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COMMERCE COMMISSION
Commerce Commission

Decision No. 357

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance involving:

RUAPEHU ALPINE LIFTS LIMITED

and

TUROA SKI RESORT LIMITED

- The Commission:** M N Berry (Acting Chairman)
P R Rebstock
E M Coutts
- Summary of Application:** The acquisition by Ruapehu Alpine Lifts Limited or an interconnected body corporate of Ruapehu Alpine Lifts Limited of a 100% shareholding in, or all of the assets of, Turoa Ski Resort Limited.
- Determination:** Pursuant to s 66(3)(b) of the Commerce Act, the Commission determines to decline to give clearance for the proposed acquisition.
- Date of Determination:** 14 June 1999

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THE PROPOSAL

1. On 14 May 1999, the Commission registered a notice pursuant to s 66(1) of the Commerce Act 1986 (“the Act”) seeking clearance for the acquisition by Ruapehu Alpine Lifts Limited (“RAL”) or an interconnected body corporate of RAL of a 100% shareholding in, or all of the assets of, Turoa Ski Resort Limited (“TSR”). The assets to be purchased include chairlifts, T bar & platter lifts, rope tows, chalet and administration buildings, workshop and garaging buildings, Kassbohrer snow groomers, road vehicles, and plant and equipment.

THE PROCEDURES

2. Section 66(3) of the Act requires the Commission either to clear, or to decline to clear, a notice given under s 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. An extension of 10 working days was sought by the Commission and agreed to by RAL. Accordingly, a decision on the application is required by Monday 14 June 1999.
3. RAL sought confidentiality for certain information supplied during the course of the investigation, and a confidentiality order was made in respect of that information for a period of 20 working days from the Commission’s determination of the notice. When the confidentiality order expires, the provisions of the Official Information Act 1982 will apply to the information.
4. The Commission’s determination is based on an investigation conducted by its staff and their subsequent advice to the Commission.
5. In investigating the acquisition, Commission staff sought comments and information from a number of parties. These parties included RAL and other New Zealand commercial ski field operators, North Island club ski field operators, ski club representatives, inbound tour operators and other wholesalers of ski holiday packages, domestic airline carriers and other travel industry participants, the New Zealand Ski Council, the New Zealand Tourism Board, and the Department of Conservation.
6. During the course of its investigation the Commission has received comments from interested parties in support of the application citing potential benefits of the acquisition to the New Zealand ski industry. The Commission notes that in making its determination, in relation to the matter of a s66(1) application, the Commission cannot consider the potential public benefits of the acquisition.

THE PARTIES

Ruapehu Alpine Lifts Limited

7. RAL operates the Whakapapa ski field on the northern slopes of Mt Ruapehu in the central North Island. Whakapapa has 400 hectares of skiable terrain. Whakapapa terrain caters for all levels of skier. The runs are 30% beginner, 45% intermediate, and 25% advanced. Whakapapa has the following lift capacity: six rope tows, four platter lifts, four T-bars, four double chairlifts, one express quad chairlift and one quad chairlift. Whakapapa has capacity for 6500 to 7000 skiers per day. RAL provides the following services at Whakapapa: ski lift services, cafeteria services, ski school services, ski equipment hire, and other facilities required by skiers.
8. The nearest accommodation centre to Whakapapa is the Whakapapa village. Whakapapa has 48 ski club lodges, with a total of 1500 beds, on the ski field itself.
9. RAL is an unlisted company registered under the Companies Act 1993, with 4,500 shareholders, nearly all of whom are resident in New Zealand. The constitution of RAL provides that shares issued by RAL have no right to receive dividends or pecuniary profit, or to participate (in excess of the amount of consideration paid on issue of the share) in the distribution of surplus assets on the liquidation of RAL. All profits of RAL are reinvested in the improvement of and development of facilities at the ski area for the benefit of the public and to promote snow sports. RAL has obtained exemption from income tax pursuant to Section CB 4(1)(j) of the Income Tax Act 1994.

