

British Columbia
Farm Industry Review Board

February 25, 2020

Files: N1911, N1912

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Dear Sirs and Mesdame:

**RE: Primary Poultry Processors Association of British Columbia v BC Broiler Hatching Egg Commission
BC Chicken Growers' Association v BC Broiler Hatching Egg Commission**

Introduction

On November 27, 2019, the BC Broiler Hatching Egg Commission (BHEC) issued a decision advising the BC Farm Industry Review Board (BCFIRB) of its intentions to remove revenues earned from the sale of spent fowl and salvage eggs from its Cost of Production (COP) calculations used in the price linkage formula between the BHEC and the BC Chicken Marketing Board (CMB). According to the BHEC, this was in an effort to address “an historical imbalance in the approach to the linkage (agreement) between hatching egg producers and chicken growers by removing revenue from the hatching egg COP to match the chicken COP”.

On December 23, 2019, the Primary Poultry Processors of BC (PPPABC) filed an appeal of this decision and on December 27, 2019, the BC Chicken Growers Association (BCCGA) filed an appeal of the same decision.

On January 27, 2020, BCFIRB received a request from the BHEC to defer these two appeals (N1911 and N1912) pursuant to section 8(8) of the *Natural Products Marketing (BC) Act (NPMA)* pending BCFIRB's supervisory consideration of a forthcoming "evidence-based SAFETI rationale setting out

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why [an exit from a pricing linkage] would be in the best interests of the hatching egg sector and the overall chicken supply chain."

A submission process was established. In its February 5, 2020 submission, the PPPABC opposed the deferral request outlining, essentially, two reasons:

- "The Commission's request would entrench its unilateral changes to the pricing linkage formula and delay a review of its legal authority to alter the price linkage formula in general." And,
- "The subject matter of this appeal is the unilateral action of the Commission in changing the linkage formula.....The PPPABC appeal does not require determination in a supervisory review."

In its February 6, 2020 submission, the BCCGA also opposed the deferral request outlining similar reasons to those expressed by the PPPABC:

- "If a deferral is granted, the Commission's request would, for all practical purposes, allow the Commission's unilateral changes to the price linkage formula (and the resultant prejudice to chicken growers in British Columbia) to remain in effect for an extended period of time pending the scheduling hearing and adjudication of the proposed supervisory review."
- The issue is straightforward: It is "whether the Commission was justified (in) unilaterally revising the linkage formula." There is no need for a review to address this issue.

Decision

For reasons I will outline below, I have determined the best course of action is to grant the deferral request.

There is a substantial background to the price linkage agreement between the CMB and the BHEC going back to 1995. The BHEC points to the original chicken supply chain pricing issues that led to the price linkage, the elimination of assurance of supply (chicken processors), the resulting system of premiums for chicken growers, and the refusal of the CMB to reflect the actual price paid to chicken growers in the linkage calculation. It tells me there are more matters at play than can be resolved in an appeal narrowed only to whether the BHEC was authorized to make COP adjustments as part of the price linkage.

The BHEC says the decision under appeal (to remove revenues from the sale of spent fowl and salvage eggs from the linkage calculation) was a response to what it considered to be a unilateral breach of the linkage agreement by the CMB. It reports it provided adequate notice of these intentions, sought and patiently awaited feedback, consulted with stakeholders and provided a SAFETI analysis.

The BHEC argues that a supervisory review will bring clarification of the impact of these price-linkage related issues, reduce the potential for multiple appeals on narrowly defined matters, and enable some measure of consensus on broad, industry-supported sound marketing agreements based on current circumstances.

The PPPABC and BCCGA oppose BHEC's request for deferral of these appeals. The PPPABC argues that its appeal is not about the desirability of a price linkage formula in general and does not require determination in a supervisory review. It offers, however, that it would consent to a deferral if the BHEC reverses the linkage amendments under appeal pending any supervisory review of the linkage. Such an agreement would offset the length of time necessary to resolve these issues and avoid lost revenue to the PPPABC. In the view of the PPPABC, the core of BHEC's complaint is that hatching egg producers do not benefit from premiums paid to chicken growers. It argues however, that the payment of such premiums does not take anything away from hatching egg producers.

