

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND AN
APPEAL OF A DECISION DATED MARCH 12, 2003

BETWEEN:

PRIMARY POULTRY PROCESSORS ASSOCIATION OF BRITISH COLUMBIA

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

AND:

ROSSDOWN FARMS LTD.

INTERVENOR

DECISION

APPEARANCES BY:

For the British Columbia Marketing Board

Ms. Christine J. Elsaesser, Vice Chair
Ms. Karen Webster, Member
Mr. Richard Bullock, Member

For the Appellant

Ms. Wendy A. Baker, Counsel

For the Respondent

Ms. Sarah P. Pike, Counsel

For the Intervenor

Mr. Dan Wiebe, President
Mr. Dion Wiebe, General Manager

Place of Hearing

Abbotsford, British Columbia

Dates of Hearing

June 20 and July 15, 2003

INTRODUCTION

1. The Primary Poultry Processors Association of British Columbia (the “Processors”) are appealing a March 12, 2003 decision of the British Columbia Chicken Marketing Board (the “Chicken Board”) approving a custom kill arrangement for Rosstown Farms Ltd. (“Rosstown”). The order states:

That the Board approve Rosstown Farms plan as submitted, for the gradual devolution of its production towards its own processing facility. The plan as approved provides for custom killing of a specified volume of production from A-53 to A-59.

2. On April 28, 2003, a Panel of the British Columbia Marketing Board (the “BCMB”) heard an application by the Processors for a stay of the Chicken Board’s March 12, 2003 order. In a decision dated April 30, 2003, the BCMB denied the Processors’ request for a stay.
3. The appeal of the Chicken Board’s March 12 order was heard on June 20 and July 15, 2003. Rosstown applied for and was granted intervenor status both in the stay application and in this appeal. Mr. Dan Wiebe and his son, Mr. Dion Wiebe, attended at the hearing and participated fully in this appeal, calling evidence and cross-examining witnesses.
4. Given that the parties require a decision on this appeal in order to plan production in the upcoming periods, the Panel has decided to release its decision now with reasons to follow.

ISSUES

5. Did the Chicken Board err in allowing Rosstown to custom kill its production as part of a gradual devolution of its production (in periods A-53 to A-59) towards its own processing facility?
6. Does the Chicken Board have the authority and/or did the Chicken Board properly exercise its authority in designating any portion of the provincial allocation to a new entrant to the processing industry in the absence of consultation and an approved policy or regulation, and in a time when the total BC domestic allocation is less than the total requested base allocation of all BC processors?

DECISION

7. This appeal arises out of the context of a year long dispute between Rosstown and the Processors flowing from Rosstown’s decision to move towards a vertically integrated operation starting with the development of a hatchery.

8. In its March 12, 2003 order the Chicken Board approved an arrangement whereby Rosstown is treated as a processor, allowing it to custom kill part and eventually all of its quota allocation. Ordinarily a grower, which Rosstown is, must enter into a contract with a processor to purchase his live chicken. The processor in turn has contracts with customers who purchase chicken meat. The effect of the March 12 order is that Rosstown is given control over its own allocation, currently 199,000 kgs. Given that Rosstown's production forms part of the Processors' allocation required to meet their market demands, control over this production is at the heart of this appeal.
9. While the BCMB understands the desire on the part of the Chicken Board to resolve the longstanding conflict between Rosstown on one hand and the Processors on the other, how it chose to do so was flawed. While an order in the nature of the March 12 order may be appropriate, it is difficult to make that assessment when that decision was issued without consultation with industry stakeholders. Further, when one compares the March 12 order to the detailed new entrant program put in place by Ontario, it is difficult to conclude that the consequences of the March 12 order were properly considered.

ORDER

10. The March 12, 2003 order is rescinded.
11. As the Chicken Board has already implemented a moratorium on the issuance of new licenses for processing facilities and approvals for custom killing arrangements (except for amounts below 3,000 kg live weight per cycle) until December 31, 2003, it is unnecessary for the Panel to so direct. However, the Chicken Board is directed to continue its consultation with industry participants and to develop a comprehensive new entrant program for processors.
12. The Panel recognises that while awaiting this decision, the parties agreed to an interim arrangement whereby Rosstown continued to custom kill 199,000 kgs of production. Until such time as the new entrant program is finalised, the Chicken Board may exercise its discretion to allow Rosstown to continue to custom kill 199,000 kgs of production. However, in implementing a new entrant policy for processors, the Chicken Board is directed, within its discretion, to treat Rosstown like any other new entrant.

Dated at Victoria, British Columbia, this 22nd day of August 2003.

BRITISH COLUMBIA MARKETING BOARD

Per

(Original signed by):

Christine J. Elsaesser, Vice Chair

Karen Webster, Member

Richard Bullock, Member