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December 16, 2019

BY EMAIL

Wanda Gorsuch
Manager, Issues and Planning
B.C. Farm Industry Review Board
780 Blanshard Street
Victoria, BC V8W 2H1

Dear Mesdames/Sirs:

Re: Vegetable Supervisory Review and Prokam Enterprises Ltd.

Kindly take this as BC Fresh Vegetables Inc.'s ("BCfresh") Reply to the letter from counsel for Prokam Enterprises Ltd. ("Prokam") dated December 10, 2019 and the letter from the BC Vegetable Marketing Commission ("BCVMC") also dated December 10, 2019 in regard to the above captioned Supervisory Review.

Introduction

By way of introduction:

- (a) In regard to the GMA with BCfresh, BCfresh does not agree that BCfresh's position in the underlying proceedings in previous years prevents Prokam and BCfresh from working together cooperatively and productively in the future.
- (b) BCfresh wishes to reply to and comment on Prokam's statements regarding BCfresh's sales and marketing in Western Canada, including in BC and the Western Canada potato market generally. Portions of this reply include highly proprietary, confidential, commercial, marketing information which BCfresh requests the BC FIRB to accept on a confidential redacted basis not to be disclosed or circulated to any other person. Release of the redacted information would injure BCfresh and the growers it represents;
- (c) BCfresh wishes to adopt, by way of Reply, certain portions of the BCVMC Submissions;
and

(d) In response to specific questions from the BC FIRB, Prokam has only responded conditionally in respect of its future planting intentions. Prokam does not establish that there is any legal, regulatory or economic bar to it growing potatoes in compliance with BCVMC's General Orders pending this Supervisory Review. BCfresh agrees with Prokam that expanding the BC potato industry is a good objective, but not to the prejudice of other BC growers who, for years, have complied with the General Orders and not to the prejudice of the Delivery Allocation those growers have worked hard to establish and the established markets to whom they sell their produce.

A. BCfresh GMA

2. In reply to the submission at page 6, second paragraph, of the Prokam letter, BCfresh's support for the Commission in the previous proceedings arose as a result of Prokam, in violation of the General Orders, producing and marketing potatoes far in excess of its Delivery Allocation thus posing a risk to the orderly marketing of British Columbia potatoes.
3. Mr. Driediger did not "spear head" an effort to have other parties sign a letter opposing Prokam as suggested. All of the agencies were supportive of the Commission enforcing its regulations.
4. Prokam is correct to say that at the time of entering into the GMA with BCfresh, it was agreed that if Prokam's appeal was allowed, that BCfresh would not seek to enforce the GMA. However, in Prokam's appeal to BC FIRB, in regard to the appointment of BCfresh as agency, the BCVMC was ordered to reconsider BCfresh as agency for Prokam. That reconsideration resulted in the BCVMC confirming its order designating BCfresh as agency for Prokam. In the result, Prokam's appeal was not allowed. BCfresh is prepared to enter into a new 3-year GMA to give both parties a fair opportunity to work together.

B. Market Competition

5. BCfresh is a competitor to Thomas Fresh in British Columbia and Alberta. This in no way means that BCfresh would not sell potatoes to Thomas Fresh on commercial terms. The suggestion of Mr. Dhillon in his Affidavit at paragraph 3 that there are no BC potatoes, to Mr. Hinchey's knowledge, sold to Thomas Fresh may well be correct; however, this does not mean that there are no BC potatoes sold in Alberta.

6. In response to the BC FIRB's request that Prokam identify its planting intentions, Prokam needs to provide a comprehensive plan of potato types, varieties, and targeted sizes i.e. creamers (C size), nuggets (B size), and standards (size A). The yields vary dramatically based on these factors. A proposed plan of growing 255 acres at an average of 12 ton/acre is insufficient information for anyone to address properly and can be very misleading. The average yield in Sumas, where Prokam is producing, can be in excess of 20 tons/acre when targeting the size A market for example. This could easily result in over 5,000 tons of potato production. The information provided by Prokam is simply incomplete and not of assistance in estimating Prokam's likely production volumes or creating any meaningful marketing plan.
7. There are no potato growers represented by BCfresh or to its knowledge represented by other agencies that plant 1.25% more than their Delivery Allocation. Most growers plant to align with their Delivery Allocation. If they want to incur more storage risk they may increase acreage of some types by 1-10%. But then they are prepared to store any surpluses until there is market opportunity and take the risks associated with the additional production.
8. Contrary to Prokam's argument about servicing "new markets", there is no such thing as "new markets" for potatoes in Western Canada. There are existing markets supplied largely by the major potato marketers in Western Canada. These same parties have been marketing potatoes throughout Western Canada and beyond for decades. Prairie supply, start and end dates, is determined more by weather and crop size than anything else. The lighter supply of potatoes in North America this crop year is directly related to very poor fall weather and an early winter in the Prairies, and the US mid-west. It has nothing to do with increased demand or need for more potatoes in 2020. There were over 40,000 acres of potatoes abandoned in these areas and had they been harvested there would have been an over-supply situation for potatoes this year. To suggest that Prokam's production of 255 acres could fill a need or a shortage does not accurately reflect the market this year or the projected demands of the market in 2020. Attached hereto as Schedule A is a December 6, 2019 report from the United Potato Growers of Canada indicating higher production volumes for 2019.

