

Cross Submission on THL's submission on SOUI

We make this submission on behalf of our client in response to the report entitled *RV Substitutability – Summary of Findings* prepared by tkp Market Research Consultants ("**Consumer Survey**") on behalf of Tourism Holdings Limited ("**THL**") that was submitted as part of THL's submission dated 31 May 2022 ("**THL Submission**") on the Commerce Commission's Statement of Unresolved Issues ("**SOUI**").

Our client notes that only a summary of tkp's findings has been published on the Commission's website. However, even from that summary, our client has concerns with the robustness of the Consumer Survey that would make it difficult for the Commission to give the results of the survey any meaningful weight in its assessment of the Merger. The UK Competition & Markets Authority has published a paper on *Good practice in design and presentation of customer survey evidence in merger cases* ("**CMA Guidance**"). Our client's view is that the Consumer Survey does not represent best practice based on the CMA Guidance.

Respondents sourced from an online panel

The respondents for the Consumer Survey were "sourced at random from an online research panel and qualified on the basis of having either hired a RV in the past 5 years or are intending to book an RV in the next 2 years" (Summary of Findings at slide 2).

Our client notes that the CMA has raised concerns with recruiting respondents from online panels on account of such individuals not being reflective of consumers in general:

*For example, evidence in the research literature suggests that those who join an online panel spend more time on the internet and engage more actively than other consumers in searching for better deals online. For a merger inquiry where channel substitution issues can be important, this could be a flaw. **The CMA tends to place less evidential weight on surveys involving customer recruitment from panels, though each case is treated on its individual merits.** (CMA Guidance at [2.29])*

Doubt as to whether the "respondents" were the decision maker

The screening question for participation in the Consumer Survey appears to have been solely whether you had hired a RV in the past 5 years or are intending to book an RV in the next 2 years. No further screening appears to have been done to ascertain whether the respondent was involved in the purchasing decision.

Our client notes that the CMA Guidance (at [3.23]) provides:

Screening questions are often used to ensure that the respondent was personally involved in the purchase decision. For example, a customer may have seen a film at a particular cinema but a friend or family member chose the cinema and booked the tickets.

The Consumer Survey (at slide 21) states that in only 7% of cases was the respondent the only member in the travel group. The Commission can therefore only be confident that 7%

of all respondents (or just 42 individual respondents) were involved in the purchasing decision. Our client submits that the views of individuals who went on a motorhome holiday but were not involved in the purchasing decision are irrelevant. Isolating who is the relevant decision maker becomes increasingly more difficult when the size of the travel group increases. In the case of the Consumer Survey:

- 19% of respondents (115 individuals) were in groups of 3;
- 18% of respondents (109 individuals) were in groups of 4; and
- 13% of respondents (79 individuals) were in groups of 5+.

Respondents are not all relevant respondents

The Commission must consider whether it is satisfied that the Merger would not have, and would not be likely to have, the effect of substantially lessening competition in a market. The Commerce Act 1986 clearly defines "market" to mean "a market **in New Zealand** for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them" (s 3(1A)). The only consumer opinions that are relevant to an assessment of the Merger are those who have hired, or are considering hiring, a motorhome in New Zealand.

The Consumer Survey reflects the views of 609 respondents. However, our client notes that closer examination reveals that the vast majority of these respondents are not relevant consumers whose views the Commission should take into account.

On slide 3, tkp provide a breakdown of the profiles of the respondents. This breakdown is reproduced below but using actual respondent numbers instead of percentages that obscure the reality of how shallow the respondent pool is.

Table 1 Country of Residence and Where Travelled

	Local	Domestic	International	Total
Australia	67	67	6	145
New Zealand	48	42	6	97
USA	48	24	6	79
UK	73	48	24	145
Germany	61	30	42	139
Total	296	218	85	605

Note: Numbers may not add up due to rounding used in the percentage breakdown provided

Our client also notes that only 85 respondents had travelled or were planning to travel, internationally. Of these there were just 11 respondents who were international visitors to New Zealand. The most relevant customer segment for this Merger (international visitors to New Zealand) are therefore almost entirely excluded from the survey results.

Instead of it being a sample size of 605 respondents, our client submits that the maximum relevant sample size the Commission should consider is just 101. Even these 101 responses are comprised of:

- 48 New Zealand residents travelling locally;
- 42 New Zealand residents travelling domestically within New Zealand; and
- 11 International residents travelling internationally to New Zealand.

Given that the results are aggregated across all 605 respondents, the Commission cannot even consider the views of the 101 respondents within the New Zealand market, and certainly cannot consider the views of the most relevant international visitors to New Zealand.

