

Statement of Unresolved Issues

THL/Apollo

28 April 2022

Introduction

1. On 13 December 2021, the Commerce Commission registered an application from THL Group (Australia) Pty Limited, a subsidiary of Tourism Holdings Limited (THL) seeking clearance to acquire 100% of the shares in Apollo Tourism & Leisure Ltd (Apollo) (the Proposed Acquisition).
2. To clear an application we must be satisfied that an acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a New Zealand market.
3. Since registering the application from THL, we have published:
 - 3.1 a Statement of Preliminary Issues (SoPI) setting out the issues that we considered important at the start of our investigation in deciding whether or not to grant clearance; and
 - 3.2 a Statement of Issues (SoI) setting out the potential competition issues that we had identified following our initial investigation.
4. The SoPI and the SoI also provided background information about THL and Apollo as well as the industry in which they operate. These documents are available on our website, along with public versions of the submissions we received following publication of the SoPI and the SoI.
5. This Statement of Unresolved Issues (SoUI) sets out the potential competition issues that have not been resolved to date and that we therefore continue to test. This is so THL and Apollo (the Parties) and other interested parties can provide us with submissions relating to those concerns.
6. In reaching the views set out in this SoUI, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition issues may arise, as the investigation continues.
7. We invite interested parties to provide comments on the likely competitive effects of the Proposed Acquisition. We request that parties who wish to make a submission do so by **31 May 2022**.

The concerns we continue to test

8. The Parties both supply motorhome and campervan rental services to domestic and international tourists in New Zealand.
9. On the basis of the information collected to date, we are currently not satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a New Zealand market.
10. While we are still investigating and have made no final decisions, we continue to have concerns that the Proposed Acquisition would substantially lessen competition due to horizontal unilateral effects resulting from a loss of competition in the market for the supply of motorhome rental services in New Zealand. We are also continuing to consider whether the Proposed Acquisition would be likely to substantially lessen competition due to an increase in the potential for the merged entity and its rivals in the supply of motorhome rental services to coordinate their behaviour.
11. Based on the available evidence, we consider that the relevant market for assessing the competitive effects of the Proposed Acquisition is a national market for the supply of motorhome rental services. However, we have not reached a final view on whether the product scope of the relevant market is confined to the supply of motorhome rental services or is a broader market for the supply of motorhome and campervan rental services. We also note that how narrowly or broadly we define the relevant product market does not affect our substantive analysis. What ultimately matters is that we consider all relevant competitive constraints, and the extent of those constraints, which we do as part of our competition analysis.
12. In the short term, while demand for motorhome rentals remains persistently subdued because of the COVID-19 pandemic, we consider that excess capacity is likely to constrain an exercise of market power by the merged entity in the supply of motorhome rental services. Our concerns with the Proposed Acquisition relate to the constraints on the merged entity in the medium term, being the period in the future when demand, and international tourism, have sufficiently recovered to meet market capacity (which may occur within the next three years, although the exact timeframe is unclear). We are not currently satisfied that, in the medium term, customers of motorhome rental services in New Zealand are unlikely to be adversely affected in a material way by the Proposed Acquisition.¹
13. In relation to potential unilateral effects, our unresolved concerns with respect to the Proposed Acquisition, are primarily that, in the medium term:
 - 13.1 the Proposed Acquisition would result in significant aggregation of motorhome rental services providers and the merged entity would have a high market share in the supply of motorhome rental services;
 - 13.2 we are not satisfied that competition from the remaining existing suppliers of motorhome rental services is likely to be sufficient to constrain the merged

¹ We define the short term and medium term in more detail at [35] below.

entity. Other suppliers of motorhome rental services operate substantially smaller fleets to the Parties and appear to be more limited in their focus (eg, in terms of the quality of rental services offered or because they target only specific types of customers). This impacts on the competitive constraint that competing motorhome rental operators would likely provide, individually and collectively;

- 13.3 based on evidence before us, we are not satisfied that entry or expansion, in a timely manner and at sufficient scale to constrain the merged entity and prevent a substantial lessening of competition, is likely;
 - 13.4 the evidence currently suggests that the merged entity would face only limited constraint from campervan rentals in the supply of motorhome rental services, whether campervans are considered within, or outside, the relevant market;
 - 13.5 we are not satisfied that the motorhomes and other recreational vehicles (RVs) for rent on peer-to-peer platforms are likely to sufficiently constrain the merged entity;
 - 13.6 we are not satisfied that the countervailing power of wholesalers, travel agents and web consolidators, would constrain an exercise of market power by the merged entity;
 - 13.7 while they may be an option for some customers, we are not satisfied that alternative transport and accommodation options (eg, renting a car and hiring a motel) would constrain an exercise of market power by the merged entity; and
 - 13.8 taken together, we are not satisfied that the constraints from within and outside the market identified above would likely be sufficient to constrain an exercise of market power by the merged entity.
14. In terms of coordinated effects, we consider that some conditions of the relevant market make it more conducive to coordination, but other features make the market less conducive to coordination. Market conditions that may enhance the ability and incentive for rivals to coordinate their behaviour include the small number of motorhome rental operators, the visibility of price to all market participants online, the common practice of firms web scraping the prices of rivals, and the interactions of motorhome rental operators through industry organisations and meetings. We are considering whether the removal of Apollo (the major competitor to THL in motorhome rentals) would change incentives so as to make coordination in the relevant market more likely (eg, by making it easier for the merged entity to act as a market leader and tacitly coordinate prices among smaller market participants). This would be more likely if Apollo is an aggressive or destabilising competitor.
 15. We discuss these outstanding concerns in more detail below.

Process and timeline

16. We have agreed with THL to extend the period in which to decide whether to clear or decline the Application until 30 June 2022.
17. We would like to receive submissions and supporting evidence from the Parties and other interested parties on the issues raised in this SoUI. We request responses by close of business on **31 May 2022**, including a public version of any submission.
18. All submissions received will be published on our website with appropriate redactions.² All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on **9 June 2022**.
19. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with us at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

The Parties

20. THL is a global tourism company, whose shares are listed on the New Zealand Stock Exchange. THL's business in New Zealand includes the manufacture and sale of new (and used) motorhomes,³ and the rental of motorhomes and campervans. THL offers motorhome rental services under its Maui, Britz and Mighty brands. THL will shortly become a shareholder in Camplify Holdings Limited (Camplify), which operates an online peer-to-peer RV rental platform that enables motorhome, campervan and other recreational vehicle owners (together, RV owners), including private individuals, to rent out their vehicles.⁴
21. Apollo is a global tourism company, whose shares are listed on the Australian Securities Exchange. Apollo's business in New Zealand includes the sale of new (and used) motorhomes and the rental of motorhomes and campervans. Apollo's motorhome rental brands include Star RV, Apollo and Cheapa Campa (Apollo has a further campervan only rental brand called Hippie Camper). Apollo is also currently the largest shareholder in Camplify.
22. THL's Proposed Acquisition of Apollo is to be by way of a scheme of arrangement under the Corporations Act 2001 (Australia).

