IN THE MATTER OF THE NATURAL PRODUCTS MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL TO THE BRITISH COLUMBIA MARKETING BOARD FROM A DETERMINATION DATED MARCH 5, 1987 OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD

BETWEEN:

THE BRITISH COLUMBIA BROILER HATCHING EGG PRODUCERS ASSOCIATION

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances:

B. Fraser, Legal Counsel
F. Reid, Director, Broiler Hatching Egg Producers Assn.
P. Every, Hatching Egg Representative, B.C. Chicken Marketing Board
J. Libbey, Audit Partner, Peat Marwick
B. Stodola, Agricultural Economist, Bank of Nova Scotia
J. C. Durham, Credit Manager, East Chilliwack Agricultural Co-operative

APPELLANT

J. Hunter, Legal Counsel
L. McGladdery, Hatchery Manager, Lilydale
M. Greenwood, Hatchery Manager, Western Hatchery
A. Fauchon, Hatchery Manager, Horizon Hatchery
P. Shoore, Owner, Sunrise Poultry
A. Mykle, Past Chairman, B.C. Chicken Marketing Board
R. Smith, Professional Agrologist
W. Borgen, Agricultural Credit Dept., Bank of Commerce
D. Sendall, Chairman, B.C. Chicken Marketing Board
M. McCallum, Price Waterhouse
G. Frank, Price Waterhouse
D. Samson, Price Waterhouse

RESPONDENT

DATE OF HEARING APRIL 28-29, MAY 21-22, 1987

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by the British Columbia Hatching Egg Producers' Association from a decision made on March 5, 1987 of the Respondent, the British Columbia Chicken Marketing Board ("the Chicken Board") not to entertain a motion that major adjustments be made to the price of hatching eggs in British Columbia by setting the Board price for hatching eggs at $2.40 per dozen on March 16, 1987; and furthermore, to prevent the necessity of these major adjustments that have to occur from time to time on a cyclical basis, that a pricing committee be appointed by the Board to consist of three (3) Hatching Egg producers, a Hatchery representative, and a Broiler or Roaster grower, to advise the Board on the pricing of hatching eggs.

2. The appeal was filed with the Board on March 25, 1987 and was heard on April 28 and 29, 1987 in Vancouver, British Columbia, and on May 21 and 22nd, 1987 in Richmond, British Columbia.

3. Both the Appellant and the Respondent were represented by legal counsel and were given the opportunity to call and cross-examine witnesses, present documentary evidence, file written submissions and make oral submissions on the facts and the law.

4. The Appellant is seeking to have firstly, the price of hatching eggs in British Columbia adjusted upwards to $2.40 per dozen; and secondly, the appointment of a pricing committee to advise the Chicken Board on the pricing of hatching eggs.

5. In response to this the Respondent points out that there is in place in British Columbia a cost of production formula for hatching eggs to which the broiler hatching egg breeders have agreed, that hatching egg prices are adjusted from time to time based on adjustments derived from the formula; and that on the basis of the last adjustments the price of hatching eggs was established at $2.24 per dozen as set out in the Chicken Board's Interim Order No. 188.

6. The Board finds that:

   (a) There is evidence of agreement by both the Appellant and the Respondent on a Cost of Production formula that is used as the basis for the establishment of hatching eggs in British Columbia. Both the Appellant and the Respondent favour the continuing use of the Cost of Production Formula approach to pricing.

   (b) Quarterly updates are done on the cost of production formula to reflect changes in the marketplace such as the individual cost elements (feed, chick, labour, etc.) included in the formula. There is also a desire that the rules must not be changed and that both parties agree to live with the cyclical changes that impact on the formula.

(c) Even with the existing agreed upon cost of production formula, a wide range on the suggested prices has emerged based on different assumptions or scenarios. At the one end of the range, the price derived by Price Waterhouse and updated by the Chicken Board is $2.21 per dozen which when adjusted at the prevailing rate amounts to $2.13 per dozen. At the other extreme, Peat Marwick has indicated a price of $3.18 per dozen with a reasonable level of confidence.

(d) Major factors that influence the price of hatching eggs are the labour inputs including family and operator's labour as well as the hatchability bonus paid to the breeders, interest on long-term debt, and feed costs. A great deal of attention has been focused on these cost elements and the differences in their employment in chicken and hatching egg production.

7. On the basis of evidence submitted to the Board, it is clear that both the Appellant and the Respondent have agreed to a cost of production formula for determining the price of hatching eggs, and both parties seem willing to continue their use of the cost of production formula approach to pricing. A change to an alternative approach to pricing cannot now be made retroactively simply because one party disagrees with the price level that has emerged from the update, notwithstanding that there may be flaws in the agreed upon formula. It is evident that both parties must now live with the cyclical changes that have impacted on the cost of production formula particularly in the absence of a consensus among the parties on the adjustment to the formula price that may be appropriate.

8. In the circumstances, the Board directs that, based on the most recent update of the cost of production formula, the price of hatching eggs be established at $2.35 per dozen calculated at 221.03 cents per dozen as determined by the update plus a labour allowance of 8.25 cents per dozen and a hatchability bonus of 5 cents per dozen.

9. In addition, the Board recommends that a Pricing Committee be appointed as early as possible to advise on the price of hatching eggs. This Committee should consist of five (5) members comprised of:

1. One breeder member from the Chicken Board,
2. One grower member from the Chicken Board,
3. One member from the Breeder's Association,
4. One member from the Growers' Association, and
5. An independent Chairman to be chosen by the breeder and grower members of the Chicken Board.

10. The issue was raised during the hearing of the appeal of the special circumstances whereby the legal and accounting costs of this appeal to the hatching egg breeders should be borne by the Chicken Board just as the legal and accounting cots to the chicken producers will be borne by

the Chicken Board inasmuch as they are under the same roof and they both pay levies. The Board views this as a purely domestic administrative matter between the growers and the breeders that should be resolved among themselves. As such, the Board perceives that its intervention in this matter is neither appropriate nor warranted.

11. In accordance with this Board's rules of appeal, the whole of the Appellant's deposit shall be refunded.

Dated this 20th day of August, 1987 in ~~Richmond~~ VICTORIA, British Columbia.

C. E. Emery, Chairman

E. M. Brun, Vice-Chairman

G. Aylard, Member