

Determination

Cardrona Alpine Resort Limited and Treble Cone Investments Limited [2019] NZCC 24

The Commission:	Anna Rawlings Dr John Small John Crawford
Summary of application:	An application from Cardrona Alpine Resort Limited seeking clearance to acquire up to 100% of the shares of Treble Cone Investments Limited or the assets it uses to operate the Treble Cone ski field.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission gives clearance to the proposed acquisition.
Date of determination:	13 December 2019

Confidential material in this report has been removed. Its location in the document is denoted by [].

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The proposed acquisition

1. On 5 September 2019, the Commerce Commission (the Commission) registered an application under section 66(1) of the Commerce Act 1986 (the Act) from Cardrona Alpine Resort Limited (Cardrona) seeking clearance to acquire up to 100% of the shares of Treble Cone Investments Limited or the assets that Treble Cone Investments Limited uses to operate the Treble Cone ski field located west of Wanaka (Treble Cone) (the Acquisition).¹
2. Cardrona and Treble Cone operate commercial ski fields that offer a range of skiing-related services such as lift passes, lessons, and rental equipment as well as food and beverage services. They operate the only commercial ski fields near Wanaka. Aside from the Cardrona and Treble Cone ski fields, the closest ski fields to Wanaka are those owned by NZ Ski Limited (NZ Ski) – the Remarkables and Coronet Peak ski fields, near Queenstown.

Our decision

3. The Commission gives clearance to the Acquisition as it is satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

Our framework

4. Our approach to analysing the competition effects of the merger is based on the principles set out in our Mergers and Acquisitions Guidelines (our guidelines).²

The substantial lessening of competition test

5. As required by the Act, we assess mergers using the substantial lessening of competition test.
6. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).³
7. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the ‘competitive price’),⁴ or reduce non-price factors such as quality or service below competitive levels.⁵

¹ Throughout this document the terms Cardrona and Treble Cone are used to describe the ski fields operated by Cardrona Alpine Resorts Limited and Treble Cone Investments Limited unless the context requires otherwise.

² Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019).

³ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

⁴ Or below competitive levels in a merger between buyers.

⁵ *Mergers and Acquisitions Guidelines* above n2 at [2.21].

When a lessening of competition is substantial

8. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.⁶ Some courts have used the word ‘material’ to describe a lessening of competition that is substantial.⁷
9. As set out in our guidelines, there is no bright line that separates a lessening of competition that is substantial from one which is not. What is substantial is a matter of judgement and depends on the facts of each case.⁸ Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

When a substantial lessening of competition is likely

10. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility but does not mean that the effect needs to be more likely than not to occur.⁹

The clearance test

11. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.¹⁰ If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.

The parties

Cardrona

12. Cardrona owns and operates the Cardrona ski field, located in the Southern Lakes region of the South Island and approximately a 20 minute drive from Wanaka and 50 minutes from Queenstown. Cardrona is part of the Wayfare Group Limited (Wayfare), which operates Real Journeys Limited and several other tourism-focused companies based in the lower South Island. Wayfare acquired Cardrona in 2013.
13. Cardrona offers a mix of beginner, intermediate and expert grade trails across 354 hectares. Cardrona’s current capacity is [] skiers per day and it averages [] skiers per day. Cardrona is typically open for skiing for 20 weeks per year.

Treble Cone

14. Treble Cone owns and operates the Treble Cone ski field located a 15-20 minute drive from Wanaka and an hour and half from Queenstown. There are currently 59 shareholders of Treble Cone. These shareholders acquired the assets of the Treble Cone ski field in 2002.

⁶ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

⁷ *Woolworths & Ors v Commerce Commission* (HC) above n6 at [129].

⁸ *Mergers and Acquisitions Guidelines* above n2 at [2.23].

⁹ *Woolworths & Ors v Commerce Commission* (HC) above n6 at [111].

¹⁰ Section 66(3)(a) of the Commerce Act 1986.

15. The Treble Cone ski area also offers a mix of beginner, intermediate and expert grade trails across 550 ha. Treble Cone’s capacity is [] skiers per day and averages [] skiers per day. Treble Cone is typically open for 12 weeks per year.

Other interested parties

16. NZ Ski operates the two nearest commercial ski fields to Queenstown, being the Remarkables and Coronet Peak ski fields. They are each located about 20 minutes’ drive from Queenstown and about an hour and a half from Wanaka. NZ Ski also operates the Mt Hutt ski field near Methven.
17. There are a number of smaller commercial and club ski fields across the South Island. None of these are near either Wanaka or Queenstown. The smaller commercial ski fields have more limited terrain and facilities, for example, the club fields often have no chair lifts.¹¹
18. There is only one commercial ski field operator located outside of the South Island – Ruapehu Alpine Lifts Limited (Ruapehu), which operates the Turoa and Whakapapa ski fields in the North Island.

