

20 July 2022

THL / Apollo

THL's submission to Commerce Commission regarding the wholesale and aggregator channels to market

1. Introduction and executive summary

- 1.1 This submission is made by **thl** in response to the Commission's email dated 14 July 2022 outlining the issues the Commission is still considering, i.e:
- (a) whether barriers to access wholesale channels are significant for smaller competitors; and
 - (b) the impact of the Proposed Transaction on wholesalers and online aggregators.
- 1.2 **thl** has explained previously that access to the wholesale/aggregator channel does not present a significant barrier to entry or expansion for any competitors including smaller competitors: there are a large number of wholesalers and aggregators that offer (or could offer) RV rentals in New Zealand, including both global and local operators, many of which seek to work with as many rental operators as possible.
- 1.3 Furthermore, the Proposed Transaction will not increase the bargaining power of the merged entity vis-à-vis wholesalers and online aggregators such that the end price of motorhome rentals to consumers through this channel to market will be increased or service reduced:
- (a) **thl** and Apollo are not 'must haves' for wholesalers or aggregators;
 - (b) wholesalers and aggregators can (and will continue to) exercise countervailing power vis-à-vis the merged entity; and
 - (c) the purchaser of the divestment assets will replace any constraint that may be lost in the wholesaler/aggregator channels to market because of the Proposed Transaction. In particular, if Next Capital/Jucy is the Approved Purchaser of the Divestment Business, Jucy will replace the competitive constraint that Apollo arguably provides: it will operate a motorhome and campervan fleet which is [REDACTED] and spans all RV rental market segments and geographic areas in which Apollo presently operates.

2. Background – key features of the wholesaler and aggregator channels to market

- 2.1 The wholesaler and aggregator channels to market are only two of several channels to market. As the Commission is aware, customers have significant choice as to where they may book their RV rental, including through a travel agent/wholesaler, an online aggregator, a peer-to-peer platform, directly with an inbound tour operator, or directly from an RV rental operator. Access to the wholesaler and aggregator channels is therefore not essential for RV rental operators to compete (indeed, some operators choose not to use them), nor are they essential channels for customer choice. However, given the Commission's focus on whether a merged **thl**/Apollo could exercise market power in this segment of the market, this submission is confined only to these channels and the extent to which competition (not, of course, the impact on these customers/competitors per se which can be of no concern to the Commission) in this market segment could be affected detrimentally.
- 2.2 **thl** has previously outlined in earlier submissions and correspondence the key features of the wholesale and aggregator channels to market. However, **thl** considers it may be helpful to remind the Commission of some of these key features.
- 2.3 First, as explained at paragraph 5.3 of **thl's** Clearance Application, there is a distinction between wholesalers and online aggregators. Wholesalers generally sell pre-purchased rentals to their own retail outlets (whether physical or online) where the rental may be sold as part of a travel package or

¹ [REDACTED]

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as a standalone product or via other retail channels, including retail travel agents, inbound tour operators or web consolidators/online aggregators. Large wholesalers generally offer customers a broad range of travel and accommodation options to a broad range of destinations, of which New Zealand RV rentals is only a very small part of their business. Large wholesalers include global operators such as Flight Centre (which operates globally, is also listed on the ASX, has a market capitalisation in the order of \$AU 3.6 billion, and REDACTED), FTI Group (which operates tours in over 120 countries, owns 60 hotels in eight countries, and operates a destination management company in 18 countries) and Trailfinders, which has over 1,000 staff and 39 travel centres in the UK and Ireland (REDACTED), as but three examples.

