

Competition Tribunal



Tribunal de la concurrence

Reference: *Commissioner of Competition v. Gestion Lebski inc.*, 2006 Comp. Trib. 23
File No.: CT-2005/007
Registry Document No.: 0117

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and its amendments;

AND IN THE MATTER OF an inquiry under subparagraph 10(1)(b)(ii) of the *Competition Act* in relation to the marketing practices of Gestion Finance Tamalia et al;

AND IN THE MATTER OF an application by the Commissioner of Competition for an order under section 74.1 of the *Competition Act*.

BETWEEN

The Commissioner of Competition
(applicant)

and

Gestion Lebski inc.
La Société de Financement Vanoit inc.
Maigrissimo inc.
Gestion Finance Tamalia inc.
9083-8434 Québec inc.
Sylvain Leblanc
(respondents)



Date of teleconference: April 26, 2006

Judicial member presiding over the teleconference: Mr. Justice Edmond Blanchard

Date of order: April 27, 2006

Order signed by the judicial member presiding over the proceeding: Mr. Justice Edmond Blanchard

**ORDER RELATING TO TESTIMONY IN THE CONTEXT OF THE
RESPONDENTS' MOTION**

[1] WHEREAS the Commissioner of Competition (the Commissioner) served and filed on April 24, 2006, summaries of the oral testimony of the witnesses whom she intends to examine for the motion to remove certain respondents;

[2] WHEREAS the respondents stated in their letter dated April 25, 2006, that the summaries were insufficient to allow them to properly prepare for the hearing of the testimony;

[3] WHEREAS the Tribunal held a case management teleconference on April 26, 2006;

[4] CONSIDERING the parties' arguments at the teleconference;

[5] CONSIDERING that, during this teleconference, counsel for the Commissioner provided the Tribunal with relevant information not found in the summaries;

[6] WHEREAS the date of commencement of the hearing is scheduled for May 1, 2006;

[7] CONSIDERING the parties' and the Tribunal's time and availability constraints;

[8] AND WHEREAS the Tribunal wishes to ensure a fair trial;

THE TRIBUNAL ORDERS THAT:

[9] The summaries of the oral testimony of the witnesses prepared and filed by the Commissioner on April 24, 2006, are insufficient because they do not allow the respondents to properly prepare;

[10] The summaries of testimonies must meet certain requirements defined, among other things, in the Tribunal's case law, notably in the case of *Commissioner of Competition v. Canada Pipe Company* (Volume 10 of the March 12, 2004, transcripts, pages 1905 and 1906) where the Tribunal stated:

[A] (...) Will-Say Statement (...) [is] provided to alert the other side they will hear evidence on specific matters from this witness.

Put differently, a Will-Say Statement serves to put the other side on notice that a particular witness will give evidence on specific matters during the hearing.

In the absence of discovery, this is the only notice a responding party will have regarding the matters to be addressed by this witness. A Will-Say Statement is not a pervading script of the evidence to be produced and, certainly, latitude must be afforded to the parties with respect to questions put to their witnesses on direct examination.

However, the evidence lead by – given by the witness must be – must relate to matters identified in the Will-Say Statement.

General statements, in the notice of application, define what evidence is relevant. A lay witness may not give evidence on matters that – on a matter that is clearly not in his or her Will-Say Statement otherwise the very purpose to be served in having individual Will-Say Statements for a lay witness is defeated.”

THE TRIBUNAL ORDERS THAT:

[11] The Commissioner prepare new summaries of the oral testimonies of the witnesses she intends to examine for the motion for the removal of certain respondents;

[12] The new summaries must contain explanations and additional details, including the nature of the relationships between the witnesses and the respondents, so as to allow the respondents to predict the content of the testimony;

[13] Counsel for the Commissioner must serve and file the new summaries no later than Friday, April 28, 2006, at noon;

DATED at Ottawa, this 27th day of April 2006.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Edmond P. Blanchard

APPEARANCES

For the applicant, the Commissioner of Competition

Anne-Marie Desgens
Chantal Sauriol

For the respondents, Gestion Lebski et al.

Alexandre Ajami
Stéphane Teasdale