



BC Farm Industry Review Board

December 7, 2020

File: 44200-60\BHEC CMB

Delivered by email

Morgan Camley
Dentons Canada LLP
Counsel, Primary Poultry Processors'
Association of British Columbia

Dear Ms. Camley:

Re: Chicken Sector Pricing Review Process

I write in response to your letter of November 27, 2020. You identify procedural fairness concerns relating to the Primary Poultry Processors' Association of British Columbia (PPPABC) December 23, 2019 appeal of a British Columbia Broiler Hatching Egg Commission (Commission) decision to reduce breeder processing age from 58 weeks to 56 weeks. This appeal was deferred by a BCFIRB appeal panel to the Chicken Sector Pricing Review supervisory process. Your letter raises concerns that recent decisions of the supervisory panel on chicken pricing "essentially decided an issue on the deferred appeal, without providing the PPPABC any of the corresponding procedural rights of an appeal", and alleges that the Commission, enabled by the supervisory panel, "have breached the procedural fairness rights of the PPPABC", which should be placed on the record in the event that judicial review proceedings are required.

The authority to defer appeals is found in subsections 8(8) and 8(8.4) of the Natural Products Marketing (BC) Act (NPMA), which provide:

(8) If, after an appeal is filed, an appeal panel considers that all or part of the subject matter of the appeal is more appropriately dealt with in a supervisory process under its supervisory power, the appeal panel, after giving the appellant and the marketing board or commission an opportunity to be heard, may defer further consideration of the appeal until after the supervisory process is completed.

(8.4) If an appeal is deferred under subsection (8) and the supervisory process has been completed, the appellant may give notice that it intends to proceed with the appeal, and the Provincial board must proceed with and decide the appeal.

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As a general principle, when matters under appeal are deferred, the very reason for that deferral is that issues raised on the appeal may be more properly addressed, not through the adversarial appeal process, but rather through a broader, more flexible industry wide process. I say more flexible, as subsection 7.1(2) allows BCFIRB to exercise its supervisory powers “at any time, with or without a hearing, and in the manner it considers appropriate to the circumstances.”

The subject matter of the supervisory review may touch on and impact the decision under appeal; in some cases, the supervisory process will go beyond the commodity board decision under appeal, rendering some or all of the issues on appeal moot. Subsection 8(8.4) contemplates that once the supervisory process has concluded, the appellant may give notice of its intent to proceed with the appeal. At that point in time, the appeal panel will consider what, if any, live issues remain to be determined on appeal.

In this case, breeder processing age was raised in the submission process leading to the supervisory panel’s July 3, 2020 Interim Pricing Decision and the associated order. Whether breeder processing age was a pricing structure subject to prior approval was raised by the parties in response to an October 22, 2020 decision of the Commission to reduce the age from 56 to 55 weeks. The supervisory panel initially determined that this change was structural in nature and required the supervisory panel’s prior approval (October 30, 2020 Determination of Prior Approval). The supervisory panel revisited this decision (November 13, 2020) after receiving the Commission’s November 4, 2020 letter enclosing Serecon’s letter confirming age is a factor in the costing model to be normalized (like feed, breeder chick and operating costs). After hearing from the Commission, the supervisory panel determined that prior approval was not required as this was not a material change to the current pricing structure within the meaning of the July 2020 Order. However, to ensure orderly marketing and to maintain working relationships in the interests of industry stability, the panel clearly outlined and stated its expectation that the Commission and the BC Chicken Marketing Board (Chicken Board) keep the supervisory panel informed of any decision materially impacting pricing so that the panel could determine if prior approval was required.

The second issue relates to the reported “unilateral actions” of the Commission to “...advance a cost of production formula without consideration to the impact on the British Columbia poultry industry and its stakeholders”. You state concern that the Commission’s actions contradict BCFIRB’s Chicken Sector Pricing Review principles that all parties participate fully in good faith and in the best interests of the industry.

First, thank you for reiterating PPPABCs commitment to participating in the Chicken Sector Pricing Review. As the supervisory panel has advised on many occasions in writing and at meetings, a successful long-term pricing outcome for the BC chicken industry depends on open, honest and genuine participation in the Review by all industry parties as well as the two first instance regulators, the Commission and the Chicken Board.

A successful outcome will require the Commission and the Chicken Board to balance multiple interests in reaching their final pricing recommendations. The BCFIRB panel will assess if those interests were duly considered and if the outcomes result in sound marketing policy across the chicken supply chain. In turn, the panel expects industry parties to fully discuss pricing options and be prepared to consider meaningful and constructive trade-offs before coming to a final position. Finally, the panel expects industry parties to provide the Commission and Chicken Board with the information needed to make sound, fact-based final pricing recommendations.

While the panel will be taking no actions at this time, the panel is aware of your concerns and will be continuing to actively monitor the Commission and Chicken Board's processes.

Regards,



Kirsten Pedersen
Executive Director

cc Wendy Holm
BCFIRB Pricing Liaison

Robert Hrabinsky
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Claire Hunter, QC
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Paul McLean
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