- 2.4 Online aggregators, on the other hand, are third party operated websites that facilitate bookings with traditional rental operators, such as *thl*. Aggregators generally have a narrower product range than wholesalers, focusing, for example, on self-drive options (e.g. car rentals and RV rentals) or on RV rentals only. Larger aggregators operate in multiple countries, while smaller aggregators may operate in more limited geographic regions. Some aggregators may also choose to work with wholesalers rather than directly with rental operators, or may work with both rental operators and wholesalers. It is important for the Commission to remember that large aggregators include large well-resourced global companies including GoSee (a large aggregator which operates in five countries and is part of the Webjet Group, a global digital travel business which is listed on the ASX which has a market capitalisation of AU\$2 billion), and Camperdays (a global tour operator for motorhome travel owned by SilverTours GmbH, one of the leading e-commerce companies in Germany, and with a presence in 170 countries worldwide).
- 2.5 *thl* refers to wholesalers, travel agents, and online aggregators as its distribution 'partners', rather than mere customers, underscoring the importance that *thl* places on these partnerships to market and sell its product. Indeed, over REDACTED % of *thl*'s bookings and as much as [REDACTED] of Apollo's revenues were generated through its distribution partners. Distribution partners are therefore a critical source of revenue for the parties. From *thl*'s perspective, they provide *thl* with diversified distribution in a wide range of countries, which *thl* considers an appropriate channel strategy for the size of its fleet.
- 2.6 Second, there are a significant number of wholesalers, travel agents, and online aggregators who sell New Zealand campervan and motorhome rentals. There are currently as many as REDACTED partners registered on *thl*'s systems that have the ability to sell its products. Apollo has approximately REDACTED registered partners in New Zealand. A very small number of partners (REDACTED) have an exclusive relationship with *thl*. The vast majority either choose to have a limited basket of suppliers or have as many suppliers as possible. The type and breadth of offerings is dependent on the partner's business model and preferences.
- 2.7 Third, *thl* supplies its inventory to its distribution partners REDACTED.
- 2.8 Finally, *thl*'s distribution partners REDACTED. Distribution partners compete against other wholesalers, travel agents and aggregators as well as *thl*'s and other rental operator's direct channels. *thl*'s distribution partners are constantly trying to undercut each other on price and also often offer end customers discount pricing relative to *thl*'s direct channels. Partners with superior commercial terms or lower overheads can price more aggressively. Therefore, although distribution partners are customers in one sense, they are also competitors in another, with different motivations and agendas as a result.

3. The Commission's email

- 3.1 The email of 14 July 2022 states that the Commission is still considering the following issues relating to the wholesaler and aggregator channels to market:
 - (a) whether barriers to entry for competitors of smaller size/scale, in particular access to wholesale distribution channels, may be significant. In this regard, it is noted that some international wholesalers have advised that fleet size, fleet variety and depots are the key considerations for working with rental operators, and that firms need a sizeable fleet to meet peak demand;
 - (b) whether *thl* (or at least one of *thl* or Apollo) is a 'must-have' for wholesalers/aggregators;

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- (c) whether the merger is likely to further increase the imbalance in the relationship with wholesalers/aggregators through an increase in the bargaining power of the merged entity, and therefore whether wholesalers and aggregators may be forced to accept lower commission rates and margins, as well as more restrictive terms and conditions, from the merged entity; and
 - (d) the extent to which a purchaser of the divestment assets would be able to access distribution channels to replace the constraint lost with the merged entity.
- 3.2 We address each of these issues in turn in the remainder of this submission.
- 4. Access to the wholesale channel is not a barrier to entry for smaller competitors**
- 4.1 *thl* has explained in previous submissions that access to the wholesale/aggregator channel does not present a significant barrier to entry for smaller competitors.
- 4.2 As a matter of fact, there are quite simply a large number of wholesalers and aggregators that offer (or could offer) RV rentals in New Zealand, many of which seek to work with as many rental operators (including smaller operators) as possible. For example, online aggregators GoSee, Discovery Motorhomes, and DriveNow work with operators of varying sizes and scale. Below are some examples of smaller RV rental operators that are promoted on the GoSee website for New Zealand:
- (a) <https://www.goseetravel.com/campervan-suppliers/discover-nz-motorhomes>
 - (b) <https://www.goseetravel.com/campervan-suppliers/mad-campers-new-zealand>
 - (c) <https://www.goseetravel.com/campervan-suppliers/road-runner-rentals-new-zealand>
 - (d) <https://www.goseetravel.com/campervan-suppliers/wanderlust-campers-new-zealand>
- 4.3 Below are some examples of smaller operators that are promoted by Discovery Motorhomes:
- (a) <https://www.discovery-motorhomes.co.nz/lucky.php>
 - (b) <https://www.discovery-motorhomes.co.nz/escape.php>
 - (c) <https://www.discovery-motorhomes.co.nz/pacific.php>
 - (d) <https://www.discovery-motorhomes.co.nz/mcrent.php>
 - (e) <https://www.discovery-motorhomes.co.nz/traveller.php>
- 4.4 A search on the CampervanFinder website also shows a huge variety of vehicles from brands of different types. Merchandising is identical between product options with price acting as the key differentiator, meaning *thl* brands have a low share of total listings.
- 4.5 In general, the decision whether or not to supply RV rentals through either the wholesaler and/or aggregator channel is a business decision for the RV rental operator. *thl* is aware that some small to medium sized operators choose not to supply their rentals through these channels because it is the highest cost of sale channel, not because they cannot access these channels. For example, *thl* understands that, prior to the pandemic, Wilderness' strategy was to supply its rentals through direct channels only. *thl* assumes that this was because Wilderness concluded that it is able to achieve the utilisation it requires without the constraints imposed by wholesalers and aggregators. As smaller rental operators grow, however, *thl* would expect such operators to consider widening their distribution to the wholesale channel, with the many options available as already noted above.
- 4.6 Finally, as highlighted in previous submissions, it is also becoming increasingly common for small RV rental operators to list on peer-to-peer sites. *thl* expects that, over time, peer-to-peer operators are

