

**Decision Re: Allegations of Non-Compliance by IVCA, Prokam and Thomas Fresh
(Friday, December 22, 2017)**

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INTRODUCTION

1. On or about October 10, 2017, the Commission delivered “Compliance Notices” to each of Island Vegetable Cooperative Association, Prokam Enterprises Ltd. (Prokam) and Thomas Fresh. The Compliance Notices described alleged non-compliance with the General Order and directed the stakeholders to cease and desist certain specified activities.
2. The Compliance Notices were intended to operate as the first step in a SAFETI-based process initiated by the Commission. The purpose of each Compliance Notice was to advise of the particulars of alleged violations, and to require compliance with the existing provisions of the General Order pending a show-cause hearing to be conducted by way of written submissions.
3. After October 10, 2017, the Commission provided various additional materials to the stakeholders to better particularize the alleged non-compliance. Then, in accordance with a schedule established by the Commission, the stakeholders made written submissions with respect to the alleged non-compliance. These submissions were then circulated among the stakeholders so that they would each have an opportunity to file a brief reply submission.
4. The allegations of non-compliance are fully particularized in the material provided to the stakeholders. The central allegation is that IVCA, a designated agency of the Commission, marketed potatoes grown by Prokam to Thomas Fresh at less than the minimum price established by the Commission.
5. On December 14, 2017, the Commission met to deliberate on the matter. At that meeting, the Commission reviewed the same material that had been provided to the stakeholders, as well as the written submission made by the stakeholders. The matter was considered by the Commission again on December 22nd, 2017.

KEY PROVISIONS OF THE GENERAL ORDER

6. Key provisions of the General Order that are germane to this matter include the following:

PART V AGENCIES

5. No Agency shall receive any Regulated Product from a Producer that was not grown by that Producer unless expressly authorized by the Commission.
14. Prices for all Regulated Crops subject to Commission minimum pricing must be approved by the Commission before coming into force or effect, unless otherwise authorized in writing by the Commission.

PART IV LICENCING

1. No person other than an Agency shall purchase Regulated Product from a Producer or market Regulated Product, within British Columbia or in interprovincial or export trade, except that:
 - (a) Regulated Product may be purchased from a Producer by a Consumer or by a Processor licensed by the Commission as permitted by these General Orders;
 - (b) Regulated Product may be marketed by a Producer, Producer-Shipper, Processor, Commission Salesperson or Wholesaler who is licensed in accordance with these General Orders in the manner permitted by the term of the licences, these General Orders, and any other Order of the Commission; and
 - (c) A Person who is specifically exempted from the requirements of this section pursuant to these General Orders or otherwise by Order of the Commission may market Regulated Product as permitted by the Commission.

3. No Producer, shall grow, process or market Regulated Product unless that Producer:
 - (a) registers with the Commission;
 - (b) is qualified to and obtains annually from the Commission one or more of the appropriate licenses herein described; and
 - (c) Pays to the Commission annually the fees for such licences as described in Schedule 3 to these General Orders.

PART IX GENERAL PROHIBITIONS

2. A Wholesaler shall only buy, accept or receive a Regulated Product from an Agency or Producer-Shipper.

7. No Person shall sell, offer to sell, supply or deliver the Regulated Product to any Person other than an Agency or such other Person as the Commission may expressly direct or authorize.

9. No Producer or Agency shall sell or offer for sale Regulated Crops subject to Commission minimum pricing, and no Person shall buy Regulated Crops subject to Commission minimum pricing, at a price less than the minimum price fixed by the Commission from time to time for the variety and grade of the Regulated Product offered for sale, sold or purchased, unless authorized by the Commission.
11. No Producer, shall market or transport any Regulated Product unless the Producer is currently licensed with the Commission, except as expressly authorized by the Commission pursuant to Section 4 of Part IV of the General Order.
12. No Producer shall produce or ship Regulated product without a Delivery or Production Allocation for the product in question, unless otherwise authorized by the Commission.

