


COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		
FILED	 APR 22 2005	PRODUIT
REGISTRAR - REGISTRAIRE T		
OTTAWA, ON	0017a	

File No: CT- 2004-013

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c.C-34, as amended; and ss. 3 and 49 of the *Competition Tribunal Rules*, Can. Reg. SOR/94-290;

AND IN THE MATTER OF the acquisition by West Fraser Timber Co. Ltd. of Weldwood of Canada Limited;

AND IN THE MATTER OF an application under Section 106(2) of the *Competition Act* by Burns Lake Native Development Corporation, Lake Babine Nation, Burns Lake Band, Nee Tahí Buhn Indian Band to rescind or vary the Consent Agreement between the Commissioner of Competition and West Fraser Timber Co. Ltd. and West Fraser Mills Ltd. filed and registered with the Competition Tribunal on December 7, 2004, under s. 105 of the *Competition Act*.

BETWEEN:

BURNS LAKE NATIVE DEVELOPMENT CORPORATION, COUNCIL OF LAKE BABINE NATION AND EMMA PALMANTIER, ON HER OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF LAKE BABINE NATION, COUNCIL OF BURNS LAKE BAND AND ROBERT CHARLIE, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF BURNS LAKE BAND and COUNCIL OF NEE TAHI BUHN INDIAN BAND AND RAY MORRIS, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF NEE TAHI BUHN INDIAN BAND

Applicants

- and -

**COMMISSIONER OF COMPETITION, WEST FRASER TIMBER CO. LTD.
and WEST FRASER MILLS LTD.**

Respondents

NOTICE OF MOTION

TAKE NOTICE that the Applicants will make a motion in writing to the Competition Tribunal.

THE MOTION IS FOR AN ORDER:

1. striking out the Notice of Reference filed by the Commissioner;
2. costs of this motion; and
3. such other relief as the Tribunal sees fit to Order.

THE GROUNDS FOR THE MOTION ARE:

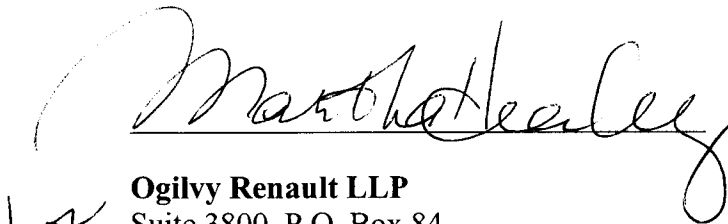
1. On December 7, 2004, the Commissioner and West Fraser Mills Ltd. (“West Fraser”) entered into a consent agreement (the “Consent Agreement”) which was filed with the Tribunal.
2. In February 2005, the Applicants filed a Notice of Application challenging the Consent Agreement under subsection 106(2) of the Act.
3. On February 23, 2005, the Chairperson of the Competition Tribunal “directed counsel to provide letters containing their views about whether, as a preliminary matter, the question of the Applicants’ status as ‘directly affected persons’ under subsection 106(2) of the Act should be considered on a reference with an agreed Statements of Facts”.
4. On March 15, 2005, the Applicants and the Commissioner filed submissions with the Chair on the appropriateness of a reference:

- (a) Counsel for the Commission proposed that a reference proceed in respect of certain issues; and
 - (b) Counsel for the Applicants stated that it would be inappropriate to proceed with any reference before the Tribunal.
5. On April 4, 2005, without leave of the Tribunal, the Commissioner unilaterally filed a reference in circumstances in which the appropriateness of such a procedural step is currently a matter before the Tribunal.
 6. At a case conference on April 13, 2005, the Tribunal scheduled the hearing of this Motion.
 7. A reference under subsection 124.1(2) of the *Competition Act* is unavailable to the Commissioner in these circumstances.
 8. In any event, the reference served and filed by the Commissioner is inappropriate and improper.
 9. Such other grounds as the Applicants may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The pleadings and proceedings herein; and
- (b) Such further documentary evidence as the Tribunal may deem necessary.

April 22, 2005



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