



The New Zealand Kiwifruit Board

Annual Report

1 April 2011 to 31 March 2012

The New Zealand Kiwifruit Board was established by Regulation 32 of the Kiwifruit Export Regulations 1999 and is known as **Kiwifruit New Zealand**

Kiwifruit New Zealand's Annual Report

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References to "the Regulations" or "the Kiwifruit Export Regulations" in this report are references to the Kiwifruit Export Regulations 1999

References to "Zespri" in this report include Zespri Group Limited and Zespri International Limited

References to "Zespri's Export Authorisation" in this report are references to the Authorisation to export kiwifruit granted to Zespri Group Limited by Kiwifruit New Zealand

References to "the Single Desk" or the "Single Point of Entry" are referring to Zespri having the right to export kiwifruit to all countries except Australia.

Kiwifruit New Zealand's Year

During the year ended 31 March 2012 Kiwifruit New Zealand:

Kept in **contact with the Markets, Zespri Marketing Managers, Collaborative Marketers, Growers and Suppliers**

Processed **collaborative marketing** applications and **appeals**

Monitored the **information flow** from Zespri

Monitored Zespri's **non-core business assessments**, including for 12 month supply

Dealt with **complaints and enquiries**

Monitored **collaborative marketing returns** for acceptable returns

Monitored Zespri's compliance with the **Kiwifruit Export Regulations**

Contact with Markets, Zespri Marketing Managers, Collaborative Marketers, Product Groups, Growers and Suppliers

- Market visit was made to Hong Kong and Europe
- Meetings were held with the Zespri Collaborative Marketing Manager and Zespri Marketing Managers
- Meetings were held with Collaborative Marketers
- Meetings were held with Growers and Suppliers during the year
- Meetings were held with the Zespri Board and NZ Kiwifruit Growers Incorporated Executive
- Presentations were made to NZ Kiwifruit Growers Incorporated, and NZ Kiwiberry Growers Incorporated

Information Disclosure

- Zespri's disclosure of information was monitored to ensure compliance with the Kiwifruit Export Regulations
- Details of collaborative marketing for last season were published by the Board to industry groups, including financial information as to the performance of the collaborative marketers

Non Diversification

- Zespri's assessment of its activities was monitored and then reviewed by Kiwifruit New Zealand's Board.
- Zespri global supply activities were monitored regularly by Kiwifruit New Zealand, and additional information was requested

Complaints and Inquiries

- A number of informal enquiries and Official Information Act requests were received, and actioned

Collaborative Marketing Results

- Increased in market collaboration, particularly in selected markets and generally. Increased collaboration between Collaborative Marketers and Zespri generally
- Increased collaborative marketing volumes in 2011 – 2012 season
- Kiwifruit collaborative marketing volumes and returns since 2000 are as follows:

Season	Volume (millions of trays)	Market Return ¹ (NZD millions)	Fruit Return ² (NZD millions)
2000	1.1	7.2	5.8
2001	1.8	12.2	9.9
2002	1.6	14.5	10.8
2003	1.6	16.8	12.2
2004	1.7	14.1	9.7
2005	1.7	10.8	7.9
2006	1.4	12.0	9.8
2007	1.7	12.9	10.4
2008	1.9	16.3	13.4
2009	1.8	15.2	11.6
2010	2.5	18.4	17.3
2011-12 Season	3.6	23.6	22.2

- Each year a benchmarking exercise is also carried out between the kiwifruit collaborative marketing programmes and similar Zespri programmes, including for region, country, and market. The results of the benchmarking averaged across all programmes for fruit return is as follows:

Season	Collaborative Marketing Return per TE	Zespri Return per TE
2000	5.26	5.13
2001	5.32	6.06
2002	6.48	6.07
2003	7.56	7.10
2004	5.57	5.56
2005	4.79	4.82
2006	6.85	6.71
2007	6.27	5.90
2008	7.01	6.80
2009	6.79	6.35
2010	6.82	6.48
2011-12 Season	6.21	6.38

