. 38):

"The quota system is an attempt to maintain an equilibrium between supply and demand and attenuate the inherent instability of the markets".

27. Although the global number of chickens produced can grow based on consumer demand, the number of producers is limited. As stated in *Pelland* (para. 33), "a producer must be allotted an individual production quota in order to produce chicken in the province". Once possessed of a quota, the producer may (subject to the relevant legislation) market both intra-and extra-provincially. Only producers owning or controlling quota may produce chicken. There is therefore insufficient competition at the production (supply) level of the chicken marketing system. The system creates a sanctioned monopoly in favour of existing quota-holders or owners, such as the Respondents. Indeed, Mr. Soucy of Westco concedes as much in his affidavit, when he says in effect, that the only way to enter the chicken production market is "en achetant un quota de production appartenant à un éleveur désirant le vendre".

Ref: Affidavit of Thomas Soucy, para. 12.

28. In its decision in *Chicken Farmers of Ontario v. Drost*, the Ontario Divisional Court discusses the goals of the system as administered by the Chicken Farmers of Ontario ("CFO")(at para. 12):

"CFO controls the amount of chicken produced and marketed so that these activities occur in an orderly manner. This enables chicken producers over time to receive a reasonable return and provides stability in the marketplace."

Ref: *Chicken Farmers of Ontario v. Drost*, [2005] O.J. No. 3973 (Div. Ct.), para. 12.

29. In New Brunswick, the provincial component of the system is administered by the Chicken Farmers of New Brunswick ("CFNB"). The Marketing Orders of the CFNB reiterate the goals and objectives of the system, and reinforce the regulatory protection offered by the system to existing producers such as the Respondents. For example:

(a) Marketing Order I (1) describes the object of the marketing plan as:

"...to control the number of chickens raised for marketing within the Province, in such a manner:

(a) As to ensure there is an adequate supply of New Brunswick grown chicken available to the consumer.

(b) To provide an opportunity for the maximum number of residents in New Brunswick to earn a living in the marketing of chicken.

(c) To ensure a reasonable rate of return from the sale of chicken and to ensure a continuity of supply.

(d) To avoid the development of monopolies which could result in excessive cost to the consumers of chicken.

(e) To avoid a curtailment of the overall supply in the event one or more producers cease to market chicken."

(b) Marketing Order III (11) provides that the Province's marketing quota "shall be allocated by the Board on a *pro rata* basis to *existing* producers" (emphasis added).

(c) Marketing Orders VII and IX deal with the prices to be paid by processors, and other conditions for the sale of chicken by a producer to a processor. These Orders provide that the minimum prices paid shall be those fixed from time to time by the CFNB.

30. As a result, existing producers are fully protected in New Brunswick, in that the producer board (the CFNB) sets minimum prices intended to ensure "a reasonable return", and new entrants are essentially barred from the producer end of the market.

31. As a result of the protected status of existing quota holders under the chicken marketing system, there is no meaningful competition among chicken producers at all. Accordingly, Nadeau's inability to obtain adequate replacement supplies is because of "insufficient competition" among suppliers of live chicken.

(d) Willingness to Meet Usual Trade Terms (s. 75(1)(c))

32. This is not disputed.

(e) The Product is in Ample Supply (s. 75(1)(d))

33. The Respondent Westco argues (Submissions, para. 128) that, because the various regulatory bodies fix quotas (maximum numbers) for chicken production on a federal and provincial basis, there is not an "ample supply" within the meaning of subsection 75(1)(d) of the *Act*.

34. This is not correct. Supplies allocated to existing producer quotas are adjusted every eight weeks following a consultative process between the federal body (Chicken Farmers of Canada) and the provincial producer boards (such as the CFO and the CFNB). The process is intended to ensure that there is an ample supply of chicken to meet consumer needs.

35. For example, in Exhibit "B" to Mr. Soucy's affidavit (at p. (i)), the Chicken Farmers of Canada notes that its "main responsibility" is to ensure the production of the "right amount" of chicken to "meet consumer needs". In Exhibits "B" and "F" to Mr. Soucy's affidavit, he includes data demonstrating that production of chicken has increased substantially in the last few years, no doubt in response to consumer demand. In New Brunswick alone, as stated in paragraph 18(f) of Mr. Soucy's affidavit, chicken production increased by close to 60% in the period from 1990 to 2000. Westco's own volume has increased by over 10,000 chickens *per week* since 2006.

Ref: Exhibits "B", "F" to Affidavit of Thomas Soucy.

Ref: Affidavit of Thomas Soucy, paras 8(e), 18(f).

36. Westco also argues that there is not "ample supply" because the totality of its production was "promise et vendue à un autre acheteur, Olymel..." (Westco Submissions, para. 67). Of course, Westco has refused to produce its alleged "contract" with Olymel, so there is no way of testing the veracity of this bald assertion. In any event, Mr. Soucy in his cross-examination says something quite different:

"The intentions of this contract were never to sell chicken to Olymel. It was to sell chicken to our partnership. It is my partnership with Olymel that is the chicken buyer."

In effect, Westco wishes to sell to itself. There is no innocent third party that would be affected. There is no "autre acheteur".

Ref: Cross-examination of Thomas Soucy, Transcript, p. 45, Q. 188 (refusal), and p. 49, Q. 197.

