

## **Lilydale and 7 Growers v. BC Chicken Marketing Board**

**Decision Date:** February 21, 2005

**Keywords:** anticompetitive implications, assurance of supply, consultation, federal provincial agreements, new entrant program (producers), premiums, sound and proper marketing policy,

**Issue:** This appeal addressed the underlying marketing policy questions arising from decisions and orders of the Chicken Board to assign BC chicken processors shares of the limited supply of chicken allocated to BC – a policy referred to as “assurance of supply” under Parts 7 and 8 of the Chicken Board’s General Orders.

### **Decision:**

This appeal arose from the situation in the chicken industry where there is more demand from processors for product than supply available to them. The national system supplies allocation based on a province’s historical base while restricting growth nationally to support higher wholesale prices, leaving processors competing for the short supply. In the case being appealed, the Chicken Board provided regulatory rules which applied cutbacks pro-rata among processors according to their historical market base. The panel was asked to address whether this “assurance of supply” under Parts 7 and 8 of the General Orders was sound and proper marketing policy and whether supply management should extend beyond the farm gate and into the market place.

The panel ruled that in regulated marketing, production and processing are inextricably linked and the Chicken Board, under its *Scheme* and the *Natural Products Marketing (BC) Act*, clearly had jurisdiction to direct product to processors and to regulate a chain of activities extending beyond the farm gate. The panel concluded, after giving extensive reasons, that while there were legitimate arguments in favour of open contracting and against assurance of supply as set out in Part 7 of the Chicken Board’s General Orders, in the circumstances and configuration of the BC chicken industry at the time, the disadvantages of open contracting outweighed the advantages. The panel further recognised that there should be provisions for a new processor entrants while protecting the historical base of the existing processors and found the system to do so as listed in Part 8 of the General Orders reasonable. Therefore, the panel upheld Part 7 and 8 which it considered in the best interests of the industry, but directed the Chicken Board to review and report upon them to the Provincial board (now BCFIRB) under its supervisory capacity after appropriate industry consultation.

### **Order:**

The appeals were dismissed subject to the directions given the Chicken Board.