

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

Date:

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.

PART I: TRANSACTION DETAILS

1.0 The business acquisition for which clearance is sought is the purchase of the business referred to as Pipeline Bungy in Queenstown New Zealand by Bungy New Zealand Limited ('the Applicant').

1.1 The Pipeline Bungy is currently owned and operated by the Skippers Canyon Joint Venture (the 'Joint Venture'), a joint venture between Ngai Tahu Tourism Limited and Skippers Canyon Jet Limited.

1.2 The proposed purchase by Bungy New Zealand Limited is conditional on Ngai Tahu Tourism Limited acquiring 100% of the Pipeline Bungy business by buying the interest of its Joint Venture partner, Skippers Canyon Jet Limited.

As such, the Applicant has entered into a conditional Agreement for Sale and Purchase of the business with Ngai Tahu Limited ('the Vendor') dated the 13th day of March 2003 ('the Agreement') a copy of which is attached hereto and marked with the letter 'A'.

Currently, the Vendor owns 51% of the Pipeline Bungy business, and the agreement marked 'A' will not take effect unless the Vendor acquires the remaining 49% of the business from Skippers Canyon Jet Limited.

The proposed purchase price is [].

Any transfer of the Pipeline Bungy business will require licensing arrangements to be documented between the owner of the Skippers Canyon site, the Vendor and the Applicant.

1.3 The Applicant proposes to acquire the assets of the Pipeline Bungy business attached hereto and marked with the letter 'B'. The Pipeline Bungy business proposed to be sold by the Vendor is restricted to the bungy, flying fox and related transport operations currently carried on by the Skippers Canyon Joint Venture and does not include the

'Riches Trip', the museum operation, the retail shop or the jet boating activities (including the associated concession) carried on or relied upon by the Skippers Canyon Joint Venture in its current activities.

As part of the proposed acquisition, the Applicant and the Vendor have agreed to arrange documentation for the sharing or use of the base building, workshops, generators and other mutually beneficial improvements and access ways to ensure that they can carry on their respective businesses in an optimum manner.

2 THE PERSON GIVING NOTICE

The person giving this notice is John Troon, a Principal of Macalister Todd Phillips Bodkins solicitors acting on behalf of Bungy New Zealand Limited. Contact details for Mr Troon are as follows:

C/- Macalister Todd Phillips Bodkins
PO Box 653
Queenstown
New Zealand

Phone: 03 442 8110
Fax: 03 442 8116

Contact details for the Applicant are as follows:

Bungy New Zealand Limited
David O'Donnell (CEO)
PO Box 488
Queenstown
New Zealand

Phone: 03 441 8732
Fax: 03 442 5327

3 CONFIDENTIALITY

- 3.1 We do wish to request a confidentiality order for specific information contained in this notice, including the purchase price, the assets involved in the proposed acquisition and the market shares contained in paragraph 16.

We would ask that this information be held as confidential information for 20 working days after determination of the matter as it involves information sensitive to the operation of Bungy New Zealand Limited as the Applicant.

4 DETAILS OF THE PARTICIPANTS

- 4.1 Bungy New Zealand Limited as Applicant is the proposed purchaser of the Pipeline Bungy business. A copy of the company search for Bungy New Zealand Limited is attached hereto and marked 'C'.

The Pipeline Bungy is currently owned and operated by the Skippers Canyon Joint Venture, which encompasses Ngai Tahu Tourism Limited and Skippers Canyon Jet Limited. Copies of company searches for Ngai Tahu Tourism Limited and Skippers Canyon Jet Limited are attached hereto and marked 'D' and 'E' respectively.

4.2 Contact details for the Applicant are as follows:

Bungy New Zealand Limited
David O'Donnell (CEO)
PO Box 488
Queenstown
New Zealand

Phone: 03 441 8732
Fax: 03 442 5327

Contact details for the Vendor are as follows:

Ngai Tahu Tourism Limited
Adrian Januszkiewicz
C/- Shotover Jet
PO Box 660
Queenstown
New Zealand

Phone: 03 442 7087
Fax: 03 442 6708

5 DETAILS OF INTERCONNECTED PARTIES

5.1 Acquirer group/associates:

The Applicant company is headed by directors Henry Van Asch and John Ward.

