



CT-2004-013  
Proceeding 2

**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

**RESPONSE OF THE RESPONDENTS  
WEST FRASER TIMBER CO. LTD. and  
WEST FRASER MILLS LTD.**

1. West Fraser Timber Co. Ltd. is a company subsisting under the laws of British Columbia which was formed by amalgamation in 1966. West Fraser Mills Ltd. is a company subsisting under the laws of British Columbia which was formed by amalgamation on January 1, 2005.
2. West Fraser Timber Co. Ltd. and West Fraser Mills Ltd. (collectively "West Fraser") admit the allegations contained in paragraphs 2, 22, and 41 (but do not admit that this Article was intended to refer to the Applicants) of the Applicants' Amended Statement of Grounds and Material Facts.
3. West Fraser has no knowledge of the allegations contained in paragraphs 4, 6-17, 19-21, 32-36 and 45 of the Applicants' Amended Statement of Grounds and Material Facts.
4. West Fraser takes no position with respect to the allegations contained in paragraphs 1, 3, 24-31, 45, 46-76 and 78 of the Applicants' Amended Statement of Grounds and Material Facts.
5. With respect to the allegations in paragraph 5 of the Applicants' Amended Statement of Grounds and Material Facts, West Fraser admits that the Burns Lake Native Development Corporation (the "Native Development Corporation") is the holder of 15% of the issued and outstanding shares of Babine Forest Products Limited ("BFPL") and is a party to a Shareholders' Agreement dated May 30, 1984 relating to BFPL and to a Joint Venture Agreement made May 30, 1984 with respect to Babine Forest Products Company.
6. With respect to the allegations in paragraph 18 of the Applicants' Amended Statement of Grounds and Material Facts, Babine Forest Products Company is an unincorporated joint venture of BFPL and West Fraser Mills Ltd. ("Mills") in which the underlying assets and the rights to receive output are owned as to 68% by BFPL and 32% by Mills. Some of the assets which form part of the "Burns Lake Saw Mill and Timber Rights" are held in trust for the joint venturers by other entities and some of the assets which form part of the "Decker Lake Saw Mill and Timber Rights" are held in trust for the joint venturers by other entities or are held by companies owned directly or indirectly by the joint venturers in the same proportion as their joint venture interests.

7. With respect to the allegations in paragraph 23 of the Applicants' Amended Statement of Grounds and Material Facts, although the statement is accurate it is not relevant to the matters in issue in this proceeding. The rights and obligations of the Applicant Native Development Corporation are as set out in the agreements described in paragraph 5 of this Reply and the laws governing share ownership in British Columbia.

8. With respect to the allegations in paragraphs 37 to 39 of the Applicants' Amended Statement of Grounds and Material Facts, West Fraser confirms that the Native Development Corporation has been represented on the Management Committee of Babine Forest Products Company and on the Board of Directors of BFPL and has played a role in, and contributed to, the development and activities of the operations. Since at least May 30, 1984 the operations have been managed by Weldwood of Canada Limited ("Weldwood") under the direction of the Management Committee of Babine Forest Products Company.

9. With respect to the allegations in paragraph 40 of the Applicants' Amended Statement of Grounds and Material Facts, it was not West Fraser's intention in entering the Consent Agreement to bind the Native Development Corporation, nor does it understand that it has done so.

10. With respect to the allegations in paragraphs 42 through and including 44 of the Applicants' Amended Statement of Grounds and Material Facts, the Applicants do not hold an interest in the Mill Assets and Timber Rights but rather the Native Development Corporation holds 15% of the outstanding shares of BFPL and is a party to the agreements described in paragraph 5 of this Response. As such, although the Applicants, or some of them, may be affected in some manner by the disposition of the Mill Assets and Timber Rights, they are not "directly affected" as contemplated under section 106(2) of the *Competition Act*.