PART VII AGENCY RESPONSIBILITIES

1. Each Agency marketing crops subject to Commission minimum pricing shall notify the Commission and obtain approval from the Commission for the establishment of any price or change in price.
2. Each Agency marketing crops subject to Commission minimum pricing shall file with the Commission a copy of any price list, local or export, and particulars of any sales other than at listed prices.
3. No pricing for crops subject to Commission minimum pricing, below listed price can be made without the prior approval of the Commission.
6. Before finalizing a contract each Agency shall provide to the Commission for its prior approval as to form any proposed contracts with Processors or other firms approved by the Commission located in BC that are to receive regulated products regardless of end use.

PRIMA FACIE EVIDENCE

7. As noted in the material provided by the Commission to the stakeholders, the *prima facie* evidence suggests that:
 - 7.1. IVCA was engaged in the selling of Prokam potatoes to Thomas Fresh on fourteen occurrences between the dates of August 23rd and October 4th, 2017, at a price that was in contravention of the minimum price set by the Commission for that period, and executed without commission authorization.
 - 7.2. A total of 170 short tons (340,450 lbs) of regulated BC grown product was sold by IVCA between two cents (5%) and 34 cents (59%) below the Commission approved minimum price. This price is set weekly and in accordance with the approved policy for establishing weekly minimum prices for all BC grown regulated storage crops. All storage crop agency managers participate in establishing the weekly minimum price and are responsible to ensure that all agency sales are in compliance of the approved minimum price.
 - 7.3. The purchase order issued by Thomas Fresh was at pricing below the IVCA product quote sheet provided by IVCA to Thomas Fresh. Therefore, Thomas Fresh had knowingly procured regulated BC grown product at pricing below the price quoted by the agency and below the minimum price.
 - 7.4. The evidence also suggests that IVCA was not permitted to offer the product at a lower price than what was stated on the product quote sheet issued by IVCA to Thomas Fresh. Prices on each product quote sheet issued by IVCA to Thomas Fresh for the subject transactions were quoted at the Commission approved minimum price.
 - 7.5. The total volume of product acquired by Thomas Fresh at below minimum price and supplied from Prokam over this period is 2.688565 Million pounds.
 - 7.6. IVCA was engaged in the selling of Prokam potatoes to Thomas Fresh on a total of 125 occurrences between the dates of July 30th, 2017 and September 24th, 2017 at a price that was below the minimum price set weekly by the Commission over this period, and executed these sales without commission authorization.
 - 7.7. For each of the 125 invoices listed, the invoiced price was at pricing below the IVCA product quote sheet issued by IVCA to Thomas Fresh. Therefore, Thomas Fresh had knowingly procured regulated BC grown product at pricing below the price quoted by the agency and below the minimum price.

- 7.8. The evidence also suggests that IVCA was not permitted to offer the product at a lower price than what was stated on the price quote sheet. Prices on each quote sheet issued by IVCA to Thomas Fresh for the subject transactions were quoted at the Commission approved minimum price.
- 7.9. The evidence suggests that in week numbers 37 and 38, Kennebec Potatoes had been shipped by Prokam and sold by IVCA. Prokam does not have any delivery allocation rights for Kennebec Potatoes and therefore is not permitted to ship Kennebec Potatoes into the market, without special permission granted by the Commission. As the designated agency for Prokam, IVCA is also to be held accountable for allowing this product to enter the market without regard to delivery allocation rights of other IVCA producers and the industry.
- 7.10. IVCA's attempts to work with Prokam and Bob Gill have been futile and have resulted in extensive verbal abuse and constant refusal to communicate effectively and take direction from Brian Meyers, IVCA General Manager.
- 7.11. The actions of Bob Dhillon and Bob Gill demonstrate a complete lack of acknowledgement of the IVCA General Manager's authority over the operations of IVCA and the Agency's authority to manage the marketing of regulated products.
- 7.12. The actions of Bob Dhillon and Bob Gill have put undue stress on IVCA staff and created a toxic environment that impedes on their ability to operate effectively as an Agency to fairly represent all its producers in the market place and function in accordance of the authority granted to it by the Commission.
- 7.13. Through the actions of Bob Dhillon (Prokam Enterprises) and Bob Gill, their refusal to communicate effectively with the IVCA General Manager and his staff has inadvertently allowed for regulated product to be sold without a price being set and approved by the Commission and prohibits the General Manager from performing his responsibility to market and sell regulated product managed by IVCA.
- 7.14. Bob Gill has deleted records from IVCA's order entry system. This action has put IVCA into non-compliance with accounting traceability requirements and may provide further evidence to support the revocation of Bob Gill's authority to handle regulated product.
- 7.15. Thomas Fresh, a wholesaler licensed by the Commission, entered into a contract directly with Prokam (a registered producer of regulated vegetables) and Sam Enterprises (an entity that is not a registered producer of regulated vegetables).