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likely to operate more as online aggregators, embracing operators of all sizes as well as individual owners is part of their business model.

5. ***thl* and Apollo are not ‘must haves’ for wholesalers or aggregators**

5.1 In general, wholesalers and aggregators are incentivised to have as many rental operators on their platform as they can manage (underscoring too the lack of barriers as noted above). The profitability of the channel is primarily driven by the volume they can drive through it. Accordingly, it is to be expected that Apollo and *thl* have relationships with most wholesalers and aggregators operating in New Zealand who want their product on their site. However, the parties reject the notion that they are a ‘must have’ for any wholesaler or aggregator to participate in either the motorhome segment of the RV rental market or the broader RV rental market.

5.2 First, as explained earlier, the New Zealand RV rental segment is a very small part of a wholesaler’s business. The RV rental category represents less than 1% of global tourism. Wholesalers therefore have no dependency on the RV rental segment as a whole, let alone any individual New Zealand RV rental operator, to stay in business.

5.3 Second, contrary to the implication in the Commission’s email of 14 July 2022, it is not the case that wholesalers/aggregators work only with large RV rental operators who offer a broad range of RVs of differing sizes/quality. As noted above in paragraph 4.2 above, many offer a range of competitors products. Also, while some wholesalers may prefer to work with a small number of RV rental operators who operate across all market segments, this is not a ‘must have’ but a business choice by the wholesaler and rental operator. For example, REDACTED. *thl* acknowledges that, historically, wholesalers operated systems that made it harder to integrate with rental operators (and therefore limited the number of rental operators they worked with). However, in *thl*’s experience, wholesalers have now moved to open API (a publicly available application interface) which enables easy access to their systems by multiple suppliers.

5.4 Third, it is not a requirement that wholesalers/aggregators work with a single operator with a large fleet in order to satisfy peak demand. Wholesalers/aggregators can instead work with multiple operators to meet customer demand: there is no difference from a customer perspective between 1,000 operators with one vehicle each or one operator with 1,000 vehicles. There are a large number of RV rental operators that operate in the various segments of the RV rental market.

5.5 Fourth, if it is the case that other operators in the motorhome segment do not have sufficient fleet between them to satisfy peak demand in some segments, this does not mean that Apollo or *thl* are ‘must haves’ for wholesalers/aggregators. *thl*, NERA, and MERW have explained in previous submissions why other motorhome rental operators can expand in the medium term to provide a credible alternative to the merged entity in this segment (and the Commission has acknowledged REDACTED). In relation to other segments of the RV rental market, there appears to be no dispute that other rental operators will provide a credible alternative to, and therefore provide a significant constraint on, the merged entity post-Transaction. In any event, prior to the pandemic, market demand did not exceed market supply for the majority of the year and therefore the supply of smaller operators could easily satisfy demand through these channels. Even if, post-Transaction, wholesalers or aggregators were forced to use the merged entity to satisfy any excess demand above the supply of smaller operators, as explained in section 6 below, wholesalers and aggregators can exercise countervailing power to prevent the merged entity from increasing price or imposing more restrictive terms and conditions.

6. **The Proposed Transaction will not increase the bargaining power of the merged entity vis-à-vis wholesalers and online aggregators**

6.1 The Proposed Transaction will not increase the merged entity’s bargaining power or enable the merged entity to force wholesalers or aggregators to accept higher prices or more restrictive terms and conditions. This is because:

- (a) wholesalers and aggregators represent a significant proportion of *thl*’s and Apollo’s revenues and will continue to do so post-Transaction. It would be contrary to commercial common sense

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for the merged entity to act in a manner that would put these partners offside and risk losing this channel to market; and

- (b) wholesalers and aggregators can (and will continue to) exercise countervailing power vis-à-vis the merged entity.