A survey of the preferences of local or domestic tourists in other markets is simply not relevant to the Merger. Even the preferences of local or domestic New Zealand tourists is of minimal value. THL and our client agree that the New Zealand market for motorhome rental has been significantly impacted due to the lack of international tourist arrivals since 2020. Our client and THL disagree on what level of international tourists will need to return to reflect the current fleet sizes and cost bases and about when sufficient numbers will return. But both THL and our client agree that it is the return of international visitors that is critical to the recovery of the New Zealand motorhome rental market. The survey results show the Commission almost nothing in respect of these consumers.

There are significant differences in circumstances, preferences and decision making between local/domestic and international tourists renting motorhomes. This is a point that THL has itself already made to the Commission in the context of the Merger:

“5.16 While New Zealand’s borders remain substantially closed the industry will continue to be significantly impacted by COVID-19. Operating a rental business in the domestic market poses a number of challenges for the industry, relative to serving the international market.

5.17 Replacing international bookings with domestic bookings does not provide the same level of returns because:

(a) domestic bookings are often clustered around the same periods, being long weekends and school holidays, with minimal demand during the shoulders of those peak periods. For example, New Zealanders have little inclination to holiday in November or February, given that they will usually have planned a holiday for, or have just returned from holiday, over the Christmas/New Year period. Those months are traditionally high demand periods for international tourists;

- (b) *domestic customers are generally willing to pay less, as they can use their personal vehicle at no additional cost for travel, combined with the use of other forms of accommodation such as caravans, hotels, motels and holiday parks for cabins or tenting; and*
- (c) *domestic bookings are, on average, 60% shorter in duration than international bookings. Consequently, an operator has to facilitate a greater number of pick-ups, drop offs and cleans and preparations, resulting in greater operational expenditure (labour, cleaning, etc.) per hire day on average.*¹

These differences that THL acknowledges between local/domestic consumers and international visitors are highly relevant to the conclusions THL seeks to draw from the survey. You would expect local/domestic renters to be more willing to consider smaller campervan options (or alternative accommodation options) than international visitors, because they are more price sensitive, are travelling for shorter durations and are closer to other support if things go wrong. For shorter duration travel in your home country, the additional comfort, amenities and protection of a large motorhome are likely to be less important. You would expect a survey of these consumers to show greater flexibility on this. THL admits in the quote above that domestic tourists are inherently more likely to favour “other forms of accommodation such as caravans, hotels, motels and holiday parks for cabins or tenting.”

Even if the respondents in just the New Zealand market could be isolated, at 101 respondents, our client’s view is that it is difficult to place any meaningful weight on their responses. These 101 respondents would still skew the results overwhelmingly towards local/domestic travellers in New Zealand though, with the associated impact on any conclusions. It would be impossible to place any meaningful weight on just the international travellers to New Zealand (just 11 respondents) and very difficult to try and extrapolate conclusions for New Zealand based on international travellers across all markets (just 85 respondents). The CMA Guidance (at [2.31] and [2.32]) states that:

... the CMA aims (as a general rule) to achieve a minimum of 100 completed interviews with any pre-defined group of interest for rigorous analysis (eg if analysis is required at an individual outlet level, a minimum of 100 interviews per outlet is needed). If there are other pre-defined sub-populations of interest within a more general population of customers, then the same threshold applies.

The target of 100 is not always met. Below this threshold, the CMA puts less reliance on statistical inferences about corresponding populations and will interpret and report results in a way that cannot be automatically applied to the whole population.

While the survey results provide some interesting analysis of local and domestic motorhome rental across a number of international markets, they are of little value in assessing how international tourists to New Zealand (the critical part of the market for this Merger) make purchasing decisions in respect of motorhome rentals.

¹ THL Clearance Application 10 December 2021, para 5.16-5.17.

A material sub-group of interest is missing from the sample characteristics

A key issue in the SOUI was the closeness of competition between THL and Apollo.

The CMA Guidance (At [3.41] and [3.42]) notes that:

In many merger cases, the main objective of the survey is to assess the closeness of competition between the Parties and their competitors. A key element of this assessment is the inclusion of a suite of questions asking customers what they would have done under various hypothetical scenarios on a previous purchase occasion from one of the Parties. The most common of these scenarios is that a given product/service/supplier (or a given supplier's outlet or website) was not available (forced diversion), or a product/service was offered at a higher price (price diversion).

As indicated before, these questions should normally be asked in relation to the last purchase occasion, to put them in a specific and meaningful context.

