

Determination

THL Group (Australia) Pty Limited and Apollo Tourism & Leisure Ltd [2022] NZCC 32

The Commission:	Sue Begg Dr Derek Johnston Vhari McWha
Summary of application:	An application from THL Group (Australia) Pty Limited seeking clearance to acquire 100% of the shares in Apollo Tourism & Leisure Limited.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed acquisition (subject to the divestment undertaking dated 22 September 2022 provided by THL Group (Australia) Pty Limited and Apollo Motorhome Holidays Limited under section 69A of the Commerce Act 1986).
Date of determination:	23 September 2022

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Executive summary

- X1. On 13 December 2021, the Commerce Commission registered an application (the 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).

The concerns we had with the Proposed Acquisition

- X2. The Proposed Acquisition relates to the rental of campervans and motorhomes (together, RVs) in New Zealand. THL and Apollo are the two largest RV rental operators in New Zealand. The Proposed Acquisition would have resulted in the removal of THL's largest and closest competitor with regards to both fleet size and composition.
- X3. The primary focus of our analysis of the Proposed Acquisition was on whether the loss of competition between THL and Apollo would enable the merged entity to profitably raise prices above, or reduce quality or service below, the levels that would prevail absent the Proposed Acquisition in the national market for RV rentals. We also considered whether the Proposed Acquisition would increase the potential for coordinated behaviour between RV rental operators.
- X4. In a Statement of Unresolved Issues (SoUI) published on 28 April 2022, we identified two competition concerns with the Proposed Acquisition. The first was in the four to six-berth¹ motorhome segment of the national market for RV rentals, where THL and Apollo were the two largest RV rental operators. The aggregation with the Proposed Acquisition meant that the merged entity would have had a high share in four to six-berth motorhomes and would have been unlikely to be competitively constrained in the short to medium term from raising prices. Our second competition concern was that the Proposed Acquisition would have likely enabled the merged entity to lower the commissions that it paid to wholesalers and online travel agents for RV rental bookings made by them for the merged entity's RV fleet and/or increase prices to wholesalers and online travel agents.
- X5. At the time we published the SoUI, we were not satisfied that there would be sufficient constraints on the merged entity to prevent it from increasing the prices of RV rentals and/or reducing quality or service such that a substantial lessening of competition was unlikely. Other existing RV rental operators had substantially smaller fleets than THL and Apollo and were more limited in their focus, with some competing in niche segments. Entry or expansion by RV rental operators was unlikely to occur in response to price increases to constrain the merged entity in the short to medium term due to factors such as supply chain shortages. Any constraint from the countervailing power of wholesalers and online travel agents, RVs rented through peer-to-peer platforms and alternative accommodation/transport options was unlikely to sufficiently constrain the merged entity.

¹ A 'berth' refers to the number of people that an RV can sleep.

The Proposed Divestment remedies our concerns

- X6. In response to our competition concerns, on 22 September 2022 THL and entities within the Apollo group of companies jointly offered an undertaking (the Divestment Undertaking) under section 69A of the Commerce Act 1986 to divest a collection of assets relating to the rental of four to six-berth motorhomes (the Proposed Divestment).
- X7. The assets to be divested include 110 of Apollo's existing four to six-berth motorhome rental fleet in New Zealand, Apollo's Star RV brand, rental bookings relating to the four to six-berth motorhomes to be divested and the lease to an existing Apollo depot in Auckland. The Proposed Divestment is to take place shortly before the Proposed Acquisition. We examined the competitive impact of the Proposed Acquisition with the Proposed Divestment (which became part of the factual).
- X8. THL and Apollo have proposed an upfront purchaser for the Divestment Assets. The proposed purchaser of the assets to be divested is Star RV New Zealand Fleet Limited, a new subsidiary of Jucy Group (2020) Limited (Jucy). Jucy is an existing provider of campervans and cars for rent in New Zealand.
- X9. Based on the evidence before us, we consider that the Proposed Divestment (taking into account the Divestment Undertaking) will sufficiently address our competition concerns with the Proposed Acquisition, such that the Proposed Acquisition together with the Proposed Divestment is unlikely to substantially lessen competition in any market in New Zealand.
- X10. In our view, Jucy has the necessary experience, expertise and resources to be a credible and effective competitor to the merged entity, including in the four to six-berth motorhome segment. Following the Proposed Divestment, a combined Jucy and Star RV would be the second largest RV rental operator in New Zealand. By combining Jucy and Star RV, the Proposed Divestment would give wholesalers and online travel agents a credible alternative to the merged entity. A combined Jucy and Star RV would be a significant competitor to, and competitive constraint on, the merged entity.
- X11. Given the above, we are satisfied that the Proposed Divestment means that the competitive constraint that would be lost with the Proposed Acquisition, compared to the counterfactual, is unlikely to be substantial. With the Proposed Divestment, the merged entity is likely to face sufficient constraints to prevent it raising prices, or reducing quality or service, in the supply of RV rentals in New Zealand.

Decision

- X12. We give clearance to the Proposed Acquisition (subject to the Divestment Undertaking) as we are satisfied that the Proposed Acquisition together with the Proposed Divestment will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

The Application

1. On 13 December 2021, the Commerce Commission registered an application (the 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).
2. On 22 September 2022 THL and entities within the Apollo group of companies jointly offered an undertaking (the Divestment Undertaking) under section 69A of the Commerce Act 1986 (the Act) to divest a collection of assets relating to the rental of four to six-berth motorhomes (the Proposed Divestment). The Proposed Divestment is to take place shortly before the Proposed Acquisition. We examined the competitive impact of the Proposed Acquisition with the Proposed Divestment (which became part of the factual).

Our decision

3. We give clearance to the Proposed Acquisition (subject to the Divestment Undertaking) as we are satisfied that the Proposed Acquisition together with the Proposed Divestment will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

Our framework

4. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisition Guidelines (our guidelines).²
5. To clear an application, we must be satisfied that a merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
6. A lessening of competition does not need to be felt across an entire market for a lessening to be substantial. A lessening of competition that adversely affects a significant section of a market may be enough to amount to a substantial lessening of competition.³
7. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).⁴
8. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise prices above the price that would exist in a

² Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019).

³ *Mergers and Acquisitions Guidelines* above n2 at [2.25] and *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 64 FLR 238; ATPR 40-315, 43,888.

⁴ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

competitive market (the ‘competitive price’),⁵ or reduce non-price factors such as quality or service below competitive levels.

9. We may accept undertakings to dispose of assets or shares. If we accept a divestment undertaking, it is deemed to form part of a clearance. As set out in our divestment guidelines,⁶ upon receiving a divestment undertaking or divestment proposal, we will consider whether it is sufficient to remedy any substantial lessening of competition that may otherwise arise from a merger. This assessment may be impacted by the timeframe within which a divestment is proposed to occur. Often this is after completion of a merger, but in this case, the Proposed Divestment is to take place shortly before the Proposed Acquisition.

THL and Apollo

THL

10. 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, and the rental of motorhomes and campervans. THL offers motorhome and campervan rentals under its Maui, Britz and Mighty brands.
11. THL is also a shareholder in Camplify Holdings Limited (Camplify), which operates an online peer-to-peer platform that enables motorhome, campervan and other recreational vehicle owners (together, RV owners), including private individuals, to rent out their vehicles.

Apollo

12. 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 and campervan rental brands include Star RV, Apollo and Cheapa Campa, and it also has a further campervan-only rental brand called Hippy Camper. Apollo is also currently the largest shareholder in Camplify.⁷

Jucy

13. Jucy Group (2020) Limited (Jucy) operates in New Zealand and Australia, renting campervans and cars under the Jucy brand. When we received the Application, Jucy was owned by Polar Capital. Australian private equity firm Next Capital Pty Limited (Next) acquired a controlling interest in Jucy on 12 August 2022.

The Proposed Acquisition and Proposed Divestment

14. THL initially sought clearance to acquire the entirety of Apollo’s business in New Zealand, including both its rental operations and the sale of new (and used) motorhomes. This was part of a broader deal in which THL and Apollo would

⁵ Or below competitive levels in a merger between buyers.

⁶ *Mergers and Acquisitions Guidelines* above n2 at Attachment F.

⁷ As at 15 August 2022, Apollo held a 17.32% shareholding in Camplify and THL held a 2.66% shareholding in Camplify.

combine their businesses globally. THL initially sought clearance to acquire from Apollo 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.

15. On 22 September 2022, THL and entities within the Apollo group of companies jointly offered the Divestment Undertaking and the Proposed Divestment. The Divestment Undertaking was provided jointly by THL Group (Australia) Pty Limited (the Applicant) and Apollo Motorhome Holidays Limited (Apollo MH), which is a New Zealand subsidiary of Apollo. The assets to be divested (together, the Divestment Assets) include:⁸
 - 15.1 110 of Apollo's existing four to six-berth motorhome rental fleet in New Zealand, being its newest motorhomes by age;
 - 15.2 Apollo's premium Star RV motorhome brand;
 - 15.3 Apollo's forward rental bookings in New Zealand for four to six-berth motorhomes, relating to the motorhomes to be divested; and
 - 15.4 the lease to an existing Apollo depot in Auckland.
16. The Proposed Divestment is to take place shortly before the Proposed Acquisition. We examined the competitive impact of the Proposed Acquisition with the Proposed Divestment (which became part of the factual).
17. THL and Apollo have proposed an upfront purchaser of the Divestment Assets, Star RV New Zealand Fleet Limited, a new subsidiary of Jucy.
18. THL and Apollo MH have also agreed with Jucy that, if the Proposed Divestment takes place, THL/Apollo MH will:⁹
 - 18.1 manufacture and/or supply a further 40 new, or near new four to six-berth motorhomes in 2023, with an option for Jucy to be supplied a further 40 four to six-berth motorhomes in 2024;
 - 18.2 introduce Jucy to Star RV wholesalers; and
 - 18.3 support Jucy to sell ex-rental motorhomes in the future through the merged entity's established retail sales channels on a consignment and commission basis on arm's length terms.
19. These arrangements among THL, Apollo MH and Jucy are separate from the Divestment Undertaking. Because they are behavioural commitments, we are unable to accept them as a remedy to its competition concerns. Rather, we have assessed the likely effect of these arrangements as part of the 'factual' scenario if the Proposed Acquisition and Proposed Divestment proceed.

⁸ THL divestment proposal (10 June 2022) and THL divestment proposal (5 August 2022).

⁹ THL divestment proposal (10 June 2022) and THL divestment proposal (5 August 2022).

Background

20. The Proposed Acquisition relates to motorhomes and campervans, which are types of recreational vehicles (RVs). The primary overlap is in the rental of RVs.

RVs and RV rentals

21. The term RV is used broadly in the Application to cover a variety of vehicles from towable caravans, campervans and motorhomes which sleep between two to six people. The range of types of RVs is broad. An RV can be as simple as a sleeper-van with a built-in mattress and separate gas stove, or a larger vehicle with a built-in kitchenette and a fully plumbed shower and toilet.¹⁰ Motorhomes are generally physically larger vehicles than campervans, and some motorhomes can sleep more people than campervans (which mostly come in two to three-berth options).
22. Consumers are able to rent RVs from commercial RV rental operators like THL and Apollo, but can also rent RVs directly from private RV owners through peer-to-peer platforms. Peer-to-peer platforms operate similarly to Airbnb and list a range of RVs available for rent at a range of locations across New Zealand (both towable vehicles such as caravans and pop-up trailers as well as driveable RVs). RV rental operators like THL and Apollo have their own fleet of driveable RVs available for rent, with physical branches and set locations for vehicle pick up and drop off.¹¹

RV rental operators

23. THL and Apollo rent both motorhomes and campervans, and offer a wide range of vehicles for rent. Their vehicles range from two to six-berth models, most of which are certified as self-contained. Some competitors to THL and Apollo also rent both motorhomes and campervans. However, most competitors offer a smaller range of vehicles and tend to specialise in a particular market segment. Tui and Wendekreisen are the only RV rentals operators other than the THL and Apollo that rent both campervans and motorhomes. Table 1 lists the largest existing RV rental operators and identifies whether their main focus.

