

Statement of Preliminary Issues

Cardrona / Treble Cone

24 September 2019

Introduction

1. On 5 September 2019, the Commerce Commission registered an application from Cardrona Alpine Resort Limited (the Applicant) 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 (Treble Cone) (the Proposed Acquisition).¹
2. The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. This statement of preliminary issues sets out the issues we currently consider to be important in deciding whether or not to grant clearance.²
4. We invite interested parties to provide comments on the likely competitive effects of the Proposed Acquisition. We request that submissions are received by close of business on **Tuesday 8 October 2019**.

The parties

5. The Applicant owns and operates the Cardrona ski field near Wanaka. 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 the Cardrona ski field in 2013. The Cardrona ski field is located approximately 34 kilometres from Wanaka.
6. Treble Cone owns and operates the Treble Cone ski field near Wanaka. There are currently 59 shareholders of Treble Cone and these shareholders acquired the assets of the Treble Cone ski field in 2002. The Treble Cone ski field is located approximately 24 kilometres from Wanaka.
7. The Cardrona and Treble Cone ski fields are the only commercial ski fields near Wanaka. The nearest commercial ski fields to those operated by the merging parties are operated by NZSki Limited (NZSki) near Queenstown, being The Remarkables and Coronet Peak.

¹ A public version of the Applicant's clearance application is available on our website at: https://comcom.govt.nz/_data/assets/pdf_file/0018/172602/Cardrona-Alpine-Resort-Limited-and-Treble-Cone-Investments-Limited-Clearance-application-5-September-2019.PDF

² The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

Our framework

8. Our approach to analysing the competition effects of the proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.³ As required by the Commerce Act 1986 (the Act), we assess mergers and acquisitions using the substantial lessening of competition test.
9. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).⁴ This allows us to assess the degree by which the Proposed Acquisition might lessen competition.
10. Market definition is a tool that provides a framework to help identify and assess the close competitive constraints the merged firm would likely face. We define markets in the way that we consider best isolates the key competition issues that arise from the proposed acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.⁵
11. If the lessening of competition as a result of the Proposed Acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:
 - 11.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if the merged firm’s prices increased; and
 - 11.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased.

Preliminary issues

Areas of overlap

12. The Applicant submitted that the Proposed Acquisition would result in overlap in the provision of downhill skiing and snowboarding services (together, skiing services), which follows previous assessments made by the Commission.⁶
13. The Applicant considers that there is a New Zealand market for skiing services because both Cardrona and Treble Cone compete with ski fields located throughout

³ Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019. Available on our website at www.comcom.govt.nz

⁴ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

⁵ Section 3(1A) of the Act. See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

⁶ See Decision 357, Ruapehu Alpine Lifts Limited and Turoa Ski Resort Limited (Cairngorm Securities Pty Limited) at <https://comcom.govt.nz/case-register/case-register-entries/ruapehu-alpine-lifts-limited>, and Decision 410, Ruapehu Alpine Lifts Limited and Turoa Ski Resort Limited at <https://comcom.govt.nz/case-register/case-register-entries/ruapehu-alpine-lifts-limited2>.

New Zealand. The Applicant also submits that Cardrona and Treble Cone are constrained by ski fields located abroad, with the majority of Cardrona's existing customers being located outside of the South Island and having a range of skiing alternatives to choose from.

14. The Applicant also submitted that a single customer market for skiing services is appropriate. This is because although the two ski fields price discriminate on the basis of the different types of ski pass on offer (season, day, multi-day etc), they do not (with certain limited exceptions) price discriminate on the basis of the customer's purchase location or origin.
15. While we will test whether the product market is skiing services, we will focus on assessing the relevant geographic and customer dimensions of the market/s for the skiing related services that Cardrona and Treble Cone currently provide. In particular, we will be considering:
 - 15.1 the extent to which commercial ski fields such as Cardrona and Treble Cone compete with club⁷ ski fields or other skiing related activities such as heliskiing or indoor skiing terrain parks;
 - 15.2 the extent to which Cardrona and Treble Cone compete with the commercial ski fields located near Queenstown, the commercial (and club) ski fields located elsewhere in the South Island and the ski fields in the North Island;
 - 15.3 the degree to which Cardrona and Treble Cone price discriminate between different types of skiers (for example by type of ski pass), the extent that separate customer markets are appropriate, and whether the geographic dimensions of these markets vary; and
 - 15.4 the extent to which overseas ski fields impose a constraint on the merging parties.

Without the acquisition

16. We will consider what the merging parties would do if the Proposed Acquisition does not proceed. We will consider the evidence on whether the without-the-acquisition scenario is best characterised by the status quo, or whether there are other likely counterfactual scenarios.

