

## Determination

### Real Journeys Limited and Southern Discoveries Limited [2023] NZCC 26

<b>The Commission:</b>	Dr John Small Sue Begg Nathan Strong
<b>Summary of application:</b>	An application from Real Journeys Limited (trading as Real NZ) seeking clearance for it (or any interconnected body corporate) to acquire the vessel, the Spirit of Queenstown, and associated assets from Southern Discoveries Limited.
<b>Determination:</b>	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed acquisition.
<b>Date of determination:</b>	6 October 2023

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

## The Application

1. On 21 August 2023, the Commerce Commission registered an application (the Application) from Real Journeys Limited (trading as Real NZ) seeking clearance for it (or any interconnected body corporate) to acquire the vessel, the Spirit of Queenstown, and associated assets from Southern Discoveries Limited (Southern Discoveries) (the Proposed Acquisition).

## Our decision

2. We give clearance to the Proposed Acquisition as we are satisfied that it will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. Real NZ and Southern Discoveries (together, the Parties) supply scheduled tourist cruises on Lake Whakatipu in Queenstown.
4. Our investigation focused on the potential for the Proposed Acquisition to result in unilateral effects in the market for the sale of tourism experiences to tourists visiting Queenstown. We found that while the Parties are the two largest operators of scheduled tourist cruises on Lake Whakatipu in Queenstown, the merged entity would face competitive constraint from the third supplier of scheduled tourist cruises on Lake Whakatipu, Million Dollar Cruise Limited (Million Dollar Cruise) and also other tourism operators in Queenstown that offer similar scenic, leisurely tourism experiences (in particular those including dining experiences such as Skyline).
5. While Real NZ and Southern Discoveries both offer scheduled tourist cruises on Lake Whakatipu in Queenstown, after considering a range of factors including the Parties' product offerings, pricing, and passenger numbers, we consider that while the Parties compete to a degree, they do not compete closely. While a degree of competitive constraint may be lost as a result of the Proposed Acquisition, we do not consider that the loss of competition is substantial.
6. We found no evidence to indicate that the Proposed Acquisition would be likely to give rise to conglomerate effects concerns. We also do not consider that the Proposed Acquisition would change conditions in the relevant market so that coordination is more likely, more complete, or more sustainable.

## Our framework

7. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisition Guidelines (our guidelines).<sup>1</sup>
8. To clear an application, we must be satisfied that a merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

---

<sup>1</sup> Commerce Commission, Mergers and Acquisitions Guidelines (May 2022).

9. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).<sup>2</sup>
10. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise prices above the price that would exist in a competitive market (the 'competitive price'),<sup>3</sup> or reduce non-price factors such as quality or service below competitive levels.

### **The Parties and the Proposed Acquisition**

11. Real NZ is a wholly owned subsidiary of Real Group Limited. Real NZ offers tourism experiences in the south of the South Island and Stewart Island, including cruises through Milford and Doubtful Sounds. Real Group Limited also owns the Cardrona Alpine Resort and Treble Cone Ski Area (both in Wanaka), and the International Antarctic Centre in Christchurch. Relevant to the Application, Real NZ owns and operates the heritage steamship, the TSS Earnslaw, providing cruises to and from downtown Queenstown to its Walter Peak High Country Farm.
12. Southern Discoveries is wholly owned by Skeggs Group Limited. Southern Discoveries offers tourism services in Milford Sound and Queenstown. Relevant to the Application, Southern Discoveries owns and operates the Spirit of Queenstown, which provides scenic cruises on Lake Whakatipu in Queenstown.
13. The Parties' offerings overlap in the supply of scheduled tourist cruises on Lake Whakatipu in Queenstown.