5.1.1 The Applicant is part of a wider group of companies that supply bungy related goods or services.

5.1.2 Bungy New Zealand Limited owns more than 10% of the shares in the following companies:

- (i) AJ Gear Limited - 100%;
- (ii) Queenstown Bungy Limited - 100%;
- (iii) Auckland Bungy Limited - 50%;
- (iv) Peak Bungy Limited - 100%;
- (v) AJ Hackett Transport Limited - 100%;
- (vi) Tempest Holding Limited - 100%; and
- (vii) Queenstown Cap & Clothing Co Limited - 25%.

Copies of the company searches for the above are attached hereto and marked 'F'.

5.1.3 Fun Innovators NZ Limited is the sole shareholder of the Applicant. Henry Van Asch and John Ward are directors of Fun Innovators Limited and Henry Van Asch is the sole shareholder.

5.1.4 Fun Innovators NZ Limited holds shares in Bungy New Zealand Limited and no other company.

5.2 Target company group/associates:

5.2.1 Pipeline Bungy ('the Target Business'), is currently owned and operated by the Skippers Canyon Joint Venture, which encompasses Ngai Tahu Tourism Limited and Skippers Canyon Jet Limited. The proposed purchase of the Target Business by the Applicant is conditional on Ngai Tahu Tourism Limited acquiring 100% of the Target Business.

Ngai Tahu Tourism Limited owns more than 10% of the shares in the following companies:

- (i) Shotover Jet Limited - 82%;
- (ii) Skippers Canyon Holdings Limited - 50%; and
- (iii) Skippers Grand Canyon Limited - 51%.

Copies of the company searches for the above are attached hereto and marked 'G'.

5.2.2 No company that currently owns shares in the Target Business will continue to own shares in the Target Business following the proposed acquisition.

6 INTEREST IN OTHER PARTICIPANTS

6.1 The Applicant and the Joint Venture:

The Applicant has provided advice to the Target Business restricted to the area of bungy jumping. For a fee, this advice has included safety and operational guidance for the Joint Venture's bungy jumping operations, helping train qualified staff, assisting the Joint Venture to comply with any industry codes of practice in the context of the Joint Venture's bungy jumping operations, marketing their product and such other advice and assistance as may be sought by the Joint Venture from time to time in the context of its bungy jumping operations (to the extent the Applicant is capable and willing to provide such advice and assistance).

7 LINKS BETWEEN PARTICIPANTS

7.1 The Applicant and the Joint Venture:

There are no common directorships between the Target Business and the Applicant. Aside from the services provided in paragraph 6 above, the two parties do not share other links or informal arrangements.

The Joint Venture currently operates in the adventure tourism market, offering bungy jumping, jet boating and scenic trips by four-wheel drive.

The Applicant also operates in the adventure tourism market, specialising specifically in bungee jumping activities. Bungee New Zealand Limited offers bungee jumping under the 'AJ Hackett Bungee' brand for the following jumps:

Kawarau Bungee - 43 metres

Nevis Highwire - 134 metres

The Ledge - 47 metres

Skippers Canyon (only operates on special occasions) - 71 metres.

8 DIRECTORSHIPS

8.1 The Applicant:

Paul Henry Drury Van Asch and John Francis Ward, the two directors of the Applicant are also directors of other companies in the associated group that operate within the wider New Zealand adventure tourism market.

Mr Van Asch is also a director of:

- (i) Queenstown Bungee Limited – bungee/adventure tourism market;
- (ii) Auckland Bungee Limited – bungee from the Auckland Harbour Bridge;
- (iii) Peak Bungee Limited – bungee/adventure tourism market;
- (iv) Tempest Holding Limited – bungee/adventure tourism market;
- (v) Fun Innovators NZ Limited – bungee/adventure tourism market;
- (vi) Auckland Bridge Adventures Limited – bungee/adventure tourism market;
- (vii) Auckland Bridge Climb Limited – adventure tourism market.

