

Statement of Issues

Ngāi Tahu Tourism/KJet

19 October 2023

Introduction

1. On 10 August 2023, the Commerce Commission registered an application (the Application) from Ngāi Tahu Tourism Limited (Ngāi Tahu Tourism) seeking clearance for it (or a wholly-owned subsidiary) to acquire the tourism jet boating business trading as “KJet” (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 (the Proposed Acquisition).¹
2. To clear an application, we must be satisfied that an acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a New Zealand market.
3. This Statement of Issues (Sol) sets out the potential competition issues we have identified following our initial investigation. This is so the parties and other interested parties can provide us with submissions relating to those concerns.
4. In reaching the preliminary views set out in this Sol, we have considered information provided by the parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition issues may arise, as the investigation continues.
5. The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

The concerns we are continuing to investigate

6. We have concerns about the competitive effects of the Proposed Acquisition that we are continuing to investigate.
7. We are still to conclude on the definition of the relevant market(s) for assessing the competitive effects of the Proposed Acquisition. However, our preliminary view is that there may be a narrow market for the supply of tourist jet boating services in Tāhuna (Queenstown). Regardless of how broad or narrow the market is, we are focused on assessing the closeness of competition between Ngāi Tahu Tourism, KJet and other jet boat operators, and the strength of competitive constraints from all sources.

¹ A public version of the Application is available on our website at: <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/>.

8. We are concerned that the acquisition may enable the merged entity to profitably raise prices or lower the quality of its services.²
9. Compared to a counterfactual in which KJet is operated by a third-party purchaser, there would be a significant increase in market concentration with the Proposed Acquisition. The merged entity would have a substantial market share in the supply of tourist jet boating services in Tāhuna (Queenstown), in terms of revenues, passenger numbers and capacity.
10. With the Proposed Acquisition, Ngāi Tahu Tourism would operate three major jet boating businesses in Tāhuna (Queenstown) offering scenic experiences, short thrill rides in river canyons and family-friendly jet boat trips accessibly located at the waterfront in central Tāhuna (Queenstown). The Proposed Acquisition would be a three-to-two merger of the operators of 60 minute or less jet boat trips in Tāhuna (Queenstown), and of the jet boat operators in Tāhuna (Queenstown) that cater to large tour groups and can accommodate high volumes of passengers.
11. We are currently not satisfied that the Proposed Acquisition would not substantially lessen competition due to unilateral effects, leading to higher prices or a reduction in quality, customer choice or innovation.
12. We continue to explore issues and competitive constraints, but our current view is that:
 - 12.1 Ngāi Tahu Tourism and KJet are close competitors and impose competitive constraint on each other. With the Proposed Acquisition, the existing competitive constraint that KJet provides on Ngāi Tahu Tourism and also the potential for KJet to provide a greater competitive constraint on Ngāi Tahu Tourism in the future under new ownership, would be lost;
 - 12.2 we are currently not satisfied that other existing jet boat operators, in particular Real NZ (whose jet boat business is currently separately for sale), would be likely to materially constrain the merged entity and prevent a substantial lessening of competition. Beyond Real NZ, other existing jet boat operators are of smaller scale and/or focus on somewhat different offerings or geographic areas;
 - 12.3 barriers to entry seem high due to challenges associated with obtaining wharf space and resource consents, there is no appetite amongst other existing jet boat operators to expand, there is no real indication that any existing competitors would seek to capitalise on an increase in price or reduction in quality post-acquisition, and entry by new jet boat operators also appears unlikely;
 - 12.4 while jet boat operators likely face a degree of competitive constraint from other tourism operators in Tāhuna (Queenstown), the extent of this constraint is unclear, and we are not currently satisfied that competition from other tourism operators would be enough to constrain the merged entity; and

² This theory is commonly referred to as unilateral effects.

- 12.5 it is currently unclear whether wholesalers, agents, resellers and tour operators have countervailing power, and if they do whether they would have an incentive to use it to constrain the merged entity.
13. As noted above, we consider that Ngāi Tahu Tourism and KJet are close competitors and impose competitive constraint on each other, although we acknowledge that there is some mixed evidence before us on this point.
- 13.1 While Ngāi Tahu Tourism and KJet are the two largest jet boat operators in Tāhuna (Queenstown), some evidence before us suggests that they may not be each other's closest competitors. Ngāi Tahu Tourism and KJet compete at different price points and offer differentiated products/services. Current evidence indicates that KJet may instead compete most closely with Real NZ's jet boats. The iconic nature of the Shotover Jet may also mean that Ngāi Tahu Tourism already has a degree of market power.
- 13.2 Even though KJet competes closely with Real NZ's jet boats at the waterfront in Tāhuna (Queenstown), evidence also indicates that KJet may be Ngāi Tahu Tourism's closest competitor, or constrain it to some degree, in the supply of tourist jet boating services. While the Shotover Jet is priced higher than KJet, each operator's pricing nonetheless provides a degree of constraint on the other. The Shotover Jet has regard to KJet in setting its pricing, internally listing KJet as a direct competitor. We also note that the marketing of the Shotover Jet and KJet is very similar at a high level, notwithstanding differences in the trips offered. In addition, KJet has the capacity to compete with Ngāi Tahu Tourism to meet the demands of large tour groups. The Proposed Acquisition would remove the existing competitive constraint that KJet provides on Ngāi Tahu Tourism and the potential for KJet to provide a greater competitive constraint on Ngāi Tahu Tourism in the future under new ownership.
14. Although other jet boat operators (Real NZ, Skippers Canyon Jet and other smaller operators) would remain as competitors, or potential competitors, to the merged entity, we are currently not satisfied that other existing jet boat operators would sufficiently constrain the merged entity and prevent a substantial lessening of competition.
- 14.1 Real NZ would be the major remaining competitor to the merged entity, but we received some evidence to suggest that it had lost market share and is no longer an effective competitor in the supply of tourist jet boating services in Tāhuna (Queenstown). Real NZ is operating well under the capacity limits of its resource consent and could easily expand to meet demand, but Real NZ has no interest in materially expanding. Real NZ's jet boating business is currently for sale (separately) and with uncertainty about whether the business will be sold, and to whom, there is, in turn, uncertainty as to the likely competitiveness of, and competitive constraint provided by, Real NZ in the future – including the plans that any new owner of Real NZ's jet boats might have for the business. This impacts on our assessment of the likelihood of Real NZ expanding in response to the merged entity raising prices or lowering the quality of its services.

- 14.2 Beyond Real NZ, we consider that other existing jet boat operators provide a weaker constraint (due to their size, location and/or the different nature of their jet boat trips). None of these other jet boat operators aspires to materially expand, despite (based on our analysis) some operators having the capacity to do so within the scope of resource consents, and some have also indicated that they would not be incentivised to expand if the merged entity increased prices.
15. We consider that there may be barriers to obtaining a resource consent to supply tourist jet boating services in Tāhuna (Queenstown) and also in securing wharf access in central Tāhuna (Queenstown). Entry by new jet boat operators appears unlikely at this time given (based on our analysis) the existing capacity under-utilisation by other jet boat operators. We are not aware of any likely entrants.
16. We consider that jet boating operators in Tāhuna (Queenstown) compete with other tourism operators to a lesser degree, depending on how closely their offering compares to a jet boat trip in terms of factors such as experience, time and cost. Based on evidence from market participants, we acknowledge that other iconic tourism activities in Tāhuna (Queenstown) may compete to some degree with the Shotover Jet, particularly in terms of marketing and quality. However, the evidence before us indicates that operators of jet boat trips compete most closely and directly with other jet boat operators, and face a lower degree of competitive constraint from other tourism operators. While we are still considering the strength of the constraint provided by other tourism operators, we are currently not satisfied that this constraint would be sufficient to constrain the merged entity. This is in part due to a lack of credible quantitative data or evidence of switching between different tourism activities by visitors to Tāhuna (Queenstown).
17. It is currently unclear if the countervailing power of wholesalers, agents, resellers and tour operators would be sufficient to prevent an exercise of market power by the merged entity. While tour operators who are able to switch between different types of experiences or to jet boat operators in other regions outside Tāhuna (Queenstown) may have countervailing power, this would not protect tourists who buy through different channels (including directly from jet boat operators). It is also unclear whether wholesalers, agents and resellers would have countervailing power and/or the incentive to exercise it.
18. We are currently not satisfied that the collective constraint from other jet boat operators, other tourism operators and the countervailing power of wholesalers, agents, resellers and tour operators would together be sufficient to prevent an exercise of market power by the merged entity.
19. While the focus of our concerns and analysis has been on unilateral effects, we are also continuing to investigate the coordinated and conglomerate effects of the Proposed Acquisition. Specifically, we are considering whether the Proposed Acquisition would substantially lessen competition by:
- 19.1 increasing the likelihood of coordination between suppliers of tourist jet boating services in Tāhuna (Queenstown); or

- 19.2 giving the merged entity the ability and incentive to foreclose rival suppliers given Ngāi Tahu Tourism's expanded portfolio of assets/investments.
20. We explain our reasons for our current views below and invite submissions on them.

Process and timeline

21. We have agreed with Ngāi Tahu Tourism to extend the period in which to make a decision from the initial 40 working day statutory timeframe until 15 December 2023.
22. We would like to receive submissions and supporting evidence from the parties and other interested parties on the issues raised in this Sol. We request responses by close of business on **10 November 2023**, including a confidential and a public version of any submission made. All submissions received will be published on our website with appropriate redactions.³ All parties will have the opportunity to cross-submit on the public versions of submissions received from other parties by close of business on **22 November 2023**.
23. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with us at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

The parties and the Proposed Acquisition

24. Ngāi Tahu Tourism and KJet overlap in the supply of tourist jet boating services in Tāhuna (Queenstown).
25. Ngāi Tahu Tourism is a wholly-owned subsidiary of Ngāi Tahu Holdings Corporation Limited, which is itself owned by the Ngāi Tahu Charitable Trust. Ngāi Tahu Tourism operates tourism businesses across both Te Ika a Māui (the North Island) and Te Waipounamu (the South Island). Relevant to the Application, Ngāi Tahu Tourism operates the Shotover Jet and Dart River Adventures jet boating businesses in Tāhuna (Queenstown) on the Kimiākau (Shotover River) and Dart River.
26. KJet and Time Tripper Limited are ultimately owned by Shaun Kelly and Skeggs Group Limited. Combined, these businesses operate, in Tāhuna (Queenstown), the KJet tourism jet boating business and the Time Tripper Underwater World experience. KJet operates its jet boats on the Kawarau River and the Kimiākau (Shotover River).
27. With the Proposed Acquisition, Ngāi Tahu Tourism would own three businesses providing tourist jet boating services in Tāhuna (Queenstown) – KJet, Shotover Jet and Dart River Adventures.

³ Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each of the pieces of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

28. Ngāi Tahu Tourism seeks to acquire KJet to expand its jet boat offering, with KJet having consents to run jet boat operations on Lake Whakatipu, the Kawarau River and the Kimiākau (Shotover) River. Ngāi Tahu Tourism would continue to operate KJet as a separate and distinct brand from Shotover Jet.⁴

Relevant background

29. There are currently four parties that operate tourist jet boat trips in Tāhuna (Queenstown):
- 29.1 Ngāi Tahu Tourism operates jet boat trips on the Kimiākau (Shotover River) under its Shotover Jet brand and separately operates jet boat experiences on the Dart River under its Dart River Adventures brand;⁵
- 29.2 KJet operates jet boat trips on both the Kawarau River and the Kimiākau (Shotover River);
- 29.3 Real NZ operates jet boat trips on the Kawarau River;⁶ and
- 29.4 Skippers Canyon Jet operates jet boat trips on the Kimiākau (Shotover River).
30. As discussed below, there are differences between jet boat operators in Tāhuna (Queenstown) in terms of the length of trips, where the trips start/end, where each jet boat trip goes, and the nature of the trips (ie, whether the trips are thrill/adventure based or more scenic).
31. Table 1 summarises aspects of the offerings of the parties that currently operate tourist jet boat trips on the Kawarau River or the Kimiākau (Shotover River) in Tāhuna (Queenstown).

Table 1: Jet boat offerings on the Kawarau River and the Kimiākau (Shotover River)

Jet boat operator	Trip length	River(s)	Details
Shotover Jet	25 minutes	Kimiākau (Shotover River)	From Arthurs Point, approximately 7km out of Tāhuna (Queenstown), ⁷ the Shotover Jet offers thrill jet boat trips on an exclusive area of the Kimiākau (Shotover River), with the trip travelling through the Shotover canyons and down to the upstream end of Tucker Beach

⁴ The Application at [26]-[27].

⁵ Ngāi Tahu Tourism's Dart River Adventures offers two hour wilderness/scenic jet boat experiences on the Dart River, leaving from Glenorchy (a 46km drive from Queenstown). Dart River Adventures is currently priced at \$299 for an adult.

⁶ Real NZ acquired a jet boating business called Thunder Jet in 2018 that it has rebranded as Real NZ. Real NZ has consent to operate some jet boats on the lower part of the Kimiākau (Shotover River), but does not do so. In July 2023, Real NZ announced that it was putting its jet boat business up for sale.

⁷ The Shotover Jet offers shuttle services from central Tāhuna (Queenstown), but most tourists make their own way to Arthurs Point.