Table 1: RV types of larger existing rental operators

Campervans	Motorhomes	Campervans and motorhomes
Jucy TAB Spaceships	Wilderness Pacific Horizon McRent	THL Apollo Tui Wendekreisen

¹⁰ For further details of the most commonly supplied motorhomes see the Application at Annexure 1.

¹¹ The Application at [5.6]-[5.7].

Sales channels

24. Commercial RV rental operators typically rent out RVs through one or more of the following channels:¹²
- 24.1 direct to end consumers (over the phone, online through an RV rental operators' own website or in person at a depot);
 - 24.2 through wholesalers (eg, Trailfinders in the United Kingdom) or bricks and mortar travel agents (eg, Flight Centre) who book RV rentals for predominately international tourists (hereafter collectively referred to as wholesalers);¹³ and/or
 - 24.3 through online travel agents, web consolidators or aggregators (hereafter collectively referred to as online travel agents (OTAs)), which are third party-operated websites that facilitate bookings with RV rental operators (eg, GoSee).¹⁴
25. Many wholesalers and OTAs only deal with larger RV rental operators like THL and Apollo. Before the COVID-19 pandemic (the pandemic), a significant proportion of THL's and Apollo's RV rental bookings were received through wholesalers or OTAs.¹⁵

Industry dynamics

26. THL, Apollo and the broader tourism industry, have been significantly affected by the COVID-19 pandemic. For over two years, New Zealand had few international tourists, and domestic travel was also impacted by lockdowns, the cancellation of events and general uncertainty associated with the pandemic. This substantially reduced the demand for RV rentals, leading to RV rental operators substantially downsizing their RV rental fleets. There is uncertainty as to when the demand for RV rentals may pick up again and how long it will take for demand to get back to pre-pandemic levels.
27. In addition to the pandemic impacting on demand for RV rentals, RV rental operators have been facing, and continue to face, supply chain difficulties due to the pandemic (in terms of procuring both finished RVs and parts used in the manufacture of RVs). This is impacting their ability to rebuild their RV rental fleet as demand recovers following the removal of pandemic-related travel restrictions.
28. Given the above factors, we consider the effects of the Proposed Acquisition both in the short term while the supply of RV rentals continues to exceed demand (despite

¹² The Application at [5.3]. Small RV rental operators commercially rent out RVs via peer-to-peer platforms, but larger RV rental operators do not.

¹³ Wholesalers have agreements with RV rental operators to sell capacity (either in a holiday package or as a pure vehicle rental) for a commission. The customer transacts with the wholesaler, and the wholesaler aims to meet customer demand while minimising the number of RV rental operators they deal with to reduce costs (administrative and other transaction costs, and having a consistent offering of vehicles).

¹⁴ An OTA is a price comparison website that displays a list of available vehicles which match a customer's search parameters. An RV rental operator pays an OTA a commission if bookings are made through its website, but the customer transacts directly with the RV rental operator.

¹⁵ THL response to a request for information (21 December 2021) and Apollo response to a request for information (21 December 2021).

the reduction in RV rental fleets) and in the medium to long term when demand and international tourism has recovered sufficiently to remove existing excess capacity, but supply constraints for finished RVs or parts for RVs may remain. There are indications that demand is equal to, or even exceeds supply.

The relevant markets

29. Market definition is a tool that helps identify and assess the competitive constraints a merged firm is likely to face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.¹⁶
30. THL submitted that the relevant market for the purpose of assessing the Proposed Acquisition is a national market for RV rental services. THL submitted that this market includes RVs rented through both RV rental operators and peer-to-peer platforms.¹⁷
31. We have assessed the competitive effects of the Proposed Acquisition in a national market for RV rentals.

Product dimension

32. THL and Apollo overlap in the supply of RV rentals.
33. RV rentals can be broadly classified into two groups: campervans and motorhomes. However, vehicles within either of these broadly defined groups can also differ considerably in size, age and quality of fitout. The evidence shows that there is broadly a size and quality spectrum of vehicles from campervans to large four to six-berth motorhomes.
34. On the demand side, the different types of RV rental vehicles along this spectrum may be more or less close substitutes for one another depending on individual customers' preferences. This makes it difficult to separate those products that are within a market from those that are outside.
35. Ultimately it has not been necessary to reach a concluded view on the scope of the product dimension since our assessment of and conclusion on the competition issues and the impact of the Proposed Divestment in this case would remain the same regardless of whether a single broad product market is defined or a number of narrower product markets are adopted.

Customer dimension

36. THL, Apollo and other RV rental operators supply RV rentals across both direct and indirect (eg, wholesalers and OTAs) channels.

¹⁶ *Mergers and Acquisitions Guidelines* above n2 at [3.7]-[3.8].

¹⁷ THL response to the Commission's Sol (24 March 2022) at [1.3(a)]. THL noted that the relevant market could be a broader tourism market which included other accommodation and transport options, but for the purposes of the Application excluded these from the relevant market (but assessed the constraint that these alternatives provide from outside the market, as we have). The Application at [5.31] and [6.32].

37. Some evidence appears to suggest that the requirements of wholesale customers may differ substantially from individual tourists. However, as with the definition of the product market, we have not considered it necessary to conclude on the dimensions of any customer markets. Instead, we have considered the impact of the Proposed Acquisition on the supply of RV rentals across all sales channels (including peer-to-peer platforms). We have taken into account in the competition assessment the potential for the Proposed Acquisition to affect wholesalers differently to other customers.

Geographic dimension

38. We consider that the key competition issues that may arise from the Proposed Acquisition are best assessed by defining a national market for the supply of RV rentals. Although the evidence indicates that most RV rental operators only have depots in Auckland and Christchurch, they offer vehicles for rent to customers located throughout New Zealand.

Other markets

39. In assessing the impact of the Proposed Acquisition on competition in the national market for RV rentals, we also considered whether it was necessary to define markets to assess the potential for vertical effects to arise in relation to the manufacture of RVs and/or the retail supply of new and used RVs.
40. There is no overlap between THL and Apollo in the manufacture of RVs in New Zealand. The Proposed Acquisition would result in some overlap in the supply of new and used RVs in New Zealand, but many other parties compete with THL and Apollo to supply new and used RVs (including Jayco and TrailLite).¹⁸ Given this, and the lack of third party concern about the potential for the Proposed Acquisition to raise competition concerns in relation to the manufacture or supply of new RV vehicles. As such, we found it unnecessary to define markets in which those goods and services are supplied and do not consider this issue further in this Determination.

With and without scenarios

41. Assessing whether a substantial lessening of competition is likely requires us to:
- 41.1 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
 - 41.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.

¹⁸ The Application at [4.36].

The factual

42. The Proposed Divestment is to occur shortly prior to the completion of the Proposed Acquisition. In the factual (with the Proposed Acquisition and with the Proposed Divestment):
- 42.1 THL would acquire the business of Apollo in New Zealand excluding the Divestment Assets. Specifically in terms of RV rentals, this means that THL would acquire from Apollo:
- 42.1.1 a small number of motorhomes, being [] of the [] four to six-berth motorhomes in Apollo's New Zealand rental fleet as at 31 May 2022;¹⁹
- 42.1.2 Apollo's campervan rental fleet in New Zealand;
- 42.1.3 the Apollo, Cheapa Campa and Hippie Camper brands; and
- 42.1.4 Apollo's depot in Christchurch; and
- 42.2 Jucy would expand its business to include motorhome rentals by acquiring the Divestment Assets. Specifically, Jucy would acquire:
- 42.2.1 110 of Apollo's existing four to six-berth motorhome rental fleet in New Zealand, being its newest motorhomes by age;
- 42.2.2 Apollo's premium Star RV motorhome brand;
- 42.2.3 Apollo's forward rental bookings in New Zealand for four to six-berth motorhomes, relating to the motorhomes to be divested; and
- 42.2.4 the lease to an existing Apollo depot in Auckland.

The counterfactual

43. Based on the evidence before us, we consider that the appropriate counterfactual is the status quo, where Apollo would operate independently of and in competition with THL (as is the case today).
44. In both the factual and the counterfactual, RV rental operators may grow the size of their RV rental fleets in New Zealand in the future as supply constraints ease. We consider the implications of this in our assessment of market shares in the future and in our competition analysis.

Unilateral effects

45. 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 exercise

¹⁹ THL divestment proposal (10 June 2022).

market power and profitably increase prices above (and/or reduce quantity, quality or innovation below) the level that would prevail without the merger.²⁰

46. THL submitted that the Proposed Acquisition would not substantially lessen competition due to unilateral effects in the supply of RV rentals due to the vigorous competition provided by and constraint from:
 - 46.1 existing and potential RV rental operators;²¹
 - 46.2 the countervailing power of wholesalers and OTAs;²² and
 - 46.3 RVs available for rent on peer-to-peer platforms, which would provide increasing (and significant) constraint on the merged entity;²³ and
 - 46.4 other accommodation and transportation options.²⁴
47. We considered the strength of the competitive constraints that the merged entity would likely face in the national market for RV rentals, and in particular in two segments of the market:
 - 47.1 the supply of four to six-berth motorhome rentals to rental customers; and
 - 47.2 the supply of RV rentals for bookings by wholesalers and OTAs (on behalf of their customers), who require a broad range of RVs of differing size/quality, and sizeable fleets across different depots to satisfy the demand and diverse preferences of their customers.
48. In a Statement of Unresolved Issues (SoUI) published on 28 April 2022, we identified concerns that, in the absence of the Proposed Divestment, the Proposed Acquisition would be likely to substantially lessen competition due to unilateral effects in the national market for RV rentals such that the merged entity could increase prices and/or reduce quality or service, compared to the counterfactual.
49. At the time we published the SoUI, we were concerned that the Proposed Acquisition would be likely to enable the merged entity to:
 - 49.1 increase the prices of RV rentals and/or reduce quality or service, particularly in the four to six-berth motorhome segment of the national market for RV rentals; and/or
 - 49.2 lower the commission that it pays to wholesalers and OTAs for RV rental bookings made by them for the merged entity's RV fleet and/or increase prices to wholesalers and OTAs.

²⁰ *Mergers and Acquisitions Guidelines* above n2 at [3.62].

²¹ The Application at [5.33]-[5.34] and THL response to the Commission's Sol (24 March 2022) at [4.1]-[4.15].

²² The Application at [6.41]-[6.43] and THL response to the Commission's Sol (24 March 2022) at [8.2].

²³ The Application at [5.35] and THL response to the Commission's Sol (24 March 2022) at [5.1]-[5.9].

²⁴ The Application at [5.28]-[5.29] and THL response to the Commission's Sol (24 March 2022) at [6.1]-[6.6].

50. In the sections that follow we set out the reasons why, at the time of the SoUI, we had unilateral effects concerns with the Proposed Acquisition as originally notified to us (ie, without the Proposed Divestment). We discuss in a separate section, later, why the Proposed Divestment subsequently offered by THL and entities within the Apollo group of companies means we are satisfied that the competition concerns we had identified (in the SoUI) with the Proposed Acquisition are unlikely to arise.

