

Real Journeys Limited

**Notice seeking clearance to acquire the vessel the
Spirit of Queenstown and associated assets**

To: registrar@comcom.govt.nz

Table of contents

Executive summary	1
Confidentiality.....	4
The acquisition and the parties.....	4
The acquisition and the clearance sought.....	4
Real NZ – the applicant for clearance	5
Southern Discoveries Limited – the vendor	6
Rationale for the acquisition and the counterfactual	6
Real NZ’s rationale for the acquisition	6
Southern Discoveries’ rationale	7
The counterfactual	8
Description of the relevant markets	8
Market includes all tourism experiences available to tourists visiting Queenstown	8
Market includes activities used by tourists visiting Queenstown including those outside Queenstown.....	11
Functional level of the market	11
Why the acquisition will not substantially lessen competition for the sale of tourism experiences	12
Summary.....	12
Spirit of Queenstown and Earnslaw/Walter Peak experiences do not compete more closely with each other than with other tourism experiences	12
The many and varied providers of tourism experiences in Queenstown.....	13
The multitude of tourism providers in Queenstown illustrates that the barriers to entry into this market are low.....	16
Tour operators’ countervailing power.....	16
Options remain for tourists only seeking a lake experience.....	17
Obstacles to a new cruise operator are surmountable	17
Conclusion.....	20
Coordinated, vertical, or conglomerate effects are unlikely	20
Summary and conclusion.....	20
Declaration.....	22
Schedule of confidential information.....	23
Schedule of required information in notice for clearance	25
Attachment A: Sale and Purchase Agreement.....	27
Attachment B: Spirit of Queenstown valuation	28
Attachment C: Real NZ products and Spirit of Queenstown products	29
Attachment D: Real NZ’s top 5 customers.....	31
Attachment E: Southern Discoveries top 5 Spirit of Queenstown customers	32
Attachment F: Contact details for main competitors	33
Attachment G: Real NZ’s relevant revenues, volumes, and capacity.....	36
Attachment H: Southern Discoveries’ Spirit of Queenstown revenues, volumes, and capacity	37

Attachment I: Internal documents	38
Attachment J: Management accounts	39
Attachment K: Licence to Use O'Regan's Wharf.....	40
Attachment L: Maps.....	41

Executive summary

Real NZ seeks clearance to acquire Spirit of Queenstown	<p>Real Journeys Limited (or any interconnected body corporate), trading as Real NZ (Real NZ), seeks clearance to acquire the vessel, the Spirit of Queenstown, and associated assets from Southern Discoveries Limited (Southern Discoveries).¹</p> <p>Each of Real NZ and Southern Discoveries offer tourism experiences to tourists visiting the lower South Island. They do so in competition with the multitude of tourism experiences available to tourists visiting the area.</p> <p>Most relevantly for this clearance application, Real NZ owns and operates Walter Peak High Country Farm on the shores of Lake Whakatipu and the vintage steamship, the TSS Earnslaw. Real NZ currently offers tourists farm, dining, horse trek, and biking experiences at Walter Peak and its strategy is to improve and expand the Walter Peak experience.</p> <p>Walter Peak is located 45 minutes by boat from Queenstown. Real NZ transports guests to and from Walter Peak on the Earnslaw.</p>
Why Real NZ is buying the Spirit of Queenstown	<p>Walter Peak's success and Real NZ's ability to continue to invest in Walter Peak depends on Real NZ's ability to transport guests across the Lake. Until 2021, the Earnslaw's capacity was 400 guests per sailing, which met Walter Peak's current capacity. In December 2019, a regulatory change affected the TSS Earnslaw resulting in the maximum number of passengers decreasing from 400 to 250 from March 2021 – a 37.5% reduction.</p> <p>Acquiring the Spirit of Queenstown – which is consented to carry 150 paying passengers (and 170 in total) – will enable Real NZ to immediately replace the mandated decrease in the Earnslaw's capacity, returning Real NZ's capacity to pre-2021 levels.</p> <p>This immediate return to pre-2021 capacity will improve the performance of Walter Peak and provide a basis for Real NZ to further invest in Walter Peak (with plans including a new conference and event centre and, in time, accommodation). As a result, the acquisition will not only benefit Real NZ but will enhance the Queenstown tourism experience to the benefit of domestic and international tourists and the Queenstown and New Zealand economies.</p>
Why Real NZ has sought clearance	<p>Real NZ has sought clearance because Southern Discoveries offers tourists on board dining, wine and cheese, and cruise experiences on Lake Whakatipu onboard the Spirit of Queenstown. Following the acquisition Southern Discoveries would not provide those experiences.</p> <p>However, while the Earnslaw and Spirit of Queenstown both operate on Lake Whakatipu, the experiences they offer tourists – of which being on the Earnslaw or Spirit of Queenstown is only part – are not close substitutes.</p>
Real NZ and Southern Discoveries' offers are not close substitutes	<ul style="list-style-type: none"> • Real NZ's experience is the Walter Peak farm experience and the uniqueness of travelling on a vintage steamship, the Earnslaw. • Southern Discoveries' offer is based on selling a dining experience that is different to the other dining experiences available in Queenstown.
Real NZ will be constrained by all	<p>In any event, Real NZ's and Southern Discoveries' experiences compete with all other tourism experiences available to tourists staying in Queenstown. In</p>

¹ The associated assets are described at paragraph [3] of the application.

other tourism experiences available from Queenstown

this market, the acquisition falls well within the Commission’s concentration indicators.

Tourists to Queenstown are time poor. They are looking to maximise their experience by allocating their scarce time to the experiences that deliver them the best value, choosing between experiences including:

- self-guided touring (by car, bike, or walking)
- attractions in and around Queenstown (e.g., Skyline Gondolas, Kiwi Park etc)
- organised scenic and movie tours in and around Queenstown
- scenic flights
- organised tours or self-guided trips to Fiordland
- wine and food experiences
- shopping and entertainment
- restaurant, cafe, and other dining
- golf
- cycling and mountain biking
- jet boating
- bungee, sky diving, rafting etc

In the parties’ experience, tourists view these experiences as substitutes to greater or lesser degrees, and it is impossible for providers to discriminate between tourists based on how close they view certain experiences as substitutes for each other. This is particularly so given many tourists travel in groups.

Importantly, in the parties’ experience tourists do not regard a Lake Whakatipu cruise as a “must do” experience that tourists seek out in and of itself. Rather, a cruise is simply one part of an overall experience (e.g., a farm tour, a dining experience, a heritage experience) or one alternative way of accessing an experience (e.g., viewing the scenery).

No market for cruises on Lake Whakatipu

To illustrate this latter point, Queenstown is not like Milford Sound where the best way to see and experience all that is on offer is onboard a boat. In Queenstown, tourists can marvel at the scenery from a car, on a guided land tour, on a bike, or on two legs. A cruise is simply an alternative mode of having this experience and, in any event, other options will remain.

For these reasons, there is no distinct market for Lake Whakatipu cruises. Experiences which include a cruise on the lake, are simply part of the overall tourism market.

Why the acquisition will not substantially lessen competition

To summarise, Real NZ submits that its acquisition of the Spirit of Queenstown will not substantially lessen competition because:

- cruises on the Spirit of Queenstown are not a close substitute for Real NZ's Walter Peak / Earnslaw experience; and
- Real NZ will continue to be constrained by the multitude of other tourism experiences available to tourists when visiting Queenstown.

Simply put, if Real NZ sought to increase prices above, or decrease the quality of services below, competitive levels tourists would simply switch their custom to one of the many other tourism experiences available in Queenstown.

**Real NZ requests
the Commission
grants clearance**

For these reasons, Real NZ submits that the Commission can be satisfied that the acquisition will not be likely to substantially lessen competition and requests that the Commission grant clearance for the acquisition.