Mr Ward is also a director of:

- (i) Queenstown Bungee Limited – bungee/adventure tourism market;
- (ii) Auckland Bungee Limited – bungee from the Auckland Harbour Bridge;
- (iii) Tempest Holding Limited – bungee/adventure tourism market;
- (iv) Fun Innovators NZ Limited – bungee/adventure tourism market;
- (v) Auckland Bridge Adventures Limited – bungee/adventure tourism market;
- (vi) Auckland Bridge Climb Limited – adventure tourism market.

9 BUSINESS ACTIVITIES

9.1 The Applicant:

Bungee New Zealand Limited acts as the parent and holding company for the AJ Hackett Bungee brand. The other companies in the associated group operate in the following areas:

AJ Gear Limited - retail clothing associated with the AJ Hackett Bungee brand;
Queenstown Bungee Limited – operates all bungee activities in the Queenstown area;
Auckland Bungee Limited - bungee activities for Auckland Harbour Bridge;
Peak Bungee Limited - bungee activities – operated by Queenstown Bungee Limited;
AJ Hackett Transport Limited – does not trade;
Tempest Holding Limited – owns and operates Auckland Bungee Limited;

Queenstown Cap & Clothing Co Limited – operates via AJ Gear Limited – provides services for embroidery on clothing etc; and
Fun Innovators Limited - licensee for certain concessions.

9.2 The Target Business:

If the acquisition is to go ahead, the Target business will be owned by Ngai Tahu Tourism Limited whose primary business endeavour in the adventure tourism market in Central Otago is currently Shotover Jet.

10 REASONS FOR PROPOSAL

10.1 The Applicant currently runs bungee jumping operations predominantly concentrated in the Central Otago region but also developing in Auckland. The Applicant was the market leader for this type of adventure activity, creating the original bungee market and building the safety standards required to keep bungee jumping a 'safe' adventure activity. Having created the standards, they wish to acquire the Pipeline Bungee as its current owners wish to concentrate on other activities. They also wish to acquire Pipeline Bungee because of a concern about the safety aspects of the operation, which could affect the reputation of the wider market.

The Applicant believes that had it not entered a contract for services with the Joint Venture, Pipeline may have lost its potential as a viable, growth-sustaining venture. Pipeline Bungee is no longer the highest bungee in the Queenstown area (overtaken by AJ Hackett's 'Nevis Highwire' at 134 metres, and now the operation of a parabungee on Lake Wakatipu by Para Bungee NZ Limited (where visitors can jump from 150-180 metres in the air from a parasail pulled behind the parasail boat)).

The Applicant feels that the Pipeline Bungee location presents a good accessible site and wants to develop it as another option for tourists in the adventure tourism market (both as a stand-alone activity and in conjunction with other adventure tourism activities in the area). The intention in respect of the acquired business is to continue to run the bungee operation from its current location, under the Pipeline Bungee name, but adding all the AJ Hackett Bungee expertise and safety standards for tourists wishing to experience the New Zealand adventure tourism market.

PART II: IDENTIFICATION OF MARKETS AFFECTED

11 HORIZONTAL AGGREGATION

11.1 Markets in which both the Applicant and Target Business are engaged

The Applicant wishes to acquire the bungee jump segment of the Joint Venture. This segment that makes up the Target Business is a small part of the wider adventure tourism market that is well established in Central Otago.

The Applicant and its wider interconnected group of companies currently offer bungee jump activities, and wish to incorporate the Pipeline Bungee into their group to strengthen competition in the adventure tourism market.

The Vendor company (Ngai Tahu Tourism Limited) will continue to operate its jet boating operations (currently focusing on Shotover Jet) independent of its other Joint Venture partner (Skippers Canyon Jet Limited). Therefore, the Applicant and the Vendor company both operate and will continue to operate in the same market.

11.2

11.2.1 In its narrowest form, the relevant market in which the acquirer and the target company are both engaged is the retailing of bungy jumping activities.

What is it?

The bungy operators' crew secure a strong latex rubber cord either to a full body harness or around the jumper's ankles. The jumper hobbles to the edge of a platform and dives into space, free falling until the cord is fully extended. If the jump is over water there is usually a 'splash-down' or 'water touch' option and the jumper is retrieved by boat. Over land, the jumper is hoisted back up to the platform. Other forms of bungy jumping include jumping from hot air balloons and from parasail boats (a parachute pulled behind a boat with a bungy dropping from a platform under the chute).

