

KIWIFRUIT EXPORT REGULATIONS 1999 (the “Regulations”)

Decision of the Collaborative Marketing Appeal Committee of Kiwifruit New Zealand (“KNZ”) relating to the Application by Seeka Industries Limited (“Seeka”) to export kiwifruit to China in collaboration with Zespri Group Limited (“ZGL” or “Zespri”).

HEARING DATE: 21 February 2013

PRESENT: Kiwifruit New Zealand (Appeal Committee)

Sir Brian Elwood

Ruth Lee

1. Introduction

- 1.1 On 14 February 2013 Seeka appealed against the decision of the Collaborative Marketing Committee (the “China Committee”) comprising Messrs Pieters and Hawkey declining the Seeka application to export Wilkins variety kiwifruit to China.
- 1.2 The substance of the Appeal was that there had been an error in the process adopted by the China Committee which resulted in some important information not being considered by that Committee and this information would have had a material bearing on the outcome.
- 1.3 Seeka has set out in its Notice of Appeal the information it considers important in this context. The information was not available to the Committee at the time it made its decision but was subsequently made available to the Committee.
- 1.4 Given that a member of the Appeal Committee who would normally consider the Appeal had withdrawn from consideration of the Appeal due to a possibly perceived conflict of interest, the KNZ Board (the “Board”) at its meeting on 21

February 2013 established a special Appeal Committee to consider the Seeka Appeal. Sir Brian Elwood and Ms Ruth Lee were constituted as the Appeal Committee to consider the Appeal.

2. Seeka Appeal

- 2.1 The Appeal Committee gave consideration to the information contained in the Notice of Appeal and which Seeka considers to be relevant to a proper consideration of its Application. The Appeal Committee notes that the information was not available to the China Committee at the time the Committee met with Seeka representatives to finalise their consideration of and decision on the Application. The China Committee came to a decision on the basis of the information then available to it. That was in accord with the usual practice of collaborative marketing committees established by the Board.
- 2.2 The Appeal Committee is of the view that in the circumstances of this Application, in particular the short time frame between the decision and the further information being available from the Applicant, there is time to consider the additional information before the kiwifruit harvest season commences. Whether or not that information is of relevance to the eventual outcome of the Application will be for the China Committee to determine.

3. Outcome of the Appeal

- 3.1 In the circumstances the Appeal can be decided without the Applicant being required to meet with the Appeal Committee.
- 3.2 The Appeal is upheld to the extent that the Appeal Committee recommends that the China Committee re-convene its meeting with Seeka to consider the further information referred to in the Notice of Appeal and make such modifications to its decision of 31 January 2013 as it deems appropriate. Zespri representatives should be invited to attend that re-convened meeting.

For and on behalf of the Kiwifruit New Zealand Appeal Committee

A handwritten signature in dark ink, appearing to be 'Brian Elwood', written in a cursive style.

Sir Brian Elwood

Chairman

Dated: 21 February 2013