

**Application by SKYCITY Entertainment Group Limited
for clearance of a proposed business acquisition**

15 April 2004

COMMERCE ACT 1986: BUSINESS ACQUISITION
SECTION 66: NOTICE SEEKING CLEARANCE

Date: 15 April 2004

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

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Executive Summary

Introduction

Proposed acquisition

1. SKYCITY Entertainment Group Limited (**SKYCITY**), or a related company to be nominated by SKYCITY, is seeking clearance for the acquisition of all the shares in Aspinall (NZ) Limited (**Aspinall**), a company which holds, directly and indirectly, an approximate 40.5% stake in Christchurch Casinos Limited (**CCL**). CCL owns and operates the Christchurch Casino.
2. Aspinall's interest in CCL is by way of a 30.7% direct interest and a 9.8% (approximately) indirect interest (held through Aspinall's 33.3% interest in Christchurch Hotels Limited). Aspinall was formerly the operator of the Dunedin casino, but Aspinall assigned the management agreement to a subsidiary of Dunedin Casino Limited (the owner of the Dunedin Casino) with effect from 31 March 2004.

Current interests

3. SKYCITY owns:
 - (a) the SKYCITY casino in Auckland (**SKYCITY Auckland**);
 - (b) 55% of Riverside Casino Limited, which owns the SKYCITY Hamilton casino in Hamilton (**SKYCITY Hamilton**); and
 - (c) 60% of Queenstown Casinos Limited, which is the company that owns the SKYCITY Queenstown Casino in Queenstown (**SKYCITY Queenstown Casino**).
4. SKYCITY Casino Management Limited (**SKYCITY Management**), a wholly owned subsidiary of SKYCITY, operates SKYCITY Auckland, SKYCITY Hamilton and SKYCITY Queenstown Casino.
5. Attached as **Appendix 1** is a table showing the ownership and management interests in the six casinos in New Zealand.

Reason for acquisition

6. SKYCITY sees this acquisition as a logical expansion of its core gaming business and an opportunity for it to enhance its performance and business in New Zealand by acquiring an interest in a quality casino business that has demonstrated a track record of profitability.

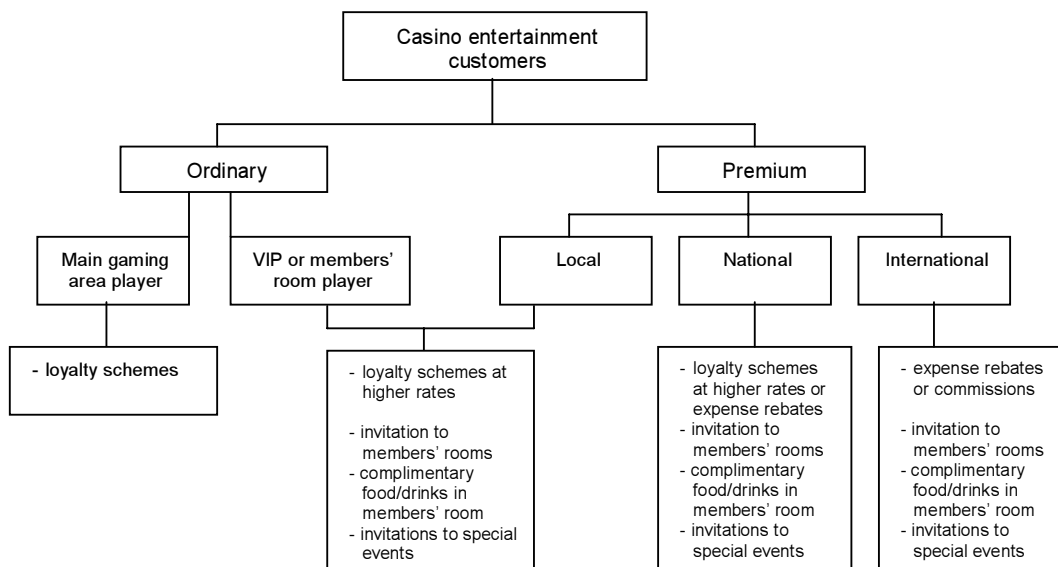
Relevant markets

Product dimension

7. This application proceeds on the basis that the relevant product market is one for casino entertainment.

Customer dimension

8. There is a spectrum of customers in terms of the amount of money that they spend (known in the industry as the “win” of the casino) per casino visit and the frequency of visits they will make. Broadly this spectrum can be divided into two types of customers. One type is the ordinary customer (i.e. the customer that spends relatively small amounts on any one visit) (**ordinary customers**). The other type of customer is the “high level” customer (i.e. the customer that spends relatively large amounts on any one visit) (**premium customers**). Each casino may have different thresholds of spend at which they regard someone as a premium customers. However, in general terms, premium customers are those who have a level of play that means casinos other than their local casino are interested in having them to play at their property. Premium customers may be **local** (from the region around the casino), **national** (from elsewhere in New Zealand attending a casino other than their local casino), or **international** (customers from outside New Zealand).
9. Customers invited to visit VIP or members’ rooms include “VIP” ordinary customers and premium customers. These rooms may provide free food and beverages. Both ordinary VIP customers and local premium customers may also receive invitations to special events and participate in loyalty schemes at a different rate from other ordinary customers. As an alternative to participation in loyalty schemes, national premium customers and international premium customers may be offered some additional benefits (such as complimentary food and beverage/accommodation/travel which are usually in the form of “expense rebates”) (referred to as **complimentaries**). As a further alternative to expense rebates, international premium customers may be offered a “commission” based on their play.
10. A chart showing the different customers and the benefits they may receive are set out below.



11. SKYCITY’s view is that both ordinary and premium customers fall within the one market. There is a spectrum of customers and not necessarily a clear nor consistent dividing line between them, both at any particular casino and as between casinos. Ordinary and local premium customers make up the predominant customer base (both in terms of number of visits and percentage of revenue) at all of the New Zealand

casinos. While each of the New Zealand casinos are able to, or could seek to, attract national and international premium customers, none of the New Zealand casinos do, or are likely to, cater only to those customers. Although local premium customers have a greater ability and willingness to switch casinos than ordinary customers (see below under “Geographic scope”), any switching will be an incomplete and imperfect substitute for visits by those customers to their local casino. Despite SKYCITY’s view that both types of customers are within the same market, it has provided competition analysis for each of these segments of the casino entertainment market.

Geographic scope

12. For both ordinary and premium customers, there are regional markets for casino entertainment. These are centred around each city with a casino, although presently only SKYCITY Auckland, SKYCITY Queenstown Casino and Christchurch Casino consistently cater for premium customers.
13. SKYCITY considers that there are regional markets because casinos outside a customer’s region are not generally a practical substitute for the convenience of the local casino. For this reason, at all of the casinos in New Zealand, customers (ordinary and premium) are predominantly local, and non-local customers are predominantly visiting the casino as an incidental part of a visit to the area.
14. Just as consumers of other products and services will from time to time sample alternatives, so too do casino customers. Premium customers are more likely to visit casinos outside their region than are ordinary customers. They may travel specifically to play at other casinos and will generally receive complimentary or commissions to do so. They may also visit other casinos as an incidental part of travel for other purposes. These visits to other casinos are, however, relatively infrequent compared with visits to their local casino.
15. Although SKYCITY considers that the markets are regional for premium customers, it has provided competition analysis also on a “supra-national” basis.

No substantial lessening of competition

16. The application has been made on the basis that the Commission may take the view that the acquisition will give SKYCITY substantial influence over CCL for the purposes of section 47(3) of the Commerce Act. The acquisition will not give SKYCITY substantial influence over the Dunedin casino. The acquisition will not change the interests held in any other casino.

Ordinary customers

17. For ordinary customers, the proposed acquisition will not create, enhance or facilitate market power held at any casino. Except for Queenstown (where the Wharf casino provides competition to SKYCITY Queenstown Casino) in each centre there is a monopoly in the regional market. That monopoly (or duopoly in Queenstown) is unaltered by the proposed acquisition.
18. To the extent that the acquisition might be thought to remove the potential for crossover competition between regions, that does not create, enhance or facilitate market power. That is because crossover competition does not in reality provide any constraint both because the number of customers involved is small and because the casinos are unable to differentiate the casino entertainment product offered to local ordinary customers and crossover ordinary customers.

19. Other constraints (regulation and other entertainment options such as gaming machines at pubs and clubs) remain unaffected by the proposed acquisition. Additionally, SKYCITY is not obtaining a controlling interest in CCL. Nor will it have a majority of directors on the board of CCL. Nor is it obtaining the operator contract for CCL. With the exception of Skyline Enterprises Limited (**Skyline**) which has an interest in SKYCITY Queenstown Casino, other shareholders in CCL do not have an interest in SKYCITY's other casinos. The other shareholders in CCL will continue to require Christchurch Casino to be operated in a way that is expected to achieve the best return on their investment in CCL.
20. No substantial lessening of competition would therefore occur.

Premium customers

Regional

21. Similarly the proposed acquisition will not create, enhance or facilitate market power at any casino in respect of premium customers. The monopoly in all regions except Queenstown, and the duopoly in Queenstown, remains unaltered by the acquisition.
22. If there were a reduction in the price/quality of the product provided at their local centre, customers would attend their local casino less. They may also attend a casino outside their region more, although these visits would remain infrequent relative to their current number of visits to their local casino.
23. To the extent that premium customers do visit other casinos, their choices are much wider than the casino experiences offered in New Zealand. The 'market rate' to attract a customer to a non-local casino (i.e. the level of complimentary or commissions) is set Australasian wide. If there was a reduction in the existing complimentary offered to premium customers to travel to New Zealand casinos outside their local centre, customers would travel to the Australian casinos (principally the casinos in Melbourne, Sydney, the Gold Coast and Brisbane) that offered the 'market rate' of incentives in preference to the New Zealand casinos. They may also travel to casinos in the Asian region. Competition from these casinos provides a greater constraint on New Zealand casinos' ability to lower the incentives/services offered to premium customers to attend casinos outside their area than do the existing casino options in New Zealand.
24. Other constraints (regulation and other entertainment options) remain unaffected by the acquisition. Additionally, there is the constraint from the substantial influence of other shareholders in CCL who will continue to require Christchurch Casino to be operated in a way that is expected to achieve the best return on their investment in CCL.

"Supra-national"

25. If the Commission considers that the geographic scope of the market for premium customers is wider than regional, the result is the same. The proposed acquisition will not create, enhance or facilitate market power at any casino because:
 - (a) if there was a reduction in the price/quality of the product offered at a customer's local casino, customers will attend their local casino less;
 - (b) if there was a reduction by a New Zealand casino in the complimentary offered to premium customers to attend a casino outside their region, those premium

customers, on the occasions they are willing/able to attend a casino outside their region, would attend the Australian and/or Asian casinos;

- (c) the constraints from regulation and other forms of entertainment remain unaffected by the proposed acquisition; and
- (d) CCL will continue to have a number of shareholders other than SKYCITY who will require the Christchurch Casino business to be operated in a way expected to generate the best return on their investment.

That is, the material constraints on market power are due to factors other than the presence of other New Zealand casinos, and will remain following the acquisition.

