

PUBLIC

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**Tourism Holdings Limited / Apollo
Submission by Tourism Holdings Limited on the Statement of Issues**

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This submission is made in response to the Statement of Issues published by the Commerce Commission on 11 March 2022 (**SOI**) in relation to the application by THL Group (Australia) Pty Limited, a subsidiary of Tourism Holdings Limited (**thl**), for clearance to acquire 100% of the shares in Apollo Tourism & Leisure Ltd (Apollo) (the **Proposed Transaction**).
- 1.2 The SOI sets out a number of preliminary conclusions on the relevant market definition and the state of competition in the relevant markets which are not supported by the evidence.
- 1.3 As explained in this submission, the NERA report dated 18 February 2022 (**NERA Report 1**), and the NERA report dated 24 March 2022 (**NERA Report 2**), the Proposed Transaction is not likely to have the effect of substantially lessening competition in any market because:
- (a) the relevant market in which to assess the competitive effect of the Proposed Transaction is the national market for the supply of recreational vehicle (**RV**) hire services, which includes motorhomes and campervans. Contrary to the Commission's preliminary view, no meaningful distinction can be drawn between motorhomes and campervans for market definition purposes. Whether a product is substitutable for another is a question of fact and commercial common sense. It is not an exercise to be carried out in a vacuum. Defining separate markets for motorhomes and campervans does not reflect the proper application of the Hypothetical Monopolist Test (**HMT**) or commercial common sense;
 - (b) the evidence shows that the merged entity will continue to face vigorous competition from the large number of RV¹ rental operators in New Zealand including Jucy, Wenderkreisen, Escape, Spaceships, Wicked, Wilderness, Pacific Horizon, Lucky Rentals, Tui, TAB, and a multitude of smaller operators;
 - (c) RVs listed for rent on peer-to-peer platforms will provide increasing (and significant) constraint on the merged entity;
 - (d) barriers to entry and expansion are low;
 - (e) rental car/hotel bookings provide a strong constraint on RV rental operators;
 - (f) the Proposed Transaction is unlikely to result in coordinated effects; and
 - (g) foreclosure concerns are unlikely to arise.
- 1.4 **thl** considers that the proper approach to assessing the competitive impact of the Proposed Transaction in the context of the COVID-19 pandemic is to use the 2- to 3-year time period which is normally used for assessing the competitive effects of a merger, but analyse the competitive effects in two scenarios:
- (a) demand for RV rental services remains significantly impacted by the pandemic and therefore remains below pre-pandemic levels; and
 - (b) demand for RV rental services returns (at some point) to pre-pandemic levels.
- 1.5 The Proposed Transaction is unlikely to have the effect or likely effect of substantially lessening competition in either scenario. While demand remains substantially below pre-pandemic levels, there

¹ For the purposes of this submission, **thl** has adopted the term 'RV' to refer to motorhomes and campervans collectively.

will be excess capacity in the market which will continue to constrain the merged entity. Once demand improves, there will then be incentives for current operators to expand their fleets and for new entrants to enter the market to meet the increased demand. RV owners will also be incentivised to offer their vehicles for rent on peer-to-peer platforms.

- 1.6 In this submission, unless noted otherwise, capitalised terms have the same meaning as defined in the SOI. References to the Application are references to **thl's** application for clearance lodged with the Commerce Commission on 10 December 2021.

2. MARKET DEFINITION

THE LEGAL TEST FOR MARKET DEFINITION

- 2.1 We acknowledge the Commission will be familiar with the relevant legal principles relating to market definition. However, it is helpful to restate these for the purposes of this submission, particularly given the importance of market definition in the context of the Application.
- 2.2 The Commerce Act 1986 (**Act**) defines a market as “a market in New Zealand for goods and services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them”.² The key elements of this definition are substitutability and commercial common sense.
- 2.3 The Act originally defined a market as “a market for goods or services within New Zealand that may be distinguished as a matter of fact and commercial common sense”. The definition was amended in 1990 to add the concept of substitutability.
- 2.4 The High Court observed in 1991 that the new wording simply made explicit the relevance of economic substitutability.³ It noted there was no conflict between the two elements of the definition, and the retention of the reference to commercial common sense affirmed the traditional emphasis on the need for a commercially realistic factual base.
- 2.5 In *Brambles New Zealand Ltd v Commerce Commission*,⁴ the High Court referred to this as a “commercial reality check” noting “the *ssnip* test used by the Commission to determine substitutability is an analytical tool which will not always be able to be applied with confidence. That may be because of a lack of accurate data or because of significant product differentiation, which makes it hard to assess and compare the available data. In that event, the Commission or Court should always be alive to identifying the appropriate market in accordance with commercial common sense”.⁵
- 2.6 The *ssnip* test (referred to in this submission as the HMT) assesses substitutability by applying a well-established hypothetical monopolist test.⁶ It considers whether a sole supplier of the product under consideration could profitably impose a small, but significant, non-transitory increase in price (SSNIP) (typically 5%). If in response to that price increase sufficient customers of the hypothetical monopolist moved to an alternative product or service such that the loss of sales meant the price increase could not be profitably maintained, that alternative product or service falls within the relevant market.
- 2.7 Whether a product is substitutable for another is a question of fact and commercial common sense. It is not an exercise to be carried out in a vacuum.
- 2.8 The application of the HMT is discussed in more detail from [7] of NERA Report 2.

THE COMMISSION'S PRELIMINARY VIEW THAT MOTORHOME AND CAMPERVAN RENTALS ARE IN SEPARATE PRODUCT MARKETS IS INCONSISTENT WITH THE LEGAL TEST

- 2.9 The Commission has formed the preliminary view that there are likely to be separate product markets for the supply of motorhome rental services and campervan rental services, based on both demand-

² Commerce Act 1986, s 3(1A).

³ *Telecom Corporation of New Zealand Limited v Commerce Commission* (1991) 4 TCLR 473.

⁴ *Brambles v Commerce Commission* (2003) 10 TCLR 868 (**Brambles**).

⁵ *Brambles* at [81].

⁶ See NZCC Mergers and Acquisitions Guidelines [3.15]–[3.21].

side and supply-side substitution factors.⁷ The Commission defines a “motorhome” to be a “purpose-built vehicle constructed on a chassis approximately 7m in length” and a “campervan” to be a “converted van-type vehicle, approximately 5m in length (eg, Toyota Hiace)”.⁸

- 2.10 There is no meaningful distinction that can be drawn between motorhomes and campervans for market definition purposes. Defining separate markets for motorhomes and campervans does not reflect the proper application of the HMT or commercial common sense. We address the Commission’s definition of motorhomes and campervans, and demand- and supply-side substitutability below.

There is no meaningful functional distinction between “motorhomes” and “campervans”

- 2.11 A brief description of a “campervan” and a “motorhome” was included in Annexure 1 of the Application. From a manufacturing perspective:
- (a) a campervan, or 'B' class vehicle, is a van that has been fitted to support accommodation and other facilities⁹;
 - (b) a motorhome may be either:
 - (i) a 'C' class vehicle which is a cab chassis that has had a specialty 'box' built on it, also supporting accommodation and other facilities; and
 - (ii) an 'A' class vehicle, which is a motorhome built on a heavy-duty frame, often a bus chassis and noticeable by their full front cab and large windscreen feature. The full house is built on the chassis and includes features similar to a 'C' class.
- 2.12 As explained at footnote 1 of the Application, the terms “motorhome” and “campervan” are often used interchangeably in the industry, and there is no common definition used by suppliers and operators. This is clear from the website of Discovery Campervans (an online travel agent) which acknowledges that the two terms are interchangeable, and both refer to the same thing – vehicles that provide transport and accommodation:¹⁰

⁷ SOI at [45].

⁸ SOI at [21]. The Commission also notes that “[a] motorhome usually provides a broad range of amenities, including a small living area, beds, kitchen, toilet and shower, whereas a campervan is much smaller and may not have the same range of facilities (eg, toilet and shower).”

⁹ This can be similarly achieved with other vehicles, such as cars.

¹⁰ <https://www.discovery-motorhomes.co.nz/differences.php>



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What are the Differences Between a Campervan and a Motorhome?

Local New Zealand Uses

There are some subtle differences between a Campervan and a Motorhome but at Discovery Motorhomes we tend to use both terms.

Generally we consider campervan and motorhome are interchangeable terms, that both refer to vehicles which provide transport and accommodation in one! Both images on the right hand side are can be referred to as campervans or motorhomes.




