



BC Farm Industry Review Board

May 17, 2023

File: 44200-35\MPL

DELIVERED BY EMAIL

Morgan Camley
Counsel
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20th Floor, 250 Howe Street
Vancouver, BC, Canada V6C 3R8

Dear Ms. Camley:

MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC) AGENCY PRIOR APPROVAL PROCESS – HEARING PARTICIPATION

Thank you for your May 11, 2023 letter raising MPL BC's concerns regarding the BC Farm Industry Review Board's (BCFIRB) May 5, 2023 decision.

MPL BC objects to BCFIRB allowing ten participants to make written and oral submissions at this stage of the supervisory review. In MPL BC's view, all eligible participants were aware of the document submission opportunity and deadlines set out in the Final Terms of Reference (Terms of Reference). Allowing new participants to make submissions long after MPL BC has put in its main reply, written submissions and book of documents splits the case among those opposing MPL BC's agency application. It further says that the new participant application letters are identical in substance and reflect that they are working in concert with "the Windset Group". MPL BC argues it is procedurally unfair to allow new participants to make additional submissions, especially where MPL BC has not been granted a right of reply. Alternatively, MPL BC seeks the right to provide a written response to the new participant submissions should anything new arise or "stray beyond the scope of submissions" previously provided by MPL BC.

Background - Terms of Reference and Participants

The Terms of Reference (Phase 2: Written Submissions, Document Disclosure and Expert Witnesses) allowed eligible participants to provide written submissions in respect of specific questions posed by the BCFIRB, and to provide relevant documents. Only MPL BC, the BC Vegetable Marketing Commission (Commission) and Greenhouse

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Grown Foods Inc./Windset Farms (Canada) Ltd. (GGFI and Windset) provided submissions and filed documents during Phase 2¹.

The Terms of Reference (Phase 3: Supervisory Hearing) further stated that "...at the conclusion of the written submission process, BCFIRB will confirm supervisory hearing participants...". To ensure a fair process for all eligible participants, including those without legal representation, and as per the Terms of Reference BCFIRB determined it was appropriate to expressly invite applications with options for participation.

On April 24, 2023, BCFIRB confirmed that MPL BC, the Commission and GGFI and Windset would have full participatory rights in the in-person hearing. In addition, BCFIRB invited all other eligible participants to apply to participate in the supervisory review hearing and gave three options: full participatory rights, the right to make a limited written submission, and the right to make a short oral submission, followed by questions.

On May 5, 2023, BCFIRB confirmed the final supervisory hearing participants. No further applications for full participatory rights were received. Nine applications for written submissions were accepted, as was one application to participate by both written and oral submission (Village Farms Canada L.P.). As per BCFIRB's April 24, 2023 letter, MPL BC has an opportunity to ask Village Farms Canada L.P. questions following their oral presentation. The deadline for receiving the written submissions was set for May 12, 2023.

On May 15, 2023, BCFIRB circulated the seven written submissions received by the May 12 deadline to the Commission, MPL BC, and GGFI and Windset. All the submissions received were two pages in length (14 pages in total) and made substantially similar and generalized assertions regarding the sufficiency of existing agencies to support current producers, disruption associated with producers moving to a new agency, harm to family-run businesses due to over competition, restricting production growth and innovation and increased costs to producers and consumers.

DECISION

In BCFIRB's view, no procedural unfairness arises from the receipt of the written submissions on May 12, 2023. The written submissions are brief, substantially similar, and contain general assertions or concerns going to core issues that have been raised since the outset of this process. MPL BC has had ample notice of these concerns and has had an opportunity to address them in its written submissions.

In any event, to the extent there is anything new, which is not immediately apparent to BCFIRB, MPL BC will have an opportunity to address those issues in the in-person supervisory hearing and closing submissions. Further, if MPL BC is unable to address

¹ Terms of Reference Phase 2: Document Disclosure and Expert Witnesses "...all eligible participants in the in-person hearing...are to file with BCFIRB all documents they intend to rely upon at the supervisory hearing by April 21, 2023"

the issues during the in-person supervisory hearing, it will be at liberty to apply to file a brief response written submission.

Regards,



Pawan Joshi
Panel Chair

cc: Derek Sturko, Chair, BC Vegetable Marketing Commission
Robert Hrabinsky, Legal Counsel, BC Vegetable Marketing Commission
Craig Ferris, K.C., Legal Counsel, Greenhouse Grown/Windset
Agency Applicants and Storage crop Agency Managers
Greenhouse Agency Managers
Storage crop/Greenhouse Managers
Storage crop Producers
Greenhouse Producers
Processing Producers
Wholesalers
Processors
BCFIRB web site