- Kiwifruit New Zealand is working with Zespri to lift the performance of collaborative marketing to ensure that it contributes to the global marketing of NZ kiwifruit

Monitoring

- Regular meetings held with Zespri at Board and Senior Executive level and Zespri's activities were monitored as required by the Kiwifruit Export Regulations
- Market visits were undertaken to provide the context for consideration of collaborative marketing applications and to monitor Zespri's and collaborative marketers' activities

Zespri Export Authorisation Re-issued

- Zespri's Export Authorisation was reviewed as to its effectiveness and confirmed

¹ * "Market Return" is what is returned to the Grower Pools at "Free on Board" after all in market costs, including freight, insurance, promotional expenditure, in market commissions, and before service costs, service level agreement and onshore costs, service charges and fruit incentives.

² ** "Fruit Return" is the Market Return less all commissions, supply costs including costs in respect of service level agreements, onshore direct costs, and the Zespri administration charge, but before service charges, fruit incentives and postharvest costs.

Kiwifruit New Zealand's Role

In 2000, the New Zealand kiwifruit industry was restructured through the Kiwifruit Industry Restructuring Act 1999 and Kiwifruit Export Regulations 1999.

The Act established Zespri, and provided for the making of Regulations providing for the establishment, funding, and other matters relating to Kiwifruit New Zealand. The Regulations established on 1 April 2000 a new regulatory board, Kiwifruit New Zealand and contain:

Export orientated provisions that:

- ban the export of NZ grown kiwifruit otherwise than for consumption in Australia, except as authorised or approved by KNZ.
- require KNZ to provide Zespri with an authorisation to export kiwifruit.
- allow KNZ to approve collaborative marketing arrangements, each of which is an arrangement by which a person may export NZ grown kiwifruit in collaboration with Zespri, and direct Zespri to make kiwifruit available for these arrangements.
- do not apply to the sale of kiwifruit in New Zealand, or its export for consumption in Australia (which from 2004 is regulated by the Horticultural Export Authority).

and provisions relating to monitoring and enforcement:

- the non-discrimination rule that limits Zespri from unjustifiably discriminating in the way it purchases kiwifruit and sets the point of purchase of NZ grown kiwifruit at not earlier than FOBS (free on board ship).
- the non-diversification rule that requires, unless the risks are minimal, that the providers of capital agree to the ways in which their capital is used outside that necessary for the purchase and export of NZ grown kiwifruit (other than for consumption in Australia and sale in New Zealand).
- the information disclosure requirements that require information disclosure by Zespri and KNZ.

The scope of the Regulations and the responsibility of KNZ is limited.

The Regulations deal with the export of NZ grown kiwifruit and mitigating the potential costs and risks of the export provisions. They do not provide for KNZ to have a general supervisory role in the industry or of Zespri. KNZ is prohibited from carrying out any commercial activity, including the purchase or sale of kiwifruit, or operating to make a profit.

Chairman's Report

At the end of the last financial year, the Board was considering a major collaborative marketing application for a multi-year, multi country export of new cultivar kiwifruit, for up to 20 years, and an interim decision had been issued. That collaborative marketing application was subsequently returned to the Board for its further consideration, a further hearing held with the applicant, and the application declined. The Board was not satisfied that the proposed arrangement would achieve the Regulatory criteria, that is of increasing the overall wealth of New Zealand kiwifruit suppliers and that the export of New Zealand grown kiwifruit will be undertaken in collaboration with Zespri. When an application is declined, reasons as to why an application is declined are issued in writing to the applicant. A synopsis of the decision and the reasons for it are set out later in this Report.