- 7.16. Prokam, a producer licensed by the Commission, entered into a contract directly with Thomas Fresh.
- 7.17. Bob Gill, Prokam, and Thomas Fresh acted in blatant disregard of the Agency's authority, the Commission General Order, and established policy approved by the Commission as the first instance regulator to maintain orderly marketing of regulated BC grown vegetables.
- 7.18. Through the actions of Bob Gill (IVCA Sales Associate), IVCA had permitted an unauthorized contract to be signed directly between a wholesaler, Thomas Fresh, and a producer, Prokam, and facilitated the activity by allowing this contracted sale to be processed through the agency.
- 7.19. Through the actions of Bob Gill (IVCA Sales Associate), IVCA allowed for the shipment of product to the market through an un-licensed producer (Sam Enterprises Ltd.)

STAKEHOLDER SUBMISSIONS

8. IVCA does not take issue with the particulars of the sales made at less than the minimum price established by the Commission. Instead, IVCA submits that it did not believe that the Commission's minimum price was "relevant" to sales of regulated product made by it to out-of-province purchasers. In addition, IVCA asserts that it believed that the Commission had no jurisdiction over prices for sales of regulated product delivered out of the Province. Finally, IVCA asserts that it did not learn until the fall of 2017 that the Commission took the position that its minimum price was applicable to out-of-province sales.
9. Similarly, Prokam and Thomas Fresh do not appear to take issue with the particulars of the sales made at less than the minimum price established by the Commission. They assert that: (a) the sales at issue are interprovincial and took place outside of British Columbia; (b) Prokam, through IVCA, and Thomas Fresh agreed to enter into the sale transactions based on an understanding that the Commission did not purport to regulate the minimum price for sales of BC potatoes in Alberta and Saskatchewan, and the information disseminated to market participants including Prokam and Thomas Fresh by the Commission did not clearly indicate a minimum price for transactions in Alberta and Saskatchewan; and (c) there is no sound marketing policy that would support a decision of the Commission to impose a minimum price on sale of BC potatoes in Alberta and Saskatchewan.
10. With respect to the second assertion, Prokam and Thomas Fresh stated (among other things):

...the Commission takes the position that the minimum prices set by the Commission are confidential to the Commission and the Agencies, and the Commission has only provided pricing information for the specific impugned transactions, redacting the other prices on the list.

There is no suggestion that the Commission price lists were published or otherwise disseminated to Prokam or Thomas Fresh such that they were on notice of the minimum prices set by the Commission when the transactions at issue were entered into. It does not accord with principles of procedural fairness or SAFETI principles to punish Prokam or Thomas Fresh for failing to comply with minimum price requirements of which they had no notice, given that the Commission not only failed to give notice to these market participants of the minimum prices set, but also actively concealed the minimum prices from non-Agency market participants because of its policy of confidentiality.