The THL Submission devotes an entire section (section 4) to rebutting the closeness of competition between THL and Apollo. None of the arguments advanced appear to be supported by evidence from the Consumer Survey. Our client considers this is perplexing, because if THL was so confident that consumers did not see THL and Apollo as being close competitors, why was this not included within the scope of the Consumer Survey? Or is it the case that, such a line of questioning was included as part of a robust consumer survey but that the results were unfavourable so omitted from the findings?

The Consumer Survey (at slide 12) notes that 36% of respondents would switch provider to stay with the same vehicle if their preferred option was unavailable. Our client submits that if a respondent's preferred supplier was THL or Apollo and the only other available supplier for their preferred motorhome was Apollo or THL these respondents would become a captive audience for the combined entity.

The Consumer Survey (at slide 26) also shows that 70% of respondents only visited 3 or fewer websites when booking. Our client considers that the obvious follow up question would be which websites did they visit to ascertain how many consumers only look at THL and Apollo's offerings.

Consumer Survey evidence undermines the NERA critical loss analysis

The Consumer Survey (at slide 14) shows that faced with a 5% price increase, 45% of consumers (and 47% of consumers who have travelled in Australia/New Zealand) would just pay the inflated price. Furthermore:

- 15% would look for the same product at another RV supplier, which our client submits is most likely to be Apollo or THL when considering larger motorhomes given the closeness of competition between them; and
- 17% of consumers would look for an alternative RV – these consumers may therefore also be retained by THL following a price increase.

On top of that, 11% of consumers whose first choice was not to immediately absorb the price increase, would absorb it if their first option failed.

Faced with an even greater 10% price increase, the Consumer Survey (at slide 16) states that 35% of consumers would pay the extra amount.

Our client considers that this evidence suggests that there is at least a material proportion of demand in the market that is relatively price inelastic (at least in the 5-10% price increase range that the Commission ordinarily adopt).

Our client submits that these statistics are even more striking when put in the context of the CMA's warning about respondents drawn from online panels spending "more time on the internet and engage more actively than other consumers in searching for better deals online". This suggests that the true proportion of consumers who would absorb the price increase would be much higher than the Consumer Survey indicates.

The NERA submission on the SOUI does not appear to reflect the results of the Consumer Survey in its estimation of demand elasticity with NERA observing (at [13]) that:

The residual demand elasticity can be estimated econometrically, but as is often the case we do not have sufficient data to undertake a rigorous econometric analysis.

From our client's perspective, the fact that THL's own economists are not prepared to rely on the robustness on the Consumer Survey further demonstrates why the Commission should not give any weight to it.

The relative factors for choosing a motorhome provider

The Consumer Survey (at slide 25) attempts to provide some insight into why consumers select a certain motorhome provider in an attempt to cast doubt on the proposition that THL and Apollo's size, airport locations, and international reach is not important to consumers. However, our client considers that this analysis is flawed:

- The questions are subject to obtaining bias results. A freeform box where respondents could independently state their most important factor would lead to more reliable data. For example, if the most important factor for a respondent was having staff that spoke their language and produced materials in their language or simply lowest price, there is no option available. Instead they are forced to select a different response, and so the data is not comparing apples with apples.
- The Consumer Survey states that "respondents were less likely to select 'being an international business' or 'located at the airport' as the #1 factor in their decision which provider to book with". This is not surprising given the sample size is biased towards local and domestic travellers. Just 14% of respondents were international travellers who are likely to disproportionately desire these aspects. Despite this 8% of respondents' first priority was "located at the airport" and 7% of respondents' first

priority was "is an international business". This suggests that virtually all international travellers found one of these factors to be the most important factor. This is an important customer segment that these factors are clearly relevant to.

- The questions suffer from what is known as "acquiescence bias, where the customer thinks they should agree with a statement included in the question and therefore does so" (see CMA Guidance at [3.11(a)]). The fact that the leading response was "offers breakdown support" is a prime example. It invites the respondent to be seen as being responsible and having a plan for if something goes wrong. In reality, consumers planning for holidays are overwhelming in a positive mood and underestimate the risk of something going wrong.

Concluding remarks

For the reasons above our client considers that:

- The Consumer Survey's methodology was flawed and is, therefore, inherently unreliable and no weight should be placed on it by the Commission; and
- Even if the Commission considered the Consumer Survey to be sufficiently robust, the results do not support a finding that the Merger would not substantially lessening competition.

Based on the totality of the evidence available to the Commission, our client considers that the Commission must decline to grant clearance.