Conclusion

26. The proposed acquisition by SKYCITY will not result in a substantial lessening of competition in any of the relevant markets.

PART I: THE TRANSACTION DETAILS

The business acquisition

1. The business acquisition for which the clearance is sought

27. The business acquisition for which clearance is sought is the acquisition by SKYCITY, or a related company nominated by SKYCITY, of all the shares in and assets of Aspinall from its shareholders.

The person giving notice

2. Who is the person giving this notice?

28. The person giving notice is:

SKYCITY
PO Box 6443
Wellesley Street
Auckland

Telephone: (09) 363 6141
Facsimile: (09) 363 6140

Attention: Andrew Webster
General Manager Legal

Contact (in the first instance):

Bell Gully: Jill Mallon
Telephone: (04) 915 6831
Facsimile: (04) 473 3845
Email: jill.mallon@bellgully.com

Confidentiality

3. Do you wish to request a confidentiality order for:

3.1 The fact of the proposed acquisition?

29. No.

3.2 Specific information contained in or attached to the notice?

30. Yes. Confidentiality is sought in respect of all items included in square brackets (**confidential information**). Confidentiality is sought indefinitely or until SKYCITY advises the Commission that it can make disclosure of those details.

31. A confidentiality order is sought in respect of the confidential information under section 100 of the Commerce Act 1986 (the Act). Confidentiality is also claimed under section 9(2)(b)(ii) of the Official Information Act 1982 on the grounds that:
 - (a) the information is commercially sensitive and valuable and is confidential to the participants; and
 - (b) disclosure of it is likely to give unfair advantage to competitors of the participants and/or to unreasonably prejudice the commercial position of the persons involved.
32. SKYCITY also requests that it is notified of any request made to the Commission under the Official Information Act for the confidential information, and that the Commission seeks SKYCITY's views as to whether the information remains confidential and commercially sensitive at the time those requests are being considered.

Details of the participants

4. Who are the participants (i.e. the parties involved)?

33. The acquirer is SKYCITY (or a related company nominated by SKYCITY). SKYCITY is purchasing all of the shares in Aspinall being held by the shareholders.
34. All queries regarding the sale of shares in Aspinall should be directed to:

Mr. Martyn Kennedy
c/- Aspinall's Club Limited
27-28 Curzon Street
London
Telephone: (+4420) 7499 4599
Facsimile: (+4420) 7409 7340

5. Who is interconnected or associated with each participant?

SKYCITY

35. SKYCITY is a listed company with over 20,000 shareholders.
36. On 27 November 2003, Commonwealth Bank Group gave notice that it was a substantial security holder in respect of 49,765,648 ordinary shares in SKYCITY (11.98% of SKYCITY's voting securities). Commonwealth Bank Group is a passive institutional investor and holds these shares in its capacity as manager and/or trustee of various investment and superannuation funds. As far as SKYCITY is aware no member of the Commonwealth Bank Group has any operational interest in any casino business, nor any other shareholding in any casino business in New Zealand.
37. On 12 December 2003, The Capital Group Companies, Inc. gave notice that it was a substantial security holder in respect of 25,506,200 ordinary shares in SKYCITY (6.14% of SKYCITY's voting securities). The Capital Group Companies, Inc. is a passive institutional investor and holds these shares in its capacity as manager and/or trustee of various investment and superannuation funds. As far as SKYCITY is aware no member of the Capital Group of companies has any operational interest in any casino business, nor any other shareholding in any casino business in New Zealand.

38. SKYCITY understands that Commonwealth Bank Group may also be a passive investor in Publishing and Broadcasting Limited, the owner of Crown Casino in Melbourne. This is by way of a passive investment of approximately 13%.
39. SKYCITY has a number of wholly owned subsidiaries in New Zealand that carry out aspects of SKYCITY's casino business. Those directly relevant to this application are:
 - (a) SKYCITY Auckland Limited, which is the Auckland casino premises licence holder; and
 - (b) SKYCITY Management which is the Casino Operator's Licence holder for SKYCITY Auckland, SKYCITY Hamilton and SKYCITY Queenstown Casino.
40. SKYCITY also has relevant interests in the following companies:
 - (a) 55% ownership of Riverside Casino Limited, which owns SKYCITY Hamilton;
 - (b) 60% ownership of Queenstown Casinos Limited, which owns SKYCITY Queenstown Casino;
 - (c) 100% of SKYCITY Adelaide Pty Limited, which is the company that owns and operates SKYCITY Adelaide casino in Adelaide, South Australia;
 - (d) an agreement to acquire 100% of Diamond Darwin Pty Limited, which in turn owns Diamond Leisure Pty Limited, the owner and operator of the MGM Grand Darwin casino in Darwin, Northern Territory.

Aspinall

41. The shares in Aspinall are owned by Conpress Christchurch Pty Limited, a subsidiary of Consolidated Press Holdings Limited (an investment company associated with Kerry Packer), (16.7%) and by entities and trusts related to the late John Aspinall (83.3%).
42. Aspinall owns 30.7% of the shares in CCL. Aspinall also owns 33.3% of the shares in Christchurch Hotels Limited. Christchurch Hotels Limited owns 68.8% of the shares in Premier Hotels (Christchurch) Limited, which in turn owns 30.7% of CCL. CCL has a reverse shareholding of 33.3% in CHL. Therefore, Aspinall holds an indirect stake in CCL of approximately 9.8%.
43. Aspinall's total ownership stake in CCL is therefore approximately 40.5%.

CCL

44. CCL owns 33% of the shares in DCL, the company that owns the Dunedin casino. Aspinall was formerly the operator of the Dunedin casino, but assigned the contract to a subsidiary of DCL with effect from 31 March 2004.
45. A diagram showing the ownership structure of CCL and associated companies is attached as **Appendix 2**.

Associated person

46. The proposed acquisition does not give SKYCITY a controlling interest in CCL. It will have an approximate shareholding of 40.5%. There are other shareholders with significant interests (see **Appendix 2**) including Skyline (a company of which Mr Barry

Thomas and Mr Phillip Hensman are directors and the Hensman and Thomas families are shareholders). Skyline has the same shareholding in CCL as Aspinall, namely a 30.7% direct interest and an approximate 9.8% indirect interest (through Christchurch Hotels Limited). SKYCITY will (indirectly through Aspinall) have one of the four directors on the CCL Board. In addition the Managing Director of CCL (Mr Arthur Pitcher), although not appointed to the CCL board by Aspinall, is a director of Aspinall. Skyline has two of the four directors on the CCL Board, one of whom (Mr Barry Thomas) is the chairperson. Under the CCL constitution, the chairperson holds a casting vote on resolutions where the board is deadlocked.

47. SKYCITY understands that on recent occasions, the chairperson has exercised his casting vote to pass resolutions that were consistent with Skyline's interests. In December 2003 the CCL directors representing Skyline also purported to remove Mr Pitcher as Managing Director of CCL. Aspinall and Mr Pitcher have challenged his removal in a proceeding in the High Court. The proceeding has been resolved on an interim basis by way of undertakings under which Mr Pitcher was reappointed as Managing Director. A full hearing is expected later this year.
48. In addition, SKYCITY does not obtain the operator contract for Christchurch Casino under the proposed acquisition. CCL remains the operator.
49. In these circumstances, the practical reality is that SKYCITY will not be able to dictate how Christchurch Casino is run (including what price/quality casino product is to be offered).
50. Nevertheless, SKYCITY accepts that it will have influence over CCL and that the Commission may consider that SKYCITY has "substantial influence" for the purposes of section 47 of the Commerce Act. The application therefore provides answers to each of the Commission's questions on the assumption that the Commission will treat the proposed acquisition as giving SKYCITY substantial influence over CCL.
51. SKYCITY considers, however, that through the proposed acquisition it will not be associated with DCL for the purposes of section 47 of the Commerce Act. Its effective shareholding will be approximately 13.5% of DCL. There are other significant shareholders (see **Appendix 1**), particularly Mr Earl Hagaman (with 42% of the shares in DCL). There are eight directors on the board of DCL. SKYCITY will not obtain representation on the DCL board through the proposed acquisition, although the Managing Director of CCL referred to above is on the board of DCL in his capacity as Managing Director of CCL. Mr Barry Thomas is also on the DCL board. Since 31 March 2004 DCL has (through its wholly owned subsidiary, Dunedin Casino Management Limited) managed the Dunedin casino. SKYCITY will not, in these circumstances, have substantial influence over DCL.

6. Does a participant, or any interconnected body corporate thereof, already have a beneficial interest in or is beneficially entitled to, any shares or other pecuniary interest in another participant?

52. Neither SKYCITY, Aspinall nor any of their related companies currently have a beneficial interest in, or are beneficially entitled to, any shares or other pecuniary interest in each other.

7. Identify any links, formal or informal, between any participant/s including any interconnected bodies corporate and other persons identified above and its/ their existing competitors in each market

53. Neither SKYCITY, Aspinall nor any of their related companies currently have a beneficial interest in, or are beneficially entitled to, any shares or other pecuniary interest in each other.

8. Do any directors of the acquirer also hold directorships in any other companies which are involved in the markets in which the target company/business operates?

54. Other than appointments to the boards of SKYCITY Auckland Limited, SKYCITY Management, Riverside Casino Limited and Queenstown Casinos Limited reflecting SKYCITY's shareholding in those companies, none of SKYCITY's directors or executives are directors of other companies involved in New Zealand casino entertainment markets.

9. What are the business activities of each participant?

55. Both SKYCITY and Aspinall are engaged in the ownership and operation of casinos in New Zealand.
56. In order to own a casino in New Zealand it is necessary to hold a casino premises licence (renamed a casino venue licence in the Gambling Act 2003 (**Gambling Act**)) issued by the Casino Control Authority (**CCA**) (soon to be replaced by the Gambling Commission) under the Casino Control Act 1990. There are presently six casino premises licences in New Zealand and six casinos in operation. Under the Gambling Act no new casino venue licences may be issued.¹ The premises licence holder need not be the manager (operator) of the casino. The premises licence holder can enter into a management contract with a manager. To hold a management contract for a casino, or to operate its own casino premises, a person must hold a casino operator's licence (**operator's licence**). (**Appendix 1** sets out the premises licensee and manager details for each of the six New Zealand casinos.)
57. An operator's licence is presently obtained upon application to the CCA but this will be changed to the Gambling Commission under the relevant provisions of the Gambling Act from 1 July 2004. These provisions of the Casino Control Act/Gambling Act provide that the CCA/Gambling Commission must only grant an application where it is satisfied that the applicant is "suitable", taking into account the applicant's honesty, financial position, business skills and expertise in this area, management structure and any other matter the CCA/Gambling Commission considers relevant. Operator's licences are not otherwise limited in number.²
58. SKYCITY presently has ownership interests in and management contracts for three of the casinos in New Zealand, namely those in Auckland (SKYCITY Auckland) and Hamilton (SKYCITY Hamilton), and one of the two casinos in Queenstown (SKYCITY Queenstown Casino).

¹ Section 10 of the Gambling Act 2003.

² Sections 124, 128-130 of the Gambling Act 2003.