Industry background

19. Ski fields are capital intensive and operators need to continually invest significant amounts of money in order to attract and retain skiers. There is a limited pool of potential skiers who live in New Zealand and ski fields are naturally constrained in how long they are open each year. In order to justify investment, New Zealand’s main commercial ski fields rely on overseas skiers.¹²
20. The Southern Lakes region has experienced a significant increase in the number of passengers visiting Queenstown over the last 10 years, with numbers of international passengers through Queenstown airport increasing from approximately 70,000 in 2008 to over 600,000 in 2018. Domestic passenger numbers have increased from approximately 600,000 to over 1,600,000 over the same time period.¹³
21. Lift passes make up a significant part [] of a commercial ski field’s revenue, with the remaining revenue coming from a range of skiing related services such as lessons, rental equipment, and food and beverage services.¹⁴ Commercial ski fields

¹¹ In addition to Cardrona, Treble Cone and NZ Ski, the application lists an additional 14 commercial and club fields in the South Island: Ohau; Mt Dobson; Roundhill; Porter Height; Awakino; Fox Peak; Mt Olympus, Mt Cheeseman; Broken River; Craigieburn; Temple Basin; Hanmer Springs; Mt Lyford; and Rainbow. Clearance Application from Cardrona (5 September 2019).

¹² Clearance Application from Cardrona (5 September 2019). We note that some of these investments are aimed at extending the ski field’s operation from purely skiing activities to summer-related activities.

¹³ See ‘Queenstown Airport- Passenger History 2005 to 2018’, Queenstown Airport.

¹⁴ <https://www.queenstownairport.co.nz/corporate/airport-statistics>

¹⁴

typically offer two types of lift passes – a season pass, and a single or multi-day pass.¹⁵

22. Table 1 lists standard pricing for lift passes at the main commercial ski fields in New Zealand for the 2019 season. Cardrona, NZ Ski and Ruapehu have similar pricing, while Treble Cone recently made a decision to significantly increase its prices in comparison to the other commercial operators.¹⁶ Although the proportions of the different types of passes sold vary between individual ski fields, based on revenue:
- 22.1 season passes account for about [] of all lift pass revenue;
- 22.2 multi-day passes account for about [] of all lift pass revenue; and
- 22.3 day passes account for about [] of all lift pass revenue.¹⁷
23. While season passes account for a smaller proportion of total sales than other passes, all operators stated that pre-commitment from early bird season pass sales is an important part of their operations, given the high fixed costs in operating ski fields and the variability in the sales of daily passes that can occur within a season.¹⁸

Table 1: Pricing of the main commercial ski field operators in New Zealand in 2019.

Lift pass (adult)	Cardrona	Treble Cone	NZ Ski*	Ruapehu
Season pass early bird (September to April)	\$699 with July school holidays blackout \$950 with no blackouts	\$1,499	\$649 (Sep-Jan) \$749 (Feb - Apr)	\$399 (Oct) \$599 (Nov-Feb) \$849 (Mar-Apr)
Season pass (in season)	\$1,299	\$2,249	\$1,199	\$1,299
Multi day (5 day)	\$525 (@\$105pd)	\$600 (@\$120pd)	\$495 (@\$99pd)	\$399 (@\$80pd)
Multi day (3 day)	\$330 (@\$110pd)	\$360 (@\$120pd)	\$297 (@\$99pd)	\$319 (@\$106pd)
Day pass	\$120	\$149	\$129	\$129

Source: Clearance Application. *Includes Coronet Peak, the Remarkables, and Mt Hutt.

Previous Commission decisions

24. The Commission previously considered an acquisition involving competing ski fields in 1999 and 2000. Both of these investigations involved the purchase by Ruapehu Alpine Lifts of Turoa Ski Resorts. We initially declined to grant clearance because of the limited existing and potential alternatives for customers in the North Island

¹⁵ Throughout this paper, we use the term ‘lift pass’ to mean day, multi day and season pass, unless stated otherwise.

¹⁶ Historically, Treble Cone standard prices for lift passes were similar to those at Cardrona and NZ Ski.

¹⁷ Clearance Application from Cardrona (5 September 2019).

¹⁸ Clearance Application from Cardrona (5 September 2019) and Commerce Commission interview with NZ Ski (25 September 2019).

market for the provision of downhill skiing and snowboarding services. Ruapehu Alpine Lifts then sought authorisation for the purchase which was granted because the benefits from the merger would outweigh the detriments that the merger would generate in the North Island market for the provision of downhill skiing and snowboarding services.¹⁹

With and without scenarios

With the acquisition

25. With the Acquisition, Cardrona would own both the Cardrona and Treble Cone ski fields. Cardrona advised that it intends to continue to operate Treble Cone but, post-acquisition, it intends to invest [] in order to increase Treble Cone's reliability such as adding additional snow making facilities. Cardrona advised that this investment would ensure Treble Cone opens in early July and that it remains open throughout its 12-week season.²⁰

