

10 June 2022

Tourism Holdings Limited / Apollo

Divestment Proposal

1. Introduction

- 1.1 We refer to THL Group (Australia) Pty Ltd's, a subsidiary of Tourism Holdings Limited's (*thl*), application for clearance to acquire 100% of the shares in Apollo Tourism & Leisure Ltd (**Apollo**) by way of a scheme of arrangement (**Proposed Transaction**).
- 1.2 *thl* remains strongly of the view that the Proposed Transaction will not substantially lessen competition in the motorhome rental segment or any other market, for the reasons set out in its previous submissions. However, for commercial and expediency reasons, *thl* offers to divest part of the Apollo business it seeks to acquire (**Proposed Business Divestment**), solely in order to secure clearance in a timely manner. [REDACTED]. Details of the Proposed Business Divestment are set out further in this submission but comprise all of the intellectual property and assets necessary to enable the purchaser to operate a motorhome rental business in competition with the merged entity.
- 1.3 In this submission, we set out:
- (a) the scope of the Proposed Business Divestment and rationale;
 - (b) the effect of the Proposed Business Divestment on the value of the Proposed Transaction;
 - (c) the reasons why there is no material composition, purchaser or asset risk associated with the Proposed Business Divestment; and
 - (d) the reasons why the Proposed Business Divestment will address the Commission's competition concerns outlined in the Statement of Unresolved Issues dated 28 April 2022 (**SOUI**) for the supply of motorhome rentals in the medium term.
- 1.4 The Proposed Business Divestment is subject to the approval of both the *thl* and Apollo Boards. Shareholders will also need to approve the Proposed Transaction. The shareholders' meeting has not yet been scheduled, given the current timing uncertainties relating to regulatory approvals.

2. Proposed Business Divestment

- 2.1 In summary, the Proposed Business Divestment consists of the following:
- (a) approximately 72% of Apollo's motorhome rental fleet¹, comprising [REDACTED] 4- to 6-berth motorhomes. Those vehicles divested will be Apollo's newest motorhomes (ranging from [REDACTED]²) with the lowest mileage. Appendix 2 includes an indicative list³ of the [REDACTED]

¹ As at 31 May 2022.

² [REDACTED].

³ The indicative list of vehicles is subject to change in the ordinary course of business. Where a vehicle included in the indicative list is sold by Apollo or is otherwise no longer in the Apollo rental fleet (for example as the result of an accident or theft) prior to completion of the proposed merger, then that vehicle will be replaced by the next

motorhomes that *thl* proposes to divest and Appendix 3 includes an indicative list of the Apollo motorhomes to be acquired by *thl*. They comprise [REDACTED]% of Apollo's current 'Star RV' and 'Apollo' rental fleet, and [REDACTED] of the newest vehicles in the 'Cheapa' rental fleet;

- (b) the Star RV premium motorhome brand; and
- (c) the assignment of forward bookings proportionate to the fleet to be sold, measured as at the date of completion of the Proposed Business Divestment,

(the **Divestment Business**).

2.2 The Divestment Business includes all of the intellectual property and assets necessary to enable the purchaser to act as an immediate competitive constraint in the market. The forward bookings in particular will ensure that the Divestment Business is revenue generating from the date of completion of the Proposed Business Divestment, which will ensure that the purchaser can immediately compete with the merged entity both in the short and long term. Identifying specific bookings for transfer will necessarily be a collaborative exercise with the purchaser, but will be done in a manner that enables the customer to receive the same vehicle as they would have in the absence of the Proposed Transaction. Indicatively, the purchaser will be entitled to up to:

- (a) [REDACTED]% of 4- to 6- berth Star RV booked days as at completion of the Proposed Transaction;
- (b) [REDACTED]% of 4- to 6- berth Apollo booked days as at completion of the Proposed Transaction; and
- (c) [REDACTED]% of 4- to 6- berth Cheapa booked days as at completion of the Proposed Transaction.

2.3 *thl* will endeavour to provide:

- (a) a range of bookings across branches and time periods in a balance manner that is not unduly burdensome on either *thl* or the purchaser; and
- (b) forward bookings commensurate to the vehicles being acquired such that the respective customers receive a vehicle that is consistent with or better than the quality of the vehicle booked.

2.4 As part of the Proposed Business Divestment, *thl* will also, if required by the purchaser:

- (a) consider assigning the leases ([REDACTED]) for certain of Apollo's rental branches to the purchaser; and
- (b) enter into transitional support arrangements for a period of three months following completion of the Proposed Business Divestment, including assistance with the operational transfer of individual bookings as well as the management of forward bookings until such time as the purchaser is set up to take new bookings direct.

newest motorhome on Apollo's then rental fleet. This means that, on completion of the Proposed Divestment, the vehicles that will be divested will be the [REDACTED] newest motorhome vehicles on the Apollo rental fleet at the time of completion of the Proposed Transaction.