59. SKYCITY is also engaged in the provision of associated services at its properties such as food and beverage, carparking, a theatre, a hotel, convention facilities, the Sky Tower and Sky Tower's telecommunication facilities at SKYCITY Auckland. However these activities are not affected by the proposed acquisition. They are therefore not discussed further.
60. SKYCITY's activities are summarised in the latest Annual Report and Interim Report attached to the application as **Appendix 3**.
61. Aspinall has an ownership interest in CCL. After the proposed acquisition, the current shareholders in Aspinall will (as far as SKYCITY is aware) have no remaining casino interests in New Zealand.

10. What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

62. It is SKYCITY's intention to continue to enhance its casino entertainment business in New Zealand and Australia.
63. As Christchurch Casino will not be a wholly owned subsidiary of, nor operated by, SKYCITY it will continue to be managed independent of the other properties in which SKYCITY has an interest.
64. Through its participation on the CCL board SKYCITY hopes to enhance the CCL business by sharing its experience of customers in different markets.

PART II: IDENTIFICATION OF THE MARKETS AFFECTED

Markets

65. SKYCITY considers that the relevant dimensions of the affected markets are the product, customer and geographic dimensions. The functional and temporal dimensions are not relevant in this case and are not considered below.

Product markets

66. The Commission granted clearance for the acquisition by SKYCITY of shares in Riverside Casino Limited on 28 January 1999 and set out its reasons in Commerce Commission Decision 337 (**Decision 337**). The product market identified by the Commission was the casino entertainment market.
67. The Commission considered whether the casino experience was substitutable with other forms of entertainment including:
- (a) other forms of gaming;
 - (b) other “night out” forms of entertainment; or
 - (c) both of these alternative forms of entertainment.
68. The Commission considered a range of evidence, including an Australian Institute for Gambling research study, an Ord Minnett study and a conference paper by Mr David Bale (the Chief Executive of the New Zealand Lotteries Commission). The Commission noted that there was a range of views on the market definition and some arguments supported the adoption of a broad definition. However, the Commission considered that there were certain characteristics that distinguished casinos from other forms of gaming, and from other avenues for spending discretionary income. Therefore, the Commission decided that casino entertainment should be considered as a separate product market. This was consistent with its usual practice of considering prospective acquisitions in terms of the narrowest market definition.
69. This is also consistent with the approach taken by the Monopolies and Mergers Commission in *London Clubs International plc and Capital Corporation plc* of August 1997 (**London Clubs**).³
70. SKYCITY has proceeded on the basis that the Commission will adopt the casino entertainment market as the relevant product market for the purposes of this application.

Customer dimension

71. The customer dimension of markets is referred to in the Commerce Commission Mergers and Acquisitions Guidelines that came into effect on 1 January 2004 (**the Guidelines**). The Guidelines state that it may be appropriate to define an additional market based on a particular group of buyers that in the face of a price increase is unable to switch.

³ paras 1.3 and 2.13.

72. In the casino entertainment context, particular types of customers may be distinguished based on the amount of money customers in a particular group spend (or a casino “wins”) on each visit and the frequency of their visits.
73. The majority of customers in each of the casinos in which SKYCITY has an interest are those customers who play with a relatively small amount of money (**ordinary customers**). This also includes most of the customers who visit VIP or members’ rooms. SKYCITY understands that this is also true of the Christchurch, Dunedin and Wharf casinos. This type of customer attends the casino as one of a range of entertainment options and typically does not travel outside his/her region for the principal purpose of attending a casino. Ordinary customers are not offered any special incentives to visit the casino although, like other providers of goods and services, a number of casinos provide programmes to reward customers for purchasing their goods and services. SKYCITY properties operate a loyalty scheme known as the Action programme⁴ whereby customers earn “action points” based on their expenditure on goods and services (including casino gaming) at the complexes. These points can be redeemed for rewards. Upper end or “VIP” ordinary customers may earn action points at a higher rate than other ordinary customers. In addition they may receive special treatment such as access to a members’ or VIP room (where there may be complimentary food and drinks) and/or invitations to special events (e.g. dinners, sporting events, tournaments). They are not, however, offered complimentary travel, accommodation, food and beverage (outside the members’ room), or commission, based on their spend.
74. SKYCITY Auckland and SKYCITY Queenstown Casino also have a number of customers who tend to spend larger amounts of money each visit (**premium customers**). A premium customer primarily visits his or her local casino and attends regularly (perhaps every day or every second day). At SKYCITY properties a person will generally be regarded as a premium customer if they are spending more than \$2000 per visit. SKYCITY considers this threshold is comparable to that in Australian casinos. Depending on their size and the number of their premium customers, other casinos in New Zealand may have a lower threshold at which they distinguish between ordinary and premium customers, although SKYCITY does not believe any difference is significant.
75. Generally speaking, premium customers are from socio-economic and ethnic groups that travel nationally and internationally more extensively than the rest of the population. They travel predominantly to parts of Australia or Asia, for business, family and leisure reasons. That travel provides them with the opportunity to visit casinos outside their local casino. Additionally, premium customers travel nationally and internationally for the principal purpose of visiting a casino. However for premium customers visits to non-local casinos are generally not as frequent as those to their local casino. A premium customer will generally attend casinos outside his/her area just a few times a year (on average perhaps four or five times a year), although there are premium customers who will travel less and more than this.
76. SKYCITY is not aware of any significant differences between the characteristics of premium customers in Auckland and other parts of the country, or in the reasons or propensity for such customers to travel to other countries.
77. In the experience of SKYCITY’s gaming personnel, premium customers are predominantly located in the cities or towns where there are casinos (Auckland,

⁴ A detailed description of the programme is available on SKYCITY’s website: www.skycity.co.nz

Hamilton, Queenstown, Christchurch and Dunedin). The largest number are located in Auckland where there are about [] premium customers. This is out of approximately [] customers who are invited to visit SKYCITY Auckland's Members' Room. SKYCITY also estimates that out of the approximately [] members of Christchurch Casino's "Aspinall's Club"⁵ there are [] premium customers. SKYCITY considers that there may be [] premium customers in the Wellington and Nelson region, and perhaps [] spread throughout the rest of the country. SKYCITY Queenstown Casino also has approximately [] customers from the lower South Island that are "premium" in the context of its business.

78. At their local casino, premium customers are offered the same casino entertainment experience offered to ordinary VIP customers⁶. Like VIP ordinary customers, local premium customers are eligible to earn Action points at a higher rate than other customers. The difference between ordinary VIP and local premium customers is in the level of their spend. Premium customers spend at a level that means casinos other than their local casino are interested in having them to play at their property. Casinos may pay special benefits to attract premium customers from outside their region. The most common way to do this is by offering participation in a complimentary programme where an expenses rebate⁷ is paid that may cover all, or a proportion of, the cost of travel, accommodation, meals and drinks. If an expenses rebate is offered then the national premium customer is not eligible to participate in SKYCITY's Action programme. Another programme to attract international players (which may in the future be more common for higher level premium customers) is a commission programme⁸. If an international premium player is offered a commission programme, s/he will not also receive an expenses rebate.
79. Premium customers generally play on tables (rather than machines, although more recently machine players have been targeted by casinos on the east coast of Australia, especially Crown Casino in Melbourne). Baccarat is generally the preferred game.

⁵ Christchurch Casino's members' room.

⁶ Including membership of loyalty programmes, entrance to VIP or members' rooms, and complimentary food and beverages in the members' rooms. Tickets to a special functions (e.g. sporting/racing events, concerts, gaming tournaments) may also be provided.

⁷ The amount of an expenses rebate will also be determined by the customer's turnover. Only if a customer's turnover is high enough will a full expenses rebate be given. For example, a casino might invite a player to visit its property on the basis that an agreed level of the player's expenses will be reimbursed if the player's turnover during their visit reaches a certain level. This level will be worked out by the casino based on:

- the expected costs (the more expensive it is to bring the customer to the property, the more the casino will want to 'recover' through play);
- the expected/theoretical win rate on the games the player will play.

If the player reaches the threshold of play, their expenses will be reimbursed. If not, only some (or none) of the expenses may be reimbursed. Expenditure above the agreed level must be paid for by the player.

⁸ A commission payment is a percentage of a customer's turnover, losses or "front money" (the amount they agree to bring to the casino to play) that is paid back to the customer (in the case of turnover or front money commission programmes) regardless of how much s/he wins or loses. Essentially, by paying a commission, a casino is agreeing to pay part of its margin or theoretical win to the customer. Commission may, for example, be paid to customers who go to the casino as part of an organised tour or "junket". In this situation, a tour organiser may get a higher commission than the customers on the tour. Alternatively (and more usually) the organiser receives all the commission, and determines how to distribute it amongst their players.

80. SKYCITY has representatives in Sydney, Hong Kong, Thailand and Singapore to assist in attracting and facilitating customers from the Asia Pacific region to visit SKYCITY's casinos, principally in Auckland, Adelaide and Queenstown. Other casinos in Australia have similar representative offices, although as far as SKYCITY is aware CCL does not.
81. Regardless of the type of customer, SKYCITY's focus is on repeat custom. This contrasts with the focus when casinos in New Zealand were in their early stages, where the focus was on attracting as many people as possible through the door to experience the casino entertainment package. The need to offer an entertainment package that meets or exceeds the customer's expectations is important. If the level of satisfaction with the experience offered is low, customers will choose to not come back at all (or to come less frequently). This is because casino entertainment is only one of a wide range of discretionary income activities on offer. To seek to ensure repeat custom, ordinary customers must enjoy their casino entertainment experience and consider that the experience offers value for their money. The same is true for premium customers.
82. All of the New Zealand casinos are predominantly (or in some cases entirely) "grind" casinos. That is, most of their visitors are ordinary customers:
- (a) SKYCITY Auckland gets about 12-13,000 visits per day. These are predominantly ordinary customers with only about [] visits per day to the VIP Members' Room⁹ (of which perhaps [] are by premium customers). Ordinary customers contribute approximately []% of SKYCITY Auckland's revenue, with premium customers making up the balance.
 - (b) SKYCITY Hamilton is a grind casino almost entirely made up of local ordinary customers, although (like all casinos) it has a small number of local premium customers. SKYCITY Hamilton averages approximately [] visits per day. Visits by international players tend to be ad hoc, and associated with visits to the region for other purposes e.g. the horse racing/breeding industry, and make up a very small percentage of the visits and the revenue (less than []% in each case). SKYCITY Hamilton does not offer a commission programme. SKYCITY Hamilton also does not generally offer travel and accommodation complimentarys to attract non-local customers to visit the casino, but it does have a group of regular customers (who average approximately 10 visits per month) for whom it will meet their accommodation and food and beverage costs when they visit the casino.
 - (c) SKYCITY Queenstown Casino also has a significant base of ordinary customers (in terms of its overall customer base). Together, gaming machines and non premium table play make up about []% of revenue. Premium table play (by local, national and international customers) makes up the balance. On average there are in excess of 200,000 visitors to the casino per annum, of which approximately [] are from premium customers who are offered complimentarys or commission payments to visit the casino.
 - (d) SKYCITY does not have accurate estimates of the present proportion of premium customers as compared with ordinary customers at Christchurch Casino.