PRELIMINARY FINDINGS

11. The Commission reviewed the matter at the Commission meeting held on December 14th, 2017. All Commissioners were present for the review of the binder of evidence and all submissions on the matter from IVCA, Prokam, Thomas Fresh, and BCVMC staff that were submitted up to and including December 13th, 2017.
12. On completion of this review, Peter, Corry and Hugh recused themselves from the meeting to avoid any appearance of a conflict of interest in the deliberations and any final decision to be made by the Commission.
13. The remaining Commission members continued with deliberations of the issues. The discussion lead to the following tentative thoughts, comments, and observations:
 - 13.1. Bob Gill, an employee of IVCA entered into contracted pricing on potatoes with Thomas Fresh at pricing that was not approved by the Commission and facilitated the selling of product at below minimum price. Furthermore, these contracts were established with Sam Enterprises, an unregistered producer with no delivery allocation rights for any regulated vegetable.
 - 13.2. Prokam Enterprises, Bob Dhillon, shipped potatoes through IVCA at pricing below the minimum price that was not approved by the Commission.
 - 13.3. Prokam Enterprises, Bob Dhillon, shipped Kennebec potatoes without having any delivery allocation rights to the market and did so without the approval of the Commission.
 - 13.4. Thomas Fresh is not privileged to the confidential minimum pricing sheets and the general orders that direct Agency behaviour. Though its behaviour is suspect, it is not reasonable beyond a doubt that Thomas Fresh acted in willful non-compliance of the general order and commission policy.
 - 13.5. Thomas Fresh entered into a contract to directly purchase regulated product with an un-licensed producer. This is in direct violation of the general order and the conditions attached to a wholesaler licence. All

sales of regulated vegetables must be managed by an Agency. All approved contracts are between a wholesaler (Thomas Fresh) and an Agency (IVCA)

- 13.6. IVCA sold product to Thomas Fresh at pricing that was below the established FOB minimum price and did not have approval to do so by the Commission.
- 13.7. The IVCA general manager and IVCA office staff had repeatedly informed Bob Gill and Bob Dhillon (Prokam) of the issues. Both Bob Gill and Bob Dhillon failed to take adequate action to respect IVCA management authority in the marketing of regulated vegetables and comply with the direction given to correct the issues.
- 13.8. Prokam Enterprises (Bob Dhillon) is licensed as a producer and has no authority to market regulated product. However, as a member of the IVCA board he is privileged to commission regulations and policy that guide how a designate agency is expected to perform to promote orderly marketing of regulated vegetables.
- 13.9. The IVCA office staff and members of the board have willfully complied with Commission staff to provide evidence on the matter. However, IVCA is also to be held accountable for the issues that have materialized.
- 13.10. The orderly marketing system for regulated storage crops is built on three components; the Agency, Pricing, and delivery allocation. Each component serves its own purpose; Agencies represent groups of producers in the market (leverage selling power), Price coordination stabilizes demand (maintains integrity in the system), delivery allocation manages an individual producer's access to the market (protects market rights). The delivery allocation component can only function if a coordinated pricing approach to the market is enforced. Together, these three components form the orderly marketing system for regulated vegetables.
- 13.11. The Commission designates its marketing authority to Agencies. For the system to be effective, Agencies need to be diligent in managing their responsibility and robust in maintaining compliance to commission regulations and in applying commission policies in its decision making. Agencies are to be held accountable for ensuring that all Commission regulations and polices are followed and a coordinated approach to the market is sustained.

DECISION

A) 'Was IVCA selling regulated product to Thomas Fresh at less than the Commission's minimum FOB price, and if so, how and why did this occur?

