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Re **THL/Apollo Statement of Unresolved Issues**

1. I have been asked by [] to review and comment on the Statement of Unresolved Issues (**SOUI**) in relation to the proposed THL/Apollo merger and on its client's submission on the SOUI.
2. In my view, the SOUI adopts the appropriate framework and there is a good basis for the Commission's present view to decline the clearance application.
3. Stepping back, two aspects of the merger and market context stand out in my opinion.
4. First is the size and market share of the combined entity. The data [] suggests that the merged entity would have a [] share for all motorhomes and a [] share for 4-6 berth motorhomes. These market shares, and the associated HHI values, indicate that the merged entity may gain and be able to exercise market power.
5. The second aspect that stands out is that there appear to be a number of dynamic features of the market that tend to favour a large incumbent. If this is the case, then the bare market share figures will understate the degree of market power that would be enjoyed by the merged entity.
6. I note the following points in particular:
 - (a) The environment over the next several years is likely to be challenging for a competing operator considering building up a fleet of sufficient size to compete with the merged entity. As noted in the SOUI [111]-[113], it is difficult to predict how the market will develop in the medium term as pandemic-related travel restrictions ease. But, on the demand side, operators will face uncertainty as to consumer behaviour and the risk of some form of travel restrictions being reintroduced. And, on the supply side, there are currently constraints on fleet expansion as recognised by the Commission. Accordingly, given where we are in the pandemic recovery process, it would seem difficult to be comfortable about the prospect of large-scale entry and expansion constraining the merged entity.
 - (b) Scale appears to be important in this market. The SOUI recognises the importance of fleet size and composition in relation to an operator being an attractive proposition to international wholesalers, travel agents and web consolidators ([77]-[78], [82], [116]-[117]). In addition, an operator

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seeking to compete with the merged entity is likely to face significant fixed costs in brand development and securing appropriate physical sites close to Auckland and Christchurch International Airports. Accordingly, economies of scale may be a barrier to the emergence of a true competitor to the merged entity.

- (c) The combined entity is likely to have considerable bargaining power vis-à-vis third party distribution channels. Wholesalers, travel agents and web consolidators would likely be dependent on the new entity and so have little option but to trade on its terms which may constrain the ability of these distributors to foster competing operators. See SOUI [156]-[161]. At an extreme, the merged entity may have sufficient dominance to withdraw from the current distribution channels and rely on direct bookings. If the THL/Apollo website became the default site for New Zealand motorhome rentals, then it may be very difficult for smaller operators to reach the international market.
- (d) A related point that the Commission may wish to consider is whether consumers (in particular, international tourists) face information difficulties in assessing in advance the quality of motorhome rental services in terms of comfort, reliability and back-up support. If so, there may be a natural tendency to prefer operators who are large and established. This would obviously give the merged entity a comfort barrier from potential competitors.

7. Overall, the proposed merger gives rise to significant competition concerns. The size of the combined entity and the market dynamics discussed above would seem to give rise to a very high hurdle for the applicant to overcome in order for the Commission to be satisfied that a substantial lessening of competition is not a real risk.

Yours sincerely

James Every-Palmer QC