

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

CLOSING SUBMISSIONS OF MPL BRITISH COLUMBIA DISTRIBUTORS INC.

A. Introduction

1. Tasked with the prior approval of the British Columbia Vegetable Marketing Commission's (the "**Commission**") January 12, 2022 designation of MPL British Columbia Distributors Inc ("**MPL BC**") as an agency licensed to market regulated vegetables grown in British Columbia (the "**Decision**"), the BC Farm Industry Review Board (the "**BCFIRB**") heard evidence, over two full days, from representatives of the Commission, MPL BC, of Greenhouse Grown Foods Inc. ("**GGFI**") and Windset Farms (Canada) Ltd. ("**Windset**"), and on the third day Village Farms Canada L.P. ("**Village Farms**") about the merits of MPL BC's May 27, 2021 application for a Class 1 agency licence (the "**Agency Application**"), and its potential impacts on the regulated vegetable industry in British Columbia.
2. The evidence resoundingly showed that the designation of MPL BC as a licensed agency will not cause undue disruption to orderly marketing, and that it is instead in the public interest and consistent with sound marketing policy. Indeed, there was consensus among the witnesses that there is a clear growing demand and corresponding waning capacity in the Western United States for vegetable production that could be met by British Columbia production if it had the capacity, infrastructure and wherewithal to service that market growth. The evidence also showed that MPL BC's agency designation benefits the regulated vegetable industry in British Columbia as a whole, by offering new North American wide opportunities to growers that are not currently available to them.
3. Mastronardi Produce Limited ("**MPL**"), MPL BC's parent company, is an industry leader in North America in the greenhouse vegetable growing, marketing space.

MPL is a well established, innovative, leading marketer, and vertically integrated organization with direct access to significant customers and business relationships with the largest 25 retailers in North America. MPL has a track record of injecting growth and innovation into existing markets and opening up those markets to greater opportunities not just for itself, but the whole industry. Opportunities for producers working with MPL include access to new and large quantities of high demand proprietary varieties and unparalleled opportunities to provide their product to top retailers across North America.

4. The British Columbia market is primed for growth and opportunities. These include:
 - a. replacement of imports currently on store shelves;
 - b. growing demand but waning capacity in the Western United States, thus increasing the opportunity for exports to that market; and
 - c. opportunities for producers to expand their operations and increase efficiencies with a leading marketer's support.

5. MPL BC is particularly poised to help the British Columbia regulated vegetable industry seize on these opportunities. As we heard from Mr. Mastronardi, among other things, MPL:
 - a. is the largest greenhouse marketer and distributor in North America and has a network of distribution centres with over 1.3M square feet of cooled warehouse facilities spanning from West to East that allow it to fill orders within 12 hours across the USA and Canada;¹
 - b. is the only marketing and distribution company with national year-round programs with the top 25 retailers in North America for its entire suit of products—approximately 2,000 SKUs;

¹ Agency Application, Section 2.2.

- c. has exclusive rights to market award-winning and proprietary varieties not currently available in the British Columbia market;
 - d. has a market leading research and development centre, studying and trialing the newest vegetable varieties to enter the market;
 - e. offers incomparable support and assistance to its growers through its dedicated team of grower liaisons; and
 - f. utilizes MPL's proprietary Grower Supply Portal software and its grower supply network to enhance operations and implement best practices amongst MPL network producers.
6. BCFIRB heard from Mr. Newell, on behalf of GGFI and Windset, about their concerns with MPL BC's agency designation. The concerns Mr. Newell conveyed can be summarized as follows:
- a. the process followed by the Commission was procedurally unfair given:
 - i. they were not granted an opportunity to make oral submissions;
 - ii. an oral hearing before the Commission, at which Windset and other producers could participate, was not held; and
 - iii. they were not provided sufficient time to make written submissions;
 - b. MPL BC's agency designation is not consistent with sound marketing policy and SAFETI principles because:
 - i. they believe the market is adequately serviced by existing agencies;
 - ii. they believe potential growth identified by MPL is either overinflated or that it can be serviced by existing agencies;
 - iii. some producers and agencies have opposed MPL BC's application; and

iv. it will cause disruption to orderly marketing by causing unprecedented movement between agencies.

7. As we heard from Mr. Mastronardi, MPL—like other vegetable industry giants—is not perfect but possesses the respect for the industry to recognize and undertake productive and positive paths. The evidence clearly shows that MPL is a respected industry player that has repeatedly shown a commitment to regulatory compliance while building long-lasting and positive relationships in local markets that assist in growing them to their full potential, and that the British Columbia market will benefit from its entry.
8. For the reasons that follow, MPL BC submits that this Panel should confirm the Commission’s Decision and approve MPL BC’s Agency Application.

B. Terms of Reference and Focus for this Supervisory Review

9. The Final Terms of Reference for this supervisory review, dated March 8, 2023, (the “**Terms of Reference**”) ask this Panel is to consider two key questions:

- a. Did the Commission conduct a SAFETI based process?

MPL BC’s Answer: Yes

- b. Is the Commission’s Decision to designate MPL BC as an agency in the public interest and consistent with sound marketing policy?

MPL BC’s Answer: Yes

10. BCFIRB prior approval role is to consider these two questions, as well as address any procedural defects in the Commission’s process and assess whether the Commission’s rationale and recommendation for approval of MPL BC’s agency licence accords with sound marketing policy.²

² Terms of Reference at p. 2.

11. This process is not an adversarial review process of the Commission’s decision and is not intended to replicate or repeat the complete agency application process.³ This supervisory review is intended to focus on the Commission’s recommendation in granting MPL BC agency designation and whether the Decision aligns with sound marketing policy.

C. The Commission Conducted a Thorough SAFETI Based Process

12. It is readily apparent from the Decision and the evidence of Mr. Newell, Ms. Etsell, and Mr. Solymosi, that the Commission followed a SAFETI-based process, both in the process it undertook to review and assess the Agency Application, as well in reaching the Decision itself.
13. The six SAFETI principles, described by BCFIRB as a lens or filter to help decision makers apply a principles-based approach to supervision and regulation of the agri-food industry and to be viewed as guiding doctrine,⁴ are as follows:⁵

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.
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.

³ BCFIRB letter to participants, dated May 9, 2023.

⁴ BCFIRB Governance - Province of British Columbia, Book of Authorities of MPL British Columbia Distributors Inc. (“MPL Authorities”) at Tab 15.

⁵ BCFIRB Governance - Province of British Columbia, MPL Authorities at Tab 16.

14. As set out in further detail below, BCFIRB need not look any further than the Decision and the record of the Decision (that is, the Book of Documents relied on by the Commission in coming to the Decision) for clear evidence that the Commission has fully discharged its obligations as a first instance regulator in applying principles-based decision-making.

1. Strategic

15. MPL BC's Agency Application is premised on a strategic focus of:
- a. displacing existing imports in British Columbia through local production;
 - b. growing the amount of acreage under production by BC producers;
 - c. bringing exclusive varieties of regulated product to BC producers;
 - d. expanding access for BC producers to the US market; and
 - e. providing fixed rate contracts to BC producers to ensure stable, reliable pricing.⁶
16. It is this strategic focus that has guided MPL BC's Agency Application and its business plan for its proposed BC agency. The strategic focus of MPL BC's Agency Application represents key opportunities identified by MPL BC that it has highlighted to the Commission and BCFIRB through the agency application process.
17. In assessing MPL BC's agency designation application, the Commission balanced opportunities and challenges, and policy drivers. In particular, as part of this analysis, the Commission articulated that MPL 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.⁷ The Commission then determined after balancing opportunities and challenges, including those identified in the submissions from industry

⁶ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 75 at Lines 10-15; and Agency Application, Section 6.11, Page 38-39.

