

Statement of Issues

THL/Apollo

11 March 2022

Introduction

1. On 13 December 2021, the Commerce Commission registered an application from THL Group (Australia) Pty Limited, a subsidiary of Tourism Holdings Limited (THL) seeking clearance to acquire 100% of the shares in Apollo Tourism & Leisure Ltd (Apollo) (the Proposed Acquisition).¹
2. To clear an application we must be satisfied that an acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a New Zealand market.
3. This Statement of Issues (Sol) sets out the potential competition issues we have identified following our initial investigation. This is so THL and Apollo (the Parties) and other interested parties can provide us with submissions relating to those concerns.
4. In reaching the preliminary views set out in this Sol, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition issues may arise, as the investigation continues.

The concerns we have been testing

5. As outlined in this document the Parties are involved in the rental of motorhomes, the rental of campervans, the sale of motorhomes and campervans and the operation of peer-to-peer platforms for rental of motorhomes and campervans. In reaching our preliminary views on the competition effects of the Proposed Acquisition in relation to the rental of motorhomes and campervans, we have assessed these separately. We outline in paragraph 21 our definitions of motorhomes and campervans, and unless otherwise indicated, references to motorhomes throughout the Sol are to motorhomes as we define them.

¹ A public version of the Application is available on the case register on our website at https://comcom.govt.nz/data/assets/pdf_file/0017/273203/THL-and-Apollo-Clearance-application-10-December-2021.pdf.

6. At this stage, our primary concern is considering whether the Proposed Acquisition would substantially lessen competition due to horizontal unilateral effects for the supply of motorhome rental services in New Zealand.
7. We are also continuing to consider whether the Proposed Acquisition would substantially lessen competition due to an increase in the potential for the merged entity and its rivals in the supply of motorhome rental services to coordinate their behaviour.
8. We explain our reasons below and invite submissions on our preliminary views.
9. We have considered whether the Proposed Acquisition is likely to result in a substantial lessening of competition in the supply of campervan rental services or the manufacture/sale of motorhomes and campervans. Our current view is that concerns are unlikely to arise in this regard. Given this we do not consider these again in this document.

Process and timeline

10. We have agreed with the Parties to extend the period in which to make a decision from the initial 40 working day statutory timeframe until 14 April 2022.
11. We would like to receive submissions and supporting evidence from the Parties and other interested parties on the issues raised in this Sol. We request responses by close of business on **24 March 2022**, including a confidential and a public version of any submission made. Please read the instructions for making a submission, which can be found starting at paragraph 116 of this document.
12. All submissions received will be published on our website with appropriate redactions.² All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on **31 March 2022**.
13. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with us at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

The Parties

14. The Parties both supply motorhome and campervan rental services to domestic and international tourists in New Zealand.

² Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each of the pieces of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

15. THL is a global tourism company, whose shares are listed on the New Zealand stock exchange. THL's business in New Zealand includes the manufacture and sale of new (and used) motorhomes,³ the rental of motorhomes and campervans and the operation of online 'peer-to-peer' platforms that enable motorhome, campervan and other recreational vehicle owners (together, RV owners), including private individuals, to rent out their vehicles. THL offers motorhome rental brands under its Maui, Britz and Mighty brands.
16. Apollo is a global tourism company, whose shares are listed on the Australian Securities Exchange. Apollo's business in New Zealand includes the sale of new (and used) motorhomes and the rental of motorhomes and campervans. Apollo's motorhome rental brands include Star RV, Apollo and Cheapa Campa (Apollo has a further campervan only rental brand called Hippie Camper). Apollo is also a minority shareholder in Camplify Holdings Limited (Camplify) which operates an online peer-to-peer RV rental platform.
17. THL's Proposed Acquisition of Apollo is to be by way of a scheme of arrangement under the Corporations Act 2001 (Australia).
18. Separate to the Proposed Acquisition, THL has entered into a conditional agreement to sell its online peer-to-peer RV rental platforms businesses (Mighway and SHAREaCAMPER) to Camplify. We registered an application from Camplify for this transaction on 11 January 2022 and the current due date for a decision on that matter is 15 March 2022.
19. After completion of both these transactions (if cleared), THL would be likely to ultimately hold 22-23% of the shares in Camplify and have a seat on Camplify's Board of Directors.⁴ As part of the Proposed Acquisition, Camplify and THL would also enter an ongoing strategic and commercial relationship. This relationship will involve:⁵
 - 19.1 THL providing vehicle management services to Camplify RV owners in New Zealand and Australia; and
 - 19.2 Camplify and THL working together on opportunities to grow each other's businesses, including via cross-promotional marketing benefits such as THL marketing Camplify's peer-to-peer RV rental platform.