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

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

⁴ THL has also owned and operated the Mighway and SHAREaCAMPER peer-to-peer platforms. On 24 March 2022, the Commission gave clearance to Camplify to acquire these platforms from THL.

Background to the industry

23. 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 (two to six-berth options). These may be as simple as a sleeper-van with a built-in mattress and separate gas stove, through to larger vehicles with a built-in kitchenette and a fully plumbed shower and toilet.⁵
24. For the purposes of this document and our assessment of the Proposed Acquisition, a motorhome is characterised as a purpose-built vehicle constructed on a chassis approximately 7m in length, and a campervan as a converted van-type vehicle, approximately 5m in length (eg, Toyota Hiace). A motorhome usually provides a broad range of amenities, including a small living area, beds, kitchen, toilet and shower, whereas a campervan is much smaller and may not have the same range of facilities (eg, toilet and shower).
25. The Parties rent both motorhomes and campervans. Their vehicles range from two to six berth models, most of which are certified self-contained.⁶ In this document, we refer to the Parties as motorhome and campervan rental operators, to distinguish them from peer-to-peer RV rental platform operators. The motorhome and campervan rental operator competitors to the Parties, as outlined in the Application, supply motorhomes, campervans and sleeper-vans (converted Toyota Estimas, or similar, that are typically not self-contained). A wider range of RVs are available for rent through peer-to-peer platforms, which offer towable vehicles (eg, caravans and pop-up trailers) as well as driveable vehicles, including smaller “hand-crafted” campervans and traditional motorhome and campervan options.

Motorhome and campervan rental operators

26. The Application describes the Parties as traditional rental operators and defines such operators as having their own fleet of vehicles available for rent, with physical branches and set locations for vehicle pick up and drop off.⁷ Such motorhome and campervan rental operators run commercial rental businesses.
27. Other major suppliers of motorhome and campervan rental services in New Zealand include:
 - 27.1 motorhome rental operators, including nationwide operators such as McRent, Wilderness, Pacific Horizon, Tui and Wendekreisen,⁸ plus several smaller motorhome operators, as noted in the Application, many of which are regionally based;⁹ and

⁵ For further details of the most commonly supplied motorhomes see the Application at Appendix A.

⁶ The New Zealand Government has also announced that it will be introducing legislation in 2022 providing for tighter freedom camping rules. Under the proposed legislation, vehicle-based ‘freedom’ campers will be required to use a certified self-contained vehicle when they stay on local council managed land, except at a designated site. Such vehicles will require a fixed toilet to be certified self-contained.

⁷ The Application at [5.6]-[5.7].

⁸ Some motorhome rental operators also offer campervan options within their fleets.

⁹ The Application at [5.34].

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

Sales channels for motorhome rentals – pre- and post the pandemic

28. Prior to the pandemic, motorhomes were generally rented through the following channels:¹⁰
- 28.1 tour wholesalers who sell pre-purchased rentals to international tourists (eg, Flight Centre and Trailfinders in the United Kingdom);
 - 28.2 online travel agents (also known as web consolidators or OTAs), which are third party-operated websites that facilitate bookings with motorhome rental operators (eg, Expedia and RV-rental specific companies like GoSee); and
 - 28.3 direct sales.
29. At present, and as a consequence of the pandemic, there are few international tourists visiting New Zealand. Bookings by domestic tourists are made primarily through direct sales.¹¹ We consider that once the border and travel restrictions are relaxed and international tourists return to New Zealand post the pandemic, rentals of motorhomes are likely to revert to being made using all the channels referred to at [28].

Peer-to-peer rental platforms

30. In addition to motorhome rental operators, customers can also rent motorhomes through peer-to-peer rental platforms. Peer-to-peer platforms differ from web consolidators and online travel agents (and the other sales channels referred to above) and operate like the Airbnb model for accommodation. Peer-to-peer platforms have listings of motorhomes available for rent, but also a wider range of campervans and RVs.
31. The motorhomes listed for rent on peer-to-peer platforms are mainly motorhomes owned by private individuals, who use the platforms to rent out their motorhome when they are not in use. However, some small motorhome rental operators also list their motorhomes for rent on peer-to-peer platforms, in addition to using other sales channels. The prices at which motorhomes are available for rent on peer-to-peer platforms are generally set by the owner of the motorhome owner, not the platform operator.¹²
32. Because peer-to-peer platforms list motorhomes owned by private individuals, they list motorhomes for rent at a wide range of locations across New Zealand.

¹⁰ The Application at [5.3].

¹¹ The Application at [5.5].

¹² Although platform operators commonly set and charge rental customers and/or owners fees for using their platforms to rent motorhomes.

Impact of the pandemic and supply chain issues

33. The Parties, and the broader tourism industry, have been significantly affected by the pandemic. For over two years, New Zealand has had few international tourists, and domestic travel within New Zealand has also been impacted by lockdowns, the cancellation of events and general uncertainty associated with the pandemic. This has substantially reduced the demand for motorhome rentals, leading to rental operators selling off surplus fleet and to a reduction in the number of vehicles available for rent on peer-to-peer platforms.¹³
34. In addition, the Parties and others in the industry are facing supply chain difficulties as a result of the pandemic, with lockdown restrictions causing factory shutdowns for some of the largest global chassis manufacturers, including Mercedes-Benz, which supplies the majority of the chassis for THL's New Zealand rental fleet.¹⁴
35. Given the above, we are considering the effects of the Proposed Acquisition both in the short term while the pandemic continues and in the medium term when demand and international tourism have sufficiently recovered to meet excess capacity.
- 35.1 The short term refers to the period while the pandemic continues and demand for motorhome rentals remains persistently subdued because of the pandemic. In the short term, demand is reduced because border and/or travel restrictions remain in place,¹⁵ and supply persistently exceeds demand (ie, there is persistent excess capacity). On the basis of available information, we consider that short term demand constraints are likely to persist until the 2023/2024 summer season at the earliest.¹⁶ Even though the borders are opening, we consider that the return of demand will be slow for several reasons.¹⁷
- 35.2 The medium term refers to the period into the future when demand, and international tourism, recover sufficiently to meet market capacity. The medium term starts when the short term period described above ends and we consider it likely that this will occur by the 2023/2024 summer season. In the medium term, we expect to see the removal of travel restrictions and the

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¹⁴ The Application at [5.21].