- 9. Market Reports prepared by the United Potato Grower's of Canada for Western Canada indicate fresh potato inventories are currently up 3.6% notwithstanding the real difficulties of the fall harvest and substantial acreage not harvested due to bad weather.
- 10. Thomas Fresh has been buying produce from BC agencies on and off for the better part of 15 years. It has purchased potatoes from BCfresh, Okanagan Grown and Island Vegetable Co - op over that period. It has had access to BC potatoes every year. One must ask why every significant wholesaler in Alberta and Saskatchewan contacts the BC industry early in the season (especially during the A&B periods) for supply. Thomas Fresh is trying to bypass the BCVMC agency system and deal directly with an early grower rather than buy from a BC agency, increasing Thomas Fresh's revenue, decreasing returns to BC growers.
- 11. BCfresh has been marketing potatoes into Alberta and Saskatchewan for over 20 years. It targets the exact same customers that Thomas Fresh targets.
- 12. There are 6 major potato players in Western Canada, including BCfresh and Thomas Fresh. BCfresh does business with the other four, even though they are all technically competitors; Edmonton Potato Growers, Bassano Growers, Sunfresh, and Peak of the Market. Thomas Fresh also has the option to buy from other existing BC agencies, the same as the rest of BCfresh's competitors. They have either chosen not to do so, or have requested terms that are unacceptable or below market pricing.

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

14. In short, BC Fresh has relationships with all major customers of potatoes in western Canada. Thomas Fresh is attempting to displace existing BC sales from a BC licensed agency that markets potatoes grown by BC growers who have earned their Delivery Allocation over decades. Issuing a Produce Shipper licence to Prokam on a summary basis would, in circumstances of inadequate market analysis, and no opportunity for the BC growers or other agencies to be heard, displace this market source for BC potatoes with Prokam product and impact all of the success in establishing this market, working within the existing rules and regulations of the BCVMC.

15. BCfresh has also been advised by industry sources that Thomas Fresh will have sufficient inventory of prairie grown red and yellow potatoes to last it until the new Canadian crop in 2020. If that is true, there will be no need to import those US potatoes as alleged. There are more than sufficient Alberta russets available from the 2019 crop as well.

16. Prokam suggests that the BC market is served by 50% imports. The evidence provided at the underlying hearing did not show that over 50% of potatoes are imported into BC. It is not correct to say so. The fact is that Washington State is the second largest producer and exporter of potatoes in North America. When they are exporting into Canada, much of their exports go through the border port in BC called Nighthawk/Osoyoos. These potatoes are almost always destined for other provinces in Canada, not just for BC (ie. if they enter Canada at Nighthawk/Osoyoos they are likely not delivering to the Lower Mainland). This fact has been acknowledged by the Canadian International Trade Tribunal looking into imports into BC in the past 10-years Expiry Reviews. There used to be "off-load data" collected previously which supported this fact but CBSA no longer collects it. However, it is a well-known and accepted fact by everyone in the industry that the data does not reflect BC consumption of U.S. potato imports.
17. There are US imports of potatoes into BC but the vast majority are "count size" (larger) russet potatoes which the BC industry has more difficulty growing due to our northern climate. In fact, Washington State produces the highest percentage of "count-size" russets from their crop, than any other growing area in the world. BCfresh would welcome the production of more russet potatoes by Prokam and marketed by BCfresh, as it has advised Prokam previously.
18. BCfresh's business model does not rely on imports; imports of potatoes in 2019 were negligible. BCfresh only imports during the period when the BC supply is sold at the end of the storage season and prior to the start of the new BC crop. In 2019, for example, BCfresh stored potatoes grown in 2018 into early July 2019 (reds), yellow potatoes into late June 2019, and kennebecs into July 2019. BCfresh does not import white potatoes. BCfresh's new crop in BC started in mid-July and our import season lasted only a few weeks for a few customers as most major retailers handle their own import program. Any suggestion that BCfresh would not be willing to market Prokam's potatoes because it would displace imports is completely incorrect.
19. BCfresh acknowledges that Prokam has "early land" as do 5 other major BC producers. BCfresh has offered to work with Prokam to take advantage of this opportunity the same way it has with its other producers.
20. BCfresh disputes that Prokam produces its potatoes more cost effectively than other BC Fresh growers. Shipping only "out of the field" and cherry picking the most profitable Delivery Allocation

periods (A+B) while not storing potatoes would mean, if permitted by the BC FIRB, that more potatoes from other BC growers would be pushed into storage which unfairly increases their costs and risks

21. BCfresh has expressly offered to market Prokam's potatoes "out of the field" the same as all growers to the extent possible. BCfresh have advised Prokam, that like all other potato growers in western Canada, they would need to build a storage facility. This could be done for a fraction of the cost that Prokam has alleged.
22. Mr. Driediger, CEO of BCfresh, has confirmed that he would be more than prepared to work cooperatively and professionally with Prokam. Prokam would do better in the long-term by marketing through BCfresh. BCfresh stands ready to work with Prokam to maximize its potential.

