

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
IN THE MATTER OF MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC)
AGENCY PRIOR APPROVAL PROCESS

WRITTEN SUBMISSIONS OF MPL BRITISH COLUMBIA DISTRIBUTORS INC.

Overview

1. Designated agencies play a pivotal role in the British Columbia regulated vegetable sector. As a result, the BC Vegetable Marketing Commission (the “**Commission**”) is charged with ensuring that new agency applicants meet the requirements for agency status, including the SAFETI principles and the applicable policy considerations. To this end, the Commission carefully and thoroughly reviewed MPL British Columbia Distributors Inc.’s (“**MPL BC**”) amended application for a NEW Class 1 designated agency licence, dated May 27, 2021. The Commission conducted a SAFETI-based assessment of MPL BC’s application and concluded that it had satisfied the threshold for agency designation. On this basis, the Commission issued its Decision, dated January 12, 2021, recommending that MPL BC be granted agency designation (the “**Decision**”).
2. MPL BC now seeks to have the BC Farm Industry Review Board (“**FIRB**”) approve its application for agency designation. For the reasons set out below, it is MPL BC’s submission that the Commission correctly assessed MPL BC’s application and that it would be appropriate for BCFIRB to accept the Commission’s recommendation and grant MPL BC’s application for agency status.

Panel Questions for Eligible Participants

3. BCFIRB has requested, by way of letter dated March 27, 2023, that all eligible participants, including MPL BC, respond to four questions regarding the Commission’s consideration of MPL BC’s agency application. MPL BC’s response to those questions is set out below.

Question #1: Did the Commission conduct a SAFETI-based process in reaching its recommendation on MPL BC's agency designation?

a. If not, identify any defects in the Commission's process and,

b. Identify what steps this panel could take to remedy any process defects?

Answer to Question #1: The Commission conducted a SAFETI-based process in reaching its recommendation on MPL BC's agency designation, for reasons that include the following:

4. In considering MPL BC's agency application and recommending that MPL BC be granted agency designation, the Commission conducted a thorough SAFETI-based assessment. At paragraph 30 of the Decision, the Commission set out the six SAFETI principles – strategic, accountable, fair, effective, transparent and inclusive – and summarized its assessment with respect to each principle. The Commission's assessment under each SAFETI principle was supported both by the information and evidence before the Commission, as well as the Commission's process for reviewing MPL BC's application.
5. By way of overview, the six SAFETI principles are defined by FIRB as a lens or filter to help decision makers (at the first instance regulator level and at FIRB) apply a principles-based approach to supervision and regulation. They are as follows:¹

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| S Strategic | Identifying key opportunities and systemic challenges, and plan for actions to effectively manage risks and take advantage of future opportunities. |
| A Accountable | Maintaining legitimacy and integrity through understanding and discharging responsibilities and reporting performance. |

¹ <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/boards-commissions-tribunals/bc-farm-industry-review-board/bcfirb-governance#safeti>

F Fair	Ensuring procedural fairness in processes and decision making.
E Effective	Ensuring clearly defined outcomes with appropriate processes and measures.
T Transparent	Ensuring that processes, practices, procedures, and reporting on how the mandate is exercised are open, accessible and fully informed.
I Inclusive	Ensuring that appropriate interests, including the public interest, are considered.

6. FIRB’s guidance document on implementing the SAFETI principles, which ought not to be construed as “directive”, suggests that the “principles should instead be considered as a group where one principle reinforces another rather than taken in isolation”.²
7. Further, FIRB has directed first instance regulators to consistently show “they are meeting their responsibilities as first instance regulators using principles-based regulation and SAFETI”.³
8. Turning to the Decision, paragraph 30 clearly demonstrates how the Commission has met its obligations in this regard. It plainly sets out:
 - a. **Strategic:** the Commission balanced opportunities and challenges, and policy drivers in assessing MPL BC’s agency designation application. In particular, as part of this analysis, the Commission articulated that MPL BC is a well-Established, leading marketer, with direct access to significant customers, with exclusive arrangements with some of the largest retailers and has penetrated markets throughout North America.⁴ The Commission

