



BC Farm Industry Review Board

May 19, 2022

File: N2215

DELIVERED BY EMAIL

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Dear Parties:

RE: PPPABC V BRITISH COLUMBIA CHICKEN MARKETING BOARD

On April 8, 2022, the British Columbia Farm Industry Review Board (BCFIRB) received a notice of appeal from the Primary Poultry Processors Association of British Columbia (PPPABC) with respect to the British Columbia Chicken Marketing Board's (Chicken Board) decision dated March 10, 2022, establishing the Mainstream Pricing Order for Period A- 175. The appeal alleges that the Chicken Board failed to adjust the live price formula in the face of changes to the Ontario formula and amended the formula without due regard for processor competitiveness and reasonable grower return. The PPPABC alleges the Chicken Board relied on inaccurate data in their feed costs calculations which use outdated feed conversion ratios that overstate feed costs and understate grower returns.

By letter dated April 25, 2022, BCFIRB wrote to the parties seeking submissions as it was not clear that the notice of appeal raised an issue appealable under section 8 of the *Natural Products Marketing (BC) Act (NPMA)* given that the Chicken Board's decision implements BCFIRB's March 9, 2022 supervisory decision and it was not clear that there was an independent exercise of discretion that created a right of appeal to BCFIRB.

The parties were referred to BCFIRB's decision in *Salmon Arm Poultry v. British Columbia Egg Marketing Board*, (May 16, 2001) which states:

36. The proposition that a commodity board must have a degree of independent ownership over an order, determination or decision before it can be appealed to the BCMB is not a technical or legalistic requirement. The fundamental purpose of a right of appeal to the BCMB is to ensure that commodity boards remain accountable to the independent and specialised BCMB for their exercises of judgement. Where action taken by a commodity board is not "their" decision, but is rather an administrative action taken pursuant to a specific BCMB direction imposed upon them and which allows for no discretion on their part, the purpose of the appeal power is absent. It would be absurd and contrary to the legislation if the BCMB, in its appellate capacity,

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was effectively required to hear an appeal from its own supervisory decision. The absurdity is even more pronounced when one considers that, if the BCMB was required to hear such an appeal, the commodity board, which is supposed to appear to defend “its” decisions on BCMB appeals, would simultaneously have a right to seek judicial review of the very same BCMB substantive supervisory direction at issue on the appeal. This is not what the legislation intended.

Submissions of the Parties

The PPPABC argues that it is appealing the implementation of the Ontario pricing formula in the interim live price formula for period A-175, similar to its previous appeals for periods A-169 to A-174. It suggests this issue be deferred to the supervisory panel.

The PPPABC also argues that the Chicken Board amended the interim live price formula without due regard for PPPABC submissions on the Chicken Board’s feed conversion calculation. It says the feed conversion ratios are outdated and result in overstated feed costs and understated grower returns. It says this issue should be dealt with separately and immediately by BCFIRB in this appeal and not be deferred to the supervisory panel given the significant financial impact on processors.

Finally, the PPPABC distinguishes the decision in *Salmon Arm Poultry* arguing that while the Chicken Board was directed to seek prior approval for amendments to the interim live price formula, it was not directed to submit an amended live price formula. Further, once it obtained BCFIRB’s prior approval, it retained the discretion to maintain the existing interim live price formula rather than use the amended interim live price formula. Unlike *Salmon Arm Poultry*, BCFIRB did not direct the Chicken Board to draft an amended interim live price formula. Rather, the Chicken Board acting on its own accord, submitted a proposed amended interim live price formula for approval.

The Chicken Board disagrees with the appellant and says that the notice of appeal does not raise an appealable issue within the meaning of section 8 of the *NPMA*. The appeal purports to challenge the Chicken Board’s A-175 pricing order but the Chicken Board can only amend the pricing formula with BCFIRB’s prior approval pursuant to BCFIRB’s interim order dated July 3, 2020 (Interim Order).

BCFIRB approved the amended pricing formula in its March 9, 2022 decision. That decision does not invite or require the Chicken Board to exercise any independent discretion, and therefore, is not “an order, decision or determination of a marketing board”. BCFIRB exercised its supervisory authority to issue specific directions to the Chicken Board to issue an order, and as such, the appropriate remedy is to challenge the BCFIRB decision by way of judicial review.

Since there is no appeal properly brought before BCFIRB, the Chicken Board argues that the appeal or portions thereof cannot be deferred pursuant to s. 8(8) of the *NPMA*.

DECISION

By virtue of BCFIRB’s Interim Order, the Chicken Board can only amend the pricing formula where it receives prior approval from BCFIRB:

44. The Chicken Board and the Commission are directed not to change any aspect of

the current pricing structures as defined in this decision, unless by the way of BCFIRB prior approval or until such time as BCFIRB determines otherwise.

In this case, and as required by paragraph 44 above, having determined that the pricing order ought to be amended, the Chicken Board sought prior approval of its proposed amended formula from the supervisory panel. The panel declined to prior approve the Chicken Board's amended formula and instead issued its own amended interim formula which it felt better reflected the balancing of the interests of growers and processors. In turn, the Chicken Board used that amended interim formula to set the price for A-175, which price the PPPABC now challenges in this appeal as it says it is based on a faulty feed conversion ratios.

A review of the supervisory panel's March 9, 2022 decision confirms that it set a new interim formula.

38. For period A-175 and A-176, the Chicken Marketing interim formula is amended to include: Plus A provision to cover 50% of the current formula costs exceeding the upper guardrail after adjustment for the cumulative increase or decrease in Ontario grower margins arising from changes to the Ontario Cost of Production formula British Columbia Farm Industry Review Board Prior Approval Chicken Interim Pricing Formula for A-175 March 9, 2022 8 (COPF) starting in A-175.4 If the resulting number is negative, no adjustment will be made to live weight price.

The Chicken Board's March 10, 2022 pricing order applied the amended formula set by the supervisory panel:

The pricing formula that has been used to establish the minimum live price for period A-175 is comprised of the following components and has been amended for period A-175 and A-176 with prior approval of BCFIRB granted March 8, 2022

It follows then that any dispute about the prices set as a result of the application of that amended formula does not result from an independent exercise of the Chicken Board's discretion and does not raise an appealable issue. Rather, the Chicken Board applied the amended formula established by BCFIRB. Arguments that the amended formula does not properly reflect the Ontario formula or that relies on faulty feed conversion ratios which favour growers are arguments that should be directed at the BCFIRB decision through judicial review. Alternatively, if the PPPABC feels that the supervisory panel failed to consider its arguments, those are issues that should be taken up with the supervisory panel directly.

Further, as the Chicken Board decided it was necessary to amend the pricing formula, and in turn the supervisory panel did amend the formula albeit on different terms, I disagree it was open to the Chicken Board to continue to rely on the existing formula in the face of BCFIRB's direction.

Finally, it is not open to the PPPABC to use the appeal process to seek remedies from the appeal panel to direct the process of the supervisory panel. I find that to use BCFIRB's appeal processes in such a manner would be an abuse of process and is improper. As such, I dismiss the notice of appeal.

Any issues the PPPABC has with the amended formula need to be addressed through judicial review or taken up directly with the supervisory panel.

Regards,

A handwritten signature in black ink, appearing to read 'Pawan Joshi', written in a cursive style.

Pawan Joshi
Presiding Member