

# BLACKTOP

5 November 2019

Gavin McNeill  
Principal Investigator, Mergers  
Competition and Consumer Branch  
Commerce Commission

By email: gavin.mcneill@comcom.govt.nz

## Public version

Dear Gavin

### Cardrona Alpine Resorts / Treble Cone

1. I refer to your email of 31 October 2019, requesting Cardrona season pass data. That data is **enclosed** with this letter. I understand from our conversations that the reason for the request is that the Commission is still considering whether Cardrona's acquisition of Treble Cone will result in higher prices for Cardrona and Treble Cone season pass holders.
2. For the reasons explained in this letter, Cardrona submits that there is no realistic prospect that Cardrona and Treble Cone season pass holders will pay higher prices if the acquisition proceeds compared to if it does not.<sup>1</sup>
  - 2.1 Cardrona's season pass holders are not confined to Wanaka. Only **[CONFIDENTIAL]**% of those Cardrona season pass holders that record their region record their region as 'Wanaka'.
  - 2.2 Even if Wanaka locals were thought to be captive to Cardrona and Treble Cone (which Cardrona does not accept), Cardrona must still compete with ski fields other than Treble Cone to attract the over **[CONFIDENTIAL]**% of skiers who record their location as being from outside Wanaka and those other skiers who provide no location information. These fields include those operated by NZ Ski (Coronet Peak, The Remarkables and Mt Hutt) and RAL (Tūroa and Whakapapa) and overseas fields (for the **[CONFIDENTIAL]**% of customers who record their location information as being from overseas). A combined Cardrona/Treble Cone will not have any greater ability to increase prices to these customers than if they were separate.
  - 2.3 There is no reliable way for Cardrona to identify, isolate, and then price discriminate against Wanaka locals.
    - 2.3.1 Cardrona's systems do not require season pass holders to provide their location (let alone their region) to purchase a pass. Only **[CONFIDENTIAL]**% of all season pass customers record their region when purchasing a season pass. Cardrona would need to invest in its systems to require customers to enter region level location information when purchasing a pass. Cardrona

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<sup>1</sup> Cardrona confidential information is highlighted in yellow (i.e., **[CONFIDENTIAL]**).

has never investigated this and so is not aware what this would cost or how long it would take.

2.3.2 In any event, there is no guarantee that requiring region location information would accurately identify Wanaka locals. It would be relatively simple for a customer to use an alternative location to Wanaka when purchasing a pass and Cardrona could not accurately verify the location provided.

2.4 The practical evidence provided by the fact that, to Cardrona's knowledge, RAL does not price discriminate against Central New Zealand locals supports the conclusion that it is unlikely that a combined Cardrona/Treble Cone would be able to, or find it rational to, price discriminate against Wanaka locals.

3. Cardrona has also reviewed Mr Hamish Hepburn's two submissions and this letter also contains Cardrona's brief response to Mr Hepburn's two submissions. Nothing in those submissions undermines any of the arguments Cardrona has made in support of its application for clearance and Cardrona believes that the Commission should place little weight on Mr Hepburn's submissions.

#### **Impact of the acquisition on season pass holders**

4. Cardrona remains of the view that a combined Cardrona and Treble Cone will be able to deliver a dual mountain experience to all skiers – including season pass holders – that is not available today.
5. Cardrona submits that the same dynamics that drive day pass and multi-day pass competition also drives season pass competition. Therefore, season pass holders will not be disadvantaged or miss out on the benefits of the acquisition. Indeed, Cardrona's plan is to reduce Treble Cone season pass prices and Treble Cone season pass holders will not only benefit from this but also have access to Cardrona's longer season.

#### ***More than [CONFIDENTIAL]% of season pass holders are from outside Wanaka***

6. The data Cardrona has provided to the Commission shows that since December 2016, Cardrona has sold [CONFIDENTIAL] season passes.<sup>2</sup> [CONFIDENTIAL]% of the passes sold were Winter Unlimited passes and [CONFIDENTIAL]% were Winter Saver passes, which are the two main 'retail' season pass products sold. 'Spring passes' (i.e., for the period after 1 September each season) were [CONFIDENTIAL]% of sales and the remaining passes were made up of a variety of trade, staff, and local school children passes.
7. Of the [CONFIDENTIAL] season passes sold, only [CONFIDENTIAL] customers provided their country level location information when booking their pass. Of those [CONFIDENTIAL] customers, [CONFIDENTIAL]% recorded their country as New Zealand, with the remaining [CONFIDENTIAL]% being from overseas (and half of those from Australia). This [CONFIDENTIAL]% is lower than the overall figure for overseas customers skiing at Cardrona on day and multi-day passes but is still significant and means that Cardrona needs to compete for these customers against overseas fields, NZ Ski, and RAL.

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<sup>2</sup> The data provided by the Cardrona includes [CONFIDENTIAL] 'free' season passes. These are season passes for children under 6 and adults over 75. These [CONFIDENTIAL] season passes are not included in the figures provided in the submission.

