

Reference: *Nadeau Poultry Farm Limited v. Groupe Westco Inc. et al.*, 2008 Comp. Trib. 26
File No.: CT-2008-004
Registry Document No.: 0303

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*.

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: October 31, 2008
Order signed by: Justice Edmond P. Blanchard

**ORDER RELATING TO OBJECTIONS TO WITNESS STATEMENTS PROVIDED BY
NADEAU POULTRY FARM LIMITED AND GROUPE WESTCO INC.**

[1] **FURTHER TO** the Competition Tribunal Order of May 12, 2008, granting Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited (the “Applicant”) leave to make an application under section 75 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “Act”);

[2] **AND FURTHER TO** the Tribunal’s Scheduling Order, dated June 11, 2008, directing the Respondents to file any objections regarding the admissibility of the Applicant’s witness statements or expert reports on or before October 1, 2008, and directing the Applicant to file any objections regarding the admissibility of the Respondents’ witness statements or expert reports on or before October 27, 2008;

[3] **AND FURTHER TO** a letter filed by the Respondent Groupe Westco Inc. (“Westco”) on October 1, 2008, objecting to the admissibility of several paragraphs contained in the Applicant’s witness statements on the basis of hearsay;

[4] **AND FURTHER TO** a letter and motion filed by the Applicant on October 27 and 29, 2008, objecting to the admissibility of several paragraphs contained in Westco’s witness statements;

[5] **AND UPON** reading the submissions filed by the Applicant and Westco in response to the objections;

THE TRIBUNAL ORDERS THAT:

[6] With respect to Westco’s objections to certain paragraphs of the Applicant’s witness statements:

- (i) The objections raised regarding paragraphs 74 to 79 of the Affidavit of Yves Landry are noted and a ruling on the objections is reserved until the final reasons;
- (ii) The objections raised regarding paragraphs 7 to 9 of the Affidavit of Réjean Plourde are noted and a ruling on the objections is reserved until the final reasons;
- (iii) The objections raised regarding paragraphs 9 to 12 of the Affidavit of Lyndsay Gazzard are noted and a ruling on the objections is reserved until the final reasons;
- (iv) Paragraph 12 of the Affidavit of Jeffrey Lloyd McHaffie shall be allowed because it does not contain hearsay;
- (v) Paragraph 20 of the Affidavit of Debbie Goodz shall not be allowed on the basis that it has no probative value because the client has not been identified.

[7] The Applicant shall serve and provide to the Tribunal a revised Affidavit of Debbie Goodz on or before Thursday, November 6, 2008.

[8] With respect to the Applicant's objections to certain portions of Westco's witness statements:

- (i) The Applicant's objection to paragraphs 9 and 10 of the witness statement of Richard Wittenberg, as set out in the Applicant's letter of October 27, 2008, appears to have been resolved as the Applicant has not pursued this objection in its Motion Record filed on October 29, 2008;
- (ii) The Applicant's motion to strike paragraphs 3.3, 4.1, 8.3, and 8.4 of the statement of Yvan Brodeur is dismissed. The Applicant will have an opportunity to challenge these paragraphs during the cross-examination of Mr. Brodeur. The Tribunal will determine the weight to be given to such evidence after it is admitted.

DATED at Ottawa, this 31st day of October, 2008.

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

(s) Edmond P. Blanchard

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
Martha Healey
Alexandre Bourbonnais

Groupe Dynaco, Coopérative Agroalimentaire

Olivier Tousignant

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

Pierre Beaudoin
Valérie Belle-Isle