⁷ BCVMC Agency Decision at paras. 24.

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.⁸

18. These conclusions reflect a strategic review by the Commission panel, where the opportunities for producers are considered alongside the potential issues of permitting a new designated agency.⁹ On a plain reading of the Decision, it is abundantly clear that the Commission satisfied the strategic principle with a thorough consideration of both opportunities and risks presented by MPL BC's Agency Application.

2. Accountable

19. The Commission is a producer board, in that a majority of the board are producers elected to the board by other producers.¹⁰
20. It is vested with the power to promote, regulate and control in all respects the production, transportation, packing, storage and marketing of regulated vegetables grown in British Columbia, which includes the important task of designating agencies through which regulated vegetables must be marketed.¹¹
21. The accountability principle thus requires the Commission to maintain legitimacy and integrity in discharging its responsibilities, by framing its actions and Decisions within the *Natural Products Marketing (BC) Act* and the *British Columbia Vegetable Scheme* (the "**Regulation**").
22. In the Decision's opening, the Commission sets out the general regulatory scheme within which the agency system functions, including the delegation of authority

⁸ BCVMC Agency Decision at paras. 24-29.

⁹ BCVMC Agency Decision at paras. 23-29.

¹⁰ *British Columbia Vegetable Scheme*, BC Reg 96/80, s. 3(2) [Regulation].

¹¹ *Regulation*, supra, ss. 1 and 4(1).

under the *Natural Products Marketing (BC) Act* to the Commission and the powers of the Commission to ensure orderly marketing in BC.¹²

23. The Commission goes on to assess MPL BC's Agency Application as against objective and measurable criteria published in Part XIV of the General Order (promulgated by the Commission under the *Regulation*). 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 MPL BC's responsive submissions to same, and conducted deliberations during three days.¹³
24. The Commission very clearly followed its policies and procedures for designation of an agency, including by recognizing its accountabilities to all stakeholders within the regulated vegetable industry.

3. Fair

25. Throughout the process and assessment of MPL BC's Agency Application, the Commission has been guided by policies and procedures which reflect the obligations of the SAFETI fairness principle.
26. The process provided a fair opportunity to all industry stakeholder for participation and to be heard: on October 13, 2021, industry stakeholders (namely, licensed producers, wholesalers, agencies and any other stakeholder of regulated vegetables) were invited to provide written submissions regarding MPL's Agency Application, which were then to be considered by the Commission ("**Consultation Letter**").¹⁴ In its call for written submissions, the Commission set out the circumstances of MPL BC's Agency Application, the importance of the agency designation process, information about the Commission's consultation process

¹² BCVMC Agency Decision at para. 30.

¹³ BCVMC Agency Decision at paras. 7-9, 11 and 15.

¹⁴ Consultation Letter at BCVMC-239 to BCVMC-242.

and the evaluation criteria under Section 2(6) of Part XIV – Designated Agencies of the Commission’s General Order.

27. GGFI and Windset complain that they were not provided a fair opportunity to respond to the call for feedback, because they were not granted enough time to do so. Industry stakeholders were initially afforded 8 days to respond to the Consultation Letter (responses were to be filed by October 22). However, Mr. Newell admits that industry stakeholders were granted an extension for responding beyond the extension that was requested by GGFI and Windset.¹⁵
28. Further, GGFI and Windset provided 10 pages of submissions—which Mr. Newell indicate was done with the support of legal counsel—responsive to each of the agency application requirements set out in Part XIV, section 2(6) of the General Order.¹⁶
29. The consultation process represented an equitable opportunity for all industry stakeholders to participate and be heard, in line with the requirements under the fairness assessment of the SAFETI principles, and more importantly, industry stakeholders did in fact meaningfully participate.

4. Effective

30. As noted by BCFIRB’s guidance, an effective decision is guided by both the correct strategic outcome along with the correct process in coming to that decision.
31. The Decision and process leading up to it followed both the process outlined at Part XIV – Designated Agencies of the Commission’s General Order and the SAFETI guidance of BCFIRB.

¹⁵ Draft Transcript, May 24, 2023, Cross of S. Newell at p. 83.

¹⁶ Draft Transcript, May 24, 2023, Cross of S. Newell at p. 77-85.

32. In its Decision, the Commission panel set out the intended outcomes under the new agency application provision, Amending Order #54, and the reasoning for the changes to the agency review process.¹⁷
33. The Commission panel clearly understood the requirements to be satisfied on an application for new agency status under Part XIV of the Commission's General Order and the "high threshold" for obtaining agency status.¹⁸
34. In the practice of applying this process to the Agency Application, the Commission considered the various outcomes in coming to an effective decision. This included concerns from industry stakeholders regarding disruption with existing agencies, which was balanced with the Commission's obligations being firstly, to producers.¹⁹
35. The panel also considered strategic outcomes, such as the inefficiencies that would result from existing agencies selling to MPL BC, resulting in unnecessary costs and inefficiencies that did not benefit producers.²⁰
36. In considering the overall strategic outcomes in coming to its decision, the Commission concluded that ultimately, producers would benefit from an agency with "better and more direct access to key retailers throughout North America" that did not justify the preservation of the status quo.²¹ An agency with "better and more direct access to key customers throughout North America" would be sufficient to meet the high threshold for agency designation, despite any disruption.²²
37. Based on the above, it is clear that the Commission was able to effectively manage both its' clearly defined process for agency designation, and ensuring that strategic outcomes were met.

¹⁷ BCVMC Agency Decision at para. 3.

¹⁸ BCVMC Agency Decision at paras. 22 and 28-29.

¹⁹ BCVMC Agency Decision at para. 28.

²⁰ BCVMC Agency Decision at para. 28.

²¹ BCVMC Agency Decision at paras. 24-29.

²² BCVMC Agency Decision at paras. 29.

5. Transparent

38. Throughout the Commission's process, it maintained transparency for both MPL BC and various industry stakeholders, including Windset and GGFI among others.
39. In providing transparency to all industry stakeholders, the Commission provided a detailed overview of the process to date in its Consultation Letter.²³ This included a summary of the regulatory scheme under the *Natural Products Marketing (BC) Act*, a timeline of MPL BC's application process to date, information on the Commission panel, and a summary of the industry stakeholder consultation process.²⁴
40. In addition to these summaries, the Commission fully set out the evaluation criteria from Subsection 2(6) of Part XIV of the General Order in the Consultation Letter, allowing industry stakeholders to review the specific considerations that MPL BC was required to satisfy before an agency licence would be granted.²⁵
41. In coming to its final Decision, the Commission provided a fulsome summary of the process for its consideration of the Agency Application, from receipt of the written application, to the process of review and oral submissions, to industry stakeholder feedback, and finally the deliberations of the panel.²⁶ Throughout this process, the Commission has provided transparent updates, through the Consultation Letter and later, the Decision.
42. Within the Decision itself, the Commission provided a transparent overview of the processes, practices and procedures for agency designation, including
 - a. A general overview of the regulatory scheme within which the Commission operates (Decision at page 1, para 2);

²³ Consultation Letter of BCVMC at BCVMC-239.

²⁴ Consultation Letter of BCVMC at BCVMC-239.

²⁵ Consultation Letter of BCVMC at BCVMC-241.

²⁶ BCVMC Agency Decision at paras. 4-15.

