

INFORMATION NOTE*

Nadeau Poultry Farm Limited v. Groupe Westco Inc., Groupe Dynaco, Coopérative Agroalimentaire, Volailles Acadia S.E.C. and Acadia Poultry Inc.

August 7, 2009. The Competition Tribunal issued the public version of its reasons and order dismissing Nadeau Poultry Farm Limited's application pursuant to subsection 75(1) of the *Competition Act* against the Respondents Groupe Westco Inc., Groupe Dynaco, Coopérative Agroalimentaire, Volailles Acadia S.E.C. and Acadia Poultry Inc. The Tribunal panel was composed of Mr. Justice E. Blanchard, Mr. Henri Lanctôt and Mr. P. André Gervais.

The respondents, who are chicken producers, advised the applicant, a chicken processor, that they would cease supplying it with live chickens. The applicant asserted that the respondents had engaged in reviewable conduct by terminating the existing supply relationship and therefore requested that the Tribunal issue an order pursuant to section 75 of the *Competition Act* directing the respondents to accept the applicant as a customer and to supply it with live chickens on the usual trade terms. The events underlying this proceeding occurred in the context of Canada's poultry supply management system. Under the supply management system, chicken producers are limited to producing a certain quota amount for each eight week quota period.

The Tribunal found that the applicant had failed to establish certain constituent elements of subsection 75(1) of the *Competition Act*. The Tribunal held that the applicant was substantially affected in its business due to its inability to obtain adequate supplies of live chickens anywhere in the market on usual trade terms (paragraph 75(1)(a)). In its analysis under paragraph 75(1)(a), the Tribunal, for the first time, ruled on the meaning of "usual trade terms". The Tribunal held that the "usual trade terms" were not those specific to the parties but rather those that are viewed from the perspective of all suppliers and customers doing business in the defined market. The Tribunal also held that the "terms in respect of payment" included price.

However, the Tribunal found that the applicant had failed to establish that insufficiency of competition among suppliers in the market was the overriding reason why it was unable to obtain adequate supply of live chickens (paragraph 75(1)(b)). Rather, the limit on supply resulting from the poultry supply management system was essentially the reason why the applicant was unable to obtain adequate supply.

The Tribunal also found that the applicant had failed to establish that the product was in ample supply (paragraph 75(1)(d)). This was the first case in which the Tribunal provided guidance on the meaning of ample supply. The Tribunal held that supply is not ample when suppliers generally would be inhibited from growing or even changing the nature of their business, or be forced to ration supplies between current and potential future customers because supply is limited. A product is in ample supply when its availability is not in issue when a supplier considers whether to develop its business by seeking new customers and/or new distribution channels. Chicken production in Canada is governed by a supply management system which ensures that supply of chicken is maintained at adequate levels to meet consumer demand. Chicken producers are limited to producing a specific amount of chicken and any adjustment to this amount takes time. Accordingly, the Tribunal held that the product, live chickens, could not be said to be in ample supply, in the sense that it was available on a timely basis to individuals wishing to expand or develop their businesses.

The Tribunal also found that the respondents' refusal to deal was not having, or was not likely to have, an adverse effect on competition in a market (paragraph 75(1)(e)). Particularly, the Tribunal held that the refusal would not create, enhance or preserve the market power of the remaining market participants.

The issue of costs was reserved.

*This is an unofficial summary prepared by the Registry of the Tribunal.