37. Westco relies upon paragraphs 18 – 21 of the decision in *Quinlan's* in connection with its argument concerning "ample supply". In that case, the Tribunal refused to require the Respondent to supply Harley-Davidson motorcycles to the applicant by way of interim order, because they were not in "ample supply". However, the facts of that case are very different. All of the respondent's supply of 2005 Harley-Davidson motorcycles had been ordered from the Harley-Davidson factory and allocated to independent third party dealers in March, 2004 (the interim application was heard in October, 2004). The motorcycles had actually begun arriving at these other dealerships in August, 2004. The evidence was that any interim order would "not only harm [the respondent], but will harm other independent dealerships as well". Clearly, the decision in *Quinlan's* was driven by the fact that existing customers, innocent third parties, would be deprived of product already sold to them. The equities in that case favoured the refusal of an order.

Ref: *Quinlan's*, supra, at paras 9-12, 17.

38. By contrast, in this case, there is no innocent third party. Olymel is not independent, and was present at all of the key meetings with Nadeau. Indeed, it is a co-conspirator with Westco in the attempt to destroy Nadeau by refusing chicken supplies. At the August 19, 2007 meeting, Réjean Nadeau of Olymel was present with Mr. Soucy when Nadeau was told that, if Nadeau would not sell the St-François Plant to Olymel/Westco at a price acceptable to it, then all of the

chicken produced by Westco would be diverted to Québec, and Olymel/Westco would build its own plant. Westco has admitted this.

Ref: Affidavit of Anthony Tavares, para. 42.

Ref: Affidavit of Thomas Soucy, para. 38(c).

39. Similarly, the extract from Goldman and Bodrug (Westco Submissions, para. 131), is also inapplicable. That extract asserts (without authority) that "Section 75 cannot be used to require a supplier to ration limited supplies of a product in a manner that prevents existing customers from obtaining whatever quantities they wish to purchase." The only "existing customer" in this case is in fact Nadeau. Accordingly, the logic behind this quote, and behind this aspect of the decision in *Quinlan's* (protection of existing customers who are innocent third parties), is inapplicable to the case at bar.

40. There is clearly sufficient evidence of "ample supply" to satisfy the "serious issue" test.

(f) Effect on Competition (s. 75(1)(e))

41. It is submitted that there is no question that there is at least a "serious issue" to be tried under this subsection. The Respondents do not deny this in their written submissions.

42. Nadeau has argued that the Respondents' refusal to supply will render it unable to effectively continue in business, since other competing processors, and in particular Olymel, are not being denied supplies. The disappearance of Nadeau, coupled with guaranteed supply from Westco, Dynaco and Acadia would undoubtedly strengthen Olymel at the cost of other players in the processor market, and would enable it to raise prices and limit supply. Nadeau has already provided substantial uncontradicted evidence of the effect this would have on customers.

Ref: Exhibits "O", "P", "Q" to Affidavit of Anthony Tavares.

43. Secondly, even assuming that someday Olymel/Westco do build a new plant in New Brunswick, this would by no means be a replacement for Nadeau. In fact, such would simply serve to further strengthen Olymel's position and increase Westco's dominance, with the adverse effects on competition noted in Mr. Tavares' affidavit. As stated by the Tribunal:

"...for a refusal to deal to have an adverse effect on a market, the remaining market participants must be placed in a position, as result of the refusal, of created, enhanced or preserved market power".

**Ref: B-Filer Inc. et al v The Bank of Nova Scotia,
2006 Comp. Trib. 42, para. 208.**

44. As stated by the Tribunal in this case:

"The market at issue for the purposes of paragraph 75(1)(e) is the market in which the Applicant participates, involving the sale of processed chickens. The Applicant's affiant attests that the refusals could lead to the closure of the Applicant processing plant, thereby eliminating a major competitor in the market place. He explains that the closure of the St-François Plant "...would result in a significant reduction of competition in the chicken market in Quebec and the Maritime provinces." In the circumstances, I am satisfied that the Tribunal could conclude that the refusals are likely to have an adverse effect on competition in a market."

**Ref: Reasons for Order and Order Granting an Application for Leave under
Section 103.1 of the Competition Act, 2008 Comp. Trib. 7, para. 36.**

IV IRREPARABLE HARM

(a) Applicable Law

45. Contrary to the position taken by the Respondents, the caselaw establishes that an applicant in a refusal to supply application has no obligation to enter into supply arrangements with other suppliers pending a final determination by the Tribunal:

"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 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."

Ref: *Quinlan's, supra*, para. 25.

46. Moreover, loss of sales, loss of market share and loss of goodwill with customers can, without more, be considered to be irreparable harm.

Ref: *Quinlan's, supra*, para. 26.

Ref: *Apotex Inc. v. Wellcome Foundation Ltd.* 1998 CarswellNat 1432 (Fed. C.A.), para. 6, leave to appeal to the S.C.C. refused 1999 CarswellNat 3538 (S.C.C.).

47. "Irreparable harm" is harm that "cannot be quantified in monetary terms or which cannot be cured". Some obvious examples are: "where one party will be put out of business"; and "where one party will suffer permanent market loss or irrevocable damage to its business reputation." It is **not** necessary for the applicant to show that the very viability of its business is threatened, where other factors exist.