The More Official Meanings

Motorhome - A motor vehicle built on a truck or bus chassis and designed to serve as self-contained living quarters for recreational travel. There is normally a divide between the cab and the living quarters behind, which contain sleeping space, ablution and kitchen facilities.

Campervan - A van equipped as a self-contained travelling home, they are normally smaller than a motorhome. There is generally no divide between the cab and the living quarters. It has basic facilities for cooking, washing, and sleeping.

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- 2.13 Further, there is also an increasing use of the term “RV” in New Zealand to describe these vehicles, which has been adopted from the United States.
- 2.14 The SOI draws a distinction between “motorhomes” and “campervans” based on the following factors:
- (a) whether the vehicle is “purpose built” (in the case of a motorhome) or a converted van-type vehicle (for a campervan);
 - (b) the length of the vehicle, with motorhomes said to be approximately 7m in length and campervans said to be approximately 5m in length; and
 - (c) features, with motorhomes said to have a broad range of amenities while the SOI notes that campervans may not have the same range of amenities.
- 2.15 However, the reality is that the underlying features and facilities of both motorhomes and campervans have many common and overlapping features. Both motorhomes and campervans can (and do) have a full array of facilities installed, including kitchen/cooking facilities, toilet and shower (whether full-service or porta potti), as well as sleeping berths and living areas. The size of a vehicle does not have a direct correlation to greater included amenities within each of these categories.¹¹ For example, the **thl** 4 and 6 berth vehicles have ‘mattresses’ that consist of several seating cushions laid flat to make a bed, whereas many campervans and small vans have a higher quality fixed single piece mattress, which is often an innerspring mattress or mattress of a similar superior quality. Attachment 1 contains photographs compiled by **thl** showing examples of the facilities in different types of **thl** and other RV rental operators' vehicles.

¹¹ **thl** notes that Motorhomes can be any reasonable length. The minimum length is determined by the shortest chassis, and the maximum length is determined by the length of “overhang” from the rear axle. There are extra-long chassis available and regulations that allow for the extension of a chassis length. For example, the Rollerteam range of motorhomes ranges from 5.9 metres to 7.47 metres in length. **thl** also has campervans which are 7 metres in length.

2.16 Importantly, motorhomes and campervans provide hirers with the exact same underlying functionality – mobile accommodation.

Demand-side substitution

2.17 At [46] of the SOI, the Commission states:

“On the demand side, the evidence we have gathered so far does not suggest that there is significant demand-side substitutability between motorhomes and campervans. Most retail operators have indicated that there are different customer bases and production propositions for motorhomes and campervan rentals.”

2.18 The Commission appears to be basing its conclusion on demand-side substitution simply on the fact that motorhome and campervan rentals serve “*different customer bases*”.¹² However, as the High Court in *Brambles* observed, significant product differentiation does not mean products are in different markets.

2.19 Markets typically involve the supply of goods or services across a range of offerings designed to appeal to the widest group of customers possible. Within that range of offerings, a supplier will typically have products targeted at a sub-set of customers. The RV rental market is such a market.

2.20 In *Brambles*, the Commission concluded that there were separate product markets for cardboard boxes and plastic crates. The High Court disagreed:

*“This was a case where there was significant product differentiation and therefore real difficulties in applying the ssnip test. It was appropriate to make a common sense assessment based on the evidence before the Commission. Clearly, cardboard cartons and plastic crates are technical substitutes for most product lines, and both are being used in the produce distribution chain at the moment. There are a variety of preferences for one or the other, based on grower or retailer preference and the particular requirements of the produce line, but there is considerable use of both for the same purpose”.*¹³

2.21 To rephrase this statement in the context of the Application: clearly, motorhomes and campervans are technical substitutes for most hirers, and both are used for travelling/transport and accommodation at the moment. There are a variety of preferences for one or the other, based on hirer preference and the particular requirements of the journey, but there is considerable use of both for the same purpose.

2.22 The High Court in *Brambles* concluded that the Commission had not given sufficient weight to evidence of the use of cardboard cartons as an alternative to plastic crates.¹⁴ In the SOI, the Commission has relied solely on [REDACTED] whereas the following demand-side evidence clearly establishes that campervans and motorhomes are economic substitutes:

- (a) there is a significant degree of cross-over in the size of campervans and motorhomes. Campervans typically range from 2 to 4 berth in size, and motorhomes typically range from 2 to 6 berth in size;
- (b) couples will book 2, 4 or 6 berth vehicles even though they do not need the extra sleeping facilities, which demonstrates the substitutability across the different berth sizes;
- (c) there is a significant degree of cross-over in the features available in campervans and motorhomes. Both campervans and motorhomes may offer toilet and shower facilities, kitchen facilities, sleeping facilities and a living area. Examples of the facilities available in different types of vehicles are in Attachment 1;

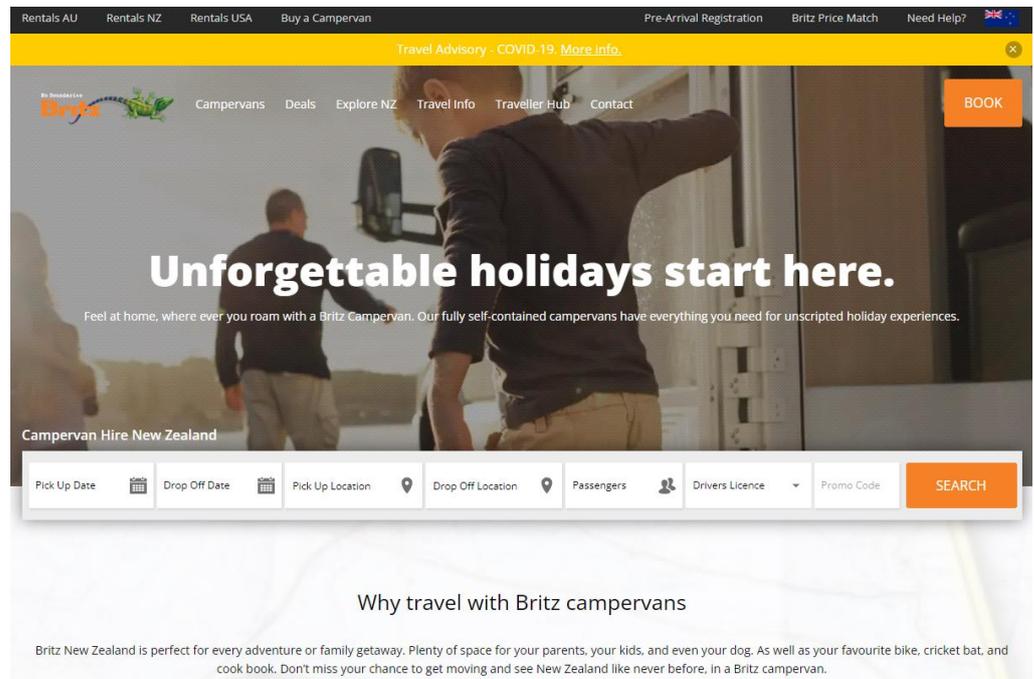
¹² Only one paragraph in the SOI refers to demand-side substitutability – see [46] of the SOI.

¹³ *Brambles* at [133].

¹⁴ *Brambles* at [130].

(d) traditional operators typically do not distinguish between motorhomes and campervans in their marketing or use the terms interchangeably. For example:

- (i) *thi* tends to use terms based on customer origin. In *thi*'s experience, in general, Australians and New Zealanders search for “campervan hire” as a catch-all; Europeans search for “motorhome hire” as a catch-all; and American customers search for “RVs” as a catch-all. The Britz website in New Zealand therefore identifies all vehicles offered for rent as 'campervans'. These include RVs built on a chassis (which from a manufacturing perspective, is a motorhome).