Without the acquisition

26. We consider the relevant counterfactual is that Treble Cone would remain as an independent competitor, either under its current ownership structure or third party ownership. However, we do not consider that Treble Cone's competitive position would materially change under third party ownership compared to the status quo.
- 26.1 Treble Cone is in a challenging financial situation but there is insufficient evidence to conclude that the business is at risk of imminent failure under the status quo.
- 26.2 While there is evidence that a third party would purchase Treble Cone if Cardrona did not, there is not sufficient evidence to suggest that a new owner is likely to result in Treble Cone performing in a materially different way to the status quo.
27. Treble Cone advised us that the challenging financial position of Treble Cone is widely known and that Cardrona is likely to be the only party interested in acquiring Treble Cone.²¹
28. Cardrona submitted that, absent it acquiring Treble Cone, Treble Cone is likely to remain operating as an independent entity. Cardrona also submitted that if the Acquisition does not proceed, it is possible that other parties may be interested in purchasing Treble Cone and that, in its view, Treble Cone's Board would explore any alternative option on its merits if that eventuated.²²

¹⁹ For example, Ruapehu Alpine Lifts and Turoa Ski Resorts (Commerce Commission Decision 357, 1999) and Ruapehu Alpine Lifts and Turoa Ski Resorts (in receivership) (Commerce Commission Decision 410, 2000).

²⁰ See <https://youtu.be/vnSqEHaHK2M> and []

²¹ Commerce Commission interview with Treble Cone (27 September 2019).

²² Clearance Application from Cardrona (5 September 2019) at [51].

29. [] potential alternative purchasers we spoke to indicated that they had not considered Treble Cone as a viable acquisition target due to the level of investment it needed.²³ However, another party did express an interest in Treble Cone. Hamish Hepburn, owner and managing director of the Mount Cook Collection hotel group, submitted an offer to purchase Treble Cone on 8 October 2019 that was broadly equivalent to Cardrona's.²⁴ However, Mr Hepburn could not provide any evidence to indicate that his ownership would entail a materially more competitive counterfactual scenario than is the case under the status quo.²⁵
30. Given this, without the merger, we do not consider that there would be any significant investment in Treble Cone that would significantly improve its facilities.
31. We consider that, in the absence of Cardona's offer to acquire Treble Cone, there is a real chance that Treble Cone shareholders would be open to considering offers from third party buyers at or around the price originally offered by Cardrona,²⁶ and that there is a real chance that a third party would make an offer acceptable to shareholders. We also note [].²⁷

Conclusion on the relevant counterfactual

32. We consider that the relevant counterfactual involves Treble Cone remaining as an independent competitor, either under its current ownership or third-party ownership. We do not consider that Treble Cone's competitiveness would differ materially under either scenario.

Market definition

33. Market definition is a tool that helps identify and assess the close competitive constraints the merged entity would face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.
34. We define markets in the way that best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive

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²⁴ Letter from Hamish J Hepburn to the Commerce Commission (19 October 2019).

²⁵ Email from Hamish Hepburn to the Commerce Commission (26 November 2019).

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constraints, and the extent of those constraints. For that reason, we also consider products which fall outside the market but which still impose some degree of competitive constraint on the merged entity.

35. In general, the more closely substitutable two products are, the closer the competition and the greater the competitive constraint between the products.

Cardrona's view of the relevant market

36. Cardrona submitted there is a national market for the provision of downhill skiing and snowboarding services. In particular, Cardrona noted that:

36.1 while there is price discrimination based on the type of lift passes purchased by customers, the Commission has in the past not considered it necessary delineate skiing and snowboarding services by particular passes or by particular customer groups;²⁸ and

36.2 the geographic market is national in scope due to the high volume of skiers skiing at Cardrona and Treble Cone from outside of the South Island.²⁹

Product dimension

37. Both Cardrona and Treble Cone provide commercial skiing and snowboarding facilities and services to customers (skiing services) and these skiing services are the primary reason why customers visit their respective ski fields.³⁰

38. Cardrona submitted that the Cardrona and Treble Cone ski fields are largely complementary, given the differences in their terrain. It submitted that Cardrona is a beginner and intermediate "family resort", while Treble Cone is known as a field for advanced skiers and snowboarders and is not generally regarded as a field for beginners due to the small size of its learners' area.³¹

39. Nevertheless, while Treble Cone and Cardrona offer a different mix of terrain types,³² we consider that the services and terrain offered by Cardrona and Treble Cone are sufficiently similar such that we have grouped them together for the purposes of our assessment.

40. To access the full range of skiing services at a ski field, customers need to purchase a lift pass. As described above, commercial ski fields offer two main types of lift passes to cater to the demands and requirements of the main types of skiers, namely:

²⁸ Ruapehu Alpine Lifts and Turoa Ski Resorts (in receivership) (Commerce Commission Decision 410, 2000).

²⁹ Clearance Application from Cardrona (5 September 2019) at [80] to [87].

³⁰ Commercial ski fields unlike club fields provide a full range of skiing related services such as ski lessons and equipment hire, as well as food and beverage offerings. We consider that any competition concerns for these type of auxiliary services are unlikely to arise if the Acquisition were to proceed and so we have therefore focused our assessment on skiing services.

³¹ Clearance Application from Cardrona (5 September 2019) at [25-26].