Turoa Ski Resort Limited

10. TSR operates the Turoa ski field on the slopes of Mt Ruapehu in the central North Island. Turoa has 400 hectares of patrolled and skiable terrain. Turoa terrain caters for all levels of skier. TSR classified the terrain as follows: 20% easiest, 25% more difficult, and 55% most difficult. Turoa has the following lift capacity: two quad chairlifts, two triple chairlifts, three T-bars and four platter lifts. Turoa has capacity for 4000 to 4500 skiers on any one day. TSR provides the following services at Turoa: ski lift services, ski patrols, ski schools, ski hire, ski shop services, cafeterias, licensed bar, toilet, locker, and parking facilities.
11. Ohakune is the closest accommodation and entertainment base for Turoa, at the base of the Turoa mountain road. There is a variety of accommodation available in Ohakune ranging from camp grounds to self-contained chalets and hotels.
12. TSR is owned by Skifield Investments Limited, who are 100% owned by Cairngorm Securities Pty Limited.

BACKGROUND

New Zealand Ski Industry

13. The ski season in New Zealand generally runs from mid June to late October or mid November, but this varies from season to season as it is dependent on climatic conditions. The New Zealand ski industry comprises 13 commercial ski fields and 12 club fields. Commercial fields account for between 90-95% of all skier days in New Zealand.
14. Club fields are run by ski clubs and are primarily used by members of associated ski clubs. They tend to be small fields with basic services and limited capacity. Their lifts are generally rope tows or T-bars. Club fields tend to offer on-mountain accommodation and some require a short walk in.
15. Commercial fields attract a wider range of skiers and have a significantly greater capacity than club ski fields. Commercial fields have a greater range of lift services, generally providing substantial chair lift and T-bar services, and a greater range of on-slope facilities, such as cafeteria services, ski hire, and ski lessons.
16. In 1997 there were 1,079,070 skier days skied in New Zealand. Of this total 726,470 (67%) were skied in the South Island, and 352,800 (33%) were skied in the North Island.¹ However, 1997 was not a particularly good season for North Island ski fields. In comparison, between 1988 and 1994 the percentage of skier days skied in the North Island fluctuated between 38% and 49%.²
17. Industry sources commented that South Island skiing was generally considered amongst skiers to offer several advantages over skiing in the North Island. These included:
 - South Island ski fields generally have more reliable weather, which is reflected in a fewer number of closed days than at North Island ski fields;
 - South Island ski fields generally have dry snow conditions and offer skiers powder snow, while snow on the North Island ski fields tends to be wetter;
 - the South Island is perceived to offer the skier a greater variety of terrain than the North Island given the proximity of many of the ski fields to each other;
 - South Island ski fields tend to have shorter lift queuing times than the North Island ski fields; and

¹ "The New Zealand Ski & Snowboard Industry". This is a one page document supplied by RAL which includes data from the 1997 New Zealand Tourism Board Survey, individual ski area manager's assessments, NZ Ski Council Executive Officer assessments, and the 1994 CM research of Whakapapa customers.

² Figures supplied by RAL on the breakdown of NZ skier days, by ski field, between 1988 and 1998.

- the South Island ski resort towns, Queenstown in particular, offer skiers a greater range of facilities and non-skiing activities than the North Island ski resorts.
18. Several South Island ski field operators commented that strong North Island ski operators were good for the ski industry as a whole. Given the larger population base in the North Island, the North Island ski fields were crucial for expanding the base of skiers in New Zealand as they generated interest and enthusiasm for skiing amongst North Islanders. Many South Island operators commented that they saw a correlation between the number of skiers who took up the sport in the North Island and the number of North Islanders skiing at South Island ski fields.

North Island Ski Fields

19. There are two commercial fields in the North Island, Whakapapa and Turoa, both situated on Mt Ruapehu in the central North Island. There are two club ski fields in the North Island; Tukino, which is situated on the eastern side of Mt Ruapehu, and, Manganui, which is situated on Mt Taranaki.
20. Skiers on North Island ski fields predominantly tend to be from the North Island. In 1997, on Whakapapa and Turoa 94% of skier days were skied by North Islanders. Of the remainder, 5% of skier days were skied by international visitors to New Zealand and 1% by skiers from the South Island.³ Industry participants commented that the low percentage of international and South Island skiers at North Island ski fields was explained by the quality of the skiing available in the South Island, which made it difficult for the North Island ski fields to attract international visitors and South Islanders.

South Island Ski Fields

21. There are 11 commercial ski fields in the South Island, the largest being Mt Hutt, The Remarkables, Coronet Peak, Cardrona and Treble Cone. These ski fields market themselves as premier destination ski resorts, offering world class skiing conditions complemented by the tourist attractions of Christchurch, Queenstown, and Wanaka.
22. International visitors to New Zealand predominantly ski at the above five ski fields. In 1997, 96% of international skier days in the South Island, were skied at the above five fields. These ski fields also had a high proportion of their skier days skied by international skiers. According to figures submitted by RAL each of the above fields had 47% of their total skier days skied by international visitors. North Islanders who ski in the South Island predominantly skied at the same five ski fields. In 1997, 70% of North Islanders skiing in the South Island skied at the above five ski fields.⁴

³ “The New Zealand Ski & Snowboard Industry”, see note 1.

