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PUBLIC VERSION

To

Registrar
Commerce Commission
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Copy to

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From

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Dear Registrar

Ngāi Tahu Tourism / KJet: Ngāi Tahu Tourism's Response to Statement of Issues

1. This letter sets out Ngāi Tahu Tourism Limited's (**NTT**) response to the Commerce Commission's Statement of Issues dated 19 October 2023 regarding the proposed acquisition by NTT (or a wholly owned subsidiary) of the tourism jet boating business trading as "KJet" and related assets (including 100% of the shares in Time Tripper Limited) from Kawarau Jet Services Holdings Limited, KJet Limited, and Time Tripper Limited (**Proposed Acquisition**).

Summary

2. There is a clear basis on which the Commission can be satisfied that the Proposed Acquisition will not have, or be likely to have, the effect of substantially lessening competition in a market.
3. The Statement of Issues begins with erroneous statements that NTT's jet boating businesses are "accessibly located at the waterfront in central Tāhuna (Queenstown)" and that "the Proposed Acquisition would be a three-to-two merger".¹ These statements are not only incorrect, but also inconsistent with other parts of the Statement of Issues. The Commission also appears to have selectively weighted evidence that supports its concerns, and not taken into account (or given weight) to the preponderance of evidence that demonstrates that the Proposed Acquisition would not have the effect or likely effect of substantially lessening competition in a market.
4. The evidence that NTT has provided, and that the Commission has obtained through its market inquiries that is referred to in the Statement of Issues, clearly demonstrates that:
 - (a) as a matter of fact and commercial common sense (being the test the Commission is required to apply under the Commerce Act 1986 to define a market), the relevant market is

¹ Statement of Issues, paragraph 10.

broader than the supply of tourist jet boating services in Tāhuna. There is strong evidence of a high degree of demand-side substitutability, with manuhiri (visitors) to the Queenstown Lakes region choosing between a wide array of activities. However, the Commission has not considered or placed sufficient weight on this evidence, and has instead drawn contrary conclusions without robust reasoning. The Commission's view is also contrary to the evidence of the majority of industry participants;

- (b) NTT and KJet are not each other's closest competitors, and NTT would continue to be significantly constrained post-acquisition by existing competition, including numerous other adventure tourism operators. The tourism industry in the Queenstown Lakes region is highly competitive. As set out in NTT's application (and clearly visible if one visits Tāhuna or views advertising/marketing for Tāhuna), there is fierce competition to be one of the activities that a visitor to the Queenstown Lakes region chooses. NTT would have no ability post-acquisition to profitably increase prices above competitive levels or lower the quality of its services. If it were to do so, manuhiri (and wholesalers, agents, resellers, and tour operators) would choose other activities – from a broad array of options including jet boating, bungy jumping, skiing / snowboarding, parasailing, skydiving, indoor skydiving, hang gliding, paragliding, scenic flights, zipline, giant swing, climbing, rafting, kayaking, 4WD and off-road rides, canyoning, and horseback riding; and
- (c) wholesalers, agents, resellers, and tour operators have significant countervailing power, given the number of activities (both adventure and other tourism activities) they can choose between in the Queenstown Lakes region.

5. The Commission also states that it is continuing to investigate the potential coordinated and conglomerate effects of the Proposed Acquisition. There is no reasonable basis on which the Commission could consider that the Proposed Acquisition would increase the likelihood of coordination between suppliers of jet boating services or other tourism activities, or give NTT any ability or incentive to foreclose rival suppliers.

Relevant markets

6. In its Statement of Issues, the Commission states that, while it has not reached any definitive views on the relevant markets for assessing the Proposed Acquisition, it currently considers that the competition issues that may arise from the Proposed Acquisition are best assessed and isolated by defining a market for the supply of tourist jet boating services in Tāhuna.
7. Under the Commerce Act, the relevant market is a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them. The Commission's proposed market definition does not meet this test, as it fails to take into account services that are substitutable for tourism jet boating services in Tāhuna. As a matter of fact and commercial common sense, other adventure tourism activities in the Queenstown Lakes region are clearly substitutable for jet boating services in Tāhuna.

Product market

8. The Commission's current product market definition is a narrow market for the supply of tourist jet boating services.
9. NTT maintains that the evidence establishes that other adventure tourism activities are close substitutes for jet boating, and that defining a narrow market or markets just focussed on jet boating would not capture the substitutability and competitive dynamics between jet boat activities and other adventure tourism activities. There is also no basis for the Commission to depart from its 2003 Bungy New Zealand and Pipeline Bungy decision, which identified a market for the provision of retail adventure tourism activities in the Queenstown Lakes region.
10. Specifically, NTT submits that:
 - (a) there is strong evidence of a high degree of demand-side substitutability. However, the Commission has not considered or placed sufficient weight on this evidence and has instead drawn contrary conclusions without robust reasoning. This is particularly relevant given that the Commission's focus is on demand-side substitution rather than supply-side substitution in its assessment of the product markets.
 - (b) there is clear, consistent evidence that the majority of industry participants agree that there is a broader market than just the supply of tourist jet boating services. The evidence that the Commission considers supports a narrower market is either anomalous or has been mischaracterised by the Commission. The Commission's statement that there is mixed evidence of different market participants or a lack of clear evidence is incorrect; and
 - (c) a number of tourism operators, including jet boat operators, consider the pricing of other tourism operators when setting their pricing, and the Commission has not given sufficient weight to this in its assessment.

Variety of factors influence choice of tourism activity

11. The Commission states that, when assessing relevant markets, it generally starts with the product(s) or service(s) in which the parties to a merger or acquisition overlap – in this case, tourist jet boating services in Tāhuna.² However, contrary to the realities of how tourists choose between different tourism activities, the Commission has not moved on from this starting point. It has remained focussed on the view that jet boating is a different type of activity to other tourism activities, even though there is evidence from NTT and other industry participants that a range of factors beyond the type of activity influence a tourist's choice of activity.
12. Relevantly, the Commission states that "*generally, assuming similar pricing, we would expect activities that offer a similar type of experience to a jet boat trip to be a closer substitute for that trip than an activity that offers a different type of experience*". There is no evidence or reasoning for how the Commission has come to this view. Rather, this statement directly contradicts the evidence before the Commission that a variety of factors influence choice of tourism activity and

² Statement of Issues, paragraph 43

provider, including adventure/thrill aspects of the activity, scenery/views as part of the activity, and the level of activity required (active or passive). The statement also assumes that a "jet boat trip" is a homogenous product, which is incorrect. As set out in paragraphs 81 to 87 of NTT's application, and paragraph 65 of the Statement of Issues, jet boating experiences are differentiated based on a range of factors. Bungy NZ's submission is also relevant, stating:

jetboating, especially in canyon-type locations like the Shotover Jet and Skippers Canyon Jet, is considered relatively adventurous and a reasonably close substitute to doing a bungy jump (Submission from Bungy NZ (19 September 2023).

13. The Commission does not appear to have given any weight to the fact that there are a variety of factors that influence the choice of activity and provider beyond the type of activity, which vary depending on the particular visitor. Given that this is a critical component of the tourism industry in fostering high demand-side substitutability, to the extent that the Commission disagrees with or has not placed weight on this fact, then its reasoning and evidence for that approach needs to be made clear.
14. In addition to the information in NTT's application and the evidence provided by industry participants referred to in the Statement, NTT has recently undertaken a survey of 49 manuhiri who have previously participated in a Shotover Jet trip that provides further support for the fact that there are a variety of factors that influence the choice of activity and provider beyond the type of activity. The survey results are attached as Appendix 1. The responses to the question "Why did you choose to book Shotover Jet" show that the survey participants chose Shotover Jet for a wide variety of reasons beyond it being a jet boat, including its scenery, reputation / reviews, that it is iwi-owned, thrilling, and an iconic Queenstown activity. []

Tourists view adventure activities as substitutable

15. A key perspective that is missing from the Commission's consideration of the issues is that of tourists. How tourists view the tourism industry, and the substitutability of the various tourism activities that are on offer, is critical to understanding the relevant product market.
16. Online review sites and travel websites, blogs, and forums serve as crucial sources of information for tourists. We assume it is beyond dispute that such online tools are pivotal in making tourists aware of what tourism activities are available in their intended destination and helping them decide which tourism activities to undertake.³
17. Given the importance of such online tools to tourists' knowledge of the available offerings and decision-making process, these online tools are a significant relevant consideration for the Commission's assessment of the application. However, it does not appear that the Commission has placed significant (if any) weight on the evidence provided by NTT that:

³ See, for example, []

- (a) tourism marketing and websites used by visitors to Queenstown reflect that adventure tourism providers compete to be one of the activities chosen by the visitor, and customers choose from a range of different activities – see paragraph 51 of the application;
 - (b) many travel blogs and travel forums present a range of adventure tourism activities as alternatives and are often focussed on the particular characteristics of the tourist (for example, the duration of their trip to Queenstown, how much discretionary income they have to spend on tourism activities, and whether they are a thrill / adrenaline seeking tourist) – see the examples set out in Appendix 5 of our letter to you dated 22 September 2023; and
 - (c) tourism agents also group adventure activities together and market them as one group, both on their websites and in their physical advertising in Queenstown (eg, on brochure stands and price boards) – see the examples set out in Appendix 5 of our letter to you dated 22 September 2023 and further examples attached as Appendix 2 to this letter.
18. It is not clear why the Commission has not engaged with the evidence of this type provided. There is vague reference to there being a lack of credible evidence of how tourists choose among various tourism activities and the extent to which they consider these activities to be close substitutes for jet boating (paragraph 58), but it is unclear why the evidence would not be considered credible and no reasoning for this view is provided. As the examples of online webpages provided are direct copies of what tourists engage with when perusing tourism activities and deciding which activity to choose, there does not seem to be a basis for the credibility of the evidence to be questioned.
19. Given the relevance of tourists' view of the relevant markets, any disregard of this evidence is unlikely to ensure a fair and rational decision-making process.