Ref: RJR – MacDonald, supra, p. 341.

**Ref: BMW Canada Ltd. v. Nissan Canada Inc
2007 CarswellNat 647 (Fed. C.A.), para. 11.**

48. Where the harm that could be caused is so great that the ultimate proceeding could be rendered nugatory or moot, an interim order should be granted:

"...We are of the view that the Court is empowered, pursuant to both s. 65.1 and r.27, not only to grant a stay of execution and of proceedings in the traditional sense, but also to make any order that preserves matters between the parties in a state that will prevent prejudice as far as possible pending resolution by the Court of the controversy, so as to enable the Court to render a meaningful and effective judgment. The Court must be able to intervene not only against the direct dictates of the judgment but also against its effects. This means that the Court must have jurisdiction to enjoin conduct on the part of a party in reliance on the judgment which, if carried out, would tend to negate or diminish the effect of the judgment of this Court".

Ref: RJR – MacDonald, supra, at p.329.

**And see M & D Farm Limited v. Manitoba Agricultural Credit Corp.,
[1998] 1 S.C.R. 1074, para. 5.**

49. It is submitted that an interim order under s. 104 of the *Act* is an integral part of the competition law scheme because of the futility of attempting to "unscramble the eggs" after a refusal to supply puts an applicant out of business, or otherwise so alters the situation that the *status quo ante* cannot be restored. This has been explicitly recognized in the merger context:

"... injury to the public interest may be caused by the lack of an adequate remedy should the Tribunal eventually order divestiture of the acquired businesses, only to find that they were no longer viable, independent units and the harm to competition in the market in the meantime...."

...The futility of attempting to "unscramble the eggs" upon a later finding that the merger will indeed likely lessen competition substantially is apparent."

Ref: Director of Investigation and Research v. Southam Inc., [1991] C.C.T.D No. 6 (Comp Trib.) – CT-90/1, p. 8.

(b) Application to the Facts of this Case

50. It is undisputed that the Respondents supply a full 46% of Nadeau's total current supply of chickens, or 271,350 chickens *per week*.

51. Mr. Tavares has testified that Nadeau's profit is approximately \$0.50 per kg, and that removal of Westco's 186,230 birds alone would cause revenue loss of over \$830,000 *per week*, and loss of profit of more than \$139,000 *per week*. Because of the high level of fixed costs, loss of Westco's birds alone would reduce profits by about 50% on an annualized basis. Mr. Soucy has not denied the accuracy of these figures. Further, counsel for Westco did not cross-examine on this issue, nor did he request production of any back-up documents. These numbers are therefore uncontradicted, for the purposes of this interim motion.

Ref: Affidavit of Anthony Tavares, para. 79.

Ref: Affidavit of Thomas Soucy, para. 59.

52. It is submitted that a revenue loss of this magnitude (close to \$20,000,000 over the six months from July, 2008 to the end of January, 2009), in and of itself, satisfies the test for irreparable harm as set out in the cases, particularly where, as here, the Respondents have offered no undertaking as to damages.

Ref: Apotex, *supra*, para. 4.

53. Mr. Tavares also testified that, if the Respondents cut off Nadeau's supply:

"The St-François Plant will only be able to run at 40% of capacity...Nadeau would be unable to continue to employ its employees. A majority of the 340 jobs would be lost immediately, and the viability of the whole plant would be severely compromised."

Ref: Affidavit of Anthony Tavares, para. 81.

54. Westco agrees that Nadeau would have to lay off its employees if the Respondents' chicken supplies are withdrawn. Westco has in fact offered to hire these laid-off employees:

(a) *"Le Groupe Westco se dit prêt à embaucher dans son futur abattoir les travailleurs qui perdront leur emploi chez Nadeau Ferme Avicole en raison d'un manque d'approvisionnement..."*

...

"Nous allons embaucher ces travailleurs. Il n'y aura donc pas de pertes d'emploi, mais un changement d'employeur..."

Ref: L'Acadie Nouvelle, June 10, 2008, Exhibit 2 to Cross-examination of Thomas Soucy.

(b) *"Westco a annoncé en mars son intention de transférer sa production de poulets à un abattoir d'Olymel..."*

Nadeau estime que cette décision nuirait à son usine. Westco promet donc d'embaucher les employés qui perdraient leur emploi chez Nadeau.

Westco offrira aussi une aide financière aux travailleurs de Nadeau, aide qui correspondrait à 90% de leur salaire entre le moment de leur mise à pied et leur embauche dans le nouvel abattoir.

«...nous autres on est prêt à embaucher les gens et on est prêt à stabiliser les gens pour leur salaire», promet Thomas Soucy..."

Ref: Radio-Canada, June 9, 2008, Exhibit 1 to Cross-examination of Thomas Soucy.

55. If the interim order is denied, large lay-offs will certainly occur. Westco will then swoop in to hire away these trained workers, for its benefit. It will thereafter not be possible to restore the *status quo ante*, or to "unscramble the eggs", if the Tribunal ultimately orders resumption of supply.