- b. An overview of the changes to the agency review process, including the decision to implement Amending Order #54 (Decision at page 2, para 3);
 - c. Summaries of previous BCFIRB guidance and court decisions on agency issues including the January 31, 2017 Supervisory Decision and decision of Justice Drost in *Global Greenhouse Produce Inc. et al. v. BCMB et al.*, 2003 BCSC 1508 (Decision at pages 3-5, paras 17-20);
 - d. A complete reproduction of the requirements for an agency application under Subsection 2(4) of Part XIV of the General Order (Decision at pages 6-7, para 22);
 - e. A complete reproduction of the required criteria for granting of agency status under Subsection 2(6) of Part XIV of the General Order (Decision at pages 7-8, para 22); and
 - f. An overview of the Commission's application of the SAFETI principles for the Decision (Decision at page 10, para 30).²⁷
43. In addition to transparency in process, procedures and evaluation criteria, the Commission provided transparency in its reasoning for the decision, utilizing an accessible and fully informed approach. The Commission set out its reasoning for the Decision in plain language, noting that MPL is a "well-established, leading marketer, with direct access to significant customers" with "exclusive arrangements with some of the largest retailers" and who has "penetrated markets throughout North America."²⁸
44. The Commission went on to clearly and coherently explain the reasoning for its determination in plain and accessible language, including the finding that:

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

²⁷ BCVMC Agency Decision.

²⁸ BCVMC Agency Decision at para. 24.

penetration opportunities available through this applicant that are not present with existing agencies.²⁹

45. Windset and GGFI take issue with the transparency of the process, given:
 - a. the Commission's circulation of a redacted version of MPL's application to industry stakeholders; and
 - b. the Commission's failure to circulate MPL BC's reply to industry stakeholder feedback.

46. On the redacted application, it is unreasonable for GGFI and Windset to expect otherwise. The provision of a redacted version of the Agency Application is consistent with guidance from BCFIRB in balancing sensitivity of interests, while taking into account the best way to obtain input for consideration.³⁰ This ensured appropriate participation from industry stakeholders, while balancing more sensitive interests such as propriety business information. MPL has commercial interests to protect and the licence application process is designed so as not to compromise those interests. In any event, this issue is moot given BCFIRB's ruling on the non-disclosure orders granted in these proceedings.³¹

47. On MPL BC's reply to industry stakeholder feedback not being provided to industry stakeholders, because the process set out in Part XIV does not contemplate any right of sur-reply, this is nothing more than a procedural irregularity incapable of causing prejudice to any interest which those stakeholders may assert. Nothing in Part XIV requires the Commission to afford a specific level of consultation to industry stakeholders, or obligate the Commission to seek input on an applicant's response to industry feedback. In any event, industry stakeholders have now had ample time to review and make submissions with respect to MPL BC's reply to

²⁹ BCVMC Agency Decision at para. 28.

³⁰ BCFIRB Governance - Province of British Columbia, MPL Authorities at Tab 16.

³¹ April 6, 2023, BCFIRB Decision re BCVMC & MPL BC Non-Disclosure Order Application.

industry stakeholder feedback, so the procedural irregularity has thus been rectified.

48. Finally, the Commission panel acknowledged that it had considered the submissions of MPL BC and the industry stakeholders, while not needing to refer to points raised in the application or those submissions.³²
49. Throughout the agency application process, the Commission has applied the approach articulated by BCFIRB of a transparent approach to processes, procedures and reporting. This is evident based on the written Decision, evidence on processes through this supervisory review and in contemporaneous documentation during the review process, such as the Consultation Letter.

6. Inclusive

50. The process of MPL BC's agency approval represents a wholly inclusive approach by the Commission, which considered the interests of all relevant stakeholders. As noted in the Consultation Letter, the consultation process was open to "licensed producers, wholesalers, agencies and any other stakeholder of regulated vegetables."³³ This broad spectrum of parties represented the variety of interests included in the regulated vegetable section.
51. Industry stakeholders were permitted to provide submissions through a written process and could request a redacted version of MPL BC's application.³⁴
52. MPL BC was also given an opportunity to respond to the feedback of the industry stakeholders.³⁵
53. In considering the inclusion of interests beyond those directly involved in the regulated vegetable sector, the Commission acknowledged the importance of orderly marketing whereby a new agency will not "result in price erosion, lead to

³² BCVMC Agency Decision at paras. 12-13.

³³ Consultation Letter of BCVMC at BCVMC-241.

³⁴ BCVMC Agency Decision at para. 8.

³⁵ BCVMC Agency Decision at paras. 12-13.

market confusion or otherwise undermine orderly marketing.”³⁶ The provision of orderly marketing takes into account all interests, including those of the general public. As noted by the Commission on its website, the purpose for orderly marketing of regulated vegetables includes providing a “framework for producer economic stability and to satisfy other related public interests” and is “intended to benefit producers, the sector’s value chain, and the public.”³⁷

54. In coming to the Decision, it is clear that the Commission considered all relevant interests in its’ inclusive approach including all industry stakeholders and the general public.
55. In sum, 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, which is plain and obvious both on a reading of the Decision itself, and considering the context as set out in the record of the Decision.

D. There are No Procedural Defects in the Commission’s Process

56. It remains MPL BC’s position that the process employed by the Commission was procedural fair, that the Commission properly considered MPL BC’s application, provided a fair opportunity for industry feedback and properly considered the feedback received, and that the Commission provided sufficient reasons. However, in the alternative, if there was a defect in the Commission’s process, it is still open to BCFIRB to consider and approve MPL BC’s application, because it made no impact on the Commission’s decision or any such concern has been rectified by the proceeding before BCFIRB.
57. Terms of Reference for this supervisory review recognize that part of BCFIRB’s role is to “address any procedural defects in the Commission’s process if necessary” and that “BCFIRB needs to reach its own conclusion as to whether the

³⁶ BCVMC Agency Decision at paras. 21.

³⁷ See <https://www.bcveg.com/>.

approval of MPL BC's agency licence is beneficial to the regulated vegetable industry in BC." As a result, BCFIRB can approve MPL BC's agency licence application based on its own analysis and assessment even if BCFIRB finds that there was a defect in the Commission's process or analysis.

58. The court has recognized that in appropriate circumstances a reviewing body can rectify or cure a defect in an underlying decision, including a breach of natural justice or a procedural unfairness.³⁸
59. All of the procedural fairness issues identified by GGFI and Windset have been addressed by BCFIRB on this supervisory review (if BCFIRB indeed found that any of the alleged defects exist). GGFI and Windset have now had an opportunity to tender evidence (indeed, they called Mr. Newell to provide evidence on behalf of both entities), cross examine witnesses (they cross examined Mr. Mastronardi and both of the Commission's representatives; Mr. Solymosi and Mrs. Etsell), and make substantial oral and written submissions regarding MPL BC's Agency Application generally (in addition to written submissions regarding the redactions made to MPL BC's application specifically), with the benefit of copies of the additional materials provided by MPL BC to the Commission.
60. In the circumstances, even if BCFIRB finds that there was a defect in the Commission's consideration of MPL BC's agency application, it should find that it made no impact on the Commission's decision or, in the alternative, that the defect has been remedied through this supervisory review process such that BCFIRB can and should approve MPL BC's agency licence application.