Commission's view that there is a mixed evidence / a lack of evidence supporting a broader market is incorrect

20. The Commission sets out in paragraphs 64 to 68 of the Statement evidence that is "indicative" of a broader product market, and in paragraph 69 evidence that the Commission asserts "supports" a narrower product market. The preliminary view expressed is that given the "mixed evidence" and "lack of clear evidence", the Commission currently considers the competitive effects of the Proposed Acquisition are best assessed within a narrow product market that includes jet boats only.
21. However, for the reasons set out below, the evidence from industry participants referred to in the Statement in fact overwhelmingly supports a broader product market and the evidence that the Commission considers supports a narrower market is either anomalous or has been mischaracterised by the Commission. As such, the Commission's statement that there is mixed evidence of different market participants or a lack of clear evidence is incorrect.
22. Paragraph 68.1 of the Statement states that tourism operators (including jet boat operators) consider the pricing of a range of other tourism operators in setting their pricing, and only refers to one operator (Skippers Canyon Jet, in paragraph 69.5) that sets its pricing "mostly" with reference to other jet boat operators. The evidence is therefore clearly different from the Commission's 2019 Queenstown Bungy Limited and Taupō Bungy Limited decision, in which it found adventure tourism operators only monitored the prices of other adventure tourism operators in limited instances.

23. It is also relevant that, despite Skippers Canyon Jet stating that it sets its pricing mostly with reference to other jet boat operators, it also commented that it sees jet boating as operating in a broad market. Skippers Canyon Jet also commented that, if NTT increased or decreased its jet boat prices post acquisition, its response would be not a lot, commenting that there are so many different products and prices in the market that it does not think it would have any effect at all.⁴ The Commission has referred to this evidence as supporting its argument that there is no evidence to suggest that entry or expansion would be more likely in response to an exercise of market power by the merged entity. However, this evidence also provides strong support to the view expressed by NTT and nearly all industry participants that there is a broader product market.
24. As mentioned, NTT has recently undertaken a survey of 49 manuhiri who have previously participated in a Shotover Jet trip. In response to Question 3 "when choosing Shotover Jet, what activities were you choosing amongst", the survey participants chose a wide variety of tourism activities, including bungy jump/swing (29%), skydive (6%), gondola (59%), lake cruise (27%) skiing/snowboarding (35%), ziplining (33%), scenic flight/helicopter (14%), Milford Sound tours (33%), and rafting (8%).⁵ It is notable that only 44.9% of survey participants considered other jet boats when choosing Shotover Jet. If the product market was a jet boat only market, then it would reason that a significantly higher number of survey participants would have considered other jet boat operators as an alternative to choosing Shotover Jet. Indeed, a greater number of survey participants considered the gondola (59%) as an alternative over other jet boats (44.9%). The survey questioned manuhiri who had already participated in Shotover Jet, and therefore represents a narrow segment of the tourism market. NTT expects that, if the survey was not limited to manuhiri who had done Shotover Jet (and therefore the survey participants would have no prior association with or disposition for Shotover Jet), then the results may even more strongly support the fact that manuhiri choose between a wide array of activities.
25. NTT's internal emails (to be provided to the Commission in response to its further information request dated 20 October 2023) also support NTT's evidence that there is a broader market. For example:
- []
26. The evidence the Commission maintains supports a narrower market is either inadequate or does not actually support a narrower market. Each piece of evidence the Commission has relied upon is addressed below:
- NTT's internal note that jet boating has broader appeal (paragraph 69.1):
- (a) Confidential Appendix 12 is a market research report undertaken for NTT in 2017, which [] is not evidence that there is a narrower market for the supply of tourist jet boating services, but rather simply shows that different activities in the broader adventure tourism market have variable levels of appeal to different customers. As set out above, there are a variety of factors that influence a visitor's choice of tourism activity and the weight of these factors will

⁴ Statement of Issues, paragraph 137.

⁵ All figures have been rounded to the nearest whole number.

depend on the need of the particular visitor. Having different levels of appeal among various customer types does not mean that, as a matter of fact and commercial common sense, other activities are not substitutable for jet boating. For example, applying a simple analogy, different flavours of chocolate have variable levels of appeal to different customers, but that does not mean that the different flavours are not substitutable.

NTT's internal identification other jet boat operators as direct competitors (paragraph 69.2):

- (b) It is inappropriate for the Commission to place weight on how jetboat operators have been labelled in NTT's internal price monitoring documentation and not place weight on the substance of the documents, which is that NTT actively monitors the prices of []

NTT's discrete research on its market share in just jet boats (paragraph 69.2):

- (c) []

KJet's information memorandum (paragraph 69.3):

- (d) It is not unusual for an information memorandum to emphasise the competitive position of the target business. It is not strong evidence of how a market operates because its purpose is to promote a business rather than to analyse competition. It is also inconsistent for the Commission to place weight on the information memorandum, but not take into account the internal consideration of the purchaser of the competitive position of the target business. As set out in []

Goldfields Jet (paragraph 69.4):

- (e) While Goldfields Jet has commented that it considers it competes with other jet boat operators in a jet boat market, its view is an anomaly. Goldfields Jet's comments need to be considered in their entirety, and in context. Relevantly, Goldfields Jet told the Commission that "*it largely does its own thing in Cromwell, but considers that it competes to a degree with jet boat operators in Tāhuna (Queenstown)*" (paragraph 126.1). It is natural for Goldfields Jet to have a unique view given it differentiates its offering based on location and operates in an area that has fewer adventure tourism activities immediately next to it. However, the Commission's reliance on Goldfields Jet's comments is inconsistent. On the one hand, the Commission relies on Goldfields Jet statement that it competes with other jet boat operators to support the Commission's view there is a narrow product market (a jet boat market), but on the other it uses Goldfields Jet's statement that it "largely does its own thing in Cromwell" to support a narrow geographic market for just Tāhuna (Queenstown) in paragraph 78.3 (to exclude Goldfields Jet from the market based on its location)..
- (f) It is not reasonable for the Commission to place more weight on Goldfields Jet's evidence than the evidence provided by the other jet boat operators in the Queenstown Lakes region. The Commission also does not appear to have taken into account the views of Real NZ (another jet boat operator), which stated in its recent clearance application (footnotes omitted):

Tourists to Queenstown are time poor – on average, tourists spend less than 3 days in Queenstown – and choose how to allocate their time between a multitude of tourism experiences including:

- 43.1 self-guided touring (by car, bike, or walking);*
- 43.2 attractions in and around Queenstown (e.g., Skyline Gondolas, Walter Peak, Kiwi Park etc);*
- 43.3 organised scenic and movie tours in and around Queenstown;*
- 43.4 scenic flights;*
- 43.5 organised tours or self-guided trips to Fiordland;*
- 43.6 wine and food experiences;*
- 43.7 shopping and entertainment;*
- 43.8 restaurant, cafe, and other dining;*
- 43.9 golf;*
- 43.10 cycling and mountain biking;*
- 43.11 jet boating; and*
- 43.12 bungy, sky diving, rafting etc.*

These tourism experiences are substitutable as a matter of fact and commercial commonsense. All providers of these tourism experiences are competing to convince tourists to spend their scarce time experiencing that provider's offer. Simply put, if a monopoly provider of any of these types of tourism experiences sought to increase prices above, or decrease quality below, the competitive level, tourists would simply switch to other tourism experiences.

Skippers Canyon Jet (paragraph 69.5):

- (g) As set out in paragraphs 22 and 23 above, the Commission records that Skippers Canyon Jet sees jet boating as operating in a broad market, alongside other adventure tourism activities, if not all tourism activities. The Commission cannot therefore place significant weight on the fact that Skippers Canyon Jet sets its pricing mostly with reference to other jet boat providers because (a) as above, Skippers Canyon Jet's view is that jet boating operates in a broad market; and (b) in any case, the Commission also states that Skippers Canyon Jet is mindful of other tourism operators when setting its pricing.

Confidential participant 1 (paragraph 69.6):

- (h) Confidential participant 1 is referred to in footnote 36 as an industry participant that sees jet boating as operating in a broad market, alongside other adventure tourism activities, if not all tourism activities, yet is also referred to in paragraph 69.6 as considering that there is a separate jet boat market. If the Commission has accurately reflected what the participant

said, the two statements cannot be reconciled and accordingly no weight can be placed on the evidence. Further, the comment by the participant that there is a separate jet boat market is qualified by the comment "*at least for those tourists who visit Tāhuna (Queenstown) with the specific intention of doing a jet boat trip*", which seems to suggest an even narrower market based on a particular limited customer dimension (tourists who visit Tāhuna with the specific intention of doing a jet boat trip). Such a market is not plausible as a matter of fact and commercial common sense.

Confidential participant 2 (paragraph 69.7)

- (i) Confidential participant 2's description of the market in which it operates as "water-based adventure tourism" is actually supportive of a broader market, and is contrary to there being a narrower 'supply of tourist jet boating services' market.

