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Statement of Preliminary Issues

Camplify/Mighway and SHAREaCAMPER

3 February 2022

Introduction

1. On 11 January 2022, the Commerce Commission registered an application (the Application) from Camplify Co (NZ) Limited, a subsidiary of Camplify Holdings Limited, seeking clearance to acquire the New Zealand assets and business of Tourism Holding Limited's (THL) Mighway and SHAREaCAMPER peer-to-peer platforms (the Proposed Acquisition).[1]

2. The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

3. This statement of preliminary issues sets out the issues we currently consider to be important in deciding whether or not to grant clearance.[2]

4. We invite interested parties to provide comments on the likely competitive effects of the proposed acquisition. We request that parties who wish to make a submission do so by **18 February 2022**.

5. 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 the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

The parties

6. Camplify and THL's Mighway and SHAREaCAMPER (together the Parties) are peer-to-peer platforms that enable motorhome, campervan and other recreational vehicle owners (together, RV owners), including private individuals, to rent out their vehicles.

7. Camplify's peer to-peer RV rental platform was established in Australia in 2015 and it launched in New Zealand in 2019. Camplify is listed on the Australian Securities Exchange.

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1 A public version of the Application is available on our website at: http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/.

2 The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

8. THL is a global tourism company, whose shares are listed on the New Zealand stock exchange. Relevant to the Application, THL's business in New Zealand includes the manufacture and sale of motorhomes, the rental of motorhomes (under brands that include Maui, Britz and Mighty) and the operation of the online peer-to-peer RV rental platforms Mighway and SHAREaCAMPER.

9. The largest existing shareholder in Camplify is Apollo Motorhome Holidays (Aus) Pty Ltd, itself a wholly owned subsidiary of Apollo Tourism & Leisure Limited (Apollo), which owned 17.8% of the shares in Camplify as at 31 July 2021.[3]

10. Separate to the Proposed Acquisition, we are currently considering an application from THL seeking clearance to acquire 100% of the shares in Apollo. After completion of both these transactions, THL is 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]

    10.1 THL providing vehicle management services to Camplify RV owners in New Zealand and Australia; and

    10.2 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.

Our framework

11. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.[6] As required by the Commerce Act 1986, we assess mergers and acquisitions using the substantial lessening of competition test.

12. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).[7] This allows us to assess the degree by which the Proposed Acquisition might lessen competition.

13. If the lessening of competition as a result of the Proposed Acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:

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[3] Camplify 2021 Annual Report at 85.

[4] THL/Apollo application at [6.5].

[5] The Application at [3.3], Camplify ASX Announcement (25 October 2021) and THL NZX announcement (26 October 2021).

[6] Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019. Available on our website at www.comcom.govt.nz

[7] *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

13.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;

13.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and

13.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser's ability to exert substantial influence on negotiations.

Market definition

14. We will define markets in the way that we consider best isolates the key competition issues that arise from the Proposed Acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.[8]

15. Peer-to-peer platforms such as Camplify, Mighway and SHAREaCAMPER are two-sided platforms that facilitate interactions and transactions between RV owners and people that want to rent RVs. Such platforms provide RV owners with a specialist online platform through which they can advertise RVs for rent, charging RV owners a commission when an RV is rented through a platform. They provide RV renters with an online platform through which they can compare RVs available for rent and rent an RV, in particular RVs owned by private individuals.

16. In the Application, Camplify submitted that the relevant markets for purposes of assessing the Proposed Acquisition are:[9]

16.1 the New Zealand market for the supply of RV rental listings and other services to RV renters (RV renters market); and

16.2 the New Zealand market for the supply of RV rental advertising and other services to RV rental owners (RV rental owners' services market).

17. We will consider whether these are the appropriate markets for considering the competition effects of the proposed acquisition.

18. In doing so, we will consider whether to define a market for each side of the RV rental platforms or a market for RV rental platforms itself. As a platform's value to the customers on one side may increase with the number of customers on another side, a firm running a platform will typically take into account the effect of its pricing decisions on each side of the platform. In these cases, we may incorporate the interdependencies in demand between different groups of customers when defining the relevant market.

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8 Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

9 The Application at [5.16].

19. In relation to any RV renters market, we will consider whether there might be narrower relevant markets for:

    19.1 motorhomes rented from traditional motorhome rental operators versus privately owned vehicles rented via online peer-to-peer RV rental platforms; and/or

    19.2 RV rentals to international versus domestic tourists.

Without the acquisition

20. We will consider what the Parties would do if the Proposed Acquisition did not go ahead. We will consider the evidence on whether the without-the-acquisition scenario is best characterised by the status quo, or whether the Parties would seek alternative options.

Preliminary issues

21. We will investigate whether the Proposed Acquisition would be likely to substantially lessen competition in any relevant markets by assessing whether horizontal unilateral or coordinated effects might result from the Proposed Acquisition. The questions that we will be focusing on are:

    21.1 unilateral effects: would the loss of competition between the Parties enable the merged entity to profitably raise prices or reduce quality or innovation by itself?[10]

    21.2 vertical effects: would the merged entity have the ability and incentive to foreclose its rivals?

    21.3 coordinated effects: would the Proposed Acquisition change the conditions in the relevant market so that coordination is more likely, more complete or more sustainable?