Estimated market shares

51. Table 2 sets out the estimated existing market shares in the national market for all RV rentals with the Proposed Acquisition (but without Proposed Divestment). These figures are based on the combined campervan and motorhome fleet sizes of RV rental operators. The market shares in Table 2 are based on actual fleet figures for the last summer peak season (2021/22) and the peak season two years earlier, which was prior to the pandemic. The figures in Table 2 are the best actual market share estimates available. We consider that peak season figures best reflect market shares in the national market for all RV rentals. This is because peak season figures take into account any additional fleet that THL and Apollo bring into New Zealand to cater to peak season demand (which are removed from their RV rental fleets after the peak season).

Table 2: Existing market shares pre-pandemic and with-pandemic, all RVs

Rental operator	Pre-pandemic (Dec-19/Jan-20)		With-pandemic (Dec-21/Jan-22)	
	Fleet size	% share	Fleet size	% share
THL	[]	[]	[]	[]
Apollo	[]	[]	[]	[]
Merged entity	[]	[]	[]	[]
Jucy	[]	[]	[]	[]
TAB	[]	[]	[]	[]
Spaceships	[]	[]	[]	[]
Lucky	[]	[]	[]	[]
Tui	[]	[]	[]	[]
Wendekreisen	[]	[]	[]	[]
Wilderness	[]	[]	[]	[]
McRent	[]	[]	[]	[]
Pacific Horizon	[]	[]	[]	[]
All other operators	[]	[]	[]	[]
Total	[]	100	[]	100

Source: Commerce Commission analysis of industry participants data.

52. Table 2 indicates that with the Proposed Acquisition (but without Proposed Divestment), while there are a large number of other RV rental operators, the merged entity would have a market share more than [] times larger than any other RV rental operator in the national market for all RV rentals.
53. Table 3 sets out the estimated existing shares in four to six-berth motorhomes only with the Proposed Acquisition (but without Proposed Divestment).

Table 3: Existing shares pre-pandemic and with-pandemic, four to six-berth motorhomes

Rental operator	Pre-pandemic (Dec-19/Jan-20)		With-pandemic (Dec-21/Jan-22)	
	Fleet size	% share	Fleet size	% share
THL	[]	[]	[]	[]
Apollo	[]	[]	[]	[]
Merged entity	[]	[]	[]	[]
Wilderness	[]	[]	[]	[]
Tui	[]	[]	[]	[]
Wendekreisen	[]	[]	[]	[]
McRent	[]	[]	[]	[]
Pacific Horizon	[]	[]	[]	[]
All other operators	[]	[]	[]	[]
Total	[]	100	[]	100

Source: Commerce Commission analysis of industry participants data.

54. Table 3 suggests that there would be significant aggregation in the four to six-berth motorhome segment with the Proposed Acquisition. In the four to six-berth motorhome segment, a smaller number of RV rental operators would continue to compete with the merged entity with the Proposed Acquisition (but without Proposed Divestment) and the merged entity would have a market share more than [] times its largest competitor.
55. Tables A1 and A3 in Attachment A set out further market share data with the Proposed Acquisition (but without Proposed Divestment), including market share estimates for future seasons which factor in growth plans of RV rental operators between 2022 and 2024.

Closeness of competition between THL and Apollo

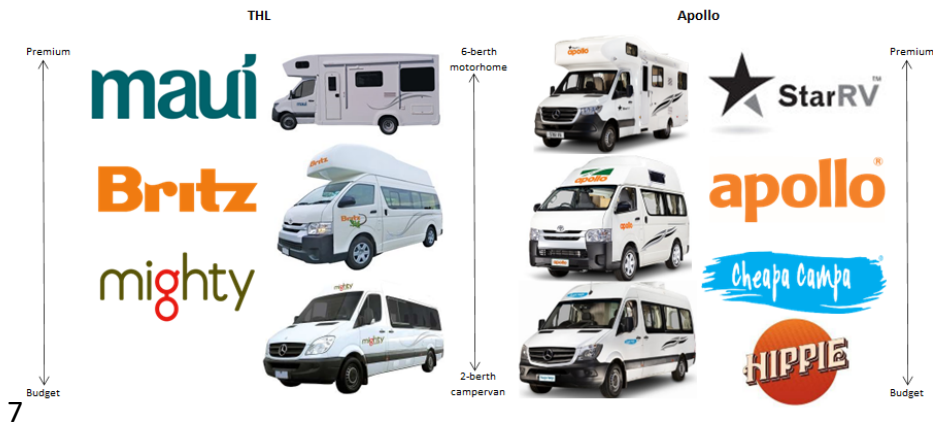
56. THL and Apollo have closely competed to supply RV rental to end consumers. THL and Apollo offer a similar range of RVs for rent from basic campervans to premium four to six-berth motorhomes (with their offerings not being matched by any other RV rental operators), as depicted in Figure 1 below. THL and Apollo were the two largest RV rental operators and the only RV rental operators of size in the premium four to six-berth motorhome segment. Evidence from market participants supported this.²⁵

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Figure 1: Brands and RVs rented by THL and Apollo



- 57. THL and Apollo closely monitored the prices of each other’s RV rentals and, [].
- 58. Because of the breadth of range and size of their RV rental offerings, evidence suggested that THL and Apollo were the only two viable options for many wholesalers, who are a key sales channel and source of their international rental bookings.²⁶

Constraint from other existing competitors

- 59. At the time of the SoUI and in the absence of the Proposed Divestment, we considered that post-acquisition other RV rental operators would be likely to impose some constraint on the merged entity. However, we considered that this was unlikely to be sufficient to constrain the merged entity, particularly in the four to six-berth motorhome segment of the national market for RV rentals. Other RV rental operators had substantially smaller fleets to THL and Apollo (as indicated earlier in Tables 2 and 3) and, as highlighted in Table 4, were generally more limited in their focus.

Table 4: Market positioning of larger existing rental operators

Segment	THL and Apollo brands	Competitors
Premium	Maui and Star RV	Pacific Horizon Wilderness McRent Wendekreisen
Mid-range	Britz and Apollo	Wendekreisen
Budget	Mighty, Cheapa Campa and Hippie Camper	Tui Jucy Spaceships TAB Wendekreisen

²⁶ See discussion later on the countervailing power of wholesalers for evidence on this point.

60. Smaller RV rental operators appeared unlikely to have an incentive to compete strongly on price with the merged entity. This is because, absent a significant change in demand, it may not be profit maximising to do so given fleet sizes are largely fixed in the short term. Some smaller RV rental operators told us that they follow THL’s pricing and are cautious about undercutting THL too much for fear of provoking price cuts that they cannot match.²⁷ In relation to our specific concerns identified above and in our SoUI, we considered that other existing RV rental operators renting four to six-berth motorhomes were unlikely to provide a substantial constraint on the merged entity even if and when they can return to pre-pandemic fleet size levels. Evidence available at the time of the SoUI indicated that competing RV rental operators renting four to six-berth motorhomes may struggle to compete other than at the margins with the merged entity.²⁸
61. At the time of the SoUI, we expressed the view that smaller RV rental operators would not significantly constrain the merged entity in the supply of RV rentals for bookings by wholesalers and OTAs. This is because smaller RV rental operators typically cannot offer the broad range of RVs of differing size/quality, and sizeable fleets across different depots to satisfy the demand and diverse preferences of wholesalers and OTAs.
62. We consider separately, later, the constraint that Jucy would provide with the Proposed Divestment.

Constraint from expansion and potential new entry

63. To constrain an exercise of market power, entry or expansion in response to a price increase or other exercise of market power by a merged entity has to be likely, sufficient in extent, and in a timely fashion, satisfying what is termed the ‘LET test’.²⁹
64. For the reasons set out below, at the time of the SoUI, we were not satisfied that entry or expansion would be likely to occur in a timely manner and at a sufficient scale to constrain the merged entity and prevent a substantial lessening of competition.

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²⁹ *Mergers and Acquisitions Guidelines* above n2 at [3.95]-[3.96].

Conditions of entry or expansion

65. The likely effectiveness of entry or expansion in constraining a merged entity is determined by the nature and effect of the aggregate conditions of entry or expansion into a market.³⁰
66. We consider that there are several key factors that are likely to impact entry and expansion conditions in the national RV rental market in the short to medium term and limit the constraint from entry and expansion. These are: uncertain demand, supply chain shortages and limited access to capital.³¹ While entry and expansion conditions may ease as demand increases, it is difficult to predict what the lasting effects of the pandemic will be and how long the supply chain issues described above will persist.

Likelihood of expansion by existing competitors

67. At the time of the SoUI, we were not satisfied that any expansion by current RV rental operators in response to a price increase would be sufficient to constrain the merged entity.
68. We acknowledged that some expansion by some other RV rental operators was likely, with and without the Proposed Acquisition. Evidence indicated that some existing competing RV rental operators were already planning expansion to return rental fleets back to pre-pandemic levels, which may increase the constraint they provide both generally and in the rental of four to six-berth motorhomes.³²
69. All expansion plans were dependent on the recovery of demand, access to capital and the ability to source vehicles to grow fleet.³³ Some RV rental operators told us

³⁰ Ibid at [3.107]-[3.111].

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³² Figures on fleet expansion plans can be seen in Attachment A, where Tables A1 and A3 set out market share estimates for future seasons factoring in growth plans of RV rental operators out to 2024.

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that they would only be willing to expand their fleet if demand was consistently high, otherwise they would need to lower prices to win business (with smaller RV rental operators having limited incentive to compete on price).³⁴

70. The evidence before us suggested that RV rental operators who currently only rented campervans were unlikely to expand into motorhomes even as expansion conditions ease.³⁵

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Likelihood of new entry

72. While entry is possible, at the time of the SoUI, there was no indication that new entry was likely in the short to medium term, including in response to an exercise of market power post-acquisition.

73. [] advised that, before the pandemic, it had plans to enter in mid-2020 with a fleet of 50-100 vehicles and a mix of two and six-berth motorhomes. Because of the pandemic, it did not proceed with plans to enter. It told us that it could possibly enter in three to five years, but indicated []. It said that if the merged entity raised prices, this would not trigger entry at this stage.³⁷

Constraint from RVs rented on peer-to-peer platforms

74. At the time of the SoUI, we had concerns that the RVs for rent on peer-to-peer platforms were unlikely to sufficiently constrain the merged entity so that a substantial lessening of competition in the national RV rental market is unlikely. This was because:

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- 74.1 the RVs for rent on peer-to-peer platforms have a different focus from RV rental operators, and provide a different kind of service.
- 74.2 consistent with the above, the RVs listed for rent on peer-to-peer platforms did not appear to currently constrain pricing of RV rental operators.³⁸ Individual owners of private RVs available to rent through peer-to-peer platforms set their prices on a flat, year-round basis unlike the larger RV rental operators who use dynamic pricing to respond to changes in demand. There is limited evidence that RV rental operators respond to prices that may be temporarily lower for rentals through peer-to-peer platforms; and
- 74.3 in any event, the RVs rented through peer-to-peer platforms currently make up a small part of the market and the extent of future growth in this segment is uncertain. At the time of the SoUI, we were not satisfied that peer-to-peer platforms would expand to be an effective constraint on the merged entity.

Countervailing power of wholesalers and OTAs

75. A merged entity's ability to increase prices profitably may be constrained by the ability of certain customers to exert substantial influence on negotiations. Countervailing power is more than the ability of customers to switch from a merged entity to competing suppliers. The size and importance of a customer is also not sufficient by itself to amount to countervailing power.³⁹
76. Countervailing power exists when a customer possesses special characteristics which give that customer the ability to substantially influence the price that a merged entity charges.⁴⁰ These characteristics can include the ability to self-supply, or sponsor entry and/or expansion. This is distinct from the ability of customers to leverage existing options to secure better prices and/or terms of trade.
77. In the SoUI that we published, we expressed the view that wholesalers and OTAs would have had limited countervailing power to constrain the merged entity.