The cultivar mix exported by Zespri is undergoing change. It is also significant that the number of collaborative marketing applications received by the Board involving other than Zespri cultivars is increasing. For the 2012 season, the Board considered eight applications for three Gold cultivars, the rights to which were owned by other than Zespri. All have been approved for market trial. We are also advised of reports of multiple other cultivars appearing in the markets, sourced from elsewhere in the world. With the proliferation of cultivars, increasingly the differential orchard to market merits of the cultivar itself will become more relevant to the case for a collaborative marketing approval. In the future, it is likely that it will be the particular differential advantages that the cultivar carries with it, along with the other merits of a particular application, that is likely to determine its approval as a collaborative marketing arrangement or not. The Board will be looking to see if applications can satisfy it that the proposal will increase overall wealth for NZ kiwifruit suppliers.

With some exceptions, dairy particularly, last year was a difficult one for horticulture and agriculture. The increasing market leverage of the supermarkets, dampened consumer demand and with the notable exception of Australia, tough exchange rates led to lower returns for growers and New Zealand generally. Increasingly the returns for farmers and growers are under pressure as others in the supply chain seek to maintain margins while reacting to competitive pressures. In this environment, the value of the Regulations was again demonstrated within the kiwifruit industry. Increased volumes of NZ grown kiwifruit were managed into the market, while price levels were maintained. While Psa remains a very significant issue, working together, the industry significantly responded, in a way not many others could.

The Board has completed a busy year in respect to all its activities, which has at times stretched its capacity to undertake its regulatory responsibilities. Again Chief Executive, Richard Procter has been required to extend substantially the time he spends on Board activities and we are grateful for the energy he has devoted to ensure the extra workload has been completed without compromise to efficiency.

During the year Alister Hawkey was elected to the Board for a three year term, replacing John Allen. I welcome Alister to the Board, and thank John for his valuable contribution during his term on the Board.

Sir Brian Elwood
Chairman

Kiwifruit New Zealand's

Regulatory Performance 1 April 2011 to 31 March 2012

KNZ Function	Relevant Regulation	Performance
To authorise the export of kiwifruit by Zespri (except to Australia).	Regulations 4, 5, 6, 7, 33(1)(a) and 42(2)	Monitored during 2011 / 2012, authorisation and the effectiveness of the enforcement regime reviewed. Authorisation continued unchanged.
To monitor and enforce the point of acquisition of title to kiwifruit which currently is at FOBS	Regulations 5(c) and 33(1)(b)	Compliance monitored during 2011 / 2012.
To monitor and enforce the terms and conditions of Zespri's export authorisation.	Regulation 33(1)(b)	Monthly reports from and meetings with Zespri Group Limited plus the provision of relevant information.
To monitor and enforce the non-discrimination rule	Regulations 9 and 33(1)(b)	Compliance monitored during 2011 / 2012.
To monitor and enforce the non-diversification rule	Regulations 11 and 33(1)(b)	Chief Executive monitored Zespri making its assessments and Zespri presented its assessments to KNZ's Board.
To monitor and enforce the information disclosure requirements	Regulations 12 to 14 and 33(1)(b)	Monitored Zespri's compliance.
To consider requests for exemption from ZGL from the information disclosure requirements	Regulation 21	Considered Zespri requests and exempted some information.
To determine collaborative marketing applications	Regulations 24 to 31 and 33(1)(c)	<p>For the year ended 31 March 2012, 23 kiwifruit collaborative marketing programmes operated into 17 countries, involving 12 collaborative marketers. 5 kiwiberry collaborative marketing programmes operated into more than 12 countries.</p> <p>For the year ended 31 March 2013 (2012/13 season), 24 kiwifruit collaborative marketing programmes are approved to operate into more than 19 countries, involving 13 collaborative marketers. In addition, 5 kiwiberry collaborative marketing programmes are approved.</p>
KNZ will inquire into complaints about the application of the non-discrimination rule, the non-diversification rule, the information disclosure regime and collaborative marketing requirements	Regulation 33(1)(b)	A number of informal enquiries were received and actioned.

Copies of the Zespri Group Limited Export Authorisation and the Report on Collaborative Marketing Results for the 2011 - 2012 season are available from Kiwifruit New Zealand on request.

