



August 26, 2002

File: 44200-50/CMB 02-22

DELIVERED BY FAX

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Attention: Mr. Christopher Harvey, Q.C.

Dear Sirs/Mesdames:

**AN APPEAL BY ROSSDOWN FARMS LTD. FROM A DECISION, AS
COMMUNICATED AUGUST 8, 2002, OF THE BC CHICKEN MARKETING BOARD
CONCERNING A SLAUGHTER SCHEDULE FOR PERIOD A-49**

On August 23, 2002, the British Columbia Marketing Board (the "BCMB") held a teleconference call hearing to hear submissions regarding an application for intervenor status and an application to adjourn the appeal currently scheduled for September 3 and 9, 2002. In addition to oral submissions, the BCMB also reviewed the following documents:

- a) August 8, 2002 decision of the British Columbia Chicken Marketing Board (the "Chicken Board");
- b) August 12, 2002 Notice of Appeal from Rosstown Farms Ltd. ("Rosstown");
- c) August 22, 2002 letter from Mr. Christopher Harvey, Q.C., Counsel for Hallmark Poultry Processors Ltd. and Sunrise Poultry Processors Ltd. (the "Processors"); and
- d) August 22, 2002 letter from Ms. Sarah Pike, Counsel for the Chicken Board.

**British Columbia
Marketing Board**

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The Processors seek to intervene, as this appeal challenges certain chicken industry practices that have been in place for many years and upon which “the efficient and effective conduct of the chicken processing and marketing business in this Province depends”. The Appellant and the Chicken Board do not oppose this application and it is therefore granted. The Panel recognises that the outcome of this appeal may have a significant impact on the Processors’ ability to schedule chicken processing within their plants.

The primary issue to be resolved is the Intervenors’ application to adjourn this appeal from September 3, 2002 to a later date. The Processors argue that they need particulars of the allegations of illegal, improper and anti-competitive conduct raised by the Appellant as justification for the relief that it seeks. Further, the Processors seek an adjournment of the appeal by at least three weeks to allow adequate preparation.

The Chicken Board takes no position on the adjournment application. However, it recognises that the issues on appeal which deal with the Appellant’s request to have a specific set schedule for the slaughter of its chicken does raise issues as between the Appellant and the Processors. For its part the Chicken Board sees this appeal raising two main issues: what are the powers of the Chicken Board; and is it appropriate in this case to exercise those powers.

The Appellant opposes any request for an adjournment. It argues that this appeal must proceed as scheduled since a decision is required before the September 15, 2002 deadline for Rosstown setting eggs in its new hatchery for Period A-49; any delay in the hearing of this appeal will result in significant financial implications. The Appellant also argues that it tried to get a preliminary ruling from the Chicken Board to deal with the scheduling issues but it was unsuccessful as the Chicken Board took the position that such a ruling would be hypothetical. The Appellant maintains that it needs a ruling from this Panel directing the Chicken Board to enforce Rosstown’s proposed slaughter schedule and to take steps to prevent the Processors from interfering with this schedule.

The Appellant opposes any requirement that it disclose particulars of its allegations of illegal, improper and anti-competitive behavior on the part of the Processors. It maintains that the allegations are well known and relate to lock in and tied selling where Processors restrict the ability of a producer to purchase chicks from a hatchery of his choosing. The Appellant maintains that the Chicken Board is well aware of these allegations, including as a result of several conversations between the Chicken Board General Manager and Mr. Dan Wiebe, a principal of Rosstown. The Appellant also argues that the Processors are aware of these allegations through Mr. Peter Shoore, a processor representative on the Chicken Board. Finally, the Appellant argues that there is no obligation on an Appellant to disclose the factual basis of its allegations against the Processors in advance of the hearing. The Appellant cannot be likened to the Crown in a criminal proceeding.

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DECISION

Based on the submissions of the parties, the Panel directs that this hearing proceed as scheduled on September 3, 2002 and September 9, 2002. The appeal raises issues which need to be determined in advance of the mid-September deadline for setting eggs. However, some modifications to the hearing process may assist the Processors in being adequately prepared to present their case.

The Panel directs that the appeal proceed on September 3, 2002 with the Appellant putting in its case first, followed by any intervenors (that may be approved) in support of the Appellant and then the Chicken Board. The Processors will be required to conclude their cross-examination of the Appellant's and the Chicken Board's witnesses, as time permits, on September 3, 2002. The Panel will sit late that day, if required.

The hearing will then be adjourned and the Processors will put in their case on September 9, 2002. The Chicken Board and the Appellant will have an opportunity to call any rebuttal evidence, then concluding submissions and argument will be heard from all parties.

We recognise that this may not be a perfect solution. However, given the time constraints before the Panel and the unwillingness of the parties to consider a "without prejudice" interim order, we are satisfied that the foregoing represents a satisfactory compromise of the various parties' competing interests.

BRITISH COLUMBIA MARKETING BOARD

Per

(Original signed by):

Christine Elsaesser, Vice Chair

cc: Mr. Dan Wiebe, President
Rosstown Farms Ltd.

Ms. Christine Rickson, Executive Assistant
BC Chicken Marketing Board