E. MPL BC's Agency Designation Accords with Sound Marketing Policy

61. The Commission is an experienced and specialized board made up of industry members. The Commission's "main policy objective [is] maximizing producer

³⁸ See MPL Authorities, at Tabs 7-9: *Taiga Works Wilderness Equipment Ltd. v. British Columbia (Director of Employment Standards)*, 2010 BCCA 97 at paras. 11 and 37-39; *Nasser v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 378 at para. 81; and *Veillette v. International Association of Machinists and Aerospace Workers*, 2011 FCA 32 at paras. 15-17.

returns through centralized, coordinated marketing of regulated product.” The Commission is responsible for ensuring that the market grows in an orderly fashion and that the granting of new agency licences accords with sound marketing policy. Here, the Commission carefully reviewed MPL BC’s Agency Application, balanced the advantages and risk associated with it, and correctly determined that granting MPL BC an agency licence was in the public interest and accords with sound marketing policy.

62. MPL BC’s Agency Application clearly demonstrates how it intends to bring healthy growth to the BC regulated vegetable market by, among other things, focusing on displacing imports into BC, and that it services the top 25 retailers and food service providers in North America and can bring pricing security and access to secure year-round sales to BC producers. It is readily apparent from the evidence that MPL BC would be a valuable addition to BC’s greenhouse agencies. MPL BC’s Agency Application meets all the requirements for the issuance of an agency licence, and the approval of its application would be in the public interest and consistent with sound marketing policy.

1. MPL BC’s Agency Application Satisfies all of the General Order Requirements

63. MPL BC’s agency application meets all of the criteria set out in the Consolidated General Orders of the Commission (the “**General Order**”). Part XIV, Section 2(6) of the General Order sets out the following criteria for agency applications:
 - a. there is a market requirement for the proposed agency, and the designation of that agency would benefit the industry as a whole having regard to the interests of all producers, including those marketing through other agencies;
 - b. it would not be in the interests of the industry for the proposed regulated product to be marketed by an existing agency;

- c. the presence of the proposed agency will not be disruptive to orderly marketing and will not result in increased competition among agencies on price, which may have a detrimental effect on producer returns;
 - d. the proposed agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission orders and the enabling legislation and regulations;
 - e. there is evidence-based demand for the specific product(s), grouped by end use customer, that are to be marketed by the proposed agency, which demand is not already satisfied by existing agencies;
 - f. there is evidence-based support from multiple licensed commercial producers, who are at arms-length from each other, and who intend to market regulated product through the proposed agency;
 - g. the primary responsibility for marketing regulated product will rest with the proposed agency, rather than wholesalers who may market regulated product on behalf of the proposed agency;
 - h. the proposed agency will comply with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the province;
 - i. the proposed agency will not have a detrimental effect on the delivery allocation and production allocation of existing producers not represented by the proposed agency; and
 - j. the proposed agency has the knowledge, capacity and ability to operate effectively as an agency.
64. After carefully reviewing MPL BC's agency application, including its response to industry feedback, as well as the feedback provided by industry participants (including Windset, GGFI and Village Farms), the Commission found that "[o]n balance, the panel is satisfied that MPL BC's application satisfies the requirements

set out in Part XIV of the General Order.”³⁹ Ms. Estell, the Chair of the Commission Panel that considered MPL BC’s application, further confirmed in her testimony that the Panel found that MPL BC’s application met all the criteria set out in Part XIV of the General Order.⁴⁰

65. As set out in more detail below and in the attached Schedule A, when MPL BC’s agency application is reviewed in its entirety, it is readily apparent that it meets all of the General Order criteria. The below and Schedule A are not intended to be a comprehensive list of how MPL BC’s detailed Agency Application and Mr. Mastronardi’s testimony demonstrate that MPL BC’s Agency Application satisfies the General Order criteria, but rather serve to highlight how the Agency Application meets the criteria.

a) There is a Market Requirement for MPL BC and its Designation as an Agency would benefit the Industry as a Whole

66. In MPL BC’s Agency Application it has clearly established that there is a market requirement for MPL BC and that its designation as an agency would benefit the industry as a whole. MPL BC’s strategic focus throughout this process has been the displacement of imported produce with BC grown regulated product and increased access for BC producers to the US market. As described by Paul Mastronardi in his direct evidence:

...so our strategy coming in is to first make sure that we displace imports whether possible coming into BC, whether that’s from Ontario or elsewhere. And then allow BC to expand and service the ever-growing US market.⁴¹

67. MPL BC’s Agency Application directly addresses the US market opportunities by outlining the declining share of BC greenhouse vegetable exports to the US market. Between 2015 and 2019 (and while Ontario was experiencing growth) BC

³⁹ BCVMC Agency Decision at para. 28.

⁴⁰ Draft Transcript, May 24, 2023, Cross of D. Estell at p. 15.

⁴¹ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 72.

exports declined 5% overall with a 7% decrease in exported tomatoes to the United States.⁴²

68. During this same period of declining exports from BC, the US market has experienced substantial growth, increasing 17% in volume and 27% in value during the period of 2015 to 2019.⁴³ As noted in MPL BC's Agency Application, since 2015 the import market for greenhouse vegetables into the United States has grown by 627 million pounds, with only 111 million pounds of that increase coming from Canada.⁴⁴
69. When compared to existing BC agencies, MPL BC is uniquely positioned to increase penetration into the United States markets as an established brand, with an in-demand suite of products and has continued to increase its tonnage shipped to the US from 2013 to 2019.⁴⁵ This growth represents a significant market opportunity which MPL BC is best positioned to exploit, when compared to existing BC agencies.
70. When examining the BC industry's growth from 2008 to 2018, Ontario accounted for 80% of growth whereas BC only accounted for 6%, despite representing 18% of the total harvest area for greenhouse produce in Canada.⁴⁶ Current BC agencies are not generating the same level of growth as producers are experiencing Ontario.
71. From 2014 to 2018, Ontario saw increases of 26% in harvested metres grown and a 41% increase in greenhouse exports with BC only generating a 3% growth in harvested metres grown and a 3% increase in exports.⁴⁷

⁴² Agency Application, Section 5.8 at p. 22.

⁴³ Agency Application, Section 5.3 at p. 17.

⁴⁴ Agency Application, Section 5.3 at pp. 17-18.

⁴⁵ Agency Application, Figure 5.12-B at p. 30.

⁴⁶ Agency Application, Section 5.9 and Figure 5.9A at pp. 22-23.

⁴⁷ Agency Application, Figure 5.9-C at p. 24.

72. This increased demand for the US market and lack of growth experienced by BC producers, highlights the significant market opportunities available based on MPL BC's strategic focus for its agency.
73. The market penetration opportunities available through MPL BC that are not present with existing BC agencies was recognized by the Commission and was one of the reasons it cited in support of approving MPL BC's Agency Application.
74. In addition, MPL BC offers producers a wide variety of proprietary products. Over one third of MPL BC's suite of products are proprietary and therefore not able to be offered by existing BC agencies.⁴⁸ One example is MPL's flavor bomb variety, which has been completely sold out since MPL started this program.⁴⁹
75. Growth in the BC industry would be beneficial to the industry in general, including producers who do not work with MPL BC and other agencies. As Mr. Mastronardi stated in his evidence:

I believe that all rising tides help all producers. We've seen that in Ontario. Ontario is continuously growing and keeps on expanding year after year. So I believe the same thing is going to happen in British Columbia.

...