Financial Summary 1 April 2011 to 31 March 2012

	2011-12	2010-11	2009-10
	\$NZ	\$NZ	\$NZ
<u>Income</u>			
Regulation 39(a) from Zespri International Ltd	243,970	234,232	243,957
Regulation 39(b) from Collaborative Marketing	214,820	227,042	220,087
Interest and Miscellaneous Income	8,941	821	566
Total Income	467,731	462,095	464,609
<u>Expenditure⁽¹⁾</u>			
Kiwifruit New Zealand Board	136,297	128,824	133,559
Kiwifruit New Zealand Executive	93,966	81,097	88,666
Collaborative Marketing	214,820	227,043	220,028
Operations	3,072	6,047	6,336
Administration and Overheads	19,740	19,065	17,536
Total Expenses	467,894	462,076	466,125
Prior Period Adjustment	0	0	449⁽²⁾
Income Tax	172	0	0
Net Surplus (deficit) to Accumulated Funds	(335)	19	(1,066)

Accumulated Funds

Opening Funds	20,576	20,557	21,622
Net Surplus for Year	(335)	19	(1,066)
Total Funds as at Year End	20,242	20,576	20,557

Reconciliation of Zespri Funding with Zespri accounts and actual KNZ expenses:

	2011-12	2010-11	2009-10
	NZ\$000	NZ\$000	NZ\$000
Funding as reported in Zespri Accounts	244	234	311
Refunded to Zespri after year end	0	0	67
Regulation 39(a) funding from Zespri as per KNZ accounts	244	234	244
Funding transferred from one year to another by KNZ (net (surplus)/deficit)	-	-	2
Actual funding by Zespri used each year	244	234	246
Collaborative marketing fees and interest	224	228	220
KNZ actual costs (including collaborative marketing)	468	462	466

Notes: (1) KNZ allocates its expenses between collaborative marketing and general (other) expenses.
(2) Tax overpaid in prior years.

A copy of Kiwifruit New Zealand's audited accounts is available on request.

Chief Executive's Report

Reflecting back over the last year, in one way little seems to have changed. We seem stuck in a recurring pattern of short-term optimism, inevitably replaced by reality checks dictated by poor fundamentals. The financial crisis is still affecting us all, Greece has still got debt issues, Christchurch has just had two more earthquakes, and Psa is still a major issue for the kiwifruit industry. Hopefully what this means is that the end of the tunnel is a year closer.

For Kiwifruit New Zealand, the financial year ended 31 March 2012 again saw an elevated level of activity.

Collaborative marketing

In the 2011-12 season, 23 kiwifruit collaborative marketing programmes operated into 17 countries, involving 12 collaborative marketers. 5 kiwiberry collaborative marketing programmes operated into more than 12 countries. To date for the 2012-13 season, 24 kiwifruit collaborative marketing programmes have been approved, to operate into more than 19 countries (some approvals are for multiple countries), involving 13 collaborative marketers. In addition, 5 kiwiberry collaborative marketing programmes were approved. Included in the 2012-13 season applications were eight involving cultivars not owned by Zespri. Five of those were a continuation of the trial of the Y356 cultivar in market for a second year. In addition, two separate market trials of the A19 cultivar, and one for the Y376 cultivar were approved.

For the last 5 years, over 90% of all kiwifruit collaborative marketing applications submitted have been approved.

To be successful, a collaborative marketing application must carry with it the prospect of increasing the overall wealth of New Zealand kiwifruit suppliers and be in collaboration with Zespri. All cultivars have some prospect of being successful in market, but need to be packaged into a successful business case that meets the Regulatory criteria. Essentially the application must include with it some differential advantage which may arise as a result of, for example, a particular capability of the applicant, a particular niche in the market, or because of a particular characteristic of the cultivar (such as yield, in processing or market premium) which differentiates it from those already in the market. In short, the Regulatory criteria apply irrespective of whether a different cultivar is involved or not, and its ability to simply substitute, rather than add wealth, is not sufficient.