Confidential participant 3 (paragraph 69.7)

- (j) See our comments in Highly Confidential Appendix 5 regarding inconsistencies in the way in which the Commission has quoted evidence from this participant, and why the Commission cannot rely on the evidence as support for a narrow market for the supply of tourist jet boating services.

Confidential participant 4 (paragraph 69.8)

- (k) Confidential participant 4's view that it operates in an active adventure market and sees jet boating as being in a separate market for soft and less active adventure does not support a narrow market for the supply of tourist jet boating services. Rather, this evidence is more supportive of distinguishing active and inactive activities. On that basis, the relevant market for jet boating would include other inactive activities like gondola rides, boat cruises, helicopter/scenic flights etc.
- (l) See also our comments in Highly Confidential Appendix 5 regarding inconsistencies in the way in which the Commission has quoted evidence from this participant.

Confidential participant 5 (paragraph 69.8)

- (m) Confidential participant 5's view that rafting does not compete closely with jet boats is not evidence of there being a narrower jet boating market. As is clear from the evidence that the Commission has gathered, the closeness of competition between different adventure tourism operators varies based on a range of factors including price, duration, accessibility, ease of the experience, uniqueness of the offering, and confidence in the brand and business. For example, as set out in NTT's clearance application, NTT views other high budget/premium adventure tourism activities such as bungy and skydiving as closer competitors than other jet boating operators.
- (n) Further, confidential submitter 5's view that jet boats appeal to a wider demographic also does not mean the relevant market is a narrower jet boating market (see paragraph 24(a) regarding the relevance of appeal). Indeed, as set out in paragraphs 81 to 87 of NTT's application and paragraph 65 of the Statement of Issues, jet boating experiences are

differentiated based on a range of factors, and it follows that different jet boating experiences will also appeal to different demographics.

Geographic dimension

27. The Commission's preliminary view is that the competition issues are best assessed and isolated by defining the geographic scope of the market as Tāhuna. However, the evidence does not support such a view. The evidence strongly supports NTT's view that the geographic market is the Queenstown Lakes region (encompassing broadly the area within the Queenstown Lakes District Council). Limiting the geographic scope of the market to Tāhuna would exclude tourism activities that, as a matter of fact and commercial common sense, are substitutable for tourism activities in Tāhuna.
28. The Commission has included as evidence for a narrower geographic market KJet's comment that it receives a lot of last minute, impulse bookings from tourists in Queenstown, and comments from confidential water-based tourism operators that they operate in a Tāhuna (Queenstown) only market given the importance of proximity and location in securing walk-up customers. Operators who operate from the waterfront in central Tāhuna will naturally get more last minute and walk-up customers than operators outside that area. However, if the Commission defines the geographic market based on this evidence, NTT's operations (Shotover Jet and Dart River Adventures) and KJet would not be in the same geographic market (and there would therefore be no aggregation as a result of the Proposed Acquisition).
29. The Commission incorrectly states at paragraph 10 of the Statement that NTT operates jet boating businesses "accessibly located at the waterfront in central Tāhuna". However, Shotover Jet is not located at the waterfront in central Tāhuna. It is located on the edge of Queenstown at Arthur's Point (a 20-30 minute return drive from Main Town Pier). As set out in paragraph 82 of NTT's application, due to Shotover Jet's location at Arthurs Point Road approximately 7km out of Queenstown, NTT expects that last minute walk-ins are less common than for jet boat providers who operate from the Main Town Pier in Queenstown. Visitors either need to bring themselves to Shotover Jet or have booked a shuttle from the Station Building in central Queenstown beforehand. NTT's Dart River Adventures is even further away from central Tāhuna (leaving from Glenorchy, a 46km drive from Queenstown).
30. In any event, tourists on the waterfront in central Tāhuna who decide to do a last-minute, impulsive activity are only one type of tourist. There is a diverse range of tourists, including those who may do research before visiting Queenstown and have picked out specific activities they want to participate in during their trip. Limiting the geographic market based on one type of customer does not reflect the reality of tourist behaviour.
31. The Commission also appears to have placed weight on the fact that NTT does not price monitor jet boat operators in Wānaka as evidence of a narrower geographic market. However, that NTT does not price monitor jet boat operators in Wānaka does not mean that activities in Wānaka are not substitutable for activities in Tāhuna. Given the broad array of tourism activities that NTT competes with, it would not be possible for it to price monitor all of them. In addition, to the extent that the Commission gives any weight to the fact that NTT does not price monitor jet boat operators in

Wānaka, then it needs to give equal weight to the fact that NTT price monitors []. Even if the Commission excludes Wānaka from the geographic market, there is no basis on which to exclude Gibbston and Cromwell from the geographic market, given activities in those areas are clearly substitutable as a matter of fact and commercial common sense.

32. The Commission appears to have given too much weight to Goldfields Jet's description of itself as "largely doing its own thing in Cromwell". The fact that Goldfields Jet bases its pricing heavily on KJet's pricing and targets tourists before they arrive at Tāhuna or when they leave is strong evidence that the geographic scope of the market is broader than just Tāhuna. As set out above in relation to the product market definition, the Commission has also recorded that Goldfields Jet considers it competes with other jet boat operators in a jet boat market (which clearly indicates a broader geographic market than Cromwell). Further, the following current home page of Goldfields Jet's website evidences that it is competing for tourists in Tāhuna who may participate in an activity on Lake Wakatipu (stating "*Don't be fooled by the still waters of Lake Wakatipu, experience the rush of the mighty Kawarau River*"):



33. Substitutability between activities outside Tāhuna is also supported by the way in which activities are marketed to tourists. For example, as set out in paragraph 87 of NTT's clearance application, Bookme's Queenstown jet boating webpage (<https://www.bookme.co.nz/things-to-do/queenstown/activities/adventure/jet-boating>) includes Goldfields, a Wānaka jet boat (Lakeland Wanaka), and Fiordland Jet.
34. The Commission has interpreted the evidence of tourists travel movements as being supportive of a narrow geographic market, when in fact these patterns support a broader geographic market. As set out in paragraph 36 and Appendix 7 of NTT's clearance application, a Queenstown Visitor Survey found that 87% of domestic visitors are exploring areas beyond the Queenstown town centre/Frankton area, and 61% of international visitors to Queenstown included Wānaka on their itinerary, 35% included Central Otago, and 30% included both Wānaka and Central Otago. The majority of international visitors (62%) travel to Queenstown from another destination in New

Zealand, most commonly Auckland and Wānaka. These are substantial portions of the market that are travelling beyond Tāhuna. It is not clear why the Commission has included travel movements as evidence for a narrower market for just Tāhuna, when on its face the evidence supports the contrary view.

35. The Commission also notes that *"a tourist who specifically wants to do the Shotover Jet is unlikely to substitute this for a jet boat trip in Wānaka or Cromwell"*.⁶ This statement does not support a narrower geographic market, and if anything would suggest the Shotover Jet is in a separate market from any other jet boat activity (which would mean there would be no aggregation as a result of the Proposed Acquisition). In our letter to the Commission dated 22 September 2023, it was stated that: *"To the extent that Ngāi Tahu Tourism's customers come to Queenstown to do Shotover Jet... they come wanting to do Shotover Jet specifically and not some other jetboat activity"*. The Commission appears to have mischaracterised this statement to only relate to jet boat trips in Wānaka or Cromwell. If the Commission accepts that a tourist who specifically wants to do Shotover Jet is unlikely to substitute this for a jet boat trip in Wānaka or Cromwell, it also logically follows that a tourist who specifically wants to do Shotover Jet is just as unlikely to substitute any other jet boat trip (even those based in Tāhuna).

Customer dimension

36. NTT agrees that it is not necessary for the Commission to conclude on whether there are distinct customer markets. As set out in NTT's application and the Commission's 2003 decision, the essential transaction involves the activity operator and the tourist. While some sales are made by an intermediary, NTT maintains that the relevant functional market is that for the provision of retail adventure tourism activities.

With and without scenarios

37. NTT does not have further submissions to make on the with and without scenarios set out in paragraph 86 of the Statement, other than that elsewhere in the Statement the Commission emphasises the potential for KJet to provide a greater competitive constraint on NTT in the future under new ownership. No evidence is provided to support this view, and it is inconsistent with the approach taken by the Commission to potential new ownership of Real NZ (stating that *"there is uncertainty around the degree of constraint that Real NZ's jet boats may provide in the future, given ... the fact that Real NZ is currently seeking a buyer for its jet boat business. There is uncertainty about whether the business will be sold, and to whom, what plans any buyer might have for the business"*). In the counterfactual, there would similarly be uncertainty about whether the KJet business would be sold and to whom, and what plans any buyer might have for the business.

Unilateral effects

38. It is clear that the Proposed Acquisition will not have the effect or likely effect of substantially lessening competition in a market. Even if a narrower market definition is adopted (which, as outlined above, NTT does not consider can be done as a matter of fact and commercial common

⁶ Statement of Issues, paragraph 78.8.

sense), the Commission must properly assess the clear competitive constraints imposed by other tourism operators.