22. This assessment is forward-looking. It will recognise that the state and conditions of competition now may not be reflective of conditions in the future, post-COVID and once international tourists return to New Zealand. This may be particularly relevant to our assessment of the likelihood and timeframe within which competitors may expand or enter to constrain the merged entity.

Unilateral effects: would the merged entity be able to profitably raise prices by itself?

23. Unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged firm can profitably increase price above the level

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[10] For ease of reference, we only refer to the ability of the merged entity to "raise prices" from this point on. This should be taken to include the possibility that the merged entity could reduce quality or innovation, or worsen an element of service or any other element of competition, i.e. it could increase quality-adjusted prices.

that would prevail without the merger without the profitability of that increase being thwarted by rival firms' competitive responses.

24. The Parties overlap in the supply of peer-to-peer RV rental platforms that RV owners), including private individuals, use to rent out their vehicles.

The Applicant's submissions

25. In the Application, Camplify submitted that the Proposed Acquisition would not be likely to substantially lessen competition in the relevant markets due to unilateral effects.

26. In the RV renters market, Camplify submitted:[11]

26.1 there are numerous competing providers of online rental listings, and other means, by which RV renters can search for and rent an RV, including other peer-to-peer RV rental platforms (eg, Outdoorsy), traditional motorhome rental operators and other online agents; and

26.2 the prices charged by the merged entity would be constrained by the fact that it would be incentivised to continue to ensure that RV rentals available on its platforms are competitively priced compared to alternatives.

27. In the RV rental owners' services market, Camplify submitted:[12]

27.1 the merged entity would continue to be constrained by:

27.1.1 its closest competitor, Outdoorsy, which is well placed to continue to grow its market share and vigorously compete;

27.1.2 other options within the market that are available to RV owners to rent their RV (including TradeMe and social media); and

27.1.3 network effects or 'feedback loops' on peer-to-peer platforms because any increase in the fees that the merged entity charges would likely increase the cost to rent an RV through its platforms and may impact the extent to which RV renters use the platforms. This, in turn, would impact the number of owners willing to list their vehicles on the platform; and

27.2 barriers to entry and/or expansion into New Zealand for global peer-to-peer platform operators are very low.

What we will consider

28. For each relevant market in which the Parties overlap, we will consider:

28.1 closeness of competition: the degree of constraint that Camplify, Mighway and SHAREaCAMPER impose upon one another. To the extent that any

[11] The Application at [1.4(a)] and [6.1]-[6.4].
[12] The Application at [1.4(b)] and [6.5]-[6.32].

constraint is material, we will assess whether the lost competition between the merging parties could be replaced by rival competitors;

28.2 remaining competitive constraints: the degree of constraint that existing competitors would impose on the merged entity. In relation to the potential constraint from a merged THL/Apollo's traditional motorhome rental business, we will consider whether THL/Apollo's ongoing relationship with Camplify will impact THL/Apollo's incentives to compete with Camplify (and equally Camplify's incentives to compete with THL/Apollo);

28.3 entry and expansion: how easily rivals could enter and/or expand; and

28.4 countervailing power: whether RV owners and/or RV renters have special characteristics that would enable them to resist a price increase by the merged entity.

Vertical effects: ability and incentive to foreclose rivals

29. A merger between parties who operate in related markets can result in a substantial lessening of competition due to vertical effects. This can occur where a merger gives the merged entity a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively (which we refer to as 'foreclosing rivals').

30. We will consider whether the proposed strategic and relationship between THL and Camplify (as summarised earlier at [10]) could give rise to foreclosure concerns. Such concerns could arise where:

30.1 the Parties may have an ability and incentive to prevent THL's rivals in traditional motorhome rentals from accessing at all Camplify's peer-to-peer RV rental platform, or to disadvantage THL's competitors by manipulating search rankings on Camplify's platform to favour THL listings; and/or

30.2 the Parties may have an ability and incentive to prevent Camplify's rivals in peer-to-peer RV rental platforms from accessing THL's RV management services or gaining the business of THL's motorhome rental listings.

31. We will test this with the Parties and other industry participants.

Coordinated effects: would the Proposed Acquisition make coordination more likely?

32. A merger can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that output reduces and/or prices increase. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.

33. In the Application, Camplify submitted that the Proposed Acquisition would not be likely to substantially lessen competition due to coordinated effects because:[13]

    33.1 there is a high degree of differentiation in the products and services offered by peer-to-peer RV rental platforms, no transparency of volumes of sales and fleet utilisation;

    33.2 there is a large degree of innovation in the market; and

    33.3 barriers to entry for global peer-to-peer RV rental platform operators are very low.

34. We will assess whether any of the relevant markets are vulnerable to coordination, and whether the Proposed Acquisition would change the conditions in the relevant markets so that coordination is more likely, more complete or more sustainable.

Next steps in our investigation

35. The Commission is currently scheduled to make a decision on whether or not to give clearance to the Proposed Acquisition by **15 March 2022.** However, this date may change as our investigation progresses.[14] In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.

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

Making a submission

37. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference “Camplify/THL” 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 **18 February 2022**.

38. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission’s website.

39. 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 unreasonably prejudice the supplier or subject of the information.

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13 The Application at [1.5] and [6.36].

14 The Commission maintains a clearance register on our website at http://www.comcom.govt.nz/clearances-register/ where we update any changes to our deadlines and provide relevant documents.