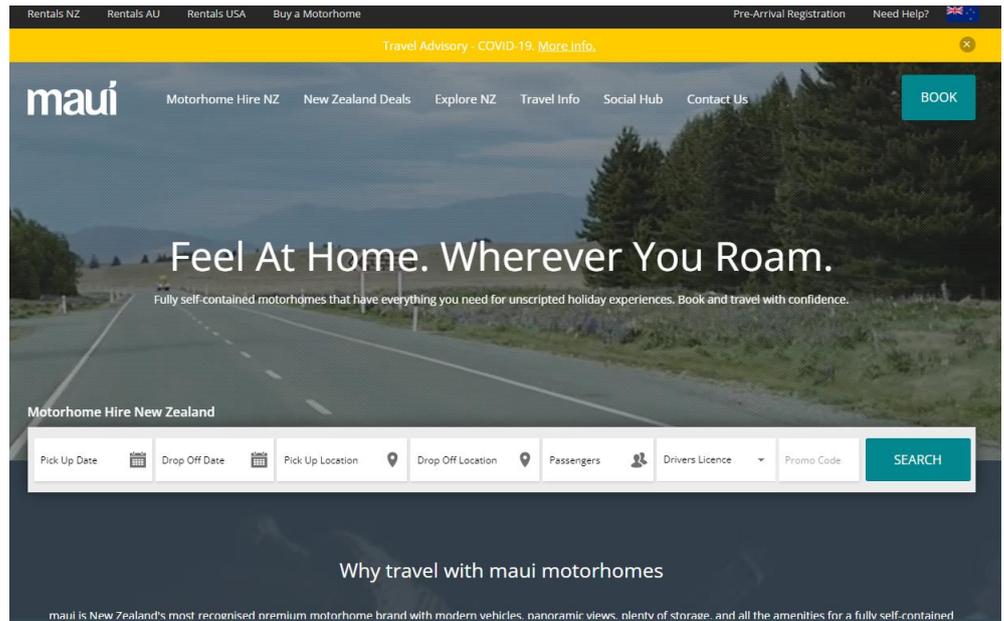


However, in the United States, a 4-berth vehicle of the same type is identified by Britz as a motorhome.¹⁵

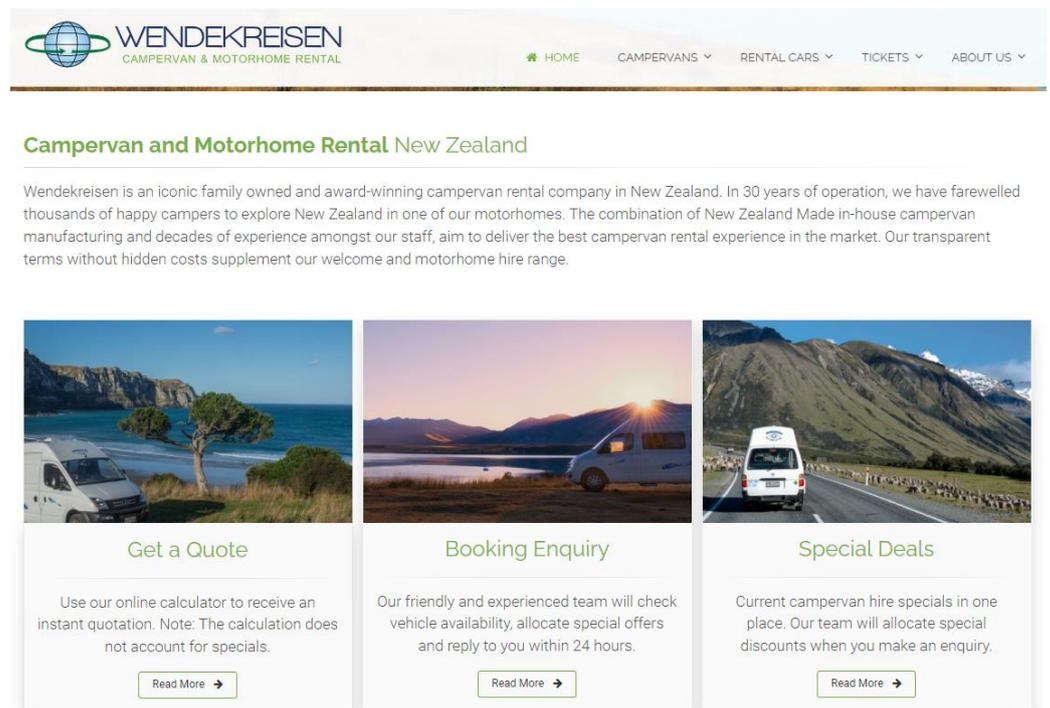
- (ii) *thi* identifies all Maui vehicles as motorhomes¹⁶ but many of Maui's vehicle are converted vans, and therefore “campervans” (from a manufacturing definition perspective);

¹⁵ See <http://www.britz-usa.com/our-vehicle/Pages/default.aspx> (Our Vehicle).

¹⁶ See <https://www.maui-rentals.com/nz/en>.



- (iii) while Wendekreisen refers to “campervan & motorhome rental” on its homepage, it describes its fleet as “campervans” and itself as a “campervan rental company”, although it offers both campervans and motorhomes (as per the manufacturing definitions);¹⁷



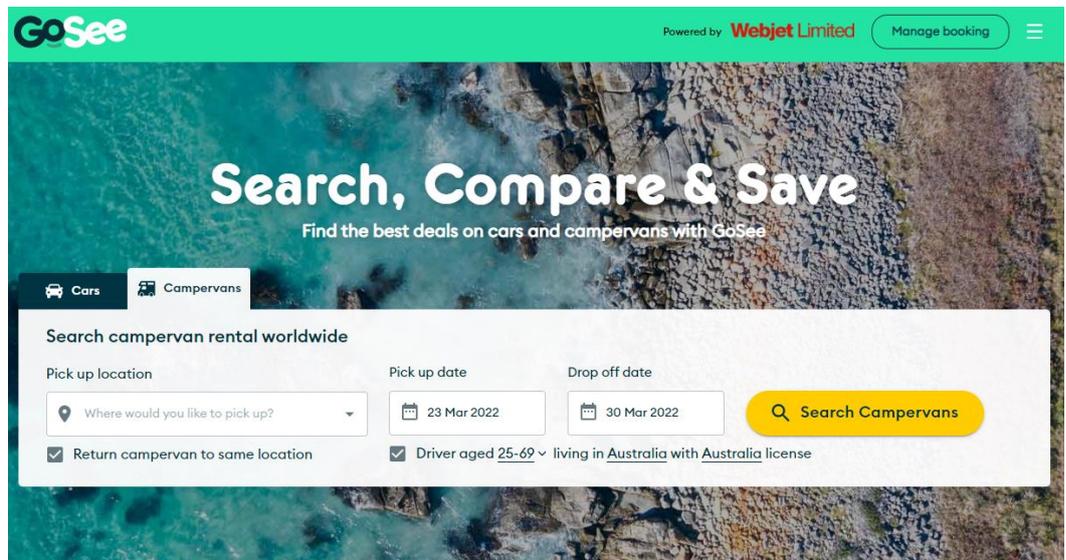
- (iv) Pacific Horizon uses the terms “campervans” and “motorhomes” interchangeably on its website:¹⁸

¹⁷ See <https://www.wendekreisen.co.nz/>

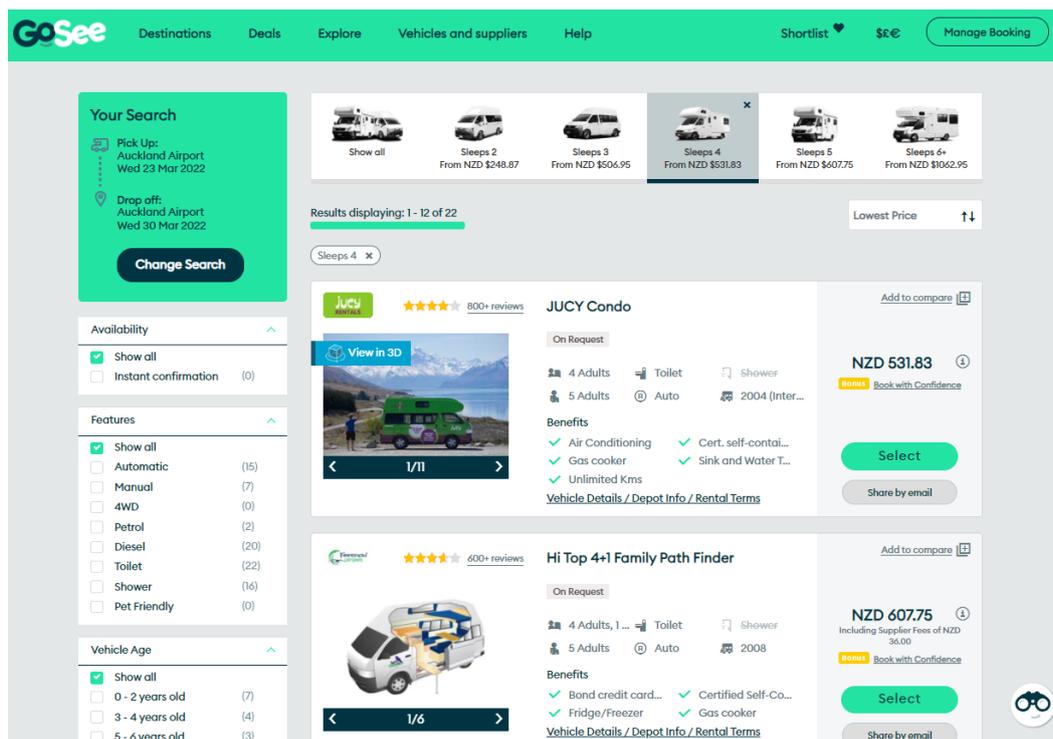
¹⁸ See <https://pacifichorizon.co.nz/>



- (e) web-consolidators typically do not distinguish between motorhomes and campervans on their websites, nor can consumers filter by 'motorhome' or 'campervan' on many web consolidator websites. Typically, filters used by consolidators to allow consumers to search for vehicles relate only to the number of berths, age of vehicle, price and sometimes ratings.
- (f) the RVs offered by web consolidator 'Go See' (formerly Motorhome Republic) are all referred to as campervans, even though many of the vehicles listed are motorhomes:



Go See allows customers to filter their search by berth size, features, age and rating only:



2.23 Attachment 1 contains further extracts of website screen shots compiled by *thl* showing interchangeable use of terminology in the industry.