Countervailing power of wholesalers

78. At the time of the SoUI, we were not satisfied that wholesalers would be able to exercise countervailing power in such a way that would constrain the merged entity.
79. Evidence before us was mixed on whether wholesalers had countervailing power. Some wholesalers told us that THL and Apollo were the only RV rental operators big enough to meet their needs, with other RV rental operators being too small or too limited in offering. This was because they only deal with RV rental operators above a

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³⁹ *Mergers and Acquisitions Guidelines* above n2 at [3.114].

⁴⁰ *Ibid* at [3.115].

certain fleet size and who have range of different types of vehicles, at different quality or price points.⁴¹

- 80. Some wholesalers told us that they have previously been unsuccessful in resisting price increases from either THL or Apollo and have had to accept price increases.⁴² However, no wholesalers told us that they would sponsor entry or enter themselves.

Countervailing power of OTAs

- 81. By virtue of a different business model, OTAs appeared to be more willing to deal with a wider range of RV rental operators than wholesalers. However, much like wholesalers, OTAs still rely on THL and Apollo for much of their New Zealand RV rental bookings.⁴³
- 82. We had received mixed evidence as to how important THL and Apollo are for OTAs. On one hand, some OTAs advised that if THL were to stop working with OTAs this would have a significant impact, undermine their attractiveness as an OTA and ability to offer an attractive “shop window” for smaller RV rental operators that do not have the same ability to offer direct to consumer channels as THL and Apollo.⁴⁴ Conversely, one OTA noted that it could survive without THL and Apollo, albeit on a much smaller scale. It has delisted Apollo before when it reduced commissions.⁴⁵
- 83. OTAs did not consider that they have much ability to constrain price increases by the merged entity (both increases in the prices of RV rentals and changes in the Commission rates paid to OTAs).⁴⁶ At the time of the SoUI, it did not appear that any OTAs had sufficient countervailing power to effectively constrain the merged entity.

Constraint from alternative accommodation and transport options

- 84. We considered that alternative transport and accommodation options are available to tourists and may be an alternative option for some RV rental customers. We had seen some evidence that tourists were taking into account alternative options, such as hotels and motels, when deciding on their accommodation and travel arrangements, and that any price increases in RV rentals may influence some

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tourists' choice of accommodation and transport options.⁴⁷ However, we received evidence suggesting that people choosing to rent RVs have different requirements to those who hire rental cars and stay in motels and hotels.⁴⁸ In particular, renting an RV provides a customer with a degree of flexibility that accommodation with set check-in and check-out dates does not have.

85. While they may be an alternative option for some customers, at the time of the SoUI, we were not satisfied that alternative transport and accommodation options would attract sufficient customers in the event of a significant price rise to constrain an exercise of market power by the merged entity.

Constraints in total

86. While we considered that the merged entity would face some constraint from other RV rental operators, RVs rented on per-to-peer platforms and also the alternative accommodation and transport options available to end consumers, as outlined in the SoUI, we were not satisfied that these constraints taken together would be sufficient to prevent a substantial lessening of competition due to unilateral effects.
87. We discuss, later, why the Proposed Divestment means we are satisfied that there would be sufficient competitive constraint on the merged entity so as to prevent a substantial lessening of competition.

Coordinated effects

88. A merger 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 a market or in a significant portion of a market.⁴⁹
89. THL submitted that the Proposed Acquisition would not result in coordinated effects as it does not enhance the ability for the merged entity and other competitors to coordinate their behaviour, and that the supply of RV rentals is not vulnerable to coordination.⁵⁰
90. We are satisfied that the Proposed Acquisition is unlikely to result in a substantial lessening of competition in RV rentals due to coordinated effects.
91. During our investigation of the Proposed Acquisition, we identified some market conditions that may enhance the ability and incentive for rivals to coordinate their decision making about fleet capacity, including:

⁴⁷ THL 2017 Annual Review, Apollo 2016 prospectus,
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⁴⁹ *Mergers and Acquisitions Guidelines* above n2 at [3.84].

⁵⁰ The Application at [6.44], THL response to the Commission's Sol (24 March 2022) at [9.1], NERA report on behalf of THL provided to the Commerce Commission (24 March 2022) and THL response to the Commission's SoUI (31 May 2022) at [10.1]-[10.3].

- 91.1 the small number of RV rental operators who specialise in large motorhome rentals (as a subset of a broader RV rentals market) – this may make it easier to reach an understanding and monitor coordination;
 - 91.2 the interactions of RV rental operators through industry organisations and meetings – this may also make it easier to reach an understanding;
 - 91.3 potentially high barriers to entry and expansion – this may reduce the potential for coordination to be disrupted; and
 - 91.4 the visibility of THL and Apollo’s RV rental fleet sizes through annual reports – this may make it easier to monitor any coordination.
92. However, we also identified other factors that make the RV rentals market less conducive to coordination, including:
- 92.1 the difficulty in detecting and punishing deviations from collusive agreements. While RV rental prices are quite visible online, particularly for smaller RV rental operators,⁵¹ prices do not solely depend on fleet capacity, but also depend on other factors such as actual demand relative to forecast demand. Further, the price of renting an RV for a specific trip may vary over the period before the trip takes place, which makes price an unreliable indicator of the fleet capacity of RV rental operators;⁵²
 - 92.2 product differentiation between different RV rental operators; and
 - 92.3 differences in the size and cost structures of individual RV rental operators (which range from individuals renting out their RVs on peer-to-peer platforms to small owner-operated businesses to large publicly-listed companies).
93. It was ultimately not necessary for us to reach a view on the susceptibility of the market to coordination because the Proposed Acquisition plus the Proposed Divestment would not materially change the status quo in this regard. In the SoUI that we published, we considered whether the Proposed Acquisition (without the Proposed Divestment) would change conditions in the market and make coordination more likely, more complete or more sustainable. We considered that this was unlikely because the merged entity would be considerably larger than any of its competitors and would be unlikely to have an incentive to coordinate with other RV rental operators.
94. With the Proposed Divestment, the market structure would be similar to the current situation, with little other change in the factors that might facilitate coordination so that coordinated effects are no more likely to arise.

⁵¹ This is also notwithstanding the use of wholesalers, as they do not appear to set prices independently and rather take prices as set by RV rental operators.

⁵² THL’s Response to the commission’s SoUI (31 May 2022) at [10.1 9(b)].

Assessment of the remedy

95. In assessing a divestment undertaking or divestment proposal, we consider whether it is sufficient to remedy any substantial lessening of competition that may otherwise arise from a merger or acquisition. In making such an assessment, we consider all the relevant risks associated with a divestment proposal, namely:⁵³
- 95.1 purchaser risk – the risk that there may not be a purchaser found within the timeframe of a divestment undertaking that is acceptable to us;
 - 95.2 asset risk – the risk that the competitive effectiveness of a divestment package will deteriorate prior to completion of a divestment; and
 - 95.3 composition risk – the risk that the scope of a divestment undertaking may be too constrained, or not appropriately configured.
96. As outlined earlier at [15]-[18], THL and entities within the Apollo group of companies jointly offered the Divestment Undertaking and the Proposed Divestment. In particular, they offered to divest to Jucy Divestment Assets which include 110 of Apollo’s existing four to six-berth motorhome rental fleet in New Zealand, Apollo’s Star RV brand, rental bookings relating to the four to six-berth motorhomes to be divested and the lease to an existing Apollo depot in Auckland. The Proposed Divestment is to take place shortly before the Proposed Acquisition. We examined the competitive impact of the Proposed Acquisition with the Proposed Divestment (which became part of the factual).
97. THL and Apollo MH agreed other commercial arrangements with Jucy that would be given effect to if the Proposed Divestment takes place, including around the supply of additional new four to six-berth motorhomes to Jucy.⁵⁴ These commercial arrangements between THL, Apollo MH and Jucy are separate from the Divestment Undertaking. However, we assessed the likely effect of these arrangements as part of the factual scenario if the Proposed Acquisition and Proposed Divestment proceed.
98. For the reasons set out below, we consider that the Proposed Divestment means we are satisfied that the competition concerns we had identified with the Proposed Acquisition are unlikely to arise. For the reasons noted, we have also found the risks associated with the Divestment Undertaking, which gives effect to the Proposed Divestment, to be acceptable.

How the Proposed Divestment remedies the above unilateral effects concerns

99. We considered whether the Proposed Divestment would sufficiently remedy the competition concerns we identified with the Proposed Acquisition. This is likely to be the case if the Proposed Divestment would:
- 99.1 replace the competitive constraint lost by the removal of Apollo from the four to six-berth motorhome segment of the market;

⁵³ *Mergers and Acquisitions Guidelines* above n2 at Attachment F.

⁵⁴ THL divestment proposal (10 June 2022) and THL divestment proposal (5 August 2022).

- 99.2 mean that Jucy becomes a credible alternative to the merged entity for wholesalers and OTAs, replacing the loss of Apollo as a competitor independent form THL; and, as a result
- 99.3 the merged entity would face sufficient constraints to prevent it from raising prices, or reducing quality or service, in the RV rentals market when compared with the counterfactual.
100. THL submitted that the Proposed Divestment would address our competition concerns in the four to six-berth motorhome segment of the national market for RV rentals. In particular it submitted that:⁵⁵
- 100.1 the Proposed Divestment would mean that the Proposed Acquisition would result in only a small increase in THL's share of the four to six-berth motorhome segment, and no aggregation in the 'premium' motorhome segment, compared with the counterfactual; and
- 100.2 the sale of the Divestment Assets to Jucy would result in a competitor in the four to six-berth motorhome segment which would provide a greater competitive constraint on the merged entity than Apollo currently provides on THL, or would provide in the counterfactual.
101. For the reasons set out below, we consider that the Proposed Divestment means that the competition concerns (in terms of unilateral effects) we had identified with the Proposed Acquisition are unlikely to arise.
102. As noted earlier, we considered that THL and Apollo had been each other's closest competitor, particularly in the four to six-berth berth motorhome segment, and in the supply of RV rentals for bookings by wholesalers (for whom THL and Apollo have largely been the only two viable supply options).
103. As the market share tables in Attachment A indicate, the Proposed Divestment removes the majority of the aggregation with the Proposed Acquisition in the four to six-berth motorhome segment. The Proposed Divestment will mean that Jucy will immediately have an RV rental fleet size []. The four to six-berth motorhomes that Jucy will acquire with the Proposed Divestment are the newest in Apollo's fleet (in terms of vehicle age).
104. Historically, Apollo (with RV rental operations internationally) has had the ability to flex the size of its RV rental fleet in New Zealand between seasons based on demand. Given this, we considered the ability of Jucy to expand in the future, particularly in the four to six-berth motorhome segment.
105. We consider that Jucy is likely to be able to materially expand, and []. Expansion will be assisted by commercial agreement Jucy has reached to have THL/Apollo MH supply it with additional new four to six-berth motorhomes.

⁵⁵ THL divestment proposal (10 June 2022) and THL divestment proposal (5 August 2022).