Confidentiality

1. This application contains information that is confidential to one or both of Real NZ or Southern Discoveries. The confidential information is either personal information, or is commercially sensitive, disclosure of which would be likely to unreasonably prejudice the commercial position of the party providing that information.
2. Confidential information in this application is contained in bolded square brackets with highlighting to reflect who the information is confidential to and is also listed in the Schedule of Confidential Information attached to this application.
 - 2.1 Information that is confidential to the parties as against third parties is highlighted in yellow (i.e., **[CONFIDENTIAL]**).
 - 2.2 Information that is confidential to Real NZ as against all parties (including Southern Discoveries) is highlighted in grey (i.e., **[Real NZ CONFIDENTIAL]**).
 - 2.3 Information that is confidential to Southern Discoveries as against all parties (including Real NZ) is highlighted in red (i.e., **[Southern Discoveries CONFIDENTIAL]**).

The acquisition and the parties

The acquisition and the clearance sought

3. Real NZ (or any interconnected body corporate) is seeking clearance to acquire from Southern Discoveries:
 - 3.1 the vessel, Spirit of Queenstown, MSA number 134744;
 - 3.2 existing mooring and shore systems at O'Regan Wharf in Queenstown;
 - 3.3 spare parts for the Spirit of Queenstown;
 - 3.4 Resource Consent RM 110038 as amended by variations RM110227, RM120426, and RM120531 and all other consents, authorisations, or permissions to operate the Spirit of Queenstown on Lake Wakatipu between Queenstown Bay and Walter Peak; and
 - 3.5 Southern Discoveries' licence to use 32 lineal metres of the outside berth at O'Regans Wharf. The current term of that licence will expire on **[CONFIDENTIAL]**. However, the licence provides rights of renewal out to **[CONFIDENTIAL]**.²
4. The Sale and Purchase Agreement³ is conditional on, among other things, the Commission granting clearance. The purchase price is **[CONFIDENTIAL]**.⁴
5. The acquisition will add the Spirit of Queenstown to Real NZ's existing Walter Peak business. Southern Discoveries will cease to offer cruises on Lake Whakatipu.⁵ Real NZ and Southern Discoveries will continue to operate their remaining tourism businesses independently of each other.

² Southern Discoveries' licence to use the wharf is attached as Attachment K.

³ Provided as Attachment A.

⁴ A copy of the valuation report commissioned by Southern Discoveries is attached as Attachment B.

⁵ Southern Discoveries has no other consents, permits, or licences for providing cruises on Lake Whakatipu other than those being sold to Real NZ.

Real NZ – the applicant for clearance

6. Real NZ was founded in Fiordland in the 1950's by tourism and conservation pioneers Les and Olive Hutchins. Today, Real NZ is one of New Zealand's leading tourism operators and offers tourism experiences from Stewart Island to Queenstown, including world renowned cruises through Milford and Doubtful Sounds, and to the Te Anau Glowworm Caves. Real Group Limited – the parent of Real NZ – also owns Cardrona Alpine Resort and Treble Cone Ski Area in Wanaka, and the International Antarctic Centre in Christchurch.
7. Most relevantly for this application, Real NZ owns and operates the heritage steamship, the TSS Earnslaw. Real NZ provides cruises on Lake Whakatipu to and from downtown Queenstown to Real NZ's high country farm, Walter Peak. Customers can choose to purchase a cruise only or can choose to undertake activities at Walter Peak such as a Gourmet BBQ Dining experience, a farm tour, horse treks, and independent cycling.
8. Real NZ's other operations in Queenstown include providing tours to Milford and Doubtful Sounds and the Te Anau glowworm caves, as well as operating Shotover River Whitewater Rafting, Kawarau River Jetboating and Lake Whakatipu ferry services. Real NZ has indicated its intention to sell its jetboating and Queenstown Ferry businesses.
9. Real NZ also has ownership interests in four of the six wharves in Queenstown Bay:
 - 9.1 Convelle Wharf, which Real NZ owns but is currently for sale;
 - 9.2 Earnslaw Wharf, which Real NZ owns and from which the Earnslaw operates;
 - 9.3 O'Regans Wharf, which is owned by Queenstown Wharves LP, a limited partnership between Real NZ, interests associated with the Skeggs Group⁶, and Remarkables Jet, and:
 - 9.3.1 from which the Spirit of Queenstown currently operates; and
 - 9.3.2 which the licence Real NZ is acquiring from Southern Discoveries as part of the acquisition relates to;
 - 9.4 St Omar Wharf, which is also owned by Queenstown Wharves LP.
10. Real NZ also owns the wharf at Walter Peak.
11. Real NZ's contact details are:

14 Captain Roberts Road
Te Anau 9600

Attention: Matthew Day
GM Corporate Affairs and Development
[CONFIDENTIAL]

www.realnz.com
12. Real NZ requests that the Commission sends all correspondence regarding this application to David Blacktop at A&B Competition Lawyers (david@abcompetitionlawyers.nz, 021 366 284).

⁶ The Skeggs interests in Queenstown Wharves LP is not affected by this acquisition.

Southern Discoveries Limited – the vendor

13. Southern Discoveries (a subsidiary of Skeggs Group Limited) is a family-owned tourism company. Southern Discoveries was originally known as the “Milford Sound Red Boats”, which was established shortly after the opening of the Homer Tunnel in 1953. In 2008, the family-owned Skeggs Group purchased “Milford Sound Red Boats” and renamed the company Southern Discoveries in 2009.
14. Today, Southern Discoveries provides a variety of cruises, kayaking and underwater observatory excursions in Milford Sound. Southern Discoveries also offer daily coach, flight and helicopter connections to Milford Sound. Currently, Southern Discoveries’ operations in Queenstown include providing tours to Milford Sound, as well as Jetboating tours on the Kawarau and Shotover rivers through its joint-venture company K-Jet.
15. As described at 9.3, interests associated with the Skeggs Group are a partner in Queenstown Wharves LP, which owns the O’Regans Wharf, and the St Omar Wharf in Queenstown Bay. Those ownership interests are not part of the acquisition.
16. In 2014, Southern Discoveries started providing cruises on Lake Wakatipu on the Spirit of Queenstown from Queenstown to Mt Nicholas station. Southern Discoveries provided the Mt Nicholas experience until Covid shut the borders in 2020. [Southern Discoveries CONFIDENTIAL]
17. [Southern Discoveries CONFIDENTIAL]
18. When the borders were closed due to Covid, Southern Discoveries pivoted its offer to focus on providing food and beverage focussed cruises, e.g., wine and cheese packages, and more recently lunch cruises onboard the Spirit of Queenstown. [Southern Discoveries CONFIDENTIAL]
19. Southern Discoveries’ contact details are:

58 Hunter Road
Queenstown 9371

David Skeggs
Managing Director
[CONFIDENTIAL]

www.southerndiscoveries.co.nz
20. Southern Discoveries requests that the Commission sends all correspondence regarding this application to David Blacktop at A&B Competition Lawyers (david@abcompetitionlawyers.nz, 021 366 284).

Rationale for the acquisition and the counterfactual

Real NZ’s rationale for the acquisition

21. Real NZ has operated the Earnslaw on Lake Whakatipu since 1969. The product offering has evolved over the years and for the last few decades the focus has been on Walter Peak High Country Farm as a destination accessed by a cruise on the TSS Earnslaw.