### **Industry background**

14. Scheduled tourist cruise experiences tend to vary in duration, but commonly have a scenic element, allowing tourists to view nature and scenery in a unique way. The cruises generally have set cruise times, and some may also provide a food and beverage offering for tourists and/or transport to an end destination.
15. Real NZ and Southern Discoveries are two of the three tourism operators that provide scheduled tourist cruises on Lake Whakatipu in Queenstown. In addition to Real NZ operating cruises on the TSS Earnslaw and Southern Discoveries offering cruises on the Spirit of Queenstown, cruises are also operated by Million Dollar Cruise.
16. While the above three parties currently provide scheduled tourist cruises on Lake Whakatipu in Queenstown, they are differentiated in their offerings:
  - 16.1 Real NZ focuses on offering transport across Lake Whakatipu on the vintage steamship the TSS Earnslaw, to enable tourists to experience Walter Peak

---

<sup>2</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>3</sup> Or below competitive levels in a merger between buyers.

High Country Farm (the experience includes a farm tour, horse treks, cycling and a gourmet BBQ dining experience).<sup>4</sup> The cost of a cruise on the TSS Earnslaw with dining at Walter Peak High Country Farm currently starts from \$175 (for an adult). Tourists can simply do a cruise on the lake aboard the TSS Earnslaw for \$99 currently. Real NZ provided data indicating that only [ ]% of passengers in its 2023 financial year to date had done a cruise only.<sup>5</sup> The TSS Earnslaw can currently carry up to 250 passengers per sailing.<sup>6</sup> In the four years prior to the COVID-19 pandemic, the passenger numbers on the TSS Earnslaw were [ ] per annum;<sup>7</sup>

16.2 Southern Discoveries, via the Spirit of Queenstown, provides food and beverage-focused cruises on Lake Whakatipu, without transportation to an end destination.<sup>8</sup> The cost of a cruise on the Spirit of Queenstown with lunch currently starts from \$109 (for an adult). Tourists can simply do a cruise on the Spirit of Queenstown without pre-purchased dining for \$59 currently. Southern Discoveries provided data indicating that [ ]% of passengers in its 2023 financial year to date had purchased a cruise only ticket upfront, but that [ ]% of these passengers had then purchased food and beverages onboard.<sup>9</sup> The Spirit of Queenstown can carry up to 150 passengers. In the four years prior to the COVID-19 pandemic, the passenger numbers on the Spirit of Queenstown were [ ] per annum;<sup>10</sup> and

16.3 Million Dollar Cruise provides scheduled tourist cruises in Queenstown up the Frankton Arm of Lake Whakatipu, where passengers are able to view mountains and scenery, lakeside homes, a historic dam and willow islands (with added commentary on the history and surrounds). It does not offer dining experiences like Real NZ and Southern Discoveries - only packaged snacks and beverages. The cost of a cruise with Million Dollar Cruise is currently \$49 (for an adult). It has consent to carry 60 passengers, [ ] and generally carries [ ] passengers per annum.<sup>11</sup>

## The relevant markets

17. Market definition is a tool that helps identify and assess the competitive constraints a merged entity is likely to face. We define markets in the way that we consider best

---

<sup>4</sup> The Application at [7] and [21].

<sup>5</sup> The Application at Attachment C. Real NZ's financial year runs from 1 October to 30 September.

<sup>6</sup> The normal operating capacity of the TSS Earnslaw is 400-500 passengers, but it is currently operating at reduced capacity. Real NZ also has consent to run scheduled cruises to Walter Peak High Country Farm using three smaller Fiordlander boats that can each carry [ ] passengers. The Application at 1 and [23]-[25].

<sup>7</sup> The Application at Attachment G.

<sup>8</sup> [ ]. The Application at [16].

<sup>9</sup> The Application at Attachment C. Southern Discoveries' financial year runs from 1 August to 31 July. This means only [ ]% of passengers did a cruise only.

<sup>10</sup> The Application at Attachment H.