I think there's a benefit to agencies too, because I can use an example in Ontario, you know, some agencies sell lower than other agencies do. And I think from what we're told, at least from the retailers we deal with. They tell us that Mastronardi is highest if not highest price in the marketplace. So I think that our price points are higher, and a lot of our competitors try to shoot under that price point. And if Mastronardi was growing and shipping out of British Columbia, that adds a higher price point going to the retailers and brings the entire market up.⁵⁰

76. MPL also has a proven track record of working with and supporting the growers it works with, including by assisting them with growing their businesses and

⁴⁸ Agency Application, Section 5.10 and Section 6.1.14.

⁴⁹ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 61.

⁵⁰ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 61.

production specifications and quality.⁵¹ MPL itself is a producer⁵² and understands the challenges that producers face.

77. MPL currently represents over 5,000 acres of greenhouses⁵³ and has over 150 external producers that it partners with to produce its Sunset® branded proprietary varieties.⁵⁴ Some of MPL's current grower relationships are decades long.⁵⁵
78. MPL BC had numerous letters of support from MPL growers in Ontario attesting to the positive relationship MPL has with its growers.⁵⁶ Mr. Mastronardi confirmed in his evidence that MPL has very low grower turn over rate. He estimated that in the last 30 years MPL's grower turn over has been less than 10 percent. He also confirmed that there have been times when a grower who left their agency ended up returning to MPL.⁵⁷ It is important to note that this low grower turn over is in Ontario where growers can more easily move between marketers or agencies.⁵⁸
79. Further, MPL BC would be a valuable addition to the BC industry in general. The Ontario Greenhouse Vegetable Growers (the "**OGVG**"), the party responsible for licensing and certain regulatory oversight of growers, packers and marketers in Ontario, also provided a letter of support for MPL BC's agency application in which the OGVG stated, in part:

Mastronardi Produce has been one of the leaders in our sector in all segments of the greenhouse vegetable category. Mastronardi has been an innovator throughout the produce value chain, building brands around new categories and varieties.

Mastronardi Produce has not only been a successful grower/marketer, but several of their representatives have served on our OGVG board contributing to the overall welfare of the Ontario sector. ...

⁵¹ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at pp. 46 and 54.

⁵² Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 51.

⁵³ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 46.

⁵⁴ Agency Application at p. 15.

⁵⁵ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 46.

⁵⁶ Agency Application at Schedule 3.5.

⁵⁷ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 53.

⁵⁸ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 53.

....

Mastronardi Produce has also played a leadership role and steadfast commitment to sustainability and environmental stewardship.⁵⁹

80. MPL BC's agency application and response to industry feedback clearly demonstrate the market requirement for MPL BC and that its designation as an agency would benefit the industry as a whole.

b) It would not be in the Interests of Industry for the Proposed Regulated Product to be Marketed through an Existing Agency

81. Further, it would not be in the interests of the industry for the proposed regulated product to be marketed through an existing agency. As noted in MPL BC's response to industry feedback, MPL BC would fill a market need that is not currently being filled by existing agencies through the export market and import replacement.⁶⁰
82. MPL BC is uniquely positioned to provide BC producers with meaningful access to national retailers in the US market to assist with growing this export market. This is in contrast to the trend of a declining share of BC imports in the US market, under the current agencies. MPL BC will provide US market access to BC producers that current agencies are not able to provide.⁶¹
83. The Commission's current licenced agencies have not demonstrated the capacity to bring to market for producers what MPL BC has proposed including access to US market, growth consistent with Ontario industry and a focus on greenhouse (not cannabis) production.⁶²

⁵⁹ Agency Application at Schedule 1.1.

⁶⁰ MPL BC's Response Submissions to Industry Participant's Submissions at p. 11 ("MPL BC Response Letter").

⁶¹ Agency Application, Section 5.10 at pp. 25 and 30.

⁶² MPL BC Response Letter at p. 11.

84. There is relative stagnation of BC greenhouse sector that MPL BC intends to address with its proposed agency.⁶³ Current agencies are not generating the same level of growth for producers as trends in Ontario.⁶⁴
85. Even through the stakeholder feedback process, the current licenced agencies of the Commission were unable to demonstrate how they could service the emerging markets and producer growth proposed by MPL BC. In fact, Mr. Newell testified that GGFI (BC's biggest agency) does not have national annual customer contracts throughout the US or Canadian markets.⁶⁵
86. In addition to growth and market access opportunities, some varieties of product are proprietary to MPL and therefore not able to be offered by existing BC agencies.⁶⁶ These proprietary varieties command higher prices from MPL's customers and in turn benefit producers from better returns.⁶⁷
87. In light of the above, it is MPL BC's submissions that the interests of the industry would be best served by MPL BC marketing the proposed regulated product.

c) MPL BC would Not be Disruptive to Orderly Marketing or Result in Increased Competition among Agencies

88. MPL BC's focus is not on poaching the business of existing agencies but rather serving its current customer base, replacing imported product with BC production and expanding BC's footprint in the US market. This strategic focus is set out in the Agency Application, where MPL BC stated:

As a result of Mastronardi Produce's growth, exceptional customer and retailer demand for our best-in-class products and ability to service and provide a surety of year-round supply, MPL BC is keenly positioned to uncap the significantly underutilized BC Producer network to fulfill increasing market demand. MPL BC is strongly positioned to immediately

⁶³ Agency Application, Section 5.9 at p. 22.

⁶⁴ Agency Application, Figures 5.9-C and 5.9-D at p. 24.

⁶⁵ Draft Transcript, May 24, 2023, Cross of S. Newell at pp. 86-87.

⁶⁶ Agency Application, Section 5.10 at p. 25 and Section 6.1.14 at p. 41.

⁶⁷ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 60 at Lines 13-17.

create mutually beneficial relationships with third-party Producers in BC to service these undersupplied markets and enhance exports.⁶⁸

89. MPL's intention is for its BC agency to target the US market, currently underserved by the existing BC agencies.⁶⁹ By targeting replacement of existing imports in BC and providing export opportunities to BC producers – there will be minimal disruption to existing agencies.⁷⁰
90. The evidence demonstrates that the current BC agencies often have surplus product that they cannot sell on their own. Mr. Newell acknowledged in his evidence that GGFI “clean[s] up a lot of some of the other agencies's [sic] production when they are long on product”. Further, while MPL and GGFI both buy produce from each other, it was clear from Mr. Mastronardi's evidence that MPL buys a larger amount from GGFI – again indicating that there is surplus product in BC that MPL can assist with marketing without causing any disruption in the market.
91. MPL is also dedicated to working with other agencies for the good of the industry as a whole. In its agency application it expressly stated that:

MPL BC believes that BC vegetable marketing agencies should work cooperatively for the good of the industry and MPL BC's entry is not a threat to other agencies. In fact, Mastronardi Produce currently and for many years purchases Regulated Product from BC agencies. Often, we work collaboratively with BC marketers to service growing demand of large national retailers. We will leverage these existing BC and national retailer relationships in furtherance of a BC grown product priority to supplant imports and fulfill the significant additional market demand we have identified in this business plan. The result will be to foster additional synergies, innovation and opportunities among the agencies, Producers, suppliers, and the entire BC industry as a whole.⁷¹

⁶⁸ Agency Application, Section 3.1 at p. 15.

⁶⁹ Agency Application, Section 5.1 at p. 17.

⁷⁰ Agency Application, Section 5.12.12 at p. 28.

⁷¹ Agency Application at p. 26.