22. Real NZ purchased Walter Peak High Country Farm in 2013 following many years of operating as a lessee. Since 2013 the company has invested \$[Real NZ CONFIDENTIAL] to improve and adapt Walter Peak to be a truly world-class visitor destination.⁷
23. Walter Peak and TSS Earnslaw are designed to operate as an integrated system, with the guest capacity of facilities at Walter Peak sized to match the carrying capacity of the vessel. Specifically, the farm show amphitheatre and Colonels Homestead were developed to accommodate Earnslaw's pre-2021 passenger capacity of 400 guests plus crew.
24. The guest carrying capacity of the Earnslaw (and any other commercial passenger vessel) is determined by regulations managed by Maritime New Zealand.
25. In December 2019, changes to Maritime New Zealand regulations required the Earnslaw's carrying capacity be reduced to 250 guests plus crew – a 37.5% reduction in capacity. This reduction reflected modern safety requirements related to vessel stability.⁸
26. While this mandated reduction in capacity coincided with the reduction in international tourism resulting from Covid, it was nonetheless detrimental to Walter Peak's performance. Real NZ needs to increase capacity to Walter Peak to optimise the business and ensure its assets are not stranded.
27. [CONFIDENTIAL]
28. The Spirit of Queenstown is attractive to Real NZ because the Spirit of Queenstown's consented capacity is 150 paying guests plus crew (170 in total). Adding this capacity will effectively return Real NZ's capacity to 400 guests, with the two vessels operating in a synchronised system. Adding the Spirit of Queenstown will also add flexibility in timing and experience for guests.
29. Moreover, adding the Spirit of Queenstown will also unlock further investment at Walter Peak. Real NZ intends to build a new conference and event centre and, in time, overnight accommodation.
30. Real NZ will need to make some investments to modify the Walter Peak wharf to accept the Spirit of Queenstown.⁹ For example, passengers embark and disembark the Spirit of Queenstown at the stern of the vessel, whereas passengers embark and disembark the Earnslaw midships. Real NZ will need to instal a gangway at the southern end of the south Walter Peak wharf to enable this. Real NZ may also need to install a dolphin between the two wharves because the Spirit of Queenstown is shorter than the Earnslaw.

Southern Discoveries' rationale

31. Southern Discoveries introduced the Spirit of Queenstown to Lake Whakatipu in 2014.
32. Originally, the Spirit of Queenstown operated between Queenstown and Mt Nicholas high country station. The product was designed to provide tourists with the ability to have an on-farm experience, although customers could also choose to take a round trip without visiting Mt Nicholas.
33. [Southern Discoveries CONFIDENTIAL]

⁷ [Real NZ CONFIDENTIAL]

⁸ The Earnslaw is a relatively high sided vessel with a narrow hull in relation to her overall length. These dimensions create a tendency for strong directional stability, making the vessel reluctant to turn. As a result, greater power has to be applied in a turn compared to a shorter vessel. The Earnslaw does not have a modern throttle to engage forward or reverse propulsion; rather the master must telegraph his intentions using traditional telegraph bells to the engineers below who in turn control the throttle. The telegraph engine order system creates delays in ordering power and having it applied to the shaft line which slows manoeuvring.

⁹ Real NZ has two DOC concessions (easements) to utilise the marginal strip (right of way, conduct water, electricity, and IT) at Walter Peak.

34. [Southern Discoveries CONFIDENTIAL]
35. [Southern Discoveries CONFIDENTIAL]
36. [Southern Discoveries CONFIDENTIAL]

The counterfactual

37. Real NZ's "Plan B" is [Real NZ CONFIDENTIAL].¹⁰ [Real NZ CONFIDENTIAL].
38. [Real NZ CONFIDENTIAL].
39. [Southern Discoveries CONFIDENTIAL]

Description of the relevant markets

40. The relevant market is the market for the sale of tourism experiences to:
- 40.1 independent tourists visiting Queenstown (either: directly (online or in-store) or indirectly via online and instore retail resellers (e.g., accommodation providers, tourism websites, tourism resellers)); and
- 40.2 tour operators who supply tour packages to international tourists visiting New Zealand.
41. There are some differences between the two groups in that a tour operator:
- 41.1 will be looking for experiences which are attractive to, and can cater for, large tour groups at once, which may change the types of tourism experiences they favour (indeed, [CONFIDENTIAL]); and
- 41.2 may have a greater ability to amend its itineraries to add or subtract time in Queenstown as a way of exercising countervailing power.¹¹
42. However, these differences are not so significant as to mean that they fall within separate markets. Even if there were separate markets, the competition analysis is likely to be substantially the same in both markets.

Market includes all tourism experiences available to tourists visiting Queenstown

43. Tourists to Queenstown are time poor – on average, tourists spend less than 3 days in Queenstown¹² – and choose how to allocate their time between a multitude of tourism experiences including:
- 43.1 self-guided touring (by car, bike, or walking);
- 43.2 attractions in and around Queenstown (e.g., Skyline Gondolas, Walter Peak, Kiwi Park etc);
- 43.3 organised scenic and movie tours in and around Queenstown;
- 43.4 scenic flights;

¹⁰ [Real NZ CONFIDENTIAL]

¹¹ By way of analogy see *Singapore Airlines Limited v Taprobane Tours WA Pty Limited* (1992) 14 ATPR 41-159, where the Full Federal Court found that when assessing the sale of air travel to Australia to package tour operators, the relevant market included destinations other than Australia. That is, an airlines' prices would be constrained by consumers deciding to travel than a destination other than Australia.

¹² This information is available from Destination Queenstown.

- 43.5 organised tours or self-guided trips to Fiordland;
- 43.6 wine and food experiences;
- 43.7 shopping and entertainment;
- 43.8 restaurant, cafe, and other dining;
- 43.9 golf;
- 43.10 cycling and mountain biking;
- 43.11 jet boating; and
- 43.12 bungy, sky diving, rafting etc.
44. These tourism experiences are substitutable as a matter of fact and commercial commonsense. All providers of these tourism experiences are competing to convince tourists to spend their scarce time experiencing that provider's offer. Simply put, if a monopoly provider of any of these types of tourism experiences sought to increase prices above, or decrease quality below, the competitive level, tourists would simply switch to other tourism experiences.
45. This substitutability is illustrated by the way resellers of tourism experiences advertise the competing products in and round Queenstown.



46. Real NZ accepts that tourism experiences where the product is the primary driver of people coming to Queenstown are less likely to be in the market. For example, people coming to Queenstown to ski, or to do a Great Walk. While these experiences impose some constraint, the tourism experiences listed above are more likely to be complementary to these types of experiences.
47. A tourism experiences market is slightly wider than the market for “retail adventure tourism activities in the Queenstown Lakes region”, which the Commission adopted when clearing Bungy NZ to acquire Pipeline Bungy in 2003.^{13 14} In clearing that acquisition, the Commission

¹³ Decision 504 *Bungy NZ and Pipeline Bungy* (24 July 2003)

¹⁴ In 2019, the Commission cleared Queenstown Bungy to acquire Taupo Bungy. The Commission did not reach a view on the scope of the market, although commented that the evidence provided during that process was unclear as to whether bungy jumping in Taupo was substitutable for other adventure tourism activities. *Queenstown Bungy Limited and Taupo Bungy Limited* [2019] NZCC 13, at [29].

adopted a distinct adventure tourism market at that time because it considered tourists viewed adrenalin or thrill inducing activities as similar product offerings.

48. The parties believe that adventure tourism falls within the relevant market. This is because while consumers can be divided into different categories or personas, there is no hard and fast line between these customers. Moreover, it is very difficult to distinguish and discriminate between those who would substitute adventure tourism for other tourism experiences.¹⁵
49. This is particularly so where tourists are travelling in groups and different members of a group may have different preferences. For example, a family travelling to Queenstown may contain some members who are looking for adventure tourism activities and others who are not. A tourism experience provider will need to provide an offer that wins that group's time and, in a real practical sense, they will be competing with all other tourism activities.
50. Nevertheless, the parties do not consider the question of whether the Commission should grant clearance will turn on whether adventure tourism is in the market or not.
51. It follows from the description above that while this acquisition involves the acquisition of a vessel that operates on Lake Whakatipu, there is no separate market for cruises on Lake Whakatipu. A lake cruise is not a 'must do' experience. Rather, a cruise on Lake Whakatipu is simply a part of, or a way to access, the tourism experience that each of Real NZ and Southern Discoveries provides.
52. To illustrate, Real NZ's customer research shows that customers on the Earnslaw chose to journey on the Earnslaw for three main reasons, which are in order of most important to least important:
- 52.1 to travel on the Earnslaw;
- 52.2 to experience the Queenstown scenery; and
- 52.3 to go to Walter Peak.¹⁶
53. With respect to the first and last of these (travel on the Earnslaw and going to Walter Peak), these are experiences that only Real NZ can provide. Given the ubiquitous beauty of the Queenstown Lakes area and beyond, the reality is that almost all tourism experiences will involve tourists experiencing the Queenstown scenery.
54. The parties acknowledge that in the Commission's 2009 decision clearing Fullers Group to acquire Kiwi Kat, the Commission premised its analysis on their being a tourism vessel services market in the Greater Auckland marine area.¹⁷ However, little can be drawn from this decision and it would be wrong to characterise this decision as reflecting a Commission finding that there was such a market.
55. In its application for clearance, Fullers Group appears to have (a) suggested there was a tourism vessel services market,¹⁸ and (b) argued that a hypothetical monopolist in that market could not impose a *snip* as customers would substitute to "bus tours, Auckland Museum ..., the Sky Tower, Kelly Tarlton's Underwater World, Harbour Bridge walks, and West Coast tours and wine trail excursions".¹⁹ As the Commission will appreciate, these

¹⁵ For this reason, while jetboats, for example are more geared towards speed and exhilaration, they are nonetheless substitutes.