<sup>11</sup> Commerce Commission interview with Million Dollar Cruise (15 September 2023).

isolates the key competition issues that arise from a specific merger or acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.<sup>12</sup>

18. When assessing relevant markets, we generally start with the product(s) or services(s) in which the parties to a merger or acquisition overlap. We then consider how broadly or narrowly to define the boundaries of the relevant markets by asking:<sup>13</sup>
  - 18.1 Whether a sufficient portion of customers could easily switch to alternative products or services or locations in response to a small but significant and non-transitory price increase (known as ‘demand side’ substitution). If so, the products/services to which they would switch are included in the relevant market;<sup>14</sup> and
  - 18.2 whether suppliers could easily switch to producing or supplying different products or locations in response to a small but significant and non-transitory price increase (known as ‘supply side’ substitution). If so, those suppliers and/or locations are included in the relevant market.
19. How we define the relevant market(s) may change from merger to merger, even for mergers within the same industry, because demand and supply side substitutability can differ from merger to merger and can change over time.

#### **Real NZ’s submissions**

20. Real NZ submitted that the market relevant to our assessment of the Proposed Acquisition is the market for the sale of tourism experiences to tourists visiting Queenstown. Real NZ further submitted that:<sup>15</sup>
  - 20.1 all tourism experiences in Queenstown (both adventure tourism and other experiences, including but not limited to wine tasting, golf, cruises on Lake Whakatipu, scenic tours, the Skyline Gondola, mountain biking, bungy jumping, jet boating, rafting and skydiving) are substitutable for each other as a matter of fact and commercial common sense, and fall within a single broad market;
  - 20.2 Real NZ and Southern Discoveries offer tourism experiences in Queenstown in competition with a multitude of tourism experiences to which tourists can choose to allocate their time;

---

<sup>12</sup> Mergers and Acquisitions Guidelines above n1 at [3.7]-[3.10].

<sup>13</sup> Mergers and Acquisitions Guidelines above n1 at [3.16].

<sup>14</sup> We use the hypothetical monopolist test as a conceptual tool to help us answer this question. This test asks whether a hypothetical sole supplier of a set of products (or locations) would profitably increase prices for at least one of the merging firms’ products (or locations) by at least a small, but significant, amount. Mergers and Acquisitions Guidelines above n1 at [3.18].

<sup>15</sup> The Application at 1-2 and [40]-[64].

- 20.3 adventure and non-adventure tourism experiences fall within the same market, as they are viewed by tourists as substitutes to greater or lesser degrees, and it is impossible for tourism operators to discriminate between tourists based on how closely they see certain activities as substitutes;
- 20.4 there is no separate market for Lake Whakatipu cruises - cruises are simply part of a broader Queenstown area tourism market;
- 20.5 Queenstown is not like Milford Sound where the best way to experience what is on offer is onboard a boat, and a Lake Whakatipu cruise is not a “must do” experience that tourists seek out in Queenstown – tourists in Queenstown have alternative options for exploring the scenery, and a Lake Whakatipu cruise is simply a part of broader tourism experiences offered by Real NZ and Southern Discoveries;
- 20.6 this market is focused on tourists staying in Queenstown, but also includes activities outside Queenstown that tourists can and do choose to do while staying in Queenstown (particularly, sightseeing in Milford Sound, Fiordland and Wanaka) and, where a tourist is travelling throughout New Zealand, they may choose to substitute tourism experiences in Queenstown for experiences elsewhere in New Zealand;
- 20.7 the tourism experiences supplied in this market are complementary to major tourism activities that may drive people to visit Queenstown (eg, skiing or a Great Walk); and
- 20.8 this market includes sales direct to tourists; sales through wholesalers, agents and resellers; and sales to tour operators (as opposed to separate markets, and defining separate markets is unlikely to change the competition analysis of the Proposed Acquisition).