39. The reasoning for this view is set out below, but as a preliminary point, there are some factual inconsistencies and inaccuracies relevant to the Commission's assessment of unilateral effects that need to be corrected:

- (a) The Commission states that NTT would operate three major jet boating businesses in Tāhuna with the Proposed Acquisition. The Commission treats Dart River Adventures as operating in Tāhuna on the one hand (but it is actually located in Glenorchy, 46km from Queenstown), yet excludes other operators that are a similar distance from central Tāhuna (such as Oxbow and Goldfields Jet).
- (b) The Commission states that the Proposed Acquisition would be a "three-to-two merger of the operators of 60 minute or less jet boat trips in Tāhuna". In making this statement, the Commission appears to be narrowing the market even further than proposed in the market definition section, to limit the product market to "60 minute or less" jet boat trips. There is no reasonable basis on which this can be done. Skippers Canyon Jet also operates a jet boat trip that is less than 60 minutes (as do other jet boat operators in the Queenstown Lakes region). If the Commission has not included such other operators because the trip includes travel time, it must also take into account the fact that Shotover Jet also requires travel time from central Tāhuna. For example, if manuhiri take the transport offered by Shotover Jet from Tāhuna, they are advised to allow 1 hour 45 minutes return. Further, such a definition ignores the significant differentiation between Shotover Jet on the one hand, and KJet and Real NZ on the other (as described in NTT's application, and supported by industry participant evidence in the Statement).
- (c) Paragraph 95 repeats the statement in paragraph 10 referred to above that, with the Proposed Acquisition, NTT would be operating three major jet boating businesses accessibly located at the waterfront in central Tāhuna. In fact, only one jet boating business that would be operated by NTT (KJet) is located at Main Town Pier. Shotover Jet is located at Arthurs Point Road approximately 7km out of Queenstown (a 20-30 minute return trip from the Main Town Pier if self-driving).
- (d) Paragraph 94.3 provides that NTT's application states that the closest competitor to Shotover Jet is Skippers Canyon Jet. The application in fact states (at paragraph 83, emphasis added):

*The closest **jet boat** competitor to Shotover Jet would be Skippers Canyon Jet, which also offers a jet boat trip through the canyons on the Shotover River. **However, the Purchaser views other high-budget/premium adventure tourism activities such as bungy and skydiving as closer competitors than Skippers Canyon Jet.***

The application also states (at paragraph 51(b)) that NTT considers that its main competitors are other high-budget, adventure tourism activities, being (for Shotover Jet) adventure tourism activities in the ~\$150+ price bracket with an adrenaline-inducing aspect or 'once in a

lifetime' aspect such as scenic/helicopter flights, skydiving, bungy-jumping, and exclusive Milford Sound tours.

- (e) Paragraph 94.4 provides that NTT's application states that the merged entity would continue to be significantly constrained by a large number of existing competitors in the Queenstown Lakes region, including at least five other jet boat operators. The application in fact states (at paragraph 5(a), emphasis added) "including at least **six** other jet boat operators".
- (f) In paragraph 96, the footnote to support the statement that the Commission is currently not satisfied that the Proposed Acquisition would not substantially lessen competition (footnote 76) appears to be a one sentence submission received by the Commission that stated "I consider this acquisition to be anti competitive and I consider it would result in higher prices to clients". The submission provides no reasoning for the concerns raised, and it is inappropriate for the Commission to rely on that submission when there is no basis provided for it.

KJet is not Shotover Jet's closest competitor and does not pose significant competitive constraint on Shotover Jet

40. The Commission has expressed the view that KJet is Shotover Jet's closest competitor. However, for the reasons set out below, this is incorrect and there is no evidence to support this view:
- (a) The Commission states that the Proposed Acquisition would remove the potential for KJet to provide a greater competitive constraint on NTT in the future under new ownership (eg, if a new owner was to seek to expand KJet in a material way or to change the strategy of the business in a way so that it would become a more aggressive competitor). It is unclear what basis the Commission has for the likelihood that KJet would be acquired by another owner in the future who will have the intention and resources to expand KJet in a material way or be more aggressive in its business strategy.
 - (b) By contrast, the Commission has taken an inconsistent approach to the potential competitiveness of Queenstown Jet (operated by Real NZ) which is also currently for sale. If the Commission considers that there is potential for KJet to place greater competitive constraint as a result of new ownership, the same potential must be taken into account for Queenstown Jet. Further comments on the competitive constraint of Real NZ are set out in paragraphs 43 to 48 below. Similarly, the Commission takes an inconsistent approach in relying on there being no apparent appetite amongst other jet boat operators to expand (ie, if the Commission considers KJet may expand or become more aggressive in the future, other operators must also be considered in the same light).
 - (c) The Commission notes that there is mixed evidence with respect to the strength of the constraint on Shotover Jet that KJet represents, and does not provide an evidential basis for the assertion that KJet is Shotover Jet's closest competitor.
 - (d) The view that KJet is Shotover Jet's closest competitor directly contradicts:

- (e) The information provided by NTT (who is in the best position to identify its closest competitors) about its closest competitors, and the Commission has provided no reasoning or justification for why it has disregarded or given reduced weight to this information.⁷
- (f) The views of a large number of industry participants. The Commission states (at paragraph 113) that a large number of industry participants do not regard Shotover Jet and KJet as each other's closest competitors, and see Shotover Jet and KJet as quite different or as having unique points of difference (with Shotover Jet being unique or iconic), and/or see KJet as competing more closely with Real NZ's jet boats. It is unclear how the evidence from industry participants factored into the Commission's assessment, but given the Commission's view that KJet is Shotover Jet's closest competitor, we infer that this evidence has been ignored or given reduced weight. If that is the case, it is not clear on what basis the Commission has ignored the evidence or given it reduced weight (particularly given the Commission relies heavily on evidence from industry participants in other aspects of the Statement where that evidence is supportive of the Commission's adverse view).
- (g) The Commission states that "a number" of parties see Shotover Jet and KJet as being direct competitors competing quite closely, but the number of industry participants who expressed this view is not specified. In any event, even if there was evidence that Shotover Jet and KJet compete closely, this is not justification for the Commission's view that they are each other's closest competitors (particularly when most industry participants have expressed the directly opposing view, and the evidence does not support the view).
- (h) That a number of industry participants consider that tourists who want to do a jet boat trip are likely to choose between Shotover Jet and KJet is not good evidence that KJet poses significant competitive constraint on Shotover Jet or is its closest competitor. It also fails to take into account the factors that influence the choice of activity, and significant differentiation between the offerings of Shotover Jet and KJet.
- (i) That NTT monitors the pricing of KJet is not good evidence that KJet poses significant competitive constraint on Shotover Jet, because:
- (j) NTT also monitors the pricing of other tourism activities. Any weight that the Commission places on NTT's price monitoring of other jet boat operators needs to be (at a minimum) equivalently placed on its pricing monitoring of other tourism operators; and
- (k) NTT's reason for monitoring the pricing of other activities is to cross-reference proposed prices/price changes and to gain insight into the market.⁸ [].⁹ While NTT monitors the pricing of other jet boat operations (including KJet), it also monitors the pricing of other tourism activities.

⁷ More specifically, NTT submitted that its closest jet boat competitor is Skippers Canyon Jet, and that it views other high-budget/premium adventure tourism activities such as bungy and skydiving as being closer competitors than Skippers Canyon Jet (paragraph 83 of the application). In its interview with the Commission on 4 September 2023, the Commission asked whether the jetboat operators who NTT price monitors are seen as Shotover Jet's closest competitors, to which NTT responded no (it is one of the many).

⁸ NTT's application, paragraph 51(b) and NTT's interview with the Commission on 4 September 2023.

⁹ []

- (l) That NTT has labelled other jet boat operators as "direct competitors" is not good evidence that KJet poses significant competitive constraint on Shotover Jet. The Commission asked in its interview with NTT whether it sees the direct competitor box as Shotover Jet's closest competitors, and NTT responded that it does not and that the jet boat operators are among many competitors. It is not clear why the Commission has disregarded or placed reduced weight on that submission.
- (m) KJet's pricing does not have a significant impact on Shotover Jet's pricing, which is at a premium price point due to the iconic nature of the product. This is supported by industry participants (of which "a large number" see Shotover Jet as being unique or iconic) and by manuhiri who have visited Shotover Jet (who have, for example, described Shotover Jet as a "quintessential Queenstown experience", a "Kiwi institution", "iconic", "unique", and a "must-do in Queenstown" – see Appendix 1).
- (n) That NTT has internally identified KJet as not having materially dissimilar appeal to Shotover Jet (71% versus 78%) is not good evidence for the Commission's view that KJet is Shotover Jet's closest competitor or provides significant competitive constraint on Shotover Jet. As discussed above in paragraph 26(a), the appeal of an activity is not necessarily determinative of whether it is substitutable for another activity, as the activities may be competing based on different dimensions of competition. In addition, [] It is unclear why the Commission has not referred to this in its discussions at paragraph 119 of the Statement about Skippers Canyon Jet's competitive constraint on Shotover Jet. To the extent that the Commission places any weight on the appeal between Shotover Jet and KJet not being dissimilar as evidence of KJet's competitive constraint on Shotover Jet, then even greater weight should be placed on the similarities between Shotover Jet and Skippers Canyon Jet's appeal as evidence for Skippers Canyon Jet's competitive constraint on Shotover Jet.
- (o) The Commission appears to rely on one example of similar marketing to support its view that NTT's closest competitor is KJet. This ignores the fact that Skippers Canyon Jet's marketing is in fact more similar to Shotover Jet's marketing (with both focused on jet boating through canyons). The Commission also appears to have placed no weight on the evidence submitted by NTT of the marketing of tourism activities on tourism websites, which shows adventure tourism activities grouped together and adventure tourism providers competing to be one of the activities chosen by manuhiri.
- (p) The Commission's focus on tourists who seek to do a 60 minute or less jet boat trip in Tāhuna is misplaced. As set out above, there is no reasonable basis to limit the product market to "60 minute or less" jet boat trips. There is similarly no reasonable basis to define a customer dimension of the market as tourists who seek to do a 60 minute or less jet boat trip. The Commission has not provided any information to support its focus on a 60 minute or less jet boat trip, or the number of the type of tourist seeking to do this trip proportional to other tourists. Similar extrapolations could be made based on the wide range of other factors that influence tourists – Shotover Jet would not be an option for a tourist based in Queenstown who wants to do an exciting activity involving beautiful views that is under \$150 per person,

but KJet, Real NZ, Ziptrek, Skyline (gondola and luge), and Paraflights (tandem) would be options; a tourist who only has half an hour available and wants to do a jet boat ride is only going to have the option of Real NZ; a tourist walking down Main Town Pier who spontaneously decides at that moment to do an activity nearby only has the options of activities located at Main Town Pier like KJet, Real NZ, Hydro Attack, Paraflights, or TSS Earnslaw.