¹⁶ A copy of this research is included as part of Attachment I.

¹⁷ Decision 674 *Fullers Group Limited and Kiwi Kat Limited* (30 June 2009).

¹⁸ *Notice of Application to Commerce Commission for Clearance Under Section 66 Commerce Act 1986 to Proposal by Fullers Group Limited to Acquire Most of the Assets of the Business Called 360 Discovery Operated by Kiwi Kat Limited* (4 June 2009) at [30].

¹⁹ Fullers Group Clearance application at [5.26] and [2.7].

statements are irreconcilable. In reality, what the applicant was saying was that there was no separate market for cruises. That is consistent with Real NZ's position in this application.

56. Against this backdrop, the Commission's discussion of this "market" comprises only two paragraphs in the decision²⁰ because the Commission had no competition concerns even if a narrow cruises market existed. Simply put, the Commission did not need to consider substitutability between tourism experiences and did not do so.
57. Similarly, the parties acknowledge that the ACCC has in the past referred to there being markets for scheduled cruises on Sydney Harbour (2005)²¹ and for scheduled dolphin and whale watch cruises in the Port Stephens region of New South Wales (2015).²² Given neither acquisition was opposed, it is not clear how much focus was placed on market definition.
58. However, in relation to the Port Stephens dolphin and whale watching cruise, the ACCC accepted that in addition to being constrained by other dolphin and whale watching cruise operators, the merged firm would also be constrained by:
- 58.1 "the potential for the merged entity, if it attempted to increase prices, to lose custom from organised tours as a result of tour operators substituting similar services in other locations or other types of services"; and
- 58.2 "the ability of residents and visitors to view dolphins and whales other than through dedicated dolphin and whale cruises (e.g. from other vessels operating in the Port Stephens region or from onshore vantage points) ...".
59. So, while the ACCC adopted a narrow market, the constraints it identified were, in fact, consistent with the market being broader than the market adopted by the ACCC.
60. Regardless, for the reasons explained above, in Queenstown the parties do not regard there as being a market for cruises on Lake Whakatipu.

Market includes activities used by tourists visiting Queenstown including those outside Queenstown

61. While the market is focused on tourists staying in Queenstown, the market includes all activities outside Queenstown that tourists can and do choose to do while staying in Queenstown. Most importantly, the market includes sightseeing (self-guided or on organised tours) in Milford Sound, Fiordland, and Wanaka.
62. In addition, there is constraint from outside the Queenstown area to the extent that tourists may substitute other experiences elsewhere in New Zealand. A good example of this is Real NZ's Walter Peak farm tours. A tourist travelling through New Zealand is unlikely to go on multiple farm tours. The result is that where a tourist is travelling throughout New Zealand, Walter Peak is competing with other farm tours in other parts of New Zealand.

Functional level of the market

63. The parties sell their experiences to:
- 63.1 independent tourists directly; and
- 63.2 travel agents, and other resellers, who then resell those experiences to tourists (these wholesale sales are made on standard industry terms with remuneration to agents/wholesalers differing by channel); and

²⁰ Decision 674 at [23] and [33].

²¹ ACCC *Public Competition Assessment: Quay Cruises Pty Ltd/Matilda Cruises Pty Ltd* (2005).

²² *Moonshadow Cruises/Tamboi Queen Cruises* – ACCC 56941 (2015).

- 63.3 tour operators who package those experiences in the tours they retail.
64. While there is a retail and wholesale aspect to the sale of tourism experiences to independent travellers and our operators, the competition effects and analysis are largely the same. Therefore, the parties have not drawn a distinction between the markets in this clearance application.²³

Why the acquisition will not substantially lessen competition for the sale of tourism experiences

Summary

65. Real NZ's acquisition of the Spirit of Queenstown is unlikely to substantially lessen competition for the sale of tourism experiences because:
- 65.1 the Spirit of Queenstown and Earnslaw/Walter Peak experiences do not compete more closely with each other than each of them does with other tourism experiences;
- 65.2 there is a multitude of tourism providers in Queenstown who will continue to constrain Real NZ post-acquisition – most acutely, Skyline Gondola;
- 65.3 the multitude of tourism providers in Queenstown illustrates that the barriers to entry into this market are low;
- 65.4 tour operators (at least) have countervailing power through their ability to:
- 65.4.1 replace Real NZ's Earnslaw/Walter Peak experiences with experiences in other parts of New Zealand; and
- 65.4.2 retaliate against Real NZ in other locations, e.g., Fiordland; and
- 65.5 to the extent there is a minority of tourists for whom a "cruise" on Lake Whakatipu is a "must do" activity and who would regard the Spirit of Queenstown and the Earnslaw as close substitutes:
- 65.5.1 other options will remain and other providers could re-focus their services to meet any market demand; and
- 65.5.2 if the acquisition left an underserved market niche, the barriers to entry for a new entrant would be surmountable.
66. Each of these points is explained below.

Spirit of Queenstown and Earnslaw/Walter Peak experiences do not compete more closely with each other than with other tourism experiences

67. While Southern Discoveries' Spirit of Queenstown and Real NZ's Earnslaw/Walter Peak experiences involve cruising on Lake Whakatipu, they are not particularly close competitors. Nor do they compete more closely with each other than they compete with many other tourism experiences.
68. As described at paragraphs [21] to [30] above, Real NZ's focus is on promoting and selling its Walter Peak farm experiences. These experiences last approximately 3.5 hours. Travel

²³ This is consistent with *Pipeline Bungy* at [58], where the Commission said: "While for some sales an intermediary operates between the activity operator and the tourist, the Commission considers that the essential transaction involves the activity operator and tourist. It is the tourist who makes a purchase based on perceived value and cost of the activity on offer".

on the Earnslaw is only one part of the experience and it is being on the Earnslaw, rather than being on the lake, that is the draw.

69. Similarly, where customers choose to book a cruise only ticket on the Earnslaw – and these are available given Walter Peak sales – Real NZ’s market research shows that the experience these customers are seeking is to be on the Earnslaw, not a cruise on Lake Whakatipu per se.
70. In contrast, what Southern Discoveries offers is a way to experience Queenstown scenery while enjoying a food and beverage service all in 1.5 hours. In doing so, it is primarily competing with other experiences that last less than 1.5 hours and can include dining/food and beverage offers. More bluntly, Southern Discoveries:
- 70.1 does not offer a similar farm tour experience to Real NZ;
 - 70.2 is not able to offer a competing experience to the experience of being onboard a vintage steamship; and
 - 70.3 has not been a strong option for tour operators given lunch and dinner cruises are not a unique selling proposition for these customers.
71. Each of the parties believes they compete more closely with Skyline New Zealand than they do with each. Skyline New Zealand offers a different way for tourists to experience Queenstown’s scenery (Gondola ride and observation decks) and the ability to combine that with a food and beverage experience (Stratosphere dining), and other activities (luge rides).
72. Indeed, rather than lessening competition, Real NZ believes that the acquisition will increase competition as it will provide Real NZ with greater capacity to compete with Skyline New Zealand as well as other tourism experiences.

