

## **Monitoring and enforcement of non-diversification provisions**

### **Monitoring Plan**

#### **China R&D and Producer Vote activities**

##### **Introduction**

1. KNZ issued a Monitoring Plan for China R&D and Producer Vote Activities dated September 2021 (**'2021 Monitoring Plan'**) setting out a brief outline of the proposed process for KNZ's monitoring of Zespri's research and development (**R&D**) activities in China following the producer vote held in June 2021.
2. The proposed activity for the producer vote was for Zespri to conduct an on-orchard monitoring, procurement and sales and marketing trial over one season, involving the sale of up to 200,000 trays of Chinese-grown G3 kiwifruit which met the Zespri Class 1 standards and the ability to use the Zespri label on the kiwifruit for the sales trial.
3. As Zespri did not obtain the required proportion of votes, it cannot carry out the proposed activity of the producer vote. Zespri can continue to carry out core business under the Regulations which includes marketing and market development of NZ grown kiwifruit and R&D relating to kiwifruit. Zespri confirmed to producers that if the vote did not pass it would continue to carry out the R&D-type activities that it currently carries out in China as part of its core business, including orchard monitoring and fruit testing, but would not sell any fruit procured for R&D purposes.
4. KNZ has an on-going function under Reg 33 of ensuring that any activities undertaken by Zespri do not stray outside of the parameters of:
  - 4.1. core business; or
  - 4.2. any activity approved as 'supports core business' under Reg 10A; or
  - 4.3. any activity approved by a producer vote under Reg 11.
5. As a result of the producer vote, KNZ's function is to monitor the activities undertaken by Zespri in China to ensure they fall within the definition of core business under the Regulations including ensuring any activities related to Chinese grown kiwifruit is within the definition of R&D.
6. The 2021 Monitoring Plan provided for KNZ to undertake a 'preliminary assessment' of whether any past or proposed future activity or component of an activity falls outside the defined parameters of R&D Activities as set out in the R&D Working Definition.
7. The KNZ Board has undertaken a preliminary assessment and the Monitoring Plan has been reviewed and updated accordingly.

## **R&D definition**

8. Zespri has provided its interpretation of R&D relating to kiwifruit (including background and principles of application) for KNZ's consideration.
9. In developing the definition of R&D Activities, KNZ has considered a range of international and New Zealand definitions and principles used in identifying 'research and development' activities, including the OECD Frascati Manual 2015, the Income Tax Act 2007 definition, Callaghan Innovation guidelines and the definition applied by Statistics New Zealand. KNZ has also had regard to Zespri's proposed definition and interpretation principles.
10. KNZ produced a paper setting out a proposed working definition of R&D activities relating to kiwifruit and principles of application (**R&D Working Definition Paper**).

## **Preliminary Assessment**

11. The 2021 Monitoring Plan provided for KNZ to undertake a 'preliminary assessment' of whether any past or proposed future activity or component of an activity falls outside the defined parameters of R&D Activities as set out in the R&D Working Definition or core business under the Regulations.
12. KNZ made a number of information requests to Zespri and engaged SGS China to undertake interviews and provide a report on Zespri's R&D activities relating to Chinese grown G3 kiwifruit.
13. KNZ has considered the information obtained and has conducted a preliminary assessment.
14. Without limiting KNZ's monitoring and enforcement functions under the Regulations, KNZ's preliminary assessment is that, taking into consideration the working definition of R&D Activities and based on the information received by KNZ to date, KNZ can be satisfied to a reasonable standard that Zespri's activities in China fall within the defined parameters of R&D Activities and/or are core business under the Regulations.

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15. Zespri must not carry out any activities that are not core business and do not support the core business, and KNZ's role under the Regulations is to monitor Zespri's activities to ensure they fall within the definition of core business.
16. KNZ will continue to monitor Zespri's R&D activities in China, including activities relating to unauthorised G3 grown in China, to ensure that these remain within the defined parameters of R&D activities as set out in the R&D Working Definition Paper or are otherwise core business.
17. KNZ's process should be efficient and proportionate in terms of scope and resources (i.e KNZ Board need to be satisfied to a reasonable standard that the activities fall within the defined parameters of R&D activities as set out in the R&D Working Definition Paper and/or are core business under the Regulations).

18. KNZ may request information from Zespri in respect of prior, current or proposed future Zespri activities in China and may at its discretion engage external parties to investigate or assist KNZ in undertaking its monitoring function.
19. KNZ may amend the scope of the monitoring programme as it considers necessary.

## **Reporting**

20. Zespri will provide 6 monthly reports (in April and October) which shall include:
  - a) A summary of current projects relating to kiwifruit variety assessments in China;
  - b) Confirmation of varieties and planted hectares included in Zespri R&D projects; and
  - c) Any proposed new R&D projects relating to unauthorised G3 or other Chinese grown varieties.
21. Zespri shall, in its April report, provide an annual estimate of total G3 planting in China, including copies of supporting reports (i.e Vision Consulting Reports, including any interim reports commissioned).
22. Zespri shall continue to provide copies of relevant contracts entered into with Chinese entities (grower cooperatives, post-harvest, service providers etc) in respect of the Jin San project.

**Kiwifruit New Zealand**

25 May 2023