³² For example, Cardrona's terrain is defined as 25% beginner, 50% intermediate, and 25% advanced, as opposed to Treble Cone which has 10% beginner, 45% intermediate, and 45% advanced terrain. Clearance Application from Cardrona (5 September 2019).

- 40.1 season passes – typically purchased by those who plan to ski multi-days throughout the entire winter season at a particular ski field;³³ and
- 40.2 day and multi-day passes – typically purchased by:
 - 40.2.1 holidaymakers from outside of the local area, who decide after arrival to the region to ski for one or more days (but for fewer days than would justify a season pass) at a particular ski field;
 - 40.2.2 skiers from outside the region who planned to ski before booking but for fewer days than would justify a season pass at a particular ski field; and
 - 40.2.3 residents within a local area who only ski occasionally at a particular ski field.
- 41. Given that the types of passes for skiing services are designed to cater to the needs of different types of skiers, and are priced differently, we consider there is limited substitutability between types of passes and have therefore defined two separate product markets for the different types of ski passes. We have separately assessed the competitive effects of the Acquisition in the product markets for:
 - 41.1 season passes for skiing and snowboarding services; and
 - 41.2 day and multi-day passes for skiing and snowboarding services.

Geographic dimension

- 42. The Cardrona and Treble Cone ski-fields are both located in the Wanaka area. In defining the geographic dimension of the market, we considered the extent to which skiers would switch to ski fields outside the Wanaka area. In our view, the level of switching indicates that the relevant geographic dimension should include all the ski fields in the Southern Lakes region.
- 43. We approached the question of geographic market definition by first considering whether the relevant geographic market for skiing services is limited to the Wanaka region, or encompasses both the Wanaka and Queenstown fields. We applied a SSNIP (small but significant non-transitory increase in price) analysis. We assessed whether a SSNIP introduced at the Wanaka ski fields would lead Wanaka skiers to switch to the Queenstown fields in sufficient numbers that the price rise would be unprofitable. If so, the geographic dimension of the market would be at least the Southern Lakes region including both Wanaka and Queenstown ski fields.
- 44. A SSNIP is usually defined as a price increase of 5-10% and in this case, based on the figures in Table 1, a SSNIP would represent:

³³ For instance, based on the figures in Table 1, if a skier is likely to want to ski more than seven days at Cardrona during the year, then it would be cheaper for them to purchase an early bird season pass rather than individual day passes.

- 44.1 at Cardrona, a price increase of \$65 - \$130 for a season pass and a price increase of \$6 - \$12 for a day pass; and
- 44.2 at Treble Cone, a price increase of \$112 – \$225 for a season pass and a price increase of \$7 – \$14 for a day pass.
45. Many customers travel a considerable distance to ski in Wanaka. Data provided by the parties indicates that a large proportion of revenue for both Cardrona and Treble Cone comes from skiers from outside of Wanaka. However, Wanaka locals are less likely to be willing to travel far to ski. This means that the profitability of a SSNIP on the passes purchased by Wanaka locals would depend on (among other factors):
- 45.1 the proportion of each field’s customers who are Wanaka locals; and
- 45.2 their respective reaction to a price increase (i.e. their elasticity of demand).
46. A significant proportion of the skiers at the two Wanaka fields do not appear to be locals meaning that a SSNIP imposed on Wanaka locals is likely to be unprofitable. The available data, while incomplete, indicates a significant number of season passes for both Cardrona and Treble Cone are purchased by customers who are located outside of the Wanaka region.³⁴ The proportion of day and multi-day passes bought by customers who are located outside of the Wanaka [].
47. In our view, this indicates that the geographic market for skiing services is likely to be at least as wide as the Southern Lakes region, which includes NZ Ski’s two ski fields in Queenstown.
48. We acknowledge that some Wanaka locals may not consider Queenstown ski fields to be close substitutes for those located near Wanaka and thus may have different options to other skiers. We discuss in the next section whether it is appropriate to define a separate customer market for those skiers to consider the potential harm to local skiers that might arise from the Acquisition.
49. We also recognise that a degree of competitive constraint is likely to be provided by ski options outside of the Southern Lakes region for those who travel into the region to ski. For example, skiers based in the North Island or Australia may decide to ski elsewhere. However, we have not found it necessary for the purposes of this determination to consider if the geographic dimension of the market is wider than the Southern Lakes region.

Customer dimension

50. As noted above, we have also considered whether there is a group of customers who may be more at risk of harm from the Acquisition, such as those living in the Wanaka region. As outlined above, the options available to customers in Wanaka may be different to those living elsewhere. Those customers may be harmed if the merged

³⁴ Detailed location data was provided for [] of Cardrona’s New Zealand season pass sales, and for [] of Treble Cone’s total lift pass sales.

entity has the ability and incentive to price discriminate between Wanaka skiers and those from other areas.

51. Currently, neither Cardrona nor Treble Cone price discriminates based on the geographic origin of skiers (with the only exception being reduced rates for local school children).
52. In our competition analysis, we have considered whether or not the merged entity would have the ability and incentive to discriminate against Wanaka local skiers and, if so, whether this would constitute a substantial lessening of competition.