The many and varied providers of tourism experiences in Queenstown

73. However, Skyline Gondolas is only one of the many and varied different tourism experiences available to tourists travelling to Queenstown. As described at paragraph 43 above, these include:²⁴
- 73.1 self-guided touring whether by car, bike, or walking (in including day walks and hiking);
 - 73.2 attractions in and around Queenstown, including Sky Line Gondola and Kiwi Park (wildlife sanctuary);
 - 73.3 organised scenic and movie tours in and around Queenstown, with providers including:
 - 73.3.1 Offroad 4x4
 - 73.3.2 Nomad Safaris
 - 73.3.3 Oxbow Adventure Company
 - 73.3.4 Queenstown Expeditions
 - 73.3.5 Queenstown Heritage tours
 - 73.3.6 Private Discovery Tours

²⁴

Some providers provide multiple experiences but are not listed twice.

- 73.3.7 AuthenticAs
- 73.3.8 Pure Glenorchy
- 73.3.9 BLACK
- 73.4 scenic flights and mountain experiences, with providers including:
 - 73.4.1 Mountainhut.nz
 - 73.4.2 Heli Glenorchy
 - 73.4.3 The Helicopter Line
 - 73.4.4 Alpine Luxury Tours
 - 73.4.5 Glacier Southern Lakes Helicopters
 - 73.4.6 Heliworks Queenstown
 - 73.4.7 Glenorchy Air
 - 73.4.8 Air Milford
 - 73.4.9 Milford Sound Scenic Flights
 - 73.4.10 Over the Top
 - 73.4.11 True South
- 73.5 organised tours to Fiordland, with providers including:
 - 73.5.1 Southern Discoveries;
 - 73.5.2 Intercity
 - 73.5.3 Pure Milford
 - 73.5.4 Intercity
 - 73.5.5 Altitude Tours
 - 73.5.6 Cheeky Kiwi
 - 73.5.7 flight operators such as those listed in 73.4 above;
- 73.6 adventure tourism such as bungee jumping, jet boating, skydiving etc, with providers including:
 - 73.6.1 Shotover Jet
 - 73.6.2 K-Jet
 - 73.6.3 Queenstown Jet, once sold by Real NZ
 - 73.6.4 AJ Hackett Bungee
 - 73.6.5 Ziptrek Ecotours

- 73.6.6 Shotover Canyon Swing
- 73.6.7 Paradise Ziplines
- 73.6.8 Serious Fun Riverboarding Limited
- 73.6.9 Challenge Rafting
- 73.6.10 NZONE Skydiving
- 73.7 wine and food experiences, including brewery and vineyard experiences and wine tours and tastings, with providers including:
 - 73.7.1 Appellation Wine Tours
 - 73.7.2 Gibbston Valley Winery
 - 73.7.3 Altitude Tours
 - 73.7.4 Alpine Wine Tours
 - 73.7.5 Hop on Hop off Wine Tours Ltd
 - 73.7.6 Queenstown Wine Trail
 - 73.7.7 Queenstown Winery Tours
 - 73.7.8 Queenstown Beer Tours
- 73.8 Golf, with courses including:
 - 73.8.1 Millbrook Resort
 - 73.8.2 The Hills
 - 73.8.3 Jacks Point
 - 73.8.4 Arrowtown Golf Club
 - 73.8.5 Queenstown Golf Club
- 73.9 cycling and mountain biking, with providers including:
 - 73.9.1 NZ EBike Tours Limited
 - 73.9.2 Queenstown Bike Hire
 - 73.9.3 Going Blue Limited
 - 73.9.4 Arrowtown Bikehire
 - 73.9.5 Around the Basin
 - 73.9.6 The Ride Guide

73.10 shopping and entertainment within Queenstown;²⁵ and

73.11 restaurant, cafe, and other dining.

74. The commercial reality is that all these providers compete and will constrain each other, to a greater or lesser extent for different customers. Tourists will mix and match these different experiences to create their own unique Queenstown experience. For some customers, different experiences will be complements, and for some customers, the same experiences will be substitutes. Providers have no way of knowing which customers will choose which combination of experiences and, therefore, the commercial reality is that a provider must treat providers of all tourism experiences as their competitors, albeit some will be closer direct substitutes than others.
75. In Real NZ's view, if any of these providers perceived there was a market opportunity to expand following the acquisition, there would be nothing to prevent providers from selling more.

The multitude of tourism providers in Queenstown illustrates that the barriers to entry into this market are low

76. While Real NZ's case for clearance does not rely on new entry into the Queenstown tourism market, the multitude of operators that compete in the market illustrates that barriers to entry are low. If the Commission requires more information on barriers to entry, Real NZ can provide that information.

Tour operators' countervailing power

77. Tour operators have countervailing power, which they would use if they considered it necessary.
78. Simply put, a tour operator's job is to compile a compelling overall New Zealand tour package for its customers. A visit to, and experiences in, Queenstown are only one potential part of that overall New Zealand tourism experience.
79. This enables tour operators to exercise countervailing power in three ways.
- 79.1 First, given tour operators will be visiting Milford Sound and possibly Te Anau, a tour operator will be able to exercise countervailing power on Real NZ by substituting away from its services in Milford in retaliation for any exercise of market power in Queenstown.
- 79.2 Second, a tour operator will be able to substitute a farm experience in another part of New Zealand a tour is visiting (e.g., AgriDome in Rotorua) for a tour for Walter Peak.
- 79.3 Third, when designing tours, a tour operator can reduce the amount of time spent in Queenstown in favour of spending more time elsewhere in the event the merged firm sought to increase prices.
80. In fact, all these options are open to independent tourists as well. While one tourist may not be able to exercise countervailing power by themselves, the fact that independent travellers as a group have these options, imposes a further degree of constraint on Real NZ.

²⁵ There are a range of other activities that will exert a degree of constraint for some tourists including the indoor climbing centre, the trampoline park, kart racing and laser tag, paintless paintball and VR games, iFLY indoor skydiving simulator, Odyssey Sensory Maze and others.

Options remain for tourists only seeking a lake experience

81. Even if there is a small minority of tourists for whom a “cruise” on Lake Whakatipu is a “must do” activity and who would regard the Spirit of Queenstown and the Earnslaw as close substitutes, other options will remain. These options include (in rough order of substitutability):
- 81.1 Million Dollar Cruises – a \$49 cruise with departures at 11:00 and 14:00 year round, and 16:00 (in summer)
 - 81.2 Kawarau Jet;
 - 81.3 Queenstown Jet Boats (currently owned by Real NZ but up for sale)
 - 81.4 Queenstown Ferry (currently owned by Real NZ but up for sale);
 - 81.5 The Luanda Experience (charter boat);
 - 81.6 Pacific Jemm (luxury charter boat);
 - 81.7 Queenstown Watersports World (self-drive boat hire);
 - 81.8 Paddle Queenstown (kayak, paddle boat and paddle board hire);
 - 81.9 Hydro Attack (submersible ‘shark’ ride); and
 - 81.10 Queenstown Jetski Tours.
82. As far as the parties are aware, these existing providers would face no insurmountable barriers to expanding sales should they identify a market opportunity to do so. They all have vessels and berths in place, and the parties expect they would have excess capacity to sell should they wish to do so.
83. While the Luanda and Pacific Jemm currently operate as charters, they could start providing scheduled cruise operations should they identify an underserved market niche. Real NZ thinks that is unlikely because such a market niche is unlikely to exist.

Obstacles to a new cruise operator are surmountable

84. Similarly, because it does not believe a market opportunity exists or is likely to, Real NZ believes that it is unlikely that any new cruise experience providers will commence in Queenstown.
85. However, if someone did wish to start a new cruise only experience, or cruise and dining experience they would need a vessel, a place to berth that vessel, and the necessary consents and approvals. These conditions are navigable as illustrated by the entry of Southern Discoveries in 2014.