2.24 As a matter of fact and commercial common sense, a SSNIP imposed by a hypothetical monopolist of motorhomes (as defined by the Commission) is likely to result in such a reduction in motorhome rentals and corresponding increase in campervan (as defined by the Commission) rentals so as to make such price increases unprofitable. NERA Report 2 provides empirical evidence consistent with this demand-side substitutability.¹⁹

2.25 As explained in our letter dated 21 February 2022, the average size of a customer group per *thl* booking is just over [redacted] people. 2019 *thl* data discloses that only [redacted] of bookings were for groups of 5 or more people. The table below shows the number of persons per booking in 2019 as recorded by *thl* in its booking system.

[redacted]

2.26 In the case of a SSNIP imposed by a hypothetical motorhome monopolist, [redacted] of customers would have the option of renting an equivalent campervan or selecting a car/hotel option.

2.27 As noted in NERA Report 1,²⁰ because of the high fixed cost nature of the motorhome rental industry, it would take only a small proportion of switching customers to render the SSNIP unprofitable. In addition, as discussed in NERA Report 2,²¹ it is not necessary for most customers to switch to alternatives in response to a SSNIP to satisfy the HMT: “it is the willingness of the marginal customers to substitute among suppliers that determines the scope of the market”.²²

2.28 As discussed at [6.5] below, the marginal motorhome rental customers will protect the infra-marginal customers, because of the difficulty for the hypothetical monopolist to price discriminate between those tourists who would consider other options (including car/hotel options) and those who are committed to travel by motorhome.

¹⁹ NERA Report 2 at [15].

²⁰ NERA Report 1 at [15]–[23].

²¹ NERA Report 2 at [7]–[8].

²² Malcolm B Coate and Jeffrey H Fisher, *A Practical Guide to the Hypothetical Monopolist Test for Market Definition*, Journal of Competition and Economics 2008, 4(4), 1031–1064.

Supply-side substitution

- 2.29 The Commission's preliminary view is that supply side substitution is likely to be weak because of a perceived difference in capital structure, namely:
- (a) *"large motorhome rental companies tend to be active across the vehicle life cycle-with manufacturing facilities, rental operations and connections to dealerships to sell vehicles at the end of their rental life (typically up to 5 years)";*²³ while
 - (b) *"large campervan rental companies tend to purchase used vehicles, refit them, rent them out for around 9 -10 years, and then either sell or scrap the vehicles".*²⁴
- 2.30 This leads the Commission to the preliminary view that *"campervan rental operators may find it relatively more costly and difficult to switch to supplying motorhomes"*.²⁵
- 2.31 This preliminary view is inconsistent with the evidence and contrary to commercial common sense.
- 2.32 The Commission's preliminary view on the difficulty of switching appears to be based on a misconception that the supply of motorhome rentals requires that an operator be a vertically integrated manufacturer of motorhomes, which is a different business model to that needed to operate a campervan rental business. There is no requirement for a motorhome rental operator to be vertically integrated or for motorhomes to be sold after only 5 years of use as a rental vehicle.
- 2.33 There are a range of business models employed by both campervan and motorhome rental operators in the industry, including:
- (a) operators who are vertically integrated manufacturers and rental operators, such as **thl**;
 - (b) operators who buy vehicles (whether imported or from local suppliers) and operate a rental business. All rental operators sell their vehicles at some point, as explained below.
- 2.34 An owner can have a business model which regularly rotates fleet (e.g. McRent) or a business model that retains vehicles for a longer period (e.g. Jucy, Tui, TAB), or a mix of both depending on vehicle range and the market demand context (e.g. **thl**, Wendekreisen). None of these models, in **thl**'s observation, involves holding a vehicle to the end of its economic life. In all models, the vehicles remain of value for sale well after they have been depreciated to a zero balance in an operator's balance sheet. Either approach is valid for small or large vehicles. [REDACTED].
- [REDACTED]
- 2.35 The business model employed by an operator is not dictated by the type of rental vehicle offered but by commercial decisions. Motorhome or campervan operators can and do choose to employ any of the above business models and successfully compete in the RV rental market.
- 2.36 The Commission's preliminary view that motorhomes are more costly appears to be based on an assumption that the higher cost vehicles will not deliver a commensurate return on the funds employed. Simply put, if both low cost and high-cost vehicles deliver a similar return on funds employed, then the decision not to supply these types of rental vehicles is a commercial decision.
- 2.37 Many commercial rental operators, including the parties, offer both motorhome and campervan rentals which reinforces the point that both are in the same market. For example, nine operators – McRent, Wenderkreisen, Tui, Wilderness, Pacific Horizon, Euro Campers, Kia Ora Campers, Classic Campers and Discover NZ Motorhomes – offer both motorhome rentals and campervan rentals, according to a review of their websites.²⁶ While there are some operators that choose to offer only campervans or motorhomes (or specialise in certain types of campervan or motorhome), these operators are capable

²³ SOI at [47].

²⁴ SOI at [48].

²⁵ SOI at [48].

²⁶ Website review undertaken on 23 March 2022.

of expanding their offerings to supply the full range of rental vehicles quickly and at little cost (see discussion in section 7 below).

3. IMPACT OF COVID-19

- 3.1 The Commission has sought submissions on how to assess the competitive impact of the Proposed Transaction in the context of the COVID-19 pandemic and the time that the Commission should apply to its assessment.
- 3.2 *thl* agrees that the pandemic complicates the competition analysis. It is highly uncertain as to when (or if) demand for motorhome rentals will return to pre-pandemic levels. While the government has now announced the removal of all self-isolation and managed isolation requirements for all Australian citizens and permanent residents from 12 April 2022 and travellers from visa waiver countries from 1 May 2022,²⁷ it is likely to take some time for demand from international tourists to improve.
- 3.3 *thl* considers that the proper approach in this case is to use the standard 2- to 3-year time period which is used for assessing the competitive effects of a merger, but analyse the competitive effects in two scenarios:
- (a) demand for motorhome rental services remains significantly impacted by the pandemic and therefore remains below pre-pandemic levels (**Scenario 1**); and
 - (b) demand for motorhome rental services returns (at some point) to pre-pandemic levels (**Scenario 2**).
- 3.4 Any attempt to assess when demand for motorhome rental services will return to pre-pandemic levels or the competitive effects of the Proposed Transaction beyond the standard 2–3-year time period would be speculative.
- 3.5 However, in any event, under either scenario, the Proposed Transaction will not have the effect or likely effect of substantially lessening competition in a market.
- 3.6 As long as demand remains substantially below pre-pandemic levels, there will be excess capacity in the market which will continue to constrain the merged entity as the last two years has shown. Once demand improves, there will then be incentives for current operators to expand their fleets and for new entrants to enter the market to meet the increased demand. RV owners will also be incentivised to offer their vehicles for rent on peer-to-peer platforms. We address the competitive effects of the Proposed Transaction in both Scenario 1 and Scenario 2 in more detail in relation to barriers to entry below.

4. COMPETITION FROM TRADITIONAL OPERATORS

- 4.1 *thl* repeats its submissions at paragraphs [6.9] to [6.14] of its Application that the merged entity will continue to face vigorous competition from the large number of rental operators in New Zealand. Those operators include Jucy, Wendekreisen, Escape, Spaceships, Wicked, Wilderness, Pacific Horizon, Lucky Rentals, Tui, TAB and a multitude of smaller operators. The mere fact that some are smaller operators does not mean the constraint they will exercise on the merged entity if it were to increase price or reduce services can be discounted. Indeed, were the merged entity to behave in this way, the commercial reality is that it will only invite switching, expansion and new entry. Every vehicle offered for rent is accessible to customers and provides a constraint on other operators irrespective of the size of the fleet that vehicle is part of.