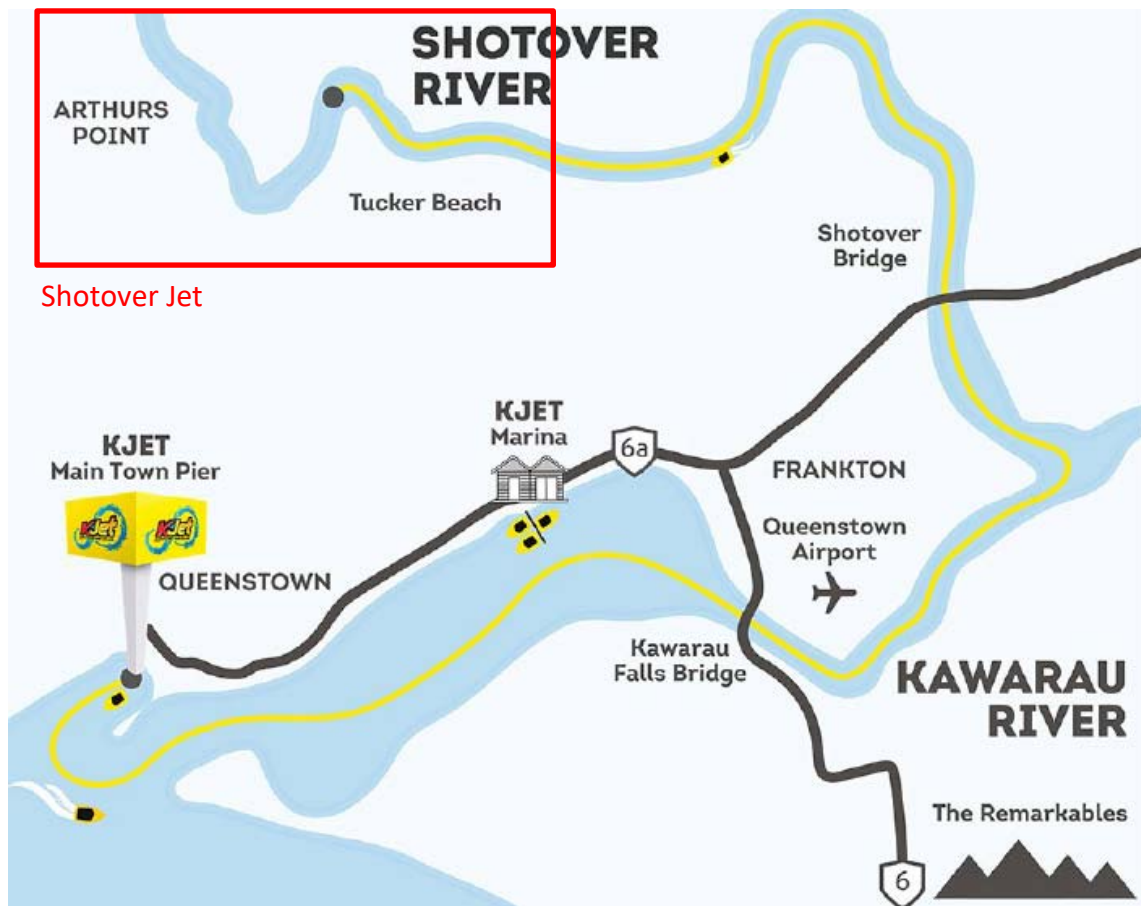
Jet boat operator	Trip length	River(s)	Details
KJet	40 and 60 minutes	Kawarau River and Kimiākau (Shotover River)	From wharf in central Tāhuna (Queenstown), the jet boat trip is a mix of scenic and thrill, travelling up the Frankton Arm of Lake Whakatipu into the Kawarau River and then up the lower part of the Kimiākau (Shotover River) as far as the upper extent of Tucker Beach KJet also offers (on its website) shorter approximately 40 minute trips from the marina in Frankton
Real NZ	25 and 60 minutes	Kawarau River	From wharf in central Tāhuna (Queenstown), the jet boat trip is a mix of scenic and thrill, travelling up the Frankton Arm of Lake Whakatipu into the Kawarau River – while KJet trips turn off onto the Kimiākau (Shotover River), Real NZ boats continue further up the Kawarau River
Skippers Canyon Jet	2.5-3 hours (only 25 minutes of this is jet boat trip)	Kimiākau (Shotover River)	The trip starts and ends in central Tāhuna (Queenstown) and includes a guided scenic bus tour of Skippers Canyon and a 25 minute thrill jet boat trip on the Kimiākau (Shotover River), with the trip travelling in the upper canyons of the Kimiākau (Shotover River)

32. The jet boat trips offered by KJet and Real NZ are similar. Both operate from the wharf in central Tāhuna (Queenstown), with jet boat trips starting and ending at the wharf. The jet boat trips of KJet and Real NZ both include travel on Lake Whakatipu before the boats travel on the Kawarau River. However, KJet also travels up the Kimiākau (Shotover River).
33. Ngāi Tahu Tourism’s Shotover Jet and Skippers Canyon Jet operate solely on the Kimiākau (Shotover River), and do not operate from the wharf in central Tāhuna (Queenstown). While the Shotover Jet, KJet and Skippers Canyon Jet all operate jet boat trips on the Kimiākau (Shotover River), the Shotover Jet is the only operator that is currently permitted to operate jet boat trips on a particular section of the Kimiākau (Shotover River).⁸

⁸ This is pursuant to a concession agreement that the Shotover Jet has with the Queenstown Lakes District Council, []. The Application at [40] and Appendix 10.

34. Figure 1 below maps where KJet operates its jet boat trips and also highlights (in a red box) the portion of the Kimiākau (Shotover River) on which the Shotover Jet operates.⁹ Real NZ's trips take a similar path to KJet until the Kimiākau (Shotover River) and then continue further up the Kawarau River, instead of going into the Kimiākau (Shotover River).
35. There are also differences in the prices for each of these jet boat operators. The base pricing of KJet and Real NZ for a 60 minute jet boat trip is similar, with KJet charging \$135 (for an adult) compared to Real NZ's price of \$139.¹⁰ The Shotover Jet is priced higher at \$159 for a 25 minute jet boat trip. Skippers Canyon Jet is more expensive still at \$189, but this includes a 25 minute jet boat trip and a canyon bus tour.

Figure 1: KJet and Shotover Jet areas of operation



36. There are differences in the scale of the jet boat operators in Tāhuna (Queenstown). Ngāi Tahu Tourism operates 15 jet boats – seven under the Shotover Jet brand and eight under the Dart River Adventures brand. Like the Shotover Jet, KJet operates seven jet boats. Real NZ has consent to operate four jet boats, but only currently has three jet boats. Skippers Canyon Jet owns five jet boats, but typically only has two on the river at any one time (it has consent to operate three jet boats).

⁹ Appendix 22 to the Application has a more detailed map of where the Shotover Jet operates.

¹⁰ Real NZ also offers a 25 minute jet boat trip at a base price of \$99 (for an adult).

37. Table 2 sets out revenue and passenger numbers for each jet boat operator as well as maximum passenger numbers (per resource consent).¹¹ It shows that Ngāi Tahu Tourism and KJet are the two largest operators, and that the maximum capacity of a merged Shotover Jet and KJet would be over [] times that of Real NZ and over [] times that of Skippers Canyon Jet.

Table 2: Jet boat sales and passenger numbers

Jet boat operator	Annual sales revenue	Actual annual passengers ¹²	Maximum annual passengers ¹³
Ngāi Tahu Tourism			
• Shotover Jet	[\$]	[]	[]
• Dart River	[\$]	[]	[]
KJet	[\$]	[]	[]
Merged entity	[\$]	[]	[]
Real NZ	[\$]	[]	[]
Skippers Canyon Jet	[\$]	[]	[]

38. In addition to the jet boat operators discussed above, there are five other jet boat operators in the broader Queenstown Lakes region or on the drive into Tāhuna (Queenstown) from the north:¹⁴
- 38.1 Oxbow, which offers jet boat sprints near the Gibbston Valley (33km from Tāhuna (Queenstown));
- 38.2 Goldfields Jet (near Cromwell, 56km from Tāhuna (Queenstown)) which offers 40 minute jet boat trips through the Kawarau Gorge for \$130 (for an adult); and
- 38.3 in Wānaka, at least 68km from Tāhuna (Queenstown):
- 38.3.1 Lakeland Wānaka offers 60 minute thrilling jet boat trips on the Clutha River for \$129 (for an adult);
- 38.3.2 Go Jets Wānaka offers 60 minute jet boat trips on the Clutha River for \$139 (for an adult), offering both scenic cruise trips and thrilling jet boat trips; and

¹¹ Resource consent numbers are as follows: the Shotover Jet (RM970219), Dart River Adventures (RM960417), KJet (RM040414, RM990113, RM990112, RM920057 and RM171091), Real NZ ([]) and Skippers Canyon Jet ([]).

¹² Actual passenger numbers and sales revenues are shown as ranges in Table 2, based on data for the last five years during which figures have fluctuated as a result of the COVID-19 pandemic (although figures in Table 2 exclude real low years of the pandemic. Figure 4 (in our competition analysis) depicts the trend in passenger numbers over time for each of Ngāi Tahu Tourism, KJet and Real NZ.

¹³ Ngāi Tahu Tourism and KJet figures are as per the Application at Appendix 9. Figures for Real NZ and Skippers Canyon Jet are based on Commission analysis of resource consents, in line with calculations used in the Application to calculate the capacity of Ngāi Tahu Tourism and KJet.

¹⁴ There are other jet boat operators even further afield, but the operators listed here are the parties that Ngāi Tahu Tourism has listed as being in the Queenstown Lakes region. The Application at [60].

- 38.3.3 Wānaka River Journeys offers half day and full day experiences, including a half day jet boat trip on the Matukituki River and wilderness walk for \$289 (for an adult) a half day jet boat trip on the Matukituki River and helicopter flight for \$945 and a full day jet boat trip on the Matukituki River, 4WD trip and wilderness walk for \$599.

39. Figure 2 depicts the approximate locations of these jet boat operators relative to Tāhuna (Queenstown).

Figure 2: Jet boat operator locations outside of Tāhuna (Queenstown)



40. We are conscious of the impact that the COVID-19 pandemic had on the supply and demand for tourist jet boating services in Tāhuna (Queenstown) and on tourism generally, and that some tourism operators are still recovering from the pandemic. We have taken this into account where appropriate in our analysis. This is because our assessment of the Proposed Acquisition is forward-looking. It recognises that the state and conditions of competition now may not be reflective of future conditions.

The relevant markets

41. We discuss below the relevant markets for assessing the competitive effects of the Proposed Acquisition.

Framework

42. Market definition is a tool that helps identify and assess the close competitive constraints a merged entity is likely to face. We define markets in the way that we consider best isolates the key competition issues that arise from a specific merger or acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.¹⁵

¹⁵ Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81] and Commerce Commission, *Mergers and Acquisitions Guidelines* (May 2022) at [3.7]-[3.10].

43. When assessing relevant markets, we generally start 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 (Queenstown). We then consider how broadly or narrowly to define the boundaries of the relevant markets by asking:¹⁶
- 43.1 whether sufficient customers could easily switch to alternative products, services, or locations in response to a small but significant and non-transitory price increase¹⁷ (SSNIP) to make the SSNIP unprofitable (known as ‘demand side’ substitution). If so, the products/services to which they would switch are included in the market;¹⁸ and
- 43.2 whether suppliers could easily switch to producing or supplying different products or in different locations in response to a SSNIP (known as ‘supply side’ substitution). If so, those suppliers and/or locations are included in the relevant market.
44. We may also define separate markets for different types of customers if customers have different supply alternatives and suppliers are able to price discriminate between customers on the basis of those differences. This may result in different product and/or geographic market dimensions for each customer type.
45. How we define the relevant market(s) may change from merger to merger, even for mergers within the same industry, because demand and supply side substitutability can differ from merger to merger, and can change over time.
46. Regardless of the boundaries of any relevant markets, what ultimately matters is that we consider all relevant competitive constraints, and the extent of those constraints. If we define a market narrowly, we will consider competitive constraints from outside a market. If we define a broad market, we will consider how closely different suppliers compete within that broad market. A substantial lessening of competition in a significant section of a broad market could still amount to a substantial lessening of competition in that market overall.¹⁹

Ngāi Tahu Tourism’s submissions

47. In the Application, Ngāi Tahu Tourism submits that the relevant market is the market for the provision of retail adventure tourism activities in the Queenstown Lakes region.²⁰ Ngāi Tahu Tourism further submits that:²¹

¹⁶ *Mergers and Acquisitions Guidelines* above n15 at [3.16].

¹⁷ This could also include a quality adjusted price increase resulting from a reduction in quality or aspects of a service offering, given that price is only one factor that tourists consider in deciding between tourism activities.

¹⁸ We use the hypothetical monopolist test as a conceptual tool to help us answer this question. This test asks whether a hypothetical sole supplier of a set of products (or locations) would profitably increase prices for at least one of the merging firms’ products (or locations) by at least a small, but significant, amount. *Mergers and Acquisitions Guidelines* above n15 at [3.18].

¹⁹ A lessening of competition does not need to be felt across an entire market for that lessening to be substantial. *Mergers and Acquisitions Guidelines* above n15 at [2.25]. A lessening of competition that adversely affects a significant section of the market may be enough to amount to a substantial lessening of competition. *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 64 FLR 238; ATPR 40-315, 43,888.

²⁰ The Application at [4] and [47].

²¹ The Application at [47] and [51]-[58].