Conclusion on the relevant markets

53. For the purposes of assessing the potential competition effects that may arise from the Acquisition, we have identified the following relevant markets, namely the markets for:
 - 53.1 the supply of day and multi-day ski passes for skiing services to customers in the Southern Lakes region; and
 - 53.2 the supply of season ski passes for skiing services to customers in the Southern Lakes region.
54. As noted above, we have not reached a conclusion as to whether the geographic dimensions of the market extend beyond the Southern Lakes region. Further, we recognised that within this Southern Lakes market, there may be groups of Wanaka locals who may be less likely to ski outside the Wanaka region. We have assessed whether or not the merged entity has the ability and incentive to price discriminate in a way that harms local Wanaka skiers in the competition analysis section.

How the acquisition could substantially lessen competition

55. We have considered the competition effects that could arise in the two Southern Lakes-based markets identified above. This involved us considering if the Acquisition would have the effect or likely effect of substantially lessening competition through either unilateral or coordinated effects as a result of the reduction of competitors from three to two.
 - 55.1 For unilateral effects, we have considered whether the Acquisition would enable the merged entity to increase the price or reduce the quality of its ski passes, including to certain groups of customers located in the Wanaka region, such that there would be a substantial lessening of competition.
 - 55.2 For coordinated effects, we have considered whether the conditions in the relevant market are currently conducive to coordination, and whether the removal of Treble Cone as an independent competitor would make coordination between the merged entity and the two NZ Ski ski fields more likely, more complete or more sustainable such that there would be a substantial lessening of competition through increased prices or decreased quality of service.

Unilateral effects - competition analysis

56. In this section we assess whether the removal of Treble Cone as an independent competitor would have the effect or likely effect of substantially lessening competition in the markets for the supply of ski passes in the Southern Lakes region, through either unilateral or coordinated effects. For ease, we have considered the impact of the Acquisition on single day and multi-day passes, and season passes, together as the constraints and competitive conditions are similar.
57. Table 2 shows the estimated market shares for ski field operators in the Southern Lakes region.

Table 2: Estimated skier days on the ski fields in the Southern Lakes region

Operators	2016		2017		2018	
	Days	Share (%)	Days	Share (%)	Days	Share (%)
Cardrona	[
Treble Cone						
NZ Ski: Coronet Peak and the Remarkables						
Total skier days		100		100		100

Source: Ski Area Association of New Zealand (supplied by Cardrona).

Closeness of competition between Cardrona and Treble Cone

58. Table 3 below lists the total number of skier days at Cardrona and Treble Cone. As outlined above, there are no other commercial or club ski fields offering skiing services in the Wanaka area.

Table 3: Estimated skier days on the ski fields within the Wanaka area

Operators	2016		2017		2018	
	Days	Share (%)	Days	Share (%)	Days	Share (%)
Cardrona	[
Treble Cone						
Total skier days		100		100		100

Source: Ski Area Association of New Zealand (supplied by Cardrona).

59. Cardrona submitted that Treble Cone and Cardrona are not close competitors. Rather, it considers that the two fields are complementary because of their different types of terrain. It submitted that this is manifested in the two fields currently having significantly different pricing structures and offering a different value proposition to customers.
- 59.1 Cardrona considers itself to be predominantly a beginner and intermediate level family resort, offering lessons and a learners' area. Cardrona also offers

a park and pipe (freestyle) skiing option aimed at both recreational and high-performance users.³⁵

59.2 In contrast, Cardrona submitted that Treble Cone is known as a field for advanced skiers and snowboarders, with a smaller learners' area. Treble Cone does not have a strong freestyle offering.³⁶

60. With some exceptions, the majority of parties who made submissions or who we interviewed also considered that Treble Cone and Cardrona are complementary ski fields, offering a different value proposition to each other.
61. However, a number of other parties noted that Treble Cone and Cardrona do compete and customers have switched between them in response to more attractive pricing. In addition, the parties' internal documents presented a mixed picture as to the extent to which they compete.
- [
-]
62. Notwithstanding the differentiation between the two fields, we consider that Cardrona and Treble Cone are likely to compete reasonably closely. Both are commercial ski fields and they can be accessed relatively easily from Wanaka. If one ski field is closed on a particular day, skiers based in and around Wanaka are likely to consider the other ski field to be their next best alternative. We consider whether the merged entity would be able to discriminate against these Wanaka based locals below.

Constraint from Queenstown ski fields

63. Even though we consider that Treble Cone and Cardrona compete closely, we have considered whether the merged entity will be constrained by NZ Ski's ski fields in Queenstown.
64. While it appears that Treble Cone's closest competitor is Cardrona, the reverse does not appear to be true. Cardrona's closest competitor is NZ Ski, with its two Queenstown ski fields, and NZ Ski's closest competitor is Cardrona. The primary reason for this appears to be the proximity of Cardrona and NZ Ski's two fields to Queenstown. Treble Cone is unlikely to compete on its own with NZ Ski's fields.
65. Industry parties consider that, in general, the Queenstown ski fields closely compete with Cardrona, given the similarities between them in terms of terrain and services and the geographic proximity of Cardrona to Queenstown. Parties also consider that the Acquisition would likely make Cardrona a stronger alternative to NZ Ski by allowing it to replicate NZ Ski's dual mountain pass.
66. Cardrona's closest competitor is NZ Ski. We understand that Queenstown locals would see Cardrona as a competitor to NZ Ski's fields but they would probably not see Treble Cone as a competitor to NZ Ski's fields. It is unlikely that NZ Ski's local

³⁵ Clearance Application from Cardrona (5 September 2019) at [25] and [26].