¹⁵ New Zealand's borders are opening up in stages to different countries.

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]. This analysis takes into account the fact that the combined fleet size of all motorhome rental operators is currently at an estimated []% of pre-pandemic levels.

¹⁷ These reasons will include the time people will take to plan/book international travel, limited airline capacity to New Zealand, the likely higher costs of travel and ongoing reticence of people to travel while the pandemic continues (and there is a risk of disruption due to outbreaks).

return of international flights (and tourism) to New Zealand. The medium term is likely to end with the cessation of supply constraints and the return of market confidence. Based on our enquiries to date, this could occur within three years but may also take longer.¹⁸ The likely duration of the medium term scenario is therefore unclear.

36. We invite further submissions on the impact of the pandemic and supply chain issues on our assessment of the Proposed Acquisition, including evidence on the timeframe within which supply constraints are likely to cease and market confidence is likely to return.

The relevant markets

37. Market definition is a tool that helps identify and assess the competitive constraints the 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.¹⁹
38. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services that fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.²⁰
39. When assessing relevant markets, we consider:²¹
- 39.1 whether customers could easily switch to alternative products or services in response to a price increase (known as ‘demand side’ substitution); and
- 39.2 whether suppliers could easily switch to producing or supply different products (known as ‘supply side’ substitution).

¹⁸ Market confidence may return with the return of tourism and demand to pre-pandemic levels, but we note that
[
]. Recovery of tourism is dependent on a number of factors, as noted above. IATA has estimated that passenger numbers in Asia Pacific may be back to pre-pandemic levels in around 2024-2025, but does not have forecasts specifically for New Zealand. <https://www.iata.org/en/pressroom/2022-releases/2022-03-01-01/>. Even if demand returns more quickly, the medium term may continue if supply constraints persist. The timeframe within which supply constraint will cease is uncertain. Some industry participants consider that this may occur in 12-18 months, but other parties expect supply chain issues to continue for two to three years or to mean that motorhome rental operators will struggle to expand their fleets to match demand. Submission from Wilderness to the Commerce Commission (24 March 2022),
[
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¹⁹ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.7]-[3.8].

²⁰ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.10] and [3.12].

²¹ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.16].

What we said in our Sol and submissions received

40. In our Sol, we expressed the preliminary view that the relevant market for assessing the competitive effects of the Proposed Acquisition is the national market for the supply of motorhome rental services. We were of the view that there are separate product markets for motorhome rental services and campervan rental services, although we noted the possibility of a broader market for motorhome and campervan rentals. We expressed a view that different quality motorhomes and different sized motorhomes were likely to be in the same market, and that the motorhomes rented via peer-to-peer platforms are rented in the same market as that in which motorhome rental operators rent motorhomes.²²
41. THL submits that the relevant market for the purpose of assessing the Proposed Acquisition is the national market for RV hire services, which includes motorhomes and campervans.²³ THL also submits that:
- 41.1 there is no meaningful distinction that can be drawn between motorhomes and campervans for market definition purposes;²⁴
 - 41.2 the underlying features and facilities of both motorhomes and campervans have many common and overlapping features, which provide customers with the same underlying functionality (being mobile accommodation);²⁵
 - 41.3 there is a large degree of demand- and supply-side substitutability across the different sizes, types and quality of motorhomes and campervans;²⁶ and
 - 41.4 RVs listed for rent on peer-to-peer platforms operate in the same market as motorhome rental operators.²⁷
42. THL further submits that defining separate markets for motorhomes and campervans does not reflect proper application of the hypothetical monopolist (or SSNIP) test or commercial common sense. It submits that marginal motorhome rental customers, who are willing to switch to alternatives (eg, campervans), would protect remaining infra-marginal customers from price rises because it would be difficult for the merged entity to price discriminate between customers.²⁸ THL further submits that the fact there might be different value propositions for motorhomes and campervans does not mean they are not in the same market.²⁹

²² Commerce Commission Sol at [41], [44]-[45], [50] and [56].

²³ THL response to the Commerce Commission's Sol (24 March 2022) at [1.3 (a)].

²⁴ THL response to the Commerce Commission's Sol (24 March 2022) at [2.10].

²⁵ Cross-submission from THL to the Commerce Commission (22 April 2022) at [2.1].

²⁶ The Application at [6.14], THL response to the Commerce Commission's Sol (24 March 2022) at 2.22 and the NERA reports on behalf of THL provided to the Commerce Commission (18 February 2022 and 24 March 2022).

²⁷ The Application at [5.35].

²⁸ THL response to the Commerce Commission's Sol (24 March 2022) at [1.3(a)], [2.6], [2.24], [2.28] and [6.5] and NERA report on behalf of THL provided to the Commerce Commission (24 March 2022).

²⁹ Cross-submission from THL to the Commerce Commission (31 March 2022) at [4].

43. Conversely, Wilderness submits that there is little overlap between the value proposition of motorhome rentals and campervan rentals. In its view, motorhomes provide a higher level of comfort and functionality than typical campervans. Given this, it considers that there is little substitution between motorhomes and campervans, except in the low season when rental operators price motorhome rentals lower to stimulate demand and cashflow, as motorhomes appeal to a different market.³⁰
44. Similarly, [] submits that there are separate product markets for motorhome and campervan rental services, noting that there is a well-known distinction between motorhomes and campervans in the industry with Apollo distinguishing between them on its website. It further submits that the motorhomes rented via peer-to-peer platforms are not rented in the same market in which motorhome rental operators rent motorhomes.³¹

Our current view of the relevant markets

45. Having considered submissions and evidence gathered before and after our Sol, we consider that the evidence currently before us does not support the Parties' view that the relevant market is a broad market that includes all types of RVs, including campervans and motorhomes.
46. Based on the available evidence (discussed later as part of our competition analysis), we consider that the relevant market for assessing competitive effects of the Proposed Acquisition is a national market for the supply of motorhome rental services. THL's view is that defining a narrow market for motorhome rental services does not reflect commercial common sense.³² However, we do not necessarily accept that the evidence supports a broader market.³³ The geographic scope of the relevant market is likely to be national in either case.
47. Our assessment of the competitive effects of the Proposed Acquisition is the same regardless of whether we define the market narrowly for motorhome rentals or more broadly for both campervan and motorhome rentals. This is because a substantial lessening of competition in a significant section of a broader market could still amount to a substantial lessening of competition in that market.³⁴

³⁰ Wilderness response to the Commerce Commission's Sol (24 March 2022).

³¹ E-mail from [] to the Commerce Commission (7 April 2022).

