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News Release

## UPDATE: TURNERS & GROWERS CASE AGAINST ZESPRI

An initial four-day hearing of Turners & Growers case against Zespri will begin next Tuesday (20 July) in the Auckland High Court.

The initial hearing from 20 to 23 July is being held to determine the issues of:

(a) Whether the Kiwifruit Export regulations purportedly giving Zespri a monopoly are unlawful; and (b) whether the High Court has jurisdiction to determine whether Zespri has been acting in breach of regulations 9 (non-discrimination) and 11 (non-diversification) of the Kiwifruit Export Regulations 1999.

The remaining issues in Turners & Growers case will then be heard during the six-week substantive hearing set down to begin in the Auckland High Court in May 2011.

In July 2009, Turners & Growers Limited and its wholly owned subsidiaries, Turners and Growers Horticulture Limited and ENZA Limited filed proceedings in the Auckland High Court against Zespri Group Limited and its subsidiary Zespri International Limited.

The proceedings are in respect of claims by Turners & Growers that:

1. Regulations 3 and 4 of the Kiwifruit Export Regulations 1999, which purport to give Zespri a monopoly over the export of kiwifruit (other than to Australia), are unlawful and of no effect because they are not permitted by s. 26 of the Kiwifruit Industry Restructuring Act 1999, read in light of the Commerce Act 1986 and the NZ Bill of Rights Act 1990;
2. Zespri has abused its dominant position for the purpose of preserving its monopoly after deregulation, by:
  - a. seeking to tie growers, suppliers and post harvest operators into exclusivity contracts;
  - b. attempting to take control of the supply of kiwifruit for export to Australia in the 2008/2009 season; and
  - c. attempting to take control of new kiwifruit cultivars.



3. Zespri has unlawfully discriminated among suppliers of kiwifruit by paying more for kiwifruit supplied by growers who are prepared to sign exclusivity agreements with Zespri, in an improper attempt to preserve Zespri's monopoly power, in breach of regulation 9 of the Kiwifruit Export Regulations 1999.
4. Zespri has unlawfully carried on non-core businesses and activities without obtaining the approval of shareholders and suppliers, in breach of regulation 11 of the Kiwifruit Export Regulations 1999.

A copy of Turners & Growers full statement of claim and all documents relating to Turners & Growers work in the Kiwifruit industry are available at [www.turnersandgrowers.com](http://www.turnersandgrowers.com)

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**About Turners & Growers:**

Turners & Growers is New Zealand's leading distributor, marketer and exporter of premium fresh produce and the largest corporate horticulture investor in New Zealand. Turners & Growers is also a large-scale grower of several fruit varieties including citrus, apples and kiwifruit.

In 1959 Turners & Growers coined the name '*Kiwifruit*' as it worked to establish the export market for NZ-grown Chinese Gooseberries in the United States.

In January 2003, Turners & Growers merged with ENZA (formerly the New Zealand Apple & Pear Marketing Board). ENZA is a leading player in the global pipfruit trade, with strong global customer relationships and a history of innovation. Following the merger, Turners & Growers saw an opportunity to pursue a new kiwifruit variety development programme using ENZA's new variety development background.

Turners & Growers remains at the forefront of the kiwifruit industry with several new varieties that it has developed and tested for production and export from New Zealand. The company holds the global Intellectual Property Rights to ENZAGold™, ENZARed™ and the regional rights to Summerkiwi.™

Turners & Growers wants the right to be able to export, without restriction, its own kiwifruit varieties internationally. The Kiwifruit Regulations 1999 prevent owners of Kiwifruit varieties, other than monopoly kiwifruit marketer Zespri, from exporting kiwifruit outside New Zealand and Australia.

**Contacts for more information:**

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For more information on Turners & Growers new Kiwifruit varieties visit:

[www.turnersandgrowers.com](http://www.turnersandgrowers.com)