14. IVCA, Prokam and Thomas Fresh each allege that the Commission does not have authority to establish minimum pricing for extra-provincial sales. However, this "jurisdictional" argument is not pressed in any substantial way.
15. To the extent that the stakeholders might be asserting that the Commission is setting out to regulate interprovincial and export trade, the Commission disagrees. This is not a supply managed commodity. Therefore, orderly marketing within the Province cannot be achieved through the use of "quota". It can only be achieved by establishing the minimum price at which agencies may market regulated product. If the Commission is going to continue to permit multiple designated agencies to exist within the Province, it must ensure that those designated agencies are not competing for the same buyer (on price) with the same product. This would lead to a "race to the bottom" – the antithesis of "orderly marketing". Therefore, the minimum prices established by the Commission exist to promote orderly marketing within the Province in order to benefit British Columbia producers. They do not exist to regulate interprovincial or export trade.
16. The main position advanced by the stakeholders is that they simply did not understand that the minimum price would apply to extra-provincial sales.
17. Though there is ample reason to think that Prokam and Thomas Fresh engaged in a calculated effort to circumvent the Commission's minimum price, the Commission is satisfied that there is not a sufficient basis to find that either had "violated" the minimum price provisions. As their counsel correctly notes, minimum prices are considered confidential, and this information is shared only with the designated agencies that are charged with the responsibility to market regulated product in a manner that promotes orderly marketing. Though Prokam and Thomas Fresh may have been aware of the applicable minimum prices given the dual-role occupied by Mr. Dhillon, the Commission does not formally share that information with them.
18. Fundamentally, it appears that IVCA failed to fulfill its responsibilities as a designated agency of the Commission insofar as it failed to ensure that it was marketing regulated product at the Commission-ordered minimum price. In this regard, it should be remembered that IVCA is not merely an industry stakeholder, it is a delegate of the Commission charged with the responsibility to promote orderly marketing. IVCA's assertion that it didn't know that price controls applied when product is sold out of the province seems difficult to believe, given that IVCA must surely understand the essential role of minimum pricing as a tool to achieve orderly marketing. Furthermore, the position advanced by it would require one to "read in" words of limitation that do not exist (i.e., that the minimum price is applicable only to regulated product sold within the Province). Alternatively, if IVCA did not understand its responsibility to promote orderly marketing by adhering to the minimum price, then questions may arise about whether IVCA is a suitable entity to exercise that

delegated authority. British Columbia potatoes are sold throughout Canada, and it would obviously be detrimental to orderly marketing if agencies competed against each other on price “in a race to the bottom”. The following passages from the BCFIRB’s January 31, 2017 Supervisory Decision are apposite:

4. In British Columbia, the production and marketing of vegetables is regulated under the *NPMA*, the *NPMA Regulation* (“the Regulation”), and the *British Columbia Vegetable Scheme* (Scheme). The Scheme (s. 4(2)) grants the Commission the power set out in s. 11(1)(a) of the *NPMA* to “regulate the time and place at which and designate the agency through which a regulated product must be marketed”. The Commission has issued General Orders which govern the regulated industry actors, including designated agencies.

7. The specific rules governing agencies differ depending on the needs of the particular regulated industry. What is common across all regulated industries, however, is the agencies are licensed entities whose purpose is to market regulated product on behalf of registered producers. Agencies are licensees whose regulatory role is to harness the collective power of producers to enhance market access for regulated products. They minimize burdens on each producer regarding finding outlets for sales of their delivery allocation (a mechanism for producers to share market access). Agencies also store, ship, and label product for producers. For consumers, they help ensure a steady supply of BC product by contributing to orderly marketing. In all this, one of their key roles is to grow the industry by looking for new markets. As was noted in the March 31, 2016 Workshop Report that was part of the current process, at p. 4: “**Agencies competing for the same buyer with the same product do little, if anything, for Producers or Buyers**”. Agencies thus play both a key front line role , and a larger strategic role, in assisting the Commission to regulate, manage and grow the industry in an orderly fashion: see generally January 7, 2013 Supervisory Decision, paras. 34 - 38; see also the Commission’s September 21, 2015 Stakeholder Engagement Discussion Paper, pp. 4 - 6.

