

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

SUPPLEMENTARY SUBMISSIONS OF MPL BRITISH COLUMBIA DISTRIBUTORS
INC.

Introduction

1. By way of letter dated August 22, 2023, MPL British Columbia Distributors Inc. (“**MPL BC**”) Prior Approval Application Supervisory Review Panel Chair Joshi invited all eligible participants to make supplemental written submissions on “the implications of [Chair Donkers’ January 25, 2023 ruling made in the Allegations of Bad Faith and Unlawful Activity Supervisory Review (the “**Supervisory Review**”)] on the designation of MPL BC as an agency, including implications of the voluntary reporting requirement agreed to by MPL BC.”
2. MPL BC submits that the implications of Chair Donkers’ January 25, 2023 ruling (“**Ruling**”) made in the Supervisory Review are two-fold:
 - a. the steps taken by MPL BC, which Chair Donkers held go a long way to restoring trust and orderly marketing, and which Chair Donkers held demonstrate that MPL BC understands the role it must play in orderly marketing in the BC regulated vegetable industry, led to Chair Donkers’ conclusion that Phase II of the Supervisory Review should not proceed against MPL BC; and
 - b. the precise contours of the enhanced BCFIRB reporting committed to by MPL BC in the Supervisory Review are still to be defined.

Background to the Supervisory Review

3. As background, in May 2021, BCFIRB initiated the Supervisory Review to investigate the allegations made against members and the general manager of the BC Vegetable Marketing Commission (“**BCVMC**”) by MPL BC in its civil claim (SCBC Action No. S-214043, filed April 22, 2021) (“**Civil Claim**”), and in another civil action commenced by another industry participant. Chair Donkers issued a decision on July 14, 2022, concluding that there was no evidence to substantiate the allegations made in the Civil Claim against the members and the general manager of the BCVMC. Chair Donkers issued a further decision on October 21, 2022, amending the terms of reference of the Supervisory Review to consider whether the Civil Action was filed for improper purposes. This amendment resulted in what was referred to as Phase II of the Supervisory Review.
4. Chair Donkers made the Ruling, concluding there was no need to pursue Phase II against MPL BC, following a recommendation by Nazeer Mitha, KC (Supervisory Review Hearing Counsel) to that effect.

MPL BC Takes Steps to Restore the Trust and Confidence in the Governance and Orderly Marketing of the Industry

MPL BC’s Commitments

5. On January 17, 2023, Paul Mastronardi, MPL BC's President and Chief Executive Officer, wrote to Mr. Mitha indicating that he had instructed MPL BC’s legal counsel to bring the Civil Claim to an end.¹ In that letter, he acknowledged the findings of Chair Donkers relating to the disruption caused by the Civil Claim and, as a result, agreed to compensate the BCVMC for half of their legal costs arising from the Supervisory Review up to a maximum of \$90,000.00. He also acknowledged that the concerns raised by MPL BC in the Civil Claim could have instead been brought to BCFIRB and expressed regret that he did not explore that option. Mr. Mastronardi further explained MPL BC’s dedication to the development of the BC

¹ [MPL BC Letter to Hearing Counsel](#), dated January 17, 2023.

greenhouse vegetable sector and the importance of building positive relationships with that sector. Finally, in recognition of the need to demonstrate MPL BC's continuing commitment to the BC greenhouse vegetable sector and to orderly marketing, Mr. Mastronardi committed MPL BC to voluntary quarterly reporting to BCFIRB for an 18-month period, should it be granted a Class 1 designated agency license.

6. Following MPL BC's letter, on January 17, 2023, MPL BC's legal counsel also wrote to Mr. Mitha seeking an order from Chair Donkers that Phase II of the Supervisory Review be concluded as against MPL BC, given the circumstances set out in Mr. Mastronardi's letter.²

Hearing Counsel's Recommendation

7. After considering those submissions, on January 18, 2023, Mr. Mitha recommended that the Supervisory Review Panel conclude Phase II of the Supervisory Review for MPL BC, on the basis that the goals of the Supervisory Review had been achieved:

“In sum, the goals of this Supervisory Review, including the second phase are to ensure orderly marketing and public confidence in the industry. In my view, those goals are achieved by MPL's conduct in:

- a) bringing an end to the civil action (and paying the defendants' costs);
- b) recognizing that there have been costs and disruption and paying a significant portion of the Commission's legal costs arising out of the Supervisory Review;
- c) switching its focus back to advancing the marketing of greenhouse vegetables;

² [MPL BC Legal Counsel Letter to Hearing Counsel](#), dated January 17, 2023.

- d) committing to becoming a constructive member of the B.C. regulated vegetable sector;
 - e) committing to comply with the three key components of orderly marketing; and
 - f) committing to quarterly reporting to BCFIRB for an 18-month period.”³
8. On January 20, 2023, the BCVCM supported the recommendation made by Mr. Mitha, subject to a clarification on the payment of legal costs to the Commission, which was subsequently provided by MPL BC.⁴

Chair Donkers’ Findings and Conclusions

9. It is with that backdrop that Chair Donkers issued the Ruling and concluded Phase II of the Supervisory Review for MPL BC. He did so recognizing and agreeing that MPL BC had taken steps that will lead to the restoration of the trust and confidence needed for the effective governance and orderly marketing in the industry:

“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. With the civil claim being brought to an end, the cloud of the allegations hanging over the Commission has been lifted. The significant cost and disruption to the Commission have been acknowledged and addressed through a significant payment of the Commission’s legal costs in the Supervisory Review. Just as importantly, MPL has expressly acknowledged the role it must play in ensuring orderly marketing in the BC regulated vegetable industry, including

³ [Hearing Counsel Submissions on MPL Application](#), dated January 18, 2023, at page 3.