56. As well, Mr. Tavares has testified that Nadeau:

"supplies reliable and predictable amounts of chicken to its customers, in a timely manner, that meet specific weight requirements for each customer,"

and that

"[i]nterruption of supply would create an immediate inability to fulfill the needs of Nadeau's customers. This would cause immediate damage to the relationships Nadeau has built with its customers over the last 18 years."

The result would be a "loss of confidence, a loss of goodwill...". Mr. Tavares was not cross-examined on this evidence.

Ref: Affidavit of Anthony Tavares, para. 75.

57. Nadeau also provided letters from customers, corroborating the foregoing. These customers expressed concerns about the implications of the Respondents' threatened withdrawal of supplies, and the possible closure of the St-François Plant. The following are some examples of their concerns:

(a) From the purchaser for Kentucky Fried Chicken restaurants, which purchases the "significant majority" of the fresh chicken used in the KFC restaurants in the Maritimes from Nadeau:

"KFC has a particular specification for its chicken, both as to quality, and as to size. Because of this, and because of the volume of purchases, and the constant turnover we experience, we are always concerned about adequacy of supply."

- (b) From Cara Operations Ltd., which operates Swiss Chalet, Montana's and Milestones restaurants:

"Cara has purchased the vast majority of its fresh chicken supplies for its NS, NB, PEI and NFLD locations from Nadeau and at this time we would like to continue this relationship."

- (c) From Service Alimentaire Desco Inc:

"We are becoming extremely anxious for the probability that Nadeau Poultry will no longer be able to supply us our poultry due to lack of live chicken being sold to them from large chicken growers. We read that live chickens will only be sold to Quebec processors, namely Olymel..."

This is a big concern for us, for we will no longer be competitive when quoting the supermarket chains or other food services chains due to fact that we will come in direct competition with Olymel. We will definitely have problems getting fair pricing and supply if we would need to rely on Olymel."

- (d) From Puddy Bros. Ltd.:

"Puddy Bros. Ltd. has demanding specifications and service requirements that few poultry slaughterhouses can meet. Nadeau Poultry has been one of those firms that have been able to consistently meet our demands in terms of quality, pricing, and supply volumes."

We have been informed that a large group of growers has given notice that they will no longer sell their birds in New Brunswick as they intend to sell them to Quebec processors..."

We are very concerned when supply management can be utilized by the producers in order to threaten a processors livelihood. Supply management was instituted for the producer's benefit. It allows quotas to producers which prevent new entrants into the

system and creates a sanctioned monopoly. Producers should not be allowed to use their preferential position to decide the fate of a poultry processor."

Ref: Exhibits "O", "P" and "Q" to the Affidavit of Anthony Tavares.

58. The foregoing evidence is uncontested and uncontradicted. It shows clearly that Nadeau would suffer irreparable harm, including loss of confidence and loss of goodwill, if the interim order sought by Nadeau is not granted.

59. Contrary to the claims made by Westco (Westco Submissions, para. 33), Mr. Tavares never admitted that Nadeau could continue with its business activities for the next two years.

What Mr. Tavares actually said was:

"I won't be able to predict exactly which date the plant will go bankrupt and fail. But that event will start a chain, in my opinion, that will eventually lead to that. And from the beginning, I have maintained that that is the ultimate objective of Westco and the others in this. Because nothing else makes sense."

Ref: Cross-examination of Anthony Tavares, Transcript, p. 64, Q. 263.

60. Westco relies on the *B-Filer* decision in support of its argument on the issue of irreparable harm (Westco Submissions, paras 135, 145, 146). In that case, however, services provided to the applicants by the respondent had ceased some months prior to the hearing of the application for an interim order. Following the withdrawal of services by the respondent:

- (a) the applicants made new banking arrangements with another bank "which have replaced the Respondent's services and allow the Applicants to continue in business";
- (b) there was no evidence showing how the loss of "dollar value of transactions" affected the applicants' revenue;

- (c) similar withdrawals of service by TD and CIBC in the past had not had any adverse effect, and in fact "the Applicants' business continued to expand";
- (d) the evidence showed not only that the applicants were able to continue in business as before, but that there was also a possibility of further expansion.

In short, the evidence showed that, *after* the withdrawal of services, the applicants in *B-Filer* were able to continue as before, and even had room for growth. They had not suffered any harm at all to their business, let alone irreparable harm.

**Ref: *B-Filer v. The Bank of Nova Scotia*, 2005 Comp. Trib. 52,
paras 7, 8, 9, 11, 12, 16.**

61. By contrast, in this case, the Tribunal has been provided with substantial cogent evidence that, if the interim order is denied and the Respondents are permitted to withdraw supplies, Nadeau will suffer irreparable harm in that:

- (a) it will suffer a massive loss of revenue and profits;
- (b) it will have to lay off employees;
- (c) it will lose customers, reputation, and goodwill; and
- (d) the inevitable result will be failure and closure of the St-François Plant.

V THE BALANCE OF CONVENIENCE

62. The test for the balance of convenience has been described as follows:

"The third test, called the balance of convenience and which ought perhaps to be called more appropriately the balance of inconvenience, is a determination of 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."