⁴ “The New Zealand Ski & Snowboard Industry”, see note 1.

23. The other South Island fields include Rainbow, Porter Heights, Mt Dobson, Mt Lyford, Ohau, and Waiorau Nordic. In 1997, with the exception of Waiorau Nordic, between 75-90% of the skier days on these ski fields were skied by South Islanders, which tended to suggest a predominantly regional skier base.⁵

Impact of the Recent Bad Seasons on the Ski Industry

24. Industry participants commented that the ski industry has experienced problems in the last four years due to climatic and volcanic conditions. All the ski fields in New Zealand experienced a poor season in 1998 due to a lack of snow. The North Island ski fields were affected by a lack of snow in 1997, and by volcanic eruptions in 1995 and 1996. RAL and TSR have commented that as a result of the successive bad seasons in the North Island, many North Islanders have had a 'taste' of skiing in the South Island and may be reluctant to return to skiing in the North Island.

THE MARKETS

Introduction

25. The purpose of defining markets is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition under consideration. Identification of the relevant markets enables the Commission to examine whether the acquisition would result, or would be likely to result, in the acquisition or strengthening of a dominant position in terms of s 47(1) of the Act in any of those markets.
26. Section 3(1A) of the Act provides that:

... the term 'market' is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them.
27. Relevant principles relating to market definition are set out in *Telecom Corporation of New Zealand Ltd v Commerce Commission*⁶, and in the Commission's *Business Acquisition Guidelines*.⁷ A brief discussion of the methodology follows.
28. Markets are defined in relation to product type, geographical extent, and functional level. With the first two dimensions, market boundaries are determined by testing for substitutability in terms of the response to a change in relative prices of the good or service in question, and possible substitute goods or services. A properly defined market will include products which are regarded by buyers as being not too different ("product" dimension), and not too far away ("geographical" dimension), and are thus

⁵ "The New Zealand Ski & Snowboard Industry", see note 1.

⁶ (1991) 4 TCLR 473

⁷ Commerce Commission, *Business Acquisition Guidelines*, 1999, pp 11-16.

products to which they could switch if a small yet significant and non-transitory increase in price (“*ssnip*”) of the product in question was to occur. It will also include those suppliers currently in production who are likely, in the event of such a *ssnip*, to shift promptly to offer a suitable alternative product, even though they do not do so currently. For the purpose of defining relevant markets, the Commission will usually consider a *ssnip* to involve a five percent increase in price for a period of a minimum of one year.

29. In practice, the process of defining markets is unlikely to be as precise and as scientific as suggested by the *ssnip* test. However, in the Commission’s view, the *ssnip* approach provides a useful framework for assessing the question of what other products, or products from other areas, are substitutable for the product in question as a matter of fact and commercial common sense.

Market Definition

Product / Function Market

30. In its previous consideration of the ski industry, the Commission concluded in its determination that the relevant product / function market was for the provision of services for downhill skiing, primarily incorporating the provision of ski lifts, but may also have included ski schools, the rental of ski equipment, restaurants, cafeterias and other ski field amenities.⁸ Heliskiing and cross country skiing were not included as part of that definition.
31. RAL contends that its pricing and other decision making is constrained by the quality-price mix of other products and services in a wider winter leisure activity market. RAL considers that activities such as winter package holidays to the Pacific Islands and other sporting and recreational activities, such as rugby and tramping, are included in this wider market.
32. The Commission recognises that there is a degree to which skiing competes with other winter leisure activities. First-time skiers were noted, by industry participants, as a segment of skiers who considered other winter leisure activities to be substitutable for skiing. First-time skiers who choose not to ski again and partake in other winter leisure activities do so for a variety of reasons. These reasons included the time commitment involved in undertaking a skiing trip, the total cost involved in pursuing skiing seriously, or purely because they felt that skiing did not in fact appeal to them.
33. Industry participants commented that a consumer’s decision on whether to ski is based on a range of factors which are often subjective, and include the time and cost involved in pursuing skiing as a hobby. The Commission considers that, having regard to the factors involved in a consumer’s decision, in particular the cost and time involved in skiing, for the majority of skiers other winter leisure activities are not close substitutes.