³² THL response to the Commerce Commission's Sol (24 March 2022) at [1.3(a)].

³³ Unlike in *Brambles v Commerce Commission* (2003) 10 TCLR 868 (*Brambles*) at [135], where the Commission relied heavily on the SSNIP test, we have considered a variety of quantitative and qualitative evidence in reaching this view. The High Court in *Brambles* also endorsed the High Court of Australia's view in *Queensland Wire Industries Ply Ltd v Broken Hill Ply Co Ltd* (1989) 167 CLR. 177 at 196 that market definition "involves value judgments about which there is some room for legitimate differences of opinion".

³⁴ A lessening of competition does not need to be felt across an entire market for that lessening to be substantial. Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [2.25]. A lessening of competition that adversely affects a significant section of the market may be enough to amount to a substantial lessening of competition. *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 64 FLR 238; ATPR 40-315, 43,888.

48. Regardless of how narrowly or broadly we define the relevant market (in terms of any product or customer dimensions) in this case,³⁵ what ultimately matters is that we consider all relevant competitive constraints, and the extent of those constraints from within or outside the relevant market. As part of our competition analysis, we are considering the degree of constraint that the merged entity would face in the supply of motorhome rental services from other motorhome rental operators, as well as the constraint from:
- 48.1 competition from campervan rental operators, or customers switching from motorhomes to campervans;
 - 48.2 customers being able to rent a motorhome or RV through peer-to-peer platforms;
 - 48.3 the countervailing power of wholesalers, online travel agents and web consolidators; and
 - 48.4 alternative transport and accommodation options available to tourists.
49. Our assessment later of each of the above constraints considers in more detail the submissions we have received on these points in response to our Sol, including THL's submissions summarised at [41]-[42] above.

With and without scenarios

50. Assessing whether a substantial lessening of competition is likely requires us to:
- 50.1 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
 - 50.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.
51. With the Proposed Acquisition, THL would acquire 100% of the shares in Apollo and would therefore acquire a range of motorhomes under the Apollo, Cheapa Campa and Star RV brands (and campervans under some of those brands and the Hippie Camper brand).
52. Without the Proposed Acquisition, the Parties submit that the status quo would apply (ie, that THL and Apollo would continue to operate as two independent businesses).³⁶

³⁵ As well as the question of whether motorhome and campervan rentals are supplied in the same product market or separate product markets, information from some industry participants raised the question of whether there might be separate customer dimension (eg, in terms of the quality of rental service offered or targeting specific types of customers).

³⁶ The Application at [3.10]-[3.12].

53. At this stage, the evidence suggests that the likely counterfactual is the status quo.

Competition concern: horizontal unilateral effects

54. 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 market power and profitably increase price above (and/or reduce quality or innovation below) the competitive level that would prevail without the merger.³⁷

Summary of what we said in our Sol and submissions received

55. In our Sol, we were not satisfied that the Proposed Acquisition would not be likely to substantially lessen competition in the supply of motorhome rental services in New Zealand in the medium term due to unilateral effects.³⁸
56. THL submits that the Proposed Acquisition would not substantially lessen competition in the supply of motorhome (or campervan) rental services due to the vigorous competition provided, amongst other things, by:
- 56.1 existing RV rental operators, including motorhome and campervan rental operators, and potential motorhome and campervan rental operators;³⁹ and
- 56.2 privately-owned vehicles available for rent on peer-to-peer platforms, which THL submits would provide increasing (and significant) constraint on the merged entity.⁴⁰
57. THL also submits that the merged entity would continue to be constrained by:
- 57.1 other RV rental accommodation and transportation options;⁴¹ and
- 57.2 the countervailing power of wholesalers, travel agents and web consolidators.⁴²

Summary of our current view

58. In the short term while demand for motorhome rentals remains persistently subdued because of the pandemic, we consider that excess capacity is likely to constrain an exercise of market power by the merged entity in the supply of motorhome rental services. Most motorhome rental operators have sold down their fleets during the last two years as a result of decreased demand during the pandemic. However, until international tourism returns, the motorhomes available

³⁷ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.62].

³⁸ Commerce Commission Sol at [70].

³⁹ The Application at [5.33]-[5.34] and THL response to the Commerce Commission's Sol (24 March 2022) at [4.1]-[4.15].

⁴⁰ The Application at [5.35] and THL response to the Commerce Commission's Sol (24 March 2022) at [5.1]-[5.9].

⁴¹ The Application at [5.28]-[5.29] and THL response to the Commerce Commission's Sol (24 March 2022) at [6.1]-[6.6].

⁴² The Application at [6.41]-[6.43] and THL response to the Commerce Commission's Sol (24 March 2022) at [8.2].

for rent will likely continue to significantly exceed demand which is likely to constrain the merged entity.

59. However, we are not satisfied that the Proposed Acquisition would not be likely to substantially lessen competition in the supply of motorhome rental services in New Zealand in the medium term (ie, when international tourism, and demand, have sufficiently recovered to meet market capacity).
60. Our unresolved concerns are:
 - 60.1 the Proposed Acquisition would result in significant aggregation of motorhome rental services providers and the merged entity would have a high market share in the supply of motorhome rental services;
 - 60.2 we are not satisfied that competition from the remaining existing suppliers of motorhome rental services is likely to be sufficient to constrain the merged entity. Other suppliers of motorhome rental services operate substantially smaller fleets to the Parties and appear to be more limited in their focus (eg, in terms of the quality of rental service offered or because they target only specific types of customers). This impacts on the competitive constraint that competing motorhome rental operators would likely provide, individually and collectively;
 - 60.3 based on evidence before us, we are not satisfied that entry or expansion, in a timely manner and at a sufficient scale to constrain the merged entity and prevent a substantial lessening of competition, is likely;
 - 60.4 the evidence currently suggests that the merged entity would face only limited constraint from campervan rentals in the supply of motorhome rental services, whether campervans are considered within, or outside, the relevant market;
 - 60.5 we are not satisfied that the motorhomes and other RVs for rent on peer-to-peer platforms are likely to sufficiently constrain the merged entity;
 - 60.6 we are not satisfied that the countervailing power of wholesalers, travel agents and web consolidators would constrain an exercise of market power by merged entity;
 - 60.7 while they may be an alternative option for some customers, we are not satisfied that alternative transport and accommodation (eg, renting a car and hiring a motel) would constrain an exercise of market power by the merged entity; and
 - 60.8 taken together, we are not satisfied that the constraints from within and outside the market identified above would likely be sufficient to constrain an exercise of market power by the merged entity.
61. We explore each of these points below.