⁹ The Members' Room is a separate gaming area, entrance to which is by invitation only. In the Members' Room table limits tend to be higher than on the main floor and the level of service offered is higher.

However, based on SKYCITY's experience generally in the casino business, SKYCITY estimates that not more []% of Christchurch Casino's revenue is derived from premium customers. SKYCITY understands that Christchurch Casino offers a complimentary programme for national and international premium customers to visit the casino on the same basis as other Australasian casino properties. In addition SKYCITY understands some international premium customers are offered commission payments, but that such payments are at a lower rate than SKYCITY Auckland and SKYCITY Queenstown Casino.

- (e) SKYCITY does not have accurate estimates of the percentage of premium customers at the Dunedin or Wharf casinos. However, it would expect the percentage to be quite small. This is because these casinos have lower maximum bet limits on table games that SKYCITY considers are unattractive to premium customers. SKYCITY understands that they do not offer commission payments or complimentary that would be sufficient to attract premium customers to travel for the purposes of visiting these casinos. The focus of these casinos is on local customers and ad hoc visits from visitors to Dunedin and Queenstown respectively.

83. SKYCITY considers that there are not two separate customer markets, but rather there is one market with customers falling along a spectrum of expenditure levels. In terms of supply side substitutability, New Zealand casinos are able to or could cater for both types of customers, and for all of them the predominant customer (in terms of number of visits and percentage of revenue) is local. Although local premium customers have a greater ability and willingness to switch casinos than ordinary customers (see below under "Geographic scope"), any switching will be an incomplete and imperfect substitute for visits by those customers to their local casinos. It is, however, arguable that there are two customer dimensions within the casino entertainment market (although there is not necessarily a clear nor consistent line as to where one dimension ends and the other begins). This is consistent with the *London Clubs* decision where an "upper-segment" of the London casino market was found to exist by reference in part to "drop" per head.¹⁰

Geographic scope

Guidelines and decisions

84. Geographic dimensions of a market are defined to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.¹¹ In the context of casinos the question is to where a customer would turn if there were a reduction in the entertainment price/quality package (which is a mix of atmosphere, table limits, games offered, payout ratios,

¹⁰ At paras 1.7, 4.55 to 4.77. However, SKYCITY considers that there are significant differences between the New Zealand casino entertainment market and the London casino market as identified by the UK Monopolies and Mergers Commission. In particular:

- UK casinos do not have gaming machines. They are therefore dependent on table games revenue;
- all UK casinos are membership based, ie you must be a member to attend, and there is a stand down period after joining;
- the UK is a world financial and tourist centre. There are significantly greater numbers of premium customers living in or visiting the UK, and London in particular, than New Zealand. Premium customers are therefore a much more significant part of that market.

¹¹ Mergers and Acquisitions Guidelines p18.

commission payments and complimentaries (as applicable), rewards programmes etc).¹²

85. The Guidelines state:

“In general, a geographic market for goods will have the following characteristics: that no more than a relatively small proportion of production of the good within the area will be sold outside the area; that no more than a relatively small proportion of the good sold within the area will be supplied from outside the area; and that these proportions would not change significantly in response to a SSNIP by a hypothetical monopoly producer in the area.¹³

86. In Decision 337 the Commission viewed the relevant markets as being regional. The Commission considered the central question to be whether those in Auckland wishing to attend a casino would consider a casino in Hamilton to be a practicable substitute and vice versa. The Commission went on to consider the travelling times and driving conditions between the two cities. Even from Auckland’s southernmost suburbs to Hamilton, the driving time was one hour. In the Commission’s view the distance was sufficiently large to make it unlikely that many Auckland and Hamilton residents would see the two casinos as substitutable. The Commission accepted evidence from overseas studies and from the experience in New Zealand that, with the exception of resort destinations (particularly Las Vegas), most casino patrons originate from within what might be described as commuting distance to the casino concerned. The Commission concluded that the relevant markets were those for casino entertainment in Auckland and for casino entertainment in Hamilton.

87. SKYCITY considers that this analysis remains correct both for ordinary and premium customers. This was the view taken in *London Clubs* where each London club was substitutable for another, but was generally not substitutable for clubs outside the London area except for some internationally mobile customers.¹⁴ In this case the question is whether any of the casinos are substitutable for another.

Travelling time/costs

88. The travelling time for driving between Christchurch and Queenstown is approximately 5 hours and 35 minutes.¹⁵ This travelling time is significantly greater than as between Auckland and Hamilton. The flight time is approximately 50 minutes and the cost currently ranges from \$132 to \$432 return.¹⁶ In addition, there is time and cost involved with transfers to and from each airport, waiting time and baggage collection.

89. The driving time between Christchurch and Auckland is significant and involves a Cook Strait ferry crossing. A direct flight time is approximately 1 hour and 20 minutes (and the flight time is longer if there is a Wellington stopover). The cost currently ranges from \$118 to \$520 return.¹⁷ In addition, there is time and costs associated with transfers to and from the airport, waiting time and baggage collection.

¹² See para 2.25 of *London Clubs*.

¹³ page 9 of Guidelines.

¹⁴ See e.g. para 2.14 of *London Clubs*. It is noted that in *London Clubs* the proposed acquisition was of casinos within the one region (London) rather than casinos in different regions.

¹⁵ AA Travelling times map South Island (www.aatourism.co.nz/southlocations.html). See Appendix 4.

¹⁶ Prices and flight times from websites.

¹⁷ Prices and flight times from websites.

90. In relation to the Dunedin casino:
- (a) the driving distance between Dunedin and Queenstown is approximately 3 hours and 40 minutes.¹⁸ This is significantly greater than the distance between Auckland and Hamilton;
 - (b) the driving distance between Dunedin and Christchurch is approximately 4 hours and 30 minutes.¹⁹ The flight time is approximately 55 minutes and the cost currently ranges from \$132 to \$352 return.²⁰ In addition, there is the time and costs in transfers to and from the airport, waiting time and baggage collection.
91. Given these times and costs, each casino is not a practical substitute for any of the others. SKYCITY considers that Auckland, Hamilton, Christchurch, Dunedin and Queenstown each comprise separate regional markets for casino entertainment for ordinary customers.
92. SKYCITY also considers that Auckland, Hamilton, Christchurch, Dunedin and Queenstown comprise separate regional markets for premium customers. The key question is whether premium customers would view casinos outside their local casino as substitutable. For the most part, customers will not. Just as with ordinary customers, the travelling time and cost means that casinos outside commuting distance for premium casinos are generally not practical substitutes. These customers play every day or every second day and would not wish to travel to another city this regularly. For this reason, visits by premium customers to casinos outside their region are less frequent.
93. Premium customers do, however, visit casinos outside their region more frequently than ordinary customers. They tend to travel internationally more frequently, whether for business, family or leisure reasons, or principally for the purpose of attending a casino. While there is a range in the frequency with which they will attend a casino outside their region, SKYCITY estimates that on average these visits will be perhaps four or five times a year.
94. The complimentary that may be offered to national and international premium customers (i.e. a reimbursement of the travel, accommodation and hospitality expenses based on their play) help to attract them to visit a property. In addition, commission based on a customer's turnover/front money²¹/losses may be offered to international premium customers. However, any reduction in these commissions/complimentaries by a non-local New Zealand casino would lead to a reduction in visits by national or international premium customers to that casino. To the extent that these customers wished to sample casino experiences other than those offered at their local casino, they would attend the casinos in New Zealand, Australia and Asia that continued to offer commission/complimentaries at a level above that of a New Zealand casino that had reduced the commission/complimentaries.
95. As noted above, local premium customers are not offered participation in complimentary or commission programmes but receive the same benefits and casino entertainment experience as ordinary VIP customers.

¹⁸ AA Travelling times map South Island.

¹⁹ AA Travelling times map South Island.

²⁰ Prices and flight times from websites.

²¹ Money which a player indicates they will be bringing to a casino to play with is known in the industry as front money.

96. In respect of any deterioration in the price/product mix at a premium customer's local casino, the response from premium customers would be a combination of a reduction in patronage, possibly a shift to or increase in other forms of entertainment and potentially a greater number of visits to a non local casino. However because of the travelling time and inconvenience those visits would not be at the frequency of visits to premium customers' local casinos.
97. In SKYCITY's view (for the reasons set out at paragraphs 148 and 149) a deterioration in the price/product mix at a non-local New Zealand casino would be more likely to lead to such customers choosing to visit an Australian or Asian casino in preference to a non local New Zealand casino on the occasions that they wish to sample a non local casino experience.

Locality of customers

98. That the markets are regional for both premium and ordinary customers is borne out by the percentage of non local customers that attend each of the casinos:
- (a) About []% of SKYCITY Auckland's casino customers are from Auckland, with []% coming from overseas. []% of customers are from the upper North Island, []% are from the lower North island, with only []% coming from the South Island. SKYCITY Auckland allocates some resources to bringing in premium table games customers from overseas but few resources on bringing players from different regions in New Zealand to game.
 - (b) []% of SKYCITY Hamilton's customers are from Hamilton, with a further []% from the upper North Island (with []% being from Auckland). Only []%, []% and []% are from the lower North Island, the South Island and overseas respectively. SKYCITY Hamilton does not target bringing premium customers from other regions to game, but seeks to attract people visiting the region for other purposes where possible.
 - (c) SKYCITY understands that the customer base in Christchurch is predominantly local. SKYCITY understands that the gaming machines located on the main gaming floor are utilised almost exclusively by local customers. Similarly, table games on the main gaming floor are also almost exclusively local play. SKYCITY estimates that approximately []% of the play in Christchurch Casino's "Aspinall's Club" room is by locals.
 - (d) About []% of SKYCITY Queenstown Casino's total customers come from the Queenstown area, with []% coming from the rest of the South Island and []% from the North Island. The remaining []% come from overseas. SKYCITY's experience is that most of its non local customers visit the casino as an incidental part of visiting Queenstown for a holiday (Queenstown being a world renowned holiday destination). For most of its customers the SKYCITY Queenstown Casino experience is not the reason for the visit to Queenstown. There is, however, a small number of customers (approximately []) from the lower South Island (including Invercargill, Gore and Alexandra) who visit on a more regular basis and who contribute approximately []% of the table games revenue on the main gaming floor. SKYCITY Queenstown Casino contributes to the cost of petrol for these customers to travel to Queenstown, and will occasionally pay for their accommodation in Queenstown.
 - (e) The Dunedin Casino is a local casino that focuses on ordinary customers. SKYCITY believes that only a small percentage of visitors are from outside the

Dunedin area, with those visitors attending the casino incidentally to a business trip, or a trip for a special event (e.g. a sporting event).

- (f) SKYCITY understands that the focus of the Wharf casino is on local Queenstown customers and ordinary customers visiting from other centres visiting as an incidental part of their trip to the Queenstown area for other reasons.
99. In terms of the Guideline referred to above (at para 85) only a relatively small proportion of premium customers come from outside the region, only a relatively small proportion of casino visits by premium customers are made to a casino outside the region, and these proportions would not change significantly in response to a SSNIP by the casino in the region.