A rigorous safety code of practice is followed in New Zealand so bungy jumping is viewed as a relatively safe adventure sport here.

While Queenstown is the traditional home of bungy jumping in New Zealand, a number of other locations throughout New Zealand have successful bungy operations. Jump prices range from \$80 to \$200, which may include extras such as a T-shirt and Certificate. Videos and action photos are an optional extra, usually costing from \$30 to \$50.

The bulk of demand for these products is supplied on a retail basis for tourist markets (both international and domestic). The market is demand driven and seasonal, with consumers offered a variety of jump opportunities New Zealand-wide.

The geographical range of bungy includes:

Supplier	Location	Height	Cost
Auckland Sky Tower Sky Jump (harness)	Auckland	192 metres	\$195
AJ Hackett Bungy - Auckland Harbour Bridge Bungy	Auckland		\$125
The Bungee Rocket	Tauranga, Christchurch and Queenstown	50 metres	\$65
Taupo Bungy	Taupo	47 metres	\$100 - \$160
Mokai Gravity Canyon Bungy	Mangaweka	80 metres	
Rotorua Bungy - at the Agrodome	Rotorua	43 metres	\$80
Aorere Gorge - bungy or swing	(Top of the South Island)	53 metres	
Thrillseeker's Canyon Bungy	Hanmer Springs	35 metres	\$114
Mt Hutt Bungy	Canterbury	40 metres	
AJ Hackett Bungy	Kawarau	43 metres	\$125
AJ Hackett Bungy - Nevis Highwire	Nevis	134 metres	\$175
AJ Hackett Bungy - The Ledge	Queenstown	47 metres	\$89 - \$125
AJ Hackett Bungy - Sky Swing	Queenstown	47 metres	\$59 - \$85
AJ Hackett Bungy - Skippers Canyon (only operates on special occasions)	Skippers Canyon	71 metres	POA
Pipeline Bungy (the Target Business)	Skippers Canyon	102 metres	\$160
Para Bungy - Bungy from a parachute pulled behind a parasail jet boat	Lake Wakatipu	150-180 metres	\$199

The Applicant is currently involved in the Auckland Harbour Bridge Bungy as well as Kawarau, Nevis Highwire, The Ledge, and Skippers Canyon.

11.2.2 The most relevant market in which both the Applicant and Joint Venture operate is the adventure tourism market.

Examples of the products in the Queenstown area within this market include but are not limited to:

Supplier	Location	Price	Length of activity (including transport)
Challenge Rafting	Kawarau River	\$129	4-5 hours
Queenstown Rafting	Shotover River	\$139	4-5 hours
Shotover Jet	Shotover River	\$45 - \$85	1-2 hours
Dart River Jet	Dart River	\$145 - \$299	5-6 hours
The Helicopter Line	Queenstown	\$112 - \$160	20 minute helicopter trip
Harris Mountains Heliskiing	Harris Mountains	3 runs (\$595) or 7 runs (\$830)	Day
NZONE - Tandem Skydiving	Queenstown	\$245 - \$395	3 hours
Fly by Wire	Queenstown	\$145	2 hours (to have a six minute powered ride in a custom manufactured plane hung by wires strung across a canyon)
Vertigo Mountain Biking - Heli, downhill and cross country biking	Queenstown	\$99 - \$229	2-4 hours
Anti Gravity Tandem Hanggliding	Queenstown	\$175 - \$235	2 hours
Queenstown Tandems - Parapente	Queenstown		1 hour
Gravity Action Mountain Biking	Queenstown	\$60 - \$199	3 hours
nzski.com – Coronet Peak/Remarkables ski areas	Queenstown	\$37 (for a child's day lift pass - \$72 - \$75 for an adult) - \$1600 (for a season's pass).	Day

Other activities include canyoning, hangliding, Flight Park Tandem Parapente, scenic four wheel drive tours and cross country skiing.