⁸ *Sepco Holdings Limited/Mt Hutt Ski and Alpine Limited*, 22 April 1994, M2243, p 2.

34. The Commission considers that the appropriate product / function market is the market for the provision of downhill skiing and snowboarding services. Snowboarding has been included in the product market as there is no significant difference in the services provided to skiers and snowboarders and because snowboarders are now a significant user of ski fields.

Conclusion on Product / Function Market

35. The Commission concludes that the appropriate product / function market is the market for the provision of downhill skiing and snowboarding services.

Geographic Market

36. RAL submits that the geographic extent of the market is nationwide and that skiing in the South Island is a practical, viable and real choice for North Island skiers. RAL submits that there is substantial mobility of North Island skiers to the South Island, indicating the existence of a nationwide market. RAL submits that 32% of skier days skied by North Islanders were skied in the South Island.⁹
37. RAL submits that lift pass prices are a very visible cost in the ski industry and that skiers at the North Island ski resorts are generally keenly aware of lift pass prices at South Island resorts. RAL argues, that should North Island ski resorts increase the price of lift passes or other services provided beyond what consumers considered an acceptable value for the skiing offered in the North Island, many skiers would substitute some or all of the skiing they intended to undertake in a season at the various South Island ski fields.
38. RAL submits that there does exist a segment of skiers, whom it identifies as “day trippers”, that are unlikely to consider the South Island ski fields as a close substitute for skiing on Mt Ruapehu. RAL contends the existence of this segment does not negate the existence of a nationwide market. The operation of a ski field involves high fixed costs and even a small reduction in the number of skier days has a significant impact on the profitability of a ski field’s operation, and there is no market segmentation or price discrimination between day trippers and other consumers.
39. In defining the relevant geographic market the Commission has considered, if all the North Island ski fields were to impose a *ssnip*¹⁰, whether a sufficient number of skiers who currently ski on the North Island ski fields would be likely to switch to the various South Island ski fields. For the 1999 season, the price of a lift pass at both Turoa and Whakapapa will be \$52.
40. In considering the geographic extent of the market the Commission has considered the factors that influence a skier’s choice of the skifield. The Commission, in its previous consideration of the skiing industry, considered that, broadly speaking, skiers could be

⁹ “The New Zealand Ski & Snowboard Industry”, see note 1.

¹⁰ See para. 28.

categorised into two groups, “extended stay” and “short stay” skiers. The factors effecting a skier’s choice of skifield were largely dependent upon whether they were an “extended stay” or “short stay” skier.

Relative Costs for North Island Skiers

41. There are a variety of costs a consumer considers in deciding whether to make a skiing trip. The following table outlines the key costs and factors which can vary these costs to the consumer:

	Variables	Costs
Travel to Destination	Travel costs are a result of the distance from the ski field that potential skiers reside and of the method of travel. For North Islanders Mt Ruapehu is within practicable driving distance for the majority of skiers. Given the time involved in travelling to the South Island the majority of North Islanders skiing in the South Island would choose to travel by air.	See below for examples of relative costs.
Accommodation	The cost of accommodation varies according to consumer preference. All the major ski areas in New Zealand offer consumers a broad range of accommodation choices. There was some suggestion by industry participants that accommodation in the South Island resort towns would tend on average to be of a higher quality than at North Island ski resorts.	Prices range from around \$15 per night, per person at ski clubs and backpackers lodges to upwards of \$150 per night, per person for upmarket hotels.
Ski Equipment Hire	Some skiers choose to hire equipment while other skiers who are more committed to the sport own their equipment. Equipment can be hired either on the slopes from ski field operators, from ski shops in the resort areas, or ski shops in the skier’s home towns.	Ski hire for skis, boots and poles ranges from \$20 to \$30 per day.
Lift Passes	This is the primary cost controlled by ski field operators. In order to ski on a ski field, skiers need to have bought some kind of lift pass. There a variety of lift passes available including day passes, half-day passes, beginner passes, multi-day passes and season passes. Discounts are generally offered to students and children.	Adult single day lift passes range from \$35-\$60, at commercial ski fields. In the major fields these range from \$50 to \$60.
Incidentals including	Costs vary according to consumer preferences.	Incidentals are likely to vary from a few dollars