92. MPL has a track record of co-operating and working with other agencies. For example, they regularly buy and sell produce to other agencies; they even voluntarily offered assistance to one of their direct competitors in Ontario when their competitor's warehouse was closed due to Covid-19;⁷² and they supported GGFI's application when they were seeking an agency application in BC.
93. Prior to MPL BC submitting its agency application, it wrote to all the agencies in BC to solicit feedback from them regarding how the current BC agencies foster collaboration and information on industry issues in BC. MPL BC further proposed regular meetings between the agencies in anticipation of a cooperative dialogue among the agencies.⁷³ While most of the current BC agencies either failed to respond to MPL BC's offer or indicated that they were not willing to engage in cooperative discussions with MPL BC,⁷⁴ MPL BC is still committed to working cooperatively with the other agencies.
2. In addition, MPL BC's agency application has received the support of a current agency – Country Fresh Produce Inc.⁷⁵ Country Fresh Produce Inc. provided a letter of support for MPL BC's agency application and has encouraged MPL BC in its application.⁷⁶
94. While Windset and GGFI have tried to suggest that MPL is litigious and could, as a result, disrupt the industry, Mr. Newell acknowledged that Windset/GGFI have also been involved in litigation and that legal disputes can be part of doing business for large companies.⁷⁷ Further, with respect to the newspaper reports of litigation that Mr. Newell referenced in his testimony, it is noteworthy that Windset's counsel did not put those reports to Mr. Mastronardi to give him an opportunity to respond

⁷² Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 49.

⁷³ Agency Application at pp. 26-27.

⁷⁴ Agency Application at p. 27.

⁷⁵ Agency Application at Schedule 5.12.2.

⁷⁶ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at pp. 68-69.

⁷⁷ Draft Transcript, May 24, 2023, Cross of S. Newell at pp. 92-93.

to the reports and provide context to the reported litigation. The media reports themselves are inadmissible hearsay.

95. The concern that MPL BC being granted an agency licence may cause disruption to agencies through producer movement is also without foundation. As Mr. Newell himself acknowledged, it is a good thing for growers to have choice and some movement of growers between agencies in a healthy for the industry.⁷⁸ Mr. Newell also provided evidence of growth plans by Windset and other growers, indicating that there will still be plenty of production for agencies even with some movement.⁷⁹ There is nothing to suggest that MPL BC being granted an agency licence would result in significant movement of growers between agencies and any concerns in that respect are purely speculative. Moreover, the Commission was clearly alive to the possibility that there could be some disruption for agencies caused by grower movement, but did not think that negated the benefits that MPL BC could bring to growers as an agency.⁸⁰
96. As an agency licenced by the Commission, MPL BC will seek to work cooperatively with other agencies for the betterment of the whole industry and its inclusion as a BC agency would not be disruptive to orderly marketing.

**d) MPL BC Understands the Regulatory System and Has
Expressed its Intention to Follow Commission Orders and
Applicable Legislation**

97. In MPL BC's agency application, and again in Mr. Mastronardi's testimony, MPL BC has expressed its commitment to following Commission orders and the applicable legislation and regulations.⁸¹ Mr. Mastronardi also provided evidence demonstrating that MPL BC understands and is aware of the responsibilities placed on agencies in BC.

⁷⁸ Draft Transcript, May 24, 2023, Direct of S. Newell at p. 39.

⁷⁹ Draft Transcript, May 24, 2023, Direct of S. Newell at pp. 40-41 and 47.

⁸⁰ Decision at para. 27.

⁸¹ Agency Application at p. 8.

98. Since the Spring of 2021, MPL BC had held a Class 1 Wholesale Licence and has operated as a wholesaler in the BC industry. MPL BC has had no compliance issues since commencing operations in the BC regulated greenhouse space and there is nothing to indicate that MPL BC does not understand the regulated environment in which it is operating. In coming to the Decision, the Commission Panel noted that it was satisfied that MPL BC had conducted itself in accordance with the applicable regulatory requirements for wholesalers.⁸² MPL BC's Wholesale Licence was approved once again for renewal on March 2, 2023 with an expiry of March 1, 2024.
99. Further, to ensure compliance with the regulatory system as an agency, MPL BC would appoint an internal Commission Liaison with knowledge and understanding of the regulatory requirements and limitations imposed on agencies under the General Orders.⁸³ MPL also currently has a cross-functional internal team dedicated to the BC entities that meets regularly and includes representation from Sales, Marketing, Finance, Operations, Procurement, Growing and Legal.⁸⁴

e) There is Evidence Based Demand for MPL BC's Products

100. There is an evidence based demand for MPL BC's products. Firstly, MPL has provided evidence of demand for its proprietary Sunset® branded products. For example, in MPL BC's response letter to the industry stakeholder feedback, MPL BC highlighted this demand stating:

Retail consumption of Sunset® branded tomatoes, peppers and cucumbers has consistently outpaced the market, with a +15% compound annual growth rate since 2014 vs. commodity growth of 1 to 3%. Currently, MPL is experiencing growth of 15-20% increases in sales in each fiscal year.⁸⁵

⁸² BCVMC Agency Decision at para. 25.

⁸³ Agency Application, Section 1 at pp. 8-9.

⁸⁴ Agency Application, Section 1 at p. 9.

⁸⁵ MPL BC Response Letter, p. 18.

101. Creekside Hothouse Ltd. and Fresh4U Farms Ltd., BC growers, have both expressed their interest in having the opportunity to grow MPL's proprietary varieties.⁸⁶
102. MPL will also be able to provide producers with access to top retailers to sell MPL BC's proprietary varieties.⁸⁷ As Mr. Mastronardi stated in his direct evidence, only MPL deals with the top 25 retailers in North America as a one stop shop for their customers.⁸⁸
103. In addition, MPL currently has supply contacts with customers operating in the BC market. If MPL BC were granted an agency licence, MPL BC would be able to have a direct marketing relationship with growers, which it could use to service MPL's BC customer contracts with more BC grown product.⁸⁹
104. Further, as discussed above, there is significant growth in the US market which Canadian producers are primed to capitalize on. The market has grown almost 17% in volume and 27% in value during the period of 2015-2019,⁹⁰ which presents a significant opportunity for Canadian vegetable marketers, given that Canada currently supplies only 17% of US greenhouse imports.⁹¹ Also as illustrated above, this export market is currently growing for Ontario producers, while BC producer exports have declined.⁹²
105. Based on the evidence of the demand for MPL's proprietary products, significant US growth opportunities, stagnation in the BC export market and unparalleled access to top retailers, it is MPL BC's submission that there is significant evidence-based demand for its products, and that this demand is currently not served by BC's existing licenced agencies.

⁸⁶ Agency Application at Schedule 3.6.

⁸⁷ Agency Application, Section 6.3, p. 45 – Identities of retailers are redacted.

⁸⁸ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 77.

⁸⁹ Agency Application, Section 6.1.3.

⁹⁰ Agency Application, Section 5.3 at p. 17.

⁹¹ Agency Application, Section 5.4 at p. 20.