Availability and cost of a vessel

86. Real NZ has no reason to believe that an appropriate vessel could not be secured.
87. The cost of such a vessel would depend on the vessel used. The valuation of the Spirit of Queenstown ([CONFIDENTIAL]) provides an indication of the cost of a second hand vessel similar to the Spirit of Queenstown. While acquiring a vessel would require a significant capital investment, that investment would not be sunk (Real NZ’s acquisition of the Spirit of Queenstown illustrates this).

Regulatory consents

88. The various rules and regulations that regulate cruise operations on Lake Whakatipu include:
- 88.1 Maritime Transport Act
 - 88.2 Queenstown Lakes District Council (QLDC) District Plan
 - 88.3 QLDC Navigation Safety Bylaw 2018;
 - 88.4 QLDC trade waste consent;
 - 88.5 Sale of Alcohol Act;
 - 88.6 Food Act.
89. A new operator would require:
- 89.1 a Maritime Transport Operator Certificate: to obtain this certificate an operator must develop a Maritime Transport Operator Plan;
 - 89.2 vessel certificate of survey: surveyors are independent contractors who can be engaged to provide advice and complete vessel surveys. Vessel surveys are audited by Maritime New Zealand, including, at a minimum, a 5 yearly out of water survey;
 - 89.3 minimum Safe Crewing Document;
 - 89.4 any necessary Maritime New Zealand exemptions;
 - 89.5 Commercial Surface Water Activity (land use) Resource Consent from QLDC: there are no limits set in the QLDC District Plan on the number of vessels that can operate commercial surface water activities on Lake Whakatipu;²⁶ and
 - 89.6 a concession under the QLDC Navigation Safety Bylaw;
 - 89.7 a liquor licence (if selling alcohol); and
 - 89.8 registration as a food business (if serving food) and have a valid food control plan with premises inspected by the QLDC Environmental Health Officer annually.
90. The number of existing providers operating on Lake Whakatipu, or who operate other tourism experiences that must comply with some of these regulations, illustrates that these regulatory requirements do not impose a barrier to entry.

Wharf berthage and wharf access

91. An operator wanting to offer lake cruising like Southern Discoveries' Spirit of Queenstown experience would need wharf berthage in Queenstown Bay.²⁷ There are six wharves in Queenstown Bay (shown in Figure 1 below).
- 91.1 Town Pier, owned by QLDC;

²⁶ Such consents do not expire although they can be reviewed in accordance with the Resource Management Act and lapse if not given effect within 5 years of the date of commencement of the consent.

²⁷ A service that landed at any other point on the lake would need to access to wharf facilities at that location. Walter Peak wharf is owned by Real NZ; Glenorchy Wharf is owned by QLDC; Mt Nicholas wharf is controlled by the proprietors of Mt Nicholas Station.

- 91.2 Lapsley-Butson Wharf, owned by QLDC;
- 91.3 Convelle Wharf, owned by Real NZ but currently for sale;
- 91.4 Earnslaw Wharf, owned by Real NZ;
- 91.5 O'Regans Wharf, owned by Queenstown Wharves LP; and
- 91.6 St Omar Wharf, owned by Queenstown Wharves LP.

Figure 1: Queenstown Bay Wharves



- 92. Another party has applied for Resource Consent to develop a new wharf in Queenstown Bay. QLDC declined Resource Consent (and Real NZ opposed the application). The applicant has appealed QLDC's decision to the Environment Court.
- 93. The size (length and draft) of the entrant's vessel would determine how much wharf space would be needed and which wharf space would be suitable.
- 94. If a new entrant wished to operate a vessel (or vessels) under 20 metres in length, then it could use existing available capacity on the Convelle²⁸, or St Omar wharves.²⁹ Indeed, depending on the actual design and layout of the vessel, a vessel larger than 20m could be accommodated at the Convelle Wharf.
- 95. The entrant would need to negotiate terms with the owner of the relevant wharf. Real NZ would have no ability to hinder or deny access to these wharves because:
 - 95.1 Real NZ is currently marketing the Convelle Wharf for sale and if sold would have no control over that wharf; and
 - 95.2 Real NZ does not have any ability to control the St Omar wharf given it is only one of three partners in Queenstown Wharves LP and so Real NZ could not deny access to a new entrant to that wharf.

²⁸ 18 linear metres available on the outer berth, and 20-25 non-contiguous linear metres on the inner berth (which is only suitable for short, shallow draft vessels).

²⁹ 10 linear metres available on inner berth with another 34 non-contiguous meters consented with the addition of two pontoons.

96. The wharves long enough for vessels over 20 metres are the Earnslaw (owned by Real NZ) and O'Regans wharves (owned by Queenstown Wharves LP).
97. While O'Regans Wharf is owned by Queenstown Wharves LP, Real NZ (48 metres) and Southern Discoveries (32 metres) hold licences for the entire outer length of O'Regans wharf with rights of renewal that provide the licences can last until [CONFIDENTIAL].³⁰ Following the acquisition, Real NZ will have licences to use all 80 metres of O'Regan wharf's outer berth.
98. Nevertheless, Real NZ considers it will have a commercial incentive to make some of this space available to a new entrant.
99. Real NZ is not acquiring the Southern Discoveries licence to use O'Regans wharf because it needs the additional space. The reason Real NZ is acquiring the licence is simply because Southern Discoveries wishes to exit the liability for the licence given it will no longer own and operate the Spirit of Queenstown. No value is attached to the licence in the sale and purchase agreement, which indicates that neither party views there as being strong alternative bidders for this wharf space.
100. Moreover:
- 100.1 Real NZ already sub-leases some of its current space at O'Regans wharf that is surplus to its requirements to the owners of the Pacific Jemm on a month by month basis; and
- 100.2 Real NZ believes it could, with modifications to the wharf and changes to its operational model, berth the Spirit of Queenstown at Earnslaw wharf freeing additional space.
101. Given Real NZ could rationalise its wharf space and its demonstrated willingness to sub-lease excess wharf space, Real NZ would be open to commercial offers to sub-lease the O'Regans wharf space that would allow Real NZ to reduce or eliminate its obligations to pay rent under the licence.

Conclusion

102. For all these reasons, Real NZ's acquisition of the Spirit of Queenstown is unlikely to substantially lessen competition for the sale of tourism experiences. Real NZ will remain constrained by the multitude of tourism providers in Queenstown who will continue to compete hard and who face no barriers to increasing their sales should a market opportunity present itself.

Coordinated, vertical, or conglomerate effects are unlikely

103. The acquisition is unlikely to result in a substantial lessening of competition arising from coordinated, vertical, or conglomerate effects due to the numerous competitors that will remain in the market combined with the fact that a cruise on Lake Whakatipu is not a "must have" experience for tourists.

Summary and conclusion

104. The acquisition will not substantially lessen competition in any market. The market is highly competitive and highly fragmented. Real NZ will continue to face strong competition from a range of competitors none of whom face any obstacles that would prevent them from

³⁰ The inner berth does not have sufficient water depth or access.

expanding their sales in response to an attempt by the merged entity to raise prices or reduce quality.

105. Real NZ, therefore, requests that the Commission grant clearance for the acquisition.

Declaration

I, Paul Norris, have supervised the preparation of this notice seeking clearance. To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

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

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am Acting Chief Executive of Real NZ (being Real Group Limited and its subsidiaries, of which the applicant Real Journeys Limited is one), and I am duly authorised to submit this notice.

Paul Norris

Date: 21 August 2023

Schedule of confidential information

The following information has been removed from the public version of the Application because the information is confidential to the parties and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice the commercial position of one or both of the parties (*cf*s 9(2)(b)(i) and (ii) of the Official Information Act):

- The dates in paragraph 3.5.
- All of paragraph 4 after words after “The purchase price is” in the second sentence.
- Paragraph 27 in its entirety.
- The words after “(indeed,” in paragraph 41.1.
- The figure in brackets in paragraph 87.
- The date in paragraph 97.
- The information provided in response to request [3.4] in the Schedule of required information in notice for clearance.
- Attachments A, B, and K.

