

**IN THE MATTER OF THE  
NATURAL PRODUCTS MARKETING (BC) ACT**

**AND IN THE MATTER OF  
A PRIOR APPROVAL APPLICATION  
CONCERNING A RECOMMENDATION MADE BY THE BRITISH COLUMBIA  
VEGETABLE MARKETING COMMISSION ON JANUARY 12, 2022  
THAT MPL BRITISH COLUMBIA DISTRIBUTORS INC.  
BE GRANTED AN AGENCY DESIGNATION**

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**CLOSING SUBMISSION OF THE  
BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION**

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**INDEX**

**PART I - THE COMMISSION'S DECISION ..... 1**

**PART II - PROCEDURAL FAIRNESS ..... 5**

**PART III - POSITION ON THE OUTCOME OF THE BCFIRB'S *DE NOVO* REVIEW .... 6**

**PART IV - MPL REPORTING REQUIREMENTS ..... 7**

## **PART I - THE COMMISSION'S DECISION**

1. On January 12, 2021, the Commission issued its decision on MPL's application for an agency licence. In that decision, the Commission:

(a) described the chronology of proceedings before it (par. 3 -15) and noted that it received (par. 11) and carefully considered (par. 23) MPL's application as well as the written submissions from industry stakeholders;

(b) observed that "the decision to grant or refuse agency status is a matter of fundamental marketing policy" (par. 16);

(c) noted that:

... [there is a] natural tension that arises from having multiple agencies. On the one hand, multiple agencies may provide some resiliency and choice for producers. On the other hand, if these agencies are left to their own devices, they might erode producer returns by competing against each other on price in the same market space. (par. 17 – 20);

(d) expressed its view that:

...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. (par. 21);

(e) considered MPL's application in the context of Part XIV of the Commission's General Order (par. 22);

- (f) decided that MPL should be designated as an agency, subject to the approval of the BCFIRB (par. 30).

2. The Commission's reasoning is set out at paragraphs 23 to 29:

23. 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.

24. The panel is satisfied that MPL BC is a well-established, leading marketer, with direct access to significant customers. It has exclusive arrangements with some of the largest retailers and has penetrated markets throughout North America. The panel notes that existing agencies regularly sell product to Mastronardi, precisely because it has direct access to these markets.

25. MPL BC has essentially operated within BC as a licensed wholesaler acquiring product from existing agencies, and the panel is satisfied that it has conducted itself in that capacity in accordance with applicable regulatory requirements. If granted agency status, MPL BC has also expressed its willingness to appoint a person as a liaison to the Commission to facilitate its continued compliance with the regulatory system.

26. Stakeholder opposition to MPL BC's application was generally expressed on the basis that the grower community is currently being well served from within the status quo. Another theme that arises from the submissions made by stakeholders opposed to the application is that the grant of agency status to MPL BC will have a detrimental impact on existing BC agencies.

27. 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 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.

28. 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 applicant 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 Mastronardi, which can then market product to these key customers, this approach is likely to introduce unnecessary costs and inefficiencies that do not benefit producers.

29. 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. If the interests of producers can be better served through a new agency, with better and more direct access to key customers throughout North America, then the high threshold established under Part XIV of the General Order can be met, despite the disruption to existing agencies. In short, while it is generally undesirable to permit a proliferation of agencies that might simply compete against each other resulting in price erosion, the Commission must be alive to the possibility that a new agency can have better and more direct access to key markets than existing agencies.

3. The Commission's SAFETI analysis is set out at paragraph 30, as follows:

30. ...It is the panel's considered view that this decision reflects a principles-based approach to supervision and regulation. This principled approach has been defined by the BCFIRB as six principles collectively referred to as the "SAFETI" principles:

**Strategic:** The decision reflects the panel's identification of key opportunities as well as systemic challenges. While the panel recognizes that a decision to grant agency status to MPL BC is likely to cause disruption to existing agencies, it is also cognizant that its main obligation is to producers, rather than to the agencies themselves. The panel believes 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.

**Accountable:** The panel has maintaining legitimacy and integrity by discharging its responsibilities according to the detailed criteria for new agency applications published in Part XIV of the General Order.

**Fair:** The panel has ensured procedural fairness by providing industry stakeholders with a fulsome opportunity to express their positions with respect to MPL BC's application.

**Effective:** The high threshold for the grant of an agency designation, as well as the process by which such applications are to be made, are both clearly defined in Part XIV of the General Order. The Commission's expectations are therefore clearly defined for both the applicant and for industry stakeholders.