Conclusion on market

100. SKYCITY therefore considers that there are regional markets for casino entertainment. The boundary of each market is the commuting distance to the casino in the region. There are broadly two types of customers within the market. Those two types are the premium customer and the ordinary customer.
101. If, however, the Commission considered that premium customers formed a separate market and that the geographic boundary of the market was wider, SKYCITY considers the market would then need to be defined as a “supra-national”²² market encompassing casinos located in New Zealand, Australia (particularly the east coast) and Asia.

Horizontal aggregation

11. Horizontal aggregation: are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

102. The proposed acquisition will not result in any horizontal aggregation in any of the relevant markets because these markets are regional in scope. For this reason there is no change to the degree of market power held in any of the regional markets and the proposed acquisition will not substantially lessen competition in any market.
103. If, however, the Commission took the view that there was a supra-national market for premium customers then there would be some horizontal aggregation. In particular, there are approximately [] premium customers from the Auckland area, approximately [] premium customers from the Christchurch area, perhaps [] in the Wellington/Nelson region, approximately [] premium customers from the lower South Island who visit SKYCITY Queenstown Casino and perhaps [] premium customers spread throughout the rest of the country. Despite the aggregation of these customers, SKYCITY considers that no substantial lessening of competition will occur. This is because of the constraints that operate on each casino in this market that will remain unaffected by the proposed acquisition. This is discussed further at paras 146-153 below.

²² page 19 of Guidelines.

Differentiated product markets

12. Are the products identified above standardised or differentiated?

Introduction

104. Given the nature of casino entertainment, customers do not make a decision based solely on price. It is the kind of entertainment experience offered that determines whether a customer wishes to attend a casino. That experience can differ between casinos through:
- (a) the minimum and maximum bets on tables;
 - (b) the payout ratio on gaming machines;
 - (c) the games;
 - (d) the denominations on gaming machines;
 - (e) the tokens for gaming machines;
 - (f) the atmosphere (e.g. decoration/layout/other attractions in the complex/bands);
 - (g) the location; and
 - (h) the incentives offered to premium customers.

The minimum and maximum bets on tables

105. Rules for games are the same regardless of bet limits. Those rules provide an expected rate of return for a casino operator from different types of games which is independent of the maximum and minimum bets. Each casino determines its minimum and maximum bets on tables based on its assessment of the appropriate trade off between risk, return and customer preference.
106. In addition the CCA can (and the Gambling Commission will be able to²³) specify the maximum and minimum bets on games if it has concerns with the way any casino sets them.
107. The present minimum/maximum bets on table games at SKYCITY properties are:

	<i>Minimum</i>	<i>Maximum²⁴</i>
Blackjack	\$2/5-\$100	\$100-\$5,000
Caribbean Stud Poker	\$5/10-\$50	\$100/200-\$800
Money Wheel	\$2	\$400

²³ Gambling Act section 313.

²⁴ As a rule of thumb maximum bets are typically the minimum bet doubled up (multiplied by 2) between 5 and 7 times.

	<i>Minimum</i>	<i>Maximum</i> ²⁴
Roulette	Betting on numbers \$1/2-\$25 Even chances \$2/5 - \$100	\$5/25-\$500 \$500 - \$5,000
Tai Sai	\$2/5	\$500-\$1,000
Pai Gow	\$25-\$50	\$1,000-\$3,000
Mini/Midi/Big Baccarat ²⁵	\$15-\$5,000	\$750-maximum depending on differential (up to \$100,000)

108. People do approach SKYCITY properties and seek agreement to higher maximum bets. The relevant SKYCITY property considers each request on a case by case basis.
109. SKYCITY understands that the maximum bets on tables at SKYCITY Auckland, SKYCITY Queenstown Casino and Christchurch Casino are not significantly different, other than that SKYCITY Auckland and SKYCITY Queenstown Casino operate much higher table differentials on Baccarat than Christchurch Casino. SKYCITY's Hamilton's table maximums are slightly below these, although SKYCITY understands that it operates a higher differential on Baccarat than CCL. In turn, maximum bets on tables at Christchurch Casino and SKYCITY Hamilton are higher than the maximums at the other two casinos.
110. The higher maximums on Baccarat at SKYCITY Auckland and SKYCITY Queenstown Casino are more attractive to upper end premium customers (i.e. those who may bring "front money" in excess of \$250,000 per visit)²⁶ than those at Christchurch Casino. Similarly the maximum bets at SKYCITY Auckland, SKYCITY Queenstown Casino and CCL are more attractive to premium customers generally than those at the Dunedin and Wharf casinos.
111. SKYCITY understands that the table limits at SKYCITY Auckland are similar to those at most Australian properties. However the Crown Casino (Melbourne) and Burswood Casino (Perth) do offer higher limits than SKYCITY Auckland.
112. Maximum bets for gaming machines are determined by the individual machine and decisions by the player, i.e. whether to double up.

The payout ratio on gaming machines

113. Under section 63 of the Casino Control Act, the CCA authorises games by notice in the New Zealand Gazette and prescribes the rules for the games. Those rules include

²⁵ In addition, Baccarat uses a maximum differential limit (the difference between wagers on the banker and the player). It is typically a maximum of \$50,000.

²⁶ SKYCITY Auckland and SKYCITY Queenstown Casino do not seek customers who deposit greater deposits per visit than \$2 million.

rules for the approval and operation of gaming machines. One of those rules is that the minimum payout on each gaming machine must be at least 87% of turnover. This rule (along with other rules made under section 63 of the Casino Control Act) is expected to continue to apply under the Gambling Act.²⁷

114. The gaming machines at SKYCITY Auckland, SKYCITY Hamilton and SKYCITY Queenstown Casino currently have an average payout of around []%. The actual payout ratio depends on the machine's pay scale, e.g. the jackpots offered. SKYCITY properties work to this payout ratio because, in SKYCITY's view, it represents an appropriate balance between customer satisfaction and profit. While in the past the payout ratios on machines in casinos were higher than those in non casino venues, SKYCITY's experience is that the average ratios across casinos and non-casino venues is now reasonably similar.
115. The payout ratio is just a statistical average (i.e. it is the return expected from an infinite number of spins). It is not a guarantee. The actual payout does vary depending on the turnover on particular machines. If a SKYCITY property wants to change the payout ratio it can do so within the limits of the particular game and customer preference. It would, however, be difficult to achieve specific actual payout in ratios because, as already stated, the payout ratio is not a guarantee.
116. In addition, the revenue to a casino operator is a function of both the expected payout ratio and the actual turnover on the machine. This turnover is entirely determined by the customer. SKYCITY believes that most customers have a set amount of discretionary expenditure they choose to play with, and will play until they have used that money. They will generally not spend more. Therefore, changing the payout ratio will not increase the turnover. It will possibly adversely affect player enjoyment and their likelihood of returning, e.g. because the player considers they have "lost" too quickly.

The games

117. Casinos can only introduce table games approved by the CCA (this function will also be taken over by the Gambling Commission from 1 July).²⁸ The games must be conducted in accordance with rules gazetted by the CCA. The rules determine the theoretical win for the casino on each game, and when a player or the casino win in any given set of circumstances. SKYCITY Auckland currently operates all the games approved by the CCA (other than Poker, Craps, Keno, Bingo and the Racing Game). SKYCITY understands that in addition to the games operated at other New Zealand casinos, Christchurch Casino operates the Racing Game, Keno, Bingo and Poker. Other properties offer a lesser number and variety of games, although all properties offer Blackjack, Baccarat and Roulette. The numbers of each type of game are determined by customer preference.
118. Each year SKYCITY properties change approximately []% of their gaming machines (either by changing the game software in the machines referred to as a "game conversion", or replacing the machine). SKYCITY is not aware of the machine replacement policies of other casinos, but considers that they are likely to be slightly below this percentage. Casinos do not need CCA approval to change the games. They do, however, need to have approval for an increase in the number of machines. Under the Gambling Act any such increase must be offset by a proportionate decrease

²⁷ Section 376 Gambling Act.

²⁸ Section 367 Gambling Act.

in the player space at table games.²⁹ The games must be changed to one of the CCA approved games (this function will also be taken over by the Gambling Commission from 1 July).³⁰ SKYCITY changes its games to provide customers with variety and to continually provide them with a new casino entertainment experience.

The denominations on gaming machines

119. There are no minimum or maximum denominations for machines under the Gambling Act 2003, although the Act now prohibits bank-note acceptors on machines taking note denominations of more than \$20.³¹ SKYCITY Auckland has a variety of games ranging from 2 cents to \$25. Other casino properties have denominations in the range of 2 cents to \$1 although SKYCITY understands Christchurch Casino has a number of \$2 machines. Machines in non-casino venues are generally in the range of 2 cents to 10 cents.

The tokens for gaming machines

120. Regardless of the denomination of the game, each casino can select the size of the coin that can be used in the machine, and whether the machines are equipped with bank note acceptors. All machines at SKYCITY's properties and (as far as SKYCITY is aware) at other casinos are equipped with bank note acceptors. Except for the machines that can accept \$5/\$25 tokens referred to below, all SKYCITY's gaming machines require \$2 coins. SKYCITY understands that all other casinos also use \$2 coins. SKYCITY Auckland's \$5 and \$25 machines accept \$5 and \$25 tokens respectively, rather than \$2 coins. These tokens are purchased from the SKYCITY Auckland cashiers. SKYCITY is not aware of other casinos utilising such tokens.

The atmosphere

121. Each casino can have its own unique atmosphere. Atmosphere is a combination of such things as the size of the casino (including the number of tables and gaming machines), the decor, the entertainment provided and the dress standard.

122. SKYCITY Auckland is the largest of the casinos, followed by Christchurch Casino and SKYCITY Hamilton. SKYCITY Auckland has 110 tables and 1647 gaming machines spread through four gaming areas. The three public gaming areas are of different sizes, have different decorative schemes, entertainment/music and different dress standards to appeal to different groups of customers. The Members' Room is accessed by invitation only and offers a more formal casino gaming experience.

123. SKYCITY understands Christchurch Casino has 35 tables, approximately 500 machines and two gaming areas. One of these is the private Aspinall's Club room. SKYCITY Hamilton has 23 tables, 339 machines and 2 gaming areas. One of these can be closed off for private gaming.

124. The other casinos are all "boutique" style, being quite small and intimate. In each case the casino has been decorated, and has adopted a dress standard, in a manner which its owners believe is most appealing for the customer base for that property. SKYCITY does not consider there is any material difference in the quality of the decor/presentation at each property.

²⁹ Section 11 and 12 Gambling Act

³⁰ Section 326 Gambling Act.

³¹ Section 180 Gambling Act 2003.

The location

125. Where a casino seeks premium customers from outside its region, the location of the casino is an important factor in the customer's decision. For example, Queenstown has the disadvantage of distance but the advantage of being a popular holiday destination. When a national or international premium customer has to travel a greater distance, the trip will be more expensive. Therefore, the customer will need to have a higher level of expected spend in order for the casino to expect to win enough (based on theoretical win rates) to cover all of that customer's travel and accommodation expenses. It is therefore more convenient for a customer to travel to a closer rather than more distant casino.