Background to the industry

20. The term RV is used broadly in the Application to cover a variety of vehicles from towable caravans, campervans, and motorhomes which sleep between 2-6 people (2-6-berth options). These may be as simple as a sleeper-van with a built-in mattress

³ Used motorhomes are sold at the end of their rental life.

⁴ The Application at [6.5].

⁵ Camplify/Mighway and SHAREaCAMPER application at [3.3], Camplify ASX Announcement (25 October 2021) and THL NZX announcement (26 October 2021).

and separate gas stove, through to larger vehicles with a built-in kitchenette and a fully plumbed shower and toilet.⁶

21. For the purposes of this document and our assessment of the Proposed Acquisition, a motorhome is characterised as a purpose-built vehicle constructed on a chassis approximately 7m in length, and a campervan as a converted van-type vehicle, approximately 5m in length (eg, Toyota Hiace). 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).
22. The Parties rent both motorhomes and campervans. Their vehicles range from 2-6 berth models, most of which are certified self-contained.^{7 8} The traditional rental operator competitors to the Parties, as outlined in the Application, supply motorhomes, campervans and sleeper-vans (converted Toyota Estimas, or similar, that are typically not self-contained). A wider range of RVs are available for rent through peer-to-peer platforms, which offer towable vehicles (eg, caravans and pop-up trailers) as well as smaller “hand-crafted” campervans and traditional motorhome and campervan options.

Traditional rental operators

23. The Application describes the Parties as traditional rental operators and defines such operators as having their own fleet of motorhomes available for rent, typically with physical branches and set locations for vehicle pick up and drop off.
24. Other major suppliers of traditional motorhome and campervan rental services in New Zealand include:
 - 24.1 motorhome rental operators, including nationwide operators of larger fleets such as McRent, Wilderness, Pacific Horizon and Wendekreisen,⁹ plus several smaller motorhome operators, as noted in the Application, many of which are regionally based;¹⁰ and

⁶ For further details of the most commonly supplied motorhomes see the Application at Appendix A.

⁷ Commerce Commission interview with THL (8 February 2022) and Commerce Commission interview with Apollo (15 February 2022). As at 31 December 2021, THL’s rental fleet in New Zealand included [] vehicles with no toilet or shower facilities ([]% of its total rental fleet of []). Currently Apollo’s rental fleet in New Zealand includes [] campervans ([]% of its total rental fleet of []). E-mail from Jones Day (on behalf of Apollo) to the Commerce Commission (24 February 2022) and e-mail from Minter Ellison Rudd Watts (on behalf of THL) to the Commerce Commission (21 February 2022).

⁸ The New Zealand Government has also announced that it will be introducing legislation this year providing for tighter freedom camping rules. Under the proposed legislation, vehicle-based freedom campers will be required to use a certified self-contained vehicle when they stay on local council managed land, except at a designated site. Such vehicles will require a fixed toilet to be certified self-contained.

⁹ Wendekreisen and Wilderness also offer campervan options within their fleets.

¹⁰ The Application at [5.34].

- 24.2 campervan rental operators, including Jucy, Travellers Autobarn, Wicked Campers, Spaceships, Escape Rentals, Mad Campers and Lucky Rentals.

Impact of COVID-19

25. The Parties, and the broader motorhome rental industry, have been significantly affected by the COVID-19 pandemic. THL has seen its revenue streams largely disappear and it has been forced to take measures to control its costs, including substantially reducing its rental fleet size (from around 2500 vehicles in June 2020 to around 1500 in June 2021 and []).¹¹ Similarly, Apollo has been impacted by COVID-19 and the closure of New Zealand's borders to international tourists and it has reduced the size of its rental fleet (from 900 vehicles in June 2020 to 700 in June 2021 and around []).¹²
26. In addition, the Parties and others in the industry are facing supply chain difficulties as a result of COVID-19, with lockdown restrictions causing factory shutdowns for some of the largest global chassis manufacturers, including Mercedes-Benz, who supplies the majority of the chassis for THL's New Zealand rental fleet.¹³
27. The COVID-19 pandemic may have a significant impact on how we assess the competitive impact of the Proposed Acquisition, including how we estimate market shares and consider the timeframe for evaluating the effects of the Proposed Acquisition.
28. We invite submissions on how we should assess the competitive impact of the Proposed Acquisition in the context of the pandemic and the time that we should apply to our assessment.