Mountain transfers, food, and apres ski entertainment expenditure.		a day for ski club members to between \$50 to \$100 per day.
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42. The precise cost difference between skiing in the North and South Island depends upon the requirements of individual consumers. The Commission found that transport costs increased significantly for North Islanders choosing to ski in the South Island. Other costs involved in a ski trip did not significantly increase if a North Islander chose to ski in the South Island. Some industry participants commented that the available accommodation at South Island ski resorts was generally more expensive than accommodation at the North Island ski resorts. However, given the range of accommodation options in both islands, this was not considered to be prohibitive for North Islanders wishing to travel to South Island ski resorts.
43. Given the distance and travelling time involved, industry participants considered that there was a high opportunity cost involved for North Islanders in driving to the South Island to ski. North Islanders travelling to South Island ski resorts predominantly choose to fly into either Queenstown or Christchurch. By comparison, most industry participants considered that North Islanders who skied at Mt Ruapehu predominantly drive to the mountain.
44. The following are the cost estimates of travelling to Mt Ruapehu from Auckland and Wellington by private car.¹¹ The running cost of a car used in the following calculations was 17.8 cents per kilometre, which is the average cost across all engine sizes.

	Distance (kms)	Marginal Cost (\$)
Wellington-Ohakune, return	580	\$103.24
Auckland-Ohakune, return	720	\$128.16

The Commission notes that the per person costs would depend on the number of people sharing the vehicle.

45. The Commission found that there is a broad range of airfares from Auckland and Wellington to the South Island. The Commission noted that for North Islanders travelling to the South Island, from centres other than Auckland and Wellington the cost of airfares was likely to be higher.

¹¹ The figures are based upon the AA estimated running costs of cars, published in the May 1999 edition of AA Directions magazine.

46. The lowest fares offered by Air New Zealand and Ansett New Zealand were subject to special conditions, including booking at least 21 days, staying at the destination for a Saturday night, and paying immediately. Travel industry sources commented these fares were capacity controlled. The lowest fares were:

Route	Return Fare
Auckland to Queenstown	\$399
Auckland to Christchurch	\$269
Wellington to Queenstown	\$299
Wellington to Christchurch	\$149

47. Other fares varied in price level and availability. The ranges of standard airfares were:

Route	Return Fare Range
Auckland to Queenstown	\$724-\$1364
Auckland to Christchurch	\$468-\$914
Wellington to Queenstown	\$536-\$1082
Wellington to Christchurch	\$260-\$560

48. Industry participants considered that the cheapest airfares for North Islanders were part of the ski holiday packages offered by wholesalers of ski holiday packages such as Ski Express, Skiwi, and Ansett Unwinders. The Commission found that ski packages, although representing 'good value' for what was included, did not represent a cheap South Island ski holiday. Wholesalers of these ski packages commented that they were primarily aimed at an affluent segment of the Auckland market and international visitors. Industry participants commented that North Islanders travelling on ski packages were generally affluent and were not only attracted to the South Island ski resorts by the better snow conditions and weather conditions, but in part by the excitement of travelling to, and spending time in, a resort town. One industry participant commented that part of the attraction of a ski trip to Queenstown is that it offered the same kind of experience as an overseas holiday.
49. On the basis of the available information the Commission considers that, depending upon the airfare secured and originating centre, travelling to the South Island would involve significant additional costs for North Islanders, in comparison to driving to Mt Ruapehu. Operators of South Island ski resorts generally confirmed this view and several operators commented that they felt that transport costs were the most significant barrier that South Island ski resorts faced in attracting skiers from the North Island.