**Transparent:** The panel has taken all appropriate measures to ensure that processes, practices, procedures, and reporting on how the mandate is exercised are open, accessible and fully informed. Though some aspects of the application have been redacted to protect confidential or proprietary information, stakeholders have been provided with a fulsome opportunity to express their positions

**Inclusive:** The panel has taken all appropriate steps to ensure that appropriate interests are considered.

## **PART II - PROCEDURAL FAIRNESS**

4. In their written submissions dated April 6, 2023, Windset and GGFI (“W&G”) argued that “the Commission’s process leading to the Decision was procedurally unfair.”<sup>1</sup> The Commission relies on its response to that argument as set out in its Reply Submission dated April 14, 2023.
5. In the course of the hearing, Mr. Steve Newell asserted that: (1) the Commission members or staff should have “reached out” to stakeholders; (2) the Commission should have conducted an oral hearing; and (3) the Commission did not provide enough time for W&G to provide its position on MPL’s application in writing to the Commission.
6. These complaints do not withstand scrutiny:
  - (a) First, the Commission’s General Manager, Andre Solymosi, was directed by the BCFIRB not to participate in matters concerning MPL’s application (except in an administrative capacity), because he was then a defendant in a suit brought by MPL. In any event, having Commission members or staff “reach out” to stakeholders, in lieu of soliciting formal submissions, is an approach that would almost certainly give rise to chaos and real procedural unfairness. How would the results of such meetings be recorded, collated and circulated?
  - (b) Second, the detailed submissions that are now required in response to the criteria set out in Part XIV of the Commission’s General Order are best expressed in written submissions. Certainly, the Commission’s decision to provide industry stakeholders with an opportunity to express their views in

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<sup>1</sup> Submissions of Windset and GGFI dated April 6, 2023, par. 2

writing, rather than by way of oral submissions, does not amount to a procedural unfairness.

(c) Third, the Commission did provide W&G with sufficient time to express their opposition to MPL's application in writing. The Commission granted an extension sought by W&G, and their position was communicated without compromise in their written submissions to the Commission.

7. As noted at paragraphs 15 to 23 of the Commission's April 14, 2023 Reply Submission, the Commission concedes that its failure to provide W&G and other eligible participants with appropriately redacted versions of three records provided by MPL during its presentation to the Commission on October 8, 2021, as well as a redacted version of MPL's reply submission, could give rise to a procedural unfairness, or at least a procedural irregularity.
8. However, W&G have not articulated any prejudice arising from the Commission's failure to provide those records. Further, and in any event, the BCFIRB has clearly stated that this *de novo* review process will cure any procedural errors in the Commission's process.

### **PART III - POSITION ON THE OUTCOME OF THE BCFIRB'S *DE NOVO* REVIEW**

9. As noted in the Commission's opening statement, the Commission takes no position on the outcome of the BCFIRB's *de novo* review. The Commission's position is that which is set out in its written decision dated January 12, 2021.
10. The Commission's decision is already the subject of an appeal before the BCFIRB which is being held in abeyance pending the outcome of this *de novo* review. For that reason alone, it would work an unfairness to MPL, and to those who are opposed to MPL's licence application, if the Commission's position became a "moving target" in the context of the BCFIRB's *de novo* review.




11. Further, and in any event, a Commission position on an application for an agency licence is arrived at after careful deliberation and consideration by a quorum of Commission members. Consequently, it is not possible for the Commission to formulate positions with respect to any new evidence or arguments arising in this process, unless the matter is remitted back to the Commission for a proper reconsideration. That is the only way in which the institutional perspective of the Commission could be reformulated.

#### **PART IV - MPL REPORTING REQUIREMENTS**

12. On March 27, 2023, the BCFIRB requested that eligible participants respond to certain questions.
13. These questions were put to a quorum of Commission members, and the institutional position of the Commission was communicated by way of the Response of the Commission to BCFIRB Questions dated April 6, 2023.
14. In response to questions concerning possible MPL reporting requirements, the Commission expressed its position, based on the information then available to it, that:
  - (a) The remedial steps already taken by MPL are sufficient to address the concerns that arose as a result of MPL advancing very serious, and unfounded, allegations of wrongdoing; and
  - (b) MPL should be subject to the same reporting requirements that are applicable to all agencies.

ALL OF WHICH IS RESPECTFULLY SUBMITTED  
THIS 25<sup>th</sup> DAY OF MAY, 2023



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Counsel for the British Columbia Vegetable Marketing Commission