C. Reply to BCVMC Submission

23. BCfresh respectfully adopts the submission of the BCVMC in its letter to you of December 10, 2019 wherein it states that the BC FIRB should consult thoroughly with affected industry stakeholders before deviating from the decisions by BCVMC in regard to Prokam and, in particular, the grant of a Producer-Shipper licence.
24. While understanding the circumstances, BCfresh also agrees with the BCVMC as to the short period of time that has been allowed to present relevant information to the BC FIRB for its consideration prior to considering the grant of any Producer-Shipper Licence to Prokam, either on an interim basis or otherwise.

D. No Prejudice to Prokam

25. At page 5 of its letter, Prokam argues that it has facilities to more efficiently and cost effectively produce potatoes compared to other BC potato growers. It must be noted that this alleged cost effectiveness only arises through Prokam not complying with the BCVMC's General Orders and selling potatoes in excess of its Delivery Allocation during the applicable time periods. Potatoes are a storage crop. If Prokam wishes to plant and harvest 2500 tons of potatoes, it will have to have storage capacity. All BC growers would like to enjoy the cost reduction in harvesting and selling "out of the field" for the first 90-days of the season without having to incur storage costs

- required to service the market for the balance of the year. However, the orderly marketing of potatoes harvested in BC, like every other jurisdiction in Canada, requires storage capacity.
26. In Mr. Dhillon's 2nd Affidavit made on September 20, 2019, he deposes at paragraph 2 that, "Prokam has lost the opportunity to earn revenue from the sale of Prokam-grown potatoes during the 2018-2019 and 2019-2020 growing seasons". It was Prokam's decision alone not to plant potatoes. There was no legal, regulatory nor economic impediment to Prokam earning revenue from the sale of Prokam grown potatoes during the 2018-2019 or the 2019-2020 growing seasons. The same is true for the 2020-2021 growing season, that is, there is no legal, regulatory or economic impediment.
27. At paragraph 4 – 6 of Mr. Dhillon's 2nd Affidavit, the indication is that by not placing deposits on seeds or securing land, Prokam, has once again, potentially, put itself in a position where it may not be able to plant and grow potatoes for the 2020-2021 season. This again is self imposed by Prokam and not as a result of any legal, regulatory or economic impediment. At paragraph 15 of Mr. Dhillon's 2nd Affidavit, last sentence, he states: "we continue to be unable to grow potatoes." Mr. Dhillon does not explain why Prokam is unable to grow potatoes other than by reference to arguments Prokam wishes to make on its pending appeals. BCfresh hopes that Prokam does grow potatoes in the 2020-2021 growing season.
28. BCfresh is in the same position as BC FIRB stated in its letter of December 4, 2019: "it is unaware of circumstances that would preclude Prokam from undertaking its planning for planting for the 2020-2021 season based on its current delivery allocation and assurance of having an agency that will market its product."
29. With respect, BCfresh understands that the BC FIRB wishes to avoid prejudice that may occur during the time necessary for the Supervisory Review. However, the issuance of a Producer-Shipper licence in these circumstances is a very substantial decision having broad implications for the current agencies and growers in BC. The fact is that there will be no prejudice or harm to Prokam during the Supervisory Review.
30. BCfresh is very keen to see Prokam provide its comprehensive production plan for the 2020-2021 growing season, plant potatoes, and then BCfresh will market Prokam's potatoes, in accordance

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with the BCVMC General Orders, to the best of its ability. As stated in BCfresh's initial submission, BCfresh believes it can generate superior returns to Prokam, if Prokam will cooperate with BCfresh as its agency.

31. Granting a Producer-Shipper license to a producer simply because it has the support of an Alberta based wholesaler would have far-reaching impacts to the BC potato industry. It would invite a raid on BC growers by other players in Western Canada. This would make the current BC regulatory system redundant.
32. The balance of prejudice is against the grant of a Producer-Shipper licence to Prokam because more harm would occur to the currently existing markets of the BC growers than may arise to Prokam's inability to purportedly expand its own sales into the same market, outside the BCVMC scheme for orderly markets potatoes, during the Supervisory Review.

Thank you for your consideration of the above.

Yours truly,

FARRIS LLP

Per:

Robert McDonnell

Robert J. McDonnell

RJM/lis

c.c.: Robert Hrabinsky, counsel for BCVMC
Claire Hunter, Q.C. and Ryan Androsoff, counsel for Prokam Enterprises Ltd.
Murray Driediger, BC Fresh Vegetables Inc.