

IN THE MATTER OF THE  
NATURAL PRODUCTS MARKETING (BC) ACT  
RSBC 1996 Chapter 330

THE BRITISH COLUMBIA CHICKEN MARKETING SCHEME, 1961  
BC Regulation 188/61, as amended

THE BRITISH COLUMBIA CHICKEN MARKETING BOARD  
GENERAL ORDERS dated January 23, 2006

And

THE COMMERCIAL ARBITRATION ACT  
RSBC 1996 Chapter 55, as amended

Between

THE GROWER COMMITTEE

Representing the “Growers”

AND

THE PROCESSOR COMMITTEE

Representing the “Processors”

Panel

Chair

Member appointed by the Growers

Member appointed by the Processors

Brian J. Wallace, QC, CARb

Hans Dueck

Ken Huttema

Counsel for the Growers

Paul D. McLean

Counsel for the Processors

Wendy Baker

Hearing held

Ramada Inn, Abbotsford  
March 25, 2008

## AWARD

1. This award is made in the final offer selection arbitration to determine the price to be paid by the Processors to the Growers for live chickens in British Columbia for the Broiler Quota Period A-80, being March 30 to May 24, 2008.

## INTRODUCTION

2. This arbitration is being conducted pursuant to section 6 of Schedule 3 to the General Orders of the British Columbia Marketing Board made January 23, 2006. The procedure requires that the Panel select and award, without modification, one of the two final offers. The arbitration proceeded on the Tuesday prior to the start of Quota Period A-84 as contemplated by section 6 of Schedule 3.
3. By agreement, the Growers proceeded first, calling four witnesses, Bruce Lindner, Bob Burden, Peter Ballachey and Gordon Esau. The Processors called five witnesses, Scott Cummings, Bruce Arabsky, Keith Nash, Blair Shier and Ed Roddenburg. Both parties presented documentary evidence. Counsel for the parties made written and oral submissions.

## THE FINAL OFFERS

4. The Growers' final offer is the Ontario posted price plus 13.8 cents/kg live weight.
5. The Processors' final offer is the Ontario posted price plus 4.35 cents/kg live weight.
6. The Ontario posted price for Quota Period A-84 is set at \$1.384/kg, which is an increase of 7 cents from the previous period. This makes the Growers' final offer  $\$1.384 + \$0.138 = \$1.522/\text{kg}$  live weight and the Processors' final offer  $\$1.384 + \$0.0435 = \$1.4275/\text{kg}$  live weight. The final offers are 9.45 cents apart.
7. Both offers are based on the Ontario posted price, which includes a 7 cent/kg increase for Quota Period A-84. The Processors' final offer reflects the same differential from the Ontario posted price as was agreed to by the parties for Quota Periods A-62 to A-78, running from November 2004 to June 2007, and which was awarded in the arbitration for Quota Period A-79. The Processors also sought a differential of 4.35 cents in the last arbitration, for Quota Period A-80. However, the award in that arbitration was the Growers' final offer, a differential of 5.35 cents/kg. For the intervening Quota Periods, the parties agreed to a differential of 5 cents.

## THE GROWERS' POSITION

8. The Growers' over-arching position is that they require a substantially increased differential from the Ontario posted price in order to earn a fair return from their operations. Within that context they identify several specific cost or revenue considerations that they say justify that substantial increase. These include:
  - a. Catching costs,
 

Catching costs of 2.8 cents/kg are borne by growers in BC but not in Ontario,
  - b. Chick costs,
 

Chick costs are about .5 cents higher in BC than in Ontario, but linked to the award in this arbitration,
  - c. Feed costs,
 

Feed costs are 16 cents/kg higher in BC than in Ontario, and
  - d. Premiums,
 

Premiums are not paid to Growers in BC, but average 7 to 8 cents/kg in Ontario.