³⁶ Clearance Application from Cardrona (5 September 2019).

season pass holders would consider a season pass at Treble Cone to be an alternative for them.³⁷ Few day pass customers in Queenstown would travel the additional 40 minutes (approximately) from Cardrona to Treble Cone.³⁸

67. Both Cardrona and NZ Ski have invested significant amounts of money in their ski fields and these investments appear to have been justified on the current and future growth of skiers arriving into Queenstown.³⁹ Treble Cone on the other hand has not made any such investments because, given its geographic distance from Queenstown, it does not have the same ability to attract skiers who are arriving into Queenstown.⁴⁰
68. We consider that Cardrona and NZ Ski's ski fields are close competitors and that Cardrona and Treble Cone are close competitors. We also consider that Treble Cone and NZ Ski are likely to be indirectly constrained by one another due to the presence of Cardrona which competes with both, albeit to a lesser extent than that between Cardrona and NZ Ski (or Cardrona and Treble Cone).
69. This chain of substitution allows customers of Treble Cone to benefit from the closeness of competition between Cardrona and NZ Ski. Accordingly, following the acquisition, the merged entity will continue to be constrained by the presence of NZ Ski, which is of a similar size and competes directly with Cardrona and, by extension, with Treble Cone.

Constraint from ski fields outside of the Southern Lakes region

70. Table 4 below outlines the estimated locations of customers for both Cardrona and Treble Cone for 2018 across their ski pass range. While the data is incomplete, it indicates a high proportion of these customers are located outside of Wanaka. With a significant number of customers travelling to Wanaka to ski, we consider that the alternative skiing options available to these skiers is likely to act as a strong constraint on the merged entity.

³⁷ []

³⁸ For example, expert skiers seeking variety or more challenging terrain after skiing several days at Coronet Peak or The Remarkables.

³⁹ '\$35m investment in skifields' Otago Daily Times (1 November 2018); 'South Island ski fields plan for warmer winters' Radio New Zealand (21 October 2019),

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⁴⁰ Commerce Commission interview with Treble Cone (27 September 2019);

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Table 4: Location of single and multi-day pass customers in 2018

Location	Cardrona	Treble Cone	
	All passes (%)	Day pass (%)	Multi day pass (%)
Wanaka	[]	[]	[]
Other South Island	[]	[]	[]
North Island	[]	[]	[]
International	[]	[]	[]

Source: Cardrona, Treble Cone, Commission estimates

71. With many existing and potential customers needing to travel to the Southern Lakes region to ski, if the price of ski passes at Treble Cone or Cardrona were to increase (or the quality of skiing decrease), many customers can choose to ski at a skifield outside of the Southern Lakes region. These alternative options could include the smaller commercial fields in the South Island, and North Island and international fields.⁴¹ The Acquisition will not change the constraint provided by the alternative ski fields from outside of the market.

Ability for the merged entity to price discriminate against Wanaka locals

72. Some Wanaka locals may consider Cardrona and Treble Cone to be the only real choice of ski field for them. In this section, we assess whether the merged entity would have the ability and incentive to discriminate against local Wanaka customers as the Acquisition would reduce the alternatives available to local Wanaka customers.
73. However, we do not consider that the merged entity is likely to have either the ability or the incentive to engage in price discrimination against any group of customers in and around Wanaka, such that it would be likely to result in a substantial lessening of competition. A strategy of price discrimination against Wanaka locals would be difficult to design, maintain and police successfully, unlikely to have material impact on revenues of the merged entity and it is likely to significantly impact on the goodwill of the community, removing the incentive to introduce such discrimination.

Ability and incentive for the merged entity to price discriminate

74. As discussed above, notwithstanding our conclusion that the relevant market is likely to be as wide as the Southern Lakes region, there may be a particular group of Wanaka local customers in the market who may be more at risk of harm from price discrimination.
75. In order for these customers to be subject to price discrimination, the merged entity would need to have:
- 75.1 the ability to:

⁴¹ For example, currently skiers from outside of the Wanaka region account for approximately [] of Treble Cone's revenue in 2018, for Cardrona closer to [].