Closeness of competition between THL and Apollo and loss of competition

What we said in our Sol and submissions received

62. In our Sol, we expressed the preliminary view that the Parties are each other's closest competitor in the supply of motorhome rental services.⁴³
63. Prior to us publishing our Sol, Bay of Islands Campervans had submitted that the Proposed Acquisition would result in only one large-scale supplier of high-end, modern motorhome rental services, create a vacuum of competition and dominance in the market. It also expressed concern that the Proposed Acquisition would create pricing dependency from one massive player.⁴⁴

Our current view

64. Based on the evidence before us (discussed below), we continue to be of the view that the Parties are each other's closest competitor in the supply of motorhome rental services. This is because the Parties operate motorhome rental fleets of a similar scale, range of quality and size of vehicles, and geographic coverage.
- 64.1 The Parties both operate rental depots close to Auckland and Christchurch international airports.
- 64.2 **Figure 1** sets out images showing the general range in types of vehicles that the Parties offer for rent. It shows that the Parties both offer two, four and six berth motorhomes for rent that are similar in look and physical size.
- 64.3 **Figure 2** sets out the market positioning of the Parties and other major motorhome rental operators. It shows that the Parties both offer budget, mid-range and premium motorhomes for rent under different brands. The Parties generally operate new motorhomes under their premium brand to start and then rebrand motorhomes under their mid-range and budget brands as the vehicles get older.
65. In terms of fleet size, the Parties operate the two largest motorhome rental fleets in New Zealand and have fleets that are substantially larger than those of other motorhome rental operators. The Proposed Acquisition would result in significant aggregation of motorhome rental operators and the merged entity would have a high market share in the supply of motorhome rental services. Based on the Parties' estimates and other evidence before us, the merged entity would have a high market share of motorhome rentals (at least an estimated []% of fleet size,⁴⁵ excluding vehicles rented through peer-to-peer platforms).

⁴³ Commerce Commission Sol at [76].

⁴⁴ E-mail from Bay of Islands Campervans to the Commerce Commission (12 February 2022).

⁴⁵ This is based on existing fleet sizes today, pre-pandemic fleet and estimated fleet in the medium term.

Figure 1: Vehicle types rented by the Parties

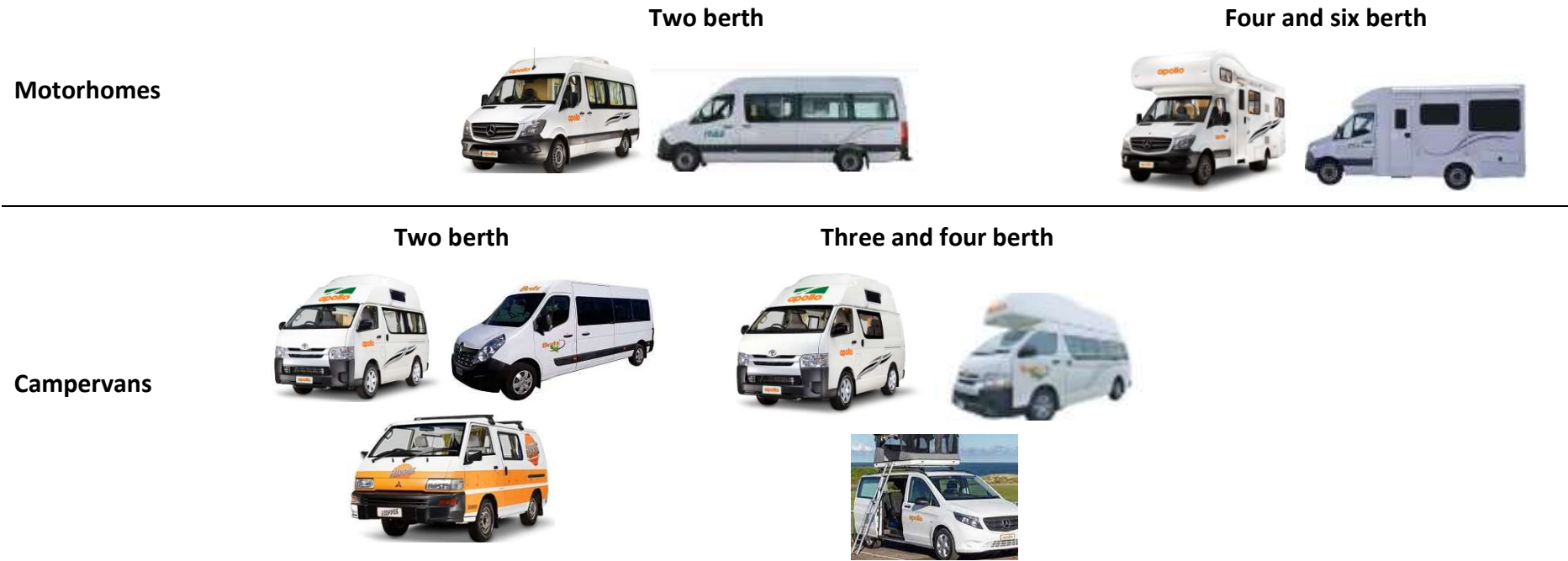
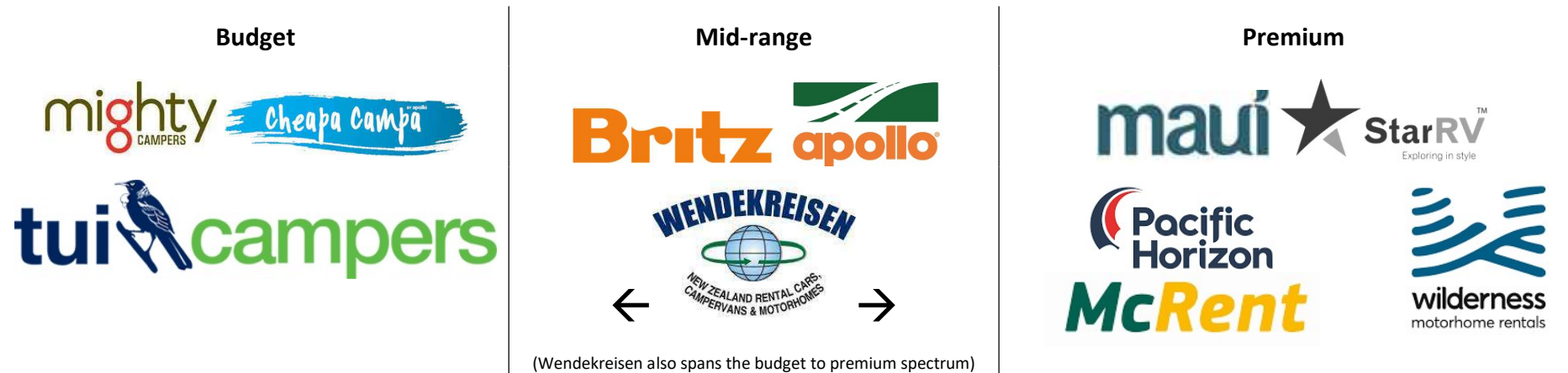