74. **With respect to IVCA**, the Commission concluded that IVCA does contribute to the vision of regulated vegetable marketing on Vancouver Island, but that **its growth ambitions need to be monitored to ensure that any such ambitions that extend beyond the Vancouver Island market are not merely seeking to displace existing markets**. With respect to promoting collaboration, the Commission noted that IVCA does work with other agencies, but it is not clear how it manages delivery allocation, and it needs to be more transparent in how it manages

earned market entitlement between all its producers. With respect to IVCA's demonstration of good governance, the Commission stated "yes, but needs improvement". The Commission noted IVCA's long history as a non - profit co - op, its focus on growth and its new investment in technology and infrastructure. However, the Commission repeated its concern about the need to monitor delivery allocation, and noted that IVCA does not have written GMAs, which does not sufficiently protect the interests of growers. With respect to business planning, the Commission stated that IVCA "appears to have a focused vision and strategic direction for its business. It is committed to working with its growers to identify products that can be grown successfully in local soils". With respect to market demand, the Commission answered this as a positive, but expressed concern that IVCA's recent move to uniform packaging did not sufficiently differentiate Vancouver Island grown product. The Commission also noted that IVCA's agency designation does not currently extend to greenhouse crops and it had requested such an extension. The Commission agreed that "[it] would strengthen its competitive position in the Vancouver Island market by giving it the ability to represent all types of vegetables". (emphasis added)

19. IVCA's failure to fulfil its responsibilities as an agency could provide a basis for the Commission to decide to terminate that agency designation. However, two factors mitigate against termination. First, though the Commission has determined that Prokam and Thomas Fresh cannot be held to account for "contravening" the minimum price, it is nevertheless satisfied that they played a significant role in the marketing of regulated product at pricing below the minimum price established by the Commission. IVCA bears ultimate responsibility, but the circumstances in which this non-compliance arose cannot be ignored. In addition, the issues here only concern potatoes grown by Prokam. For these reasons, the Commission has determined that it would be more "proportionate" to move Prokam to another agency that is better equipped to manage the producer and ensure that pricing rules are followed.

20. In determining the designated Agency, the Commission has reflected upon the following questions:

- 1) Does the Agency have sufficient staff with the necessary experience to effectively manage the producer's supply and market the regulated product?
- 2) Does the move to this Agency enhance orderly marketing?
- 3) What benefits, if any, not currently available to Prokam will accrue to this producer if their regulated product is marketed through this Agency?

21. BCfresh is the only Agency that is robust in upholding the principles of orderly marketing and can ensure fair representation of this producer in the market. The reasoning in support of this decision is as follows:

1) Does the Agency have sufficient staff with the necessary experience to effectively manage the producer's supply and market the regulated product?

22. Yes, BCfresh is an established marketer of BC product and represents the majority of regulated storage crop acreage in the province.

23. It's important that an agency has a clearly defined purpose in the market, can attract the resources it needs to grow, and be sustainable. To be sustainable it needs to be effective at protecting the producer's interests in the market.

24. BCfresh is clearly effective at protecting producer interests. The evidence is in the significant growth it has experienced in servicing both the BC and export markets. It is clearly capable of representing the market interests of their group of producers and has the staff and resources to effectively manage Prokam's product.

25. In addition, BCfresh has deep rooted relationships with numerous stakeholders in the market. They are relied upon by the Commission in setting minimum prices because of its depth of intelligence on the market conditions and therefore its ability to make informed recommendations.

26. This depth of intelligence is primarily a result of the Agency having established direct relationships in the market with the end customers in the supply chain that supply the consumer with regulated product. This is an important point to note. By selling packaged product directly to the retail and food service segments BCfresh has direct control over placement of the packaged consumer product in the market place – the driving force that defines demand. This depth to the market further enhances orderly marketing because the sales relationship is between the Agency, a designated marketing authority held accountable to BC producers, and the retail / food service buyer (servicing the consumer). Establishing these direct relationships is fundamental to insuring long term stability to BC producers. Only an Agency can justifiably ensure that the interests of the industry and their producers are protected in the market. This vested responsibility to promoting orderly marketing is essential to maximizing producer returns.

27. The mandate of an Agency is to represent a group of producers and carry out the marketing duties of the Commission's regulated vegetables;

- i. in compliance of the consolidated general order,
- ii. in respect of the operating principles of the orderly marketing system, and,
- iii. for the benefit of its producers and the industry.