⁴ [BCVMC Letter to BCFIRB](#), dated January 20, 2023; [MPL BC Legal Counsel email to BCVCM](#), dated January 20, 2023.

maintaining a transparent and accountable relationship with the Commission, coupled with heightened reporting requirements, should its agency licence be approved.

Accordingly, it is my view that steps have been taken which will lead to the restoration of the trust and confidence which lie at the heart of effective governance and orderly marketing in the industry." [emphasis added]

The Ruling's Implications are Two-Fold

10. Chair Joshi's August 22, 2023 letter invites submissions on "the implications, if any, of the Ruling on the designation of MPL BC as an agency, including implications of the voluntary reporting requirement agreed to by MPL BC". MPL BC submits that the implications of the Ruling are as follows:
 - a. the actions taken by MPL BC as a commitment to the BC greenhouse vegetable sector, to orderly marketing, and to moving past the circumstances that triggered the Supervisory Review led Mr. Mitha to recommend, and Chair Donkers to conclude, that there was no longer a need for Part II of the Supervisory Review to proceed against MPL BC; and
 - b. the specifics of the 18-month quarterly reporting to BCFIRB committed to by MPL BC are still to be determined.

As is further addressed below, the circumstances which led to Chair Donkers' Ruling are unchanged today.

MPL BC Has and Continues to Show its Commitment to Restoring Orderly Marketing

11. The Ruling's main implication is that MPL BC has shown its commitment to, and was found by Chair Donkers to, being committed to refocusing on advancing the marketing of greenhouse vegetables and being a constructive member of the BC regulated vegetable sector.

12. The impact of the Civil Claim, and its discontinuance by MPL BC, on orderly marketing were expressly considered in BCFIRB's decision to discontinue Phase II of the Supervisory Review against MPL BC. The Ruling concluded Phase II in respect of MPL BC because the Supervisory Review Panel determined that MPL BC did not pose a risk to orderly marketing or the public's trust and confidence in the industry. This was the direct result of the evidence of proactive steps taken by MPL BC to restore trust and confidence in the governance and orderly marketing of the industry.
13. MPL BC has paid half of the legal costs of the BCVMC and its members and general manager relating to the Supervisory Review, as was committed to in its January 17, 2023 letter to Mr. Mitha. The Civil Claim is long over, and instead MPL BC has been focusing on successfully operating under its wholesale license in BC, and building positive relationships within the industry.

Additional Reporting Requirements Should Align with BCVMC Existing and Future Requirements

14. As mentioned, in its January 17, 2023 letter to Mr. Mitha, MPL BC committed to voluntary quarterly reporting to BCFIRB for an 18-month period, should it be granted a Class 1 designated agency license. MPL BC stands by this commitment, and is committed to working with BCFIRB in establishing reporting criteria that will provide it comfort that licensing and regulatory requirements are being complied with.
15. On April 6, 2023, the BCVMC submitted that:

“[...] the Commission does not think that there is any need to impose any “special” regulatory reporting requirements against MPL, notwithstanding MPL's offer to commit to “quarterly reporting to BCFIRB for an 18-month period”, and notwithstanding the findings made by Chair Donkers in his July 14, 2022 decision concerning Phase I of the “Bad Faith” Supervisory Review.

[...]

Against this background, it is the Commission's respectful submission that the 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."⁵

16. The BCVMC further submitted that it had not yet finalized its agency accountability framework as directed by the BCFIRB in its December 22, 2020 Supervisory Decision. It indicated that it anticipates further consultations regarding the development of additional reporting requirements applicable to all agencies.
17. It is MPL BC's respectful submission that whatever reporting requirements BCFIRB deems appropriate should align with existing and future reporting requirements (and avoid duplicity of reporting), and be imposed for licensing and regulatory compliance purposes.
18. The reporting should also be confidential, given it may contain MPL BC's proprietary information.
19. With that in mind, MPL BC suggests the following additional quarterly reporting requirements, for an 18-month period:
 - a. identify the growers for whom it is marketing regulated product and the production acreage of regulated product marketed for each grower; and
 - b. confirming compliance with the BCVMC General Orders and Policies, in particular as it relates to delivery allocation and pricing.

MPL BC would be pleased to discuss the matter of reporting further with BCFIRB if that would be constructive.

⁵ [Response of the BCVMC to BCFIRB Questions](#), dated April 6, 2023, at pages 10, 12.

Conclusion

20. In closing, MPL BC was found to have taken steps that have and continue to restore trust in the governance and the orderly marketing of the industry.

21. MPL BC reiterates its commitment to focusing on advancing the marketing of greenhouse vegetables and being a constructive member of the BC regulated vegetable sector, including by working with BCFIRB to develop reporting requirements aimed at providing comfort regarding licensing and regulatory compliance that align with existing and future BCVMC reporting requirements.

All of which is respectfully submitted this 6th day of September, 2023.



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