With such a variety of activities on offer in Queenstown, most if not all are demand driven with prices remaining competitive. The competition between the different companies for the transient tourist market has for the most part kept prices in a bracket from \$60 to \$400 for activities that can be completed within a day. For the most part, the activities are easily substitutable, with high cross price elasticity between them. There is also combination selling of products – for example, a helicopter flight may be paired with a jet boat ride and then bungy jump. This type of combination experience shows how all these activities appeal to the same market consumer – the adventure tourist.

The activities listed above are all in direct competition with both the Applicant and the Target Business.

12 DIFFERENTIATED PRODUCT MARKETS

12.1 Standardised products versus differentiated products

The competitors named in 11.2.1 all have largely identical products to the Applicant. They all promote being harnessed to a cord and jumping off platforms in one form or another. The only real points of differentiation are the heights of the jumps and the physical locations. The Target Business is neither the first nor the highest jump, so no longer holds market leading attributes. A major aspect of the bungy marketing machine tells visitors that size does matter, so those wanting to come to New Zealand and bungy jump are likely to consider size of jump and price depending on where in the country they are.

For example, if in Auckland, consumers may prefer the Auckland Sky Tower Sky Jump to the Auckland Harbour Bridge bungy, while in Queenstown visitors may prefer the ParaBungy over Lake Wakatipu as it presents the highest commercial bungy in New Zealand.

However, other attributes that may be taken into account by people prepared to bungy jump are the reputation for safety, strict standards, and experience of the AJ Hackett Bungy brand (as the original bungy jump operator). Bungy jumping is an adventure sport, and as such has to protect itself with rigorous attention to safety so that it can compete with other adventure tourism operators. The same can be said for most adventure tourism operators who need to be perceived as 'safe' to attract consumers.

An international visitor satisfaction survey that explains the types of motivations for the adventure tourism product market is attached hereto and marked with the letter 'H'.

The competitors named in 11.2.2 also have similar products to the Applicant. They are designed to fulfill a consumers' need for exciting, outdoor activity. Some of the products, such as the Fly-by-Wire ride or NZONE skydiving are more directly comparable to bungy jumping. However, the adventure tourist is faced with a myriad of choices as a consumer. Whether the activity is jet boating, downhill mountain biking, parapenting, skiing or bungy jumping, the products chosen all have an element of speed, a perception of danger and an exposure to beautiful surroundings.

On this basis, and as prices are comparable for the output of the operator across the adventure tourism marketplace, the products can be standardised, with the major differentiation being dependent on the inclination of the consumer or the success of the marketing of the products. This also relies heavily on the continued safety standards of the companies competing in the market.

13 DIFFERENTIATED PRODUCT MARKETS

13.1 Differentiated product characteristics

Many of the adventure tourism activities on offer in the Central Otago region are not perfect substitutes for each other in that they are not identical activities. However, the substitutability between products is very strong, as the ability to meet consumer needs for safe and instant adventure is marketed. One of the major differentiating characteristics of the services supplied in the region are the competing brand images. The competition between the Applicant and the Vendor for example (AJ Hackett Bungy versus Shotover Jet) very much relies on the marketing strategies and profile of the two companies. There is also reliance on visibility in the region, both in market presence but also in physical presence - ie some company's have the advantage of parapenting off the hills surrounding the immediate Queenstown urban area or using the visible lakefront of Lake Wakatipu (such as ParaBungy), while others rely on word-of-mouth and reputation.

13.2 Product differentiation in the adventure tourism market relies on what level of interaction the consumer seeks. In this way, a scenic helicopter flight across the Remarkables mountain range is a passive approach to enjoying the environment, whereas white water rafting or downhill mountain biking are more interactive and physically challenging. In some cases, consumers will have the budget to try a number of activities, and this need is also catered for with combination trips offered by operators.

13.3 The closest substitutes for the bungy operation of the proposed combined entity are other activities that involve elements of risk in a controlled environment. In this way, parapenting, Fly-by-Wire, jet boating, skydiving etc could be substituted for bungy jumping as they all contain similar characteristics of either speed, height or controlled fear that attract consumers to these activities.

13.4 The merged entity is likely to be constrained in its actions in the same way that the separate entities are constrained now. The adventure tourism market is highly competitive with well established, smart, marketable brands and competitive pricing offering good value activities.