106. We are satisfied that Jucy, with the support and capital of Next, has the incentive, ability and commercial acumen to be able to expand, and to effectively compete with the merged entity in the four to six-berth motorhome segment. Jucy has credible growth plans that will enable it to constrain the merged entity going forward. Next indicated that it has plans to invest in and grow a combined Jucy/Star RV. Next has told us that it plans to
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107. We consider that the Proposed Divestment means that Jucy will achieve sufficient breadth of offering to replace Apollo as a suitable partner for wholesalers. This is because a combined offering of Jucy branded campervans and Star RV branded motorhomes, including the fleet size of the combined fleet, would likely be attractive to wholesalers.
108. We received feedback from other industry participants indicating that the Proposed Divestment would largely resolve or deal with the competition concerns associated with the Proposed Acquisition.⁵⁷
109. Taking the above, together with the other competitive constraints identified earlier in the unilateral effects section, we are satisfied that the Proposed Divestment is sufficient to mean that the merged entity will be constrained in its ability to exercise market power to raise prices, or reduce quality or service, in the national market for RV rentals compared with the counterfactual.

Purchaser risk

110. Jucy is proposed as an upfront purchaser of the Divestment Assets with the Proposed Divestment and in the Divestment Undertaking. As a consequence, there is no purchaser risk as such with the Proposed Divestment. However, we have still needed to consider whether Jucy is an acceptable purchaser of the Divestment Assets.
111. For the reasons set out below, we consider that Jucy is an acceptable purchaser of the Divestment Assets. It is sufficiently independent, and has the necessary experience, expertise and resources to be an effective competitor to the merged entity in the national market for RV rentals, including in the four to six-berth motorhome segment.

Independence of Jucy

112. We are satisfied that Jucy will be sufficiently independent of the merged entity. There is no ownership relationship between Jucy and THL and/or Apollo (or any of their affiliates).

⁵⁶ Commerce Commission interview with Next (27 June 2022) and Commerce Commission interview with Next (18 August 2022). See the figures in Table A2 and Table A4 for fleet expansion plans over time.

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Necessary expertise, experience and resources

113. We are satisfied that Jucy is a viable RV rental operator in New Zealand, and has the necessary expertise, experience and resources to be an effective competitor to the merged entity in the national market for RV rentals, including in the four to six-berth motorhome segment.
114. Jucy is an existing RV rental operator in New Zealand and Australia that operates a fleet of two to four-berth campervans. It also provides rental cars. Jucy has been operating in New Zealand since 2001. Jucy is currently the third largest RV rental operator, after THL and Apollo.
115. While Jucy has previously tried and failed as a competitor in the four to six-berth motorhome segment, we consider that it is likely to be more successful this time with the Proposed Divestment, as it will have the benefit of the Star RV brand, the divested motorhomes and associated forward bookings.
116. Evidence suggests that Jucy, with the support and capital of Next, has the experience and expertise to operate the Divestment Assets and compete with the merged entity in the four to six-berth motorhome segment:
- 116.1 Jucy is an experienced RV rental operator and has established relationships with many wholesalers and OTAs;
- 116.2 as already discussed, Jucy (supported by Next) has plans to invest in and grow a combined Jucy/Star RV; and
- 116.3 several industry participants expressed confidence that with the Divestment Assets Jucy would become an effective competitor to the merged entity, particularly in the 4-6 berth segment, and will be able to use the Divestment Assets to grow further to become even stronger.⁵⁸

Acquisition by Jucy does not raise competition concerns

117. We consider that the acquisition of the Divestment Assets by Jucy does not raise any competition concerns.
118. Jucy and Apollo are currently not close competitors. While Jucy is an existing RV rental operator, as noted earlier, it only currently operates in the campervan segment of the national market for RV rentals (where there are a number of RV rental operators with significantly sized fleets) and []. Given this, no unilateral effects concerns in either the market for RV rentals, or the four to six-berth motorhome segment, are raised by the acquisition of the Divestment Assets by Jucy.
119. We do not consider that the acquisition of the Divestment Assets by Jucy would make coordination in the national market for RV rentals more likely. As noted earlier

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at [92], there are several factors that make the national market for RV rentals less conducive to coordination. It is unlikely that the acquisition of the Divestment Assets by Jucy would change the conditions in the market and make coordination more likely compared with the counterfactual.

Asset risk

120. We consider that the Divestment Undertaking is sufficient to mitigate any asset risk. We consider that there are limited to low asset risks with the Proposed Divestment. This is because:

- 120.1 there would be a relatively short period of time before the Proposed Divestment occurs;
- 120.2 Apollo MH has undertaken to us to complete the Proposed Divestment before the Proposed Acquisition completes (ie, before THL and Apollo merge). The Divestment Assets would therefore remain separate from THL; and
- 120.3 the Divestment Undertaking requires Apollo MH to appoint an independent monitor to audit and report to us on Apollo MH's and THL's compliance with the Divestment Undertaking.

Composition risk

121. We are satisfied that the composition of the Proposed Divestment would allow Jucy to operate a viable RV rental business across a range of RVs, including four to six-berth motorhomes, in competition with the merged entity. This is because:

- 121.1 the Proposed Divestment comprises the assets that Jucy needs to compete with the merged entity to supply four to six-berth motorhome rentals, taking into account the size and assets of Jucy's existing business (this includes a recognised brand in Star RV, forward bookings and motorhomes); and
- 121.2 the Divestment Assets can be practically separated from Apollo (and transferred from Apollo to Jucy) in a timely fashion. While Next commented to us that [],⁵⁹ we are satisfied that operational process around the transfer of the Divestment Assets is likely to occur in a manner that is timely, taking into account the practical steps would need to occur and the management of RV rental bookings.

⁵⁹ Commerce Commission interview with Next (18 August 2022).

Determination on notice of clearance

122. Subject to the Proposed Divestment, we are 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.

123. Under section 66(3)(a) of the Act, the Commerce Commission determines to give clearance to THL Group (Australia) Pty Limited to acquire 100% of the shares in Apollo Tourism & Leisure Limited subject to the divestment undertaking dated 22 September 2022 provided by THL Group (Australia) Pty Limited and Apollo Motorhome Holidays Limited under section 69A of Act.

Dated this 23rd day of September 2022

Sue Begg
Deputy Chair

Attachment A: Market shares

A1. We set out below market share estimates, these include existing market shares (at Dec-21/Jan-22), future market shares (for up to three seasons) and market shares with the Proposed Divestment. Peak/summer season fleet figures are used for market shares as winter figures are affected by differing abilities and practices of RV rental operators to operate a smaller fleet off-peak. We separately set out market shares in the national market for all RV rentals and for the supply of four to six-berth motorhomes. We note that in differentiated product markets, overall market shares may not be a good indicator of the likely constraint provided by each supplier.

National market for RV rentals

A2. Table A1 sets out the estimated market shares in the national market for all RV rentals based on fleet size. This is based on the combined campervan and motorhome fleet sizes of RV rental operators. The market share estimates for future seasons factor in growth plans of RV rental operators in terms of fleet sizes between now and 2024.

Table A1: Existing and future market shares, all RVs

Rental operator	Dec-21/Jan-22		2022/23 season		2023/24 season	
	Fleet size	% share	Fleet size	% share	Fleet size	% share
THL	[]	[]	[]	[]	[]	[]
Apollo	[]	[]	[]	[]	[]	[]
Merged entity	[]	[]	[]	[]	[]	[]
Jucy	[]	[]	[]	[]	[]	[]
TAB	[]	[]	[]	[]	[]	[]
Spaceships	[]	[]	[]	[]	[]	[]
Lucky	[]	[]	[]	[]	[]	[]
Tui	[]	[]	[]	[]	[]	[]
Wendekreisen	[]	[]	[]	[]	[]	[]
Wilderness	[]	[]	[]	[]	[]	[]
McRent	[]	[]	[]	[]	[]	[]
Pacific Horizon	[]	[]	[]	[]	[]	[]
All other operators	[]	[]	[]	[]	[]	[]
Total	[]	100	[]	100	[]	100

- A3. Table 1 provides an indication of the aggregation that would occur with the Proposed Acquisition (but absent the Proposed Divestment), including the size of the merged entity compared to other RV rental operators. If the merged entity row is ignored in Table A1, then the figures represent the estimated market shares in the counterfactual, where THL and Apollo would continue to operate separately in the market (and compete to supply RV rentals).
- A4. Table A2 below sets out the estimated future market shares with the Proposed Acquisition and the Proposed Divestment.

Table A2: Future market shares with divestment, all RVs

Rental operator	2022/23 season		2023/24 season	
	Fleet size	% share	Fleet size	% share
THL/Apollo	[]	[]	[]	[]
Jucy/Star RV	[]	[]	[]	[]
TAB	[]	[]	[]	[]
Spaceships	[]	[]	[]	[]
Lucky	[]	[]	[]	[]
Tui	[]	[]	[]	[]
Wendekreisen	[]	[]	[]	[]
Wilderness	[]	[]	[]	[]
McRent	[]	[]	[]	[]
Pacific Horizon	[]	[]	[]	[]
All other operators	[]	[]	[]	[]
Total	[]	100	[]	100

Four to six-berth motorhomes

- A5. Table A3 sets out the estimated shares of the supply of four to six-berth motorhomes.

Table A3: Existing and future shares, four to six-berth motorhomes

Rental operator	Dec-21/Jan-22		2022/23 season		2023/24 season		2024/25 season	
	Fleet size	% share	Fleet size	% share	Fleet size	% share	Fleet size	% share
THL	[]	[]	[]	[]	[]	[]	[]	[]
Apollo	[]	[]	[]	[]	[]	[]	[]	[]
Merged entity	[]	[]	[]	[]	[]	[]	[]	[]
Wilderness	[]	[]	[]	[]	[]	[]	[]	[]
Tui	[]	[]	[]	[]	[]	[]	[]	[]
Wendekreisen	[]	[]	[]	[]	[]	[]	[]	[]
McRent	[]	[]	[]	[]	[]	[]	[]	[]
Pacific Horizon	[]	[]	[]	[]	[]	[]	[]	[]
All other operators	[]	[]	[]	[]	[]	[]	[]	[]
Total	[]	100	[]	100	[]	100	[]	100

A6. Table A4 sets out the estimated future shares with the Proposed Acquisition and the Proposed Divestment.

Table A4: Future shares with divestment, four to six-berth motorhomes

Rental operator	2022/23 season		2023/24 season		2024/25 season	
	Fleet size	% share	Fleet size	% share	Fleet size	% share
THL/Apollo	[]	[]	[]	[]	[]	[]
Wilderness	[]	[]	[]	[]	[]	[]
Jucy/Star RV	[]	[]	[]	[]	[]	[]
Tui	[]	[]	[]	[]	[]	[]
Wendekreisen	[]	[]	[]	[]	[]	[]
McRent	[]	[]	[]	[]	[]	[]
Pacific Horizon	[]	[]	[]	[]	[]	[]
All other operators	[]	[]	[]	[]	[]	[]
Total	[]	100	[]	100	[]	100

Attachment B: Divestment Undertaking

Non-confidential version

Undertaking

in relation to the divestment of assets in New Zealand (**Divestment Assets**).

Given by THL Group (Australia) Pty Ltd (Applicant) and Apollo Motorhome Holidays Ltd (Apollo) on behalf of the Applicant in favour of the New Zealand Commerce Commission (Commission) in connection with the Applicant's application for clearance of its proposed acquisition of Apollo Tourism & Leisure Ltd under s 66 of the Commerce Act.