Complimentaries/commissions offered to premium customers

126. Casinos can offer the various complimentaries and commissions referred to at paragraph 78 above. If these are not offered then national and international premium customers will not come to the casino at all, some local premium customers will not attend as frequently and some local premium customers may not attend at all.

Vertical integration

14. Will the proposal result in vertical integration between firms involved at different functional levels?

127. No. SKYCITY, Aspinall and CCL do not operate at different functional levels from each other.

Previous acquisitions

15. Identification of all previous proposed acquisitions involving either participant.

Identify all proposed acquisitions of a business or shares involving either participant notified to the Commission in the last three years.

128. SKYCITY has not notified the Commission of any proposed acquisitions of the assets of or shares in a business in the last 3 years. As far as SKYCITY is aware, Aspinall has not notified the Commission of any proposed acquisitions of assets of or shares in a business in the last 3 years.

Identify any other acquisition of assets of a business or shares which either participant has undertaken in the last three years.

129. SKYCITY has completed or announced the following acquisitions in the last three years:

- (a) in March 2001, SKYCITY acquired a 50.2% interest in SKYCITY Leisure Limited (formerly Force Corporation Limited), a cinema business, from interests associated with its Executive Chairman, Mr Peter Francis;

- (b) in late 2000 and early 2001 SKYCITY acquired a 32.6% interest in Canbet Limited, an Australian internet sports wagering company, by way of a share placement;
- (c) in February 2004 SKYCITY announced it had agreed to buy 100% of Diamond Darwin Pty Limited, the holding company of Diamond Leisure Pty Limited, the owner and operator of the MGM Grand Darwin hotel and casino from MGM Mirage Inc. The transaction is expected to be completed before the middle of the year.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

Existing competition

16. In the market or market(s), who are the suppliers of competing products including imports?

Introduction

130. With the exception of Queenstown (where there are two casinos), each casino has a regional monopoly. There are, however, a number of constraints on the exercise of market power by each casino. These constraints will remain unaffected by the proposed acquisition.

Ordinary customers

Constraints

131. In relation to ordinary customers there are the following actual or potential constraints:
- (a) in Queenstown, competition between the two casinos;
 - (b) crossover competition;
 - (c) regulation;
 - (d) other forms of entertainment (or going/staying home);
 - (e) other significant shareholders in CCL.

Queenstown competition

132. The proposed acquisition will not affect the constraint on SKYCITY Queenstown Casino provided by competition from the Wharf casino (in addition to the other factors noted below).

Crossover competition

133. Under the proposed acquisition, the Commission may take the view that SKYCITY will have (in Commerce Act terms, rather than in an operational sense) substantial influence over CCL (in addition to owning SKYCITY Auckland and having substantial

influence over SKYCITY Hamilton casino and SKYCITY Queenstown Casino). This would not result in any loss of significant crossover competition because customers between SKYCITY Auckland/SKYCITY Hamilton and Christchurch Casino are not within commuting distance of these casinos. As between SKYCITY Queenstown Casino and Christchurch Casino, there would not be a loss in any significant crossover competition because the customers between these two casinos are both small in number and not within commuting distance of either casino. (There is no change to any crossover competition as between the other casinos.)

Regulation

134. The CCA presently, and the Gambling Commission will shortly, limit the way a casino can be operated. In addition to the matters referred to in paragraphs 106, 113 and 117 above, the Gambling Act provides that:
- (a) no charges may be made by the casino to enter the casino or to commence playing a game;³²
 - (b) certain information must be given to customers upon request. This includes copies of game rules, minimum and maximum bets and the manner in which winning bets will be paid;
 - (c) each casino must be operated in accordance with the conditions attached to its casino premises licence (and the casino operator must comply with the conditions of its casino venue licence). All such licences include a requirement to operate the casino generally in accordance with the relevant casino licence application. A lowering of standards may potentially risk breaching the casino premises/venue licence depending on the particular change being made and the information provided in the application.
135. SKYCITY notes the view of the Commission in Decision 337³³ that, despite this regulation, there was scope for casinos to alter aspects of the entertainment package offered. For example, the maximum and minimum bets could be altered, the payout ratio on gaming machines and the denomination and tokens could be changed, the amenities, standard of service and the number and range of games could be altered.
136. SKYCITY considers that regulators and the regulatory framework (including legislation, licence conditions, procedures and game rules) currently exert a material restraint on operational decisions that a casino business could otherwise make. For example, in 2001, SKYCITY Auckland sought approval to install continuous shuffling machines³⁴ on its blackjack tables on a trial basis. The CCA approved the introduction of such machines on not more than 50% of blackjack tables for a 12 month period. At the end of the trial SKYCITY Auckland sought approval for their permanent introduction on all blackjack tables. The CCA approved their permanent introduction but only on a maximum of 50% of blackjack tables, because in their view the full introduction would be unfair to some players.

³² Section 174 Gambling Act.

³³ para 57. In *London Clubs* (see paras 2.50 to 2.53 and 2.60) the view was also taken that within the limits of regulation competition occurred through quality of service, the setting of minimum and maximum bets, the waiving of ancillary charges, advertising, and through capacity.

³⁴ These machines continuously shuffle cards, as opposed to the standard shoe, in respect of which a dealer must manually shuffle the cards once they have all been dealt. The device offers significant benefits in preventing fraudulent collusion between dealers and customers.

137. SKYCITY considers that the constraints referred to in paragraph 136 are greater under the Gambling Act. In contrast to the provisions of the Casino Control Act, under the Gambling Act:
- (a) fines can be imposed on casino operators for breach of the Act. A series of offences have been designated as “infringement offences” allowing regulatory bodies to issue an instant fine (much like a speeding ticket). The Department of Internal Affairs is currently considering other breaches that should be designated as infringement offences by regulation, and the fines for those offences;
 - (b) the Gambling Commission can add to or vary the licence conditions attached to casino licences. There is no specific restriction on the changes that can be made (other than pursuant to administrative law requirements). Currently such changes can only be made at the request of the licence holder. Therefore there is the potential for the Department of Internal Affairs and the Gambling Commission to take steps to prevent or limit operational decisions by casino owners and operators;
 - (c) the Secretary of Internal Affairs can specify minimum operating standards for the day to day operation of a casino. Although it must consult with the holders of the relevant casino licences before doing so, and there are rights of appeal to the Gambling Commission, such powers are a significant extension from those available under the Casino Control Act. In particular the matters in respect of which such operating standards can be specified is not limited to particular items set out in the Act;
 - (d) casino operators must introduce a minimum standard of measures to prevent problem gamblers from playing at the property. Regulations will mandate the minimum standards, and the Department of Internal Affairs is currently consulting on such regulations.
138. In summary, the Gambling Act provides significantly greater scope than the Casino Control Act for regulators to be involved in, and to significantly influence, the operation of casinos. Nevertheless, SKYCITY accepts that there remains scope for casinos to alter aspects of the entertainment package offered.
139. Both the constraint of regulation and the limits of that constraint remain unchanged after the proposed acquisition.

Other forms of entertainment

140. For ordinary customers, SKYCITY considers that this is the most important constraint on the exercise of market power by the casino. Customers do not have to attend casinos. It is one discretionary entertainment activity out of a wide range of other entertainment activities. If customers consider that they are not getting value for money they will not return or they will return less frequently.
141. There is a spectrum of casino customers. The vast majority of customers are those who attend casinos solely as a form of entertainment and as part of discretionary spending on entertainment. Some of these will attend frequently while others will attend only occasionally. If these customers consider that levels of service are deteriorating, they will either simply switch to an alternate form of entertainment or they will decrease the amount of time and money they spend at the casino. Either of these outcomes would be undesirable for SKYCITY. Studies indicate that approximately 1-2% of people who participate in gambling activities are problem gamblers. These

customers are unlikely to reduce significantly the amount of gambling that they do in response to a deterioration in the offering at the casino. However, these customers are undesirable for casinos. All SKYCITY casinos operate host responsibility programmes to identify and assist such customers to recognise their problem and seek treatment. This includes a self-exclusion facility. Under the Gambling Act all casinos and non-casino gaming machine operators will be required to offer a self-exclusion facility and to operate a programme to identify and assist problem gamblers.

142. For gaming machine customers, the availability of gaming machines at locations outside casinos is a significant alternative form of entertainment to that offered at a casino. Since its decision in respect of SKYCITY's application to acquire shares in Riverside Casino Limited, the number of machines outside casinos has increased significantly. As at 31 December 2003 there were 22,734 machines at 2,031 locations in New Zealand³⁵. The quality of such machines has also improved to the point where such venues have equipment of similar quality to that in SKYCITY's casinos (particularly in Auckland). The payout ratios are now understood to be broadly similar. While such machines cannot offer the same jackpots as casinos, they have the benefit of convenience. A failure by a casino to offer product or service of the required standard would lead to a shift of patronage for a number of its customers to gaming machines outside casinos.
143. Any changes made to reduce the value of the entertainment package provided to customers would be readily apparent to customers. SKYCITY's experience is that most customers tend to have a fixed budget for their visit. Whether they perceive that they have received value for money tends to depend on how long their money has lasted. If SKYCITY changed their take or the payout ratio, customers would feel that they had lost their money too quickly and they would therefore feel less satisfied with the experience. Reducing the value of the package offered would be detrimental to SKYCITY, and contrary to its focus on encouraging repeat custom.
144. This significant constraint remains unaffected for ordinary customers in each of the regional markets by the proposed acquisition.

Other significant shareholders

145. As noted at paragraphs 46-47 above, SKYCITY is not obtaining a controlling interest in CCL. Nor will it obtain board control. Skyline currently controls the board (and Mr Thomas, chairman of Skyline and CCL, is opposed to SKYCITY's involvement in CCL).³⁶ Southern Equities Limited and SPHC (NZ) Holdings Limited also have significant interests in CCL. These other shareholders will continue to require CCL to be operated in a way that is intended to generate the best return on their investment, regardless of whether or not that suits SKYCITY's interests.

³⁵ 2,000 machines were located at approximately 180 sites in Auckland City; approximately 2,000 at 160 sites in Christchurch; 650 machines at approximately 50 sites in Hamilton; 1,100 at approximately 90 sites in Manukau City, Auckland; 670 machines at 50 sites in North Shore City, Auckland; 135 machines at 13 sites in Queenstown; and 446 machines at approximately 30 sites in Waitakere City, Auckland.

³⁶ SKYCITY asks that the Commission bears this in mind in receiving the views of Skyline and CCL in the context of considering this application.