“Short Stay” Skiers

50. Short stay ski trips usually consist of weekend or long weekend trips, where skiers leave on either Friday evening or very early Saturday morning and stay one to two nights. Some skiers live close enough to a ski field for it to be feasible to make a day trip and they would be included in this category. Factors which influence the choice of ski field for short stay skiers are distance, travelling time and the cost of getting to a ski area.
51. Industry participants have commented that short stay skiers at Whakapapa and Turoa included various types of skiers, including North Island dedicated skiers making frequent weekend or long weekend trips during the ski season, North Island skiers who were part of a social club or corporate group trip, and first-time skiers wanting to give skiing ‘a try’.
52. Generally, short stay skiers in the North Island consider the cost of air travel to the South Island prohibitive and will choose to drive to Mt Ruapehu rather than flying to a South Island ski field. Some industry participants commented that there were very few North Islanders who had sufficient discretionary income to make frequent weekend trips to South Island destination ski resorts. Industry sources also considered that the driving time of approximately four hours from Wellington and Auckland to Mt Ruapehu was not a disincentive for skiers from these centres to make short stay trips.
53. Industry participants considered that Mt Ruapehu was heavily focused towards ‘weekend skiers’. Figures supplied by RAL indicate that [] of skier days on Whakapapa were skied on Saturday and Sunday in 1997. In addition, RAL submitted that in 1995 [] of skiers at Whakapapa skied for less than 2 days and [] of skiers skied for 3-5 days.¹² This data confirms industry participant comments that a significant portion of skiers on North Island ski fields are short stay skiers for whom the South Island is not a close substitute.
54. RAL submits that the Rainbow ski field in the Nelson Lakes region has, in the last few years, become a cost competitive option for short stay Wellington based skiers. Figures provided to the Commission by Rainbow indicate that around [] of skiers at Rainbow come from Wellington. Despite Rainbow’s proximity to Wellington, in the Commission’s view there were certain disadvantages for skiers relative to the North Island ski resorts. Rainbow is a smaller field with significantly less capacity than the ski fields on Mt Ruapehu. Rainbow caters primarily for beginners and intermediate skiers and does not have the same variety of skiing as that available at Whakapapa and Turoa. The need to travel by ferry also precluded the ability of short stay skiers to make spontaneous decisions to go skiing for the day or the weekend.
55. Figures supplied to the Commission by RAL and TSR indicate that [] of skier days at Whakapapa and [] of skier days at Turoa were skied by Aucklanders, in comparison

¹² 1994 CM Research of Whakapapa customers.

to [] of skier days at Whakapapa and [] at Turoa that were skied by Wellingtonians. Given the capacity of Rainbow and the predominance of Aucklanders at Mt Ruapehu, the Commission considers that Rainbow was a limited option for North Island short stay skiers.

56. Given the above factors, the Commission considers that, were North Island ski fields to impose a *ssnip*, it is unlikely that significant numbers of North Island based short stay skiers would switch some or all of their skiing to South Island ski fields.

“Extended Stay” Skiers

57. Extended stay skiers are skiers who ski for 5 to 10 days or more at a time. Generally extended stay trips, unlike weekend trips, are planned well in advance and most skiers will have only one extended trip per season. Often, extended stay skiers tend to be dedicated skiers, given the time and financial commitment involved. Skiers in this category will tend to travel a greater distance than those in the “short stay” category and will normally choose from a range of ski areas. Industry participants commented that North Islanders who ski in the South Island generally make one trip during the season and this will be for an extended stay.
58. Industry sources commented that North Islanders who travel to the South Island are often skiers who have skied two to three seasons at Mt Ruapehu, and want to widen their skiing experience. Often these skiers have a high disposable income and as such are not sensitive to the additional transport costs involved in undertaking an extended ski trip at South Island destination ski resorts. The decision is likely to be based on relative snow and weather conditions in a particular season, the availability of discounted airfares, and the type of skiing experience they wanted that season and not on the price of lift passes charged by ski fields on Mt Ruapehu.
59. Amongst North Island extended stay skiers there is a segment for whom the additional costs of travelling to the South Island is likely to be prohibitive. This group includes ski club members, price conscious skiers such as families on modest incomes, and students. Information supplied to the Commission indicated that this segment of extended stay skiers is significant. Nearly [] of Whakapapa users were from a non-working situation which was attributed to []. A further [] of skiers considered themselves to be in the ‘low income’ bracket.¹³ Whakapapa has 48 ski lodges with a capacity of 1,500 beds, which is 20 to 25% of the number of skiers and snowboarders on Whakapapa on a well patronised day.
60. Industry participants commented that, given the costs involved in getting to the South Island, only a certain proportion of extended stay skiers from the North Island can afford to travel to the South Island. One South Island ski field operator felt that the domestic market was relatively ‘static’ and didn’t expect a growth in the number of North Island skiers coming to the South Island. The operator estimated that there are [

¹³ 1994 CM Research of Whakapapa customers

] skiers in the North Island and that only [] had the financial ability to undertake a ski trip to the South Island.

61. Recognising the type of North Island skier who travels to the South Island, some South Island ski field operators stated that they saw themselves as offering a skiing experience that was complementary to, rather than competing with, what was being offered by the North Island ski resorts supporting the view that North Island skiers who choose to ski in the South Island were making a decision that was independent of the price of a lift pass charged in the North Island. Based on the available information, the Commission has concluded that were North Island ski field operators to impose a *ssnip*, this would be unlikely to have a significant effect on the number of North Island extended stay skiers who would choose to ski in the South Island.