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- 2.5 **thl** will undertake the Proposed Business Divestment by a trade sale to a purchaser approved by the Commission (**Approved Purchaser**). If any transitional support arrangements are required, they will take effect from completion of the Proposed Business Divestment.
- 2.6 [REDACTED]. **thl** is currently in discussions with Next Capital and H&G Limited (together referred to as **Next Capital**) regarding the Proposed Business Divestment. **thl** understands that an announcement of the sale of Jucy Rentals to Next Capital is imminent. As the Commission is aware, Jucy Rentals is a well-established RV and car rental operator in New Zealand and Australia with prior experience operating in the motorhome segment, established international distribution channels, and a branch network that is more expansive than Apollo's.
- 2.7 A copy of the Term Sheet agreed with Next Capital is **enclosed**. [REDACTED]. If terms can be agreed with Next Capital, it is intended that the Proposed Business Divestment will be completed either contemporaneously or very shortly⁴ after completion of the Proposed Transaction. The practical effect of the divestment is that **thl** will not, in effect, acquire these Apollo assets.
- 2.8 If terms are not agreed with Next Capital, **thl** will discuss the process for undertaking the Proposed Business Divestment and agree any hold-separate and other conduct commitments with the Commission.

Star RV brand

- 2.9 Star RV was launched in 2012 and is Apollo Tourism Limited's premium brand, specialising in fully self-contained motorised RVs with plumbed toilets and showers. [REDACTED]. It is a Trans-Tasman brand, with pick-ups currently available from Auckland, Christchurch, Sydney, Brisbane, and Melbourne.
- 2.10 **thl** intends to [REDACTED]. **thl** has selected Star RV for the Proposed Business Divestment because:
- (a) it is a brand that **thl** would otherwise have acquired as part of the Proposed Transaction;
 - (b) it is the Apollo brand that best aligns with the market segment the Commission has indicated may raise competition concerns;
 - (c) it is a longstanding and well established brand, with an existing customer base and relationships with distributors;
 - (d) it is a regional brand, meaning the brand can be divested in full rather than needing separation from the business in the USA, Canada, UK, or Europe, an important consideration for consistency and clarity with customers and wholesalers; and
 - (e) the brand carries Apollo's newest vehicles and fleet models, providing customers with a superior product and the Approved Purchaser with full optionality for positioning the fleet in market, and how long to retain the fleet before selling.
- 2.11 **thl** considers that the other Apollo brands are not appropriate for divestment. Apollo is a global brand with presence outside of Australia / New Zealand, and Cheapa Campa and Hippie carry a wide range of older non-motorhome fleet.
- 2.12 Star RV has registered trademarks in New Zealand and Australia. The New Zealand trademarks apply to classes 12, 35, 37, 39 with renewal required from 3/05/2027 (logo mark) and 9/06/2026 (word mark). All trademarks will be transferred to the Approved Purchaser.

⁴ [REDACTED].

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- 2.13 Star RV also has a multi-country website for direct bookings, with SEO value, viewable at starrv.com. The starrv.com domain will be assigned to the Approved Purchaser on completion of the Proposed Business Divestment and *thl* will provide transitional support in relation to booking management as mentioned above.
3. The effect of the Proposed Business Divestment on the value of the Proposed Transaction
- 3.1 The Commission has requested information about the effect that the Proposed Business Divestment will have on the value of the Proposed Transaction.
- 3.2 [REDACTED].
- 3.3 [REDACTED].
4. There is no material risk associated with the Proposed Business Divestment
- 4.1 There is no material composition, asset or purchaser risk associated with the Proposed Business Divestment:
- (a) **Composition risk:** as explained above, *thl* is already in discussions with Next Capital regarding the Proposed Business Divestment. If terms are agreed with Next Capital, there can be no composition risk. Even if Next Capital is not ultimately the Approved Purchaser, the Divestment Business includes Apollo's newest motorhomes, the established Star RV brand and forward bookings which will allow the Approved Purchaser to immediately generate revenues on completion of the Proposed Business Divestment. The Divestment Business is therefore an attractive proposition for any existing operator or new entrant in the RV rental market, particularly given the current supply chain issues affecting the supply of new motorhomes. [REDACTED];
- (b) **Asset risk:** if Next Capital is the Approved Purchaser, any asset risks will be addressed by the proposal that the Proposed Business Divestment will occur either at the same time as or shortly after the completion of the Proposed Transaction. The Commission can be comfortable that the Divestment Business will not deteriorate prior to completion of the Proposed Business Divestment. Until completion of the Proposed Transaction, [REDACTED]. As explained above, the Proposed Business Divestment will be of the [REDACTED] newest motorhomes on Apollo's rental fleet with the lowest mileage as at the date of completion of the Proposed Transaction. [REDACTED], the final list of vehicles to be divested will be more weighted to new than the indicative list;
- (c) [REDACTED]; and
- (d) **Purchaser risk:** Any purchaser risks are appropriately addressed by *thl's* proposal to have the Commission approve the purchaser.
5. Proposed Business Divestment resolves the competition concerns raised in the SOUI
- 5.1 As explained above, *thl* remains strongly of the view that the Proposed Transaction will not substantially lessen competition in any relevant market and that a divestment of assets is not required. [REDACTED].
- 5.2 *thl* considers that the Proposed Business Divestment resolves the competition concerns identified by the Commission in its SOUI for the following reasons:

- (a) the Proposed Business Divestment will result in only a small increase in *thl's* share of the motorhome segment of the RV rental market, and no aggregation in the 'premium' motorhome segment;
- (b) the Proposed Business Divestment will exceed the critical loss volume, which means that the Approved Purchaser will provide an effective constraint on the merged entity in the medium term;
- (c) the Divestment Business will be revenue generating from completion and includes all of the assets required to create a viable and effective competitor almost immediately in the motorhome segment of the RV rental market which would have the ability to expand in the medium term. The competitor will sufficiently replace any reduced competitive constraint in the medium term which would otherwise be lost from the Proposed Transaction;
- (d) in particular, if the Divestment Business is sold to Next Capital, it will result in the creation of a competitor in the motorhome segment which [REDACTED];
- (e) the Proposed Business Divestment addresses perceived concerns about the Proposed Transaction from trade partners; and
- (f) there is no risk of increased coordination as a result of the Proposed Business Divestment.

5.3 We expand on each of these reasons below.

The Proposed Business Divestment will result in only a small increase in thl's share of the motorhome segment

- 5.4 The competition concerns identified by the Commission in its SOUI relate to the motorhome segment of the RV rental market, principally the 4- to 6-berth (or large) motorhome rental segment. Accordingly, the starting point for any divestment undertaking must be Apollo's current motorhome fleet, as *thl* can only divest assets that it is acquiring, not assets that it may or may not acquire in the future.
- 5.5 As a consequence of the Proposed Business Divestment, *thl* will only acquire [REDACTED] of Apollo's 4-6 berth motorhomes (as at 31 May 2022). This equates to an increase in *thl's* current share of the motorhome segment of only [REDACTED]%, based on the market share data provided in the letter from MERW dated 31 May 2022. An increase in market share of this size cannot raise any competition concerns.
- 5.6 Furthermore, the vehicles to be acquired by *thl* comprise the oldest motorhomes on Apollo's fleet: all of these vehicles are [REDACTED]. The Proposed Business Divestment will therefore remove the overlap between the parties in the 'premium' 4-6 berth motorhome segment of the RV rental market.
- 5.7 Moreover, the [REDACTED] motorhome rental vehicles to be acquired by *thl* are less valuable than the vehicles that will be sold as part of the Divestment Business. As older vehicles, their revenue generating potential is less than for a newer vehicle (and, indeed, as many of these vehicles will be nearing the end of their useful rental life, many of these vehicles are likely to be sold in the medium term) and they will incur higher repair and maintenance costs.
- 5.8 The table below provides further details of the Apollo 4-6 berth motorhome fleet as at 31 May 2022, the 4-6 berth motorhome fleet to be divested and the 4-6 berth motorhome fleet to be acquired by *thl* as part of the Proposed Transaction:

	Apollo 4-6 berth motorhome fleet (31 May 2022)	4-6 berth motorhome fleet to be divested	4-6 berth motorhome fleet to be acquired by <i>thl</i>
Number of vehicles	[REDACTED]	[REDACTED] (72.4%)	[REDACTED] (27.6%)
Range of models	[REDACTED]	[REDACTED]	[REDACTED]
Average kilometres travelled	[REDACTED]	[REDACTED]	[REDACTED]

The Proposed Business Divestment will exceed the critical loss volume

5.9 The NERA reports have demonstrated that:

- (a) The merged entity will be particularly sensitive to volume loss (NERA 18 February 2022 Statement of Preliminary Issues report, at [22]);
- (b) Capacity in the RV market (including the motorhome segment) is fluid (NERA 24 March 2022 Statement of Issues report, at [21]); and
- (c) Rivals could expand capacity by more than the critical loss within the relevant timeframes (NERA 22 April 2022 Addendum memo at [10] and NERA 31 May 2022 SOUI report at [28]).