Sales channels for motorhome rentals – pre- and post-COVID 19

29. Prior to COVID-19, motorhomes were generally rented through the following channels:¹⁴
- 29.1 tour wholesalers who sell pre-purchased rentals to international tourists (eg, Flight Centre and Trailfinders in the United Kingdom);
- 29.2 online travel agents (also known as web consolidators or OTAs), which are third party-operated websites that facilitate bookings with traditional rental operators like THL (eg, Expedia and RV-rental specific companies like GoSee);
- 29.3 direct online sales; and

¹¹ The Application at [4.18], THL Investor Presentation – Proposed merger of THL and Apollo (10 December 2021) at 16 and e-mail from Minter Ellison Rudd Watts (on behalf of THL) to the Commerce Commission (21 February 2022).

¹² The Application at [4.28] and THL Investor Presentation – Proposed merger of THL and Apollo (10 December 2021) at 16.

¹³ The Application at [5.21].

¹⁴ The Application at [5.3].

29.4 walk-up sales.

30. At present, and as a consequence of COVID-19, there are no international tourists visiting New Zealand. Bookings by domestic tourists are made primarily through direct online sales.¹⁵
31. We consider that once the border restrictions are relaxed and international tourists return to New Zealand post-COVID-19, sales of motorhome rentals are likely to revert to being made using all the channels referred to in paragraph 29.

Peer-to-peer rental platforms

32. In addition to traditional motorhome rental operators, customers can also rent motorhomes through peer-to-peer rental platforms. Peer-to-peer platforms differ from online agents (and the other sales channels referred to above) and operate like the Airbnb model for accommodation. Peer-to-peer platforms have listings of motorhomes available for rent, but also a wider range of campervans and RVs.
33. The motorhomes listed for rent on peer-to-peer platforms are mainly motorhomes owned by private individuals, who use the platforms to rent out their motorhome when they are not in use. However, some small motorhome rental operators also list their motorhomes for rent on peer-to-peer platforms, in addition to using other sales channels. The prices at which motorhomes are available for the rent on peer-to-peer platforms are generally set by of the owner of the motorhome, not the platform operator.¹⁶
34. Because peer-to-peer platforms list motorhomes owned by private individuals, they list motorhomes for rent at a wide range of locations across New Zealand. This is different to traditional rental operators and online agents (discussed above), that tend to offer motorhomes for rent mainly from the international arrival ports of Auckland and Christchurch.
35. The following peer-to-peer platforms currently have listings of motorhomes available for rent in New Zealand: Highway and SHAREaCAMPER (both owned by THL), Outdoorsy and Camplify.¹⁷

The relevant markets

36. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also

¹⁵ The Application at [5.5].

¹⁶ Although platform operators commonly set and charge rental customers and/or owners fees for using their platforms to rent motorhomes.

¹⁷ Quirky Campers also operates a peer-to-peer platform renting out campervans that have been specially crafted by their owners prior to listing (see [Campervan Hire NZ - Quirky Campers - Home of Handmade Campervans](#)).

consider products and services that fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.

37. When assessing relevant markets, we consider:
- 37.1 whether customers could easily switch to alternative products or services in response to a price increase (known as ‘demand side’ substitution); and
 - 37.2 whether suppliers could easily switch to producing or supply different products (known as ‘supply side’ substitution).

The Parties’ view of the markets

38. THL submits that the relevant market for the purpose of assessing the Proposed Acquisition is the national market for ‘motorhome rentals’, including motorhomes and campervans.¹⁸
39. THL also submits that:
- 39.1 there is a large degree of demand- and supply-side substitutability across the different sizes, types and quality of motorhomes and campervans;¹⁹ and
 - 39.2 peer-to-peer platforms for the rental of privately-owned RVs operate in the same market.²⁰
40. Separately, THL submits that there are many other accommodation and transport options available for tourists (eg, hotels and rental cars) such that there may be a broader ‘tourism market’.²¹ We consider these as out-of-market constraints and discuss these further at paragraph 101.

Our current views of the relevant markets

41. For the reasons set out below, our preliminary view is that the relevant market for assessing competitive effects of the Proposed Acquisition is the national market for the supply of motorhome rental services.

Motorhome and campervan rental services

42. In 1999, the Commission considered an application from THL for clearance to acquire the assets, liabilities and businesses operated by Britz New Zealand Rentals Limited and Backpacker Campervans Limited. In its decision, the Commission defined the relevant market as a national market for motorhome and campervan rentals.²²

¹⁸ The Application at [5.31].

¹⁹ The Application at [6.14] and the NERA report on behalf of Parties provided to the Commerce Commission (18 February 2022).

²⁰ The Application at [5.35].

²¹ The Application at [5.27(b) and (c)] and 5.30].

²² Tourism Holdings Limited and Britz New Zealand Rentals Limited and Backpacker Campervans Limited (Commerce Commission Decision 368, 13 August 1999) at [26].