Figure 2: Market positioning of major motorhome rental operators



- 66. In 2015, THL publicly referred to Apollo as its “only significant competitor in the large motorhome market” in Australia and also identified Apollo as one of its two main competitors in the large motorhome market in New Zealand, along with Jucy (who in 2015 had started offering motorhomes for rent, before getting out of motorhomes and selling its fleet to THL in the year ended 30 June 2018).⁴⁶ Since THL made these comments, the only motorhome operator to have entered the market on any scale has been McRent (who entered in 2017) and, in the second half of 2017, THL still referred to Apollo as its largest competitor.⁴⁷
- 67. THL acknowledges that [].⁴⁸ Other industry participants generally see the Parties as each other’s closest competitors.⁴⁹
- 68. In assessing the closeness of competition between the Parties and the competition that would be lost with the Proposed Acquisition, we have considered the nature of price competition between the Parties, including whether Apollo is a price leader, follower or disrupter. Industry participants generally see the Parties, as the largest rental operators, as influencing prices in the market, with some seeing Apollo as more price aggressive or as a disrupter.⁵⁰
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- 68.1 [];⁵¹
- 68.2 [];⁵²
- 68.3 [];⁵³
- 68.4 [],⁵⁴ and
- 68.5 []⁵⁵
- 69. We invite further submissions on the closeness of competition between THL and Apollo, the extent to which Apollo is a price leader, follower or disrupter and the competition that would be lost with the Proposed Acquisition.

⁴⁶ THL 2015 investor introduction and update (September 2015) at 7.

⁴⁷ THL 2017 Shareholder Annual Review at 18.

⁴⁸ Commerce Commission interview with THL (8 February 2022).

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⁵⁰ Wilderness response to the Commerce Commission’s Sol (24 March 2022),

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⁵³ []

⁵⁴ []

⁵⁵ []

The size and scale of other motorhome rental operators

74. Beyond the Parties, the other major motorhome rental operators in New Zealand (based on fleet size) are Wilderness, McRent, Pacific Horizon, Tui and Wendekreisen. Pre-pandemic, these five competitors were the only motorhome rental operators, other than the Parties, with fleets of approximately [] or more motorhomes. After these five rental operators there is a tail of motorhome rental operators with very small fleets.⁶¹
75. Other existing motorhome rental operators have significantly smaller fleets than the Parties. The fleet size of Wilderness, the largest of the existing motorhome rental competitors, would be only []% of that of the merged entity and Wilderness would have an estimated []% market share. The combined fleet size of these five major motorhome rental operators would mean that they would collectively have an estimated []% market share. The merged entity would have a size and scale to its operations that would significantly exceed that of competing motorhome rental operators.
76. We consider that other existing motorhome rental operators are unlikely to provide a substantial constraint on the merged entity even if and when they can return to pre-pandemic fleet size levels. Evidence indicates that competing motorhome rental operators may struggle to compete other than at the margins with the size and scale of the merged entity, as well as its recognised brands.⁶²
77. Some industry participants see scale as important, including to service international tourists.⁶³ Other industry participants consider that scale may give the merged entity significant advantages over smaller rivals in dealing with international wholesalers, travel agents and web consolidators.⁶⁴ We note that with the Proposed Acquisition, THL is seeking to gain scale globally and benefit from cost and fleet synergies from the scale of the merged entity.⁶⁵ As we discuss further later, we consider that they are unlikely (collectively or individually) to expand to the extent necessary to constrain the merged entity.
78. We are continuing to investigate, and invite further submissions on, how the size and scale of the fleets of other motorhome rental operators impacts on the competitive constraint that they would, both individually and collectively, provide on the merged entity.

⁶¹ The largest of these smaller operators had a fleet of [] pre-pandemic and the smallest had only [] in its fleet.

⁶² []

⁶³ Camplify Prospectus (17 May 2021) at 34 and [].

⁶⁴ []

⁶⁵ THL Investor Presentation, Proposed Merger of THL and Apollo (10 December 2021).

Differences in the quality and size of motorhomes offered by suppliers

79. In our Sol, we considered that different quality motorhomes (budget to premium) and different sized motorhomes (two, four and six berth) were likely to be in the same market.⁶⁶
80. Regardless of the boundaries of any relevant market, differences in the quality and size of motorhomes offered by suppliers may impact on the constraint that the merged entity would face from other motorhome rental operators. The majority of the motorhome rental operators that compete with the Parties appear to be more limited in their focus than the merged entity. Some industry participants went so far as to describe some motorhome rental operators as operating in niches of the market.⁶⁷
81. As noted above, we consider that the relevant product market is for motorhome rental services. However, the rental services provided can often be differentiated by the size and quality of the motorhomes offered for rental. We would expect that suppliers of motorhomes of similar size and quality would compete more closely, and thus provide more constraint on each other, than suppliers who focus on other sizes or quality.
82. The narrower focus of some motorhome rental operators means that they may not provide competitive constraint in the supply of all motorhome rentals (from a quality or size perspective). It may also impact on the ability of motorhome rental operators to compete for the business of wholesalers, travel agents and web consolidators that want to deal with suppliers who have a broad offering.⁶⁸ However, a narrower focus by such motorhome rental operators may mean that they have more rental vehicles available to service specific segments of any market. They may therefore provide different degrees of constraint in particular size or quality segments of any market for the supply of motorhome rental services.
83. As Figures 1 and 2 show a range of different quality motorhomes (budget, mid-range and premium) and different sized motorhomes (two, four and six berth) are available for rent from motorhome rental operators.
84. Evidence from the Parties and industry participants suggests that budget, mid-range and premium motorhome segments may target different customers in terms of age and demographics.⁶⁹

⁶⁶ Commerce Commission Sol at [50].

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⁶⁹ Apollo Prospectus (6 October 2016) at 35,

[].