Further, the Commission refers (at paragraph 109) to a tourist seeking to do a 60 minute or less jet boat trip "due to cost and/or time constraints". The relevance of "cost constraints" in this paragraph is unclear, given a tourist could do a wide array of other activities for a similar cost (including other jet boat operators such as Skippers Canyon Jet, Goldfields, and Oxbow).

- (q) The Commission also asserts in paragraph 109 that "where tourists particularly want to do a jet boat trip on the Kīmiākau (Shotover River), the Shotover Jet and KJet may be the only two options that tourists consider". This statement appears to misunderstand the differences between the different parts of the Shotover River on which Shotover Jet and KJet operate, and the differentiation between the offerings of Shotover Jet and KJet (see paragraph 81 of NTT's application). In Figure 1 (page 8) of the Statement, the Commission has drawn a red box that is intended to depict the portion of the Shotover River on which Shotover Jet operates, which incorrectly represents that Shotover Jet and KJet overlap on the Shotover River. This is incorrect – Shotover Jet and KJet's operating areas do not overlap. It is also relevant that Skippers Canyon Jet operates on the Shotover River, and is one of the two most adrenaline-inducing jet boat trips, offering high speeds through narrow canyons on the Shotover River (which is why NTT considers Skippers Canyon Jet to be its closest jet boat competitor, as set out in paragraph 83 of the application).
- (r) The Commission states that "because the Shotover Jet and KJet operate more jet boats than Real NZ (seven each, compared to Real NZ's three jet boats), the Shotover Jet and KJet may be the two jet boat operators in Tāhuna (Queenstown) with the most capacity to accommodate large tour groups, and compete closely for this business". However, the number of jet boats is not the only matter that determines a jet boat operator's capacity. Real NZ's jet boats have a larger capacity than Shotover Jet. Shotover Jet's jet boats can have a maximum of 14 passengers per boat, whereas NTT understands that Real NZ's jet boats can have nearly double the number of passengers. In addition, some of the boats KJet's fleet are single engine vessels that NTT understands are rarely used. Accordingly, NTT submits that Real NZ also has capacity to accommodate large tour groups, and the fact that Shotover Jet and KJet have a higher number of jet boats than Real NZ is not strong evidence that KJet is Shotover Jet's closest competitor.
- (s) See Highly Confidential Appendix 5 regarding the Commission's suggestion that evidence on trends in jet boat passenger numbers and pricing provides further evidence for the Commission's view on the closeness of competition between NTT and KJet.

Constraint provided by other jet boat operators

Skippers Canyon Jet

41. The Commission has not placed sufficient weight on the competitive constraint of Skippers Canyon Jet. The Statement records that Skippers Canyon Jet considers that it competes with NTT, and to some extent KJet and Real NZ. NTT also submitted that Skippers Canyon Jet is Shotover Jet's closest jet boat competitor. The experiences are the most similar, in that they are the most thrilling/adrenaline inducing because they both involve a jet boat trip through narrow canyons on the Shotover River. They also require customers to travel by road to participate in the activity. In addition, as discussed above, []. It is unclear why the Commission has disregarded the evidence provided by Skippers Canyon Jet and NTT, and instead concluded that KJet is Shotover Jet's closest competitor.
42. As discussed above, it is also unclear why the Commission has focussed on tourists who seek to do a 60 minute or less jet boat trip in Tāhuna when considering the competitive constraint of Skippers Canyon Jet on Shotover Jet. While it may be the case that a tourist who only has 60 minutes to spend on an activity will not be able to choose Skippers Canyon Jet, that is only one type of customer amongst a heavily diverse customer market. The Commission has provided no evidence of the number of tourists who (a) only want to do a jet boat ride and (b) only want to do a jet boat ride that is 60 minutes or less, and there is no reasonable basis for this assumed type of customer to form the basis for the Commission's analysis of the competitive constraint posed by Skippers Canyon Jet.

Real NZ (also referred to as Queenstown Jet)

43. The Commission has heavily undervalued the potential competitive constraint that Queenstown Jet could have. The Commission states that there is uncertainty about whether the business will be sold, to whom, what plans any buyer might have for the business, and if the business would expand sufficiently to constrain the merged entity.
44. As a preliminary point, NTT reiterates its earlier observation that this approach is significantly inconsistent with the Commission's approach to KJet, where it noted that there is potential for KJet to provide a greater competitive constraint in the future under new ownership (eg, if a new owner was to seek to expand KJet in a material way or to change the strategy of the business in a way so that it would become a more aggressive competitor).
45. Before it was acquired by Real NZ, Queenstown Jet (under its previous brands Thunder Jet and Go Orange) was a considerably stronger competitor to KJet than it is currently. This is reflected by industry participants' comments that Real NZ has lost market share and is no longer an effective competitor, and also by the confidential market research report commissioned by NTT in 2017, in which it is clear that Thunder Jet had significant brand presence.¹⁰
46. NTT understands that a likely reason for Queenstown Jet's loss of market share following its acquisition by Real NZ is because of a business choice by Real NZ to not focus on growing the

¹⁰ Confidential Appendix 12 submitted with NTT's application, page 35.

Queenstown Jet business and to instead primarily use Queenstown Jet as a bundled product to increase the sales of Real NZ's other tourism offerings. NTT expects that if the Commission investigated the passenger numbers and sales revenue of the business prior to its sale to Real NZ, the business would closely compare to KJet. For example, as referred to in the Statement, there is a history of price battles between Real NZ and KJet. During a time of significantly discounted jet boat trips by Real NZ, NTT started to take counts of other jet boating providers' customers during a particular daily departure time (the market share figures in NTT's application are based on such counts). NTT did so to see if it was losing any customers as a result of the price reductions, and found that Shotover Jet's customer numbers were not impacted (and instead that Real NZ and KJet were taking customers from each other).

47. []

48. NTT also submits that the focus of the Commission's analysis of the competitive constraint posed by Real NZ should not be too heavily influenced by recent performance, given that the business has the potential to significantly expand to be similarly competitive to KJet (as it was under its previous ownership) and that it has substantial capacity under its resource consent to expand its passenger numbers.

Other jet boat operators

49. NTT maintains that it will be competitively constrained by other jet boat operators. Most of the reasons for this submission have already been discussed above and in NTT's application, but in summary:

- (a) the potential competitive constraint of jet boat operators cannot be adequately assessed by looking at current passenger numbers, that they have the potential to expand would provide competitive constraint;
- (b) similarly, that Goldfields Jet has advised that it would not have the incentive to expand if NTT increased its jet boat prices post-acquisition is not strong evidence that Goldfields Jet would not constrain the merged entity. Again, the fact that it has the potential to expand is what provides competitive constraint. It is also relevant that Goldfields Jet commented that an increase of jet boat prices by NTT "*might be beneficial and provide window to capture a market who are not prepared to pay higher prices*" (paragraph 137 of the Statement), which is strong evidence that Goldfields competes with NTT and KJet (and is also evidence of a broader market than the market suggested by the Commission). See also Highly Confidential Appendix 5 regarding paragraph 126.2 and Oxbow; and
- (c) that NTT does not price monitor jet boat operators in Wānaka is not strong evidence that those jet boat operators would not constrain the merged entity. As noted above, given the broad array of tourism activities that Shotover Jet competes with, it would not be possible for it to price monitor all of them. In addition, to the extent that the Commission gives any weight to the fact that NTT does not price monitor jet boat operators in Wānaka, then it needs to give equal weight to the fact that NTT price monitors Oxbow and Goldfields Jet (which supports other jet boat operators providing competitive constraint on NTT) and other tourism activities.