5.10 The divestment of [REDACTED] vehicles would instantly provide a rival with capacity that exceeds the critical loss volume as set out in NERA's report in response to the SOUI.

The Divestment Business will create a viable and effective competitor in the motorhome segment that will replace the constraint otherwise lost from the Proposed Transaction

5.11 The Divestment Business will provide revenue generating assets that will allow the Approved Purchaser to immediately compete with the merged entity in the motorhome segment. The Approved Purchaser will own more than 70% of Apollo's current motorhome rental fleet (or approximately [REDACTED]% of Apollo's motorhome rental fleet at its maximum future fleet point in its current New Zealand rental fleet plan⁵), with forward bookings and an internationally established, premium motorhome brand. As a result, the Approved Purchaser will be equipped to provide a significant and immediate competitive constraint on the merged entity in a manner that is at least equivalent to the constraint that Apollo imposes on *thl's* activities today.

5.12 The Divestment Business will also provide the Approved Purchaser with a sufficient platform for growth in the motorhome segment (being the only area of concern raised by the Commission in its SOUI), [REDACTED] which will constrain the merged entity in the medium term:

- (a) *thl* has provided evidence that the current supply chain issues will resolve by the end of 2023 and therefore will not present a barrier to expansion in the medium term;⁶
- (b) As noted above, the motorhome rental vehicles to be divested are Apollo's newer vehicles with lower mileages. This will enable the Approved Purchaser to retain all the vehicles acquired on its

⁵ The Apollo fleet plan projects a fleet of [REDACTED] motorhomes as [REDACTED].

⁶ Submission by Tourism Holdings Limited on the Statement of Unresolved Issues dated 31 May 2022 at [2.3(a)].

active rental fleet for the foreseeable future with low repair and maintenance costs. Accordingly, rental fleet acquisitions by the Approved Purchaser will grow its total rental fleet;

- (c) *thl* estimates that the market value of the fleet to be divested (based on the retail value of the fleet alone) is in excess of \$[REDACTED] (and, given the fleet are revenue generating units, the value of the Divestment Business is significantly higher than this), providing a sizeable investment and a platform for the Approved Purchaser to grow;
 - (d) The Commission's own analysis of the post-pandemic market shares demonstrates that substantial growth is possible in the motorhome rental segment. [[REDACTED]]; and
 - (e) Apollo's entry into the American market also demonstrates that significant expansion is possible from a (relatively) small initial fleet. Apollo initially entered the American market in 2008 with [REDACTED]. Based on *thl's* experience, a well-funded operator with growth intentions could build the New Zealand fleet up by approximately [REDACTED] vehicles per year from the platform set up by the Divestment Business, assuming there is sufficient demand to meet that level of increased supply.
- 5.13 *thl* submits that, absent the Proposed Transaction, Apollo will not be in a better position than an Approved Purchaser to grow its fleet in the medium term. *thl* understands that it is Apollo's opinion that its business structure, particularly its vertical integration, does not give it a competitive advantage to access capital. As explained previously, capital is readily available, and new motorhomes are not sunk – RVs (including motorhomes) can be used for a rental provider's other brands as they age and/or be sold. In addition, it should be noted that any rental operator can readily expand its fleet by acquiring vehicles from one of the many overseas suppliers.
- 5.14 Further, Apollo [REDACTED].
- 5.15 [REDACTED].
- 5.16 [REDACTED].
- 5.17 This demonstrates that, if the Proposed Transaction does not proceed, [REDACTED]. [REDACTED].
- 5.18 Further, as Apollo permanently shut down its local New Zealand manufacturing facility in 2020, any motorhomes that Apollo supplies to the New Zealand market must either be sourced from its own manufacturing facilities based overseas or acquired from another manufacturer. Any vehicles produced by Apollo for New Zealand at its manufacturing facilities will present one less motorhome available to the rental market in which the facility is located. [REDACTED].
- 5.19 [REDACTED].
- 5.20 While it is not relevant to the Commission's analysis because *thl's* fleet plans remain the same with or without the Proposed Transaction, for the Commission's information [REDACTED].
- 5.21 While the Commission will need to make its own inquiries of any proposed purchaser, it is safe to assume that any Approved Purchaser will have plans to invest in expansion in the New Zealand market. It is therefore likely that the purchaser of the divested assets will provide [REDACTED]. [REDACTED].