- 47.1 this market is consistent with a previous decision of the Commission;²²
- 47.2 there is a high degree of demand-side substitutability – other adventure tourism activities are close substitutes for jet boating, with tourists choosing between adventure tourism activities based on the amount of time they have in the Queenstown Lakes region and the money they have to spend, and adventure tourism operators competing for the business of tourists;
- 47.3 Ngāi Tahu Tourism monitors the prices of other adventure tourism activities and considers those prices when setting the prices for its jet boating services;
- 47.4 jet boating attracts a broad range of customers, including a range of ages and families, who want a fast-paced, action filled experience;
- 47.5 defining a narrow market or markets just focused on jet boating would not capture the competitive dynamics between jet boating activities and other adventure tourism activities;
- 47.6 defining the geographic scope of the market as the Queenstown Lakes region reflects that tourists travel around the region to different activities, but constraints may also be imposed by activities outside this region; and
- 47.7 alternatively, that there could be a broad market for all tourism activities in the Queenstown Lakes region, given the shift towards more tourists visiting the region for nature-based experiences as opposed to adventure activities.

Our view

- 48. We have not reached any definitive views on the relevant markets for assessing the Proposed Acquisition.
- 49. Currently, we consider 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 (Queenstown). This is narrower than the market for adventure tourism activities in the Queenstown Lakes region suggested by Ngāi Tahu Tourism.
- 50. We discuss, in turn below, our preliminary views on the product dimension of the relevant market(s), the geographic scope of the relevant market(s) and the customer dimension of the relevant market(s), with reference to the evidence before us.
- 51. We invite submissions on our current approach to market definition and for parties to provide us with further direct evidence on the scope of the relevant market.

²² Bungy New Zealand and Pipeline Bungy (Commerce Commission Decision 504, 24 July 2003). In this decision, the Commission defined a market for the provision of retail adventure tourism activities in the Queenstown Lakes region. Adventure tourism activities were listed as including jet boating, skydiving, bungy jumping, hang gliding, parapenting, mountain biking, 4WD off-roading, heliskiing, white-water rafting and fly by wire.

Product dimension

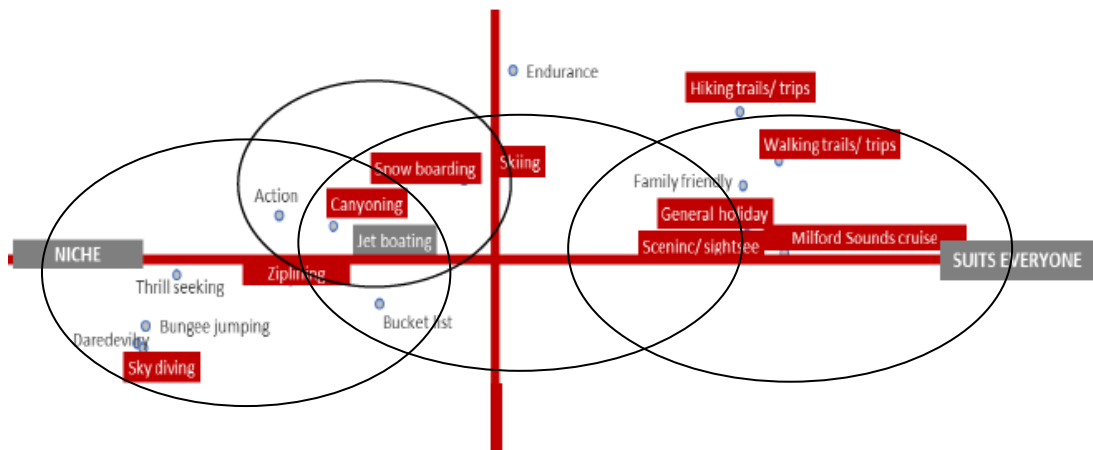
52. As noted above, Ngāi Tahu Tourism submits that it operates in a broad market for the provision of retail adventure tourism activities as opposed to a narrow product market for the supply of tourist jet boating services.
53. Currently, we consider that the competition issues that may arise from the Proposed Acquisition are best assessed by defining a narrow market for the supply of tourist jet boating services.
54. Our assessment of product markets has focused on demand-side substitution, as opposed to supply-side substitution. This is because we consider that suppliers of other tourism activities could not easily switch to supplying tourist jet boating services in response to a SSNIP. Significant costs and time would be required for the suppliers of other tourism activities to switch to jet boat services.
55. In considering the product dimension of the market(s) and the substitutability of different tourism activities on the demand-side, we have been assessing:
 - 55.1 whether all types of jet boat trips are close substitutes for each other; in particular the closeness of substitution between a fast-paced, thrill/action seeking jet boat trip and a slower-paced, scenic jet boat trip;
 - 55.2 how visitors to Tāhuna (Queenstown) choose between different tourism activities and the importance of factors such as cost, time, type of experience and the nature of the activity (which may range from relaxed or scenic through to high adrenaline or extreme adventure) for the substitutability of activities;
 - 55.3 which other activities are likely close substitutes for a jet boat trip having regard to differences in individual preferences of specific tourists;
 - 55.4 whether there is evidence of customers switching between jet boat trips and other tourism activities in response to differences in price; and
 - 55.5 evidence from tourism operators on how they see the markets in which they operate, including evidence on their sales, customer bases, pricing and marketing strategies.
56. We invite parties to provide us with further evidence on the above; in particular on the tourism activities that visitors to Tāhuna (Queenstown) consider to be close substitutes for jet boating and the extent of switching between those tourism activities, and evidence of jet boat operators taking account of other tourism operators in setting their pricing and marketing strategies (and vice versa).

The difficulties in defining product markets in this case

57. As noted above, the starting point for product market definition is the area(s) of overlap between Ngāi Tahu Tourism and KJet (ie, tourist jet boating services). We then ask whether other tourism activities are sufficiently close substitutes for jet boating that they should be included in the relevant market.

- 58. However, defining the relevant product market in this case is challenging because of the differentiated nature of tourism activities and tourists’ diverse preferences for these activities. There is also at this stage 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.
- 59. On the demand-side, different tourism activities (including on a spectrum from relaxed, scenic activities through to extreme adventure activities) may be more or less close substitutes for one another, depending on individual customers’ preferences. This makes it difficult to apply the SSNIP framework to identify those activities that are within a market from those that are outside. 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.
- 60. Ngāi Tahu Tourism’s view that the relevant product market is broader than jet boats suggests a potential chain of substitution. This would be the case, for example, if activities that are not close substitutes for jet boating nevertheless provide an indirect constraint because they directly constrain activities that are a closer substitute. When considering a chain of substitutes, the SSNIP test is used to identify ‘breaks’ in the chain to delineate markets. If there is no break in the chain, then it might be argued that the relevant market should be defined broadly to encompass the full chain of products.
- 61. Figure 3 depicts the potential chain of substitution of tourism activities in Tāhuna (Queenstown). It depicts jet boating as sitting at niche end of a spectrum, with the document from which Figure 3 is sourced describing jet boating as “an action activity that borders on the more extreme”. Jet boating is depicted as being close to canyoning, with bungy jumping and skydiving being further along the niche end of the spectrum. More scenic and leisurely activities are shown at opposite end that suits everyone.²³

Figure 3: Potential chain of substitution of tourism activities



²³ [], included with the Application at Appendix 12. The original figure sourced from this document had one circle, but we have added additional circles to depict potential chain of substitution.

62. It is challenging to apply a mechanistic approach to market definition in this case, particularly given we have been unable, at this stage, to obtain direct evidence or data on visitors to Tāhuna (Queenstown) – who are often one-time only visitors – switching between different tourism activities, to enable us to reach a definitive conclusion on the scope of the relevant markets. In addition, differing perspectives of tourists, including what they likely view as substitutes for a jet boat trip, further complicates analysis of the substitutability of individual tourism activities. Visitors to Tāhuna (Queenstown) may also take part in a mix of extreme adventure and more relaxed or scenic activities (not just entirely extreme adventure). This makes it difficult in this case to identify with precision any breaks in a chain of substitution.

The evidence currently before us

63. Below we discuss the evidence currently before us on the scope of the product market.

64. The evidence currently before us suggests that there is a ‘sliding scale’ within the spectrum of tourism activities, ranging from extreme adventure (such as skydiving, bungee jumping and canyon swing)²⁴ to soft adventure (such as jet boating and zipline)²⁵ to scenic/sightseeing/leisure (such as lake cruises, Skyline Gondola, private scenic drives and scenic flights).²⁶ We have also received evidence differentiating active adventure activities (eg, rafting, river boarding and canyoning) from inactive adventure activities where tourists can simply sit and enjoy the experience with no physical exertion.²⁷ Broadly, the evidence before us suggests that visitors come to Tāhuna (Queenstown) to explore a range of activities, including both adventurous and non-adventurous. Also, even where tourists seek mainly adrenaline driven or scenic experiences, they tend to mix and match experiences.²⁸

65. The characteristics of a jet boat trip tend to place it in the adventure portion of the spectrum of tourism activities. However, evidence suggests that different jet boat offerings may involve different levels of adventure.²⁹ We have been told that the Shotover Jet and Skippers Canyon Jet are more thrilling trips while KJet and Real NZ are considered more scenic.³⁰ This suggests a distinction between jet boat trips on rivers/canyons and those that operate on lakes and wider braided rivers. Dart River Adventures is seen as providing a scenic, wilderness jet boat trip. We note that the

²⁴ []

²⁵ []

²⁶ []

²⁷ []

²⁸ Submission from Bungy NZ (19 September 2023), Commerce Commission interview with Real NZ (14 September 2023) and [].

²⁹ []

³⁰ Submission from Bungy NZ (19 September 2023).

Commission has previously defined separate product markets for the provision of “thrill” jet boat rides and “eco-tour” jet boat rides.³¹

66. Tourists may view activities as being more or less adventurous or scenic depending on their individual preferences. The level of adventurousness a person may attribute to a particular activity will also likely differ. However, visitors tend to take account of similar factors when choosing a tourism experience, including location, cost and type of activity. We consider that all tourists are constrained to the extent that they generally have a finite amount of time and money to spend in Tāhuna (Queenstown).³²
67. Ngāi Tahu Tourism advised that demand side substitutability will be limited if a visitor comes to Tāhuna (Queenstown) specifically to do a certain type of activity. A tourist who comes specifically to do jet boating is unlikely to consider other types of adventure tourism activities as close substitutes. But Ngāi Tahu Tourism considers that it would be unusual for a visitor to come to Tāhuna (Queenstown) for this specific reason although it has not provided data to support this view. It also notes that if a visitor came to do the Shotover Jet, then other jet boat trips would not be any more substitutable for that tourist for the Shotover Jet than other adventure tourism activities.³³
68. The above and some other evidence (discussed below), is indicative of a broader product market than just the supply of tourist jet boating services.
- 68.1 Some tourism operators (including jet boat operators) consider the pricing of a range of other tourism operators in setting their pricing, including the pricing of operators that offer quite different tourism activities. This suggests these tourism operators may see themselves as competing in a broad product market. Ngāi Tahu Tourism and KJet both have regard to the pricing of other jet boat operators (listed as direct competitors) and other tourism operators in setting the pricing of their respective jet boat trips, although they could not tell us how the pricing of different parties is weighted in pricing decisions.³⁴ Other tourism operators consider a matrix of tourism operators in setting prices for their offerings, including the prices of jet boat trips to varying degrees.³⁵

³¹ In 1997, the Commission considered two mergers in jet boating in Tāhuna (Queenstown) – Shotover Jet and Helijet (April 1997) and Twin Rivers Jet and Alpine Jet (October 1997). The markets adopted in assessment of the Shotover Jet and Helijet merger (the earlier of these two mergers) are discussed in Bungy New Zealand and Pipeline Bungy (Commerce Commission Decision 504, 24 July 2003) at [22]-[23].

³² Submission from Bungy NZ (19 September 2023),

[

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³³ E-mail from Buddle Findlay (on behalf of Ngāi Tahu Tourism) to the Commerce Commission (22 September 2023).

³⁴ The Application at 16-17 and Appendix 15, Commerce Commission interview with Ngāi Tahu Tourism (4 September 2023) and Commerce Commission interview with KJet (11 September 2023).

³⁵ Submission from Bungy NZ (19 September 2023),

[

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- 68.2 Some industry participants (including Skippers Canyon Jet) see jet boating as operating in a broad market, alongside other adventure tourism activities, if not all tourism activities.³⁶
- 68.3 Ngāi Tahu Tourism noted that travel blogs and forums present a range of adventure tourism activities to tourists researching a trip to New Zealand, and that tourism agents market adventure tourism activities as one group (both online and in brochure stands).³⁷
69. However, we also received evidence to the contrary that supports a narrower product market for the supply of tourist jet boating services (or there being multiple different product markets for tourism activities), including from some industry participants that also view the market as broad.
- 69.1 Ngāi Tahu Tourism has internally noted that jet boating has a broader appeal than other adventure activities such as skydiving and bungy jumping.³⁸
- 69.2 Ngāi Tahu Tourism internally identifies other jet boat operators as the direct competitors to the Shotover Jet and has undertaken discrete research on its market share in just jet boats.³⁹
- 69.3 KJet information memorandum prepared for sales process refers to there being few other competitors in the Tāhuna (Queenstown) jet boat experience market.⁴⁰
- 69.4 Goldfields Jet considers that it competes with other jet boat operators in a jet boat market, not in a broader adventure activity or tourism market, seeing other tourism activities like chalk and cheese (relative to jet boats).⁴¹
- 69.5 Skippers Canyon Jet sets its pricing mostly with reference to other jet boat operators, and is only mindful to a degree of other tourism operators.⁴²

³⁶ Commerce Commission interview with Skippers Canyon Jet (5 September 2023),
[

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³⁷ E-mail from Buddle Findlay (on behalf of Ngāi Tahu Tourism) to the Commerce Commission (22 September 2023).

³⁸ [], included with the Application at Appendix 12.