Conclusion on Geographic Market

62. The Commission has found that the majority of North Island skiers travelling to the South Island were extended stay skiers with a relatively high discretionary income. The Commission considered that transport costs to the South Island ski resorts were prohibitive for North Island “short stay” skiers and a segment of North Island “extended stay” skiers. The Commission considers that were North Island ski fields to impose a *ssnip*, that it was unlikely that sufficient numbers of North Island skiers would switch to skiing in the South Island to make the price increase unprofitable. The Commission considers that even if a *ssnip* involving a 10% price increase were imposed, the impact would be largely the same.
63. Having considered the above factors the Commission has concluded that the relevant market is a North Island market.

Conclusion on Market Definition

64. The Commission has concluded that the relevant market is the North Island market for the provision of downhill skiing and snowboarding services.

ASSESSMENT OF DOMINANCE

Overview

65. Section 66(3) of the Act, when read in conjunction with s 47(1) of the Act, requires the Commission to give clearance for a proposed acquisition if it is satisfied that the proposed acquisition would not result, and would not be likely to result, in a person acquiring or strengthening a dominant position in a market. If the Commission is not so satisfied, clearance must be declined.
66. Section 3(9) of the Act states that a person is in a “dominant position” if:

... a person as a supplier or an acquirer of goods or services either alone or together with an interconnected or associated person is in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market ...

67. That section also states that a determination of dominance shall have regard to:

- market share, technical knowledge and access to materials or capital;
- the constraint exercised by competitors or potential competitors; and
- the constraint exercised by suppliers or acquirers.

68. In *Port Nelson Ltd v Commerce Commission* (1996) 3 NZLR 554, the Court of Appeal approved the following dominance standard, adopted by McGechan J in the High Court:

...dominance involves more than “high” market power; more than mere ability to behave “largely” independently of competitors; and more than power to effect “appreciable” changes in terms of trading. It involves a high degree of market *control*.

69. In the Commission’s view, a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:¹⁴

- the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;
- the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share.

70. However, as Tipping J stated in the High Court decision of *New Zealand Magic Millions Limited & Anor v Wrightson Bloodstock Limited* (1990) 3 NZBLCA 99-175:

[]arket share is not the sole determinant of the presence or absence of dominance or market power. The most that can be said is that dominance is frequently attended by substantial market share but all the other relevant factors must be brought to account. For example, a substantial market share without barriers to entry will seldom, if ever, be indicative of dominance.

¹⁴ See note 7, p17.

71. Accordingly, before a conclusion on dominance is reached, it is necessary to consider all factors listed in s 3(9) and any other relevant factors.

The North Island Market for the Provision of Downhill Skiing and Snowboarding Services

Market Shares

72. Downhill skiing and snowboarding services in the North Island are currently provided on two commercial ski fields, Whakapapa and Turoa, and by the Tukino club ski field on Mt Ruapehu, and Manganui club ski field on Mt Taranaki. In its application RAL provided the Commission with figures relating to the New Zealand ski and snowboard industry in 1997¹⁵. The Commission has calculated the following market shares based upon that information:

Ski Field	Total Skier Days	%
Whakapapa (RAL)	190,000	53
Turoa (TSR)	157,000	45
Combined Entity	347,000	98
Club Ski Fields	5600	2

73. On the basis of the above the figures, the combined entity's market share would fall outside the Commission's "safe harbours" (refer paragraph 69). However as, earlier stated, the fact that a proposed acquisition may lead to a market share falling outside these "safe harbours" does not necessarily mean that it will be likely to result in the acquisition or strengthening of a dominant position in the market. Additional factors must also be considered before a conclusion on dominance is reached.

Constraint by Existing Competitors

74. The capacity of club ski fields is small. The operators of Tukino commented that on a good day there may be 100 to 300 skiers on the field. The lifts provided at club ski fields are limited to rope tows, and access to the club fields is not straightforward (for example access to the Tukino requires a four wheel drive vehicle).
75. Club fields are generally based around individual ski clubs and family skiing. They have a niche of customers who enjoy the smaller crowds, the camaraderie of ski club

¹⁵ "The New Zealand Ski & Snowboard Industry", see note 1.

skiing, and they are skiers for whom the limited facilities is not a disadvantage. For example, the operators of Tukino commented that skiers on Tukino predominantly belong to the three ski clubs that have lodges there and that Tukino has only a minimal number of non-club member skiers on its slopes.