14 VERTICAL INTEGRATION

14.1 Will there be any vertical integration between firms involved at different functional levels?

The Applicant and associated companies and the Target Business are engaged at the same functional levels of the same product market. They both provide retail adventure tourism activities. The Applicant operates bungy jumping operations, as does the Target Business. The Applicant intends to continue to promote the Target Business as a bungy jump operation.

15 PREVIOUS NOTIFICATIONS

15.1.1 None of the participants the Applicant holds shares in have acquired or proposed to acquire assets of a business notified to the Commission in the last three years.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

16 EXISTING COMPETITORS

16.1 The existing competitors include those companies named in 11.2.1 and 11.2.2.

16.2 The total size of the domestic market for bungy jumping alone is approximately 130,000 per year using figures provided by International Visitor Surveys from Tourism New Zealand and information from the Applicant. The estimated market shares of the four leading bungy jump suppliers (and the Target Business) are as follows for the companies named in 11.2.1:

Rank	Supplier	Owner(s) of supplier	Estimated % of market sales
1	AJ Hackett Bungy	Bungy New Zealand Limited	[]
2	Taupo Bungy	Taupo Bungy and Scenic River Cruises Limited	[]
3	Thrillseekers Canyon (Hanmer Springs)	Thrillseekers Canyon Limited	[]
4	Pipeline Bungy	Skippers Canyon Joint Venture	[]
5	ParaBungy	ParaBungy NZ Limited	[]

The Applicant advises that information to provide comparative market shares for each company for the past five years is not available.

The leading suppliers for the adventure tourism market are as follows (for the companies named in 11.2.2):

Rank	Supplier	Owner(s) of supplier
1	Shotover Jet	Shotover Jet Limited
2	nzski.com	Southern Alpine Recreation Limited
3	Kawarau Jet	Kawarau Jet Services Holdings Limited
4	Skyline Luge	Skyline Enterprises Limited
5	NZONE- the Ultimate Jump (tandem skydiving)	Skydive Queenstown Limited

16.3 The data provided above came internally from Bungy New Zealand Limited as an estimate of its' competitors position in the market. We are advised information on the market share for the companies in the adventure tourism market is very limited or not available as most of the operators are private companies and do not swap information.

Attached and marked '1' are copies of numbers from the International Visitor Survey for the year ended September 2002. The information includes activities undertaken and attractions visited by tourists throughout New Zealand, and then specifically in Queenstown. It does not however break the categories (eg jet boating) into specific operators.

After approaches to Destination Queenstown and the Queenstown Chamber of Commerce, we have been advised there is no other data available specifically in regard to adventure activities undertaken with specific companies in Central Otago.

16.4 See tables above.

16.5 The Applicant advises that other adventure tourism operators could enter the market at a cost of approximately \$1million (for a brand new land based jump) as long as they comply with local authority conditions and safety standards. It requires finding a location that is suitable (Mr Van Asch found the Nevis site while mountain biking in the area), and then acquiring the respective consents, licences and certification that may be required to carry out the activity.

A good example is the recent addition of Para Bungy to the Queenstown market. The core business prior to the addition of bungy was parasailing on Lake Wakatipu. Once consents were gained and certification granted for retrieving people from lake level (once the jump is complete), ParaBungy provides a strong alternative to the Applicant's core business.

However, the Applicant advises that a new firm entering the market is unlikely to be triggered by the Applicant raising prices or reducing output or quality – if the Applicant reduced quality, that would destroy their bungy market within the adventure tourism arena (as the consumers' confidence in the safety and quality of the operator is paramount to the ongoing success of the bungy business). AJ Hackett Bungy has worked closely with the New Zealand Standards Association to develop a special safety standard specifically for bungy jumping.

Also, if the Applicant raises prices and reduces output, consumers can substitute activities from alternative adventure operators. Other activities provide similar characteristics, so there is real incentive to keep pricing competitive.

- 16.6 Production depends entirely on consumer demand.
- 16.7 The activity is a locally based retail activity so imports have little effect on this market.
- 16.8 The intellectual property relating to bungy jumping has been exported and run by AJ Hackett (the individual) globally,
- 16.9 The Target Business was not performing up to its potential, which is why the Applicant was asked to supply services to the Joint Venture. Therefore, it was not the most vigorous and effective competitor for the Applicant.