Ref: *Metropolitan Stores (MTS) Ltd. v. Manitoba Food & Commercial Workers, Local 832, [1987] 1 S.C.R. 110, para. 35.*

63. The Respondents Dynaco and Acadia do not allege that they will suffer any real or tangible losses at all. They allege only that they would lose (for a few months) their "freedom" to choose to whom to sell their poultry if the Tribunal makes the requested order. However, any court or tribunal order inevitably entails some restriction of someone's "freedom". Such "harm" cannot be a factor in weighing the balance of convenience.

Ref: *Affidavits of Rémi Faucher and Caroline Cloutier.*

64. Westco does not suggest that it would be *worse off* if it has to continue supplying Nadeau pending the Tribunal's decision. Rather, it alleges that it would not be able to make the *additional* profit obtained upon the sale by the "partnership" of slaughtered chicken. In its public pronouncements, Westco has alleged that this additional profit amounts to \$500,000 per month. Of course, Westco has refused to produce its contract with Olymel, so this assertion cannot be tested. Even if it is true, however, it does not amount to irreparable harm because:

- (a) it is a "harm" that *can* be quantified in monetary terms;
- (b) it pales by comparison with the losses that would be suffered by Nadeau; and
- (c) it is recoverable in damages and Nadeau has given an undertaking in that regard (see Affidavit of Anthony Tavares, para. 97).

65. In his cross-examination, Mr. Soucy admitted that his "contract" provided that the "sale" of the chicken to the "partnership" is to be at the CFNB fixed price (it is the "partnership" that will reap additional profit upon the sale of slaughtered chicken to the end-user). That is the *same price* at which the same chicken is currently being sold by Westco to Nadeau. It is submitted in

these circumstances that Westco has failed to prove that it would suffer even monetary harm if the requested order is made.

Ref: Cross-examination of Thomas Soucy, pp. 54-55, Q. 223-226.

66. Westco alleges (Westco Submissions, paras 55, 155-156) that the interim order sought would prevent Westco from building its own processing plant in New Brunswick. However, there is nothing in the proposed order, which relates exclusively to continuation of supply of chicken, that would in any way prevent Westco from building a processing plant.

67. Nadeau questions, however, whether Westco intends to build a plant in New Brunswick at all, despite its assertions in its submissions. In fact:

- (a) no contract has been signed with any general contractor;
- (b) no equipment has been paid for;
- (c) no approvals have been obtained;
- (d) no land has been purchased; and
- (e) as recently as June 4, 2008, Westco has stated that it might decide to build a plant in Québec, rather than New Brunswick.

Ref: Cross-examination of Thomas Soucy, p. 17, Q. 81-82, p. 108, Q. 425-426.

Ref: Press Release from Westco, Exhibit "K" to Supplementary Affidavit of Anthony Tavares (see also Exhibits 1 and 2 upon the cross-examination of Thomas Soucy).

68. Indeed, in his cross-examination, Mr. Soucy said that if Bill 81 is passed by New Brunswick, "we will re-evaluate our business model and where we will be conducting business

from now on." Bill 81 has been passed, and received Royal Assent on Wednesday, June 18, 2008. (It has not, however, been proclaimed in force as of yet.)

Ref: Bill 81, Exhibit "J" to Supplementary Affidavit of Anthony Tavares.

Ref: Cross-examination of Thomas Soucy, Transcript, p. 21, Q. 90.

69. It is also interesting to note that nowhere in the brochure issued by Westco in 2007, does Westco mention any desire to build a processing plant.

Ref: Exhibit "B" to Affidavit of Anthony Tavares.

Ref: Cross-examination of Thomas Soucy, Transcript, p. 79, 82.

70. In any event, even if Westco does decide to build a plant in New Brunswick, there is nothing in the proposed order that would prevent it from doing so, and the main application will have long since been decided on the merits before there is any issue as to supply for any new plant that might ultimately be built. Westco will suffer no prejudice at all in connection with its supposed plan to build a plant to slaughter its own chickens, if the interim order is made as requested.

71. It is submitted that the balance of convenience clearly favours Nadeau, and the interim order therefore should issue as requested in Nadeau's Notice of Application under section 104 of the *Act*.

VI OTHER ISSUES RAISED BY THE RESPONDENTS

72. The Respondents mention and rely upon the decision of the CFNB denying Nadeau's request for a plant allocation. However:

- (a) The CFNB lacks impartiality in that:
- (i) the majority of its directors are affiliated with one or more of the Respondents;
 - (ii) it disclosed Nadeau's submissions to Westco (without advising Nadeau), and invited a response;
 - (iii) it met privately with Westco, which made a presentation to it that was not disclosed to Nadeau.
- (b) In any event, the decision is under appeal to the Farm Products Commission, which has scheduled the hearing for June 23-25, 2008.

Ref: Supplementary Affidavit of Anthony Tavares, paras 3, 4, 5.

Ref: Letter to Thomas Soucy from CFNB, Exhibit "G" to Affidavit of Thomas Soucy.

Ref: Cross-examination of Thomas Soucy, Transcript, pp. 66-67.

73. As well, the Respondents Dynaco and Westo argue (Dynaco Submissions, paras 25-26, Westco Submissions, paras 54-55, 166) that the absence of a legislatively guaranteed plant supply allocation in New Brunswick somehow precludes the Tribunal from making an interim order. To the extent that this assertion amounts to a jurisdictional challenge to the Tribunal's authority to make an interim order under s. 104, it is wrong in law. The cases establish that this Tribunal has plenary and *exclusive* jurisdiction to make an interim (and permanent) order requiring a respondent to continue (or resume) supply to an applicant, if it sees fit. There is no legal impediment to the granting of the order sought herein by Nadeau.