⁹² Agency Application, Section 5.8 at p. 22.

f) There is Evidence Based Support from BC Producers

106. MPL BC has produced evidence of support from BC producers. Specifically, MPL BC has provided letters of support from Creekside Hothouse Ltd. and Fresh4U Farms Ltd., which are operated by a husband and wife. Creekside Hothouse Ltd. and Fresh4U Farms Ltd. have both expressed their intention to sell product through MPL BC if it were granted an agency licence.⁹³
107. MPL BC has also obtained a letter of support from Millennium Pacific Greenhouses Partnership, which is arms length from Creekside Hothouse Ltd. and Fresh4U Farms Ltd. Millennium Pacific Greenhouses Partnership has also expressed an intention to sell product through MPL BC noting MPL BC's access to proprietary and exclusive varieties.⁹⁴
108. As noted, MPL has even received a letter of support from existing agency Country Fresh, a potential competitor of MPL BC's proposed agency.⁹⁵ In its letter of support, Country Fresh stated that:
- We look at Mastronardi and its long-standing operations as a reliable and potential contributory member to BC as a whole with many valuable contracts and an extensive distribution network throughout North America that will assist in growing the market for regulated BC vegetables, which will benefit BC growers, other agencies, consumers and other stakeholders through the distribution chain.⁹⁶
109. Further, and again as noted above, MPL has also received numerous letters from its Ontario producers demonstrating the support and benefits MPL provides to its growers.
110. While Windset and GGFI have consistently referred to "producer opposition" to MPL BC's agency application, the reality is that the vast majority of producers who have opposed MPL BC's application have agency relationships with GGFI. As

⁹³ Agency Application at Schedule 3.6.

⁹⁴ Letter from Millennium Pacific Greenhouses, dated October 7, 2021, Commission's Book of Documents at BCVMC-238.

⁹⁵ Agency Application at Schedule 5.12.2.

⁹⁶ Agency Application at Schedule 5.12.2.

was evident from Mr. Newell's testimony, there are only three opposing producers who do not have a relationship with GGFI – two of those producers have agency relationships with Village Farms and one is a related entity of Global Greenhouse Produce Inc, another agency.⁹⁷

111. Further, none of the growers currently in agency relationships with the following agencies have opposed MPL BC's application:

- a. Island Vegetable Co-operative Association
- b. Okanagan Grown Produce Ltd.
- c. Vancouver Island Farm Products Inc.
- d. BC Hothouse Foods

112. It is also worth noting that, as Mr. Newell confirmed, not all of GGFI's producers have objected to MPL BC's application.⁹⁸

113. While many of GGFI's producers and some of Village Farm's producers may be happy with their current agency relationships, that is not a reason to prevent other producers from having the opportunity to build an agency relationship with MPL BC. There is no obligation on producers to change agencies and it is open to GGFI and Village Farm's producers to stay with their current agencies.

114. As previously noted, agency applications are not a popularity contest. Nor is this supervisory review a contest between MPL BC and GGFI. It is noteworthy that the opposition to MPL BC's agency application is really being led by Windset/GGFI, which is the current big player in BC controlling half of BC's greenhouse production.

115. Mr. Newell acknowledged in his evidence that GGFI is the biggest agency or player in the BC market right now.⁹⁹ GGFI represents approximately 50% of the current BC greenhouse acreage. GGFI also has the largest scale and suite of products of

⁹⁷ Draft Transcript, May 24, 2023, Cross of S. Newell at pp. 87-89.

⁹⁸ Draft Transcript, May 24, 2023, Cross of S. Newell at pp. 89-90.

⁹⁹ Draft Transcript, May 24, 2023, Cross of S. Newell at p. 91.

the current BC agencies.¹⁰⁰ The only other agency Mr. Newell referred to as a large agency was Village Farms and Mr. Newell admitted no other current agency has national annual contracts like Mr. Mastronardi testified to MPL's scale.¹⁰¹ It is not surprising that GGFI would want to avoid having another agency that is not only comparable but actually exceeds them in terms of scale and product suite.

g) Primary Responsibility Will Be With Agency

116. If MPL BC were granted an agency licence, the primary responsibility for marketing any regulated product dealt with by MPL BC would rest with its agency rather than wholesalers. MPL BC is already a licenced wholesaler in BC. It is now seeking an agency licence because of the numerous benefits it can provide to producers, by working directly with them (as opposed to being one step removed) to support growth and expansion of the BC greenhouse vegetable industry. Through a direct agency / producer relationship the BC producers will be opened up to an array of benefits from proprietary varieties to best practices from a vast, collective producer network. In addition, by obtaining an agency licence, MPL BC would be able to eliminate the additional costs that happen when there is pass-through of an agency to a wholesaler.¹⁰²

117. As Mr. Mastronardi further testified, MPL is a fully integrated company:

...so Mastronardi is a fully integrated company. So we have our own greenhouses. We have our own trucks, we have our own warehouse distribution system, we do the sales and marketing. We do the branding and IP. And obviously we sell to the customer base.

118. MPL BC's agency is a fully integrated part of MPL's larger organization as a producer, shipper, distributor and marketer of greenhouse vegetable, and would have access to MPL's significant reach in marketing BC regulated product.

¹⁰⁰ Draft Transcript, May 24, 2023, Cross of S. Newell at pp. 91-92.

¹⁰¹ Draft Transcript, May 24, 2023, Cross of S. Newell at p. 92.

¹⁰² Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 75.

119. There is nothing in MPL's Agency Application or any participants' submissions to date to suggest any need or reliance by MPL BC on wholesalers to market its product. The entirety of MPL's business plan is to position itself in the market to supplant imports and develop export markets for BC producers, not to resell products to existing wholesalers.

h) The Agency Will Comply With the Commission's Orders

120. As noted above, in its Agency Application, MPL BC has committed to following all the rules, regulations, and General Orders of the Commission with its agency working to enhance the BC Greenhouse industry and to improve profitability for producers.¹⁰³ When asked on this supervisory review regarding MPL BC's intention to follow Commission orders, enabling legislation and regulations, Mr. Mastronardi reiterated this commitment to compliance with all rules and regulations stating:

So Mastronardi is committed to being a good partner in BC. If we are granted our agency license, we'll be working with the other agencies and producers to make it a better place for greenhouse growers. Our commitment is to follow all rules and regulations that are set forth by the Commission and be a good citizen in the business environment and in the community.¹⁰⁴

121. Further, as noted, MPL BC has been operating as a wholesaler in BC for a number of years without incident.¹⁰⁵
122. While Mr. Newell has expressed a concern that MPL BC would challenge Commission decisions, this concern is primarily premised on the misfeasance claim MPL BC filed in 2021 and the proceedings that arose out of that claim. However, this concern ignores the fact that MPL BC voluntarily agreed to a dismissal of that claim, and Mr. Mastronardi, on behalf of MPL BC, has acknowledged BCFIRB's decision with respect to the allegations raised in the

¹⁰³ Agency Application, Section 1 at p. 8.

¹⁰⁴ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 69.

¹⁰⁵ MPL BC Response Letter at p. 19.

claim and has committed to shifting the focus back to the good that MPL BC can do in the BC industry.¹⁰⁶

123. The BCFIRB panel that was inquiring into MPL BC's misfeasance allegations was satisfied with MPL BC's voluntary steps to resolve the matter and that there was no need for BCFIRB to inquire further into MPL BC's conduct or motivations in starting the misfeasance claim. In this respect, the BCFIRB Panel noted, in part:

...MPL has taken steps which I agree will significantly address the impact of its conduct on orderly marketing, the Commission, its members and staff. These steps, taken voluntarily, will go a long way in restoring trust, and in my view eliminate the need for me to pursue Phase II for MPL. ...MPL has expressly acknowledged the role it must play in ensuring orderly marketing in the BC regulated vegetable industry, including maintaining a transparent and accountable relationship with the Commission...¹⁰⁷

124. BCFIRB's decision to end Phase II of the misfeasance supervisory review, as it relates to MPL BC, was supported by the Commission.¹⁰⁸ Mr. Solymosi and the Commissioners named in the misfeasance action took no position on BCFIRB's decision not to pursue Phase II with respect to MPL BC. Further it should be remembered, that the Commission was well aware of MPL BC's outstanding misfeasance claim when it issued its decision recommending that MPL BC be granted an agency licence.
125. When the evidence is looked at in its entirety, it demonstrates a concerted intention on MPL BC's part to be a good industry member who follows all applicable rules and there is no basis upon which this Panel should find that MPL BC would not comply with all applicable orders and rules.

i) There Will Be No Detrimental Effect On Delivery or Production Allocation

126. Granting MPL BC an agency licence would not have a detrimental effect on delivery or production allocation of producers not represented by MPL BC. As

¹⁰⁶ Letter from Paul Mastronardi, dated January 17, 2023.