- 75.1.1 identify those customers purchasing season ski passes who live in or around the Wanaka area
 - 75.1.2 raise the price payable by locals for a season pass; and
 - 75.1.3 prevent locals from avoiding the price increase by, for example, having friends and family from outside the Wanaka area buying a lower priced season pass for them.
- 75.2 the incentive to engage in price discrimination against those locals, taking into account the profitability or otherwise of engaging in such behaviour.
76. Currently the ski fields do not determine with a high degree of precision where their customers come from.⁴² In order for Cardrona to require this information as a condition of purchase, it would need to invest in its point of sale system and impose additional and costly information requirements on its customers.
77. While technically possible, there appear to be practical problems with identifying customers who live in the Wanaka area in order to charge them a higher price than other skiers. This is because the customer could provide a non-Wanaka address. In Cardrona's view, there would be no reliable way, short of requiring all customers to provide proof of address, of verifying that the address provided was not the person's correct address. These potential difficulties in identifying local Wanaka skiers also make it easier for locals to avoid a price discrimination strategy.
78. Even if the merged entity has the ability to price discriminate against Wanaka locals, we consider it unlikely that it would have the incentive to do so. This is because, as noted above, such a strategy would likely impose additional costs on customers which would increase the likelihood of some non-local skiers choosing another ski field. In addition, a strategy of price-discriminating against locals would also potentially lead to a loss of goodwill in the local community. The value of local goodwill, while difficult to estimate with a high degree of accuracy, is likely to be considerable. In this context, Cardrona stated:

Wanaka locals are Cardrona and Treble Cone's best advocates through New Zealand and to travellers from around the world. Visitor-driven businesses such as Cardrona rely on the goodwill of their community to create a welcoming feel for visitors within those communities.

and

Discriminating against Wanaka locals in the way postulated would be counterproductive. It would quickly erode goodwill, turn Wanaka locals off, reduce their enthusiasm to advocate for Cardrona and Treble Cone and would thereby reduce Cardrona and Treble Cone's ability to attract customers and build a world

⁴² Cardrona stated that its point of sale system is not set up to require customers to enter location information when they purchase a season pass, although customers are able to volunteer this information. Letter from Cardrona to the Commerce Commission (5 November 2019).

class ski field business over time. It would be an unattractive commercial strategy counter to all visitor industry norms and practices.⁴³

79. Cardrona also notes that Ruapehu, which is the sole commercial ski field operator in the North Island, does not price discriminate against its local customers. In Cardrona's view, this supports the conclusion that a combined Cardrona/Treble Cone entity would be unlikely to be able to, or find it rational to, price discriminate against Wanaka locals.⁴⁴
80. We do not consider that the merged entity would have the incentive to price discriminate against Wanaka locals given the relatively low share of total revenue accounted for by Wanaka locals.

Conclusion on the ability and incentive to price discriminate against Wanaka locals

81. We are of the view that it is unlikely that the merged entity would have either the ability or the incentive to engage in price discrimination against any group of customers in and around Wanaka, such that it would be likely to result in a substantial lessening of competition. A strategy of price discrimination would be difficult to design, maintain and police successfully, unlikely to have material impact on revenues of the merged entity and it is likely to significantly impact on the goodwill of the community, removing the incentive to introduce such discrimination.

Conclusion – unilateral effects in the Southern Lakes ski markets

82. We consider that the merged entity would face strong competitive constraint from NZ Ski's ski fields in Queenstown, and some constraint from ski-fields outside the Southern Lakes region. We also consider that while it may be technically possible to price discriminate against Wanaka locals, the costs of doing so are likely to be higher than the benefits and so the merged entity is unlikely to have incentive to engage in such a strategy.

Coordinated effects - competition analysis

83. We have considered whether conditions in either of the two Southern Lakes ski markets are conducive to coordination, and whether the removal of Treble Cone as an independent competitor would alter those conditions so that coordination is more likely, more complete or more stable.
84. Cardrona submitted that Treble Cone has a different pricing and investment strategy to other commercial ski areas and is not a significant competitor. It submitted that the removal of Treble Cone as an independent competitor will not change the competitive dynamic in any relevant market. Cardrona also submitted that skiing markets do not have characteristics that would make them vulnerable to co-ordination. As such, Cardrona is of the view that the acquisition does not raise any concerns about coordinated effects.⁴⁵

⁴³ Letter from Cardrona to the Commerce Commission (5 November 2019) at [15 – 16].

⁴⁴ Letter from Cardrona to the Commerce Commission (5 November 2019).

⁴⁵ Clearance Application from Cardrona (5 September 2019) at [116 – 121].