Ref: *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, [1992] S.C.J. No. 64.

**Ref: *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*
1995 CarswellOnt 539 (Ont. Div. Ct.), paras 18-27.**

74. To the extent the argument amounts to a request that the Tribunal refuse to exercise its discretion to grant an order, the Respondents have provided no proper reasons on the facts or the law for such requested refusal. Where, as here, the tests set out in the cases have been met, there is no principled basis for denial of relief. The equities favour Nadeau. It is submitted therefore that the order should be granted as requested.

RESPECTFULLY SUBMITTED

June 19, 2008

 LP

Fogler, Rubinoff LLP
Barristers & Solicitors
95 Wellington Street West
Suite 1200
Toronto, Ontario
M5J 2Z9

Leah Price
lprice@foglerrubinoff.com
Andrea McCrae
amccrae@foglerrubinoff.com

Solicitors for the Applicant

List of Authorities

Case Law

1. *B-Filer Inc. v The Bank of Nova Scotia*, 2005 Comp. Trib. 52.
2. *Quinlan's of Huntsville Inc. v. Fred Deeley Imports Ltd.*, 2004 Comp. Trib. 28.
3. *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 312 (S.C.C.).
4. *B.-Filer Inc. v. The Bank of Nova Scotia*, 2005 Comp. Trib. 38.
5. *Fédération des producteurs de volailles du Québec v Pelland*, [2005] S.C.J. No. 19.
6. *Chicken Farmers of Ontario v. Drost*, [2005] O.J. No. 3973 (Div. Ct.).
7. *B-Filer Inc. et al v The Bank of Nova Scotia*, 2006 Comp. Trib. 42
8. Reasons for Order and Order Granting an Application for Leave under Section 103.1 of the Competition Act.
9. *Apotex Inc. v. Wellcome Foundation Ltd.* 1998 CarswellNat 1432 (Fed. C.A.), leave to appeal to the S.C.C. refused 1999 CarswellNat 3538 (S.C.C.).
10. *BMW Canada Ltd. v. Nissan Canada Inc.* 2007 CarswellNat 647 (Fed. C.A.).
11. *M & D Farm Limited v. Manitoba Agricultural Credit Corp.*, [1998] 1 S.C.R. 1074 (S.C.C.).
12. *Director of Investigation and Research v. Southam Inc.*, [1991] C.C.T.D No. 6 (Comp Trib.) – CT-90/1.
13. *Metropolitan Stores (MTS) Ltd. v. Manitoba Food & Commercial Workers, Local 832*, [1987] 1 S.C.R. 110 (S.C.C.).
14. *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, [1992] S.C.J. No. 64 (S.C.C.).
15. *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.* 1995 CarswellOnt 539 (Ont. Div. Ct.).



Atlantique / Poulet

Westco contre-attaque

Mise à jour le lundi 9 juin 2008 à 10 h 40



Le plus important producteur de poulets au Nouveau-Brunswick, le Groupe Westco, lance une offensive contre les détracteurs de son projet de construction d'un abattoir dans le nord-ouest de la province.

L'entreprise a rendu publique en fin de semaine une offre qu'elle affirme avoir faite le mois dernier au gouvernement provincial et aux employés de l'abattoir Nadeau Maple Lodge.

Westco a annoncé en mars son intention de transférer sa production de poulets à un abattoir d'Olymel, au Québec, le temps de construire son propre abattoir dans le Haut-Madawaska.

Nadeau estime que cette décision nuirait à son usine. Westco promet donc d'embaucher les employés qui perdraient leur emploi chez Nadeau.

Westco offrira aussi une aide financière aux travailleurs de Nadeau, aide qui correspondrait à 90 % de leur salaire entre le moment de leur mise à pied et leur embauche dans le nouvel abattoir.

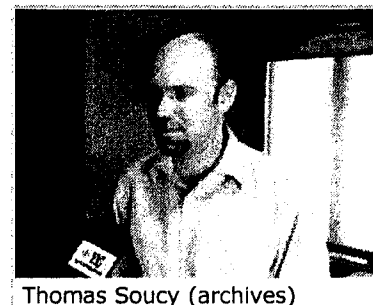
« Il y a une autre partie des gens qu'on va embaucher pour la construction directe, mais nous autres, notre garantie au gouvernement, on a garanti aux employés et on veut que tout le monde sache aussi, que nous autres nous sommes prêts à stabiliser les gens pour que même si Nadeau fait une mise à pied, nous autres on est prêt à embaucher les gens et on est prêt à stabiliser les gens pour leur salaire », promet Thomas Soucy, président-directeur général du Groupe Westco.

Westco déposera aussi 4,5 millions de dollars dans un compte en fiducie en guise de garantie au gouvernement. Le Nouveau-Brunswick pourra garder cette somme si le groupe ne construit pas l'abattoir.

Westco espère qu'en rendant publiques ces mesures, le gouvernement provincial suspendra son projet de loi qui, s'il est adopté, forcerait les producteurs de volailles à vendre leurs poulets à Nadeau Maple Lodge.