¹⁰⁷ BCFIRB Bad Faith Supervisory Review decision, January 25, 2023, at p. 5.

¹⁰⁸ BCFIRB Bad Faith Supervisory Review decision, January 25, 2023, at p. 1.

noted through the agency process and this proceeding, MPL BC intends to focus on producer expansion, resulting in little to no affect on existing production allocation.¹⁰⁹

127. Similar to the growth generated in Ontario, MPL BC intends to assist in the facilitation of growth for its producers. Regarding how MPL has already facilitated expansion in Ontario, it provided the following statement in its response letter to the industry stakeholder feedback:

Furthermore, traditional banking institutions are competing among themselves to finance new greenhouse construction projects in Ontario with favorable borrower terms, none of which would occur without proven profitability and stability among the Ontario greenhouse industry.¹¹⁰

128. Mr. Mastronardi also provided evidence of how MPL marketing agreements have assisted growers in the past with obtaining financing for expansion or to start back up their business.¹¹¹

129. MPL BC's business plan is based on developing and providing BC producers with access to new markets that are not currently being fully exploited by existing BC agencies or other companies.¹¹² MPL BC intends to further establish BC's presence in the international greenhouse marketplace through the production of specialty products and utilization of niche market opportunities.¹¹³

130. MPL has also provided the following statement in its stakeholder response letter regarding how existing producers not represented by its BC agency will remain unaffected:

For the reasons noted above, and given its primary goals of displacing existing imported product while promoting and expanding capacity for its BC grower partners, MPL will have no detrimental effect of existing delivery and production allocation. MPL is focused on continued growth in the

¹⁰⁹ Agency Application, Section 2.4 at p. 14.

¹¹⁰ MPL Response Letter at p. 11.

¹¹¹ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 54. See also Agency Application at BCVMC-103.

¹¹² Agency Application, Section 6.11 at p. 38.

¹¹³ Agency Application, Section 6.11 at p. 39.

greenhouse produce space. MPL has continued to increase sales in the west and work towards increased BC grower capacity to meet the demand of its customers for BC-grown product and opportunities that have not been available under the existing Agency framework. Demonstrative of this fact is the current expansion by Fresh4U Farms Ltd.¹¹⁴

131. MPL is also currently selling into BC, utilizing non-BC grown product from Ontario or other countries, with a BC agency in place this would immediately allow BC producers to fill this existing space.¹¹⁵ By replacing existing product for current MPL sales contracts, there will be no effect on existing production allocation for BC producers or accounts of current BC agencies.
132. Further, MPL BC already has the support of three BC growers who have expressed an interest in working with MPL BC. These producers already have the production that MPL BC anticipates having on start up if it were to be granted an agency licence.¹¹⁶
133. When considering the growth and opportunities outlined within MPL BC's application and the focus on growth moving forward for producers, there will be no detrimental effect on existing producers.

j) MPL BC Has the Knowledge, Capacity and Ability to Operate Effectively as an Agency

134. MPL BC's knowledge, capacity and ability to operate effectively as an agency are well-documented and are evidenced throughout MPL BC's agency application. In describing the company in its Agency Application, MPL BC stated:

After four generations, the Mastronardi family still operates the largest protected agriculture fresh produce company on the continent, and together with its expanding third party Producer base, grow and sell world-class tomatoes, peppers, cucumbers, lettuce and berries within the domestic Canadian markets and export markets throughout the United States and beyond.¹¹⁷

¹¹⁴ MPL BC Response Letter, p. 19.

¹¹⁵ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 78.

¹¹⁶ Agency Application, Section 6.11 at p. 39.

¹¹⁷ Agency Application, Section 2.1 at p. 9.

135. MPL and its executive team have extensive experience operating an agency and marketer in Ontario, with numerous members of MPL's team having significant experience in the greenhouse vegetable industry in general.¹¹⁸ As MPL BC highlighted in its industry stakeholder feedback response the Ontario Greenhouse Vegetable Growers has described MPL as having played a "significant role in the foundation and continued growth of the greenhouse sector in Ontario," a leader "in all segments of the greenhouse vegetable category," and a successful grower/marketer.¹¹⁹ MPL's existing strength as an agency and marketer in Ontario is further evidenced by the fact that MPL BC's application included numerous letters of support from Ontario Greenhouse Vegetable Growers.¹²⁰
136. While Windset and GGFI tried to make much of the fact that MPL has a non-family member minority shareholder, as was evident from Mr. Newell's own testimony, minority investors are not uncommon in large family companies. Nor is it uncommon (as in the case of MPL) for those minority shareholders not to play a role in the day-to-day operation of the company.
137. Further, as noted above, MPL is a fully integrated company and one of the largest greenhouse distributors in North America with distribution centres across Canada and the US.¹²¹ As a fully integrated company, MPL maintains its own greenhouses, trucks, warehouse distribution system, in house sales and marketing, branding, and intellectual property while selling directly to its customer base.¹²² MPL BC has also committed to its state-of-the art 70,154 sq. ft. cooled warehouse and distribution center in Surrey, BC, evidencing its intention and ability to timely service for BC producers.¹²³ The result of this is that MPL's team is experienced in all areas of the greenhouse industry and is poised to succeed at operating an agency in BC.

¹¹⁸ Agency Application, Section 7.2 at p. 46-54.

¹¹⁹ MPL BC Response Letter at p. 19-20.

¹²⁰ Agency Application at Schedule 1.1.

¹²¹ Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 42.

¹²² Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 42.

¹²³ Agency Application at p. 9.


138. Due to MPL's significant experience, resources and base of knowledge in its senior leadership team, if MPL BC were to be granted an agency licence, it will have the necessary knowledge, capacity and ability to effectively run an agency right from the start.
139. For the reasons set out, it is evident that MPL BC's application meets the criteria set out in Part XIV of the General Order and that granting MPL BC an agency licence would be in the public interest and consistent with sound marketing policy.

F. Conclusion

140. In conclusion, through the Commission's consideration of MPL BC's Agency Application, including its process of review, solicitation of industry stakeholder feedback and consideration of risks and issues while balancing benefits to producers, the Commission conducted a thorough SAFETI-based analysis that took into account all of the relevant information before the Commission. The Commission also carefully considered the applicable public interests and determined MPL BC's application to be in accordance with sound marketing policy.
141. The Commission's SAFETI based assessment of MPL BC's application was supported by the evidence before the Commission including MPL BC's Agency Application and responses by MPL BC to the industry stakeholder feedback.
142. MPL BC's Agency Application clearly sets out the strategic benefits MPL BC offers to the BC greenhouse industry and how it meets all the criteria set out in section 2(6) of Part XIV of the General Order. It is evident that granting MPL BC an agency licence is consistent with sound marketing policy and is in the public's interest.

143. In closing, MPL BC respectfully submits that this panel should approve the decision of the Commission and grant MPL BC's application for Class 1 Agency Status in BC.


All of which is respectfully submitted this 26th day of May, 2023.



Morgan Camley



Emma Irving



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