Competition analysis

17. We will investigate whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant market/s by assessing whether unilateral and/or coordinated effects might result from the Proposed Acquisition. The questions that we will focus on are:

⁷ Club ski fields are smaller fields with more limited services and capacity that are run by a ski club and primarily used by members of associated ski clubs.

- 17.1 *unilateral effects*: would the loss of competition between Cardrona and Treble Cone enable the merged firm to profitably raise prices or reduce quality or innovation;⁸ and
- 17.2 *coordinated effects*: would the Proposed Acquisition change the conditions in the relevant market/s so that coordination is more likely, more complete or more sustainable?

Unilateral effects: would the merged firm be able to profitably raise prices by itself?

18. Unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged firm can profitably increase prices above the level that would prevail without the merger.
19. At present, the Cardrona and the Treble Cone ski fields are the only two commercial ski fields located in close proximity to Wanaka.
20. The Applicant submitted that the Proposed Acquisition would not be likely to substantially lessen competition in any market because:
- 20.1 for many skiers, the Cardrona and Treble Cone ski fields are not close competitors because they offer different types of terrain and as such cater for skiers with differing levels of skill and experience. The Applicant submitted that Cardrona tends to focus on beginner and intermediate skiers and snowboarders while Treble Cone focuses on more advanced skiers. To this extent, the Applicant considers that the two fields are largely complementary;
- 20.2 the merged firm would compete closely with two prominent commercial ski field operators namely;
- 20.2.1 NZSki, which operates the Coronet Peak and The Remarkables ski fields near Queenstown and the Mt Hutt ski field near Methven; and
- 20.2.2 Ruapehu Alpine Lifts Limited (Ruapehu), which operates the Whakapapa and Turoa ski fields in the central North Island.
- 20.3 there are other commercial and club ski fields in the lower South Island that would compete with the merged firm; and
- 20.4 a significant proportion of all skiers on New Zealand ski fields are from overseas and because of this ski field operators are constrained by the offerings of overseas ski fields.

⁸ For ease of reference, we only refer to the ability of the merged firm to “raise prices” from this point on. This should be taken to include the possibility that the merged firm could reduce quality or innovation, or worsen an element of service or any other element of competition, i.e. it could increase quality-adjusted prices.

21. To assess whether the merged firm will be able to profitably raise prices we will consider the:
- 21.1 *closeness of competition* – the degree of constraint that Cardrona and Treble Cone currently impose upon one another. To the extent that any constraint is material, we will assess whether the lost competition between the merging parties could be replaced by rival competitors entering and/or expanding;
 - 21.2 *constraint from other ski field operators* – the degree of constraint that:
 - 21.2.1 NZSki and the other operators of ski fields in the South Island would impose on the merged firm; and
 - 21.2.2 Ruapehu, with its two central North Island ski fields, would impose on the merged firm.
 - 21.3 *likelihood of expansion by existing competitors* – while the Applicant concedes that entry of new ski field operators is unlikely, we will assess the likelihood of existing ski field operators expanding their operations.

Coordinated effects: would the proposed acquisition make coordination more likely?

22. A merger can substantially lessen competition if it increases the potential for the merged firm and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power that output reduces and/or prices increase across the market. Unlike unilateral effects, in which a substantial lessening of competition can arise from the merged firm acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.⁹
23. The Applicant submitted that Treble Cone has a different pricing and investment strategy to other commercial ski areas and is not a significant competitor, and therefore its removal as an independent competitor will not change the competitive dynamic in any relevant market. The Applicant also submitted that the ski market does not have the characteristics which would make it vulnerable to co-ordination. As such, the Applicant is of the view that the Proposed Acquisition does not have the potential to raise any coordinated effects.
24. We will assess whether any of the relevant market/s are vulnerable to coordination, and whether the Proposed Acquisition would change the conditions in the relevant market/s so that coordination is more likely, more complete or more sustainable.

Next steps in our investigation

25. The Commission is currently scheduled to make a decision on whether or not to give clearance to the Proposed Acquisition by 1 November 2019. However, this date may

⁹ *Mergers and Acquisitions Guidelines* above n3 at [3.84].

change as our investigation progresses.¹⁰ In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.

26. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above.

Making a submission

27. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference 'Cardrona/Treble Cone' in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **Tuesday 8 October 2019**.
28. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website.
29. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.

¹⁰ The Commission maintains a clearance register on our website at <https://comcom.govt.nz/case-register> where we update any changes to our deadlines and provide relevant documents.