Date: 22 September 2022

Details

Date 22 September 2022

Parties

Name **THL Group (Australia) Pty Ltd**
Short form name **Applicant**
Notice details Attention: Grant Webster / Amir Ansari
Email: [REDACTED]
Address: The Beach House, Level 1, 83 Beach Rd, Auckland 1010

Name **Apollo Motorhome Holidays Limited**
Short form name **Apollo**
Notice details Attention: Luke Trouchet/Tennille Carrier
Email: [REDACTED]
Address: 698 Nudgee Road, Northgate, Brisbane, Queensland 4013, Australia

Name **Commerce Commission**
Short form name **Commission**
Notice details Attention: Mergers Manager
Email: mergers@comcom.govt.nz
Address: Level 9, 44 The Terrace, Wellington 6011

Background

- A The Applicant has applied to the Commission for clearance of the Proposed Transaction pursuant to section 66 of the Commerce Act 1986.
- B The Applicant is a subsidiary of Tourism Holdings Limited, a global tourism company whose shares are listed on the main board of the New Zealand stock exchange (NZX code: THL). It supplies, amongst other things, motorhome and campervan rental services to domestic and international tourists in New Zealand.
- C Apollo is wholly owned by Apollo Motorhome Holdings (NZ) Limited, a subsidiary of Apollo Tourism & Leisure (**ATL**). ATL is an Australian tourism leisure company with operations in Australia, New Zealand, Canada, Germany, the United Kingdom and Ireland. It is listed on the Australian Securities Exchange (ASX code: ATL).
- D As at the date of this Undertaking, the Commission has indicated that it is not satisfied that the Proposed Transaction will not be likely to substantially lessen competition in a New Zealand market and has not yet decided to give clearance to the Proposed Transaction.

- E To address the Commission's concerns and in order to obtain clearance from the Commission, the Undertaking Parties undertake to carry out a Divestment of the Divestment Assets in accordance with the terms of this Undertaking.

- F The Undertaking Parties have entered into the Approved Divestment Agreements, pursuant to which the Divestment Assets will be divested to Star RV New Zealand Fleet Limited, which is ultimately owned by Jucy Group (2022) Limited (together **Jucy**). Next Capital Tourism Holdings Pty Limited (**Next Capital**) holds a controlling interest in Jucy. Star RV New Zealand Fleet Limited, together with Jucy and Next Capital, have been approved by the Commission as purchaser of the Divestment Assets.

Agreed terms

1. Defined terms and interpretation

1.1 In this undertaking:

Apollo means Apollo Tourism & Leisure Ltd.

Apollo Forward Booking Transfer Team means the Apollo employees who have been assigned by Apollo to the booking transfer team in accordance with the terms of the Approved Sale and Purchase Agreement.

Apollo NZ Rental Fleet means the rental vehicles to be divested to the Approved Purchaser as described in Schedule A, clause 2.

Applicant means THL Group (Australia) Pty Ltd.

Approved Divestment Agreements means the Approved Sale and Purchase Agreement, the Approved Transitional Services Agreement and the Approved Vehicle Supply Agreement in the form approved by the Commission.

Approved Purchaser means Star RV New Zealand Fleet Limited or its Related Entity nominated by Star RV New Zealand Fleet Limited.

Approved Sale and Purchase Agreement means the sale and purchase agreement between Apollo, Apollo Motorhome Holidays Pty Limited, the Applicant, *thl*, Star RV New Zealand Fleet Limited, Star RV Australia Fleet Pty Limited and Jucy, dated 22 September 2022, in the form approved by the Commission.

Approved Transitional Services Agreement means the NZ Transitional Services Agreement referenced in the Approved Sale and Purchase Agreement, in the form approved by the Commission.

Approved Vehicle Supply Agreement means the NZ Vehicle Supply Agreement referenced in the Approved Sale and Purchase Agreement, in the form approved by the Commission.

Assumed Liabilities means the obligations and liabilities of Apollo under the NZ Forward Bookings and the Property Lease to the extent such obligations relate to and are due to be performed in the period after the Divestment Date.

Clean Team Protocols means the Competition Law Guidelines for Providing the Transition Services to Jucy related to StarRV for the Forward Booking Transfer Team and the Competition Law Guidelines for Providing the Transition Services to Jucy related to StarRV For the Apollo/Merged Company Non-Forward Bookings Team in Confidential Schedule C of this Undertaking.

Confidential Information means all commercially sensitive, confidential and/or proprietary information of the Approved Purchaser, such as information about the NZ Forward Bookings (from the date that such bookings are allocated to the Approved Purchaser) and the Approved Purchaser's customers, terms (i.e. contract terms and payment terms) post-completion of the Divestment, pricing post-completion of the Divestment, capacity to supply motorhome rental services, marketing strategies, scheduling, and potentially other information identified as commercially sensitive, confidential and/or proprietary to the Approved Purchaser.

Control Date means the date and time on which the Proposed Transaction is completed.

Divestment means the divestment of the Divestment Assets, in accordance with this Undertaking.

Divestment Assets means the assets described in Schedule A to this Undertaking.

Divestment Date means the date on which the Divestment is completed.

Divestment Period means the period starting on the date that this Undertaking comes into effect and ending on the Control Date.

Divestment Undertakings means clause 3.1 of this Undertaking.

Fleet Date means:

- a. if the Divestment Date is on or prior to 16 December 2022, 31 October 2022; or
- b. in any other case the date that is 1 month prior to the Divestment Date.

Interconnected Body Corporate has the meaning set out in section 2(7) of the Commerce Act 1986.

Independent Monitor means a natural or legal person who:

- a. is approved by the Commission and is appointed pursuant to clause 7.1 of this Undertaking;
- b. is independent of the Applicant, Apollo and their Related Entities; and
- c. possesses the necessary qualifications to carry out its obligations.

Jucy means Jucy Group (2022) Limited and its Interconnected Bodies Corporate.

Next Capital means Next Capital Tourism Holdings Pty Limited and its Interconnected Bodies Corporate.

NZ Forward Bookings means the forward bookings defined in Schedule A, clause 3.

NZ Consumables means the consumables described in clause 5 of Schedule A.

Property Lease means the leased property specified in Part 2 of Confidential Schedule B.

Proposed Transaction means the proposed acquisition by the Applicant of shares in Apollo by way of Scheme of Arrangement approved by the Supreme Court of Queensland, such that on completion of the proposed acquisition *thl* and its Related Companies will hold 100% of the shares in Apollo.

Records means all original and copy records regardless of their form or medium and whether coming into existence before, on or after the date of the Approved Sale and Purchase Agreement, relating to the Divestment Assets and the Assumed Liabilities (including, without limitation, ownership records for all motorhomes comprising the Apollo NZ Rental Fleet, copies of all workshop and accident history pertaining to all motorhomes in the Apollo NZ Rental Fleet, copies of all included inventory pertaining to all motorhomes in the Apollo NZ Rental Fleet, copies of all manuals pertaining to the motorhomes in the Apollo NZ Rental Fleet, records relating to the NZ Forward Bookings, copies of all documentation comprising Apollo's rights and interests in the Property Lease and details of all current chassis manufacturer warranties pertaining to all motorhomes in the Apollo NZ Rental Fleet, whether contained in vehicle offer and sale agreements or otherwise).

Related Company has the meaning given to it in section 2(3) of the Companies Act 1993, provided that, for this purpose, references to company in that section will extend to any body corporate wherever incorporated or registered.

Related Entity means an Interconnected Body Corporate and/or a Related Company and/or an "associated person" as defined in section 47(3) of the Commerce Act 1986.

Star RV Intellectual Property Rights means the intellectual property rights listed in Schedule A, clause 4.

thl means Tourism Holdings Limited.

Undertaking Parties means the Applicant and Apollo.

Working Day has the meaning set out in section 2(1) of the Commerce Act 1986.

- 1.2 References to dates and time in this Undertaking are references to New Zealand Standard Time or Daylight Savings Time as applicable.
- 1.3 This Undertaking will be governed by, and construed in accordance with, the laws of New Zealand and the Undertaking Parties accept the exclusive jurisdiction of the New Zealand Courts in respect of this Undertaking.
- 1.4 The Undertaking Parties acknowledge that any disputes under Part 6 of the Act in relation to this Undertaking may be referred to the High Court Commercial Panel by the Commission. If that occurs, the Undertaking Parties undertake that they will work co-operatively and constructively with the Commission, to ensure any such proceedings are dealt with expeditiously.
- 1.5 A right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, on those persons jointly and severally.
- 1.6 On and from the Control Date, the Applicant will become jointly and severally liable for all obligations of Apollo under this Undertaking, whether such obligations accrued before or after the Control Date.
- 1.7 Any notice or communication that is given or served under or in connection with this Undertaking must be given in writing in the following manner:
 - (a) if addressed to the Commission, by hand delivery or email to the following address:

Commerce Commission
Level 9, 44 The Terrace, Wellington 6011
Attention: Mergers Manager (mergers@comcom.govt.nz)
 - (b) if addressed to the Applicant, by hand delivery or email to the following address:

C/- MinterEllisonRuddWatts
Level 22, PwC Tower, 15 Customs Street West, PO Box 105 249, Auckland 1143
Attention: Jennifer Hambleton (Jennifer.hambleton@minterellison.co.nz) / Mark Stuart
(mark.stuart@minterellison.co.nz)
 - (c) If addressed to Apollo, by hand delivery or email to the following address:

C/- Jones Day
Level 41, Aurora Place, 88 Phillip Street, Sydney
Attention: Prudence Smith [REDACTED]

2. Commencement and term

- 2.1 This Undertaking comes into effect when it is signed by the Undertaking Parties and accepted by the Commission (as indicated in the Commission's notice of clearance) under s 69A of the Commerce Act 1986.
- 2.2 Except for the obligations set out in clause 8 (Confidentiality obligations) and clauses 6.4 and 6.9, which continue to apply for a period of 12 months from the Divestment Date, and the ongoing

reporting requirements set out at clauses 6.5, 6.7 and 6.8, the Undertaking Parties' obligations under this Undertaking are discharged when, either:

- (a) the sale of the Divestment Assets to the Approved Purchaser has completed, the Approved Purchaser has taken physical possession of all vehicles on the Apollo NZ Rental Fleet and the Undertaking Parties have complied with the reporting obligations in clause 3 of this Undertaking; or
- (b) the Undertaking Parties have confirmed in writing to the Commission that the Proposed Transaction will no longer proceed to completion.

3. Divestment

3.1 Apollo undertakes to the Commission on behalf of the Applicant (and the Applicant undertakes to procure) that it will:

- (a) before the Control Date, divest, or cause the divestiture of, the Divestment Assets to the Approved Purchaser pursuant to the terms of the Approved Sale and Purchase Agreement;
- (b) within 2 Working Days of the Divestment Date, inform the Commission in writing that the Divestment has completed; and
- (c) use best endeavours in accordance with the terms of the Approved Sale and Purchase Agreement to procure, obtain or assist the Approved Purchaser to obtain any consents required to assign the rights and contracts described in Schedule A of this Undertaking to the Approved Purchaser.

3.2 The Applicant undertakes to the Commission that:

- (a) it will not complete the Proposed Transaction until after the Divestment Assets have been divested to the Approved Purchaser in accordance with clause 3.1(a) of this Undertaking;
- (b) should a breach of clauses 3.1(a) and 3.2(a) occur, it will within 2 Working Days of the Control Date divest, or cause the divestiture of, the Divestment Assets to the Approved Purchaser pursuant to the terms of the Approved Sale and Purchase Agreement;
- (c) within 2 Working Days of the Control Date, it will inform the Commission in writing that the Proposed Transaction has completed and include confirmation that the Proposed Transaction completed after the Divestment Assets were divested to the Approved Purchaser in accordance with clause 3.1(a) of this Undertaking.
- (d) within 2 Working Days of the Control Date, it will inform the Commission in writing of the vehicles on the Apollo NZ Rental Fleet that were on hire on the Divestment Date;
- (e) for any vehicles on the Apollo NZ Rental Fleet out on hire on the Divestment Date, it will deliver or procure the delivery of the relevant Apollo NZ Rental Fleet to the Approved Purchaser in accordance with the terms of the Approved Sale and Purchase Agreement; and
- (f) it will inform the Commission in writing as soon as practicable once the Approved Purchaser has taken physical possession of all vehicles comprising the Apollo NZ Rental Fleet.

