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File: 44200-60/CMB RDOWN

DELIVERED BY E-MAIL OR FAX

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Rosstown Farms Ltd
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Dear Sirs/Mesdames:

ROSSDOWN FARMS LTD. REQUEST FOR RECONSIDERATION OF HOME WEEKS COMMENCING IN QUOTA PERIOD A-53

On April 28, 2003, the British Columbia Marketing Board ("BCMB") conducted a telephone conference call to hear a preliminary application by the Primary Poultry Processors Association of BC ("Processors") for a stay of the British Columbia Chicken Marketing Board's ("Chicken Board") decision of March 12, 2003, approving a custom kill arrangement for Rosstown Farms Ltd. ("Rosstown"). The Processors' stay application is dealt with under separate cover.

At the same time, the BCMB also heard an application by Mr. Dan Wiebe of Rosstown for a reconsideration of the BCMB's January 17, 2003, supervisory decision in which we confirmed one home week for Rosstown. By e-mail dated April 11, 2003, Mr. Wiebe requested that the BCMB amend its earlier decision and change his operation's home week from week 5 to weeks 4, 5, and 6.

This decision relates to Mr. Wiebe's request for an amendment to our January 17, 2003, supervisory decision. There is a lengthy history to this matter and in the interests of time, it is not our intention to review all the events over the past year. However, some background is necessary to put this decision into context.

**British Columbia
Marketing Board**

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BACKGROUND

For the past several months, Rosstown and the Processors have been engaged in significant economic conflict flowing from Rosstown's decision to move further towards an integrated operation by building a hatchery. There have been several recent BCMB decisions (June 5, 2002, supervisory decision, September 12, and December 13, 2002, appeal decisions, January 17, and January 31, 2003, supervisory decisions) and one Supreme Court enforcement decision (*British Columbia Chicken Marketing Board v. Hallmark Poultry Processors Ltd et al*, BCSC Vancouver Registry No L023090)) dealing with the economic fall-out from this decision.

The BCMB's December 13, 2002, appeal decision outlined the terms upon which regulatory intervention under the *British Columbia Chicken Marketing Scheme, 1961* was appropriate in the context of the economic dispute between the Processors and Rosstown. These terms were summarised in our January 17, 2003, supervisory decision as follows:

1. Rosstown's hatchery needs do not, as a matter of sound marketing policy, justify a regulatory order directing Processors to pick up Rosstown's production.
2. The fundamental regulatory responsibility of the British Columbia Chicken Marketing Board (Chicken Board), as stated in its original approach to this matter, is to ensure that all quota production for a period, including the production of Rosstown as a chicken producer, finds a home.
3. The question of when Rosstown's chicken will be picked up is principally for the parties themselves to determine, by agreement.
4. It is only where the parties demonstrate that they have an irreconcilable difference on a schedule that the Chicken Board may act to direct product. If such were to arise in the Rosstown dispute, the Chicken Board should limit itself to directing product during a single home week.
5. The Chicken Board may only direct product in multiple home weeks if the Processors do not live up to their representations, which were accepted by the BCMB, that they can properly or safely take all of Rosstown's production in a single home week.

In that same supervisory decision, the BCMB declined to consider multiple home weeks for Rosstown and confirmed one home week for Rosstown. The decision states:

Upon our review of all the material before us, including the evidence and information tendered at the recent appeal hearing in this matter, the BCMB concludes that, subject to private agreements to the contrary, Rosstown's assigned home week for all its production will be home week 5. Our selection of home week 5 recognizes the production needs of Rosstown. While we recognize that the Processors would have preferred home week 8, we note that the Processors gave no detailed explanation for this preference. It appears to the BCMB that this is the week that would work the greatest hardship to Rosstown as a producer in altering its production schedule should it enter into alternative agreed shipping weeks with another processor or processors. In our view, home week 5 grants Rosstown the flexibility it needs as a large producer, and minimizes the time that it will take Rosstown to alter its production schedule to accommodate new processor requirements.