In the view of the BCCGA, the deferral would result in the BHEC's unilateral changes remaining in effect for an extended period of time while the supervisory review takes place. Further, the matters outlined in its appeal are discrete and can be readily adjudicated.

For the reasons that follow, I have rejected the arguments of the PPPABC and the BCCGA.

There is a long-standing history of highly contentious pricing issues in the chicken industry in British Columbia. As per the history recounted by the BHEC, there is a demonstrated need to, from time to time, take an in-depth look at what constitutes a sound marketing policy approach to pricing in the chicken supply chain. This, by necessity, means the supply chain must work on collaborative solutions applicable to all concerned. Thus, the question I must answer is whether this is such a situation?

Without delving into this history in any great detail, I note that BHEC questions whether the linkage remains sound marketing policy and has issued notice it will be making a submission to BCFIRB to exit the linkage. The linkage itself is a broader policy question than the COP components currently under appeal. Should I not defer the appeals, one potential outcome is that the BHEC, CMB, PPPABC, BCCGA and other stakeholders may need to engage in simultaneous processes; with the appeal process challenging the changes to the COP components of the linkage, and a supervisory process potentially addressing the existence of the linkage. From my view, it is not effective or strategic for any party to be dealing with core pricing questions on multiple fronts and on multiple levels. In my view, the broader sound marketing policy question of the existence of the linkage needs to take precedence.

Clearly, tensions are rising. I see serious accusations and references about actions and apparent subsequent counter-actions being taken to address what one side sees as necessary steps to address growing hardships to one part of the supply chain and the other side sees as diversionary tactics to create economic advantage. These accusations and actions seem unlikely to improve industry relations or contribute in a positive way to sound marketing policy. This reinforces my view that, again, there

are more issues afoot than are likely to be resolved via an appeal without first giving consideration to the broader questions regarding the price linkage.

I observe here that the PPPABC and CMB note that there is no current supervisory process underway. I am not sure I agree with that assessment as the BHEC has for over a year corresponded with BCFIRB and stakeholders about exiting the linkage and has been taking BCFIRB's advice about how that could be managed. BCFIRB stated in a July 31, 2019 letter, copied to the CMB, PPPABC and BCCGA:

Should the Commission pursue exiting the price linkage agreement, BCFIRB would expect to receive a submission from the Commission with an evidence-based SAFETI rationale setting out why the exit would be in the best interest of the hatching egg sector and the overall chicken supply chain (sound marketing policy). For transparency, BCFIRB asks that any potential submission from the Commission to BCFIRB be shared with the chicken supply chain stakeholders, including the Chicken Board.

What the next steps will be in the supervisory process when BHEC makes its initial submission to BCFIRB I do not know. In any event, I do not see the lack of an ongoing supervisory process as a barrier to a deferral decision under s. 8(8) of the *NPMA*.

I note here the PPPABC's position that it would not oppose the deferral were the BHEC to reverse the linkage amendments under appeal pending a supervisory review of the linkage. I see this request as an attempt to impose a status quo order akin to a stay where the BHEC reverses its linkage amendment decision under appeal pending the supervisory review. In my view, and as I have come to the conclusion that these appeals should be deferred in accordance with s. 8(8) of the *NPMA* until a supervisory process has been completed, consideration of the appropriateness of any such order is for BCFIRB in its supervisory capacity. I am not limiting the supervisory panel as to the issues it may consider, the process it will follow or the time frame to conclude its supervisory process.

Yours truly,

A handwritten signature in cursive script, appearing to read "D. Lapierre".

Dennis Lapierre
Presiding Member