Premium customers**Constraints**

146. In relation to premium customers there are the following actual or potential constraints on the market power of a New Zealand casino:
- (a) crossover competition and competition from Australian and Asian casinos;
 - (b) regulation;
 - (c) other forms of entertainment or staying at home; and
 - (d) other significant shareholders

Competition

147. Although premium customers predominantly play in their local casino, there is competition for these customers on the occasions that they travel. SKYCITY Auckland, SKYCITY Queenstown Casino and Christchurch Casino to an extent compete with each other, but more significantly compete with the Australian casinos and some of the casinos in Asia.
148. The degree of competition between SKYCITY Auckland and SKYCITY Queenstown Casino on the one hand and the Christchurch Casino on the other hand is limited because:
- (a) travel to a casino outside the customer's region will not generally replace the regular attendance at their local casino;
 - (b) the number of premium customers from Christchurch going to Auckland or vice versa is negligible. SKYCITY Auckland estimates that []% of its customers are from the South Island. SKYCITY would not expect the percentage of North Island customers at Christchurch Casino to be much different. Similarly about []% of SKYCITY Queenstown Casino's customers are from Christchurch. SKYCITY would expect the number of Queenstown customers attending the Christchurch casino to be less than this;
 - (c) the SKYCITY Auckland and SKYCITY Queenstown Casino properties have higher table limits on baccarat;
 - (d) when a premium customer wishes to attend a casino outside their region, there are a number of options outside New Zealand that provide stronger competition than those casinos from within New Zealand (see below at para 149).
149. In contrast with the competition from within New Zealand, the competition from the Australian and Asian casinos is much stronger. This is because:
- (a) there are a greater number of them (see below at para 155);
 - (b) such properties, because of their larger size, can offer a number of tables with higher limits at different table games, and a larger number and variety of gaming machines. In addition, because some of the casinos have different casino management computer platforms, they have different gaming machines from those available on the platforms used in New Zealand;

- (c) Crown Casino (Melbourne), and to a lesser extent Jupiters on the Gold Coast, has recently become more aggressive in targeting premium gaming machine customers, and has been offering travel, accommodation and hospitality rebates to induce customers to visit (previously confined to table games customers);
- (d) the casinos are almost all part of wider entertainment complexes, including hotels, restaurants and entertainment venues. The properties can therefore internalise the cost of providing these services on a complementary basis in a way that the casinos in New Zealand (other than SKYCITY Auckland) cannot;
- (e) Crown Casino (Melbourne) and Star City (Sydney) have private “salons”³⁷ that are quite opulent as compared with anything on offer in New Zealand;
- (f) international travel generally has more appeal for customers than domestic travel;
- (g) customers in this category may have business that takes them to Australia/Asia so they are able to combine their visits with other activities;
- (h) Australian casinos are more active in and allocate resources to competing in this area. For example Star City (Sydney) and Crown Casino (Melbourne) have recruited or are recruiting representatives in New Zealand. In contrast, Christchurch Casino does not have representatives overseas or elsewhere in New Zealand;
- (i) when the Smokefree Environments Amendment Act 2003 comes into force all casino premises in New Zealand will become smoke-free. In most Australian States, there are or will be exceptions to smoke-free legislation for members’ rooms in casinos. This may, therefore, make Australian casinos more desirable for premium customers who smoke;
- (j) commission rates for premium international customers are determined by international markets. Because of the time and cost for customers to travel to New Zealand, the rates offered by SKYCITY must at least match those available at properties closer to the customer’s residence. This is demonstrated by SKYCITY’s recent increase in the rates of commission offered to international customers to match the rates offered by Australian properties. Similarly, because national premium customers can enjoy these rates for travel to other properties, SKYCITY must offer a competitive package to bring such customers to its casinos.

Regulation

150. This constraint is no different for premium customers than for ordinary customers.

Other entertainment/staying at home

151. This constraint is no different for premium customers than for ordinary customers. It is a significant constraint on the ability of New Zealand casinos to increase price/reduce service.

³⁷ private rooms.

Other significant shareholders

152. See above at paragraphs 45-46.

“Supra-national” premium customers

153. Whether the Commission views the market as regional market (with casinos from outside the region operating as a constraint) or as a supra-national market (with New Zealand, Australian and Asian casinos being direct competitors), the effect of the proposed acquisition is the same. This is because, to the extent that Christchurch Casino competes with SKYCITY Auckland and SKYCITY Queenstown Casino, that competition is less significant as compared with the competition from the Australian and Asian casinos. That competition will remain unaffected by the proposed acquisition, as will the other constraints operating on casinos.

16.1 to 16.4 Identity and market shares of competitors.

154. There are no market share figures for premium customers because:

- (a) revenues from such customers are not separately disclosed by casinos; and
- (b) customers may play in different jurisdictions. Therefore there is no way of tracking play by New Zealand premium customers or overseas premium customers who may have come to New Zealand but have chosen to play elsewhere.

155. To the extent that New Zealand premium customers are prepared, on occasion, to visit a non-local casino, the competitors are:

Identity	Owner	Facilities	2003 Casino Revenues	Visitation	Other Information
SKYCITY Auckland	SKYCITY	110 tables 1,647 machines 4 gaming areas (including a members room) 344 room hotel (320 room hotel under construction) 6 restaurants 7 bars 700 seat theatre	NZ\$330m	12-13,000 per day	
SKYCITY Queenstown Casino	SKYCITY/ Skyline Enterprises	11 tables 86 machines 2 gaming areas (1 private room) 1 restaurant	NZ\$6m	200-220,000 per annum	
Christchurch Casino	Aspinall/ Skyline/ Southern Hotels Corp/ Southern Equities	35 tables 500 machines 2 gaming areas (1 VIP room) 2 restaurants 3 bars	NZ\$65m	N/A	
Crown Casino (Melbourne)	Publishing and Broadcasting Limited	350 tables 2,500 machines 3 private/VIP gaming areas 500 room 5 star hotel 465 room, 4-5 star hotel 30 bars 22 restaurants 2 theatres	A\$1,100m	45,000 per day	A\$20bn turnover (A\$242m revenue) from international commission business (approx. 11% of global)

		Cinema complex Bowling alley			market)
Star City (Sydney)	TABCORP Ltd	200 tables 1,500 machines VIP machine room Private gaming room, Hotel Two theatres 7 restaurants 6 bars	A\$631m	18,000 per day	
Jupiters (Gold Coast)	TABCORP Ltd	100 tables 1,348 machines VIP machine room VIP gaming room 594 room hotel 5 restaurants 3 bars	A\$341m	13,500 per day	A\$3.0bn turnover (A\$40m revenue) from international commission business
Treasury (Brisbane)	TABCORP Ltd	86 tables 1,300 machines 2 VIP gaming areas 5 restaurants 2 bars	A\$251m	11,600 per day	A\$1.2bn turnover (A\$15.0m revenue) from international commission business
Burswood (Perth)	Publicly-owned (PBL has an approximate 16% interest)	123 tables 1,300 machines Diamond Lounge and International room premium gaming areas Keno lounge 413 room 5 star hotel (291 room 3.5 star hotel under construction) Convention Centre for 2,300 people 9 restaurants 6 bars Burswood Dome Events Centre	A\$249m (A\$55.1m from International play)	9,000 per day	A\$5.0bn turnover (A\$72m revenue) from international commission business
SKYCITY Adelaide	SKYCITY	72 tables 899 machines Private gaming room 3 restaurants 3 bars	A\$92m	6,000 per day	

Sources: Casino Websites, Deutsche Bank report: "Tourism and Leisure Handbook" 27 January 2004; ABM Amro report "Gambling – Companies: searching for growth" 27 January 2004.

156. In addition there are a number of casinos in Asia that premium customers may visit.

Other considerations

16.5 Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality (near entrants).

157. Section 10 of the Gambling Act 2003 prohibits any further casino licences being granted in New Zealand. Therefore, SKYCITY considers no new suppliers will enter the casino market in New Zealand. Similarly, there are unlikely to be any new casinos established in Australia in the foreseeable future. Macau has recently licensed 3 new casino operators who are in the process of building facilities that are significantly larger

than SKYCITY Auckland. Because of its proximity to a number of significant markets for Asian customers, SKYCITY expects these properties will significantly increase competition for premium customers in Asia, and this may feed through to competition for customers in New Zealand and Australia.

158. While the Dunedin and Wharf casinos are potentially able to compete for premium customers, it is not expected that they will do so in the near future.
159. In addition, while not currently having a significant impact on New Zealand casino businesses, internet casinos and sports wagering sites have continued to grow in number and popularity. As these sites establish a reputation for security and honesty they may well become a relevant gaming entertainment alternative for a small but material segment of land-based casinos' customer bases.

16.6 Estimate the productive capacity that such near entrants potentially could bring to the market.

160. Not applicable.

16.7 Please indicate the extent to which imports provide a constraint on domestic suppliers. What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate?

161. The exchange rate is a relevant but not decisive factor in a decision by a premium customer to travel to an Australian casino. The cost of travel may be met by the Australian casino. The lower New Zealand exchange rates means that the table limits and machine denominations are proportionately higher than in New Zealand. This means that New Zealand customers would spend a proportionately higher amount than they would playing the same denominations in New Zealand. They also potentially win more.

16.8 To what extent is the product exported?

162. Casino entertainment is by its nature confined to the physical location from which it is supplied i.e. it cannot be exported. Customers must travel to the relevant site.
163. SKYCITY Auckland and SKYCITY Queenstown Casino do seek Australian and Asian premium customers (approximately []% of revenues in Auckland and approximately []% of revenues in Queenstown). Christchurch Casino also seeks these customers, although (SKYCITY understands) to a lesser extent (perhaps []% of revenues). SKYCITY does not consider it will be able to materially increase its share of these customers if it obtains the interest in CCL under the proposed acquisition. However it may, in conjunction with CCL, be able to better coordinate packages tailored to the needs or wishes of those customers. For example, it may be more attractive to an Asian customer to visit SKYCITY Queenstown Casino if SKYCITY can also coordinate a visit to the Christchurch casino during a Christchurch stopover, and vice versa.
164. The Dunedin and Wharf casinos do not compete for premium customers.

16.9 Please indicate whether the target company could be described as a vigorous and effective competitor, taking into account its pricing behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour

165. The Christchurch casino is not seen by SKYCITY as a particularly vigorous competitor for premium customers. This is in part because of its smaller size and in part because of its lower baccarat table limits. It is also because SKYCITY understands it has not put any significant resource into attracting premium customers from outside its region. It does not exhibit any of the features associated with a maverick competitor listed in the Guidelines, although these are not particularly applicable in the casino entertainment area.³⁸

Conditions of expansion

17. Which conditions do you consider would be likely to act as a barrier to the expansion of existing competitors, where they have the incentive to do so in response to a sustained effort by the merged entity to raise prices or to lower service quality or product quality?

Please provide evidence, where available of expansion by existing competitors in the relevant markets during the past five years

166. Under the Gambling Act, existing New Zealand casinos cannot expand the overall number of gaming positions (i.e. total number of tables and machines) at their casino, although they can to some extent substitute one form of gaming e.g. table games, for another, e.g. gaming machines. Similarly, the Gambling Act has imposed greater restrictions on the numbers and locations of gaming machines outside casinos via direct limits and the requirement for territorial authorities to establish policies for the number of machines to be allowed at new locations in their area, and the locations at which they can be operated. It is therefore not anticipated there would be any expansion of casinos or material expansion of gaming machines in New Zealand. There is, however, scope for the facilities at New Zealand casinos and at gaming machines outside casinos to be used more intensively.
167. SKYCITY understands that Australian casinos are also generally operating at close to their maximum number of gaming positions. These properties have the same or greater capacity than New Zealand properties to accommodate additional visits from New Zealand customers (whether as a result of specific commission/complimentary offerings, or on an ad hoc basis).
168. The barrier to expansion is that ordinary and premium customers will not substitute the convenience and lower cost of visits to a local casino for visits to a casino outside their region. To the extent that premium customers are, on occasion, prepared to travel to a casino outside their region, these visits will remain relatively infrequent.
169. Over the last five years SKYCITY has allocated more resources to seeking to attract premium customers from outside its region. The focus of these efforts has been on obtaining customers from Australia and Asia. For example, SKYCITY set up its representatives in Australia and Asia progressively between 2001 and 2003. The

³⁸ page 30 of Guidelines.