43. However, we define markets on a case-by-case basis after taking into account all the factors described in paragraph 36.
44. We consider that, for the purposes of assessing the Proposed Acquisition, the relevant market is no wider than motorhome and campervan rentals, and that it may be narrower.
45. Based on the evidence currently before us we consider there are likely to be separate product markets for the supply of:
- 45.1 motorhome rental services; and
- 45.2 campervan rental services
46. 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 rental operators have indicated that there are different customer bases and product propositions for motorhome and campervan rentals.²³
47. On the supply side, there is evidence that traditional campervan rental businesses commonly structure themselves, and use capital differently, to traditional motorhome rental businesses. 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).²⁴ This build, rent, sell approach is a core part of the business model of each of the Parties.
48. In comparison, 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. This suggests that campervan rental operators may find it relatively more costly and difficult to switch to supplying motorhomes.²⁵
49. We are still considering the precise scope of the relevant market(s) and invite submissions on:
- 49.1 the extent to which there is substitution between motorhomes and campervans for renters; and
- 49.2 the ease (or otherwise) with which traditional campervan rental operators could switch to start offering motorhomes for rent.

Quality and size of motorhomes

50. Our preliminary view on the quality and size of motorhomes is consistent with submissions made by the Parties. On the basis of the information currently before

²³ See for example [].

²⁴ See for example [].

²⁵ See for example [].

us, we consider that different quality motorhomes (budget, premium) and different sized motorhomes (two, four, six-berth) and are likely to be in the same market.

51. The current evidence indicates that the quality of motorhome rentals tends to be linked to the age of vehicles, so that supply-side substitution between vehicles of different quality is a matter of holding onto a motorhome for longer (to move into a more budget range), or sourcing newer motorhomes (for more premium rentals).²⁶
52. Aside from the Parties, most traditional motorhome rental suppliers operate a single ‘brand’ within their respective tiers dependent on the age of the vehicle.
[

] ²⁷ This is a point of difference
[
], and differentiates them from other traditional operators who tend to operate under a single brand.²⁸
53. In terms of size of vehicle, most traditional motorhome rental operators appear to have fleets which cover a range of berth-sizes. Unlike the structural challenges discussed above that campervan operators face when seeking to expand into motorhome rentals, existing motorhome rental operators seem likely to have the business structures in place to cover motorhomes of all berth-sizes. Namely, existing motorhome rental operators will be unlikely to require significant development of manufacturing facilities or further expansion of dealership networks to start supplying motorhome rentals with a different berth-size.
54. At this stage, we have seen limited evidence of substitution between rental customers on these factors, however some degree of switching between motorhome rental quality for customers appears likely.
55. We invite submissions on our preliminary views.

Peer-to-peer motorhome listings and traditional rental operators

56. From the perspective of some rental customers, the motorhomes listed for rent on peer-to-peer platforms are likely substitutes for the motorhomes available for rent from traditional rental operators. Our preliminary view is that the motorhomes

²⁶ See for example

[
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²⁷ Commerce Commission interview with THL (8 February 2022) and Commerce Commission interview with Apollo (15 February 2022).

²⁸ Commerce Commission interview with THL (8 February 2022) and Commerce Commission interview with Apollo (15 February 2022). Public investor material of THL and Apollo further highlights the importance of their build, rent, sell business model for their businesses, including THL Investor Presentation – Proposed merger of THL and Apollo (10 December 2021) at 14.

rented via peer-to-peer platforms are rented in the same market as that in which traditional rental operators rent motorhomes.²⁹

57. As part of our competition analysis, we consider the degree of constraint that the motorhomes listed for rent on peer-to-peer platforms provide on traditional rental operators and would provide on the merged entity. In doing so, we consider:
- 57.1 how the prices at which motorhomes are rented via peer-to-peer platforms compares to the prices of traditional rental operators;
 - 57.2 the extent to which traditional motorhome rental operators are competing for the same customers that rent motorhomes through peer-to-peer platforms; and
 - 57.3 other factors that may influence the constraint that the motorhomes listed for rent on peer-to-peer platforms provide on traditional motorhome rental operators.
58. An alternative approach would have been to exclude the motorhomes listed for rent on peer-to-peer platforms from the market that traditional rental operators supply motorhomes for rent. If we took this approach, then we would assess the constraint that the motorhomes listed for rent on peer-to-peer platforms would provide from outside the market.
59. We invite further submissions on this issue.

Geographic market

60. Our current view is that the geographic scope of any market for motorhome rentals is likely to be national.
61. The evidence available to us so far indicates that most traditional motorhome rental businesses only have depots in Auckland and Christchurch, but offer vehicles for rent to customers located throughout New Zealand. Customers are able to make one-way trips, where vehicles are picked up in one location and dropped off in another.