### **Our view**

21. For the purposes of this determination, we have not reached any definitive views on the relevant markets for assessing the Proposed Acquisition. We encountered difficulties in obtaining quantitative data around switching patterns of visitors to Queenstown between different tourism experiences. The broad range of individual customer preferences has also made it challenging to define the scope of the relevant markets. We consider that the relevant market is unlikely to be as narrow as scheduled tourist cruises on Lake Whakatipu in Queenstown, but not as wide as a market for all tourism activities in Queenstown, as submitted by Real NZ. Rather than defining the precise boundaries of the relevant market, our analysis has focused on the closeness of competition between Real NZ and Southern Discoveries, and considered the competitive constraints that the merged entity would face from other tourism operators.
22. We do not consider that the relevant product market is necessarily as broad as a market for all tourism experiences as submitted by Real NZ. A scenic and relaxed cruise on Lake Whakatipu is unlikely to be a close substitute for extreme adventure tourism activities, which are different types of experiences. We acknowledge that tourists may view

activities as being more or less adventurous or scenic, or more or less substitutable depending on their individual preferences and the level of adventurousness or passiveness a person may attribute to a particular activity will differ.

23. However, we consider that the relevant market is likely broader than just a market for scheduled tourist cruises on Lake Whakatipu in Queenstown. This is because tourists have several ways in which they can experience and enjoy the nature and scenery in Queenstown, other than by way of a cruise on Lake Whakatipu (eg, through a scenic drive, a scenic flight or a trip on Skyline's Gondola). The majority of industry participants that we spoke with or gathered information from about the scope of the relevant markets did not consider that there was a narrow market for cruises on Lake Whakatipu and evidence does not support there being a separate market for such lake cruises.
24. As with the product market, it is not necessary for us to conclude on the boundaries of the relevant geographic market. To isolate any competitive effects of the Proposed Acquisition, we have focused on Queenstown, but note that the market is unlikely to be broader than a Queenstown Lakes regional market. This geographic market does not include Milford Sound, as we did not receive any evidence to indicate that cruises on Lake Whakatipu compete with or are seen as a substitute for a cruise in Milford Sound.
25. We have not concluded on the dimensions of any customer markets as we have considered the Proposed Acquisition in a market for all sales channels.

### **With and without scenarios**

26. Assessing whether a substantial lessening of competition is likely requires us to:
  - 26.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the merger, often referred to as the factual) with the likely state of competition if it does not (the scenario without the merger, often referred to as the counterfactual); and
  - 26.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.

### **The factual**

27. Real NZ owns and operates the heritage steamship, the TSS Earnslaw, providing cruises to and from downtown Queenstown to its Walter Peak High Country Farm.<sup>16</sup> With the Proposed Acquisition, Real NZ would:
  - 27.1 acquire the Spirit of Queenstown (and associated assets thereof), which also provides scenic cruises on Lake Whakatipu, from Southern Discoveries;<sup>17</sup> and

---

<sup>16</sup> Real NZ also owns, and has consents to operate, three Fiordlander class vessels on Lake Whakatipu, which it has used as a substitute for the TSS Earnslaw during maintenance periods and adverse weather.

<sup>17</sup> In addition to the vessel the Spirit of Queenstown, Real NZ proposes to acquire arrangements that enable the Spirit of Queenstown to berth at O'Regans Wharf in central Queenstown, the consents, authorisations and permissions to operate the Spirit of Queenstown on Lake Whakatipu, and spare parts for the vessel.

27.2 own two separate large capacity boats capable of providing tourist cruises on Lake Whakatipu – the TSS Earnslaw and the Spirit of Queenstown.

28. Real NZ seeks to acquire the Spirit of Queenstown to enable it to increase the number of passengers it can transport across Lake Whakatipu to Walter Peak High Country Farm, supplementing the passenger capacity of the TSS Earnslaw.<sup>18</sup>

### The counterfactual

29. We have assessed the Proposed Acquisition against a counterfactual where the Spirit of Queenstown is sold to a third party that continues to operate scheduled cruises on Lake Whakatipu in Queenstown, aboard the Spirit of Queenstown.