³⁹ The Application at Appendix 15 and [], included with the Application at Appendix 27.

⁴⁰ [], included with the Application at Appendix 5.

⁴¹ Commerce Commission interview with Goldfields Jet (7 September 2023).

⁴² Commerce Commission interview with Skippers Canyon Jet (5 September 2023).

69.6 [] considers that there is a separate jet boat market, at least for those tourists who visit Tāhuna (Queenstown) with the specific intention of doing a jet boat trip.⁴³

69.7 [] described the market in which it operates as water-based adventure tourism.⁴⁴ Also water-based, [] described itself as operating in a niche, non-motorised, largely non-guided watercraft market and does not see itself competing with jet boats, which are quite different.⁴⁵

69.8 [] considers that it operates in an active adventure market and sees jet boating as being in a separate market for soft and less active adventure.⁴⁶ [] considers that rafting does not compete closely with jet boats, with jet boats appealing to a wider demographic.⁴⁷

70. Given the mixed evidence of different market participants outlined above, we note that a broad product market for all adventure tourism may not be plausible given the likelihood of “breaks” in the chain of substitution. If the product market was wider than just jet boats, it may only extend to a soft adventure tourism market, rather than a wider adventure tourism market.

71. Given the lack of clear evidence, we currently consider that the competitive effects of the Proposed Acquisition are best assessed within a narrow product market that includes jet boats only. If the Proposed Acquisition does not raise competition concerns within this market, then it would not raise concerns in a broader market. We consider constraints from other tourism operators in our competition assessment.

72. As indicated above, we invite parties to provide us with further evidence on demand side substitution, including the switching patterns of tourists, particularly in response to increases in prices or services offerings of tourist jet boating services.

Geographic scope of market

73. As noted above, Ngāi Tahu Tourism submits that the geographic scope of the market should be defined as the Queenstown Lakes region, not just Tāhuna (Queenstown), reflecting the fact that tourists travel around the region to different activities. It also submits that constraints may be imposed by tourism activities outside the region.

74. Currently, we consider that the competition issues that may arise from the Proposed Acquisition are best assessed and isolated by defining the geographic scope of the market as Tāhuna (Queenstown).

75. In assessing the geographic scope of the market(s), we are investigating the extent to which customers would switch between doing a jet boat trip in Tāhuna (Queenstown) to a jet boat trip in another location in response to price or quality changes. In order to answer that question, we have been considering:

⁴³ []
⁴⁴ []
⁴⁵ []
⁴⁶ []
⁴⁷ []

- 75.1 what customers having to travel to a supplier's location to take a jet boat trip means for the geographic scope of the market(s);
- 75.2 whether location is relevant to how closely individual jet boat operators compete and whether the jet boat operators in Tāhuna (Queenstown) compete more closely with each other for the business of tourists in Tāhuna (Queenstown) than with jet boat operators further afield in the Queenstown Lakes Region;
- 75.3 whether jet boat operators have the ability to price discriminate between customers based on where a customer is located or a customer's ability to travel to a location; and
- 75.4 the proportion of tourists who visit only Tāhuna (Queenstown) versus those who travel around other parts of Te Waipounamu (the South Island), such as Cromwell and Wānaka.
76. As with product market definition, we have received conflicting evidence on the geographic dimension of the market.
77. We received some evidence suggesting that the geographic scope of the market is broader than Tāhuna (Queenstown), with many tourism operators considering themselves as competing with other tourism operators beyond Tāhuna (Queenstown), including those in Wānaka and Cromwell.⁴⁸ This is because, while tourists tend to base themselves in Tāhuna (Queenstown), many have their own transport or attend a tour group and may travel outside of Tāhuna (Queenstown) for tourism activities around the region, or do activities on the way to Tāhuna (Queenstown).⁴⁹ In addition, we received evidence indicating that some tourists may consider substituting a tourism activity in Tāhuna (Queenstown) for the same or similar offering in Wānaka, where they are visiting both places.⁵⁰
78. However, we also received evidence to the contrary that supports a narrower market for just Tāhuna (Queenstown).
- 78.1 Visitors to Tāhuna (Queenstown) generally have a limited amount of time, and location may influence the activities that a visitor does or the alternative activities a visitor may consider. KJet, which operates from the waterfront in central Tāhuna (Queenstown), told us that it gets a lot of last minute, impulse bookings from tourists in Tāhuna (Queenstown).⁵¹ Ngāi Tahu Tourism has told us that a tourist walking around the main centre of Tāhuna (Queenstown) wanting to do a quick, last-minute activity is more likely to be influenced by the

⁴⁸ Submission from Bungy NZ (19 September 2023), Commerce Commission interview with Skippers Canyon Jet (5 September 2023), Commerce Commission interview with Goldfields Jet (7 September 2023), [].

⁴⁹ Submission from Grand Pacific Tours (3 October 2023), Commerce Commission interview with Skippers Canyon Jet (5 September 2023) and [].

⁵⁰ []

⁵¹ Commerce Commission interview with KJet (11 September 2023).

accessibility of an activity's location.⁵² Other water-based tourism operators consider that they operate in a Tāhuna (Queenstown) only market given the importance of proximity and location in securing walk-up customers.⁵³

- 78.2 Ngāi Tahu Tourism commented that jet boat operators based in Wānaka and Cromwell differentiate themselves from those in Tāhuna (Queenstown) based on location.⁵⁴ Evidence from Ngāi Tahu Tourism also shows that it does not price monitor jet boat operators in Wānaka, although it does price monitor Oxbow and Goldfields Jet, based at Cromwell. Ngāi Tahu Tourism noted that it might not price monitor jet boat operators in Wānaka because pricing is not easy to find,⁵⁵ but it is readily available on the websites of operators.
- 78.3 Goldfields Jet described itself as largely doing its own thing in Cromwell, but acknowledged that it competes to a degree with jet boat operators in Tāhuna (Queenstown), prices its jet boats heavily based off KJet's pricing and targets free and independent travellers and tourists before they get to Tāhuna (Queenstown) or when they leave.⁵⁶
- 78.4 While Skippers Canyon Jet considers jet boat operators further afield to be competitors, it commented that jet boat operators in Wānaka target people in Wānaka and not Tāhuna (Queenstown), and it competes most closely with jet boat operators in Tāhuna (Queenstown).⁵⁷
- 78.5 [] considers that it competes in a Wānaka specific market and that only a small number of visitors would compare Wānaka and Tāhuna (Queenstown) jet boats.⁵⁸ [] also considers competition among water-based activities to be location based and that there is very little competition between Wānaka and Tāhuna (Queenstown) tourism operators.⁵⁹
- 78.6 [] considers it unlikely that jet boat operators in Wānaka compete with Tāhuna (Queenstown) jet boat operators, noting that someone has to be in Wānaka to do a jet boat trip there.⁶⁰
- 78.7 [] sees Wānaka and other parts of Central Otago as being in a different geographic market.⁶¹ Somewhat similarly, [] said that it draws customers from both Tāhuna (Queenstown) and Wānaka, but also sees them as separate markets.⁶²

⁵² The Application at [77].

⁵³ []

⁵⁴ The Application at [81(h)] and [87].

⁵⁵ The Application at Appendix 15 and Commerce Commission interview with Ngāi Tahu Tourism (4 September 2023).

⁵⁶ Commerce Commission interview with Goldfields Jet (7 September 2023).

⁵⁷ Commission interview with Skippers Canyon Jet (5 September 2023).

⁵⁸ []

⁵⁹ []

⁶⁰ []

⁶¹ []

⁶² []

- 78.8 While many tourists may travel around the Queenstown Lakes region, some tourists only visit Tāhuna (Queenstown). A recent survey of visitors to Tāhuna (Queenstown) found that only 26-37% of domestic visitors also visited Central Otago or Wānaka, only 35% of Australian visitors also visited Central Otago and that, while 61% of Australian visitors also visited Wānaka, 39% did not.⁶³ KJet suggested that whether a tourist is only visiting Tāhuna (Queenstown) or has travelled geographically further in New Zealand (and maybe even done a jet boat trip elsewhere) may influence what they choose to do while in Tāhuna (Queenstown).⁶⁴ Although we note 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.
79. We invite industry participants to provide us with any further evidence of tourists switching between a jet boat trip in Tāhuna (Queenstown) and a jet boat trip further afield in the Queenstown Lakes region, and evidence of jet boat operators in Tāhuna (Queenstown) taking account of other jet boat operators further afield in setting their pricing and marketing strategies (and vice versa).
80. While we consider it appropriate to define the geographic scope of the market as Tāhuna (Queenstown) at this stage, in our competition analysis we consider the extent to which jet boat operators in Tāhuna (Queenstown) face competitive constraint from, and compete with jet boat operators further afield in the Queenstown Lakes Region.
81. Although we have defined the geographic scope of the market narrowly as Tāhuna (Queenstown) in this Sol, we consider that the geographic scope of the relevant market would, at its broadest, be the Queenstown Lakes region. We consider that jet boat operators in Tāhuna (Queenstown) likely face limited competitive constraint from tourism activities outside the Queenstown Lakes region, as there is no evidence to indicate that they have regard to jet boat operations outside of the region.

Customer dimension

82. We have been considering whether it is appropriate to define distinct customer markets for the supply of tourist jet boating services in Tāhuna (Queenstown). This is because Ngāi Tahu Tourism and KJet each supply jet boat trips direct to visitors to Tāhuna (Queenstown) and through indirect channels (ie, via wholesalers, agents, resellers and tour operators). In doing so, we have been assessing whether:
- 82.1 the requirements of larger customers (eg, tour operators) differ substantially from smaller customers, such that fewer suppliers can fulfil their demand and they have different supply alternatives; and
- 82.2 suppliers have the ability to price discriminate between customers because their competitive alternatives vary, either due to their size as a customer or what customers may view as substitutes for a jet boat trip.

⁶³ Destination Queenstown, "Queenstown Visitor Survey Q1 2023 Update", included with the Application at Appendix 7.

⁶⁴ Commerce Commission interview with KJet (11 September 2023).

83. On the first point, some evidence suggests that the requirements of, and the supply alternatives available to indirect customers, may differ substantially from tourists who purchase direct from suppliers. The size and capacity of a jet boat operator may limit supply alternatives for large tour groups. Service quality, health and safety practices and relationships with jet boat operators may influence supply alternatives for some customers.
- 83.1 Some jet boat operators have the capacity to cater to large tour groups, including conference groups and can accommodate high volumes of international tourists. Other smaller jet boat operators may be unable to cater to large groups and instead rely on free and independent travellers to generate bookings and revenue.
- 83.2 Some tour operators indicated that customer service, quality and health and safety practices were important in their decisions on the operators they work with.⁶⁵ [] usually requires tourism operators to have the Qualmark standard before it will offer booking services.⁶⁶ Ngāi Tahu Tourism told us that the quality of the offering, professionalism and health and safety is important to maintain long-term relationships with tour operators.⁶⁷
- 83.3 Some tour operators also cited relationships with operators as influencing decisions around the operators they work with, or referred to themselves as partnering with operators.⁶⁸
84. On the second point, based on the evidence currently before us, we do not consider that jet boat operators have the ability to price discriminate between customers. Jet boat operators have very little insight in relation to the specific preferences of each tourist or what they may view as substitutes for a jet boat trip. We also note that visitors to Tāhuna (Queenstown) face the same prices from jet boat operators whether they book direct or through indirect channels.
85. We do not consider it necessary to conclude on or define distinct customer markets. In this Sol, we have considered the impact of the Proposed Acquisition in a market for all sales channels. However, in our competition analysis, we take into account the potential for the Proposed Acquisition to affect some customers differently.

With and without scenarios

86. Assessing whether a substantial lessening of competition is likely requires us to:
- 86.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the merger, often referred to as the factual) with the likely

⁶⁵ Submission from Grand Pacific Tours (3 October 2023) and [].

⁶⁶ []

⁶⁷ Commerce Commission interview with Ngāi Tahu Tourism (4 September 2023).

⁶⁸ Submission from Grand Pacific Tours (3 October 2023), [].

state of competition if it does not (the scenario without the merger, often referred to as the counterfactual); and

- 86.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.

The factual

87. Ngāi Tahu Tourism already operates the Shotover Jet and Dart River Adventures jet boating businesses in Tāhuna (Queenstown) on the Kimiākau (Shotover River) and Dart River. With the Proposed Acquisition, Ngāi Tahu Tourism would:
- 87.1 acquire KJet’s tourist jet boating business, which operates jet boats from wharves in central Tāhuna (Queenstown) on Lake Whakatipu, the Kawarau River and the Kimiākau (Shotover River);⁶⁹
 - 87.2 acquire the Time Tripper Underwater World experience; and
 - 87.3 own three businesses providing tourist jet boating services in Tāhuna (Queenstown) – KJet, Shotover Jet and Dart River Adventures – offering family-friendly jet boat trips accessibly located at the waterfront, short thrill rides in river canyons, and scenic experiences, respectively.⁷⁰
88. This Sol is focused on the competition concerns we have with Ngāi Tahu Tourism’s proposed acquisition of KJet’s tourist jet boating business. The proposed acquisition of the Time Tripper Underwater World Experience by Ngāi Tahu Tourism does not cause us competition concerns at this stage.