## THE PROCESSORS' POSITION

9. The Processors say that to give effect to the Growers' final offer "would create severe disruption in pricing – disastrous to the BC industry." The Processors say that a differential with their competitors in other provinces would destroy their competitiveness in a market that is increasingly regional and national.
10. The Processors also point out that, coupled with the 7 cent increase in the Ontario base price, the Growers' final offer would result in an increase in the BC live price of 18.55 cents in just 8 months. This, they argue, will drive consumers to other sources of protein.
11. In response to the Growers' claim that they require a substantial increase in order to earn a fair return, the Processors say that their own farm operations demonstrate good and improving returns and that the Growers' returns will improve as a result of the 7 cent/kg increase in the Ontario posted price.
12. The Processors address the specific cost differences between BC and Ontario as follows:

a. Catching costs,

The modest and subsidized catching cost of 2.8 cents/kg charged to the Growers is fully covered by the Processors' final offer,

b. Chick costs,

The price of chicks is linked to the live price, with the effect that the result of this arbitration will determine the chick price,

c. Feed costs,

The historic feed price differential resulted from a higher wheat content in the BC mix, but that the mixes in BC and Ontario are now very similar with the result that the difference is only about 4 cents/kg and fully covered by the Processors' final offer, and

d. Premiums,

The evidence does not support that premiums are provided to all growers and have no place in setting a live price in the BC context.

## ANALYSIS

### Fair Return

13. The Growers relied on a series of studies performed by Serecon Consulting to seek to demonstrate that the Growers were unable to recover their costs at current and recent prices and that their recovery was deteriorating. Tabs 47, 48, 49, 50, 51 of the Growers' Book of Documents are copies of *Chicken Nuggets* for Quota Periods A-79 through A-83. They describe the "pricing linkage" between live chicken, hatching eggs, and day old chicks and indicate that grower cost recovery fell from 97.64% to 93.97% during those periods. These recoveries were found from analyses done by Serecon.
14. The analysis was addressed and the underlying data identified in oral evidence by Mr. Burden and Mr. Ballachey. The validity of the treatment of some cost items, particularly, the treatment of capital assets at depreciated replacement cost rather than depreciated cost was challenged on cross-examination.
15. Serecon's analyses were based on a sample of 32 farms, and done for the principal purpose of demonstrating the relative profitability among live chicken growers and producers of hatching eggs. Here, the Growers submit the "price linkage" to demonstrate both relative profitability – their cost recovery is deteriorating, and absolute profitability – they are not able to fully recover their costs.

16. While the model and its assumptions may well be appropriate for determining relative profitability, it does not necessarily follow that it is appropriate to determine absolute profitability. As long as the same assumptions are used for both sides of the comparison their inadequacies are mitigated. I do not say that the model cannot be used as some support for the Growers' position, only that it would be unsafe to rely on it without other strong evidence, consistent with it.
17. Here there is evidence that contradicts the assertion that Growers cannot recover their costs, let alone earn a fair return. That evidence is the value of Quota. The evidence of Mr. Esau was that Quota currently sells for between \$58 and \$61 per bird, more than double its price in 1995. It appears that buyers of Quota believe that there is a fair return to be earned in producing chickens.

#### Processor competitiveness

18. There is no question that the Growers' final offer would have a dramatic impact on the pricing of chicken products. On the other hand, the Growers pressed on the Panel that it should give no weight to the assertion that the Processors' competitiveness would be undermined, in the absence of disclosure by the Processors of private financial information.
19. In my view this arbitration process, compressed in time as it is, cannot adequately deal with evidence of the sort the Growers say is required. I am satisfied, based on the price increase alone, that the increase sought by the Growers would be sufficiently disruptive that even if otherwise justified, their final offer should not seek to redress the balance in a single Quota Period.

#### Catching Costs

20. I am satisfied that the Growers are entitled to 2.8 cents/kg differential for the imposition of catching costs.

#### Chick costs

21. The Growers assertion of a .5 cent difference in the cost of chicks based on the A-83 Quota Period live price was not contradicted by the Producers.

#### Feed costs

22. The evidence is that, in spite of changes in feed mix, there remains a differential in the cost of feed. However, the magnitude of that differential is unclear. I am satisfied, by comparing the February 2008 price difference shown on the graph in Tab 7 of the Producers' Book of Documents that it is greater than the 4 cents/kg asserted by them but substantially less than the 16 cents/kg asserted by the

Growers. I am not satisfied that a differential in excess of 6 cents/kg is justified to adequately reflect the difference in the cost of feed.

23. On a purely numeric analysis, I have calculated a cost difference over Ontario growers of  $2.8 + .5 + 6 = 9.3$  cents/kg. That is 4.95 cents/kg over the Processors' final offer and 4.5 cents/kg less than the Growers'. As noted above, however, I am satisfied that to select the Growers' final offer would cause an unacceptable market disruption.

#### DECISION

24. For the reasons outlined herein, the Panel selects and awards the Final Offer of the Processors.

Dated: March 26, 2008

Original signed by Brian J Wallace

Brian J Wallace, QC, CARb