30. Real NZ submitted that the relevant counterfactual against which to assess the competition effects from the Proposed Acquisition, is a scenario where:<sup>19</sup>

30.1 Real NZ would  
[  
],<sup>20</sup> and

30.2 Southern Discoveries would  
[  
].

31. Southern Discoveries  
[  
].<sup>21</sup>

### Competition analysis

32. We investigated whether the Proposed Acquisition would be likely to substantially lessen competition by assessing whether horizontal unilateral, coordinated and/or conglomerate effects might result from the Proposed Acquisition. The questions that we considered specifically were:

32.1 unilateral effects: would the loss of competition between the parties enable the merged entity to profitably raise prices or reduce quality or innovation by

<sup>18</sup> The Application at 1, [26] and [28]-[29].

<sup>19</sup> The Application at [37]-[39].

<sup>20</sup> Although Real NZ also provided information that  
[

September 2023) and [ Commerce Commission interview with Real NZ (14  
].

<sup>21</sup> Commerce Commission interview with Southern Discoveries (14 September 2023).

itself, or to reduce any commissions received by wholesalers, agents and resellers?<sup>22</sup>

- 32.2 coordinated effects: would the Proposed Acquisition change the conditions in the relevant market so that coordination is more likely, more complete or more sustainable?
- 32.3 conglomerate effects: would the Proposed Acquisition increase the merged entity's ability and/or incentive to foreclose rivals, for example by allowing it to bundle or tie products in a way that rivals cannot match?
33. For the reasons outlined below, we are satisfied that the Proposed Acquisition is not likely to give rise to unilateral, coordinated or conglomerate effects in any relevant market.

### **Real NZ's submissions**

34. Real NZ submitted that the Proposed Acquisition would not be likely to substantially lessen competition in the market for the sale of tourism experiences to tourists visiting Queenstown due to unilateral effects because, in its view:<sup>23</sup>
- 34.1 while the TSS Earnslaw and the Spirit of Queenstown both operate on Lake Whakatipu, the different experiences they offer tourists mean that they are not particularly close substitutes or competitors – Real NZ offers transport across the lake on a vintage steamship and experiences at Walter Peak High Country Farm, compared to Southern Discoveries offering dining experiences whilst cruising the lake;
- 34.2 the merged entity would be constrained by the multitude of other tourism experiences available in Queenstown, and a multitude of tourism providers including, in particular, those provided by Skyline Enterprises Limited, operator of the Skyline Gondola, with whom the Parties compete more closely in Queenstown than they do with each other;
- 34.3 for the tourists for whom a cruise on Lake Whakatipu is a “must do” activity, who would regard the TSS Earnslaw and the Spirit of Queenstown as close substitutes, alternative options in terms of tourism experiences on the lake would remain – Million Dollar Cruise, jet boats, charter cruise boats, Hydro Attack and other water-based activities (paddle boats, kayaks, paddle boards and jet skis);
- 34.4 other existing tourism operators face no material barriers to increasing sales should a market opportunity present itself (eg, charter boat operators could start providing scheduled cruises on Lake Whakatipu) and barriers to new

---

<sup>22</sup> For ease of reference, we only refer to the ability of the merged entity to “raise prices” from this point on. This should be taken to include the possibility that the merged entity could reduce quality or innovation, or worsen an element of service or any other element of competition (ie, it could increase quality-adjusted prices).

<sup>23</sup> The Application at 1-3, [65]-[71], [76]-[80], [84]-[85], [89]-[90] and [102].

entry are low for tourism operators generally (and surmountable for new cruise boat operators); and

- 34.5 tour operators have countervailing power through an ability to substitute Real NZ experiences for those of other tourism operators, in Queenstown, Milford Sound and elsewhere in New Zealand.

### **Our view**

35. While Real NZ and Southern Discoveries both offer scheduled tourist cruises on Lake Whakatipu in Queenstown, after considering a range of factors including the Parties' differentiated product offerings, different prices and passenger numbers, our view is that they do not compete closely. Given this, we do not consider that there would be a substantial loss of competitive constraint on Real NZ as a result of the Proposed Acquisition. In our view, the Proposed Acquisition would also not change conditions in the relevant market so that coordination is more likely, more complete or more sustainable.
36. We also found no evidence to indicate that the Proposed Acquisition would increase Real NZ's ability and/or incentive to foreclose rivals.