The counterfactual

89. For the purposes of this Sol, we have assessed the Proposed Acquisition against a counterfactual where KJet is sold to a third party who continues to operate its tourist jet boating business in competition with Ngāi Tahu Tourism.
90. In the Application, Ngāi Tahu Tourism submits that the relevant counterfactual is the status quo, where the parties would continue as separate jet boating businesses, but notes that an alternative purchaser might be sought for KJet.⁷¹
91. KJet is a profitable business. However, the current owners of KJet wish to sell and fully exit the business.⁷² Other parties (none of whom currently operate a jet boat business) expressed interest in, and made offers for, KJet in 2022.⁷³

⁶⁹ The Proposed Acquisition would see Ngāi Tahu Tourism acquire physical assets such as jet boats, the consents, permits, concessions and licences that KJet holds to operate jet boats, the arrangements that KJet has to operate from the wharves and the KJet brand.

⁷⁰ Ngāi Tahu Tourism would also acquire the consents that KJet holds to operate ferry services on Lake Whakatipu and rafting or funyak trips on the Kawarau River and the Kimiākau (Shotover River), []. The Application at [28].

⁷¹ The Application at [30]-[31].

⁷² The Application at [25].

⁷³ []

92. We invite submissions on the likely without-the-acquisition scenarios.

Unilateral effects

93. Horizontal unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged firm can profitably increase prices above (and/or reduce quality below) the level that would prevail without a merger.⁷⁴

Ngāi Tahu Tourism's submissions

94. In the Application, Ngāi Tahu Tourism submits that the Proposed Acquisition would not be likely to substantially lessen competition in the market for adventure tourism activities in the Queenstown Lakes region due to unilateral effects because, in its view:⁷⁵
- 94.1 the market is highly competitive and there will be no substantial difference in competition with and without the Proposed Acquisition;
 - 94.2 jet boating operators in the Queenstown Lakes region differentiate their trips and experiences based on different factors;
 - 94.3 Shotover Jet and KJet are not each other's closest competitors, instead the closest competitor to Shotover Jet is Skippers Canyon Jet and KJet faces the strongest competition from Real NZ;
 - 94.4 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, other adventure tourism operators and other non-adventure tourism activities;
 - 94.5 existing competing jet boat operators are not operating at capacity and could expand their operations;
 - 94.6 barriers to entry (including any necessary resource consents, permits and concessions) are not substantial and there is significant potential for new entry by adventure tourism activity operators in the Queenstown Lakes region, including new jet boat operators (even though further consents to operate jet boating services on Lake Whakatipu, the Kimiākau (Shotover River), the Kawarau River, and the Dart River may not be available);
 - 94.7 the merged entity would be constrained by the countervailing power of agents and wholesalers, who generate a substantial portion of jet boat bookings; and
 - 94.8 where tourists travel around New Zealand, the merged entity would also face constraint from adventure tourism operators in other parts of New Zealand.

⁷⁴ *Mergers and Acquisitions Guidelines* above n15 at [3.62].

⁷⁵ The Application at [5], [75], [81]-[85] and [94]-[103].

Summary of our current view

95. Compared to a counterfactual in which KJet is operated by a third-party purchaser, there would be a significant increase in market concentration with the Proposed Acquisition. The merged entity would have a substantial share of revenues, passenger numbers and capacity in the market for the supply of tourist jet boating services in Tāhuna (Queenstown) . With the Proposed Acquisition, Ngāi Tahu Tourism would operate three major jet boating businesses in Tāhuna (Queenstown) offering scenic experiences, short thrill rides in river canyons and family-friendly jet boat trips accessibly located at the waterfront in central Tāhuna (Queenstown). The Proposed Acquisition would be a three-to-two merger of the operators of 60 minute or less jet boat trips in Tāhuna (Queenstown), and of jet boat operators in Tāhuna (Queenstown) that cater to large tour groups and can accommodate high volumes of passengers.
96. We are continuing to explore the issues set out in this Statement, but we are currently not satisfied that the Proposed Acquisition would not substantially lessen competition due to unilateral effects, leading to higher prices or a reduction in quality, customer choice or innovation.⁷⁶ This is because, on our current evidence:
- 96.1 Ngāi Tahu Tourism and KJet are close competitors and impose competitive constraint on each other. With the Proposed Acquisition, the existing competitive constraint that KJet provides on Ngāi Tahu Tourism and also the potential for KJet to provide a greater competitive constraint on Ngāi Tahu Tourism in the future under new ownership, would be lost;
- 96.2 we are currently not satisfied that other existing jet boat operators, in particular Real NZ (whose jet boat business is currently separately for sale), would be likely to materially constrain the merged entity and prevent a substantial lessening of competition. Beyond Real NZ, other existing jet boat operators are of smaller scale and/or focus on somewhat different offerings or geographic areas;
- 96.3 barriers to entry seem high due to challenges associated with obtaining wharf space and resource consents, there is no appetite amongst other existing jet boat operators to expand, there is no real indication that any existing competitors would seek to capitalise on an increase in price or reduction in quality post-acquisition, and entry by new jet boat operators also appears unlikely;
- 96.4 while jet boat operators likely face a degree of competitive constraint from other tourism operators in Tāhuna (Queenstown), the extent of this constraint is unclear, and we are not currently satisfied that competition from other tourism operators would be enough to constrain the merged entity; and
- 96.5 it is currently unclear whether wholesalers, agents, resellers and tour operators have countervailing power, and if they do whether they would have and incentive to use it to constrain the merged entity.

⁷⁶ One submitter raised concerns that the Proposed Acquisition is anti-competitive and would result in higher prices. Submission from [] (5 September 2023).

97. We invite submissions on our assessment of unilateral effects.
98. We discuss further, in turn below:
- 98.1 the loss of competition with the Proposed Acquisition;
 - 98.2 the constraint provided by other jet boat operators;
 - 98.3 the constraint from new entry or expansion by jet boat operators;
 - 98.4 the constraint provided by other tourism operators; and
 - 98.5 the countervailing power of wholesalers, agents, resellers and tour operators.

The loss of competition with the Proposed Acquisition

99. We have considered the degree of constraint that Ngāi Tahu Tourism and KJet impose upon one another in the supply of tourist jet boating services in Tāhuna (Queenstown), to assess how closely they compete and the extent of competition that would be lost with the Proposed Acquisition.
100. In doing so, we have considered:
- 100.1 how the offerings of Ngāi Tahu Tourism and KJet compare;
 - 100.2 how closely Ngāi Tahu Tourism and KJet have competed to date; and
 - 100.3 the potential for KJet to provide a greater competitive constraint in the future.
101. At this time, evidence indicates that the Proposed Acquisition would remove competition between Ngāi Tahu Tourism and its closest competitor (KJet) even though:
- 101.1 the offerings of Ngāi Tahu Tourism and KJet are differentiated; and
 - 101.2 the competitive constraint between Ngāi Tahu Tourism and KJet may be asymmetric. KJet provides the greatest competitive constraint on Ngāi Tahu Tourism, but KJet's closest competitor is Real NZ.
102. We note that the evidence is mixed with respect to the strength of the constraint that KJet represents, and there is some evidence to suggest that Ngāi Tahu Tourism may already have a degree of pricing power due to the 'iconic' status of the Shotover Jet. However, the Proposed Acquisition would remove whatever constraint KJet currently provides and the potential for it to provide greater competitive constraint in the future.
103. We invite industry participants to provide us with further evidence on how closely the tourist jet boating services of Ngāi Tahu Tourism and KJet compete and on the extent of competition that would be lost with the Proposed Acquisition. We are particularly interested in evidence parties can supply on how Ngāi Tahu Tourism and KJet have competitively reacted to each other or the extent to which they have had regard to each other in setting their respective business strategies.

The Proposed Acquisition would remove competition between Ngāi Tahu Tourism and its closest competitor

104. The Proposed Acquisition would remove competition between Ngāi Tahu Tourism and its closest competitor, KJet.
105. A number of parties (including some of those who see differences in the offerings of Ngāi Tahu Tourism and KJet), see the Shotover Jet and KJet as being direct competitors competing quite closely and as offering a similar product (a jet boat trip). A number of parties consider that tourists who want to do a jet boat trip are likely to choose between the Shotover Jet and KJet.⁷⁷
106. While the Shotover Jet is priced higher than KJet, each operator’s pricing nonetheless provides a degree of constraint on the other. In internal documents (including market research and analysis of market shares), Ngāi Tahu Tourism has listed KJet as one of its competitors, along with Real NZ and Skippers Canyon Jet.⁷⁸ Ngāi Tahu Tourism also considers the pricing of KJet in setting the pricing of the Shotover Jet, grouping KJet as one of the Shotover Jet’s direct competitors along with other jet boat operators in Tāhuna (Queenstown)]⁷⁹ KJet considers the pricing of other jet boat operators in setting its pricing.⁸⁰
107. Ngāi Tahu Tourism has internally identified KJet as having not materially dissimilar appeal to the Shotover Jet (71% versus 78%).⁸¹
108. As shown in Figure 4, the marketing of the Shotover Jet and KJet is at a high level very similar. This marketing highlights the fact that both parties run jet boat trips on the Kimiākau (Shotover River). A significant proportion of international visitors to Tāhuna (Queenstown) are first time visitors, 48% of Australians and 72% of other international visitors.⁸² First time visitors to Tāhuna (Queenstown) may be less familiar with the different jet boat operators that exist than return visitors and (based on this similar marketing) may see the Shotover Jet and KJet as potentially more substitutable.

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⁷⁸ [], included with the Application at Appendix 12 and Appendix 27.

⁷⁹ The Application at Appendix 15.

⁸⁰ Commerce Commission interview with KJet (11 September 2023). KJet was not totally clear if it considered Ngāi Tahu Tourism’s pricing in setting its own prices, but also did not indicate that it did not.

⁸¹ [], included with the Application at Appendix 12.

⁸² Destination Queenstown, “Queenstown Visitor Survey Q1 2023 Update”, included with the Application at Appendix 7.

Figure 4: Shotover Jet and KJet marketing



109. Where a tourist (due to cost and/or time constraints)⁸³ seeks to do a 60 minute or less jet boat trip in Tāhuna (Queenstown), the Shotover Jet and KJet are two of the three options available for that tourist to choose from. Where tourists particularly want to do a jet boat trip on the Kimiākau (Shotover River), the Shotover Jet and KJet may be the only two options that tourists consider. 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.
110. With the Proposed Acquisition, there would be competition lost in the supply of tourist jet boating services in Tāhuna (Queenstown). The Proposed Acquisition would remove the existing competitive constraint that KJet provides on Ngāi Tahu Tourism and also the potential for KJet to provide a greater competitive constraint on Ngāi Tahu Tourism 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).
111. Evidence on trends in jet boat passenger numbers and jet boat pricing (set out later in Figure 5 and Figure 6) provides further evidence on and support for the above views.

⁸³ As noted earlier in discussing market definition, all tourists are constrained to the extent that they have a finite amount of time and money to spend in Tāhuna (Queenstown).

The offerings of Ngāi Tahu Tourism and KJet are differentiated

112. As noted earlier, the offerings of jet boat operators are differentiated. Differences in the nature of the offerings of Ngāi Tahu Tourism and KJet may impact on how closely they compete with each other or how closely people see them as competing.
- 112.1 Ngāi Tahu Tourism’s Dart River Adventures is seen by industry participants as very different to KJet.
- 112.2 There are, as noted earlier, a number of differences between the jet boat trips operated by Shotover Jet and KJet respectively (trip length, price, where the trip goes, and the start/end points).
- 112.2.1 KJet operates from central Tāhuna (Queenstown), while Shotover Jet operates from Arthurs Point, approximately 7km out of Tāhuna (Queenstown).
- 112.2.2 The Shotover Jet operates 25 minute jet boat trips in an exclusive part of the narrow canyons of the Kimiākau (Shotover River). KJet operates 60 minute jet boat trips on Lake Whakatipu and along the Kawarau River and the lower part of the Kimiākau (Shotover River).
- 112.3 The adult price for a trip on the Shotover Jet is \$159, a premium price point compared to \$135 for a trip on KJet.
113. Because of the above differences, a large number of industry participants do not regard the Shotover Jet and KJet as each other’s closest competitors. They see them as quite different or as having unique points of difference (with Shotover Jet being unique or iconic), and/or see KJet as competing most closely with Real NZ’s jet boats.⁸⁴ Ngāi Tahu Tourism may already have a degree of market power with the ‘iconic’ Shotover Jet and this would not be affected by the Proposed Acquisition. We are considering the extent to which KJet and other tourism activities currently constrain the pricing of the Shotover Jet.

The competitive constraint may be asymmetric

114. Evidence indicates that the competitive constraint between Ngāi Tahu Tourism and KJet may be asymmetric. KJet provides the greatest competitive constraint on Ngāi

⁸⁴ Submission from Grand Pacific Tours (3 October 2023), Commerce Commission interview with Skippers Canyon Jet (5 September 2023),
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Tahu Tourism. However, current evidence indicates that KJet's closest competitor is Real NZ.