28. A wholesaler has no legal obligation to represent the interests of BC producers.

2) Does the move to this Agency enhance orderly marketing?

29. Yes, by way of proficient management of Prokam's growth ambitions in the target market.
30. Demand is defined as the quantity of a good or service that consumers and business are willing to buy at a given price at a given time. Market demand is the sum of each individual demand for the product from buyers in the market. The price elasticity of demand is a measure of how responsive demand for a product is to the changes in its price. Research completed on potato consumption reveals that consumer demand for fresh market potatoes is inelastic, meaning that consumers are not very responsive to a price change. On the other hand, the demand for a business is more elastic because the buyer is motivated to procure the product for as little as possible to maximize margins. Canadian consumption statistics compiled by Statistics Canada also reveals that fresh potato consumption from 1997 has declined by 48%.
31. Growth, or "New Demand", cannot be argued as being derived from a displacement of product that is already supplying the market. The growth ambitions of an agency and its producers need to be validated against the current market being supplied by the industry and the industry's ability to satisfy the demands of this market.
32. BCfresh is the only other agency servicing the export market. Having one experienced agency that is well informed of the target export marketing environment to be responsible for coordinating supply to this market provides for enhancement of orderly marketing.
33. A potato is a potato. This is especially true in an export market where BC grown potatoes can't be positioned as the 'local' source to be sold to end users as the 'local' option and cater to an established niche market that demands local grown.
34. Market access is largely influenced by price, which directly impacts your ability to compete in the market against like product. A single agency approach to this market is an efficient and effective means of ensuring that a coordinated pricing approach is maintained and that only "truly" new market demand is being serviced by new supply.

3) What benefits, if any, not currently available to Prokam will accrue to this producer if their regulated product is marketed through this Agency?

35. BCfresh is in a position to provide a "hands on" approach to monitor and guide the growth ambitions of Prokam in an effective and efficient manner in consideration of other producer interests in the export market.
36. Enhances economic stability of both the producer and the industry through informed decision making that encourages growth of vegetable production in naturally strategic areas.

37. The producer will be privileged to informed decision making on market opportunities that will maximize returns.

4) Other Considerations

38. As noted in the Decisions and Recommendation document issued by the Commission on June 8, 2016 (as part of the Vancouver Island supervisory review), under the section 'BC Production on Scope of Total Market' (page 31);

"BC Production in Scope of Total Market"

81. Demand for BC product is local, driven by some degree of consumer preference for locally-grown food, and heavily dependent on a wholesaler and retailer's business and marketing plans. Retailers place preference on what will sell and are highly price-sensitive in the supply choices they make when procuring a mature commodity in a market saturated with numerous supplier options. Prices are set by the market in which BC producers are price takers. Purchasers demand quality product and high service levels. Competition for shelf space is fierce. This needs to be emphasized. Whether you look at the Vancouver Island, BC, or Canadian market for our regulated vegetables, the same situation applies....

82. In the 2015/16 season, total storage crop acreage and production of BC's regulated storage crop vegetables amounted to 5,516 acres producing 80,000 tons of product. Of this production, approximately 75% is in potatoes with the balance in other regulated storage crop vegetables (Cabbage, Carrots, Beets, Parsnips, Rutabagas, Turnips, Yellow Onions). Comparing our potato production to just the supply of competing potato growing regions in North America, US production dwarfs the BC industry. In 2014/15, the four Western US states produced 263,995,000 hundredweight of potatoes (one hundredweight is equal to 100 lb or 45.36 kg), whereas BC produced 1,616,146 hundredweight of fresh potatoes during the same period – that amounts to less than 0.06%. To put this in perspective, the combined 2014/15 fall production of the Western United States is approximately 163 times greater than BC potato production.