²⁷ <https://covid19.govt.nz/international-travel/travel-to-new-zealand/when-new-zealand-borders-open/>, accessed 17.03.22.

Campervan operators

- 4.2 The Commission's preliminary conclusion is that campervan rental operators do not compete in the same market as motorhome rental operators and that "*campervan rental operators would pose only a weak constraint on the merged entity in the motorhome rental market*".²⁸
- 4.3 This conclusion is contrary to the available evidence. As explained in section 2 above, the preponderance of evidence shows no meaningful distinction can be drawn between campervans and motorhomes. Motorhomes and campervans serve the same functional purpose; as Discovery Campervans states, both provide transport and accommodation.²⁹ There is little difference between a 2-berth campervan and 2-berth motorhome, or a 4-berth campervan and 4-berth motorhome, etc. While a 6-berth motorhome has more sleeping capacity than 2-berth and 4-berth vehicles, [REDACTED]% of *thl* bookings are made by groups of 4 or less. Accordingly, it follows that the price and equivalent functionality of a campervan rental necessarily constrains the price of a motorhome rental, and vice versa.³⁰
- 4.4 Further, campervan and motorhome rental operators consider themselves to be competitors:

- (a) *thl* consistently refers to Jucy as a competitor in its internal documents and tracks its pricing and marketing activity. For example:

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

(v) [REDACTED]

(vi) [REDACTED]

Plainly, if campervans were in a separate market and only posed a weak constraint as the Commission contends, *thl* would not monitor Jucy's activities and operations (among others). *thl* would be very surprised, whatever Jucy may say now, if Jucy does not monitor *thl*'s activities in its SWAT and other analysis.

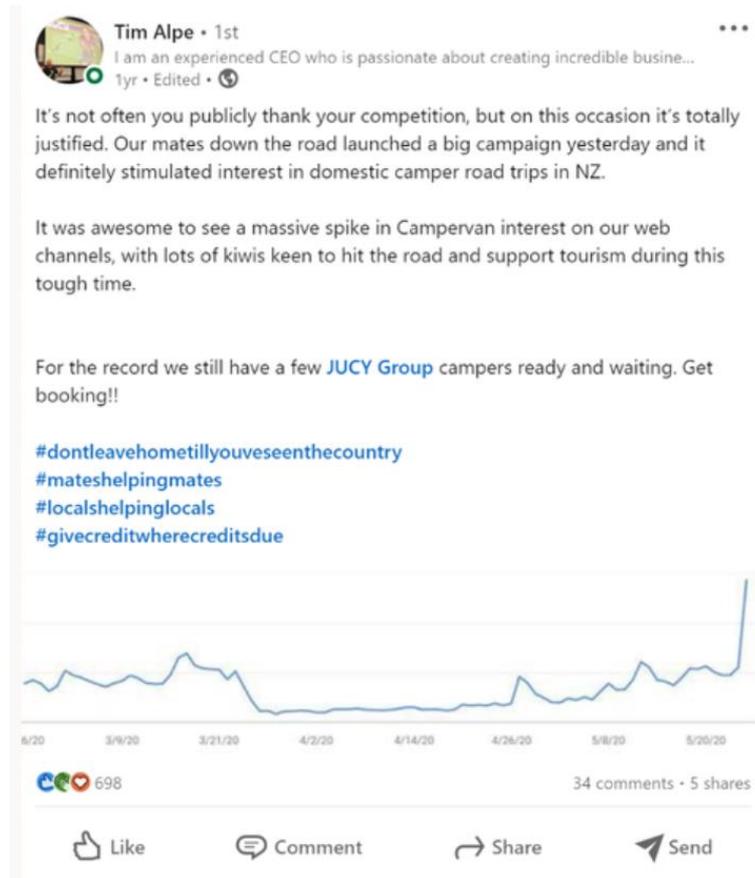
- (b) Jucy's then CEO Tim Alpe, in a LinkedIn post from mid-2020, publicly acknowledged that *thl* is a competitor of Jucy and that *thl*'s 2020 Get Moving to Get New Zealand Moving Campaign stimulated demand for Jucy vehicles as well as *thl*'s.³¹ This one piece of evidence alone demonstrates clearly that Jucy is, and regards itself as, a competitor of *thl*, and that motorhomes and campervans are in the same market.

²⁸ SOI at [106].

²⁹ See [2.12] above.

³⁰ As noted in Brambles at [130] "in considering the 'price-product -service packages' in relation to differentiated products, it is unwise to concentrate solely on price."

³¹ See https://www.linkedin.com/posts/tim-alpe-3a806715_dontleavehometillyouveseenthecountry-mateshelpingmates-activity-6670790408240533504-6HKM/?utm_source=linkedin_share&utm_medium=member_desktop_web



Motorhome operators

4.5 The Commission's preliminary views are that:

- (a) the merged entity would continue to have by far the largest motorhome fleet, based on pre-COVID fleet sizes;³² and
- (b) the competitive constraint provided by other motorhome rental operators (e.g. Wilderness, McRent, Wendekreisen and a small number of other operators) will be insufficient to effectively constrain the merged entity.³³

4.6 **thl** disagrees with the Commission's preliminary conclusions. As already noted, campervans and motorhomes are substitutable as a matter of fact and commercial common sense. No valid conclusions on the competitive effects of the Proposed Transaction can be derived from an analysis of motorhomes in isolation.

4.7 For completeness, however, we address below deficiencies in the Commission's assessment of competition in the motorhome segment of the RV rental market.

4.8 First, the Commission has wrongly calculated the parties' market shares by using 2019 pre-Covid fleet size estimates. The appropriate fleet estimates to use for market share estimates are operators' current (2022) fleet sizes. As the Commission is already aware, **thl** sold down as much as [redacted] of its fleet since 2019 so the 2019 figures are wholly inaccurate.

4.9 Second, the Commission's analysis is static. The Commission appears to treat capacity in the rental market as if it were factory or hotel capacity; that is, unable to change quickly in response to demand. However, capacity in the rental market is not static as shown by the significant movement in fleet sizes since the beginning of the pandemic. While operators with smaller fleets than the merged entity have

³² SOI at [77].

³³ SOI at [78].

more limited capacity, operators can quickly and easily add or remove fleet to meet demand. For example, McRent entered the market in 2017 and **thl** estimates that it had built a fleet of approximately [REDACTED] vehicles within two years.

- 4.10 Third, the estimates for **thl** are not based on the Commission's definition of motorhome and campervan. The Commission has counted all **thl** vehicles with a toilet and shower as motorhomes, despite acknowledging at [21] of the SOI that campervans may also contain a toilet and shower.³⁴
- 4.11 Fourth, the Commission has relied on data provided by other motorhome rental operators to calculate fleet sizes. However, given the interchangeable use of the terms "motorhome" and "campervan" in the industry and the different definitions employed, there is a real risk that fleet mix data provided to the Commission by other operators is unreliable.
- 4.12 For all these reasons, the Commission's 2019 market share estimates are of no evidential value and cannot be relied upon.
- 4.13 Finally, smaller RV rental operators can and will provide a significant constraint on the merged entity. All RV rental operators have established distribution channels, including:
- (a) directly through their own branded website, social media, rental depots and/or reservation centres; and
 - (b) indirectly through intermediaries, wholesalers, retail travel agents, inbound tour operators, online travel agencies and/or affiliates.
- 4.14 Smaller operators have the same opportunities and ability as a larger operator to attract renters by using Google search and wholesalers and aggregators offer a range of RV rental operators' vehicles (both large and small). **thl** understands that, for example:
- (a) FTI offers vehicles from **thl**, Jucy, TAB, Apollo and Spaceships in New Zealand;
 - (b) Go See (formerly Motorhome Republic) offers vehicles from **thl**, Jucy, Spaceships, TAB, McRent, Lucky Rentals, Road Runner Rentals, Tui Campers, Discover NZ Motorhomes, Freedom Campers NZ, Happy Campers, and Apollo;
 - (c) Camperdays offers vehicles from Spaceships, TAB, Jucy, McRent, Apollo and **thl**;
 - (d) TUI offer vehicles from **thl**, Jucy, TAB and Apollo; and
 - (e) Camperboerse offers vehicles from Spaceships, Tui, TAB, Jucy, Apollo and **thl**.
- 4.15 In any event, collectively the smaller operators will provide a significant constraint on the merged entity. There are at least 30 RV rental operators in New Zealand who offer RV rentals with a range of fleet sizes. They are well placed to attract bookings away from the merged entity, which will invariably constrain the merged entity's pricing decisions. Most of these operators have vehicles listed on web-aggregator websites and have visibility through Google search.

