

Monitoring and enforcement of non-diversification provisions

Monitoring Plan

China R&D and Producer Vote activities

Introduction

1. This paper sets 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 has not obtained 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 has 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.

R&D definition

6. Zespri has provided its interpretation of R&D relating to kiwifruit (including background and principles of application) for KNZ's consideration.
7. 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.

8. KNZ has 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**).

Monitoring Plan

9. The following details a proposed monitoring plan for KNZ.

10. *Scope of the monitoring programme.*

- 10.1. 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. However, for the purposes of this monitoring plan and without limiting KNZ's monitoring and enforcement functions under the Regulations, KNZ sets out below the initial scope of the monitoring programme for activities undertaken by Zespri relating to Chinese grown G3.

- a) KNZ will assess whether the activities Zespri has undertaken from 2017 to present in China in respect of Chinese grown G3 kiwifruit are core business under the Regulations.
 - b) KNZ will request Zespri to supply and will review contracts and commitments made with Chinese government entities or state-owned enterprises and any Chinese commercial entities from 2017 to present.
 - c) KNZ will review Zespri's R&D activities relating to Chinese grown G3 kiwifruit to date and any proposed activities to ensure these are within the defined parameters of R&D activities as set out in the R&D Working Definition Paper or are otherwise core business.
 - d) KNZ will continue to monitor Zespri's activities relating to Chinese grown G3 going forward, 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.

- 10.2. KNZ may amend the scope of the monitoring programme as it considers necessary.

11. *Assessment Process.*

- 11.1. KNZ's assessment 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).

12. *Information Request – prior activities and proposed future activities.*

- 12.1. KNZ will:

- a) request information from Zespri, including an initial list of questions and requests for documentation in respect of Zespri's activities in China (**Information Request**)
 - b) determine whether the information provided is sufficient to make a preliminary assessment of whether the activities fall within the defined parameters of R&D

activities as set out in the R&D Working Definition Paper or are otherwise core business. If not KNZ may:

- request further information from Zespri; and/or
- engage external parties to complete further investigations (including investigations in China).

13. *Preliminary Assessment.*

13.1. Once KNZ has received sufficient information, KNZ will consider all information obtained and make 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 Paper or core business under the Regulations.

14. *On-going monitoring.*

14.1. KNZ will determine the scope of ongoing monitoring of the R&D activities in China (including establishing Zespri's reporting requirements and considering whether ongoing engagement of external parties is necessary).

Timeframes

15. KNZ will confirm reasonable timeframes with Zespri in respect of the provision of information to KNZ and KNZ's assessment of the activities. Our initial proposal would be:

- Zespri to have one month to provide an initial response to the Information Request;
- KNZ completes an initial review of the information provided by Zespri and requests any further information within one month; and
- KNZ undertakes its preliminary assessment and confirms the scope of ongoing monitoring as detailed in paragraphs 13 and 14 above, as soon as practicable but with three months of receiving all relevant information (including from any third party).

16. KNZ may amend the timeframes of the monitoring programme as necessary.