85. Figure 2, above, shows that, aside from the Parties and Wendekreisen, all other motorhome rental suppliers operate a single ‘brand’ or within a single tier or quality segment.
- 85.1 Wilderness, McRent and Pacific Horizon operate solely at the premium end of the market, alongside THL’s Maui and Apollo’s Star RV. Wilderness, McRent and Pacific Horizon compete with the Parties in this premium segment of the market,⁷⁰ and may compete at the margins for mid-range customers or for customers choosing between a premium and mid-range vehicle, but are unlikely to compete for customers at the budget end of the market.
- 85.2 Tui Campers operates solely at the budget end of the motorhome market, alongside THL’s Mighty and Apollo’s Cheapa Campa. Tui Campers competes with the Parties in this budget end of the market (and in any campervan market),⁷¹ and may compete at the margins for mid-range customers or for customers choosing between a budget and mid-range vehicle, but is unlikely to compete for customers at the premium end of the market.
- 85.3 While Wendekreisen operates like THL and Apollo, across the budget to premium spectrum, it does so under a single umbrella brand (although it has different names for its vehicles on its website depending on their age).⁷² It is possible that operating a single brand may negatively impact on the competitiveness of Wendekreisen.
86. The current evidence indicates that the quality of motorhome rentals tends to be linked to the age of vehicles. This means that a motorhome rental operator could switch between vehicles of different quality by holding onto a motorhome for longer (to move into a more budget range), or by sourcing newer motorhomes (for more premium rentals).
87. In terms of size of vehicle, most motorhome rental operators have fleets which cover a range of berth sizes, likely because a number of factors may influence the size of vehicle that a customer demands (with these factors potentially varying for different types of customers). There is no evidence of any difference between existing motorhome rental operators based on vehicle berth size. In contrast to the structural challenges discussed below that campervan rental operators face when seeking to expand into motorhome rentals, existing motorhome rental operators seem likely to have the business structures in place to cover motorhomes of all berth-sizes. Existing motorhome rental operators are unlikely to require significant development of

⁷⁰ E-mail from Bay of Islands Campervans to the Commerce Commission (12 February 2022), [].

⁷¹ []

⁷² Wendekreisen’s premium fleet (in both motorhomes and campervans) is Koru Star, its mid-range fleet is Koru and its budget fleet is simply named Budget. []

manufacturing facilities or further expansion of dealership networks to start supplying motorhome rentals with a different berth-size.

88. We are continuing to investigate, and invite further submissions on, how the quality and size of motorhomes offered by other motorhome rental operators impacts on the competitive constraint that such rivals would, both individually and collectively, provide on the merged entity, and on whether there would be sufficient constraint across the entire size and quality spectrum of the market to effectively constrain the merged entity.

Constraint from campervan rental operators

What we said in our Sol and submissions received

89. In our Sol, we expressed the preliminary view that campervan rental operators would pose only a weak constraint on the merged entity in any motorhome rental market.⁷³
90. THL submits that, in addition to facing vigorous competition from existing motorhome operators and constraints from excess capacity in the marketplace as a result of the pandemic, the merged entity would continue to be constrained by competition from campervan rental operators.⁷⁴ THL further submits that campervans would provide a very strong constraint on motorhome operators, noting that:⁷⁵
- 90.1 no meaningful distinction can be drawn between campervans and motorhomes which serve the same functional purpose;
 - 90.2 the underlying features and facilities of both motorhomes and campervans have many common and overlapping features, which provide customers with the same underlying functionality (being mobile accommodation);⁷⁶ and
 - 90.3 campervan and motorhome rental operators consider themselves to be competitors.
91. As noted earlier, Wilderness submits that there is little overlap between the value proposition of motorhome rentals and campervan rentals. In its view, motorhomes provide a higher level of comfort and functionality than typical campervans. Given this, it considers there is little substitution between motorhomes and campervans, except in the low season when rental operators price motorhome rentals lower to stimulate demand and cashflow, as motorhomes appeal to a different market.⁷⁷
92. As also noted earlier, [] submits that there are separate product markets for motorhome and campervan rental services and that there is a well-known distinction between motorhomes and campervans in the industry, with Apollo distinguishing

⁷³ Commerce Commission Sol at [106].

⁷⁴ The Application at [1.3].

⁷⁵ THL response to the Commerce Commission's Sol (24 March 2022) at [4.3]-[4.4] and [6.1].

⁷⁶ Cross-submission from THL to the Commerce Commission (22 April 2022) at [2.1].

⁷⁷ Wilderness response to the Commerce Commission's Sol (24 March 2022).

between them on its website. It submits that regardless of any marketing, when customers book, the differences in pricing and specifications between motorhomes and campervans is important.⁷⁸

Our current view

93. Beyond the Parties, there are several campervan rental operators that have relatively large campervan rental fleets in New Zealand. This includes several campervan only rental operators (eg, Jucy, Spaceships and Travellers Autobarn (TAB)), plus two motorhome rental operators Tui and Wendekreisen).
94. The evidence (discussed below) currently suggests that the merged entity would face only limited constraint from campervans and campervan rental operators in the supply of motorhome rental services, whether campervans are considered within, or outside, the relevant market.
95. The majority of industry participants see campervans as distinct from motorhomes.⁷⁹ Apollo itself appears to distinguish between the two on its website, as do some other rental operators that offer both campervans and motorhomes. Apollo separately lists campervans and motorhomes on different pages on its website and has described how the two differ. It defines a motorhome as larger two to six berth vehicles, generally built on a long-wheel base, which usually includes kitchen and bathroom facilities, as well as other features typically found in a home. Apollo defines a campervan as a smaller two to three berth vehicle, which is typically more compact.⁸⁰
96. On the demand side, the evidence currently before us does not suggest that there is significant demand-side substitutability between motorhomes and campervans to constrain the merged entity in the supply of all motorhomes. Most motorhome and campervan rental operators have indicated that there are different customer bases and product propositions for motorhome and campervan rentals.⁸¹
97. We acknowledge the potential for customers looking to rent a two to four berth motorhome (particularly at the budget end of the spectrum) to see a two to four berth campervan as an alternative, either based on price or the driveability

⁷⁸ E-mail from [] to the Commerce Commission (7 April 2022).

⁷⁹ Wilderness response to the Commerce Commission's Sol (24 March 2022), e-mail from [] to the Commerce Commission (7 April 2022), []

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⁸⁰ <https://www.apollocamper.co.nz/be-inspired/blog/whats-the-difference-between-a-motorhome-and-a-campervan>.

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advantages of campervans over motorhomes. Customers looking to rent one of the Parties' cheapest two berth motorhome models may consider a two berth campervan to be an alternative. However, the evidence suggests that a customer demanding the quality or size of a large four to six berth motorhome (even for a one or two person booking) is unlikely to consider a campervan to be a good substitute.⁸²

98. THL has submitted that []% of its bookings in 2019 were for groups of between one and four, and that these customers would have the option of renting an equivalent campervan or, alternatively, selecting a rental car and hotel option.⁸³ However evidence that customers have the option of switching does not establish the extent to which these customers consider campervans and motorhomes to be substitutes, nor that they would actually switch in response to a price increase imposed by the merged entity based on perceived differences between the two types of vehicle.
99. Data also indicates that there is a distinct price split between the pricing of motorhomes and campervans. Data provided by THL indicates that on average there is around a \$[] per day peak period price difference between the pricing of its no toilet/shower vehicles and motorhomes.⁸⁴ Industry participants generally consider that there is a significant price difference between motorhomes and campervans, except maybe in low season.⁸⁵
100. We are continuing to investigate, and invite further submissions on, the constraint that the merged entity would face from campervans and campervan rental operators in the supply of motorhome rental services, including evidence of rental customers switching between campervans and motorhomes.