3.3 The Undertaking Parties acknowledge that:

- (a) a failure to comply with their undertakings in clauses 3.1(a) and 3.2(a) of this Undertaking will constitute a contravention of the Divestment Undertakings, notwithstanding any subsequent compliance by the Applicant with clause 3.2(b) of this Undertaking;
- (b) the Divestment Undertakings form part of any clearance given by the Commission for the Proposed Transaction under section 66(3)(a) of the Commerce Act 1986;

- (c) the Divestment Undertakings impose legal obligations on them;
- (d) the Divestment Undertakings may be enforced by the Commission under sections 84, 85A and 85B of the Commerce Act
- (e) any clearance given by the Commission for the Proposed Transaction under section 66(3)(a) of the Commerce Act will be void and of no effect from the date it was given or granted if the Divestment Undertakings are contravened; and
- (f) the Divestment Undertakings may only be varied by application under section 69AC of the Commerce Act.

4. Approved Purchaser

- 4.1 The Undertaking Parties acknowledge that the Commission's approval of the Approved Purchaser as purchaser of the Divestment Assets is an approval for the Approved Purchaser to acquire the Divestment Assets pursuant to the terms of the Approved Divestment Agreements.

5. Preservation Obligations

- 5.1 At all times before the Divestment Date, Apollo (either directly or through its Related Entities) will, in relation to the Divestment Assets, use best endeavours to:
 - (a) preserve the reputation and goodwill of the Divestment Assets;
 - (b) preserve the economic viability, marketability and competitiveness of the Divestment Assets;
 - (c) undertake ongoing maintenance of the vehicles that will comprise (or could comprise at the Fleet Date) the Apollo NZ Rental Fleet in accordance with Apollo's normal business practices [REDACTED];
 - (d) ensure that, other than in respect of vehicles which are damaged (in which case clause 5.2 of this Undertaking applies), the vehicles that will comprise (or could comprise at the Fleet Date) the Apollo NZ Rental Fleet will meet the following criteria at the Divestment Date:
 - (i) the vehicles are in a condition that will allow the vehicles to be continued to be hired out;
 - (ii) the vehicles are in full working order; and
 - (iii) the vehicles comply with all pre- and post-rental checks in accordance with Apollo's normal business practices;
 - (e) continue its current practices and initiatives of maximising booking intakes for its New Zealand motorhome rental fleet and maximise utilisation, including continuing existing or implementing new marketing initiatives where required in accordance with Apollo's business plans as at the date of this Undertaking; and
 - (f) maintain the provision of goods and services by the Divestment Assets in a manner consistent with the provision of goods and services as at the date of this Undertaking.
- 5.2 At all times before the Divestment Date, Apollo (either directly or through its Related Entities) will in relation to the vehicles which comprise or could comprise the Apollo NZ Rental Fleet at the Fleet Date, use reasonable endeavours to procure that any damage to those vehicles (where that damage

renders vehicles unable to be hired out) is repaired as soon as reasonably practicable such that the vehicles meet the criteria in clause 5.1(d)(i)-(iii) at the Divestment Date.

- 5.3 At all times before the Divestment Date Apollo (either directly or through its Related Entities) will not:
- (a) carry out any act upon its own authority that might have a significant adverse impact on the value or competitiveness of the Divestment Assets or that might alter the nature and scope of activity, or the industrial or commercial strategy in relation to Divestment Assets;
 - (b) sell or transfer any of the Divestment Assets, any assets comprising part of, or used in, the Divestment Assets, or contractual rights to use assets which are required to continue to operate the Divestment Assets in the ordinary course, to any person other than the Approved Purchaser in accordance with this Undertaking;
 - (c) cease any marketing or promotion of the Divestment Assets to the extent such marketing or promotion was occurring at the date of this Undertaking;
 - (d) cease any efforts that were occurring at the date of this Undertaking or planned in any Apollo business plan current as at the date of this Undertaking to maximise the number of new motorhome bookings generated; and
 - (e) treat motorhome bookings in respect of the Apollo NZ Rental Fleet that commence after the Divestment Date differently in any material way from motorhome bookings that commence before the Divestment Date.

5.4 If an issue, event or circumstance arises in relation to the Divestment Assets (the **Adverse Event**) that Apollo reasonably considers is sufficiently material and adverse that its ability to operate the Divestment Assets in accordance with clause 5.1 is or may be compromised (after, and for the avoidance of doubt, Apollo has considered and sought to use best endeavours to meet the requirements of clause 5.1), Apollo shall, as soon as practicable after it becomes aware of the Adverse Event:

- (a) use best endeavours to:
 - (i) mitigate the adverse effects on the Divestment Assets of the Adverse Event; and
 - (ii) restore (as relevant) the reputation, goodwill, economic viability, marketability or competitiveness of the Divestment Assets to a level that is materially similar to, and consistent with, the operation of the Divestment Assets prior to the date of the Adverse Event;
- (b) report in writing to the Commission and the Independent Monitor on:
 - (i) the nature of the Adverse Event and when and how it arose;
 - (ii) why the Adverse Event has or may compromise Apollo's ability to operate the Divestment Assets in accordance with clause 5.1;
 - (iii) what steps have been taken, or are planned to be taken, by Apollo in compliance with clause 5.4(a); and
 - (iv) any other material information relevant to the Adverse Event.

6. Monitoring compliance with this undertaking

- 6.1 During the Divestment Period the Undertaking Parties will each provide separate reports to the Independent Monitor on a fortnightly basis (or at different times as notified by the Independent Monitor or the Commission) detailing (as applicable):
- (a) the relevant Undertaking Party's compliance with their respective obligations under this Undertaking;
 - (b) the relevant Undertaking Party's progress towards carrying out the Divestment;
 - (c) at the Independent Monitor's request, any other information and documents reasonably required:
 - (i) about the relevant Undertaking Party's progress towards carrying out the Divestment; and
 - (ii) that demonstrate that the relevant Undertaking Party's conduct complies with its obligations under this Undertaking.
- 6.2 The Undertaking Parties will report separately, and confidentially to the Independent Monitor on the matters identified in clause 6.1 of this Undertaking.
- 6.3 The Undertaking Parties will comply with any other reasonable request for information or assistance from the Independent Monitor to enable the performance of the Independent Monitor's obligations as set out in clause 7.
- 6.4 The Undertaking Parties will comply with any request from the Commission for information and documents required to assess:
- (a) the relevant Undertaking Party's progress towards carrying out the Divestment; and
 - (b) the relevant Undertaking Party's compliance with its obligations under this Undertaking.
- 6.5 In the period until 12 months after the Divestment Date, the Undertaking Parties will report to the Commission and the Independent Monitor, any actual or potential breaches of this Undertaking as soon as practicable and, in any event, no later than 5 Working Days after the discovery of the actual or potential breach.
- 6.6 In the period between the date that the Commission grants clearance of the Proposed Transaction and the Divestment Date, Apollo will provide reports to the Independent Monitor on a fortnightly basis (or at different times as notified by the Commission) on the progress of the forward booking allocation process, including (as at the date of each report):
- (a) a list of all of Apollo's forward bookings in respect of its New Zealand motorhome fleet which have a hire period that includes the Divestment Date or commences after the Divestment Date, including for each booking the hire period and price (but excluding personal information belonging to the customer);
 - (b) any booking identified in (a) above which, at the time of the report, has been identified by the forward booking transfer team as a booking that will or are likely to be transferred to the Approved Purchaser;
 - (c) in respect of any booking identified in (a) above which, at the time of the report, has been identified by the forward booking transfer team as a booking that will be retained by Apollo, an explanation as to the reason why the booking will be retained by Apollo; and
 - (d) an estimate of the number of vehicles on the Apollo NZ Rental Fleet expected to be on hire on the Divestment Date.

- 6.7 In the period between the Divestment Date until the date that the Approved Purchaser has taken physical possession of the Apollo NZ Rental Fleet, the Applicant will provide reports to the Independent Monitor on a fortnightly basis (or at different times as notified by the Commission):
- (a) on the progress of the forward booking allocation process, including (as at the date of each report):
 - (i) a list of all of Apollo's forward bookings in respect of its New Zealand motorhome fleet which have a hire period that includes the Divestment Date or commences after the Divestment Date, including for each booking the hire period and price (but excluding personal information belonging to the customer);
 - (ii) any booking identified in (i) above which, at the time of the report, has been identified by the booking transfer team as a booking that will or are likely to be transferred to the Approved Purchaser;
 - (iii) in respect of any booking identified in (i) above which, at the time of the report, has been identified by the booking transfer team as a booking that will be retained by Apollo, an explanation as to the reason why the booking will be retained by Apollo; and
 - (iv) an estimate of the number of vehicles on the Apollo NZ Rental Fleet expected to be on hire on the Divestment Date;
 - (b) on the progress of the physical transfer of the Apollo NZ Rental Fleet to the Approved Purchaser, including:
 - (i) the vehicles delivered to the Approved Purchaser since the Divestment Date or the last report;
 - (ii) the vehicles remaining to be delivered to the Approved Purchaser; and
 - (iii) the expected timeframe for delivery of the remaining vehicles to the Approved Purchaser; and
 - (c) on the Applicant's compliance with its obligations under clause 8.2 of the Undertaking.
- 6.8 In the period after the Approved Purchaser has taken physical possession of the Apollo NZ Rental Fleet until the date that is 12 months after the Divestment Date, the Applicant will provide monthly reports to the Commission on its compliance with its obligations under clause 8.2 of the Undertaking.
- 6.9 If requested, the Undertaking Parties will attend a meeting with the Commission at a time and place appointed by the Commission to answer any questions the Commission may have in relation to compliance with this Undertaking (including by telephone or video conference if agreed by the Commission).
- 6.10 Nothing in this Undertaking requires the Undertaking Parties to provide legally privileged information or documents to the Commission or any other party.

7. Independent monitor

- 7.1 Apollo will appoint the Independent Monitor within 7 Working Days of the date that the Commission grants clearance of the Proposed Transaction on terms of engagement to be approved by the Commission to audit and report to the Commission on the Undertaking Parties' compliance with this Undertaking. This appointment must be conducted in accordance with the following process:
- (a) Apollo must provide for approval by the Commission, the name of the proposed Independent Monitor, and the terms of engagement between the Undertaking Parties and the proposed

Independent Monitor within 2 Working Days after the date that the Commission grants clearance of the Proposed Transaction;

- (b) if the Commission is satisfied with the proposed Independent Monitor, the Commission will approve the appointment of the Independent Monitor in writing; and
- (c) in the event that Apollo does not comply with clause (a) above or the Commission does not approve the name or terms of appointment of the Independent Monitor, the Commission may nominate or arrange directly for the appointment of an Independent Monitor and the Undertaking Parties will accept any terms, timelines or other steps imposed by the Commission (including as to payment of the Independent Monitor's costs) for this to take effect.

7.2 The Independent Monitor will:

- (a) oversee and monitor the Undertaking Parties' compliance with this Undertaking;
- (b) oversee and monitor the forward booking allocation procedure described in the Approved Sale and Purchase Agreement;
- (c) approve the final allocations of the forward bookings relating to Apollo's motorhome rental fleet in New Zealand as identified in the forward booking allocation procedure described in the Approved Sale and Purchase Agreement;
- (d) oversee and monitor any adjustments to be made to the Apollo NZ Rental Fleet in accordance with the terms of the Approved Sale and Purchase Agreement;
- (e) monitor the physical delivery of the Apollo NZ Rental Fleet to the Approved Purchaser.