Thomas Soucy dit qu'il ne comprend pas l'attitude des membres du gouvernement. « On a beaucoup de difficultés à les rencontrer. Ils sont très réticents à nous rencontrer. Ils ne veulent pas discuter avec nous. Alors, on n'a quasi pas le choix de passer par les médias. Ce n'était pas notre option première parce qu'ordinairement, Westco, on est quand même une belle compagnie, donc dans le passé on a quand même fait nos affaires assez privées », explique M. Soucy.

Westco menace toujours de construire son abattoir au Québec si le Nouveau-Brunswick adopte cette loi.



Thomas Soucy (archives)

30

GILLESPIE REPORTING SERVICES	
EXHIBIT NO.	1
EXAMINATION OF	Thomas Soucy
IN	Nadeau vs. Westco
HELD ON	June 12, 2008
AT OTTAWA, ONTARIO	
PER:	AP

Le ministre de l'Agriculture du Nouveau-Brunswick, Ronald Ouellette, n'a pas émis de commentaires.

31

Vos prévisions locales en un seul clic!

GILLESPIE REPORTING SERVICES	
EXHIBIT NO.	2
EXAMINATION OF	Thomas Soucy
IN	Nadeau VS Westco
HELD ON	June 12, 2008
AT OTTAWA, ONTARIO	
PER:	AS

L'ACADIE NOUVELLE



ACADIE PRESSE

SERVICE AUX ABONNÉS ET À LA DISTRIBUTION HISTORIQUE DU JOURNAL SERVICE DE LA PUBLICITÉ

Guerre du poulet: Westco contre-attaque

Mise à jour le mardi 10 juin 2008

Par: Duval, Gilles

SAINT-FRANÇOIS - Le Groupe Westco revient à la charge avec deux propositions pour inciter la province à annuler son intention de le forcer à faire abattre ses poulets au N.-B.

Le Groupe Westco se dit prêt à embaucher dans son futur abattoir les travailleurs qui perdront leur emploi chez Nadeau Ferme Avicole en raison d'un manque d'approvisionnement et il s'engage à leur verser 90 % de leur salaire pendant la période de construction.

Il entend déposer une garantie de 4,5 millions \$ pour démontrer son engagement à aménager son infrastructure dans la province.

Les dirigeants du Groupe Westco disent avoir fait part de ces deux intentions à la province sans avoir obtenu de réponse.

Le Groupe Westco veut construire sa propre usine de transformation dans le Haut-Madawaska en partenariat avec la société québécoise, Olymel.

En attendant, il entend faire abattre ses poulets chez son nouvel allié, dans la province voisine, dès le 20 juillet.

La semaine dernière, le ministre de l'Agriculture et de l'Aquaculture, Ronald Ouellette, a proposé d'imposer une mesure obligatoire pour les forcer à faire abattre leur poulet vivant dans la province afin, dit-il, de protéger les emplois à l'usine actuelle de Nadeau Ferme Avicole.

"Nous allons embaucher ces travailleurs. Il n'y aura donc pas de pertes d'emploi, mais un changement d'employeur. Nous demandons donc au gouvernement de lever l'adoption de ce projet de loi qui n'aurait plus aucune utilité" a dit Thomas Soucy, président-directeur général du Groupe Westco par voie de communiqué, hier.

Selon M. Soucy, la compagnie est prête à verser l'équivalent de 90 % des salaires aux employés dont les services ne seraient plus requis par leur compétiteur si la province accepte qu'elle fasse abattre ses poulets chez Olymel.

M. Soucy a indiqué que la compagnie perdra environ 500 000 \$ par mois si elle est forcée à faire abattre ses poulets vivants dans la province.

L'entreprise dit avoir confirmé au syndicat des employés de Nadeau Ferme avicole qu'elle les embaucherait aux mêmes conditions et que l'ancienneté et les vacances seraient reconnues.

La semaine dernière, le Groupe Westco a laissé planer la menace de construire son abattoir au Québec. Or, hier, la compagnie a réitéré qu'elle voulait l'aménager au Nouveau-Brunswick. Ses actionnaires disent vouloir s'engager à déposer une garantie de 4,5 millions \$ si le projet de loi est retiré.

"La somme sera déposée en fiducie et le gouvernement pourra garder l'argent si nous ne respectons pas notre engagement", a ajouté M. Soucy.



CON

C. 47 Cc

Té Té Té Cc

33

Édité

Ca

Se























CC

Le syndicat des employés de Nadeau semble voir d'un bon oeil ces nouveaux développements.

"Aucune proposition précise n'est sur la table. C'est la première fois aujourd'hui (lundi) que nous entendons parler que la compagnie est prête à embaucher des travailleurs et à leur verser 90 % de leurs salaires. Elle semble ouverte à y instaurer un syndicat puisqu'il en existe dans ses usines au Québec", a continué Anne Ouellette.

Le nouvel abattoir du Groupe Westco sera construit au coût de 30 millions \$ et devrait créer 250 emplois.