Information removed to protect privacy

The names and contact details of the individuals listed in the following parts of the Application have been removed from the public version to protect the privacy of individuals relying on s 9(2)(a) of the Official Information Act.

- Matthew Day’s contact details.
- David Skeggs’ contact details.
- Individual contact details in Attachment F.

Real NZ confidential information

The following information has been removed from the public version of the Application because the information is confidential to Real NZ and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice FDL’s commercial position (*cf*s 9(2)(b)(i) and (ii) of the Official Information Act):

- The dollar figure in paragraph 22.
- Footnote 7.
- Paragraph 37 after the words “Real NZ’s “Plan B” is”.
- Footnote 10.
- Paragraph 38.
- The revenue and passenger figures in the Table in Attachment C.
- Attachments D, G, I, and J.

Southern Discoveries' confidential information

The following information has been removed from the public version of the Application because the information is confidential to Southern Discoveries and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice Southern Discoveries' commercial position (*cfs* 9(2)(b)(i) and (ii) of the Official Information Act):

- The last sentence in paragraph 16.
- Paragraph 17 in its entirety.
- The last two sentences in paragraph 18.
- Paragraphs 33 to 36 in their entirety.
- Paragraph 39.
- The information after each hyphen in the sub-bullets in Attachment C on page 30.
- Attachments E and H.

Schedule of required information in notice for clearance

Notice para.	Commission request	Response
[1]	Applicant details	See paragraphs [6] to [12] of the Clearance Application.
[2]	Other party details	See paragraphs [13] to [20] of the Clearance Application.
[3.1]	Type of transaction	Acquisition of assets. See paragraph [3] of the Clearance Application.
[3.2]	Merger rationale	See paragraphs [21] to [36] of the Clearance Application.
[3.3]	How merger changes control	See paragraph [5] of the Clearance Application.
[3.4]	Ancillary agreements	[CONFIDENTIAL]
[3.5]	Counterfactual	See paragraphs [37] to [39] of the Clearance Application.
[4]	International notification	Not applicable.
[5.1]	Applicant's view on market definition	See paragraphs [40] to [64] of the Clearance Application
[5.2]	Each merging party's total sales revenues, volumes, and capacity for the last three financial years.	See Attachments G and H.
[5.3]	Names and contact details of the merging parties' main competitors	See Attachment F.
[5.3]	Names of any trade or industry associations which either of the merging parties participate	<p>Real NZ and Southern Discoveries</p> <ul style="list-style-type: none"> • Destination Queenstown • Tourism New Zealand • Tourism Export Council • Tourism Industry Association • Queenstown Chamber of Commerce <p>Southern Discoveries</p> <ul style="list-style-type: none"> • Backpacker, youth association • Business South <p>Real NZ</p> <ul style="list-style-type: none"> • Business Events Association Aotearoa

Notice para.	Commission request	Response
[5.4]	Names and contact details of merging parties top 5 customers	See Attachments D and E
[6]	Why the transaction will not substantially lessen competition	See the Executive Summary and paragraphs [65] to [103] of the Clearance Application.
[7]	Copies of documents bringing about the merger	See Attachment A.
[8]	<p>Internal applicant documents seen by the Board or senior management within the last two years that relate to:</p> <ul style="list-style-type: none"> • the transaction; or • market conditions. 	See Attachment I.
[9]	Most recent annual report, audited financial statements and management accounts	Real NZ does not have an annual report or financial statements for its Queenstown operations. Management accounts for Queenstown operations have been provided as Attachment J.

Attachment A: Sale and Purchase Agreement

[CONFIDENTIAL]

Attachment B: Spirit of Queenstown valuation

[CONFIDENTIAL]

Attachment C: Real NZ products and Spirit of Queenstown products

Real NZ experiences

- Winter departures: 12:00, 14:00, 16:00
- Summer departures: 9:00, 11:00, 1:00, 3:00, 5:00

Experience		Total duration	Availability	Price		For FY23 YTD ³¹	
				Adult	Child	Revenue / revenue share	Passengers / passenger share
Gourmet BBQ dinging	<ul style="list-style-type: none"> • Cruise to/from Walter Peak • Gourmet BBQ buffet • Dog/sheering show 	3.5 hours	Depending on the schedule: <ul style="list-style-type: none"> • 12pm, 4pm, or 6pm; or • 11am, 1pm, 5pm, or 7pm Availability subject to constraints at Walter Peak	\$175 (lunch) \$189 (dinner)	\$89 (lunch) \$95 (dinner)	[Real NZ CONFIDENTIAL]	[Real NZ CONFIDENTIAL]
Farm tour	<ul style="list-style-type: none"> • Cruise to/from Walter Peak • Farm tour and animal feeding • Afternoon tea • Dog/sheering show 	3.5 hours	Select sailings before 3pm. If BBQ demand sufficient, this product is not sold	\$145	\$65	[Real NZ CONFIDENTIAL]	[Real NZ CONFIDENTIAL]
Cruise only	<ul style="list-style-type: none"> • Cruise to/from Walter Peak 	1.75 hours	Available at all sailing times subject to demand for Farm	\$99	\$49	[Real NZ CONFIDENTIAL]	[Real NZ CONFIDENTIAL]

³¹ Real NZ's financial year runs 1 October to 30 September.

Experience		Total duration	Availability	Price		For FY23 YTD ³¹	
				Adult	Child	Revenue / revenue share	Passengers / passenger share
			and BBQ experiences.				
Horse Trek	<ul style="list-style-type: none"> Cruise to/from Walter Peak Horse trek Afternoon tea 	3.5 hours	Available on select sailings before 3pm in Summer and during School holidays.	\$219	\$169	[Real NZ CONFIDENTIAL]	[Real NZ CONFIDENTIAL]

Spirit of Queenstown

- Departures: 11:00, 13:15, 15:15, plus 4 per week evening cruises in summer.
- Duration: 1.5 hours.
- Product offerings with proportion of sales in FY23 (Year to Date)³²:
 - Cruise only pre-purchased – [Southern Discoveries CONFIDENTIAL]
 - Lunch cruise pre purchased – [Southern Discoveries CONFIDENTIAL]
 - Dinner cruise pre purchased – [Southern Discoveries CONFIDENTIAL]
 - Wine and cheese package pre-purchased – [Southern Discoveries CONFIDENTIAL]

³² Southern Discoveries' financial year runs 1 August to 31 July.

Attachment D: Real NZ's top 5 customers

[Real NZ CONFIDENTIAL]

Attachment E: Southern Discoveries top 5 Spirit of Queenstown customers

[Southern Discoveries CONFIDENTIAL]