5. COMPETITION FROM P2P OWNERS

- 5.1 The Commission's preliminary view is that "motorhomes listed for rent on peer-to-peer platforms may not provide a strong constraint on traditional motorhome operators (and the merged entity) in the medium term".³⁵
- 5.2 **thl** disagrees with the Commission's preliminary view. While peer-to-peer platforms are still emerging in the RV rental industry in New Zealand, **thl's** experience in other jurisdictions and the observed experience in other New Zealand industries with peer-to-peer platforms shows that motorhomes listed

³⁴ **thl** notes that, of its 2019 fleet, only [REDACTED] met the manufacturing definition of a motorhome.

³⁵ SOI at [91].

for rent on peer-to-peer platforms will provide increasing (and significant) constraint on the merged entity.

5.3 It is now well known and accepted that the emergence of peer-to-peer online platforms has rapidly and permanently disrupted the tourism accommodation industry and taxi hire industries.

5.4 **thl** notes the comments by the then Chair of the Australian Competition and Consumer Commission, Rod Sims, in a February 2015 interview, that services such as those provided by Uber, Ingogo Pty and Taxi Apps Pty are making his job easier:³⁶

“Any concerns people used to have about competition in the taxi industry are essentially a thing of the past ... Technology will solve whatever problems that all of us have had about competition in the taxi industry.”

5.5 **thl** endorses this comment as equally applicable to peer-to-peer platforms in the New Zealand RV rental market.

5.6 As stated in the Application, peer-to-peer RV rental platforms enable private owners to rent out their RVs in a single, convenient online place. These platforms add a significant amount of capacity to the national RV rental market by allowing single vehicle owners and small fleet operators to access customers and to grow in size and scale.

5.7 Peer-to-peer platforms globally have been expanding rapidly and are at different levels of maturity in different regions. The most developed regions for peer-to-peer RV rental platforms are the United States and Europe. In those regions, there are a few large, well established RV rental platforms with strong brand awareness that are well capitalised,³⁷ as well as a number of small to medium platforms. Further information about the major global operators and the markets in which they operate is set out in Attachment 9.

5.8 **thl** considers that the growth and impact of peer-to-peer platforms on competition in New Zealand is approximately 24 to 36 months behind the United States. **thl** expects that the impact of growth in the peer-to-peer segment on the national RV rental market will follow a similar trend as the United States market as peer-to-peer platforms continue to mature. Growth of peer-to-peer platforms is also demonstrated in other tourism segments, notably AirBnB and Stayz.

5.9 **thl** considers peer-to-peer platforms a key disruptor to the RV rental industry. They are likely to continue to grow strongly and rapidly in the short to medium term and will inevitably disrupt traditional RV rental business models. Peer-to-peer platforms have disrupted the historical supply and demand dynamics by increasing market supply during peak periods and imposing downward pressure on price and growing rental markets. As explained at [6.23] of the Application, there are estimated to be more than [REDACTED] privately owned motorhomes in New Zealand. The potential capacity of peer-to-peer platforms far exceeds the combined fleet of the merged entity.

Pricing

5.10 At [93] of the SOI, it is stated that *“it is not clear that the prices at which motorhomes are rented via peer-to-peer platforms materially impact on the prices of traditional rental operators”*.

5.11 As stated in our letter dated 21 February 2022, as part of its price setting processes, **thl** considers various data signals to make decisions about its pricing. It is very difficult to monitor the pricing of a myriad of owners on a peer-to-peer platform. However, pricing on peer-to-peer platforms plainly has an impact on traditional operators' pricing. If **thl** observes a fall in demand it reduces its price to meet the market. When its pricing appears to be in line with that of other traditional operators it assumes consumers are choosing to rent through a peer-to-peer platform (or to book car/hotel options as discussed in section 6 below) which, as discussed below, typically price below traditional operators

³⁶ As reported in Uber's Presentation to the United States Federal Trade Commission, 'In Response to the “Sharing” Economy: Issues Facing Platforms, Participants, and Regulators', 9 June 2015.

³⁷ For example, RVshare and Outdoorsy, the two largest P2P operators in the USA, have approximately US\$190M in capital combined in the last 18 months.

during peak periods. **thl** expects, based on its experience in the US, that pricing by RV rental owners on peer-to-peer platforms will become more sophisticated and dynamic over time.

- 5.12 As explained at [6.22] of the Application, owners on peer-to-peer platforms tend to price lower than commercial rental operators during peak seasons but also keep prices low when demand decreases due to the absence of fixed overheads. **thl** notes that, while in its Application it noted that for private owners a motorhome would be considered ‘sunk’ capital, these assets are not truly sunk as explained at [20] in NERA Report 2.
- 5.13 **thl** expects that peer-to-peer pricing will have an increasing impact on its pricing. In the US market where peer-to-peer RV rental platforms are more mature, [REDACTED].
- [REDACTED]
- 5.14 [REDACTED].
- 5.15 **thl** expects that, as peer-to-peer platforms gain traction in Scenario 2, rental yields will similarly decline in New Zealand.

Target customers

- 5.16 At [94.1] of the SOI it is stated that “*some traditional rental operators expressed the view that peer-to-peer platforms appear to focus on domestic tourists, while traditional operators focus on international travellers*”.
- 5.17 This is simply incorrect. **thl**'s experience with Mighway, its online peer-to-peer platform, is that, prior to the COVID-19 pandemic, international tourists made up the majority of bookings through the platform. In FY20, from July 2019 to January 2020, international tourists represented approximately [REDACTED] of Mighway's total bookings. In FY18, international tourists were approximately [REDACTED] and in FY19 approximately [REDACTED].
- 5.18 We note that at [94.2] of the SOI, the Commission states that “*information from peer-to-peer platforms suggests that even before the pandemic, the largest peer-to-peer platforms operating in New Zealand received a higher proportion of bookings from domestic tourists than traditional rental operators (whose business was almost entirely international travellers)*”. The Commission has based this statement on a [REDACTED], New Zealand was in the midst of the COVID-19 pandemic and international borders were closed. It is of no surprise that the Mighway business was focused on domestic tourists at that time.
- 5.19 Camplify is one of several well-established Australian brands. Australian tourists who use the Camplify or other platforms in Australia are likely to also use that platform for travel in New Zealand. Australian tourists comprise a significant proportion of the inbound tourists to New Zealand. Australian tourists represented [REDACTED] of **thl**'s rental bookings in 2019, more than double the inbound tourists from the next largest point of origin (the United Kingdom). According to Camplify's most recent half-year report, marketing spend in H1 FY22 was up 283% to \$1.7m. This was nearly four times **thl**'s Australian marketing spend in the same period. The other major tourist sources – Europe and the US – also have well established peer-to-peer brands. Camplify have grown revenue by more than 100% in each of the last three years and are ranked #17 in AFR's 2021 Fast 100 Companies. Based on their run rate in the first half of the current financial year, Camplify's gross revenue for the current financial year should be in excess of AUD\$45m compared to **thl** Australia's rental revenue of approximately AU\$33m, or **thl**'s New Zealand rental revenues of around NZ\$21m.

Other factors

- 5.20 At [95] of the SOI, the Commission states that there are a number of factors which may mean that international travellers may be less likely to switch to peer-to-peer rentals, including:
- (a) the geographic spread of vehicle pick-up locations of peer-to-peer rental vehicles;
 - (b) the fact that one-way rentals are not generally available through peer-to-peer platforms;

- (c) uncertainty around vehicle availability on peer-to-peer platforms particularly during peak periods; and
- (d) less flexibility and back-up support in the event of a vehicle breakdown.