CONDITIONS OF EXPANSION

- 17.1 There are minimal Frontier entry conditions (ie tariffs, quarantine or international freight requirements. There are however consent requirements, amusement device licences, and certification (if jumpers are lowered into boats once the jump is completed). There are also safety standards to be complied with.
- 17.2 The most likely barrier to expansion by existing competitors is the influence of the branding and sales promotion by AJ Hackett Bungy. As they were the inventors of commercial bungy in New Zealand and have built a strong reputation by marketing bungy as an exciting (but safe) activity, this gives them a competitive advantage over newcomers. AJ Hackett Bungy has been an international leader in adventure tourism, product innovation and the development of technology directly associated with safety management and service delivery.
- 17.3 Examples of expansion by existing competitors includes the ParaBungy (see 16.5 above), Fly-by-Wire (which opened in Queenstown in 1998) following its Wellington success, and the redevelopment and addition of new activities currently taking place at Mokai Gravity Canyon in Mangaweka.

- 18 & 19 Due to the seasonal nature of the activities in the markets, many of the companies have the potential to increase supply to the market by utilising existing capacity, but do not have the consumer demand to do so. The Applicant advises that due to consumer fluctuations, the peak season usually runs from December to April.
- 20 With an increase in consumer numbers, the length of time for supply of the activities to increase should be short unless numbers overwhelm the resources (ie too many people for jet boat capacity or not enough daylight hours for bungy jump operators).
- 21 The bungy and adventure tourism markets rely heavily on market awareness, reputation and customer service. The pricing between the companies in the market is extremely competitive as each activity is comparative in its ability to cater to consumers who will also have a limit on what they're willing to pay.
- 22 As a result, the merged entity would be constrained in its actions by the conduct of the existing competitors in the affected markets because of the substitutability of the activities in the eyes of the consumers. For those who feel compelled to bungy jump, if the proposed acquisition goes ahead, consumers still have the choice of bungy operators.

For tourists taking part in adventure activities in Central Otago (and particularly Queenstown), the choice is vast and many tourists may choose one activity over another based purely on price. This will mean the merged entity will need to control its prices to remain competitive.

COORDINATED MARKET POWER

- 23 Post acquisition, there should be no material change to facilitate coordination effects as there are such large numbers of adventure tourism companies operating in the market. Rather than acting as a collective monopolist, the market and its participants are open to small enterprises such as Fat Tyre Adventures (a recent addition to the market run as a mountain bike guiding enterprise). The Central Otago region also attracts business people with a strong entrepreneurial spirit, so it would be very difficult to control all the operators as they seek innovative ways to create profitable activities.
- 24 Seller concentration is low, with a range of participants making coordination difficult. Each competitor attempts to profit from the provision of adventure activities tailored to appeal to the adventurous visitor. As the range of activities is wide, there are always going to be variations in quality between the operators, as well as the pressure of potential new entrants into the market.

The lack of data on the companies involved in the market is also an indicator that competitors in the region are unlikely to collude – this lack of information sharing is the basis of any competitive market.

- 25 There is nothing to indicate price coordination, price matching or price following by market participants as the companies involved in the markets seek to set their prices at a level that provides enough consumers to make the enterprise profitable.

26 Within AJ Hackett Bungy, the prices for each jump are different depending on which site consumers choose. If the proposed acquisition goes ahead, the site will continue to have the same characteristics, and will be priced accordingly in the scale of AJ Hackett Bungy options (all of which are cheaper than ParaBungy).

Most prices for other competitors within the relevant markets range from \$60 to \$400 for activities, depending on the extent of the activity itself and the length of time taken to complete it. The participants for the most part appeal to a transient tourist consumer base so prices are open to fluctuation depending on consumer demand.

If everyone followed price rises, the participants would price themselves above the tourist market, leaving themselves open to innovative competitors who can pick up any excess consumer demand. As a result, the acquisition is unlikely to increase the risk of coordinated behaviour in the relevant markets.

If there is any further information required in relation to the processing of this application we should be grateful if you would contact the writer who would be pleased to assist.

Yours faithfully

MACALISTER TODD PHILLIPS BODKINS

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Principal

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