76. The Commission's view is that the combined entity is unlikely to face effective competition from the two club fields in the North Island given their capacity and facilities. For the majority of North Island skiers, the limited facilities and accessibility of club ski fields outweighs the cost advantages. The information available shows that North Island skiers choose to ski at Whakapapa and Turoa. Having regard to the above factors the Commission concludes that the two North Island club fields are unlikely to provide an effective constraint on the combined entity.

Constraint from Potential Competitors

77. The Commission considers that the barriers to entry for a potential operator of a new ski field in the North Island are significant. The establishment of a ski field is capital intensive, with a significant investment required to develop road access to the ski area, ski lifts and other facilities.
78. The development of a ski field requires compliance with a substantial range of regulatory requirements, including compliance with the provisions of the Resource Management Act. In the case of a ski field developed on land managed by the Department of Conservation ("DOC"), an application for a concession must be lodged with DOC. A full environmental assessment is required for every ski area concession proposal.
79. The Commission considers that the potential for expansion by existing operators is limited. Club ski fields would be required to reapply to DOC seeking a variation, or a new concession, to become a commercial ski field, as they are currently licensed as low impact ski fields. Significant capital investment would be required in terms of road access and lift facilities to attract skiers away from the two North Island commercial ski fields.
80. Industry sources advised that the most suitable area to develop a new ski field in the North Island would be in the vicinity of Whakapapa and Turoa in the Tongariro National Park. Based on information supplied to the Commission by DOC, it appears that the likelihood of ski field extensions or new ski field licences being issued for Tongariro National Park by DOC is low. The Tongariro National Park Management Plan for 1990 to 2000 states that: "No further ski field areas are seen as necessary or desirable during the term of this management plan".¹⁶ It appears that a significant expansion of Tukino is similarly unlikely and that DOC's intention appears that Tukino remain a low-impact club ski field.¹⁷

¹⁶ *Tongariro National Park Management Plan, Volume 1 – Objectives and Policies*, p.95.

¹⁷ *ibid.*

81. Having regard to the above factors, the Commission has concluded that potential entry to, or expansion within, the market by an existing or new operator is unlikely to act as a significant constraint on the combined entity.

Constraint by Customers

82. RAL submits that the merged entity will be subject to a degree of constraint from skiers. The vagaries of the weather at Mt Ruapehu are such that over 70% of skiers buy day passes at Whakapapa. RAL submit that there is limited demand at Mt Ruapehu for multi-day lift passes. RAL considers that given the particularities of ski lift purchasing behaviour at Mt Ruapehu, the combined entity is unable to discriminate between skiers who are captive to the North Island and skiers who consider skiing in the South Island.
83. RAL contends it is a feature of the market that RAL's pricing is constrained by the prices at South Island ski fields. RAL submits skiers are keenly aware of the lift pass prices at South Island ski fields and that, were the combined entity to increase the price of lift passes beyond the market value of skiing at Mt Ruapehu, a significant numbers of skiers would modify their behaviour, for example by reducing their numbers of days skiing, or choosing not to ski that season.
84. The Commission considers that, although the above factors do provide some degree of constraint on the combined entity, the cost of a lift pass in relation to the total cost of a skiing holiday is such that, were the combined entity to impose a *ssnip*, this would be unlikely to deter significant numbers of skiers from skiing at Mt Ruapehu.
85. Having regard to the above factors, the Commission has concluded that customers of Whakapapa and Turoa are unlikely to act as a significant constraint on the combined entity.

OVERALL CONCLUSION

86. This Commission has considered the likely impact of the proposal in the following market:
- the North Island market for the provision of downhill skiing and snowboarding services.
87. Having regard to the various elements of s 3(9) of the Act, and all the other relevant factors, the Commission is not satisfied that the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in the North Island market for the provision of downhill skiing and snowboarding services.

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DETERMINATION ON NOTICE OF CLEARANCE

Accordingly, pursuant to s 66(3)(b) of the Act, the Commission declines to give clearance for the proposed acquisition by Ruapehu Alpine Lifts Limited or an interconnected body corporate of Ruapehu Alpine Lifts Limited of a 100% shareholding in, or all of the assets of, Turoa Ski Resort Limited.

Dated this 14th day of June 1999

M N Berry
Acting Chairman