### *Unilateral effects*

37. We consider that the Proposed Acquisition will not have, or would not be likely to have the effect of substantially lessening competition due to unilateral effects. Real NZ and Southern Discoveries do not appear to compete closely and therefore the loss of competition between the two with the Proposed Acquisition, would not be significant. We consider that the merged entity would continue to face some degree of competitive constraint from the other scheduled tourist cruise operator on Lake Whakatipu in Queenstown, Million Dollar Cruise. In addition, the merged entity would also continue to face some degree of competitive tension from other tourism operators that offer similar scenic, leisurely tourism experiences (in particular those including dining experiences such as Skyline) but also including charter cruise operators on Lake Whakatipu such as Pacific Jemm and the Luanda Experience. We set out our reasoning for this assessment below. Given our views on the degree of constraint from Million Dollar Cruise and other tourism operators, it is not necessary for us to consider the extent of constraint from entry and expansion or customers.

### *Closeness of competition and competition lost*

38. While Real NZ and Southern Discoveries are the two largest operators of scheduled tourist cruises on Lake Whakatipu in Queenstown, Southern Discoveries does not provide significant competitive constraint on Real NZ. There would not be a significant loss of competition between Real NZ and Southern Discoveries with the Proposed Acquisition. This is because:
- 38.1 as noted earlier, the offerings of Real NZ and Southern Discoveries are differentiated. Real NZ is focused on offering transport across Lake Whakatipu on a vintage steamship (the TSS Earnslaw) and experiences at Walter Peak High

Country Farm. On the Spirit of Queenstown, Southern Discoveries provides food and wine-focused cruises on Lake Whakatipu, absent an end destination;

- 38.2 Real NZ is the market leader in scheduled tourist cruises on Lake Whakatipu in Queenstown and its market position has not been impacted by the entry of the Spirit of Queenstown. The Spirit of Queenstown [ ] since it commenced operations. There is no evidence of [ ] Real NZ [ ]],<sup>24</sup> and
- 38.3 a large portion of industry participants do not see the TSS Earnslaw and the Spirit of Queenstown as close competitors and see them as providing quite different offerings.<sup>25</sup> This is also supported by the [ ]. Southern Discoveries does not appear to exert any material competitive constraint on Real NZ.
39. While the Spirit of Queenstown has a larger passenger capacity than the third lake cruise operator, Million Dollar Cruise, [ ]. The Spirit of Queenstown has struggled to provide an offering that is attractive to tourists, in part due to the design of its vessel, which is not well suited to viewing the scenery and mountains around Queenstown.<sup>26</sup> We consider that the competitive constraint that it has provided on Real NZ is no greater than that provided by Million Dollar Cruise (which is priced the lowest of all three scheduled tourist cruises on Lake Whakatipu).
40. Although [ ], there is no guarantee that an alternative owner of the Spirit of Queenstown would be more successful and create a stronger competitor to Real NZ.

---

<sup>24</sup> Commerce Commission interview with Real NZ (14 September 2023).

<sup>25</sup>

[

]

<sup>26</sup>

[

]

*Constraint from Million Dollar Cruise*

41. Although Million Dollar Cruise is a much smaller business than Real NZ and Southern Discoveries and offers quite different lake cruises on a smaller vessel, it would continue to provide competitive constraint on the merged entity. This is because:

41.1 Million Dollar Cruise offers the lowest priced cruise on Lake Whakatipu and the price of this cruise may provide some constraint on the pricing of Real NZ. Million Dollar Cruise considers that [ ];<sup>27</sup> and