NTT would continue to be significantly constrained by other tourism operators

50. The Commission has significantly underestimated the degree of competitive constraint that other tourism operators have (and would continue to have post-acquisition) on NTT. Relevantly:
- (a) the Commission has given insufficient weight to the evidence put forward by NTT that it will be constrained post-acquisition by a large number of existing competitors in the retail adventure tourism market in the Queenstown Lakes region because it competes with other tourism operators for the discretionary tourist dollar (see, for example, paragraphs 94-97 of NTT's application);
 - (b) the Commission asserts that the evidence before it indicates that suppliers of tourist jet boating services in Tāhuna (Queenstown) compete most directly and closely with, and face the greatest competitive constraint from, other jet boat operators. However, it is unclear what evidence the Commission is referring to or how the evidence that is identified in the application supports that view. In fact, the evidence set out in paragraph 144 supports NTT's submission that NTT will be constrained post-acquisition by a large number of existing competitors. Out of the ten tourism operators referred to in paragraph 144, all but one have given evidence that they consider they compete with jet boating (and at least around half of the operators appear to have given evidence that they consider the pricing of jet boating when setting their prices). There is therefore no basis for the Commission to come to the view that the evidence before it from tourism operators about the degree of constraint they impose on jet boat operators is "mixed"; and
 - (c) as detailed above in the market definition section, the majority of industry participants see jet boating as operating in a broad market, alongside other adventure tourism activities, if not all tourism activities.
51. As further evidence of manuhiri choosing between different tourism operators, attached as Confidential Appendix 6 are []

Commission has failed to properly consider potential entry or expansion

52. The Commission's consideration of constraint from new entry or expansion in the Statement is limited to consideration of entry or expansion by jet boat operators, which indicates the Commission has predetermined a narrow market definition and not taken into account the constraint imposed by potential entry or expansion of other tourism operators.
53. In respect of potential entry or expansion of jet boat operators, it is clear from the evidence the Commission refers to in the Statement that there is significant potential for expansion by existing jet boat operators. The Commission appears to rely heavily on indications from current participants that they have no interest in materially expanding. Although the Commission states that it is conscious of the impact that the COVID-19 pandemic had on tourism operators and has taken it into account in its analysis, it is not clear the Commission has done so in considering the current position of participants. As outlined above, the Commission has also taken an inconsistent approach in relying on there being no apparent appetite amongst other jet boat operators to expand, but considering that KJet may expand or become more aggressive in the future.

54. Further, the evidence that the Commission has obtained from Queenstown Lakes District Council also indicates that additional resource consents for jet boat operators would be possible. As set out in NTT's application, there are various waterways close to the Queenstown Lakes region that have the potential for additional jet boating, as well as jetties/moorings around Lake Whakatipu and berth space available at Queenstown Marina. The Commission's statement that issues around wharf access in central Tāhuna suggests that there may be barriers to securing a berth for jet boats appears to be predicated on a view that a new jet boat operator would have to operate jet boats from central Tāhuna (which is clearly incorrect, given most jet boat operators, including Shotover Jet, do not do so).
55. The Statement does not reflect that there is significant potential entry or expansion of other competing tourism activities, including adventure tourism operations (for which there are an array of recent examples – as set out in paragraphs 104 and 105 of NTT's application).

Wholesalers, agents, resellers and tour operators have countervailing power

56. NTT maintains that it would be constrained post-acquisition by the countervailing power of wholesalers, agents, resellers, and tour operators. As set out in NTT's application, if agents and wholesalers are not satisfied with the services or price/commission offered by NTT, they would likely turn to other activities (both adventure and other tourism activities). This is supported by the material in paragraphs 152-154 of the Statement. Further evidence can be found in the internal email correspondence to be provided to the Commission in response to its further information request dated 20 October 2023. For example, []
57. In paragraph 158 of the Statement, the Commission seems to rely on the fact that no wholesalers, agents, resellers, or tour operators have raised any concerns about the Proposed Acquisition, or asserted they would be harmed as a result. The Commission uses this to support a view that wholesalers, etc may not be incentivised to exercise countervailing power. However, NTT submits that the fact no concerns have been raised more likely reflects that NTT is operating in a highly competitive market, and would not have any ability post-acquisition to harm wholesalers, etc (or manuhiri) given the extent of competition (in addition to the countervailing power of wholesalers, etc).
58. The Commission also suggests (in paragraph 151) that, even if wholesalers, agents, resellers, and tour operators have countervailing power, this would not protect tourists who buy through different channels (eg, directly from operators). NTT submits that this is not correct or reflective of how pricing works. NTT would not have any ability to raise prices for direct sales above competitive levels, as it would be constrained by the pricing of agents and resellers to whom customers could easily switch if direct sales were not price competitive. The countervailing power of wholesalers, etc would therefore also impact pricing for direct sales.

Coordinated effects

59. The Proposed Acquisition will not enhance coordination between adventure tourism operators, as the market is highly competitive, with a large number of suppliers (of different sizes) and

differentiated offerings. With reference to the market features referred to in the Commission' Mergers and Acquisitions Guidelines:

- (a) the tourism industry is extremely diverse, and there is a broad array of tourism activities. Even among jet boat activities, there is differentiation between jet boat offerings;
- (b) there are a large number of tourism operators who compete for the discretionary tourist dollar, and the market is highly competitive;
- (c) numerous, repeated transactions between competitors are not typical. The Commission suggests that the interactions of operators through industry organisations and meetings may enhance the ability and incentive for jet boat operators to coordinate their behaviour. There is no basis to suggest that the Proposed Acquisition would have any effect on the likelihood of any such coordination (and in any event, given the significant differentiation between jet boat operators and different offerings/cost structures etc, coordination is unlikely);
- (d) there is varied firm size and cost structure among tourism operators. Some tourism operators are owner-operated on a smaller scale and focused on one activity type, whereas other tourism operators have large and diverse portfolios. NTT disagrees with the Commission's suggestion that the cost of operating a jet boat is likely similar for all operators. As set out in NTT's application, NTT expects that it has higher operating costs than some other providers, because of higher dock costs, higher boat maintenance costs due to operating only twin engine boats, and additional costs arising from NTT's commitment to undertaking boat servicing and staff training beyond the regulatory requirements; and
- (e) the tourism market has high levels of innovation, and due to the competitive nature of the market tourism operators are incentivised to increase the quality of their offering. For example, Bungy NZ's submission refers to stronger marketing efforts, the creation and marketing of unique experiences, improved customer service, innovation (such as the new Bungy NZ human catapult that is the first in the world), sustainability initiatives, moves to improve accessibility and inclusivity, collaborations, partnerships, and greater safety and quality assurance. NTT's innovative approach is also reflected in its electric jet boat project (<https://www.shotoverjet.com/about/electric-jet-boat/>).

Conglomerate effects

- 60. NTT does not have the ability or the incentive to engage in conduct like bundling or tying that will prevent or hinder rivals from competing effectively, and the Proposed Acquisition would not change that.
- 61. NTT is a large tourism operator in Aotearoa, offering a number of iconic tourism activities across Aotearoa (including Shotover Jet). The Proposed Acquisition will not significantly expand NTT's current portfolio, and will not provide NTT with any ability or incentive to foreclose rival suppliers. It is not clear what "superior bundled service" the Commission considers the Proposed Acquisition could give rise to. As the Commission notes, there are a range of bundles offered by tourism providers, and there is nothing stopping other operators from offering bundles. The highly competitive nature of the tourism industry (in the Queenstown Lakes region and across Aotearoa)

means that there is no prospect that NTT could leverage its current offering (including via combos or bundled deals) that other tourism operators cannot compete with.

Conclusion

62. In light of the above, there is a clear basis on which the Commission can be satisfied that the Proposed Acquisition will not have, or be likely to have, the effect of substantially lessening competition in a market, and therefore for clearance to be granted.

Confidentiality

63. Confidentiality from the public and the Vendors is sought for the information in this submission in square brackets and highlighted [●].
64. Confidentiality is also sought for Confidential Appendices 3, 4, 6, and 7. Highly Confidential Appendix 5 is subject to Confidentiality Undertakings provided to the Commission in respect of material provided on a counsel-only basis that only Buddle Findlay (and not NTT) has viewed.
65. A public version of this submission with confidential information deleted will be provided to the Commission.
66. NTT requests that it be notified of any request made under the Official Information Act 1982 for the confidential information included in this submission, and be given the opportunity to be consulted as to whether the information remains commercially sensitive at the time that the request is made.
67. These requests for confidentiality are made because the information is commercially sensitive and disclosure would be likely to unreasonably prejudice the commercial position of NTT or, alternatively, the person who is the subject of or who provided the information. A schedule setting out the reasons for each request is attached as Confidential Appendix 7.