With and without scenarios

62. Assessing whether a substantial lessening of competition is likely requires us to:
- 62.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the merger, often referred to as the factual) with the likely state of competition if it does not (the scenario without the merger, often referred to as the counterfactual); and

²⁹ For clarity, we note that platform operators do not operate in this market in competition with traditional rental operators; rather it is the owners of motorhomes listed on peer-to-peer platforms that are operating in this market alongside traditional rental operators. This distinction is discussed further in the Camplify/Mighway and SHAREaCAMP application at [5.19].

- 62.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.
63. With the Proposed Acquisition, THL would acquire 100% of the shares in Apollo and would therefore acquire a range of motorhomes under the Apollo, Cheapa Campa and Star RV brands (and campervans under some of those brands and the Hippie Camper brand).
64. Without the Proposed Acquisition, the Parties submit that the status quo would apply (ie, that THL and Apollo would continue to operate as two independent businesses).³⁰
65. At this stage, we consider that the likely counterfactual is the status quo.
66. We invite submissions on the appropriate without the Proposed Acquisition scenario.

Competition concern: horizontal unilateral effects

67. Horizontal unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors, if any) such that the merged entity can profitably increase price above (and/or reduce quality below) the level that would prevail without the merger.
68. THL submits that the Proposed Acquisition will not substantially lessen competition in the supply of motorhome (or campervan) rental services due to the vigorous competition provided, amongst other things, by:
- 68.1 existing and potential traditional motorhome and campervan rental operators;³¹ and
- 68.2 privately-owned vehicles available for rent on peer-to peer platforms.³²
69. THL also submits that the merged entity will continue to be constrained by:
- 69.1 other RV rental accommodation and transportation options,³³ and
- 69.2 the countervailing power of wholesalers.³⁴
70. For the reasons set out below, we are not currently satisfied that the Proposed Acquisition would not be likely to substantially lessen competition in the supply of motorhome rental services in New Zealand in the medium term.

³⁰ The Application at [3.10]-[3.12]

³¹ The Application at [5.33]-[5,34].

³² The Application at [5.35].

³³ The Application at [5.28]-[5.29].

³⁴ The Application at [6.41]-[6.43].

71. We discuss first the constraint from traditional motorhome rental operators before then discussing the constraint provided by motorhomes rented on peer-to-peer platforms and other constraints.

Constraint from traditional rental operators

72. On the basis of the evidence currently before us, we consider that while the merged entity is likely to be constrained by excess capacity in the short term (ie, during the COVID-19 pandemic), the constraint from other existing motorhome rental operators (actual and potential) is likely to be insufficient in the medium term (ie, after the COVID-19 pandemic) to effectively constrain the merged entity.

Competition in the short term (during the COVID-19 pandemic)

73. The evidence we have seen to date indicates that in the short term (while demand for motorhome rentals remains subdued because of COVID-19), there may be sufficient excess capacity in the motorhome rental market to constrain the merged entity. We have also seen evidence of short-term price competition, including following the introduction by THL of its ‘get moving’ promotion, when THL offered significant discounts for its motorhome rental fleet, starting from \$29 per day.³⁵
74. Most traditional motorhome rental operators have sold down their fleets during the last two years as a result of decreased demand during the pandemic.³⁶ However, until international tourism returns the motorhomes available for rent will continue to significantly exceed demand.

Competition in the medium term (after the COVID-19 pandemic)

75. The key competition concerns that we foresee from the Proposed Acquisition are likely to emerge in the post-pandemic period, once international tourism returns to pre-pandemic levels. Based on our enquiries to date, this appears likely to occur within the medium term (the next three years), with the gradual removal of travel restrictions and the return of international flights (and tourism) to New Zealand.³⁷ Most traditional motorhome rental operators have indicated that they do not expect to exceed pre-pandemic fleet levels within this period (ie, they expect to be back to where they were pre-COVID-19 within about three years).³⁸
76. The Parties appear to be each other’s closest competitor in the supply of motorhome rental services. This is because the Parties operate fleets of similar size, range of quality and size, and geographic coverage.
77. Our preliminary view is that the merged entity would continue to have by far the largest motorhome rental fleet.³⁹ Based on the Parties’ estimates and other evidence

³⁵ The Application at [4.19].

³⁶ See for example [].

³⁷ See for example [].

³⁸ See for example Apollo 2021 AGM Presentation, THL 2021 AGM Address and [].

³⁹ Submission received from Bay of Islands Campers in response to the Commerce Commission’s Statement of Preliminary Issues (12 February 2022).

before us, the merged entity would have a high market share of motorhome rentals (at least []% by pre-COVID fleet size, while the Parties' next closest remaining competitors would have about []% each).