8. Only [CONFIDENTIAL] customers buying season passes ([CONFIDENTIAL]%) recorded their region level location data. The breakdown of location is shown in the table below.

**Table 1:** Season pass holder by region (as recorded)

[CONFIDENTIAL]

9. The figures vary somewhat by type of pass but do not materially change the overall picture. For example, for Winter Unlimited passes, [CONFIDENTIAL]% of customers are from Wanaka and [CONFIDENTIAL]% from Auckland, while for Winter Saver passes, [CONFIDENTIAL]% are from Wanaka, and [CONFIDENTIAL]% from Auckland.
10. For the reasons set out in its Clearance Application, Cardrona submits that a combined Cardrona/Treble Cone will be constrained from increasing season pass prices. Even if Wanaka locals were restricted to Cardrona and Treble Cone (which Cardrona believes is not true) the over [CONFIDENTIAL]% of Cardrona customers that are from outside Wanaka would still have other ski field options open to them. A combined Cardrona/Treble Cone would not risk losing these season pass holders.

***No prospect that Cardrona/Treble Cone would price discriminate against Wanaka locals***

11. Nor, in Cardrona's submission, is there any prospect that Cardrona could isolate and price discriminate against Wanaka locals given the technical and practical challenges such a strategy would pose and given the harm it would do to Cardrona's relationship with Wanaka locals.
12. In terms of the technical challenges, Cardrona's POS systems are not set up to require customers to enter location information when they purchase a season pass. The data illustrates this, with approximately [CONFIDENTIAL] customers out of [CONFIDENTIAL] ([CONFIDENTIAL]%) over the period providing no location information at all, and only [CONFIDENTIAL] ([CONFIDENTIAL]%) providing region level location data.
13. Cardrona would need to invest in its POS system to require customers to provide region level location information as a condition of purchase. While this may be technically possible, it is not something that Cardrona (or Wayfare in any of its other businesses) has ever explored or felt the need to explore. As such, Cardrona does not know the cost and time involved in such a systems investment but the returns from any investment would need to justify that investment compared to the return on investment of Cardrona's (and Wayfare's) other projects.
14. In any event, even if Cardrona made such an investment, there are practical problems with isolating 'Wanaka locals'. It would be reasonably simple for a Wanaka local to use an alternative address to acquire a season pass. All that would be required would be to enter a non-Wanaka address. If someone did this, Cardrona would have no reliable way of verifying that the address provided was not the person's address.
15. Finally, Wanaka locals are Cardrona and Treble Cone's best advocates throughout 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. Cardrona is continually seeking to foster its relationship with Wanaka locals to ensure they continue to advocate its merits for the benefit of Cardrona and Wanaka. This is consistent with Cardrona's purpose – *kia whai mana mo te maunga* (mana for our

mountain), kia whai mana mo te iwi (mana for our people) and kia whai mana mo ake tonu (mana for our future).

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

***Best practical evidence is RAL not price discriminating***

17. Perhaps the best practical evidence that (negative) price discrimination against locals is not likely is the fact that, as far as Cardrona is aware, RAL does not price discriminate against Central New Zealand locals.
18. RAL has owned both Tūroa and Whakapapa for nearly 20 years yet has not found it rational to implement such price discrimination. If price discriminating against locals were a rational and profit maximising strategy, then one would have expected RAL to have introduced it. The fact RAL has not done so is consistent with Cardrona's submissions that such price discrimination is not likely.

**Mr Hepburn's submissions**

19. Cardrona submits that the Commission should place little weight on Mr Hepburn's submissions given that he has an interest in the Cardrona acquisition failing, does not adequately evidence the submissions made, and does not provide a description of his qualifications and experience to opine on the New Zealand ski market.

***Interest in the acquisition***

20. Mr Hepburn has an interest in the Cardrona acquisition not proceeding and his submission should be read in that light.
21. As Mr Hepburn's 17 October letter states, Mr Hepburn made an unsolicited offer for the shares of Treble Cone Investments Limited (**TCIL**) on or around 9 October. While Mr Hepburn states that he considers the offer he made to be commercially superior<sup>3</sup>, TCIL's Board rejected the offer and all but two of TCIL's shareholders voted in favour of the Cardrona transaction.
22. Moreover, and while not disclosed in his submissions, Cardrona's understanding is that Mr Hepburn is associated with, or represents, the Dunleavy interests, who own 17.46% of TCIL. The Dunleavy interests were one of the two shareholders to vote against the resolution approving the sale of the Treble Cone assets to Cardrona.

***Mr Hepburn's experience in operating a ski field***

23. Neither of Mr Hepburn's submissions describe his experience in operating a ski field and therefore his expertise to opine on market dynamics in the New Zealand ski industry. Mr Hepburn is the Managing Director of a collection of hotels in the Mackenzie and Aoraki/Mt

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<sup>3</sup> 17 October submission, page 2.

Cook regions. As far as Cardrona is aware, Mr Hepburn has no experience in running a ski field.