Monitoring and Enforcement of the Non-diversification and Information Disclosure Rules

During the year, Kiwifruit New Zealand monitored Zespri's compliance with the non-diversification and information disclosure rules. All potential diversification activities were evaluated and reviewed. Monitoring of Zespri's twelve month supply activities continues.

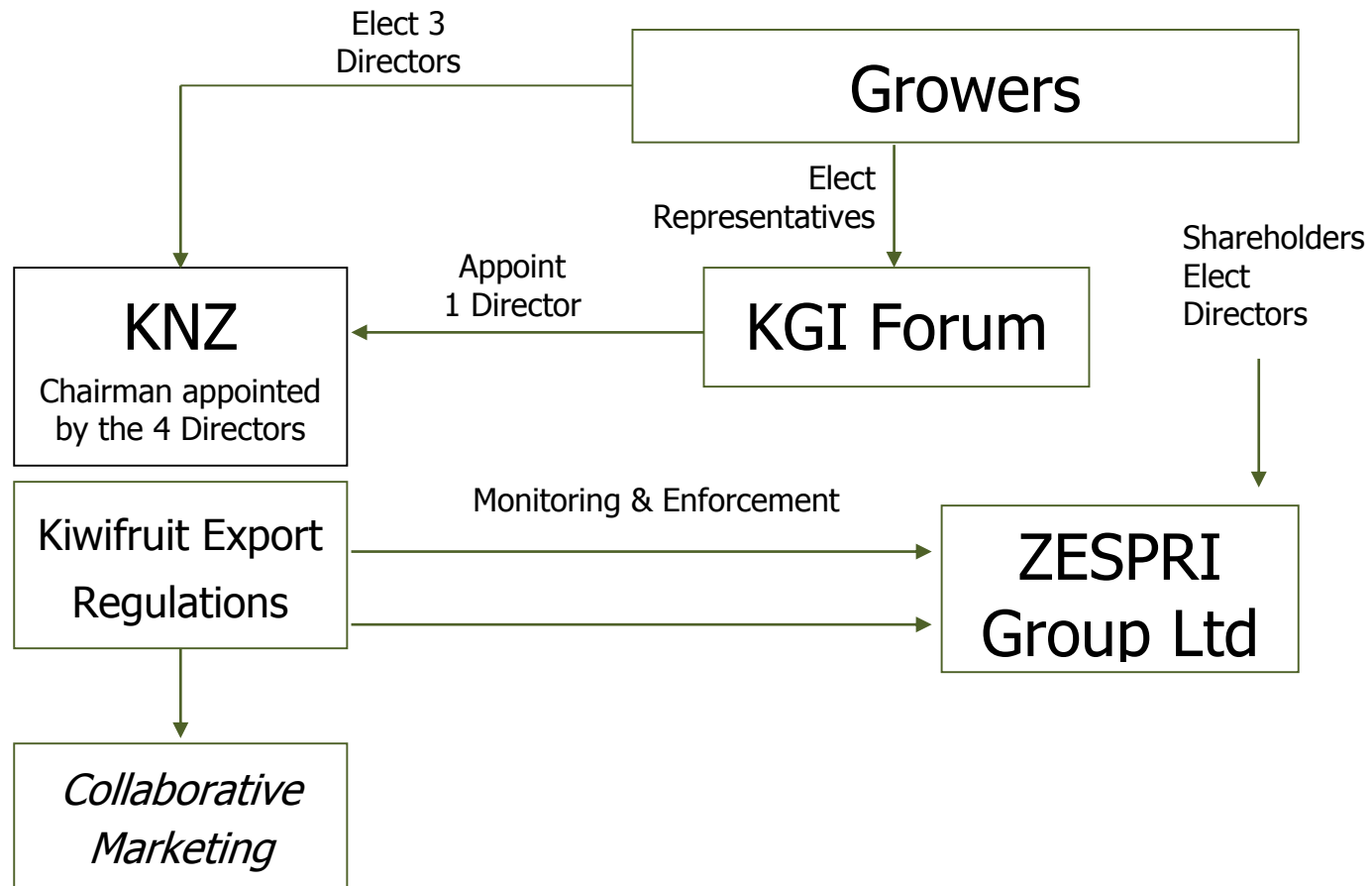
Complaints and Information Requests

The last financial year saw a number of informal complaints and official information requests. At the end of last financial year, an Ombudsman investigation was under way of a decision by Kiwifruit New Zealand to refuse release of information under the Official Information Act. The outcome of that investigation is awaited.

I would like to thank the Board, and industry for the help and cooperation that I have received over the last year.

Richard Procter
Chief Executive

Regulatory Structure



Selected Collaborative Marketing Determinations Issued by Kiwifruit New Zealand³

Turners & Growers Limited

Summary

For KNZ to approve the application as a collaborative marketing arrangement, the applicant must satisfy it that the proposed arrangement will achieve the purpose of increasing the overall wealth of New Zealand kiwifruit suppliers and that the export of New Zealand grown kiwifruit will be undertaken in collaboration with Zespri. Collaborative marketing applications are not a means by which to circumvent the effect of the Regulations.

Synopsis of KNZ Board decision

For the 2011-12 season, Kiwifruit New Zealand received an application dated 16 November 2010 for a collaborative marketing approval for the export of New Zealand grown kiwifruit from Turners & Growers' ("T&G") ENZAGold™, ENZARed™ and Summerkiwi™ varieties to multiple countries for a term of five years with three rights of renewal each for a term of five years. At T&G's request the application was considered by the full KNZ Board, not by the Collaborative Marketing Committees. Part B of the application (covering the collaborative marketing business case) identified the volume of fruit involved as 80,000 trays of a single fruit variety labelled ENZAGold™, and the majority of the information in the application appeared to be focused on that variety.