78. Our preliminary view is that the competitive constraint provided by other motorhome rental operators (eg, Wilderness, McRent, Wendekreisen and a small number of other operators) will be insufficient to effectively constrain the merged entity. These other existing motorhome rental operators have significantly smaller fleets and are unlikely to be strong competitors to the merged entity even if and when they can return to pre-COVID-19 fleet size levels.⁴⁰ As we discuss further below, we consider that they are unlikely (collectively or individually) to expand to the extent necessary to constrain the merged entity.

Constraint from new entry and expansion appears insufficient

79. THL submits that there are low barriers to entry and expansion in the motorhome rental market, including:
- 79.1 no specific legislative or regulatory requirements;⁴¹
 - 79.2 new and used vehicles are readily available;⁴² and
 - 79.3 a new entrant could readily enter on a small scale.⁴³

Conditions of entry/expansion

80. We consider that there are several entry and expansion conditions that are likely to prevail in the short-term, such as uncertain demand, supply chain shortages, and limited access to capital. We do not anticipate any operators looking to enter or expand while international borders remain closed. We expect entry and expansion conditions to ease in the next three years as demand increases with the return of international tourism.
81. The conclusion of the COVID-19 pandemic, and return of demand for motorhome rental services, is likely to encourage small-scale entry (eg, up to around 20 vehicles), and potentially expansion by existing traditional motorhome rental operators beyond pre-pandemic fleet levels. However, we are not currently satisfied that large-scale entry and expansion to the extent necessary to constrain the merged entity is likely in the medium term. We consider that such entry and expansion is likely to remain difficult during this period due to:
- 81.1 the need to match motorhome rental fleet sizes with consumer demand for motorhome sales (which varies seasonally);

⁴⁰ Submission received from Bay of Islands Campers in response to the Commerce Commission's Statement of Preliminary Issues (12 February 2022).

⁴¹ The Application at [6.34].

⁴² The Application at [6.35].

⁴³ The Application at [6.35].

81.2 ongoing supply constraints;⁴⁴

81.3 the need to establish distribution channels; and

81.4 the capital requirements for large-scale entry.

82. We consider that ongoing supply constraints in the form of likely difficulties in sourcing new vehicles and parts, together with the requirement to establish links with, for example, distribution channels are likely to operate as barriers to new entrants. 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 that investors and lenders may be reluctant to invest in any tourism activities which have been significantly affected by the COVID-19 pandemic.

83. Some market participants identified the need to establish distribution channels as a barrier to entry/expansion.⁴⁵ Some expressed concerns about the potential for the merged entity to use its combined bargaining power to foreclose rival motorhome rental operators from access to wholesalers, travel agents and/or web consolidators (suggesting a strategic or behavioural barrier).^{46 47} We are still considering these concerns (including whether anything would change with the Proposed Acquisition) and invite further comment on this point.

Likelihood of entry/expansion

84. Although we consider that none of the above conditions of entry/expansion are likely to be insurmountable, together they may amount to a major impediment for any party intending to enter or expand, and to the likelihood of entry or expansion which would constrain the merged entity.

85. For entry or expansion to constrain the merged entity, our preliminary view is that 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. This is because operators with only a small number of motorhomes available can necessarily only pose a limited constraint – they may compete vigorously on price or service but once their fleet capacity is booked out, any constraint they pose on the merged entity falls away. The scale of necessary entry or expansion would not need to be to the same extent as

⁴⁴ []

⁴⁵ See for example [].

⁴⁶ In the pre-pandemic period, [] of THL motorhome rentals were generated through international wholesalers and online agents. [] of Apollo’s bookings in FY21 were made through these channels. THL has a [] exclusive and preferred supply agreements with agents and wholesalers.

⁴⁷ See for example [].

the merged entity, but would need to be substantially greater than the size of most existing motorhome rental operators.

86. At this time, we have insufficient evidence to be satisfied that existing motorhome rental operators are likely to expand on a large scale (even in an incremental manner), or that other parties⁴⁸ have plans to enter the motorhome rental market. The only example in the last ten years, of which we are aware, of entry into motorhome rental services of any scale has been McRent. Additionally, we note that Jucy attempted to enter the motorhome rental market in 2015 but subsequently withdrew [].⁴⁹
87. On the basis of the available evidence, we consider that the prospect of an existing or potential competitor entering or expanding on a sufficient scale to constrain the merged entity is unlikely in the time frame we are considering (ie, within the next three years). However, we are continuing to test whether the combined entry and expansion by a few motorhome rental operators could provide sufficient constraint.
88. We welcome submissions on this preliminary view.