Yours sincerely

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APPENDIX 1 – SURVEY OF SHOTOVER JET CUSTOMERS

Q1 What activities did you participate in when you visited Queenstown

Answered: 49 Skipped: 0

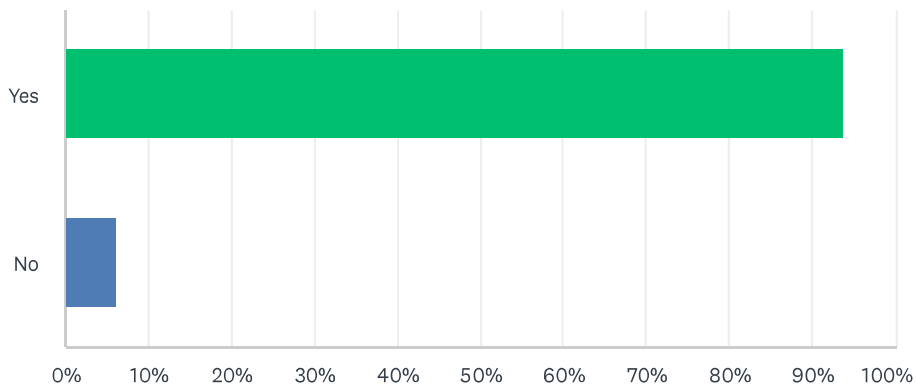
#	RESPONSES	DATE
1	Shotover jet, 5 days Skiing, haunted house thing in town	11/6/2023 1:59 PM
2	Shot over jet, bungee jumping, abseiling	11/6/2023 8:52 AM
3	Shot over jet, snow boarding, ice bar, VR experience, wildlife park, tobogganing, star gazing, skyway, onsen pools, segway tour, sheepdog and steamship experience, 2 museums, puzzle world	11/5/2023 10:16 AM
4	Shotover jet Earnslaw Hiking Gondola	11/4/2023 1:10 PM
5	Shot over jet, luge, gondola, Milford Sound	11/3/2023 2:31 PM
6	Shotover Jet	11/3/2023 1:17 PM
7	Disc golf, wine tasting, jet boating, onsen	11/3/2023 12:38 PM
8	Shotover Jetboat Ride	11/3/2023 12:12 PM
9	Shotover Jet	11/3/2023 12:10 PM
10	Snowboarding	11/3/2023 11:10 AM
11	Shot over jet and horse trekking	11/3/2023 11:09 AM
12	Shot over Jet Hydro attack Luge Go Karting Hot lap in Porsche cayenne River cruise	11/3/2023 10:33 AM
13	The shotover jet was our only activity in Queenstown this trip	11/3/2023 6:27 AM
14	Skiing, Gondola, Luge, Fishing	11/2/2023 11:30 PM
15	Shotover Icebar Private Hotpools	11/2/2023 11:02 PM
16	Jet Boating , ski fields ,tobogganing , sightseeing	11/2/2023 10:18 PM
17	Shot over jet the ajay jacket swing wine tasting sight seeing at lake wanaka	11/2/2023 9:27 PM
18	Shotover jet	11/2/2023 9:06 PM
19	Jet Boat, skiing, bungee, walking, eating out, shopping, mountain bike Coronet	11/2/2023 8:53 PM
20	Shotover jet, Earnslaw Walter peak, luge, mini golf.	11/2/2023 8:18 PM
21	Came over to get married in the beautiful Glenorchy. We did shot over jet ride last time we visited in 2019 and simply had to come back for round 2! We also did a doubtful sound overnight cruise, glowworm caves in Te Anau and Milford sound visit.	11/2/2023 7:36 PM
22	Skiing, luge, ifly, dining out	11/2/2023 7:05 PM
23	Shotover jet Skyline gondola Wine tour Tss Earnshaw dinner trip Mini-golf Onsen spa Kingpin timezone	11/2/2023 6:58 PM
24	Jet boating Wineries Restaurants Breweries Distilleries Skiing Bars	11/2/2023 6:32 PM
25	Shot over Sky dive	11/2/2023 6:02 PM
26	Shot over jet Kawarau bungee Oxbow Gondolas and luge Jetski	11/2/2023 5:48 PM
27	Jet boat , Swing, Gondola,	11/2/2023 5:45 PM
28	Jet boat, hiking, cruise, day trips	11/2/2023 5:41 PM
29	Shotover jet Cruises Sky point	11/2/2023 5:30 PM
30	Milford sound Paragliding Jet boating Beer tasting Lake cruise Ziplining	11/2/2023 5:16 PM

Shotover Jet Customer Survey

31	Shotover Jetboat Skyline Gondola and Luge	11/2/2023 4:47 PM
32	Skyline Gondola and luge, Shotover jet boat ride, drive to Glenorchy, wine tasting and dinner at Amisfield	11/2/2023 4:43 PM
33	Shotover Jet, Skyline and Luge, Onsen	11/2/2023 4:42 PM
34	Jetboat, Luge, Gondola, Ice Bar	11/2/2023 4:37 PM
35	Sites seeing, onset hot pools, arrowtown	11/2/2023 4:33 PM
36	Luge, shotover, skiing	11/2/2023 4:26 PM
37	Shotovee jet	11/2/2023 4:24 PM
38	skiing gondola	11/2/2023 4:23 PM
39	skiing gondola earns law	11/2/2023 4:22 PM
40	Shotover jet, canyon swing, ice bar	11/2/2023 4:18 PM
41	Skiing	11/2/2023 4:17 PM
42	Shotover Jet, onsen, gondola & luge, Lake Wakatipu cruise, Milford Sound cruise	11/2/2023 4:15 PM
43	Shotover Jet, Doubtful Sound Cruise, Gondola ride and dinner.	11/2/2023 4:13 PM
44	Shot over jet, gondola ride and trip to Milford sound	11/2/2023 4:12 PM
45	Snowboarding, Shotover Jet, gondola, and luge	11/2/2023 4:10 PM
46	Segway, shot over jet	11/2/2023 4:09 PM
47	Shotover Jet	11/2/2023 4:07 PM
48	Onsen spa, luge , shotover yet	11/2/2023 4:07 PM
49	Lots	11/2/2023 4:01 PM

Q2 Did you know what activities you wanted to do before visiting Queenstown

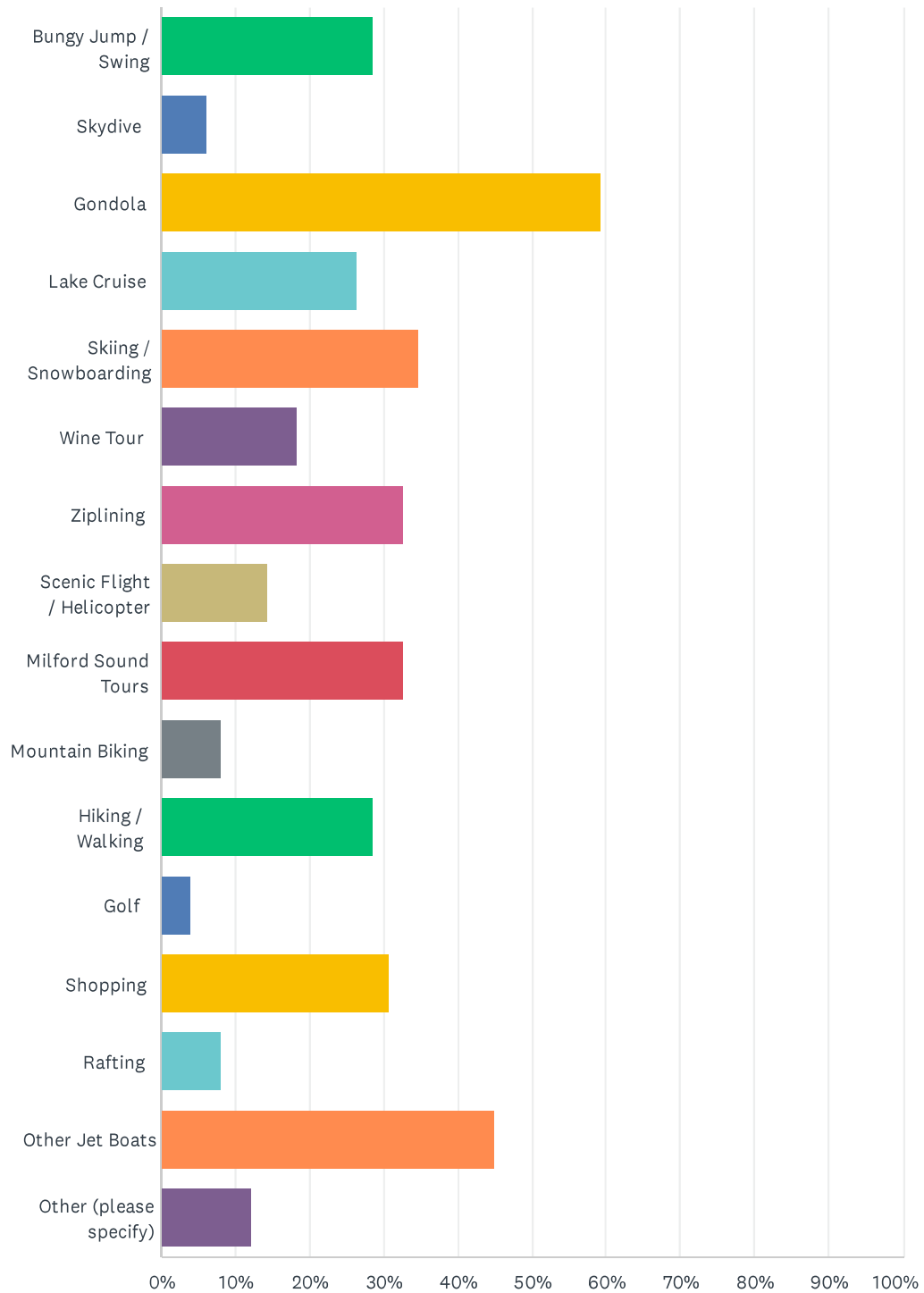
Answered: 49 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	93.88% 46
No	6.12% 3
Total Respondents: 49	

Q3 When choosing Shotover Jet, what activities were you choosing amongst?

Answered: 49 Skipped: 0



Shotover Jet Customer Survey

ANSWER CHOICES	RESPONSES	
Bungy Jump / Swing	28.57%	14
Skydive	6.12%	3
Gondola	59.18%	29
Lake Cruise	26.53%	13
Skiing / Snowboarding	34.69%	17
Wine Tour	18.37%	9
Ziplining	32.65%	16
Scenic Flight / Helicopter	14.29%	7
Milford Sound Tours	32.65%	16
Mountain Biking	8.16%	4
Hiking / Walking	28.57%	14
Golf	4.08%	2
Shopping	30.61%	15
Rafting	8.16%	4
Other Jet Boats	44.90%	22
Other (please specify)	12.24%	6
Total Respondents: 49		

#	OTHER (PLEASE SPECIFY)	DATE
1	others listed above	11/5/2023 10:16 AM
2	None, I only wanted to do Shotover Jet	11/3/2023 11:10 AM
3	Horse trekking	11/3/2023 11:09 AM
4	fishing	11/2/2023 11:30 PM
5	None. We knew Shotover was what we wanted to do	11/2/2023 11:02 PM
6	KJet	11/2/2023 4:07 PM

Q4 Why did you choose to book Shotover Jet?