115. Ngāi Tahu Tourism and KJet are the two largest suppliers of tourist jet boating services in Tāhuna (Queenstown). As shown in Table 2, the Shotover Jet and KJet are the market leading brands, with passenger numbers substantially greater than those of other jet boat operators (both in terms of actual passenger numbers and the maximum capacity under resource consents). In the supply of 60 minute or less jet boat trips to tourists in Tāhuna (Queenstown), KJet is the jet boat operator that has the greatest capacity to compete against Ngāi Tahu Tourism's Shotover Jet, including for the business of large tour groups. Their services are differentiated in several ways, however (as discussed earlier).
116. By contrast, the jet boat offerings of Real NZ and KJet are similar.
- 116.1 Both operate from the wharf in central Tāhuna (Queenstown), with jet boat trips starting and ending at the wharf. KJet and Real NZ likely compete for walk up bookings at the waterfront, with KJet getting a lot of last minute, impulse bookings.⁸⁵
- 116.2 The jet boat trips of KJet and Real NZ both include travel on Lake Whakatipu before the boats travel on the Kawarau River. However, KJet also travels up the Kimiākau (Shotover River).
- 116.3 The price of a 60 minute Real NZ jet boat trip at \$139 is similar to that of KJet (and likely constrains the pricing of KJet).
- 116.4 KJet considers that Real NZ is its closest competitor, not Shotover Jet, but also noted that KJet tries to differentiate itself from Real NZ's jet boats.⁸⁶ Real NZ sees KJet as its closest competitor.⁸⁷

The constraint provided by other jet boat operators

117. We are currently not satisfied that the constraint from other jet boat operators would be sufficient to prevent an exercise of market power by the merged entity in the supply of tourist jet boating services in Tāhuna (Queenstown).
118. Beyond Ngāi Tahu Tourism and KJet, there are two other parties currently operating jet boat trips on the Kawarau River or the Kimiākau (Shotover River) in Tāhuna (Queenstown):
- 118.1 Real NZ, which offers 25 and 60 minute jet boat trips on the Kawarau River; and
- 118.2 Skippers Canyon Jet, which offers 25 minute jet boat trips on the Kimiākau (Shotover River).

⁸⁵ Commerce Commission interview with KJet (11 September 2023).

⁸⁶ Commerce Commission interview with KJet (11 September 2023).

⁸⁷ Commerce Commission interview with Real NZ (14 September 2023).

Skippers Canyon Jet

119. Our current view is Skippers Canyon Jet would provide some constraint on the merged entity. However, it does not compete for tourists who (due to cost and/or time constraints) seek to do a 60 minute or less jet boat trip in Tāhuna (Queenstown) – a trip with Skippers Canyon Jet requires a greater time commitment. It provides tourists a 2.5-3 hour experience at \$189 (for an adult) that includes a guided bus tour of Skippers Canyon and a 25 minute jet boat trip on the Kimiākau (Shotover River). Skippers Canyon Jet considers that it competes with Ngāi Tahu Tourism and to some extent KJet and Real NZ.⁸⁸ However, Skippers Canyon Jet is seen as quite different to the Shotover Jet and KJet by other parties.⁸⁹ Skippers Canyon Jet would also be significantly smaller than the merged entity, with the maximum capacity of Skippers Canyon Jet being only []% that of a merged Shotover Jet and KJet. However, our analysis indicates that Skippers Canyon Jet is operating well under the capacity limits of its resource consent.

Real NZ

120. Post-acquisition, Real NZ would remain the main competitor to the merged entity. Real NZ considers that it competes closely with KJet (in terms of proximity), but was not clear on the extent to which it competes with Shotover Jet.⁹⁰ Real NZ has a fleet of three jet boats and in the last year has handled [] passengers and had sales of \$[].⁹¹ Although Real NZ's jet boat business would be much smaller than that of the merged entity (eg, the maximum capacity of Real NZ would be less than [] that of a merged Shotover Jet and KJet), it could potentially expand to provide a greater constraint on the merged entity. Real NZ is operating under the capacity limits of its resource consent and could expand its services, advising that it would be easy for it to schedule more jet boat trips to meet demand.⁹²
121. Real NZ offers both 25 and 60 minute jet boat trips, because some people may not be able to afford or have the time to do a 60 minute trip.⁹³ Real NZ's 25 minute trips are priced at \$99 for an adult. Some industry participants told us that Real NZ has had a history of offering price discounts to win business, being involved in price battles with KJet or as trying to start a price war.⁹⁴ We note that Real NZ has internally commented that jet boating in Tāhuna (Queenstown) is highly competitive and has also identified a need for it to have market based pricing for products like jet boats in

⁸⁸ Commerce Commission interview with Skippers Canyon Jet (5 September 2023).

⁸⁹ [

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⁹⁰ Commerce Commission interview with Real NZ (14 September 2023).

⁹¹ E-mail from A&B Lawyers (on behalf of Real NZ) to the Commerce Commission (22 September 2023).

⁹² Commerce Commission interview with Real NZ (14 September 2023) and e-mail from A&B Lawyers (on behalf of Real NZ) to the Commerce Commission (22 September 2023).

⁹³ Commerce Commission interview with Real NZ (14 September 2023).

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order to take volume.⁹⁵ Data appears to confirm that
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122. On the other hand, a number of industry participants see Real NZ as a small operator in jet boats, as having lost market share and as no longer an effective competitor (or as not much of a threat to the merged entity).⁹⁷

122.1 As shown in Table 2, the passenger capacity and passenger numbers of Real NZ’s jet boats are significantly less than those of the Shotover Jet and KJet.

122.2 Figure 5 shows the trend in passenger numbers of each of Ngāi Tahu Tourism, KJet and Real NZ jet boats over the last five years.⁹⁸ This data confirms that
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Figure 5: Trend in jet boat passenger numbers

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⁹⁶ The Application at Appendix 9 and e-mail from A&B Lawyers (on behalf of Real NZ) to the Commerce Commission (22 September 2023).

⁹⁷ []

⁹⁸ The Application at Appendix 9 and e-mail from A&B Lawyers (on behalf of Real NZ) to the Commerce Commission (22 September 2023).

122.3 We note that Real NZ only acquired its jet boat business in 2018 and since that time has rebranded the boats from Thunder Jet to Real NZ.⁹⁹ We received feedback that the black Real NZ jet boats were less visible in Tāhuna (Queenstown) than the Thunder Jet boats used to be or than KJet boats.¹⁰⁰

123. We received data on price changes for Ngāi Tahu Tourism, KJet and Real NZ jet boat trips in recent years.¹⁰¹ Figure 6 plots adult pricing since 1 October 2019 (showing for Real NZ only the pricing of its 60 minute trips). It reveals that:

123.1 []; and

123.2 [].

Figure 6: Trend in jet boat pricing

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124. Figure 5 and Figure 6 suggest that [

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⁹⁹ Thunder jet boats were brightly coloured, with orange being its base colour. The jet boats may have operated for a period under another Real NZ brand, Go Orange (with the boats being painted orange), but were painted black and rebranded as Real NZ in the second half of 2022.

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¹⁰¹ E-mail from Buddle Findlay (on behalf of Ngāi Tahu Tourism) to the Commerce Commission (22 September 2023), e-mail from RVG Law (on behalf of KJet) to the Commerce Commission (22 September 2023) and e-mail from A&B Lawyers (on behalf of Real NZ) to the Commerce Commission (22 September 2023).

125. This could of course change in the future. Real NZ has the potential to provide some competitive constraint on the merged entity. However, there is uncertainty around the degree of constraint that Real NZ's jet boats may provide in the future, given the above and 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. It is uncertain, at this time, if the Real NZ jet boat business would expand sufficiently to constrain the merged entity.

Jet boat operators in the broader Queenstown Lakes region

126. Beyond Real NZ and Skippers Canyon Jet, there are other smaller jet boat operators in the broader Queenstown Lakes region or on the drive into Tāhuna (Queenstown), including Goldfields Jet (near Cromwell), Go Jets Wānaka, Lakeland Wānaka, Wānaka River Journeys and Oxbow (which offers jet boat sprints near the Gibbston Valley). While the merged entity may face some constraint from these jet boat operators further afield, we are currently not satisfied that the constraint from such operators would replace the competition that would be lost from KJet with the Proposed Acquisition. Evidence indicates that these jet boat operators provide a weaker constraint and only compete to a degree with the Shotover Jet and KJet (due to their size, location and/or the different nature of their jet boat trips). None of these other jet boat operators aspire to materially expand, and some have also indicated that they would not be incentivised to expand if the merged entity increased prices.

126.1 Goldfields Jet told us that it largely does its own thing in Cromwell, but considers that it competes to a degree with jet boat operators in Tāhuna (Queenstown). It prices its jet boats heavily based off KJet's pricing, but told us that it stays away from some of the markets that the Shotover Jet targets. Goldfields Jet targets free and independent travellers and tourists before they get to Queenstown or when they leave, but does get some business from tour operators. The passenger numbers of Goldfields Jet are currently less than those of both Real NZ and Skippers Canyon Jet (at []) and Goldfields Jet can only grow to [] passengers within the capacity of the two boats it currently operates daily.¹⁰² KJet sees Goldfields Jet as quite competitive with tour groups, because its daylight is longer in Cromwell than in Tāhuna (Queenstown) and advised that it notices a significant drop in group bookings at certain times of the year.¹⁰³

126.2 Oxbow considers that [],¹⁰⁴ although we note that the volumes of passengers it handles are [] compared to Ngāi Tahu Tourism and KJet ([] a year).

¹⁰² Commerce Commission interview with Goldfields Jet (7 September 2023).

¹⁰³ Commerce Commission interview with KJet (11 September 2023).

¹⁰⁴ Commerce Commission interview with Oxbow (15 December 2023).

126.3 Go Jets Wānaka and Lakeland Wānaka both offer 60 minute jet boat trips at a comparable price point to KJet, in Wānaka., We note that while Ngāi Tahu Tourism looks at the pricing of Goldfields Jet and Oxbow (and KJet, Real NZ and Skippers Canyon Jet) in setting the pricing of the Shotover Jet, it does not price monitor jet boat operators in Wānaka.¹⁰⁵ Lakeland Wānaka []¹⁰⁶

127. We invite industry participants to provide us with further evidence on the price and non-price constraints provided by other jet boat operators. This includes evidence of strategies of other jet boat operators to win market share from Ngāi Tahu Tourism or KJet, and the effectiveness of any such strategies. In terms of pricing specifically, we invite industry participants to provide further information generally on how jet boat prices are set, including the extent to which prices are based on demand, an operator's running costs, or the value of the services offered, and whether pricing is benchmarked in relation to prices of a market leader. Parties are requested to explain the weighting of these factors in the determination of prices.

The constraint from new entry or expansion by jet boat operators

128. To constrain an exercise of market power by the merged entity, entry or expansion in response to a price increase or other exercise of market power by the merged entity has to be likely, sufficient in extent, and in a timely fashion, satisfying what is termed the 'LET test'.¹⁰⁷ While we look at evidence of whether parties are already planning to enter or expand (and consider the impact of that entry or expansion), what matters for our analysis is whether entry and expansion in addition to that already planned would be likely if prices increased post-acquisition.¹⁰⁸

129. We have considered both the conditions of entry and expansion, and also whether entry or expansion is likely. Based on the evidence currently before us, it appears that there are barriers to obtaining a resource consent to supply tourist jet boating services in Tāhuna (Queenstown) and also in securing wharf access in central Tāhuna (Queenstown). Entry by new jet boat operators appears unlikely at this time. We are not aware of any likely entrants.

Conditions of entry/expansion

130. For a party to supply tourist jet boating services in Tāhuna (Queenstown), it needs jet boats, a resource consent (and potentially other concessions or permits), to secure wharf or jetty access, to satisfy other regulatory requirements, to establish facilities and to hire staff. Ngāi Tahu Tourism further submits that:¹⁰⁹

130.1 there are no significant barriers to acquiring jet boating infrastructure;

¹⁰⁵ The Application at 16-17 and Appendix 15, and Commerce Commission interview with Ngāi Tahu Tourism (4 September 2023).

¹⁰⁶ E-mail from Lakeland Wānaka to the Commerce Commission (26 September 2023).

¹⁰⁷ *Mergers and Acquisitions Guidelines* above n15 at [3.95]-[3.96].

¹⁰⁸ *Ibid* at [3.99].

¹⁰⁹ The Application at 30-32.

- 130.2 while access to the Main Town Pier in Tāhuna (Queenstown) is limited, there are some jetties/moorings available around Lake Whakatipu and berth space is also available at Queenstown Marina (in Frankton); and
- 130.3 the resource consent process is not a substantial barrier to entry, although it would be difficult – due to environmental and safety considerations – for a new entrant to obtain consent for jet boat operations in the specific areas of Lake Whakatipu, the Kawarau River, the Kimiākau (Shotover River) and the Dart River on which existing suppliers already operate.
131. In terms of expansion, all existing operators of tourist jet boating services in Tāhuna (Queenstown) have the ability to expand operations within the scope of any existing resource consents (as shown in Table 2) – they could sweat existing jet boat assets by operating more trips or by taking on more passengers. Real NZ has consent to operate four jet boats, but currently only has three jet boats, so could expand easily and materially by adding an extra jet boat. Real NZ could also expand and start operating jet boat trips on the lower part of the the Kimiākau (Shotover River), just as KJet does. However, Real NZ has no interest in expanding in this way, with its jet boat business being currently for sale.¹¹⁰ To expand further by acquiring additional jet boats beyond the scope of existing consents, we consider that existing jet boat operators would face the same requirements for entry/expansion as any new entrant.¹¹¹
132. We consider that there may be barriers to obtaining a resource consent to supply tourist jet boating services in Tāhuna (Queenstown) which may be a deterrent to new entry, although there is mixed evidence before us on this point (as noted below).
- 132.1 The resource consents already held by existing jet boat operators in Tāhuna (Queenstown) never expire, even if those consents are not fully utilised or cease to be used at all (they exist in perpetuity once given effect to).¹¹²
- 132.2 Ngāi Tahu Tourism having the exclusive right to operate the Shotover Jet on sections of the Kimiākau (Shotover River)¹¹³ prevents a new entrant from obtaining consent to operate on those same parts of the Kimiākau (Shotover River).
- 132.3 Ngāi Tahu Tourism has internally noted that KJet holds key consents to operate jet boats on Lake Whakatipu, the Kawarau River and the Kimiākau (Shotover River) that provide broad commercial access.¹¹⁴

¹¹⁰ Commerce Commission interview with Real NZ (14 September 2023).