² https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/about-bcfirb/board-members-staff/governance/11_sept_13_safeti_definitions_guidance_-_6_principles_v2.pdf

³ https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/about-bcfirb/board-members-staff/governance/2016_june_6_chair_to_boards_re_governance_expectations.pdf

⁴ Commission Decision Re: In the Matter of an Application Made by MPL British Columbia Distributors Inc. for an Order Designating it as an Agency, dated December 21, 2021 (the “Decision”) at para. 24.

then determined after balancing opportunities and challenges, including those identified in the numerous submissions from industry stakeholders that producers will be better served when they have the opportunity to market through an agency that has better and more direct access to key customers throughout North America;⁵

- b. **Accountable:** the Commission assessed MPL BC's agency designation application as against objective and measurable criteria published in Part XIV of the General Order.⁶ As part of discharging the accountability obligations, the Commission reviewed MPL BC's detailed 109 page application and submissions supporting the Part XIV General Order criteria, as well as submissions made by industry stakeholders, and conducted deliberations during three days;⁷
- c. **Fair:** the Commission gave all interested parties a meaningful opportunity to participate in the proceeding, in accordance with the Commission's Amending Order #54 to the General Order;⁸
- d. **Effective:** the General Order and Amending Order #54 establish objective and measurable criteria and clear procedures for the grant of agency designations, proportionate to the importance of agency designations;
- e. **Transparent:** the processes and procedures for the grant of agency designations are clearly set out in the General Order and Amending Order #54. These include a process for considering and protecting an applicant's confidential and proprietary information; and
- f. **Inclusive:** the Commission ensured industry stakeholders' interests were considered by giving them an opportunity to comment on MPL BC's agency

⁵ The Decision at paras. 11 and 30.

⁶ https://www.bcveg.com/uploads/1/2/3/2/123285464/bcvmc_general_order.pdf

⁷ The Decision at paras. 7-9, 11 and 15.

⁸ https://www.bcveg.com/uploads/1/2/3/2/123285464/amending_order_no.54_-_march_15_2021.pdf

application. It also considered producers' and existing agencies' competing interests, and the public's interest in market stability and orderly marketing.

9. After conducting its assessment of MPL BC's application, the Commission concluded that MPL BC should be designated as an agency, subject to the approval of FIRB, and stated that it was the Commission "panel's considered view that this decision reflects a principles-based approach to supervision and regulation."⁹
10. MPL BC submits that, in making the Decision, the Commission discharged its obligation to meet its responsibilities as a first instance regulator using SAFETI principles-based decision-making.

Question #2: Is there any information that was put before the Commission that the Commission did not consider in making its decision?

a. If yes, what information was not considered, and why should it be considered in this supervisory process?

Answer to Question #2: The Commission considered all relevant information put before it, for reasons that include the following:

11. While the Commission is in the best place to respond to this question, it is MPL BC's submission that it is clear from the Decision that the Commission carefully considered MPL BC's 109 page application and submissions, as well as the submissions provided by industry stakeholders. In paragraph 23 of the Decision, the Commission expressly states that:

The panel has carefully considered MPL BC's application, together with the submissions of industry stakeholders, even though it may not refer to every point raised in the application or those submissions.

⁹ The Decision at para. 30.

12. MPL BC is not aware of any additional relevant information put before the Commission that was not considered. Accordingly, it is submitted that in rendering the Decision, the Commission considered all relevant information put before it.

Question #3: Is there any relevant information that the Commission did not have before it in reaching its recommendation on MPL's agency designation?

a. If yes, what information was not considered and,

b. Why was this information not provided to the Commission in the first instance?