On the 24 March 2011, Kiwifruit New Zealand issued an interim decision, and recorded that it was not satisfied that the material before it has established that the proposed programme submitted by T&G will increase the overall wealth of New Zealand kiwifruit suppliers; nor was it satisfied that the stated T&G willingness or intent to collaborate with Zespri is the collaboration required of an applicant for a collaborative marketing approval. KNZ advised T&G and Zespri that it would reconvene the application hearing on a date to be agreed, to allow the parties in the meantime to undertake further discussions to see if it may be possible to put before KNZ an agreed proposal for a collaborative marketing programme consistent with the provisions of the Regulations.

On 12 May 2011, T&G requested that KNZ reconvene the hearing of the original application because it wished to place before KNZ a proposal by which it and Zespri could collaborate. The main thrust of the T&G approach was that the Appendix and the identified principles constituted a robust and comprehensive framework for collaboration appropriate to their application. For its part, Zespri submitted that while a measure of agreement had been reached as to a process which could guide collaboration with T&G it found it difficult to accept that collaboration in the circumstances would be successful or realistic. There were no other changes to the application. Notwithstanding Zespri's concerns, it had engaged with T&G with a view to participating in a one year trial programme for the export of ENZAGold kiwifruit to assess its market acceptance and performance through the supply chain. The applicant did not accept that as a basis for proceeding and sought a longer trial term of five years.

Although the parties made some progress with addressing deficiencies in the process/procedures for collaboration between them, T&G did not establish to KNZ's satisfaction that the proposed arrangement would (or would be likely to) increase the overall wealth of New Zealand kiwifruit suppliers, and was such that it would pose a not insignificant risk to the overall wealth of kiwifruit suppliers.