Constraint from motorhomes rented on peer-to-peer platforms

89. We now consider the degree of constraint that the motorhomes listed for rent on peer-to-peer platforms provide on traditional rental operators and would provide on the merged entity.
90. THL submits that, in addition to facing vigorous competition from existing motorhome operators and constraints from excess capacity in the marketplace as a result of COVID-19, the merged entity will continue to be constrained by competition from privately owned vehicles available to rent through peer-to-peer platforms.⁵⁰ It submits that owners on peer-to-peer platforms tend to price lower than traditional rental operators during peak seasons and benefit from the absence of fixed overheads compared to traditional operators. THL further submits that, globally, peer-to-peer listings have increased substantially, with the potential to do so in the New Zealand market. It submits that peer-to-peer platforms have significant capacity for growth both from there being a number of privately owned RVs in New Zealand not currently listed on a peer-to-peer platform, and from the potential for a major international peer-to-peer platform operator to expand in or enter the New Zealand market.⁵¹
91. Our preliminary view is that the 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.

⁴⁸ Such parties could include traditional campervan rental operators already operating in New Zealand or overseas motorhome rental operators.

⁴⁹ [].

⁵⁰ The Application at [1.3].

⁵¹ The Application at [6.22].

Pricing

- 92. Evidence indicates that the prices at which motorhomes are rented via peer-to-peer platforms may at times be cheaper than the prices of traditional rental operators but can also be more expensive than traditional rental operators. We have been told that private motorhome owners that list their motorhomes for rent via peer-to-peer platforms often list them for rent at a flat price year round, in contrast to traditional rental operators whose pricing will fluctuate based on supply and demand (and in peak and off peak seasons).⁵² At times, rental customers may be incentivised to switch to renting motorhomes at cheaper prices via peer-to-peer platforms.
- 93. However, 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. Evidence indicates that traditional rental operators set their pricing primarily with reference to the pricing of other traditional rental operators (and general economic indicators), rather than based on the prices at which motorhomes are rented via peer-to-peer platforms.⁵³

Target customers

- 94. Evidence suggests that traditional rental operators may not necessarily be competing for the same customers that rent motorhomes through peer-to-peer platforms and may be focused on different customer segments.
 - 94.1 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.⁵⁴
 - 94.2 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).⁵⁵

Other factors

- 95. A number of factors may also mean that international travellers may be less likely to switch to peer-to-peer rentals. These include:⁵⁶
 - 95.1 the geographic spread of vehicle pick-up locations, which for peer-to-peer rentals can include the inconvenience of travelling to a private residence to collect a motorhome, or the motorhome only being available for rent from a

⁵² See for example [] and [].

⁵³ See for example [].

⁵⁴ See for example [].

⁵⁵ See for example [].

⁵⁶ See for example [].

location outside of an international arrival port (this may be beneficial to domestic tourists who can rent a motorhome within their local area);

- 95.2 that one-way rentals (where pick up and drop off are in different locations) are generally not available through peer-to-peer platforms;
 - 95.3 greater uncertainty around vehicle availability particularly during peak periods such as school holidays; and
 - 95.4 less flexibility and back-up support in the event of a vehicle breakdown.
96. We are also continuing to consider the extent to which the ownership interest that the merged entity would have in the peer-to-peer platform Camplify (which is, in a separate transaction, proposing to acquire THL's Mighway and SHAREaCAMPER peer-to-peer platforms) may impact on the level of any constraint.
97. We invite further views on the above.

Countervailing power of wholesalers, travel agents and web consolidators

- 98. THL submits that traditional wholesalers (who pre-purchase motorhome rental bookings and then on-sell them as part of a package) possess strong countervailing power and expects them to continue exerting such power on the merged entity.⁵⁷
- 99. We are continuing to consider the countervailing power of wholesalers, travel agents and web consolidators and the extent to which they would constrain the merged entity in the medium term. We invite further submissions on this issue.

Constraints from outside the market

- 100. THL submits that, in addition to facing vigorous competition from existing motorhome operators and constraints from excess capacity in the marketplace as a result of COVID-19, the merged entity will continue to be constrained by:⁵⁸
 - 100.1 alternative accommodation and transport options that tourists can use; and
 - 100.2 competition from traditional campervan rental operators.

Constraint from alternative accommodation and transport options

- 101. THL submits that there are several decisions faced by international tourists that act as a constraint on the New Zealand motorhome rental market. These decisions include whether to select New Zealand as a destination, choose a self-drive holiday, and then opt for a motorhome rather than numerous other accommodation and travel options available to the traveller, including hotels, rental cars, motels, and Airbnb. THL submits that consumers compare the cost of travel by motorhome to the

⁵⁷ The Application at [6.41]-[6.43].