85. We consider that some current market conditions could make the markets vulnerable to coordination. For example:
- 85.1 the parties can observe each other's pricing, and ski field operators actively interact with one another through various tourism related organisations;
 - 85.2 there would be a smaller number of competitors in the Southern Lakes market (being the merged entity and NZ Ski) and the merged entity would likely be similar in size to NZ Ski and have a similar cost structure; and
 - 85.3 the cost-structures of NZ Ski and the merged entity are likely to be more closely aligned post-acquisition, with both having two fields within the Southern Lakes region and approaching similar capacity and utilisation.⁴⁶
86. However, we also consider there are a number of conditions that would make coordination less likely or less sustainable:
- 86.1 while Cardrona, Treble Cone and NZ Ski offer ski fields with similar facilities, they have differences in terrain, the range of snow sports services offered (night skiing, skills park, off-piste), the quality of lifts, and additional services offered;
 - 86.2 the quality and supply of natural snow appears to have a significant impact on demand. While ski fields try to reduce their exposure to the weather by installing snow making facilities, there appears to be little substitute for abundant and consistent snow fall throughout winter and early spring. Ski fields do not experience stable demand and attendance can drop suddenly due to shocks caused by bad weather or a lack of snow; and
 - 86.3 ski fields are characterised by having high fixed costs and being very dependent on maximising the number of skiers on the mountain.⁴⁷ As a consequence, ski fields may face strong incentives to cheat on any coordination, by cutting prices during a bad-weather season in order to maintain profitability or otherwise competing aggressively to maximise the number of skiers and snowboarders on the ski field.
87. We also consider that the Acquisition would not result in the removal of a particularly dynamic or aggressive competitor that has been disrupting the markets. Operators such as Cardrona, NZ Ski and Ruapehu have made, or are in the process of making, significant investments into their respective ski fields in the order of tens of

⁴⁶ Post acquisition, a merged Cardrona / Treble Cone would have a capacity of [] skiers per day with NZ Ski having a capacity of [] skiers per day. Clearance Application from Cardrona (5 September 2019).

⁴⁷ For example,
[

millions of dollars.⁴⁸ These investments are aimed at improving the quality of their respective ski fields in order to both retain their existing customer base as well as to attract new customers.⁴⁹ In contrast, Treble Cone has not made any comparable investments in its facilities over the last 10+ years. Rather, its current financial position means that it has deferred a number of planned investments.

88. Further, industry participants noted that Treble Cone's marketing efforts were poor and very limited. Its recent efforts to market itself as a premium ski field were also unsuccessful.
89. At present, Treble Cone's day pass is significantly more expensive than either Cardrona's or NZ Ski's, although it does not offer any additional services than these other operators. Further, Treble Cone advised us that its terrain tends to attract more advanced skiers who do not require many of the ancillary services that other commercial ski fields offer (as advanced skiers tend not to require lessons or rental equipment). Treble Cone said that this means that its overall revenue stream is much less diversified than either Cardrona or Treble Cone, which impacts on its ability to compete aggressively with these operators.⁵⁰
90. On balance, we do not consider that the Acquisition will make coordination more likely, more complete or more stable so as to result in a substantial lessening of competition. We consider that the potential for demand shocks, and the high fixed cost nature of the industry is likely to make coordination more difficult. These conditions will not change with the Acquisition such that a substantial lessening of competition due to coordinated effects is unlikely.

Overall conclusion

91. Both Cardrona and Treble Cone operate ski fields located near Wanaka. The closest ski fields to Cardrona and Treble Cone are the two ski fields operated by NZ Ski near Queenstown.
92. To access the skiing services provided by Cardrona and Treble Cone (as well as NZ Ski) customers need to purchase a lift pass and these passes fall into two categories: day and multi-day ski passes; and season ski passes. We identified two potential markets for assessing the impact of the Acquisition on these skiing services, namely:
 - 92.1 the market for the supply of day and multi-day ski passes for skiing and snowboarding services to customers in the Southern Lakes region; and

⁴⁸ See Clearance Application from Cardrona (5 September 2019); '\$35m investment in skifields' Otago Daily Times (1 November 2018); 'Increasing visitor numbers on Mt Ruapehu proves a challenge to keep skiers and daytrippers happy' Sunday Star Times (1 Sept 2019); 'South Island ski fields plan for warmer winters' Radio New Zealand (21 October 2019).

⁴⁹ []

⁵⁰ Commerce Commission interview with Treble Cone (27 September 2019).

- 92.2 the market for the supply of season ski passes for skiing and snowboarding services to customers in the Southern Lakes region.
93. Cardrona and Treble Cone compete with NZ Ski in each of these markets. Post acquisition we have concluded that the merged entity would be unable to successfully charge higher lift prices or reduce the quality of the skiing services it offers. This is primarily because the merged entity would face a strong constraint from NZ Ski's two ski fields located near Queenstown. In addition, many existing (and potential) customers would continue to have alternative skiing options, given the high number of customers who come from outside the Southern Lakes region to ski.
94. We do not consider that the merged entity would have the ability and incentive to engage in price discrimination to the detriment of local customers.
95. Further, we consider that the potential for demand shocks, the high fixed cost nature of ski field operations, and the need to maximise the number of skiers using a ski field incentivise both NZ Ski and the merged entity to compete aggressively. To this extent, we consider it unlikely that the Acquisition would result in a substantial lessening of competition because of coordinated effects.
96. Accordingly, we are satisfied that the Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any relevant market.

Determination on notice of clearance

97. Under section 66(3)(a) of the Act, the Commerce Commission determines to give clearance to Cardrona Alpine Resort Limited (and/or any of its interconnected bodies corporate) to acquire 100% of the shares of Treble Cone Investments Limited or the assets that Treble Cone Investments Limited uses to operate the Treble Cone ski field located west of Wanaka.

Dated this 13th day of December 2019

Anna Rawlings
Chair