⁷ [REDACTED]

The Proposed Business Divestment to Next Capital will create a more effective constraint in the medium term

- 5.22 **thl** submits that the sale of the Divestment Business to Next Capital in particular will more than replace any competitive constraint otherwise lost by the Proposed Transaction, [REDACTED]. In short:
- (a) Jucy Rentals is an established and experienced rental vehicle operator, with existing depots, staff and distribution networks. It already operates across the campervan rental segment;
 - (b) Jucy Rentals has a presence in more locations than Apollo. Jucy Rentals has depots in Auckland, Christchurch and Queenstown whereas Apollo does not have a depot in Queenstown;
 - (c) Jucy Rentals is solely focused on the Australasian region and its investment decisions are focused on these markets. [REDACTED];
 - (d) As private equity investors, Next Capital is well capitalised and is likely to invest in growing the Jucy Rentals business and its share of the motorhome segment. [REDACTED];
 - (e) As a private company, Jucy Rentals will have lower overhead costs than Apollo and **thl**. Apollo and **thl** have significant overhead costs as a result of being listed on the ASX and NZX respectively, including audit, listings, and directors' fees, and regulatory compliance, share registry, and annual meeting costs. Jucy Rentals does not have these overhead costs, which gives it an advantage over Apollo, **thl** and the merged entity.
- 5.23 [REDACTED].
- 5.24 **thl** acknowledges that Jucy Rentals previously entered and subsequently exited the motorhome rental segment. However, Jucy Rentals was under different ownership at the time. The soon to be new owners of Jucy Rentals have demonstrated a strong desire to enter the motorhome segment. Further, unlike last time when Jucy Rentals entered the motorhome rental segment, Next Capital (and therefore Jucy Rentals) will acquire an established motorhome brand, *Star RV*.
- 5.25 If Next Capital acquires the Divestment Business, Jucy Rentals will [REDACTED]⁸ with operations across all segments of the RV rental market and will plainly provide a significant competitive constraint on the merged entity. [REDACTED]. [REDACTED].
- 5.26 As part of **thl**'s discussions with Next Capital and as set out in the enclosed Term Sheet, the divestment of certain Apollo branches is being considered. [REDACTED].
- 5.27 [REDACTED].

Proposed Business Divestment addresses perceived concerns about the Proposed Transaction from trade partners

- 5.28 The Proposed Business Divestment addresses perceived concerns from distribution partners about the Proposed Transaction, as it:
- (a) will establish a new competitor in the motorhome rental segment with a strong appetite to grow fleet volumes in New Zealand. As explained above, this new competitor is likely to grow fleet [REDACTED], and will therefore present a viable alternative to Apollo;

⁸ This assumes that [REDACTED]

- (b) arms the Approved Purchaser with the newest possible fleet, which is more attractive to trade partners, and will give the Approved Purchaser continuity in its fleet range for years to come; and
- (c) provides competitive tension if there are any perceived concerns about commercial arrangements between the trade partner and the merged entity.

5.29 For the Approved Purchaser, the *Star RV* brand provides established distribution with a wide range of aggregators and trade partners. A full list of Star RV distribution partners is enclosed in Appendix 4. If the Approved Purchaser already has an established relationship with the same partner, the transition will be straight-forward as the partner's and Approved Purchaser's systems will already be integrated, the Approved Purchaser will be able to leverage its existing terms and relationships, and staff will already be trained on the partner's systems. While establishing a relationship with a new trade partner is not a barrier to entry, the ability to leverage an existing relationship will represent a time saving. *thl* notes that Jucy Rentals already has established relationships with most of *thl's* trade partners. [REDACTED]

5.30 If the Approved Purchaser does not have a prior relationship with the distribution channel, *thl* will facilitate an introduction between the parties. As explained earlier, if required, *thl* will enter into transitional support arrangements with the Approved Purchaser, including booking management.

There is no risk of increased coordination as a result of the Proposed Business Divestment

5.31 The proposal that the Commission approve the purchaser of the Divestment Business will mitigate any risk of coordination between the Approved Purchaser and the merged entity. If the Approved Purchaser is Next Capital, *thl* notes that Next Capital is independent of *thl* and any transitional arrangements entered into as part of the Proposed Business Divestment will be on an arms length commercial basis, with appropriate protocols in place. Therefore, there is no risk of coordination between Next Capital/Jucy Rentals and the merged entity.

10 June 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]