⁵⁸ The Application at [1.3].

cost of alternative transport and accommodation options (particularly a rental car and motel/hotel package) before selecting their travel option.⁵⁹

102. We acknowledge THL's submission that travellers must first choose to travel to New Zealand, and then choose between different travel and accommodation options before ultimately opting to travel via motorhome. However, to date, we have seen limited evidence of the price of motorhomes factoring into consumer decisions to travel to New Zealand and between travel options, and our preliminary view is that alternative travel and accommodation options pose only a weak constraint.
103. We invite further views on the likely impact that an increase in motorhome rental prices or a reduction in the quality of motorhome services would have on the number of international tourists who choose to travel to New Zealand and opt to travel by motorhome.

Constraint from campervan rental operators

104. While we currently consider motorhome and campervan rentals to be in separate markets, we are considering whether campervan rental operators may provide constraint from outside the market.
105. Customers looking to rent one of the Parties' cheapest 2-berth motorhome models (eg a THL Mighty motorhome or an Apollo Cheapa Campa-branded motorhome) may consider a 2-berth campervan to be an alternative. If they do, the offerings of campervan rental operators may provide a degree of constraint on the merged entity in the supply of motorhomes. However, data provided by the Parties indicates that 2 berth motorhomes in their basic brands make up only []% of their current combined New Zealand motorhome rental fleets.⁶⁰
106. Our preliminary view is that campervan rental operators would pose only a weak constraint on the merged entity in the motorhome rental market.
107. We invite further views on this issue.

Competition concern: coordinated effects

108. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all, or some, of its remaining rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across the market. Unlike unilateral effects, which can arise from the merged entity acting on its own, coordinated effects require some or all the firms in the market to be acting in a coordinated way.⁶¹

⁵⁹ The Application at [6.25]-[6.32].

⁶⁰ E-mail from Jones Day (on behalf of Apollo) to the Commerce Commission (24 February 2022) and e-mail from Minter Ellison Rudd Watts (on behalf of THL) to the Commerce Commission (21 February 2022).

⁶¹ Commerce Commission "Mergers and Acquisitions Guidelines" (July 2019) at [3.84].

THL's view

109. THL submits that the Proposed Acquisition will not result in coordinated effects as it does not enhance the ability for the Parties and other competitors to coordinate their behaviour, and that the market is not vulnerable to coordination. In particular, THL submits that:⁶²

109.1 there is a high degree of differentiation in the products and services offered by motorhome rental operators, no transparency of volumes of sales and fleet capacity; and

109.2 the Proposed Acquisition will not result in the removal of a particularly aggressive or destabilising competitor.

Our current view

110. At this stage, we are not satisfied that the motorhome rental market is not vulnerable to coordination, or that the Proposed Acquisition would not be likely to change conditions in that market to make coordination more likely, more complete or more sustainable.

111. We consider that there are market conditions that may create the conditions for coordination; for example, the small number of motorhome rental operators, the visibility of price to all market participants online, the common practice of firms web scraping the prices of rivals, and the interactions of motorhome rental operators through industry organisations and meetings. The removal of the major competitor to THL in motorhome rentals may make it easier for the merged entity to act as a market leader and tacitly coordinate prices among smaller market participants.

112. However, we have also identified some market conditions which make the market less vulnerable to coordination. These include a degree of product differentiation and the heterogeneity of firms in terms of size and cost structure.

113. We are continuing to consider the risk of possible coordination resulting from the Proposed Acquisition and invite submissions on:

113.1 the extent to which these conditions may make the motorhome rental market vulnerable to coordination; and

113.2 whether the Proposed Acquisition changes the conditions in the motorhome rental market so that coordination is more likely, more complete, or more sustainable.

Next steps

114. We are currently scheduled to decide whether or not to give clearance to the Proposed Acquisition by 14 April 2022. However, this date may change as our

⁶² The Application at [6.44].

investigation progresses.⁶³ In particular, if we need to test and consider the issues identified above further, the decision date may extend.

115. As part of our investigation, we are identifying and contacting parties that we consider will be able to help us assess the issues identified above.

Making a submission

116. We are continuing to undertake inquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further evidence and other relevant information and documents that the Parties or any other interested parties are able to provide regarding the issues identified in this Sol.
117. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference “THL/Apollo” in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **24 March 2022**.
118. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would be likely to unreasonably prejudice the commercial position of the supplier or subject of the information.

⁶³ The Commission maintains a clearance register on our website at <https://comcom.govt.nz/case-register/case-register-entries/verifone-new-zealand-smartpay-holdings-limited> where we update any changes to our deadlines and provide relevant documents.