5.21 **thl** responds as follows:

- (a) While it is correct that listings on peer-to-peer platforms may be located all across New Zealand, the reality is that the majority of listings on those platforms are located in Auckland and Christchurch. For example, Camplify has 77 listings in the Auckland region and 33 listings in Christchurch out of a total of 191 listings as at 23 March 2022. As at 28 February 2022, [REDACTED] of Mighway’s listings and [REDACTED] of SHAREaCAMPER’s listings were based in Auckland or Christchurch. In any event, there is no evidence that international tourists would not book rentals located outside of the main centres in New Zealand. International tourists may see the fact that RV rentals are located in regional areas as a benefit if they wish to combine multiple forms of travel for their visit to New Zealand.
- (b) **thl’s** experience in other jurisdictions is that peer-to-peer platforms have been expanding to offer services such as one-way rentals and roadside assistance/on-road care. For example, RVshare in the United States offers one-way rentals³⁸ as does Camping World Holdings Inc³⁹, GoCamp⁴⁰, Indie Campers⁴¹ and Camptoo⁴². RVEzy offers 24/7 roadside assistance.⁴³ **thl** expects peer-to-peer platforms in New Zealand to similarly expand their services to remove or minimise any perceived limitations of their services compared to traditional motorhome operators. In any event, **thl** notes that over the period FY18 to January FY22, [REDACTED] of **thl’s** bookings were return bookings.
- (c) **thl** does not understand the Commission’s comment about uncertainty as to vehicle availability. Any uncertainty as to the availability of vehicles on a peer-to-peer platform will be resolved for renters at the time of booking. In any event, the evidence does not support a conclusion that vehicle availability on peer-to-peer platforms is more limited during “peak” periods such as school holidays. For example, a search on the Mighway platform for listings in Auckland for each week between April 2022 to March 2023 shows that there are between 115 and 131 listings available each week. The data from the search is contained in Attachment 10. A search of the Camplify platform shows that, other than for the easter holiday in a few weeks’ time (presumably because many vehicles are already booked), there are no significant reductions in listings during ‘peak’ periods. The Camplify search data is at Attachment 11.

6. CONSTRAINTS OUTSIDE THE MARKET

- 6.1 If the Commission concludes that motorhomes and campervans are not in same market (which would not be the correct conclusion) then campervans would plainly provide a very strong constraint on motorhome operators for the reasons outlined in section 2 above.
- 6.2 Alternative travel and accommodation options, contrary to the Commission’s preliminary conclusion, pose a strong constraint on RV rental operators. This is demonstrated by the evidence. **thl’s** internal market intelligence reports prepared by **thl’s** European sales team in 2019 (pre-COVID) refer to the loss of sales to car/hotel packages based on price and availability. For example:

(a) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

³⁸ See <https://help-rvshare.force.com/s/article/Can-I-book-a-one-way-rental>

³⁹ See <https://www.campingworld.com/>

⁴⁰ See <https://gocampcampervans.com/>

⁴¹ See <https://indiecampers.com/>

⁴² See <https://www.camptoo.com/>

⁴³ See <https://www.rvezy.com/>

(iii) [REDACTED]

(iv) [REDACTED]

(b) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(c) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

- 6.3 Copies of the reports are provided in Confidential Attachments 12, 13, 14 and 15.
- 6.4 Customers consider the cost and availability of other accommodation and transport options when considering their mode of travel and plainly can (and do) substitute other accommodation and transport options for motorhome rentals.
- 6.5 The above evidence also shows that similar types of purchasers split their purchase across several options. Because of the (externally perceived) homogeneity of these tourists, it will be difficult for the hypothetical monopolist to price discriminate between the tourists who would consider other options and those who are committed to RV travel. Therefore, the marginal customers will protect the infra-marginal customers.
- 6.6 The graph below (which was provided in our letter of 21 February 2022) shows *thl's* average yield across its rental fleet over time compared with the average daily rate of hotels in New Zealand. The correlation coefficient for the two sets of data is [REDACTED]. This supports the evidence that there is a strong relationship between *thl's* RV pricing and hotel pricing. While all RV rental operators seek to maximise their achievable yield, the graph below indicates that there is a ceiling for pricing in the industry relative to hotel pricing.

[REDACTED]

7. BARRIERS TO ENTRY AND EXPANSION

- 7.1 As explained in the Application, barriers to entry and expansion into the motorhome rental market are low.⁴⁴ While *thl* accepts that, in Scenario 1, new entry or expansion is less likely due to (amongst other things) the excess capacity in the market and supply chain issues caused by the pandemic (although an existing overseas operator may make a strategic decision to enter the New Zealand market at any point), in Scenario 2 new entry and expansion of existing operators is likely.
- 7.2 The Commission preliminary view at [81] of the SOI is that large scale entry and expansion to the extent necessary to constrain the merged entity is likely to remain difficult in the **medium term** due to:
- (a) the need to match motorhome rental fleet sizes with consumer demand for motorhome sales (which varies seasonally);
 - (b) ongoing supply constraints;
 - (c) the need to establish distribution channels; and

⁴⁴ Application [6.33]–[6.40]

(d) the capital requirements for large-scale entry.

7.3 The Commission's preliminary view is that "for entry or expansion to constrain the merged entity, it would need to involve entry on a reasonably large scale in terms of fleet numbers and across a range of size/types of motorhomes".⁴⁵

7.4 **thl** disagrees that these factors present barriers to entry or expansion in the market, or that entry on a reasonably large scale would be required to act as a constraint on the merged entity.

Requirements for entry and expansion

7.5 To enter the market on a greenfield basis, a motorhome rental operator would need the following:

(a) a rental service transport licence. As explained at [6.39] of the Application, this is a procedural requirement and costs only \$450 to obtain. There are no other regulatory or licensing requirements in New Zealand;

(b) access to fleet:

(i) As explained at [4.36] and [5.10] of the Application, there are many suppliers of new and used motorhomes in New Zealand. Motorhome rental operators can choose to manufacture their own motorhomes (which means to build a specialty box on a bare cab chassis supplied by a third party), purchase and import motorhomes from one of the many international suppliers of motorhomes or purchase motorhomes from a local manufacturer or importer. Arrangements with international or local motorhome manufacturers are not exclusive. There is also the option to purchase second-hand fleet from dealerships, importers, other operators or private individuals, which is the means by which several operators entered the RV rental market. It is not, as suggested in the SOI, a pre-requisite to have in-house manufacturing capabilities;

(ii) **thl** acknowledges that there are currently constraints in accessing vehicle components and new vehicles. As explained at [5.21] of the Application, the industry has had a significant supply-side shock as a result of COVID-19 which has led to longer lead times for, and shortages of, new vehicles and parts, shipping delays and increasing freight costs. There is also a well-documented shortage of semi-conductors (computer chips) impacting the automotive industry globally. These issues are affecting operators who import complete vehicles as well as manufacturers such as **thl** equally. [REDACTED]. To the extent that supply bottlenecks make expansion difficult, the merged entity will be impacted to the same extent. In any event, as noted earlier, in the short term (Scenario 1) the merged entity will remain constrained by excess capacity in the market. **thl** expects the supply chain issues to have resolved in Scenario 2.

(iii) Fleet is not a sunk cost as it can be sold at any time in the secondary market.

(c) access to capital:

(i) **thl's** experience is that asset financiers are willing to finance up to 100% of the cost of new fleet purchases in the RV industry, enabling fleet growth. Asset finance products are provided by a wide range of reputable lenders including manufacturers (e.g. Toyota, Mercedes-Benz), commercial banks (e.g. ASB) and specialist financiers (e.g. DLL Financial Solutions and Mitchcap Asset Finance Providers).

(ii) At [82] of the SOI, the Commission states:

"The requirement for capital to fund the acquisition of a fleet of motorhome rental vehicles, particularly in an uncertain investment environment, may also provide an obstacle to entry and expansion in the affected market. We note

⁴⁵ SOI at [85].

that investors and lenders may be reluctant to invest in any tourism activities which have been significantly affected by the COVID-19 pandemic.”