Answered: 49 Skipped: 0

#	RESPONSES	DATE
1	best option	11/6/2023 1:59 PM
2	Went on the jet in 1994, wanted to go again with my kids	11/6/2023 8:52 AM
3	I've been to Queenstown now many times mainly snowboarding when younger, then with multiple friends and my girlfriend and most recently with my children for the first time. I've been on the Shot over jet every time and it's the first activity that i wanted my children to experience, it's the best start to the adventure Queenstown has to offer and it never disappoints. We jammed as much into our recent 9 day adventure and my youngest talks about the Shotover Jet being the best experience. We will be back!	11/5/2023 10:16 AM
4	We have friends visit often and we always get them to do this. It's our kid's favourite thing to do.	11/4/2023 1:10 PM
5	Good reviews and had heard good things. Also knowing it was close to town and the only company allowed to jet boat in that area	11/3/2023 2:31 PM
6	I have had friends go on it before and loved it so I decided to take my football team on it, they had the time of their Life! #CoreMemories	11/3/2023 1:17 PM
7	Previously went on the Shotover Jet several years ago and wanted to do it again	11/3/2023 12:38 PM
8	Scenery, Reputation & Popularity	11/3/2023 12:12 PM
9	Good reviews and the videos on TikTok looked good.	11/3/2023 12:10 PM
10	Something I have always wanted to do. Its the original and best	11/3/2023 11:10 AM
11	Because two of our party had never done it before and the rest of us wanted them to experience it.	11/3/2023 11:09 AM
12	I'd gone on the shotover Jet when I was in NZ as a teenager with my parents and I remembered it being good	11/3/2023 10:33 AM
13	Iwi owned and beautiful scenery, most iconic/well advertised option since I was young	11/3/2023 6:27 AM
14	more fun speeding close to rocks. scenic gorge	11/2/2023 11:30 PM
15	Great reputation	11/2/2023 11:02 PM
16	Enjoyed the thrill on a previous visit and wanted to enjoy the thrill again	11/2/2023 10:18 PM
17	Because the scene looked more fun then the lake in the townsgip	11/2/2023 9:27 PM
18	Family done it previously. Said it was a riot	11/2/2023 9:06 PM
19	It's a Kiwi institution that we passed onto our kids	11/2/2023 8:53 PM
20	Lots of fun, quintessential Queenstown attraction and family friendly.	11/2/2023 8:18 PM
21	The scenery is just so special. There are many jet boat ride options around Queenstown but the location and scenery you provide is second to none. This is our second time cruising with you and both times have been spectacular.	11/2/2023 7:36 PM
22	Have done it before and really enjoyed it	11/2/2023 7:05 PM
23	Its the original jet boat and the one I trusted the most. And you have exclusive access to the narrow part of the river	11/2/2023 6:58 PM
24	Extreme Professional Nearby Quick and easy	11/2/2023 6:32 PM
25	A talked about attraction	11/2/2023 6:02 PM

Shotover Jet Customer Survey

26	Been on it before and wanted to take our kids	11/2/2023 5:48 PM
27	The whole family wanted to do it	11/2/2023 5:45 PM
28	Wanted to do it	11/2/2023 5:41 PM
29	It was the videos I saw on TikTok tbh	11/2/2023 5:30 PM
30	To have a wholesome experience on our honeymoon	11/2/2023 5:16 PM
31	So our young boys could experience the thrill of the ride.	11/2/2023 4:47 PM
32	You touted being only allowed in the canyon. Looked like a unique experience. Friend recommended.	11/2/2023 4:43 PM
33	It had the best reviews	11/2/2023 4:42 PM
34	Recommended over other local Jet Boat tour. For the thrill	11/2/2023 4:37 PM
35	World renowned. Was so disappointed the river was flooding and our ride was cancelled	11/2/2023 4:33 PM
36	Been on as a kid and loved it	11/2/2023 4:26 PM
37	Have been before and loved it.	11/2/2023 4:24 PM
38	rave reviews	11/2/2023 4:23 PM
39	a fantastic experience - always make sure we take our guests on the SJ	11/2/2023 4:22 PM
40	Have done it before, think it's the best in town	11/2/2023 4:18 PM
41	Always a great experience - a must do in Queenstown	11/2/2023 4:17 PM
42	I did it last time I was in Qt and it was so much fun I had to do it again!!	11/2/2023 4:15 PM
43	Great reviews, good website, beautiful scenery.	11/2/2023 4:13 PM
44	Looked amazing	11/2/2023 4:12 PM
45	Benn on the Shotover jet before and it was great. Took my 8yo son for the first time	11/2/2023 4:10 PM
46	Friends recommendation	11/2/2023 4:09 PM
47	Word of mouth	11/2/2023 4:07 PM
48	Bad weather couldnt skydive	11/2/2023 4:07 PM
49	Wanted to take the kids for a ride	11/2/2023 4:01 PM

APPENDIX 2 – BLACKBOARDS AND BROCHURE STANDS ADVERTISING TOURISM ACTIVITIES

Tahuna (Queenstown) Local Agents Booking Sites How activity choices are portrayed to a visit to Tahuna (Queenstown)



Jet Boat is one of the many activities and Shotover Jet is its own activity vs. a long list of other options.



Jet Boating only appears as one 1-hour option for price well below Shotover.

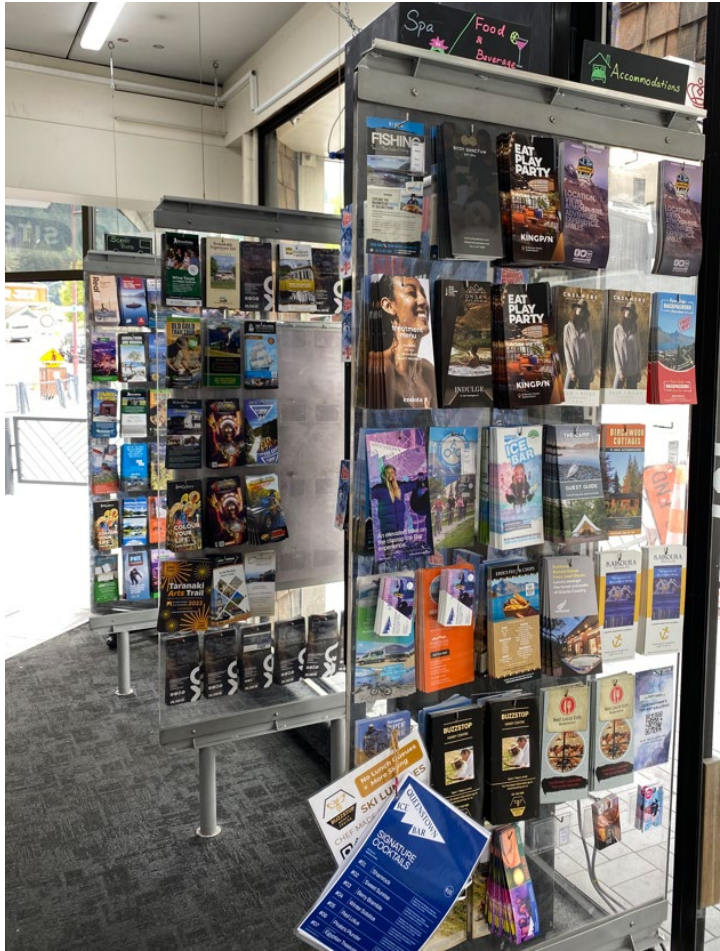
NGĀI TAHU Tourism



NGĀI TAHU Tourism



NGĀI TAHU Tourism



NGĀI TAHU Tourism



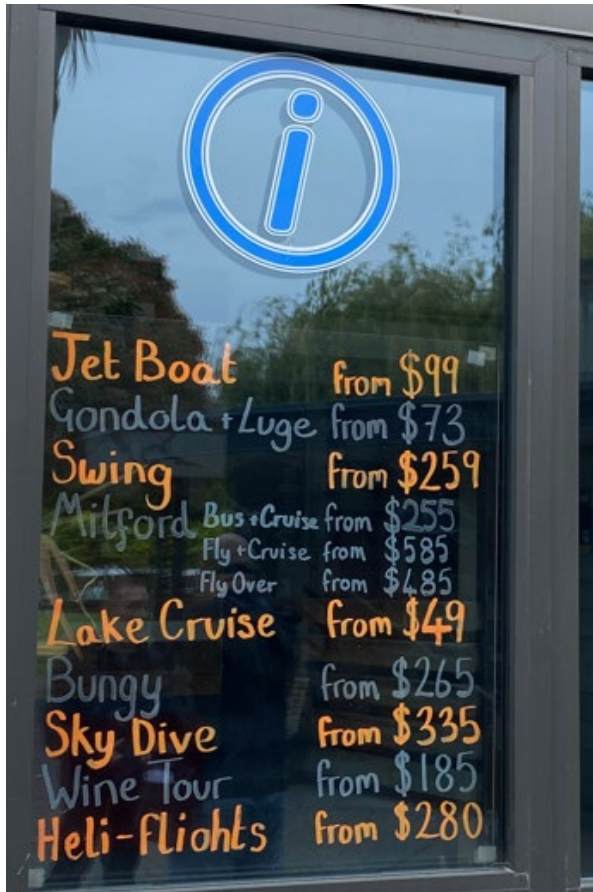
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