41.2 While Million Dollar Cruise caters less frequently to [ ], it may continue to provide some constraint on the customer market of Real NZ, in respect of [ ].<sup>28</sup> Million Dollar Cruise provides a more [ ].<sup>29</sup>

*Constraint from other tourism operators*

42. While it is not necessary to ultimately conclude on the extent of constraint imposed by other tourism operators, we consider that Real NZ already faces and would continue to face some degree of constraint from other tourism operators that offer similar scenic, leisurely tourism experiences (in particular those including dining experiences such as Skyline but also including charter cruise operators on Lake Whakatipu such as Pacific Jemm and the Luanda Experience). For example:

42.1 Skyline offers a trip on the gondola and Stratosphere dining (with scenic views) for \$109-159 per adult, which is cheaper than the price for a cruise on the TSS Earnslaw and dining at Walter Peak High Country Farm which starts from \$175 per adult. Skyline considers [ ];<sup>30</sup>

42.2 Skyline indicates that [ ]<sup>31</sup> and is also located in central Queenstown;

42.3 Real NZ [ ];<sup>32</sup> and

42.4 Southern Discoveries considers that [ ]

<sup>27</sup> Commerce Commission interview with Million Dollar Cruise (15 September 2023).

<sup>28</sup> Commerce Commission interview with Million Dollar Cruise (15 September 2023).

<sup>29</sup> Commerce Commission interview with Million Dollar Cruise (15 September 2023).

<sup>30</sup> Commerce Commission interview with Skyline (6 September 2023).

<sup>31</sup> Commerce Commission interview with Skyline (6 September 2023).

<sup>32</sup> Real NZ internal documents and Commerce Commission interview with Real NZ (14 September 2023).

].<sup>33</sup>*Coordinated and conglomerate effects*

43. We consider that the Proposed Acquisition will not or would be unlikely to change conditions in any relevant market so that coordination is more likely, more complete or more sustainable. While we acknowledge there are market conditions that may enhance the likelihood of coordination between the merged entity and its competitors, including the reduction from three to two scheduled tourist cruises on Lake Whakatipu in Queenstown, the small number of cruise boat operators on Lake Whakatipu, the visibility of prices to all market participants online and the interactions of tourism operators through industry organisations and meetings, we also note that the degree of product differentiation between operators of scheduled tourist cruises on Lake Whakatipu in Queenstown, the heterogeneity of firms in terms of size (number of vessels, market shares and capacity) and [ ] Million Dollar Cruise, already make coordination in the supply of scheduled tourist cruises on Lake Whakatipu less likely. We consider that these market conditions will not or would be unlikely to change with the Proposed Acquisition to the extent that coordination is more likely, more complete or more substantial.
44. We have found no evidence to indicate that the Proposed Acquisition would increase Real NZ's ability and/or incentive to foreclose rivals by offering bundles of tourism activities that rivals could not match. The Parties operate in the same market offering scheduled tourist cruises on Lake Whakatipu as opposed to an adjacent market. Real NZ offers bundles with a range of offerings from its portfolio which currently includes Milford Sound and Doubtful Sound cruises, Cardrona Alpine Resort and Treble Cone Ski Area (both near Wanaka), Te Anau Glowworms Cave tours, Real NZ jet boat trips (which is separately for sale) and the International Antarctic Centre in Christchurch (also separately for sale). However, we have found no evidence to indicate that Real NZ would use the Proposed Acquisition to advance these other businesses. We consider foreclosure is unlikely as Million Dollar Cruise would be able to offer competing bundles (including bundles of its lake cruise with other tourism activities) in partnership with other tourism operators.

---

<sup>33</sup> Commerce Commission interview with Southern Discoveries (14 September 2023).

### **Determination on notice of clearance**

45. We are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
46. Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to Real Journeys Limited (trading as Real NZ) for it, or any interconnected body corporate, to acquire the vessel, the Spirit of Queenstown, and associated assets from Southern Discoveries Limited.

Dated this 6<sup>th</sup> day of October 2023

Dr John Small  
Chair