6.2 We elaborate on both these points – interrelated as they are – below.

6.3 First, the Commission appears to be starting from an assumption that there is presently an imbalance in bargaining power in *thl*'s and Apollo's favour in relation to the wholesaler and aggregator channels. The *thl* view is that this could not be further from the truth. Indeed, to the extent there is any imbalance in bargaining power, that imbalance is in favour of these large wholesalers and aggregators, many of which are owned by huge corporates with global operations such as GoSee, Flight Centre, FTI Group, and Camperdays.

6.4 As noted above, pre-pandemic more than REDACTED% of *thl*'s bookings and as much as REDACTED of Apollo's revenues were generated through these indirect channels. Further, in response to the Commission's email, *thl* has calculated that more than REDACTED% of *thl*'s New Zealand rental business revenues were generated through *thl*'s top REDACTED distribution partners (REDACTED). Given this, and the fact that consumers prefer to shop around online to choose their RV rental, *thl* cannot simply choose to no longer supply through these channels, nor would it make commercial sense for it to act in a manner that could jeopardise this revenue stream. As shown by the TKP customer survey, 75% of respondents who had booked an RV visited two or more websites before they booked such that the wholesaler and aggregator channels represent an important source of bookings for the parties now and in the future.

6.5 Given the size of its RV rental fleet, *thl* (and post-Transaction, the merged entity) must retain its broad and diversified distribution channels to ensure its fleet is profitably utilised and to minimise its dependence on a single channel/intermediary. The merged entity simply could not replace the bookings that *thl* and Apollo have historically achieved through the wholesaler and aggregator channels. These channels are critical to achieve the reach required to ensure that the fleet is profitably utilised. Further, *thl* (and post-Transaction, the merged entity) is incentivised to work with a large and diversified group of partners to reduce its risk so that one partner's performance (or one group of partners' performances) does not affect a significant proportion of *thl*'s rental business. Therefore, the notion that the merged entity may exercise increased bargaining power to the detriment of these huge wholesalers and aggregators who are a core part of *thl*'s business model and risk losing their support makes no business sense. This is especially when, as the Commission is aware, the drivers for the Proposed Transaction are cost synergies and international expansion.

6.6 Second, while wholesalers and aggregators provide a critical source of bookings and revenues for the parties (pre-and post-Transaction), the same cannot be said the other way. *thl* and Apollo do not, contrary to the Commission's concerns, have the same level of importance for large wholesalers and aggregators and this will not change as a result of the Proposed Transaction. *thl* refutes the notion that it has significant bargaining power vis-à-vis wholesalers and aggregators and that somehow the Proposed Transaction (with the Proposed Business Divestment) will increase the merged entity's bargaining power.

6.7 In particular, as noted above:

- (a) Large wholesalers are large international corporates that offer a broad range of travel related products and services. New Zealand RV rentals are a very small and niche part of a large wholesaler's business; and
- (b) While online aggregators are generally more specialised than wholesalers, and therefore RV rentals represent a larger part of their portfolio of products, the large online aggregators are significant businesses with operations in multiple jurisdictions around the world and already work with a large number of RV rental operators globally.