¹¹¹ To operate larger jet boats as a replacement to existing jet boats or a greater number of jet boats, an operator would need to apply to vary its existing resource consent.

¹¹² Commerce Commission review of resource consent documents and Commerce Commission interview with Queenstown Lakes District Council (11 September 2023). The consents would only expire if they stipulated an expiry date.

¹¹³ The Application at [40].

¹¹⁴ [], included with the Application at Appendix 6. This point is similarly noted in [], included with the Application at Appendix 5.

- 132.4 Some industry participants see barriers to getting resource consents,¹¹⁵ while other participants do not see resource consents as a barrier to entry or expansion, except on certain parts of the Kimiākau (Shotover River).¹¹⁶
- 132.5 The Queenstown Lakes District Council confirmed that there are no limits on the number of operators that can get consent to operate jet boats, including on the Kawarau River and the Kimiākau (Shotover River), but commented that any consent applicant would need to show that issuing the new consent would not derogate the rights of existing consent holders.¹¹⁷
133. In considering a consent application, the Queenstown Lakes District Council would likely consult with a range of stakeholders, including both Kai Tahu and Ngāi Tahu (in terms of iwi customary rights), as it has done for previous resource consent applications. Existing jet boat operators, including Ngāi Tahu Tourism, would likely have an opportunity to submit on any application. There is a history of litigation by competing jet boat operators opposing consents being granted to other operators, resulting in entrants facing a lengthy and costly process to get consent (the last of which was concluded in 2015). However, the Queenstown Lakes District Council did not indicate that any of the above would mean that it would be disinclined to issue additional resource consents.
134. Evidence before us indicates that some parties have been facing issues around wharf access in central Tāhuna (Queenstown), suggesting that there may also be barriers to securing a berth for jet boats. The Queenstown Lakes District Council owns two wharves which are fully leased, but is not offering new long-term leases while it seeks clarity about the future of public transport services in Tāhuna (Queenstown) Bay.¹¹⁸ KJet has been exploring its options should it have to vacate from the Queenstown Lakes District Council owned wharves from which it currently operates.¹¹⁹
135. We are still investigating whether there are barriers to accessing other wharves or jetties in Tāhuna (Queenstown), including in Frankton or along the Kawarau River or the Kimiākau (Shotover River). We note that Ngāi Tahu Tourism has long-term lease and access arrangements with the Department of Conservation and Land Information New Zealand in respect of Arthurs Point, and owns the jetty from which it operates from at Arthurs Point.¹²⁰ As well as operating from the Main Town Pier in central Tāhuna (Queenstown), KJet also operates from and has access to Frankton marina.¹²¹

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¹¹⁶ Commerce Commission interview with Skippers Canyon Jet (5 September 2023) and

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¹¹⁷ Commerce Commission interview with Queenstown Lakes District Council (11 September 2023).

¹¹⁸ Commerce Commission interview with Queenstown Lakes District Council (6 September 2023).

¹¹⁹ The Application at [45] and [], included with the Application at Appendix 6.

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¹²⁰ The Application at [41].

¹²¹ For details of KJet's access arrangements at the Frankton marina, see the Application at Appendix 11.

Likelihood of entry/expansion

136. We have not identified any parties with plans to enter and start supplying tourist jet boating services in Tāhuna (Queenstown), or to materially expand the scope of any existing jet boat operations.

136.1 As noted above, Real NZ has no interest in materially expanding.

136.2 Skippers Canyon Jet has no current plans to materially expand (despite, in our view, it having the capacity to do so within the scope of its resource consent) and is happy with what it is doing currently.¹²²

136.3 Goldfields Jet can only grow to [] passengers within the capacity of the two boats it currently operates daily. To expand beyond that would require it operating additional jet boats. Goldfields Jet already owns a further two jet boats (ie, has a total of four jet boats), but told us that it would not be viable for it to operate a third jet boat daily below [] passengers and estimated that it would be at least five years before it might grow to these volumes.¹²³

136.4 [] told us that it is not interested in [] or in buying Real NZ's jet boat business, noting that it would not want to go up against the merged entity.¹²⁴

137. 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. Skippers Canyon Jet told us that, if Ngāi Tahu Tourism 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.¹²⁵ Goldfields Jet advised that, if Ngāi Tahu Tourism increased its jet boat prices post-acquisition, this would not give it an incentive to expand as such, but might be beneficial and provide a window to capture a market who are not prepared to pay higher prices.¹²⁶

The constraint provided by other tourism operators

138. We are considering the level of constraint that other tourism operators currently provide and would provide on the merged entity in the future.

139. Beyond the constraint Ngāi Tahu Tourism faces from close competitors (ie, other jet boat operators), we acknowledge that it already faces and, post-acquisition, is likely to continue to face, a degree of competitive constraint from a range of other tourism operators in Tāhuna (Queenstown). This is because jet boat operators compete with other tourism operators to a degree to attract tourists to do their activities instead of other activities (with tourists typically having a limited amount of time and money

¹²² Commerce Commission interview with Skippers Canyon Jet (5 September 2023).

¹²³ Commerce Commission interview with Goldfields Jet (7 September 2023) and e-mail from Goldfields Jet to the Commerce Commission (17 October 2023).

¹²⁴ []

¹²⁵ E-mail from Skippers Canyon Jet to the Commerce Commission (20 September 2023).

¹²⁶ E-mail from Goldfields Jet to the Commerce Commission (20 September 2023).

to spend on activities). Other iconic tourism activities in Tāhuna (Queenstown) may compete to some degree with the Shotover Jet, particularly in terms of marketing and quality.

140. However, the evidence before us currently 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. At this time, we consider that jet boat operators face a lower degree of competitive constraint from other tourism operators.
141. We are still considering the constraint provided by other tourism operators, but are currently not satisfied that the constraint from other tourism operators would be sufficient to prevent an exercise of market power by the merged entity.
142. While what interests individual tourists varies, current evidence indicates that Ngāi Tahu Tourism may face a greater degree of competitive constraint from tourism activities that:
- 142.1 are at a similar price point to a jet boat trip;
 - 142.2 take a similar amount of time to a jet boat trip;
 - 142.3 target or are suitable for a similar customer demographic to a jet boat trip;
 - 142.4 offer a similar level of adventure or adrenaline, or similar experience;
 - 142.5 are similarly regarded as iconic or must do experiences;
 - 142.6 involve a similar level of physical effort or exertion on the part of tourist; and/or
 - 142.7 are located in close proximity to the base of jet boat operators.
143. We also have some evidence indicating that Ngāi Tahu Tourism and KJet have regard to the pricing of other tourism operators, as an input into setting the prices of their jet boat trips. Ngāi Tahu Tourism, in setting the prices for the Shotover Jet, monitors the pricing of other jet boat operators (identified as its direct competitors) but also some other tourism operators, including the TSS Earnslaw, the Spirit of Queenstown, skydiving, bungy jumping, Ziptrek and Canyon Swing.¹²⁷ KJet considers it competes with paraflights, Hydro Attack and lake cruises, and noted that Skyline's gondola and luge also operate at a similar price-point to a jet boat trip. KJet has regard to the pricing of other tourism operators (and other jet boat operators) in setting its prices.¹²⁸
144. Overall, the evidence before us from other tourism operators in relation to the degree of constraint they impose on jet boat operators is currently mixed. Some other tourism operators told us that they compete with jet boat trips, whilst other tourism operators do not see themselves competing closely with jet boats. For example:

¹²⁷ The Application at 16-17 and Appendix 15.

¹²⁸ Commerce Commission interview with KJet (11 September 2023).

- 144.1 Bungy NZ submits that it competes with all tourism activities (both adventure and non-adventure tourism activities), but that it competes most closely with a canyon swing, zipline and skydiving (activities most closely related to what it offers) and that it faces more competition from jet boats than lake cruises;¹²⁹
- 144.2 [] sees itself as competing with jet boating to a degree, but noted that its [] does not directly compete with jet boating (and is at a different price point). However, it considers the pricing of jet boating in setting its prices because jet boating is a long-standing iconic activity;¹³⁰
- 144.3 [] sees itself directly competing with jet boats and other soft outdoor adventure (eg, []);¹³¹
- 144.4 [] as operating at the top end of an adventure tourism market, alongside [], and considers jet boating is within its market. It competes with every tourism operator, even non-adventure tourism operators to a lesser degree, and considers the pricing of other tourism operators];¹³²
- 144.5 [] does not see itself being in direct competition with jet boat operators;¹³³
- 144.6 [] considers rafting does not compete closely with jet boats;¹³⁴
- 144.7 [] considers that it competes with all other tourism operators (including jet boats) in a broad market, but it does not consider the pricing of jet boats in setting its prices (which are cost based);¹³⁵
- 144.8 [], but noted that jet boats are what it most likely will lose sales to and are its main competitor on the water. It considers the pricing of jet boats in setting its own pricing;¹³⁶
- 144.9 [] does not consider itself directly competing with jet boats as they are quite different to its activities, but acknowledged that it competes with jet boats to a degree and sometimes considers the prices of jet boat trips in setting its own prices;¹³⁷ and
- 144.10 [] considers that it competes with jet boating, but not as closely as it competes with [] operators (and other active adventure).¹³⁸

¹²⁹ Submission from Bungy NZ (19 September 2023).

¹³⁰ []
¹³¹ []
¹³² []
¹³³ []
¹³⁴ []
¹³⁵ []
¹³⁶ []
¹³⁷ []
¹³⁸ []

145. We invite industry participants to provide us with further direct evidence on visitors to Tāhuna (Queenstown) choosing and switching between different tourism activities, on how jet boat operators have competitively reacted to other tourism operators, and on the degree of constraint provided by other tourism operators. Equally, we invite industry participants (not currently offering jet boating services) to provide us with further evidence on how they have responded to competition from jet boat operators.

The countervailing power of wholesalers, agents, resellers and tour operators

146. A merged entity's ability to increase prices profitably may be constrained by the ability of certain customers to exert substantial influence on negotiations. Countervailing power is more than the ability of customers to switch from a merged entity to competing suppliers. The size and importance of a customer is also not sufficient by itself to amount to countervailing power. Countervailing power exists when a customer possesses a special ability to substantially influence the price the merged entity charges.¹³⁹ This may be the case if a customer:
- 146.1 can switch or credibly threaten to switch to suppliers of the same product in other geographic markets where competitive conditions are different;
 - 146.2 can switch or credibly threaten to switch to suppliers of other products it acquires from the merged entity;
 - 146.3 can take action to reduce the merged entity's sales (eg, by promoting less or giving less favourable placement to the merged entity's products); and/or
 - 146.4 can feasibly sponsor new entry or expansion.
147. The above are distinct from the ability of customers to leverage existing options to secure better prices and/or terms of trade.
148. As well as being sold directly to tourists, jet boat trips are sold to tourists through intermediaries such as local agents (eg, Queenstown iSite and hotels), inbound tour operators (who promote and sell New Zealand travel packages to overseas visitors), online travel agents and other wholesalers.
149. Ngāi Tahu Tourism submits that the merged entity would be constrained by the countervailing power of wholesalers, because wholesalers and inbound tour operators could substitute a jet boat trip for other activities or market/promote activities of other tourism operators, if they were not satisfied with the services or price/commission offered by the merged entity.¹⁴⁰ Ngāi Tahu Tourism advised that continuing to offer good customer service/experiences was key to it being included with a tour programme as an included activity (as opposed to an optional extra).¹⁴¹
150. In assessing the constraint from countervailing power, we are considering:

¹³⁹ *Mergers and Acquisitions Guidelines* above n15 at [3.113]-[3.115].

¹⁴⁰ The Application at [70] and [100].

¹⁴¹ Commerce Commission interview with Ngai Tahu Tourism (4 September 2023).

- 150.1 whether wholesalers, agents, resellers and tour operators are likely to have countervailing power, and the strength of any countervailing power; and
- 150.2 the incentives that wholesalers, agents, resellers and tour operators would have to use any countervailing power to constrain the merged entity.
151. It is currently unclear whether wholesalers, agents, resellers and tour operators have countervailing power, and if they do whether they would have an incentive to use it to constrain the merged entity. Even if they do, this would not protect tourists who buy through different channels (including directly from jet boat operators).

The countervailing power of wholesalers, agents, resellers and tour operators

152. We consider that tour operators who are able to switch between different types of experiences or to jet boat operators in other regions outside Tāhuna (Queenstown) may have some countervailing power. Wholesalers, agents and resellers who generate a significant portion of bookings for Ngāi Tahu Tourism and KJet could also potentially have some countervailing power.
153. Wholesalers have generated a significant portion of sales for both Ngāi Tahu Tourism and KJet.¹⁴² Inbound tour operators, in particular, account for a sizeable portion of Ngāi Tahu Tourism's customer base.¹⁴³ Ngāi Tahu Tourism expects that sales made indirectly through trade channels will increase when international visitor numbers in Tāhuna (Queenstown) return to pre-pandemic figures.¹⁴⁴ KJet told us that wholesalers are not as important as they used to be and that it is trying to do more direct sales, holding commission rates and not dealing with wholesalers that do not generate bookings. It noted that, before the pandemic, wholesalers dictated the percentage commissions that they took and were a strong force in the market.¹⁴⁵ Data provided by Real NZ indicates that the proportion of its jet boat passengers derived from tour operators or tour groups [].¹⁴⁶
154. There is some evidence suggesting that wholesalers, agents, resellers and tour operators have countervailing power and provide a degree of competitive constraint.
- 154.1 Ngāi Tahu Tourism advised that, in 2017, the Shotover Jet was replaced by a Milford Sound Cruise as an included part of Contiki tour packages, and Shotover Jet become an optional excursion within Contiki tours.¹⁴⁷
- 154.2 Some other tourism operators see wholesalers as having power to influence prices and bookings. Bungy NZ submits that agents and wholesalers can significantly influence a tourist's choice and possess bargaining power, as they negotiate prices with operators to secure favourable rates.¹⁴⁸ []

¹⁴² The Application at [71]-[72], Appendix 18 and Appendix 19.