On January 31, 2003, the BCMB declined the Processors' request to reconsider the choice of home week 5 for Rosstown for period A-51 and beyond.

In his letter of April 11, 2003, to Mr. Ross Husdon, Chair of the BCMB, Mr. Wiebe states:

Rosstown Farms Ltd. has put forward a business plan to the BCCMB regarding our intention to custom kill some of our poultry starting (sic) in A53 to A59. We have been granted permission to make this transition to our own operation. Our confidential business plan (copy held by BCCMB) demonstrates our ability to make this transition with firm commitments for production every week. Some of our product will be custom killed by two small plants. In order to meet our firm commitments we are requesting the BCMB to amend the supervisory decision of January 17/03 from week 5 to week 4,5,6 in A53.

This is only a push and pull schedule and has successfully worked in A52. The reason we are requesting an amendment is that the large processors are refusing to agree to our schedule stating that we must stay in week 5 in A53. In order to supply the product we must be able to pull birds from each week and the large block of production in week 5 leaves us unable to fill this commitment. We have firm agreements with our own customers for this product committed after we were granted permission to custom kill our product and before the A53 huddle. On the other hand we have not had any contracts signed with the large processors since period A49. They have rather dealt with us without contracts since A49.

In your letter of January 31/03 to Mr. Harvey you point out in your last sentence that week 5 was chosen in order for Rosstown to be "in a position to alter its production schedule in a timely fashion should it enter into alternative shipping weeks with another (sic) processor or processors".

The Chicken Board generally supports Mr. Wiebe in his application and argues that this application is consistent with its March 12, 2003, decision to allow Rosstown to custom kill some of its production.

The Processors oppose this application and argue that there was nothing new in Mr. Wiebe's submissions. The BCMB came to a considered decision after hearing several days of evidence in December 2002. At that time Rosstown was told that its hatchery needs did not, as a matter of sound marketing policy, justify a regulatory order directing Processors to pick up Rosstown's production in multiple home weeks. That decision was confirmed in January 2003 and should be confirmed again.

DECISION

Having heard the arguments of Mr. Wiebe and counsel for the Chicken Board and the Processors, the BCMB is not satisfied that our January 17, 2003, supervisory decision was incorrect. Further, Mr. Wiebe has not satisfied us that there has been any significant change in circumstances warranting a further reconsideration in advance of the Processors' appeal.

Rosstown has gone out and found contracts to supply smaller processors. Those efforts are to be commended. However, the fact that these small contracts are difficult to supply is based on Rosstown's barn configurations and its particular business structure.

These considerations were canvassed in detail in the December 2002 appeal and do not now warrant a change in our earlier decision.

The fact that Rosstown has entered into small weekly contracts should not be used to dictate to the rest of the processors when they will receive product. Therefore, the BCMB confirms the earlier supervisory decision which states:

Upon our review of all the material before us, including the evidence and information tendered at the recent appeal hearing in this matter, the BCMB concludes that, subject to private agreements to the contrary, Rosstown's assigned home week for all its production will be home week 5.

Thus, that portion of Rosstown's production subject to a private agreement with a processor can be delivered in whatever home week the parties agree to. The balance of that production, not subject to a private agreement, is to be shipped in home week 5. As was pointed out in the December 13, 2002, appeal decision and confirmed in the January 31, 2003, supervisory decision, the Processors in carrying out the duty to pick up product for periods A-53 and beyond are required to comply with all relevant Chicken Board orders, including its pricing orders.

BRITISH COLUMBIA MARKETING BOARD
Per

(Original signed by):

Christine J. Elsaesser
Vice Chair

cc: BC Chicken Marketing Board
Hallmark Poultry Processors Ltd.
Sunrise Poultry Processors Ltd.
K&R Poultry Ltd. (Farm Fed)
Lilydale Foods Ltd. (Alberta)
British Columbia Chicken Growers' Association
British Columbia Broiler Hatching Egg Commission