Australian and Asian casinos have more well established programs (although similar in context to SKYCITY's approach) for attracting premium customers to their casinos.

18. Please name any business which already supplies the market- including overseas firms- which you consider could increase supply of the product concerned in the geographic market by diverting production into the market (e.g. from exports), increasing utilisation of existing capacity or expansion of existing capacity

170. All of the casinos listed in the table at para 155 above could "increase their supply" to customers in New Zealand (i.e. provide packages to more premium customers more frequently) utilising their existing capacity. The extent to which they will do this is limited not by their production capacity, but by the customers' relative unwillingness to travel frequently for the purpose of attending a casino.

19. Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?

171. Competitors may increase their supply if premium customers become dissatisfied with their local casino. However this is constrained by the relatively limited number of occasions that premium customers would be willing to travel outside their region for the purposes of attending a casino.

20. How long would you expect it to take for supply to increase in each case?

172. Increase in supply can occur quickly. Existing resources can be utilised.

21. In your opinion, to what extent would the competitive response of existing suppliers constrain the merged entity?

173. As set out above (paragraph 148), SKYCITY considers the competitive response of the Christchurch casino is not a significant constraint on SKYCITY Auckland or SKYCITY Queenstown Casino. As also set out above (paragraph 149), the competitive response of the Australian and Asian casinos is a more significant constraint.

22. Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?

174. As set out above (paragraph 140), the most significant constraint is the ability of customers to choose not to come. The other significant constraint in relation to premium customers on the occasions on which they are prepared to travel, is the competition from Australian and Asian casinos.

Coordinated market power

23. Identify the various characteristics of the market that, post acquisition, you consider would either facilitate or impede coordination effects

175. SKYCITY considers that the likelihood of any collusion in any market for casino entertainment is low and would not be increased by the acquisition.

176. The Guidelines identify the characteristics of a market that are likely to be conducive to collusion.³⁹ If the Commission adopts the view that the markets are regional then there is no change to the potential (or in this case absence of potential) for collusion between suppliers. If the Commission adopts the view that there is a “supra-national” market for premium customers then the following characteristics are present:

- (a) high seller concentration in New Zealand (but not if Australia and Asia are incorporated);
- (b) slow speed of new entry;
- (c) lack of fringe competitors.

177. However, the following characteristics are not present, making collusion difficult:

- (a) parity in size of sellers;
- (b) static production technology;
- (c) undifferentiated product;
- (d) acquisition of a maverick business;
- (e) price inelastic market demand;
- (f) history of anti-competitive behaviour;
- (g) purchasers without countervailing power.

24. Identify the various characteristics of the market that, post acquisition, you consider would either facilitate or impede the monitoring and enforcement of coordinated behaviour by market participants

178. Not applicable.

25. Indicate whether the markets identified above show any evidence of price coordination, price matching or price following by market participants

179. There is no collusion by providers. Incentives provided to premium customers to the extent that they are prepared to travel are offered because premium customers would be unlikely to travel to a casino that did not offer those incentives. To the extent the rates of commission offered to international premium customers, and the level of expense rebate offered as part of complementary programmes, is similar between New Zealand and Australasian casinos, that is evidence of competition forcing properties to match the incentives offered by others. The entertainment packages provided to ordinary and local premium customers are offered because otherwise customers will not return or they will return less frequently. Similarly, competitive pressure has forced operators of gaming machines outside casinos to gradually increase their overall return to player so that (as far as SKYCITY is aware) there is now no significant difference in their returns to player compared with that of casinos.

³⁹ page 33.

26. Please state the reasons why, in your opinion, the transaction will not increase the risk of coordinated behaviour in the relevant market(s).

180. The casinos operate in different markets (apart from SKYCITY Queenstown Casino and Wharf casinos which are not affected by this acquisition). To the extent that there is competition for premium customers on the occasions that they are prepared to travel, any collusion between the New Zealand casinos would increase the prospects of a premium customer travelling to an Australian casino rather than a New Zealand one.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

Conditions of entry

27. Which if any of the conditions identified above do you consider would be likely to act as a barrier to entry of new competitors, where they would otherwise have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

181. As set out above, each of the regional casino entertainment markets in New Zealand is characterised by a monopoly (apart from the duopoly in Queenstown) except to the extent that premium customers will, on occasion, be prepared to travel to a casino outside their region. Further, SKYCITY expects that no new casino venue licences will be granted. As a result, for customers not prepared to travel outside their region to attend a casino, barriers to entry are absolute. For customers prepared to travel, there are no material barriers for potential competitors. The constraint from potential competitors is limited only by the frequency with which a premium customer is prepared to travel.

28. Please name any businesses (including overseas businesses) which do not currently supply the market but which you consider could supply the relevant market(s) by investing in new production facilities to produce the product, overseas companies diverting production to New Zealand or domestic companies expanding, or changing the utilisation of, existing capacity to produce the relevant products (where this would involve substantial new investment).

182. As noted in paragraph 157 above, Macau has issued three casino concessions (franchises) to established Asian and United States operators. The first of these will open in the next 12 months. A number of Asian countries (including Thailand, Singapore, Taiwan and Japan) have announced that they are examining the legislation of casinos in their jurisdictions. None of these countries has confirmed the introduction of casinos or a timeframe for doing so.

183. The casinos established in these jurisdictions would not be expected to target New Zealanders because of the size of the Asian marketplace which is geographically proximate to the properties. However, SKYCITY expects they would seek to attract Asian customers who are or might have been customers of SKYCITY. They would also be expected to attract visits from New Zealanders (particularly the Asian

community) who have business or family in the region and who may visit such casinos in conjunction with visits to the region for business/family reasons.

29. What conditions of entry do you consider would most influence the business decisions to enter in each case?

184. The establishment of casinos in the jurisdictions referred to in paragraph 182 will occur irrespective of developments in the New Zealand market. Those decisions will be based on economic development and revenue generation objectives of the respective governments. SKYCITY's experience is that if casinos are legalised in such jurisdictions, operators will establish new casinos.

Likelihood, sufficiency and timeliness of entry

30. How long would you expect it to take for supply to increase in each case?

185. If supply (for premium customers) were to be increased, Australian casinos could do so relatively quickly (see paragraph 172 above).

31. Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?

186. It is profitable for casinos in Australia and Asia to attract premium customers from New Zealand. This is evidenced by the fact that they are already active in this area.

32. Would the threat of entry be at a level and spread of sales that is likely to cause market participants to react in a significant manner?

187. SKYCITY properties would continue to seek to attract non local premium customers in part because if they did not do so, these customers would travel to the Australian or Asian casinos on the occasions that they were prepared to travel.

33. What conditions of entry would influence the business decision to enter the market by setting up from scratch?

188. Not applicable.

34. How long would you expect it to take for de novo entry to occur?

189. Not applicable.

35. To what extent would the possibility of de novo entry constrain the merged entity?

190. Not applicable.

PART V: OTHER POTENTIAL CONSTRAINTS

The conduct of suppliers

36. Who would be the suppliers of goods to the merged entity in each market?

191. No suppliers exercise any material constraint on SKYCITY.

37. Who owns them?

192. Not applicable.

38. To what extent would the conduct of suppliers of goods to the merged entity constrain it in each affected market?

193. Not applicable.

The conduct of acquirers

39. Who would be the acquirers of goods to the merged entity in each market?

194. All persons 20 years and over who seek the casino entertainment experience.

40. Who owns them?

195. Not applicable.

41. To what extent would the conduct of acquirers of goods to the merged entity constrain it in each affected market?

196. Both ordinary and premium customers have a degree of countervailing power. SKYCITY views this as the most significant constraint on the exercise of market power. See paragraphs 140, 173 and 174 above. This constraint remains unaffected by the proposed acquisition.

THIS NOTICE is given by SKYCITY Entertainment Group Limited (**SKYCITY**)

I, Andrew Alan Webster, General Manager Legal of SKYCITY am authorised to make this application on SKYCITY's behalf.

I hereby confirm that to the best of my knowledge:

- (a) All information specified by the Commission has been supplied;
- (b) All information known to the applicant which is relevant to the consideration of this application has been supplied;
- (c) All information supplied is correct as at the date of this application.

I undertake to advise the Commission immediately of any material change in circumstances to the application.

Dated this day of 2004.

Appendix 1

**NEW ZEALAND CASINO
OWNERSHIP AND MANAGEMENT**

CASINO	PREMISES LICENSEE	SHAREHOLDER(S)	SHAREHOLDING	MANAGER
SKYCITY Auckland	SKYCITY Auckland Ltd	SKYCITY Entertainment Group Limited (ultimate holding company of SKYCITY Entertainment Group) (Public Company)	100%	SKYCITY Casino Management Limited (subsidiary of SKYCITY Entertainment Group Limited)
SKYCITY Hamilton	Riverside Casino Limited	Riverside Trust (trust associated with Perry Family; Trustees: Simon Perry, Brian Richard Perry & Stuart Cann) SKYCITY Entertainment Group Limited Tainui Development Limited	30% 55% 15%	SKYCITY Casino Management Limited
Christchurch Casino	Christchurch Casinos Limited	Skyline Enterprises Ltd Aspinall (New Zealand) Ltd Southern Equities Ltd (associated with Louis Crimp) Southern Pacific Hotels Corporation (part of Intercontinental Hotels)	40.5% 40.5% 8.6% 10.4%	Christchurch Casinos Limited
SKYCITY Queenstown Casino	Queenstown Casinos Limited	SKYCITY Entertainment Group Limited Skyline Enterprises Limited	60% 40%	SKYCITY Casino Management Limited
Wharf Casino*	Otago Casinos Limited	Michael Spencer Stone Philip Dean Griffith Raymond Douglas Pike David Ralph Wishing Graham Leslie Smolenski	38% 38% 9.5% 9.5% 5%	Otago Casinos Limited
Dunedin Casino**	Dunedin Casinos Limited	Earl Raymond Hagaman Christchurch Casino Limited	42% 33%	Dunedin Casino Management Limited (subsidiary of Dunedin

		Stuart James McLaughlan	10%	Casino Limited)
		Robert Anthony Scott	5%	
		Geoffrey Read Thomas	2.5%	
		Warren Peter Leslie	2.5%	
		Kenneth John Cummings	2.5%	
		Anthony Grant Clear	2.5%	

* Shareholding based on March 2004 Annual Return

** Shareholding based on 14 May 2003 Annual Return

Appendix 2

CCL SHAREHOLDING STRUCTURE