¹⁴³ The Application at [100] and e-mail from Buddle Findlay (on behalf of Ngāi Tahu Tourism) to the Commerce Commission (22 September 2023).

¹⁴⁴ The Application at [100].

¹⁴⁵ Commerce Commission interview with KJet (11 September 2023).

¹⁴⁶ E-mail from A&B Lawyers (on behalf of Real NZ) to the Commerce Commission (22 September 2023).

¹⁴⁷ E-mail from Buddle Findlay (on behalf of Ngāi Tahu Tourism) to the Commerce Commission (22 September 2023). []

¹⁴⁸ Submission from Bungy NZ (19 September 2023).

noted that tour operators push tourism companies for best prices and that commissions paid have increased over time.¹⁴⁹

154.3 Separate to bundles and “combo” deals that tourism operators (including Ngāi Tahu Tourism and KJet) themselves put together and offer, wholesalers, resellers and agents put together bundles and combo deals of activities of different tourism operators, which may influence customer bookings.¹⁵⁰

155. We invite tourism operators to provide us with further direct evidence on instances where wholesalers, agents, resellers or tour operators have exercised countervailing power, particularly against jet boat operators. Equally, we invite wholesalers, agents, resellers or tour operators to provide further evidence of their negotiation power (or lack thereof) with tourism operators, in particular, Ngāi Tahu Tourism and KJet.

The incentive to exercise countervailing power

156. It is unclear whether wholesalers, agents, resellers and tour operators that have countervailing power would have the incentive to exercise it to constrain the merged entity.

157. Wholesalers, agents, resellers and tour operators are typically remunerated on a commission basis for bookings they make (ie, they get an agreed percentage of value of bookings).¹⁵¹ Because of this, they may not have a strong incentive to exercise countervailing power to resist increases in the price of jet boat trips. In addition, prices for inbound tour operators or wholesalers are contracted or locked in by some operators two to three years in advance,¹⁵² likely protecting them from short-term price increases.

157.1 Ngāi Tahu Tourism advised that any price changes to tour operators were generally sent out six to 12 months before they come into effect (in some cases, two years prior), meaning that prices may be locked in for tours 18-24 months in advance. It noted that prices could still change after that with other pricing changes, unless it honours bookings at former prices.¹⁵³

157.2 KJet’s pricing is set annually.¹⁵⁴

¹⁴⁹ []

¹⁵⁰ For example, Everything Queenstown offers bundles that include a jet boat trip with a skydive, wine and craft beer tour, canyon swing, horse riding, scenic tour, hot pools, rafting trip, cruise on the TSS Earnslaw, bungee jump, 4WD trip or scenic flight.

¹⁵¹ The Application at [65] and [67]. Inbound tour operators and tour groups receive a commission of 10-20% from Ngāi Tahu Tourism for bookings. E-mail from Buddle Findlay (on behalf of Ngāi Tahu Tourism) to the Commerce Commission (22 September 2023). Real NZ advised that its pricing to tour operators is retail less 20%. E-mail from A&B Lawyers (on behalf of Real NZ) to the Commerce Commission (22 September 2023).

¹⁵² Commerce Commission interview with Ngāi Tahu Tourism (4 September 2023), Commerce Commission interview with Skippers Canyon Jet (5 September 2023) and [].

¹⁵³ E-mail from Buddle Findlay (on behalf of Ngāi Tahu Tourism) to the Commerce Commission (22 September 2023).

¹⁵⁴ E-mail from RVG Law (on behalf of KJet) to the Commerce Commission (22 September 2023).

- 157.3 KJet and Goldfields Jet offer the same pricing to all customers, meaning that prices are essentially locked in for all customers, once set.¹⁵⁵
158. Wholesalers, agents, resellers and tour operators could be incentivised to exercise any countervailing power if the merged entity sought to reduce the percentage commission they are paid for bookings they generate. However, no wholesalers, agents, resellers or tour operators we have contacted so far have raised any concerns about the Proposed Acquisition, or asserted that they would be harmed as a result, noting that commission rates are negotiated and not unilaterally set by tourism operators.¹⁵⁶ In addition, some evidence also suggests tour operators, in particular, might not have strong incentives to exercise countervailing power even if the merged entity sought to reduce commissions.
- 158.1 [] noted that 95% of customers wanting to do a jet boat trip want to do Shotover Jet (as it is the trip everyone has heard about).¹⁵⁷
- 158.2 [] could not think of scenarios where it might exercise countervailing power by switching between tourism operators and told us it would not stop using Ngāi Tahu Tourism in one location to constrain it in another location.¹⁵⁸
- 158.3 [] advised that the price it is charged by tourism operators is inconsequential to its business model.¹⁵⁹
- 158.4 Grand Pacific Tours submits that it has a lot of long-term relationships and would not move away from these lightly, and would first make all efforts to retain any existing operator like Ngāi Tahu Tourism (which is a valued partner with unique experiences suited to its travellers). It submits that the thrill of a jet boat ride is generally high on the agenda for its travellers.¹⁶⁰
- 158.5 [] told us that the Shotover Jet is the most booked jet boat trip in Tāhuna (Queenstown).¹⁶¹
159. We invite industry participants to provide us with further evidence on the incentives of wholesalers, agents, resellers and tour operators to use any countervailing power to constrain the merged entity.

¹⁵⁵ Commerce Commission interview with Goldfields Jet (7 September 2023) and e-mail from RVG Law (on behalf of KJet) to the Commerce Commission (22 September 2023).

¹⁵⁶ Submission from Grand Pacific Tours (3 October 2023),
[

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¹⁵⁷ []

¹⁵⁸ []

¹⁵⁹ []

¹⁶⁰ Submission from Grand Pacific Tours (3 October 2023).

¹⁶¹ []

Coordinated effects

160. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that output reduces and/or prices increase. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.¹⁶²
161. In the Application, Ngāi Tahu Tourism submits that the Proposed Acquisition would not be likely to substantially lessen competition in the market for adventure tourism activities in the Queenstown Lakes region due to coordinated effects because, in its view, the market is highly competitive, and includes an array of large and small operators, with differentiated offerings.¹⁶³
162. We are continuing to assess whether the Proposed Acquisition could substantially lessen competition by increasing the likelihood of coordination between suppliers of tourist jet boating services in Tāhuna (Queenstown). In doing so, we are assessing:
- 162.1 whether the market for the supply of tourist jet boating services in Tāhuna (Queenstown) is vulnerable to coordination; and
- 162.2 whether the Proposed Acquisition would change the conditions in the supply of tourist jet boating services in Tāhuna (Queenstown) so that coordination is more likely, more complete or more sustainable.
163. We set out our current thinking on coordination below. We invite submissions on whether the Proposed Acquisition would increase the likelihood of coordination between suppliers of tourist jet boating services in Tāhuna (Queenstown).

The vulnerability of the relevant market to coordination

164. A range of market features are commonly accepted as making a market more vulnerable to coordination. That is, these are market features that make it more likely that suppliers would be able to successfully coordinate their behaviour to increase their profits. For example, firms may find it easier to reach a common understanding if they are relatively symmetric in terms of cost structures, market shares and capacity levels. Not all the features that make a market more vulnerable to coordination need to be present for a market to be vulnerable to coordination. Nor does the existence of some or all of these market features inevitably mean that suppliers would engage in coordinated behaviour.
165. We consider that there are conditions in the market for the supply of tourist jet boating services in Tāhuna (Queenstown) that may enhance the ability and incentive for rivals to coordinate their behaviour. These include:
- 165.1 the small number of jet boat operators in Tāhuna (Queenstown);

¹⁶² *Mergers and Acquisitions Guidelines* above n15 at [3.84].

¹⁶³ The Application at [107].

- 165.2 the visibility of prices to all market participants online;
 - 165.3 the cost of operating a jet boat likely being similar for all operators; and
 - 165.4 the interactions of operators through industry organisations and meetings.
166. However, there are also some features of the market for the supply of tourist jet boating services in Tāhuna (Queenstown) which may make it less vulnerable to, or mitigate against, coordination. These include:
- 166.1 a degree of product differentiation between jet boat operators;
 - 166.2 spare capacity of jet boat operators, which means that barriers to expand existing services (in line with consents) are low and there may be an incentive to cheat on any coordination.
 - 166.3 while spare capacity may equally be used as a quick response to any cheating on a coordinated outcome, this is unlikely given the lack of homogeneity of the service offering among jet boat operators); and
 - 166.4 the heterogeneity of firms in terms of size (number of jet boats, market shares and capacity) and overall business cost structure.
167. Accordingly, we invite industry participants to provide us with further information in relation to the likelihood of coordination as a result of the Proposed Acquisition.

Conglomerate effects

168. A merger between suppliers who are not competitors but who operate in related markets can result in a substantial lessening of competition due to conglomerate effects. This can occur where a merger gives the merged entity a greater ability or incentive to engage in conduct (eg, bundling or tying) that prevents or hinders rivals from competing effectively.¹⁶⁴
169. We are continuing to assess whether the Proposed Acquisition would give the merged entity the ability and incentive to foreclose rival suppliers, and the likely effect of any foreclosure on competition in any relevant market. In doing so, we are assessing:
- 169.1 the likelihood that the merged entity offers a bundle of its products and goes as far as ceasing to offer its jet boat trips standalone, outside of any bundles;
 - 169.2 the demand for bundles from visitors to Tāhuna (Queenstown); and
 - 169.3 the ability of competing jet boat operators to assemble competing bundles.
170. While both Ngāi Tahu Tourism and KJet offer bundled or combo deals already, the question is whether the Proposed Acquisition would enhance Ngāi Tahu Tourism's ability to offer a superior bundled service to the detriment of competition. Ngāi Tahu Tourism offers bundles of jet boat trips with a canyon swing, bungy jump, helicopter

¹⁶⁴ *Mergers and Acquisitions Guidelines* above n15 at [5.11]-[5.15].

flight or 4WD tour. KJet offers bundled deals of jet boat trips and helicopter flights, wine tours and clay target shooting. With Southern Discoveries, KJet also offers a bundled price deal on a cruise on the Spirit of Queenstown and a 60 minute KJet jet boat trip for \$169, a saving of \$25, as well as a KJet jet boat trip bundled with a Milford Sound cruise.

171. While, the above may indicate that there is nothing stopping Real NZ or other jet boat operators from offering bundles, including bundles of jet boat trips with other tourism activities in partnership with other tourism operators,¹⁶⁵ it is currently unclear whether the Proposed Acquisition would provide Ngāi Tahu Tourism with an additional avenue through which to leverage its offering that other competitors may not be able to match or compete with.
172. [] noted a potential downside to the Proposed Acquisition if Ngāi Tahu Tourism was to offer combo/bundled deals that it could not compete with.¹⁶⁶ We are also considering whether the Proposed Acquisition would enable Ngāi Tahu Tourism (which already owns a portfolio of tourism assets, across both Te Ika a Māui (the North Island) and Te Waipounamu (the South Island), to enhance or leverage its market power to adjacent markets.
173. We invite submissions on whether the Proposed Acquisition would enable the merged entity to leverage its current offering (including via combos or bundled deals) that other tourism operators cannot compete with or engage in behaviour which otherwise prevents competitors from operating effectively.

Next steps

174. We are currently scheduled to decide whether or not to give clearance to the Proposed Acquisition by 15 December 2023. However, this date may change as our investigation progresses.¹⁶⁷ In particular, if we need to test and consider the issues identified above further, the decision date may extend.
175. As part of our investigation, we are identifying and contacting parties that we consider will be able to help us assess the issues identified above.

¹⁶⁵ For example, Real NZ offers with cruises on the TSS Earnslaw and experiences at Walter Peak and also offers a Milford Sound Day Cruise bundled with a Te Anau Glowworm Caves tour. Before 1 October 2023, Real NZ was offering a bundled price deal on a TSS Earnslaw Cruise and a 60 minute jet boat trip at \$159 (for an adult), a discount of \$30. Southern Discoveries also offers bundles of a Milford Sound cruise with add-ons such as a KJet jet boat trip or a scenic flight with Southern Alps Air. Skyline offers bundled deals on its gondola with luge rides, dining, stargazing or guided walks. Serious Fun Riverboarding offers bundles of river boarding with Goldfields Jet, canyoning or a 4WD tour. Totally Tourism offers rafting trips bundled with a Real NZ jet boat trip. Appellation Wine Tours offers bundles of wine tours with golf, Ziptrek, a KJet jet boat trip or a cruise on the TSS Earnslaw. Air Milford offers a scenic flight bundled with a cruise on the TSS Earnslaw. Oxbow offers jet boat sprints bundled with 4WD off-roading and clay target shooting.

¹⁶⁶ []

¹⁶⁷ The Commission maintains a clearance register on our website at <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/> where we update any changes to our deadlines and provide relevant documents.

Making a submission

176. We are continuing to undertake inquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further evidence and other relevant information and documents that the parties or any other interested parties are able to provide regarding the issues identified in this Sol.
177. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference “Ngāi Tahu Tourism/KJet” in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **10 November 2023**.
178. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would be likely to unreasonably prejudice the commercial position of the supplier or subject of the information.