The application was too broad, too generalised and lacking a clear marketing strategy that could be demonstrated as complying with the Regulations or being complementary to the strategic or marketing strategies being pursued currently by Zespri. KNZ looked for but found no basis in the submissions and material provided that would give it confidence that it could safely approve the application as one that would increase the overall wealth of New Zealand kiwifruit suppliers. In substance, the proposed arrangement had more the features that might be expected of an authorisation to allow for a parallel or supplementary system

³ These are brief summaries. For full details refer to the Determinations by the Appeal Committee.

of exporting kiwifruit from New Zealand than what might reasonably be expected in a collaborative marketing arrangement provided for by the Regulations. Collaborative marketing approvals are not a way of circumventing the effect of the Regulations. The application was declined.

Fruitlynx Marketing Limited

Summary

Each collaborative marketing application is considered on its merits on a case by case basis, and assessed relative to the purpose of the collaborative marketing regime established by the Regulations of "increasing the overall wealth of NZ kiwifruit suppliers." Zespri is entitled to develop strategy which might or might not be supportive of a collaborative marketing proposal or arrangement, but this is not determinative of KNZ's consideration of the application.

Synopsis of KNZ Board decision

In October 2011, Fruitlynx Marketing Limited ("Fruitlynx") applied to KNZ for approval to export 300,000 tray equivalents Hayward green class 1 to Malaysia. Although this arrangement had been in existence for a number of years, the application was declined by the Collaborative Marketing Committee, for the reasons set out in its decision dated 31 January 2012. Fruitlynx appealed the decision.

It was clear from the papers available to the Appeal Committee that the Collaborative Marketing Committee had concerns with the consequence to grower wealth of a situation where Fruitlynx involvement in the Malaysian market was changing and diminishing, but commission levels were no longer commensurate with Fruitlynx's level of activity. This was a consequence of the evolution of Zespri's involvement in that market first signalled in 2006 and made known by Zespri. The Collaborative Marketing Committee had clearly sought from Fruitlynx the exact nature of its current role in Malaysia in light of the evolving role of Zespri in that market, and how in the future a further approval of Fruitlynx as a collaborative marketer in that market would increase the overall wealth of NZ kiwifruit suppliers. In all the circumstances the Appeal Committee was satisfied that the application as presented to KNZ was correctly understood by the Committee and on the evidence available to it there was no basis upon which it could have approved the application.

At all times Zespri is able to develop a marketing strategy for Malaysia and this cannot be seen as a predetermination which affects KNZ's ability to consider and determine a collaborative marketing application, nor in any way prevent it from properly considering an application. Zespri's involvement in the consideration of the Fruitlynx collaborative marketing application was in accord with normal practice, and also did not result in a predetermination of its application by the Committee.

Fruitlynx was not able to establish any ground that would enable the Appeal Committee to come to a view that an error had occurred in the Committees consideration of the application, and the Appeal was not upheld.

List of Members and Staff

Kiwifruit New Zealand is comprised of the Chairman and four members who serve for three year terms. Growers elect three of the members, and the fourth member is appointed by the New Zealand Kiwifruit Growers Incorporated. The four members appoint the Chairman. Hendrik Pieters position as director is up for election this year. The Kiwifruit Export Regulations 1999 require the Chairman to be fully independent of the kiwifruit industry.

Kiwifruit New Zealand:

Chairperson	Sir Brian Elwood	(Term expires in July 2013)
Deputy Chairperson	Hendrik Pieters	(Term as member expires in September 2012)
Members	Ian Greaves	(Term expires in September 2013)
	Alister Hawkey	(Term expires in September 2014)
NZKGI Appointed Member	Ruth Lee	(Term expires in July 2014)

Kiwifruit New Zealand Executive:

Chief Executive	Richard Procter
Administration Assistant	Amy Te Whetu

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Procedures Manual

A procedures manual is available on request. The procedures manual is designed to provide general advice and guidance on the role and function of Kiwifruit New Zealand Board and its application of the Kiwifruit Export Regulations 1999. It will be updated and revised from time to time. The procedures manual includes KNZ's Code of Conduct for the Conflicts of Interest, and Code of Conduct for trades in Kiwifruit Company Securities.