11. On December 31, 2004, West Fraser Mills Ltd. acquired the issued and outstanding share of Weldwood of Canada Limited ("Weldwood") (the "Acquisition")

12. Prior to completing the Acquisition, West Fraser made all required notifications and fully complied with all the requirements of the *Competition Act*, including obtaining the

agreement of the Commissioner of Competition (“Commissioner”) to the course of action pursued. West Fraser followed all of the requirements of the law.

13. The Commissioner advised West Fraser that, absent a resolution acceptable to her by way of Consent Agreement, she would seek to enjoin the Acquisition.

14. West Fraser, as is recited in the Consent Agreement, did not accept or believe that there was any substantial lessening of competition, or a basis for a Tribunal order to be made in respect of the Acquisition, but nevertheless was prepared, for the purposes of finalizing and definitively resolving its issues with the Commissioner, to enter into the Consent Agreement.

15. The Acquisition proceeded without opposition by the Commissioner of Competition, on the basis of the Consent Agreement which is the subject of this Application.

16. Whatever duty the Commissioner or the Crown in Right of Canada does or does not have to consult with the Applicants is and was for the Commissioner and/or the Crown in Right of Canada to determine. West Fraser has no such duty.

17. This Application is essentially a *lis* between the Commissioner and the Applicants, in which West Fraser asserts its willingness to abide by the terms of the Consent Agreement it entered into, but not by more prejudicial terms, and seeks to ensure that this Application does not unfairly reduce the time it was granted by the Consent Agreement to appropriately divest the assets in issue.

18. West Fraser would not have proceeded with the Acquisition, including the expenditure of in excess of \$1.2 billion, but for its reliance on the terms of the Consent Agreement, and section 106(2) should not be interpreted as permitting the imposition of any terms on West Fraser that are more prejudicial than those contained in the Consent Agreement.

19. Insofar as the conduct challenged by the Application herein is the conduct of the Commissioner, the Tribunal does not have the jurisdiction to vary the Consent Agreement in a manner prejudicial to West Fraser.

20. With respect to paragraph 77 of the Applicants' Amended Statement of Grounds and Material Facts, insofar as the Application seeks to vary the Consent Agreement, the Tribunal does not have the jurisdiction to vary the Consent Agreement at large. Pursuant to section 106(2) of the *Competition Act*, the Applicants must identify the "one or more of [the Consent Agreement's] terms" to be varied, and must give specific notice of the nature of the variations sought.

21. As noted in paragraph 17 above, West Fraser's secondary concern in relation to this Application is that, whether or not a stay is granted as is requested by the Applicants nevertheless the fact of the existence of this Application, if it continues outstanding for any length of time, will prejudice West Fraser's ability to dispose of assets as contemplated under the Consent Agreement on a reasonable commercial basis.

22. The Consent Agreement contains specific timelines within which assets are to be divested.

23. The timelines for the sale of such assets were established given the reasonable contemplation of both the Commissioner and West Fraser that the disposition would take a certain period of time.

24. Should this Application remain outstanding for any significant length of time West Fraser reserves its right to seek to extend the time periods within which the assets in issue are to be divested, by an equivalent period, in order to maintain the original effect of the Consent Agreement.

25. West Fraser requests that the hearing of this matter be in the English language.

#### **ORDER SOUGHT**

26. West Fraser requests that the Tribunal, whether or not it grants any aspect of the Order sought by the Applicants:

- (a) make no Order against West Fraser beyond the terms of the existing Consent Agreement, without its consent; and

- (b) if requested, extend, by a time period equivalent in length to the period during which this Application is outstanding, the time period during which West Fraser may sell the Weldwood and West Fraser Babine Interests, as those interests are defined in the Consent Agreement.

Dated at Vancouver this 30th day of March, 2005.

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**Solicitors for the Respondents**  
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**West Fraser Mills Ltd.**

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**AND TO:**

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**BETWEEN:**

**BURNS LAKE NATIVE DEVELOPMENT CORPORATION,  
et al**

Applicants

**- and -**

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

Respondents

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**RESPONSE OF THE RESPONDENTS**

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