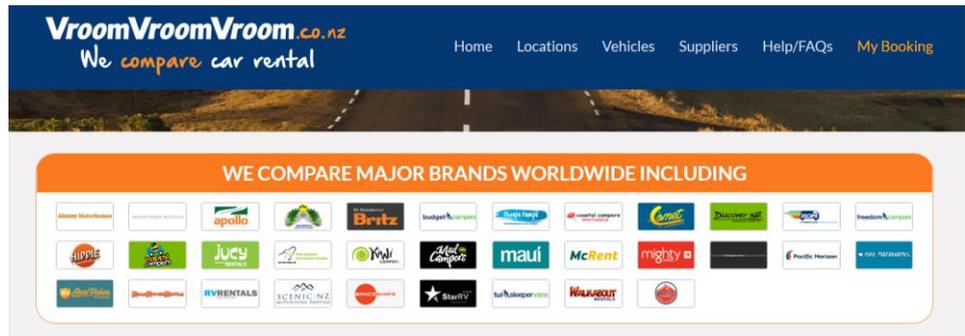
- (iii) **thl** acknowledges that, in Scenario 1, there may be a reluctance to invest in tourism activities by some investors and lenders. This is not surprising given the current level of excess capacity and reduced demand. The tourism industry has, as explained at paragraphs [5.12] to [5.22] of the Application, been heavily impacted by the COVID-19 pandemic and, to the extent that access to capital may be less forthcoming as a result, this is an issue that affects existing operators equally.
 - (iv) However, despite the impact of the pandemic on the sector, there remains appetite to invest in the RV rental industry by some investors with a longer time horizon. As explained at [5.33(b)] of the Application, Jucy was purchased by Polar Capital (a New Zealand-owned private equity firm associated with Colin Neal) in November 2020, in the midst of the pandemic. [REDACTED].
 - (v) The potential challenges that could exist with accessing capital in Scenario 1 are unlikely to apply in Scenario 2. Access to capital will become easier as demand for motorhome rentals increases.
 - (vi) Finally, as explained at [30] of NERA Report 2, the Commission overstates the role of capital as a barrier to entry and expansion;
- (d) access to a branch location(s) or storage. An operator can secure their own premises or use third party premises under an agency arrangement, such as a mechanic, holiday park, car rental business, coach operator etc. If an operator decides to secure their own premises, suitable properties are widely available and there is no requirement for an operator to be based at or near an airport to successfully compete. As explained in our letter of 21 February 2022, when **thl** was searching for a new location for its Auckland depot after fire destroyed its original depot, it canvassed sites across Auckland. Following the fire, **thl** was able to establish a temporary site in Auckland on an empty lot with a container office within 24 hours (see Attachment 16), which shows how quick and easy it is to establish a physical location in New Zealand;
- (e) an IT system for fleet management and a booking operating system. While a manual system is an option that is used successfully by some operators, there are many off the shelf rental software solutions that are readily available and can be set up within weeks, including Wheelbase, which is an RV rental software solution developed by Outdoorsy⁴⁶, Rental Car Manager⁴⁷, and Prohire⁴⁸;
- (f) an accounting system. This can be off the shelf products such as Xero;
- (g) a channel to market. As noted earlier, there are various channels to market that are readily accessible by new entrants. For example, a new entrant can:
- (i) establish its own webpage and rely on Google searches and advertising to reach potential customers. As explained at [35] of the Application, the cost of setting up a webpage is low and small operators are able to create an online presence through Google search and other similar search engines equal in quality to larger market participants. Google search trends obtained by **thl** through Google insights in 2017 indicated that approximately [REDACTED] of searches for the purpose of campervan hires are brand agnostic, with only [REDACTED] of searches referencing a specific operator;
 - (ii) utilise an online travel agency and/or establish partnerships with wholesalers. Online Travel Agencies in particular want to maximise range and are always open to listing new operators, giving them instant visibility in a new market. For example, below is a

⁴⁶ See <https://www.wheelbasepro.com/>

⁴⁷ See <https://www.rentalcarmanager.co.nz/>

⁴⁸ See <https://www.prohire.co.uk/>

screen shot of vroomvroomvroom.co.nz which shows all the RV rental brands in New Zealand listed on its website:



Details of many of these operators were included in the Application;

- (iii) utilise a peer-to-peer online rental platform, and the brand awareness of that platform. Peer-to-peer platforms aggressively buy advertising space to make sure their listings get seen. *thi* notes that both it and other traditional operators have sold down their fleets significantly since the beginning of the COVID-19 pandemic. As a result, the number of privately owned rental platform vehicles available in New Zealand has more than doubled since 2019. All of these vehicles have the potential to be rented on a peer-to-peer platform, and peer-to-peer platforms provide a good springboard for operators to enter the market; and

(h) insurance.

- 7.6 All of the requirements to enter the market as a motorhome rental operator are the same regardless of whether a rental operator chooses to rent motorhomes, campervans or both. It is factually incorrect and inconsistent with the commercial reality of the RV rental market to suggest any specific or additional requirements for entry to, or expansion of, the rental of 'motorhomes' (within the technical or manufacturing meaning). There are not higher barriers to entry in this respect.
- 7.7 In general, the key requirements for an existing operator to expand their fleet are access to vehicles and capital to fund the acquisition. Both fleet and capital are readily accessible, albeit as acknowledged earlier this is likely to be difficult in Scenario 1 as a result of the pandemic. However, in Scenario 1 expansion is unlikely to be rational because demand is impaired with excess capacity. In Scenario 1 this excess capacity imposes a significant constraint on all operators.
- 7.8 Contrary to the Commission's preliminary views, there is no need for rental operators (whether they offer "motorhome" rentals, "campervan" rentals or both) to match their rental fleet sizes with consumer demand for sales. While *thi*'s fleet mix is heavily influenced by its sales business, this is because *thi* is also an RV manufacturer. Other rental operators who offer motorhomes do not face the same incentives as they do not manufacture motorhomes in New Zealand. McRent, Tui, Wilderness, Walkabout Rentals, Discover NZ Motorhomes, Venture RV Limited, Euro Campers and Coastal Campers all have motorhomes on their fleet but are not manufacturers. All of these operators will sell older vehicles and replace them with newer vehicles (similar to rental operators who have campervans on their fleet) from time to time. It is not a requirement that they match the composition of their fleet to demand for RV sales because their business is focused on rentals, not sales.
- 7.9 Further, it is not a pre-requisite to successfully enter and / or expand in the RV rental market, to have a network of dealerships or to partner with dealers for the sale of vehicles. An RV owner can sell vehicles seeking to maximise resale price through multiple channels including existing physical rental depots, retail sales depots or third-party dealerships and online (e.g. TradeMe). Only [redacted] of *thi*'s rental fleet sales in FY21 were through *thi*'s dealer network.

The role of scale

- 7.10 *thl* disagrees with the Commission's preliminary conclusion that entry "*would need to be substantially greater than the size of most existing motorhome rental operators*"⁴⁹ to effectively constrain the merged entity. Smaller operators can and do impose a significant constraint on the parties (both individually and collectively) and will continue to constrain the merged entity post-Transaction. The threat of new entry will provide an effective constraint regardless of the scale of entry.
- 7.11 As explained in section [4] above, a smaller operator has the same opportunities and ability as a larger operator to attract renters. While operators with smaller fleets than the merged entity have more limited capacity, fleet sizes are not static. Operators can quickly and easily add or remove fleet to meet demand.
- 7.12 In any event, collectively the smaller operators will have significantly greater capacity than the merged entity. There are at least 30 RV rental operators in New Zealand who offer campervan rentals, motorhome rentals or both. As set out in the Application, *thl* management estimated that the total fleet of all operators, excluding *thl* and Apollo, for FY22 was [REDACTED].⁵⁰ The capacity of these other operators collectively plainly exceeds the capacity of the merged entity.
- 7.13 Finally, it should be noted that the combined capacity of motorhome rental operators as distinct from campervan rental operators is also significant. There are at least 14 rental operators in New Zealand who offer motorhome (as per the manufacturing definition) rentals.
- 7.14 The constraints imposed by smaller operators is discussed at [33] of NERA Report 2.

8. COUNTERVAILING POWER

- 8.1 *thl* understands that the Commission is continuing to consider the countervailing power of wholesalers, travel agents and web consolidators, and the extent to which they would constrain the merged entity.⁵¹
- 8.2 As explained at [6.41] of the Application, wholesalers and online agents possess strong countervailing power; if an agent is not happy with the products, services or its commission from a particular supplier, the agent will either not promote the supplier's products or terminate its agreements with the relevant supplier.

8.3 [REDACTED].

9. COORDINATED EFFECTS

- 9.1 The merger is unlikely to result in coordinated effects for the reasons set out in section 4 of NERA 2.

10. FORECLOSURE

- 10.1 Foreclosure concerns are unlikely to arise for reasons set out in Section 3.1 of NERA 2.

11. CONFIDENTIALITY

- 11.1 Confidentiality is requested of the information in this submission that is in highlighted and contained in square brackets, and the information set out in the Confidential Attachments, on the basis that disclosure would be likely unreasonably to prejudice the commercial position of the parties providing the information.
- 11.2 Confidential information in this submission is highlighted to reflect who the information is confidential to:

⁴⁹ SOI at [85].

⁵⁰ See Table 1 of the Application.

⁵¹ SOI at [99].

- (a) information that is confidential to **thl** is highlighted in pink (i.e., **CONFIDENTIAL**); and
- (b) information that is counsel-only is highlighted in teal (ie **CONFIDENTIAL**).

11.3 **thl** requests that it be notified if a request is made to the Commission under the Official Information Act 1982 for release of the information for which confidentiality has been claimed.

11.4 Confidential and public versions of this submission will be provided to the Commission.