24. Nevertheless, Mr Hepburn describes submissions made by Cardrona as “nonsense”<sup>4</sup> despite those arguments being fully supported by evidence provided by Cardrona in support of those submissions, and by submissions by other third parties who have direct experience in the ski industry. Cardrona submits that the Commission should prefer Cardrona’s submissions and the evidence it has provided to support those.

***No adequate evidence to support submissions made***

25. Mr Hepburn’s two submissions contain several assertions for which no or insufficient evidence is provided. Cardrona has already provided its views and evidence to support those views and does not seek to repeat them here. Rather, Cardrona wishes to highlight five points in reply to Mr Hepburn’s submissions.

26. First, in arguing that Wanaka is a distinct market from Queenstown, Mr Hepburn states that:

The crown range during the winter is often treturious [sic] requiring chains or even often impassable as the road is closed.<sup>5</sup>

This road is often closed due to winter conditions or open with ‘extreme care/chains needed.’<sup>6</sup>

Alternative road access either way via Cromwell [from Queenstown] is time and distance impractical for day skiing.<sup>7</sup>

27. This is not Cardrona’s experience. Cardrona only recalls one closure of the Crown Range road this season that effected its operation. This started during the night and moved into the early morning with the road reopened mid-morning. This meant that Cardrona’s buses and some guests came via Cromwell around the Crown Range. Cardrona estimates that chains are required on the road between 1 and 5 days per season and the extra journey time via Cromwell is not impractical for day skiing.

28. Moreover, Mr Hepburn’s argument that Wanaka and Queenstown are distinct markets is inconsistent with other comments made in his submission where he accepts that Cardrona is being constrained by NZ Ski:

Cardrona over current ownership time to date (7 years) is a shining example of a ski area development in the ski area product and the associated facilities and services keeping pace with the evolving market demands of the skier and boarder today and the investment carried out by NZSki.Com in the Queenstown [sic].<sup>8</sup>

29. Second, Mr Hepburn’s states that:

Soho in my view is almost all intermediate-advanced skiing, and not suitable for Intermediate skiers.

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<sup>4</sup> 25 October submission, at [1.6].

<sup>5</sup> 25 October submission, page 6.

<sup>6</sup> 25 October at [1.2].

<sup>7</sup> 25 October submission, page 6.

<sup>8</sup> 25 October submission, at [2.6].

Further, there is ample terrain at Treble Cone suitable for beginner skiers and boarders. Additional investment would result in this area being better utilised.<sup>9</sup>

30. Neither of these statements is correct. Soho is an intermediate level skiing basin. On average it is 2 degrees steeper than Cardrona's existing Captains Basin. Cardrona is developing Soho to add capacity and variation but not steeper terrain or a new type of offering.
31. Cardrona does not believe that there is ample terrain suitable for beginner skiers at Treble Cone. The poma lift area – designed for first time skiers at the bottom of the field – is small and constrained with no scope to increase.
32. More importantly, there is a very difficult pathway of progression from this poma lift to the main field accessed by the six-seater chair. The lack of a progression pathway makes the beginner experience at Treble Cone poor and off-putting to most guests. This is because the easiest route down from the six-seater is a switchback trail, much like a road, that is not wide-open beginner terrain. Due to the steep nature of the entire area there is absolutely no possible solutions to developing more beginner terrain.
33. Third, Mr Hepburn states that:
- Car parking at Remarkables ski-field is severely constrained.<sup>10</sup>
34. To the best of Cardrona's knowledge this is not correct. Access to The Remarkables ski area is not constrained and is unlikely to be constrained in the future. NZ Ski continues to develop car parks down the access road as demand rises and to provide other transport options. Nor is a constrained carpark consistent with the significant investments that NZ Ski is making in The Remarkables.
35. In addition, an investment group separate from the NZ Ski business and whose Chief Executive was until recently the Chief Executive of RAL is developing an alpine gondola to access The Remarkables from the base of the mountain range in urban Frankton.
36. Fourth, Mr Hepburn states that:
- At best Treble Cone in the short term (5years) will become a 8-9 week ski area on natural snow if it falls.<sup>11</sup>
37. Cardrona has outlined its plans for Treble Cone should the acquisition proceed, which includes investing in snow making facilities to ensure that the field can open in time for the July school holidays.
38. Finally, Cardrona submits that Mr Hepburn's endorsement of Cardrona as "the shining example of how to operate and develop a ski area"<sup>12</sup> and his comment that "Without the realignment of the on field assets of Treble Cone and the continued ski area operation status quo Treble Cone is not a commercial viable operation"<sup>13</sup>, is consistent with what Cardrona has said are the benefits of its acquisition of Treble Cone.

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<sup>9</sup> 17 October submission, page 2.

<sup>10</sup> 25 October submission, at [1.5(a)].

<sup>11</sup> 25 October submission, at [2.7].

<sup>12</sup> 25 October submission, at [2.7].

<sup>13</sup> 25 October submission, at [2.7].

39. If you need any further information, please let me know.

Yours sincerely

A handwritten signature in blue ink that reads "David Blacktop". The signature is written in a cursive style with a large initial 'D'.

**David Blacktop**

Director

T (09) 377 0592 / M 021 366 284

**Encl.**