Answer to Question #3: The Commission had before it and considered all the relevant information it needed to render its decision, for reasons that include the following:

13. In making its recommendation that MPL BC be granted agency status, the Commission had before it an abundance of information regarding both MPL BC and the views of certain industry stakeholders. MPL BC provided the Commission with a thorough and comprehensive written application package touching on all relevant aspects of MPL BC's application, including the SAFETI principles.
14. In addition, prior to reaching its recommendation on MPL BC's agency designation, the Commission provided notice to industry stakeholders of MPL BC's application, along with a copy of MPL BC's redacted application, and invited stakeholders to provide written submissions on MPL BC's application. The Commission received submissions from 14 industry stakeholders. MPL BC was then provided an opportunity to provide written reply submissions to the Commission, which it did.
15. As a result, the Commission had before it MPL BC's comprehensive application and submissions, as well as the submissions of 14 industry stakeholders.
16. The Commission had before it and considered all the relevant information it needed to render its recommendation.

Question #4: Are there any public interest or sound marketing policy arguments that the Commission did not consider in making its decision?

a. If yes, what arguments were not considered and why should they be?

Answer to Question #4: The Commission was aware of and took into consideration all relevant public interest and sound marketing policy arguments, for reasons that include the following:

17. It is evident from a review of the Decision that the Commission was well aware of and took into account the applicable public interest and sound marketing policy interests that were at play in its consideration of MPL BC's agency application.
18. The Commission started the analysis section of the Decision, at paragraph 16, by stating that "the decision to grant or refuse agency status is a matter of fundamental marketing policy." The Commission then went on to review some of the relevant policy considerations, and to highlight the importance of ensuring that the designation of a new agency will enhance orderly marketing, promote the development of the industry and ensure that producer returns are maximized. In particular, the Commission stated:

In summary, the designation of a new agency should only follow where the panel is satisfied that the presence of an additional agency will not result in price erosion, lead to market confusion or otherwise undermine orderly marketing. Furthermore the panel must be satisfied that the presence of an additional agency will enhance orderly marketing, promote the development of the industry, and ensure that producer returns are maximized. There is a high threshold that must be satisfied before an application for agency status will be granted.¹⁰

19. After considering the public interest and sound marketing policy arguments, the Commission concluded:

The panel accepts that a grant of agency status to MPL BC could create significant disruption to some existing agencies. However, the Commission's primary obligation is to producers; not to the agencies themselves. As noted, the agency system exists to enhance orderly marketing, promote the development of the

¹⁰ The Decision at para. 21.

industry, and ensure that producer returns are maximized. Agencies are the tools through which these regulatory objectives are pursued, rather than an end to themselves.

On balance, the panel is satisfied that MPL BC's application satisfies the requirements set out in Part XIV of the General Order. There are market penetration opportunities available through this application that are not present with existing agencies. Furthermore, the panel believes that the industry will benefit when product can be marketed through an agency that has better and more direct access to key customers throughout North America. While it is possible for existing agencies to sell to Martronardi, which can then market product to these key customers, this approach is likely to introduce unnecessary costs and inefficiencies that do not benefit producers.

Producers are likely to be better served when their product is marketed by an agency that has better and more direct access to key retailers throughout North America. In this regard, the panel does not think that preservation of the status quo is itself a valid objective. ...¹¹

20. The Commission's recommendation is well supported by the relevant policy issues and there are no policy arguments that the Commission did not consider in coming to its conclusion.

Conclusion

21. In sum, in considering MPL BC's agency application, the Commission conducted a thorough SAFETI-based assessment that took into account all of the relevant information before the Commission. The Commission also carefully considered the applicable public interest and sound marketing policy arguments. After taking into account all of the relevant considerations, the Commission determined that MPL BC's application met the high threshold for agency applications and recommended that MPL BC be granted agency status. The Commission's principled assessment of MPL BC's application was supported by the evidence before the Commission, and it would be appropriate for BCFIRB to accept the Commission's recommendation and approve MPL BC's application.

All of which is respectfully submitted this 7th day of April, 2023.

¹¹ The Decision at paras. 27-29.

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