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- 6.8 Third, wholesalers and aggregators have the ability to exercise their own countervailing power, such that any attempt by the merged entity post-Transaction to increase the prices offered to wholesalers and aggregators would ultimately fail for the following reasons:
- (a) Wholesalers can (and are likely to) simply choose to no longer work with the merged entity or no longer promote RV rentals more generally through that channel in response to an increase in price or decrease in quality. The breadth of products and destinations offered by large wholesalers means that RV rental operators need to be prepared to accept lower prices and other terms to incentivise these wholesalers to represent the category in brochures and other channels. *thl* understands that the commercial terms provided to its wholesale partners are more favourable to the partner than those provided to wholesalers by other travel verticals such as hotels and airlines due to the small size of the RV rental category. Without these more favourable terms, *thl* believes that these wholesalers would simply cease to represent the New Zealand RV rental category as it would not be worth the effort for wholesalers to continue to supply the product. *thl* has calculated that its top **REDACTED** wholesalers (**REDACTED**) in FY19 alone represented around [**REDACTED**]% of *thl*'s total New Zealand rental revenues. It is simply not credible to suggest that *thl* would attempt to increase prices for these partners and risk losing some or all of their business.
 - (b) While aggregators are less likely to simply stop offering RV rentals in New Zealand in response to an increase in price, any attempt by the merged entity to increase the prices it offers to the aggregator channel (and not the wholesaler channel) would be inconsistent with its business model. This is because, if the merged entity increased its net rate for specialist online aggregators but not wholesalers, this could allow wholesalers to offer better market rates which would cause customers to quickly move to that channel. This could result in a higher proportion of bookings through the wholesaler channel, which would increase the merged entity's risk. Further, aggregators would also likely choose to acquire from wholesalers rather than *thl* direct if it increased net rates for aggregators but not wholesalers. [**REDACTED**] already choose to acquire through the wholesaler channel.
 - (c) Wholesalers and aggregators could seek to 'punish' the merged entity if it attempted to increase its prices by employing tactics such as reducing the merged entity's exposure on websites or brochures, de-ranking the merged entity's brand in search results, decreasing training about the product to sales teams, or providing explicit instructions to contact centres to prioritise selling a competitor brand when customers ask for recommendations.
 - (d) Large wholesalers and aggregators could also sponsor new entry or expansion by an existing smaller rental operator by prioritising that rental operator in brochures, in search results, through training and through their contact centres. Many have the size and resources to do so should they wish if the merged entity increased its prices or imposed more restrictive terms. The fact some may choose at present to use mainly *thl* and Apollo does not mean they do not have the ability to look elsewhere in the future.
- 6.9 *thl* considers the competitive dynamic with wholesalers/aggregators to be most analogous to the role of large supermarkets as intermediaries for various suppliers – that is, the wholesalers/aggregators are akin to the large supermarkets, with the RV rental industry representing a small category and *thl* a single provider within that. In this environment, the supplier (*thl*) has much less influence than the intermediary (wholesalers/aggregators).
- 7. The purchaser of the divestment assets will replace any constraint that may be lost in the wholesaler/aggregator channels to market because of the Proposed Transaction**
- 7.1 While *thl* considers that the Proposed Transaction will not give the merged entity the ability to exercise market power vis-a-vis wholesalers or aggregators, as explained in *thl*'s Divestment Proposal, the Proposed Business Divestment fully addresses trade partner concerns in this regard.
- 7.2 The Proposed Business Divestment will establish a new competitor in the motorhome rental segment with a strong appetite to grow fleet volumes in New Zealand. This new competitor will simply replace Apollo in the motorhome rental segment:

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- (a) by acquiring 70% of Apollo's motorhome fleet it will have the size and range of motorhome rentals to replace the competitive constraint that may otherwise be lost in this segment as a result of the Proposed Transaction. Further, it is likely to grow fleet [REDACTED] for the reasons explained to the Commission previously; and
- (b) the Star RV brand provides established distribution with a wide range of trade partners. *thl* will facilitate introductions between the purchaser and trade partners and help facilitate the transition of bookings from Apollo to the purchaser.

7.3 In the event Next Capital/Jucy Rentals is the Approved Purchaser – and all present indications are that it will be – Jucy already has significant operations in the campervan rental segment in New Zealand and [REDACTED]. By acquiring 70% of Apollo's motorhome fleet, it will immediately become a credible alternative to *thl* in both the motorhome segment and in the RV rental market more generally. In particular, Jucy Rentals will immediately [REDACTED]² with operations across all segments and locations of the RV rental market and will plainly provide a significant competitive constraint on the merged entity both in the short and medium term. So, to the extent the Commission suggests wholesalers and aggregators may need an alternative operator to the merged entity with a large fleet size across the difference sizes/types of vehicles, these distribution partners will have exactly that in Jucy.

7.4 Furthermore, as *thl* has explained in its proposal, [REDACTED]. [REDACTED]. [REDACTED]. Aggregators and wholesalers – who admittedly do not know this – therefore do not require Apollo *per se* as an entity to provide an alternative to, or constrain, *thl*.

8. Conclusion

- 8.1 It is plain for the reasons explained in this submission that there can be no credible suggestion that, as a result of the Proposed Transaction including the Proposed Business Divestment, the merged entity could increase its prices for wholesalers and aggregators such that prices to consumers would increase.
- 8.2 It is important that the Commission be reminded that, as a consequence of the Proposed Business Divestment, *thl* will only be acquiring approximately [REDACTED] motorhome rental vehicles and two brands (which span both the motorhome and campervan segments). This is an increase in *thl*'s share of the motorhome rental segment of only [REDACTED %], which for the reasons explained previously simply cannot have the effect or likely effect of substantially lessening competition in the motorhome rental segment. Apollo will be effectively substituted with Jucy as a large credible operator to continue to provide strong competition for *thl* and continuing choice for distribution partners and consumers alike.

² This assumes that [REDACTED].