

## **Rosstown Farms Ltd. v. BC Chicken Marketing Board (Rosstown #1)**

**Decision Date:** September 12, 2002

**Keywords:** Competition Act, anticompetitive implications, home weeks, integrated operations, new entrant program (producer), direction of product

**Issue:** The issues on appeal were whether the Chicken Board erred in not assisting the appellant in maintaining its choice of an eight “home week” schedule and whether it was appropriate for the Chicken Board to decline to exercise its authority to assist the appellant in directing its product on an eight week home schedule.

### **Decision:**

The appellant argued that the Chicken Board has power and authority to control all aspects of chicken production in the province and that it should be required to use its regulatory powers to assist a grower in becoming economically viable. It further argued that the Chicken Board’s own regulations recognise that it is the producer who chooses its home weeks (the week or weeks that the chicken is picked up to be processed) and not the processor and that the processor must buy the chicken from the producer in accordance with the contract and regulations. The appellant cited several factors in support of its argument including noting the previous investigation by the Competition Bureau in 1996-97 which resulted in the processors giving assurances that they would not restrict competition in the supply of chicks and the purchase of broilers as they appeared to be doing in this case. Consequently, the appellant argued that the Chicken Board should have exercised its authority and stepped in to protect it and its eight week home schedule.

The Chicken Board maintained that the real issue on appeal is whether it was appropriate in these circumstances, to exercise its power to direct product. The Chicken Board determined that it was not appropriate in this situation because the direction of product was solely for the benefit of the appellant’s hatchery, and not as a chicken producer. Furthermore, it argued that no other producer operates on an eight week home schedule. The Chicken Board disagreed with the appellant that its regulations allowed a producer to impose its desired home week schedule on a processor.

The processors, as interveners, agreed with the Chicken Board’s position with respect to the imposition of the eight week home period, but argued that the Chicken Board lacked the authority to direct product.

The panel disagreed with the appellant’s interpretation of the home week schedule as a unilateral decision regarding when to ship and ruled that this was a contract between the producer, the hatchery and the processor. The panel ruled that the Chicken Board met its regulatory objectives of balancing the needs of the producers with those of the processors to maintain stability in the market place by ensuring that the appellant’s production was processed. The panel declined to rule on the Chicken Board’s power to direct product as it did not have full arguments from the parties in this hearing. It also declined to make determinations under the Competitions Act.

### **Order:**

The appeal was dismissed.