AUTRES MANCHETTES

- **Victor Boudreau nie favoriser les riches**
- **Réforme fiscale: avantage aux gens à haut revenu et aux grandes entreprises**
- **Les entreprises sont vendues à l'idée**
- **Péninsule: feu vert à la collecte optimale des déchets**
-  **Des méthodes de recyclage à l'essai**
-  **Construction de la piscine de Shippagan: une question de jours**
-  **Deux cultures plus unies grâce à leurs efforts**
-  **L'Acadie des terres et forêts: des réservations jusqu'en 2009!**
-  **Alcool NB prend le virage Internet**
-  **Westco confirme ses intentions par écrit au ministre**
- **Moncton: émoi chez Alcool NB**
-  **Vaincre sa dépendance... à l'essence**
-  **Drame conjugal à Edmundston: comparution ajournée à demain**
-  **Boise AllJoist: vote pour la grève**
-  **Attention aux produits contrefaits**
-  **À quand un parc pour planches à roulettes à Tracadie-Sheila?**
-  **FestiVin: des produits primés**
-  **Une trame insidieuse**
-  **Un orage renverse des camions à Montréal**
-  **Droits du foetus: Ken Epp défend son projet de loi**
-  **La GRC connaissait Julie Couillard avant l'affaire Bernier**
-  **Un interrogatoire de Paul Bernardo rendu public**
-  **Le naufrage d'un navire de pêche sous enquête**
- **Le Festival de musique baroque se donne des airs de jeunesse**
-  **Mercredi Show: Pascal Lejeune, Blou et Jonathan Painchaud à l'affiche**
-  **Maladie d'Alzheimer**
-  **Ça se passe aujourd'hui**
-  **L'Acadie NOUVELLE rapportait:**

[Service aux abonnés et à la distribution](#) | [Historique du Journal](#) | [Service de la publicité](#) | [Contactez](#)

© 2008 CapAcadie.com Tous droits réservés.

L'Acadie Nouvelle
Actualités, mercredi, 11 juin 2008, p. 7

Westco confirme ses intentions par écrit au minis
Duval, Gilles

GILLESPIE REPORTING SERVICES	
EXHIBIT NO.	<u>3</u>
EXAMINATION OF	<u>Thomas Sancy</u>
IN	<u>Nadeau</u> VS <u>Westco</u>
HELD ON	<u>June 12, 2008</u>
AT OTTAWA, ONTARIO	_____
PER:	<u>AS</u>

34
SAINT-FRANÇOIS - Il faudra plus qu'une simple lettre pour que le ministre de l'Agriculture et de l'Aquaculture, Ronald Ouellette, accepte de retirer la mesure temporaire visant à forcer le Groupe Westco à faire abattre ses poulets au Nouveau-Brunswick.

Le Groupe Westco a confirmé par écrit ses intentions au ministre Ouellette, hier. Par lettre, la compagnie s'est engagée à embaucher les travailleurs de l'abattoir de Nadeau Ferme Avicole, dont les services pourraient ne plus être requis en raison d'une diminution de l'approvisionnement de poulets à cette usine de transformation.

La compagnie confirme également qu'elle entend déposer 4,5 millions \$ dans un fonds de fiducie pour démontrer son désir de construire son nouvel abattoir dans la province.

En retour, elle demande que le ministre Ouellette retire son projet de loi. Les dirigeants veulent le rencontrer le plus tôt possible pour discuter de la situation.

"Ce sont de beaux arguments. Mais ce n'est pas un document officiel. Nous avons des aviseurs légaux qui examinent la question. Quand nous aurons des engagements coulés dans le béton, on pourra peut-être penser à laisser tomber notre projet de loi", a dit le ministre Ouellette.

Les dirigeants du Groupe Westco sont surpris des commentaires de Ouellette voulant qu'il n'était pas au courant de leurs intentions.

"Nous avons discuté de ces mesures proposées, en fin de semaine, lors de plusieurs récentes rencontres avec ses fonctionnaires", a mentionné Bertin Cyr, président du consortium formé d'hommes d'affaires du Haut-Madawaska.

Le Groupe Westco propose de construire un nouvel abattoir dans le Haut-Madawaska, un projet de 30 millions \$, en collaboration avec la société québécoise Olymel.

En attendant qu'il soit complété, il entend faire abattre ses poulets dans les usines de transformation de son nouveau partenaire, dans la province voisine.

Les dirigeants de l'abattoir de Nadeau Ferme Avicole soutiennent que cette intention aura des répercussions négatives sur son fonctionnement. Le Groupe Westco lui fournit plus de 50 % de son approvisionnement.

La province envisage d'adopter une loi spéciale pour forcer le Groupe Westco à faire abattre ses poulets dans la province.

En tenant compte des programmes gouvernementaux, le Groupe Westco soutient qu'une aide financière correspondant à 90 % de leurs salaires serait versée aux employés embauchés jusqu'à l'ouverture du nouvel abattoir.

La compagnie assure qu'ils seront embauchés aux mêmes conditions de travail et qu'elle reconnaîtra l'ancienneté et les vacances des travailleurs.

"Il n'y aura pas de pertes d'emplois, mais un changement d'employeur" a précisé M. Cyr.

Quant au fonds de fiducie de 4,5 millions \$, ses dirigeants affirment que le gouvernement pourra garder la cagnotte s'ils ne respectent pas leur intention.