7.3 Apollo (and from the Divestment Date, the Applicant) will procure that the Independent Monitor submits a written report to the Commission:

- (a) on a fortnightly basis until the date that all vehicles in the Apollo NZ Rental Fleet have been delivered to the Approved Purchaser (or the Approved Purchaser has taken possession of such fleet) regarding the following:
 - (i) the Undertaking Parties' compliance with their obligations under this Undertaking;
 - (ii) Apollo's progress on the Divestment;
 - (iii) the forward booking allocation process, including (as at the date of the report):
 - (aa) a list of all of Apollo's forward bookings in respect of its New Zealand motorhome fleet which have a hire period that includes the Divestment Date or commences after the Divestment Date, including for each booking the hire period and price (but excluding personal information belonging to the customer);
 - (bb) any booking identified in (aa) above which, at the time of the report, has been identified by the booking transfer team as a booking that will or are likely to be transferred to the Approved Purchaser;
 - (cc) in respect of any booking identified in (aa) above which, at the time of the report, has been identified by the booking transfer team as a booking that will be retained by Apollo, an explanation as to the reason why the booking will be retained by Apollo;
 - (dd) an estimate of the number of vehicles on the Apollo NZ Rental Fleet expected to be on hire on the Divestment Date.

- (iv) the Applicant's progress of the physical transfer of the Apollo NZ Rental Fleet to the Approved Purchaser after the Divestment Date, including:
 - (aa) the vehicles delivered to the Approved Purchaser since the Divestment Date or the most recent report;
 - (bb) the vehicles remaining to be delivered to the Approved Purchaser; and
 - (cc) the expected timeframe for delivery of the remaining vehicles to the Approved Purchaser;
- (v) any other information about Divestment Assets or the Undertaking Parties' compliance with this Undertaking requested by the Commission; and
- (b) within 5 Working Days of the Divestment Date, on the final outcome of the forward booking allocation process;
- (c) as soon as reasonably practicable following the receipt by the Independent Monitor of any other reports or notifications that Apollo or the Applicant are required to make to it under this Undertaking, other than the reports required under clause 6.1.

7.4 In the event that Apollo (or the Applicant, post the Control Date) receives notice that the Independent Monitor's term will end before the Undertaking Parties' obligations in this Undertaking have expired, Apollo (or if the Independent Monitor's term will end after the Control Date, the Applicant) will procure that a replacement Independent Monitor is appointed with the approval of the Commission in accordance with the following process:

- (a) Apollo or the Applicant (as applicable) will provide, for approval by the Commission, the name of the proposed replacement Independent Monitor, and the terms of engagement between the Applicant and the replacement Independent Monitor 10 Working Days prior to the end of the term of the incumbent Independent Monitor.
- (b) If the Commission is satisfied with the proposed replacement Independent Monitor, the Commission will approve the appointment of the Independent Monitor in writing.
- (c) If the Commission has not approved the name or terms of appointment of the Independent Monitor within 5 Working Days prior to the end of the term of the incumbent Independent Monitor, the Commission may nominate or arrange directly for the appointment of an Independent Monitor and the Applicant will accept any terms, timelines or other steps imposed by the Commission (including as to payment of the Independent Monitor's costs) for this to take effect.

8. Confidentiality obligations

8.1 At all times before the Control Date, Apollo will:

- (a) ensure that only Apollo Forward Booking Transfer Team members are assigned to the booking transfer team for the purposes of determining the NZ Forward Bookings; and
- (b) implement all reasonable measures to ensure that, to the extent possible, the Confidential Information is only disclosed in accordance with the terms of the Clean Team Protocols.

8.2 After the Control Date, the Applicant will:

- (a) implement all reasonable measures to ensure that, to the extent possible, the Confidential Information is only disclosed to those officers, employees, contractors, agents or advisers that require access to the Confidential Information for one or more of the purposes of:

- (i) facilitating the transfer of the NZ Forward Bookings to the Approved Purchaser (including, but not necessarily limited to, allocating the NZ Forward Bookings to be transferred to the Approved Purchaser);
- (ii) providing services under the terms of the Approved Transitional Services Agreement;
- (iii) reporting to the Commission and/or the Independent Monitor, pursuant to this Undertaking; and/or
- (iv) complying with legal, reporting and regulatory obligations (including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements) or to progress any legal dispute,

and provided such information is disclosed only to those Apollo Forward Booking Transfer Team members who have signed a non-disclosure agreement in accordance with the Clean Team Protocols or other officers, employees, contractors, agents or advisers who have signed a confidentiality undertaking and need to know the information in order to carry out the purposes listed at clause 8.2(a)(i)-(iv) above;

- (b) ensure that any Apollo Forward Booking Transfer Team members are not involved in pricing strategy activities (other than for reasons relating to the period before the Divestment Date to attend to issues such as refunds) relating to the Applicant's (or its Related Entity's) motorhome rental fleet in New Zealand for a period of 12 months from the Divestment Date;
- (c) take all reasonable steps to ensure that any Confidential Information that relates to the Approved Transitional Services Agreement that remains in its control is, where possible, destroyed within 20 Working Days of termination or expiry of the Approved Transitional Services Agreement.

Schedule A - Divestment Assets

1. The Divestment Assets

The Divestment Assets comprise the following:

- (a) the Apollo NZ Rental Fleet, as described in clause 2 of this Schedule A;
- (a) the benefit of all of Apollo's rights and interests in all manufacturer warranties (including all original equipment manufacturer warranties) applicable to all motorhomes comprising the Apollo NZ Rental Fleet to the extent they are able to be assigned to the Approved Purchaser;
- (b) the benefit of all of Apollo's rights and interests in the NZ Forward Bookings, as described in clause 3 of this Schedule A;
- (c) the Star RV Intellectual Property Rights specified in clause 4 of this Schedule A;
- (d) the benefit of all Apollo's rights and interests in the Property Lease;
- (e) the NZ Consumables specified in clause 5 of this Schedule A;
- (f) the Records.

2. The Apollo NZ Rental Fleet

- (a) The Apollo NZ Rental Fleet comprises the final list of four to six berth used motorhomes from Apollo's rental fleet in New Zealand notified to the Approved Purchaser and the Commission no later than 15 Working Days prior to the Divestment Date, being the 110 newest four to six berth used motorhomes on Apollo's rental fleet in New Zealand as at the date of the Approved Sale and Purchase Agreement unless:
 - (i) the Approved Purchaser gives notice in accordance with the terms of the Approved Sale and Purchase Agreement that it wishes to acquire any new four to six berth motorhomes added to Apollo's rental fleet in New Zealand prior to the Fleet Date, in which case the Apollo NZ Rental Fleet will include that new vehicle(s) instead of the lowest value vehicle(s) which was comprised in the 110 newest four to six berth used motorhomes on Apollo's rental fleet in New Zealand as at the date of the Approved Sale and Purchase Agreement;
 - (ii) any of these vehicles are damaged beyond repair as determined by a third party insurer or the Independent Monitor and, in accordance with the terms of the Approved Sale and Purchase Agreement, Apollo procures that the damaged vehicles are substituted for other like-for-like motorhomes in Apollo's rental fleet in New Zealand of the same make, model, age, specifications and having substantially similar mileage as the damaged motorhomes by reference to the characteristics of the relevant motorhomes before they were damaged (or, if Apollo does not have any like-for-like motorhomes to substitute, Apollo procures that the damaged vehicles are substituted for motorhomes that are as similar as possible to the damaged vehicles by reference to the characteristics of the relevant motorhomes before they were damaged), in which case the Apollo NZ Rental Fleet will exclude the damaged vehicles and will include the substituted vehicles in accordance with the terms of the Approved Sale and Purchase Agreement;
 - (iii) the Approved Purchaser gives its prior written approval in accordance with the terms of the Approved Sale and Purchase Agreement to substitute any of these vehicles for another vehicle in circumstances where the vehicle has been damaged and that damage has not been repaired prior to the Divestment Date in accordance with the terms of the Approved Sale and Purchase Agreement, in which case the Apollo NZ

Rental Fleet will exclude the vehicle which the Approved Purchaser has approved is to be substituted and will include the vehicle which the Approved Purchaser has approved will be included in the final list.

- (b) Confidential Schedule B sets out an indicative list of the 110 newest four to six berth motorhomes on Apollo NZ Rental Fleet Apollo's rental fleet in New Zealand as at the date of the Approved Sale and Purchase Agreement.




3. NZ Forward Bookings

- (a) NZ Forward Bookings comprise the customer bookings for the hire of four and six berth rental motorhomes on Apollo's New Zealand rental fleet made prior to the Divestment Date:
 - (i) where the hire period commences after the Divestment Date; and
 - (ii) that comprise the final list of bookings that have been identified as the bookings to be assigned to the Approved Purchaser in accordance with booking allocation process set out in the Approved Sale and Purchase Agreement and approved by the Independent Monitor (**NZ Forward Bookings**).

4. Star RV Intellectual Property Rights

Star RV Intellectual Property Rights means all Intellectual Property Rights owned by Apollo in respect of the "Star RV" brand and the associated goodwill, including:

- (a) the following registered trademarks:

#	Brand	Source	Status	Origin	Holder	Number	App. Date	Maintenance	Renewal due	Classes	Image
1	STARRV										
2	STARRV										
3	STARRV										
4	STAR RV										
5	STAR RV										
6	STAR RV										

- (b) the following domain names:

[Redacted domain name]

Towel	4
Dustpan and Brush Set	1
Bucket	1
First Aid Kit	1
Extension Lead	1
Fresh Water Hose	1
Hangers	8
Broom	1
Grey Water Hose	1
Hairdryer	1

For each 6 berth motorhome on the Apollo NZ Rental Fleet, the following items:

Item	Quantity
Kitchen	
Plates	6
Bowls	6
Knives	6
Forks	6
Dessert Spoons	6
Tea Spoons	6
Cutlery Tray	1
Mugs	6
Glasses	6
Toaster	1
Whistling Kettle	1
Moka Pot	1
Can Opener	1
Tongs	1
Spatula	1
Serving Spoon	1
Microwave Bowl	1
Frypan 24 cm	1
Saucepan 20 cm	1
Saucepan 16 cm	1
Cutting Mats	2
Chef Knife	1
Steak Knife	1
Vegetable Peeler	1
Bedding	
Doona	3
Pillow	6
Pillow Case Protector	6
Pillow Case	6
Sheets	6
Other	
Tea Towel	2
Towel	6
Dustpan and Brush Set	1
Bucket	1
First Aid Kit	1

Extension Lead	1
Fresh Water Hose	1
Hangers	12
Broom	1
Grey Water Hose	1

#	Rego	VIN	Model	Manufacture Date	Loc	Type	Model	Brand	Year	Updated Kms
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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Confidential Schedule C

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Signing page

EXECUTED as a deed

Executed by THL Group (Australia) Pty Ltd (ACN 055 966 222) in accordance with section 127 of the Corporations Act 2001 (Cth):)
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[Redacted signature]

Director

[Redacted name]

.....
Name of Director (print)

[Redacted signature]

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Director

[Redacted name]

.....
Name of Director (print)

Executed by Apollo Motorhome Industries Pty Ltd (ACN 101 079 127) in accordance with section 127 of the Corporations Act 2001 (Cth):)
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[Redacted signature]

Company Secretary/Director

[Redacted name]

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Name of Company Secretary/Director (print)

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Director

[Redacted name]

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