Attachment F: Contact details for main competitors

Company name	Website	Contact details (where known)
Skyline New Zealand	www.skyline.co.nz/en/queenstown/	[CONFIDENTIAL]
Million Dollar Cruises	milliondollarcruise.co.nz/	[CONFIDENTIAL]
Fiordland Discovery	www.fiordlanddiscovery.co.nz/	[CONFIDENTIAL]
Intercity	www.intercity.co.nz/tours/intercity-milford-sound-tour	
Kiwi Park	www.kiwibird.co.nz/	Kiwi@kiwibird.co.nz
Shotover Jet	www.shotoverjet.com/	[CONFIDENTIAL]
K Jet	www.kjet.co.nz/	[CONFIDENTIAL]
AJ Hackett Bungy	www.bungy.co.nz/	[CONFIDENTIAL]
Pacific Jemm	www.pacificjemm.com/	[CONFIDENTIAL]
The Luanda Experience	www.luanda.co.nz/	bookings@luanda.co.nz
Queenstown Water Sport World	www.watersportworld.co.nz/	HELLO@WATERSPORTWORLD.CO.NZ
Paddle Queenstown	www.paddlequeenstown.co.nz/	info@paddlequeenstown.co.nz
Hydro Attack	www.hydroattack.co.nz/	info@hydroattack.co.nz
Offroad 4x x 4	offroad4x4.co.nz/	play@offroad.co.nz
Nomad Safaris	nomadsafaris.co.nz/	sales@nomadsafaris.co.nz
Oxbow Adventure Company	oxbow.co.nz/	INFO@OXBOW.CO.NZ
Queenstown Expeditions	queenstownexpeditions.com/	info@queenstownexpeditions.com
Queenstown Heritage tours	queenstown-heritage.co.nz/	
Private Discovery Tours	privatediscoverytours.co.nz/	info@privatediscoverytours.co.nz
AuthenticAs	authenticas.org/	emailus@authenticAs.org t
Pure Glenorchy	pureglenorchy.com/	info@pureglenorchy.com
Mountainhut.nz	mountainhut.nz/	[CONFIDENTIAL]
Heli Glenorchy	heliglenorchy.co.nz/	
The Helicopter Line	helicopter.co.nz/english/queenstown	queenstown@helicopter.co.nz
Alpine Luxury Tours	alpineluxurytours.co.nz/	[CONFIDENTIAL]

Company name	Website	Contact details (where known)
Glacier Southern Lakes Helicopters	glaciersouthernlakes.co.nz/	sales@glaciersouthernlakes.co.nz
Heliworks Queenstown	queenstownhelicopters.nz/	info@heliworks.co.nz
Ziptrek Ecotours	ziptrek.co.nz/	nzinfo@ziptrek.com
Shotover Canyon Swing	canyonswing.co.nz/	INFO@CANYONSWING.CO.NZ
Paradise Ziplines	paradiseziplines.com/	info@paradiseziplines.com
Serious Fun Riverboarding Limited	riverboarding.co.nz/	book@riverboarding.co.nz
Challenge Rafting	raft.co.nz/	challenge@raft.co.nz
NZONE Skydiving	nzoneskydive.co.nz/	reservations@nzoneskydive.co.nz
Appellation Wine Tours	appellationwinetours.nz/	bookings@appellationwinetours.nz
Gibbston Valley Winery	gibbstonvalley.com/	info@gibbstonvalley.com
Altitude Tours	altitudetours.co.nz/	info@altitudetours.co.nz
Alpine Wine Tours	alpinewinetours.co.nz/	info@alpinewinetours.co.nz
Hop on Hop off Wine Tours Ltd	hoponhopoffwinetours.com/	enquiries@hoponhopoffwinetours.com
Queenstown Wine Trail	queenstownwinetrail.co.nz/	info@queenstownwinetrail.co.nz
Queenstown Winery Tours	queenstownwinerytours.com/	info@queenstownwinerytours.com
Queenstown Beer Tours	queenstownbeertours.co.nz/	tours@newzealandcraftbeers.com
NZ EBike Tours Limited	ridetothsky.co.nz/	info@ridetothsky.co.nz
Queenstown Bike Hire	queenstownbikehire.co.nz/	Info@qbikehire.co.nz
Going Blue Limited	goingblue.co.nz/	goingbluequeenstown@gmail.com
Arrowtown Bike Hire	arrowtownbikehire.co.nz/	ride@arrowtownbikehire.co.nz
BLACK	blackzqn.com/	INFO@BLACKZQN.CO.NZ
Around the Basin	aroundthebasin.co.nz/	info@aroundthebasin.co.nz
The Ride Guide	therideguide.co.nz/	

Attachment G: Real NZ's relevant revenues, volumes, and capacity

[Real NZ CONFIDENTIAL]

Attachment H: Southern Discoveries' Spirit of Queenstown revenues, volumes, and capacity

[Southern Discoveries CONFIDENTIAL]

Attachment I: Internal documents

[Real NZ CONFIDENTIAL]

Attachment J: Management accounts

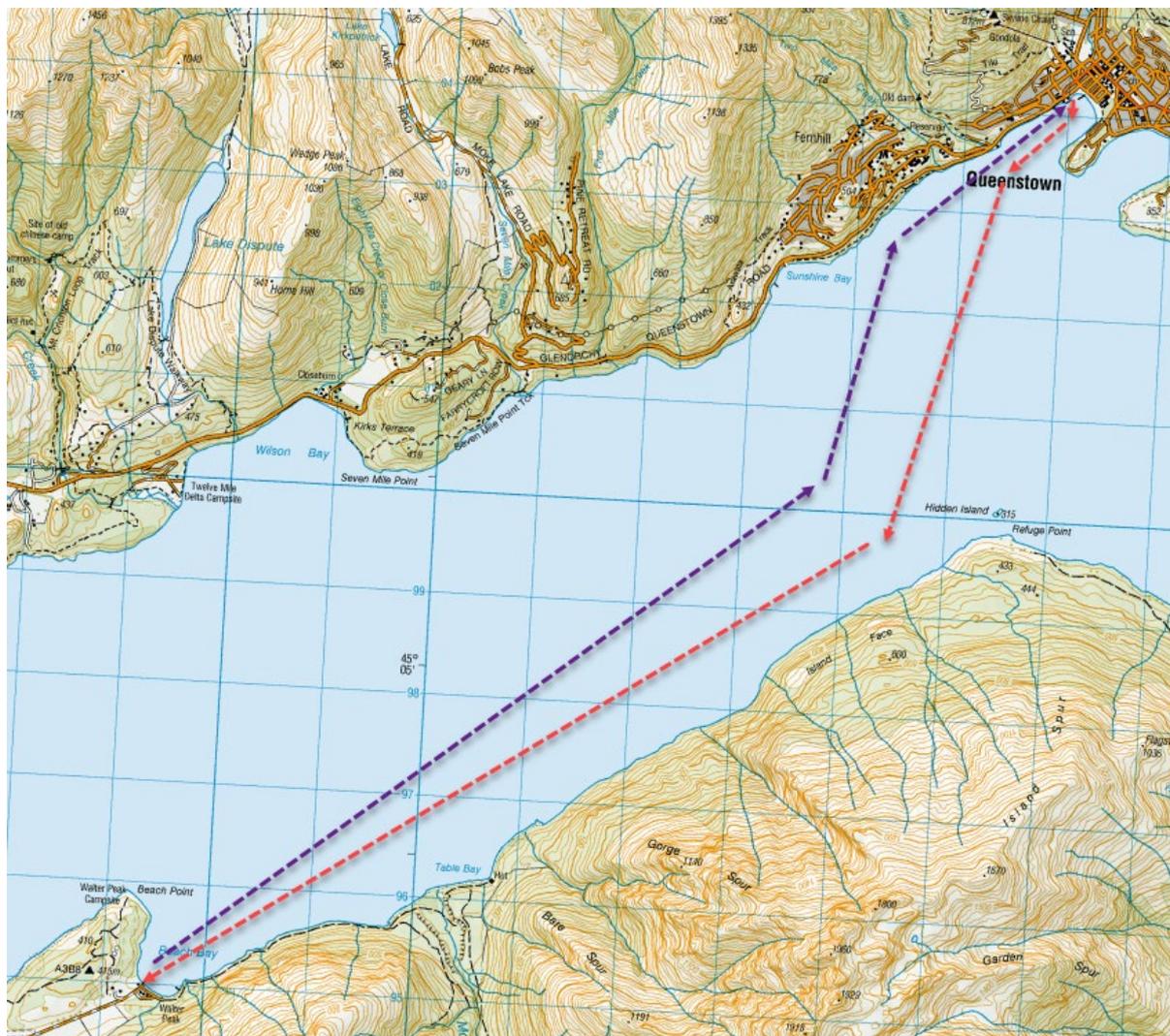
[Real NZ CONFIDENTIAL]

Attachment K: Licence to Use O'Regan's Wharf

[CONFIDENTIAL]

Attachment L: Maps

TSS Earnslaw route map



Spirit of Queenstown route map