83. The point to be made is that BC production of regulated vegetables represents a small group of producers in the bigger picture and it emphasizes the need for all producers and all agencies to work together and consolidate as much as possible at the marketing level to efficiently deliver quality product to the market place. It is also important to emphasize that it is essential

for our survival as an industry to ensure interests representing the collective good of the community of producers always be placed in front of individual self-serving purpose.”

39. It is also clearly evident from the strategic analysis completed on the BC industry (page 37 of the same document) that the power lies with the buyers. The placement of Prokam with another Agency must result in a sound marketing framework that best services the industry. This becomes increasingly difficult when you represent a small producing region targeting an export market where BC is no longer the 'Local Choice'. It takes a concerted effort to ensure that BC producer interests are protected.
40. At this time there are no Agencies other than BCfresh that are qualified to effectively manage Prokam's growth ambitions in the export market.
41. If Prokam wishes to argue that they should be directed to another Agency, it may make such a submission and the Commission will give it due consideration. The submission is also to address the questions and considerations the Commission had reflected upon in making their choice.

B) Prokam Enterprises Ltd. Delivery Allocation & Licence

42. The Commission is of the view that Prokam's Delivery Allocation must be adjusted to negate the effect of shipments achieved through sales made at less than the minimum price. No permission was granted to IVCA to market at pricing below the established minimum price.
43. In addition, the shipments of Kennebec Potatoes will not count towards the calculation of delivery allocation for this product. Prokam does not have any delivery allocation for Kennebec potatoes and was not granted permission by the Commission to ship any Kennebec Potatoes into the market.
44. Prokam's licence class is to be adjusted to reflect its disregard of delivery allocation rights on Kennebec potatoes and in acknowledgement that it played a significant role in the marketing of regulated product at pricing below the minimum price established by the Commission.

C) Mr. Bob Gill's Certificate of Authority

45. The Commission has decided the temporary suspension of Mr. Gill's Certificate of Authority is to be addressed as an Agency matter. IVCA is to inform the Commission General Manager on how they would like to proceed.

D) IVCA Licence

46. IVCA's licence will remain status quo in acknowledgement that it played a significant role in bringing forth the evidence that product was being sold by IVCA at pricing below the minimum price established by the Commission. Though IVCA could not regain control, a concerted effort was made to address the situation.

E) Thomas Fresh Wholesaler Licence

47. Thomas Fresh's wholesale licence class is to be adjusted to reflect its disregard to orderly marketing of BC regulated vegetables. Thomas Fresh had entered into a contract to directly purchase regulated product with an un-licensed producer. This is in direct violation of the general order and the conditions attached to a wholesaler licence. The Commission is also satisfied that Thomas Fresh played a significant role in the marketing of regulated product at below the minimum price established by the Commission.

ORDERS

48. Therefore, the Commission orders are as follows:

48.1. Effective February 1st, 2018, BCfresh is the designated Agency for Prokam. Prokam is to sign a GMA with BCfresh under the Agency's standard terms.

48.2. Prokam's 2017-18 Crop Year potato shipments on Kennebec potatoes and all potato exports are not to be included in the calculation of delivery allocation for the 2018-19 crop year.

48.3. The Class 1 Producer Licence issued to Prokam is to be revoked and replaced with a Class 4 Licence. The Commission may choose to replace this licence with a Class 3 or Class 5 licence on review of the producer's compliance with these orders.

48.4. The suspension of Mr. Bob Gill's 2017-18 certificate of authority is to be addressed as an Agency matter. IVCA is to inform the Commission General Manager on if the certificate is to be re-instated or cancelled.

48.5. The Class 1 Wholesaler Licence issued to Thomas Fresh is to be revoked and replaced with a Class 4 Licence.

49. These are the decisions and reasons of the Commission as "first instance regulator". A person aggrieved by this decision may appeal the decision to the BCFIRB.

DATED AT SURREY, BRITISH COLUMBIA, THIS 22nd DAY OF DECEMBER

BRITISH COLUMBIA VEGETABLE COMMISSION

A handwritten signature in blue ink, appearing to read 'Alf Krause', is written over a horizontal line.

Alf Krause - Chair