Constraint from new entry and expansion

101. To constrain an exercise of market power by the merged entity, entry or expansion in response to a price increase or other exercise of market power by the merged entity has to be likely, sufficient in extent, and in a timely fashion, satisfying what is termed the 'LET test'.⁸⁶ While we look at evidence of whether parties are already planning to enter or expand (and consider the impact of that entry or expansion), what matters for our analysis is whether entry and expansion in addition to that already planned would be likely if prices increased post-acquisition.⁸⁷

⁸² Wilderness response to the Commerce Commission's Sol (24 March 2022), [].

⁸³ THL response to the Commerce Commission's Sol (24 March 2022) at [2.25]-[2.26] and cross-submission from THL to the Commerce Commission (31 March 2022) at [7].

⁸⁴ NERA report on behalf of THL provided to the Commerce Commission (24 March 2022).

⁸⁵ Wilderness response to the Commerce Commission's Sol (24 March 2022), [].

⁸⁶ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.95]-[3.96].

⁸⁷ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.99].

What we said in our Sol and submissions received

102. In our Sol, we expressed the preliminary view that we expected entry and expansion conditions to ease in the medium term as demand increases with the return of international tourism, and that none of the conditions of entry or expansion are likely to be insurmountable. However, we were also of the view that we consider that the prospect of an existing or potential competitor entering or expanding on a *sufficient scale* to constrain the merged entity is unlikely in the medium term.⁸⁸
103. THL submits that there are low barriers to entry and expansion in the motorhome rental market, noting:
- 103.1 there are no specific legislative or regulatory requirements;⁸⁹
- 103.2 new and used vehicles are readily available, and THL has no advantages over other motorhome rental operators in accessing vehicles. On this point it further submits while there are currently constraints in accessing vehicles, THL expects these issues to have been resolved in the medium term. It also notes that the costs of rental operators acquiring motorhomes are not sunk, given that motorhomes can be sold at the end of their rental lives;⁹⁰
- 103.3 all motorhome rental operators will have the same opportunity to grow in response to increased demand in the future;⁹¹
- 103.4 access to capital will become easier as demand for motorhome rentals increases and there remains an appetite to invest in the RV rental industry;⁹²
- 103.5 there are various channels to market readily accessible to new entrants;⁹³ and
- 103.6 a new entrant could readily enter on a small scale. THL considers that smaller operators can and do impose a significant constraint on the Parties (both individually and collectively) and that the entry would provide an effective constraint regardless of the scale of entry.⁹⁴
104. THL further submits that the requirements to enter as a motorhome rental operator are the same as for a campervan rental operator, and that any additional investment required is limited. THL noted that both Tui and Wendekreisen initially entered as campervan rental operators and later expanded into motorhomes.⁹⁵

⁸⁸ Commerce Commission Sol at [80], [84] and [87].

⁸⁹ The Application at [6.34] and THL response to the Commerce Commission's Sol (24 March 2022) at [7.5 (a)].

⁹⁰ The Application at [6.35], THL response to the Commerce Commission's Sol (24 March 2022) at [7.5 (b)], NERA report on behalf of THL provided to the Commerce Commission (24 March 2022) and Cross-submission from THL to the Commerce Commission (22 April 2022) at [3.5].

⁹¹ Cross-submission from THL to the Commerce Commission (22 April 2022) at [3.4(b)].

⁹² THL response to the Commerce Commission's Sol (24 March 2022) at [7.7 (c)].

⁹³ THL response to the Commerce Commission's Sol (24 March 2022) at [7.5 (g)].

⁹⁴ The Application at [6.35] and THL response to the Commerce Commission's Sol (24 March 2022) at [7.10]-[7.14].

⁹⁵ THL response to the Commerce Commission's Sol (24 March 2022) at [7.6] and cross-submission from THL to the Commerce Commission (22 April 2022) at [2.6]-[2.7].

105. [] submits that entry and expansion by motorhome rental operators requires greater capital and is more difficult than it is for campervans. It submits that a new entrant may find it difficult to acquire a sufficient number of motorhomes to build a sizeable rental operation in New Zealand at a reasonable cost. It also expressed the view that few new entrants break into four to six berth motorhomes.⁹⁶
106. Prior to us publishing our Sol, Bay of Islands Campervans had submitted that it would take deep pockets to establish a new large-scale motorhome rental operator.⁹⁷

Our current view

107. Based on evidence before us (discussed below), we are not satisfied that entry or expansion, in a timely manner and at sufficient scale to constrain the merged entity and prevent a substantial lessening of competition, is likely.
108. While the conditions of entry and expansion in the supply of motorhome rental services are not insurmountable, there are several entry and expansion conditions that are likely to prevail in the short term and make it unlikely that entry and expansion will occur during that timeframe. In the medium term, it is difficult to predict with certainty what the lasting effects of the pandemic will be and, in addition, how long the supply chain issues described above will persist. We are consequently not yet satisfied that entry and expansion would occur to a sufficient extent in the medium term that it would act as a sufficient constraint on the merged entity.

Conditions of entry or expansion

109. The likely effectiveness of entry and expansion in constraining the merged entity is determined by the nature and effect of the aggregate conditions of entry and expansion into the relevant market. The conditions of entry and expansion can take a variety of forms, including structural, regulatory and strategic conditions.⁹⁸
110. Some market participants identified the need to establish distribution channels as a barrier to entry or expansion. They expressed concerns about the potential for the merged entity to use its combined bargaining power to foreclose rival motorhome rental operators from access to wholesalers, travel agents and/or web consolidators (suggesting a strategic or behavioural barrier).⁹⁹ However, we also received evidence to the contrary, indicating that the establishing distribution channels may not be a significant barrier to entry or expansion because they are not difficult to establish.¹⁰⁰ On balance, we consider that the requirement to establish distribution channels may pose challenges to some new entrants but may only be a low barrier to entry.

⁹⁶ E-mail from [] to the Commerce Commission (7 April 2022).

⁹⁷ E-mail from Bay of Islands Campervans to the Commerce Commission (12 February 2022).

⁹⁸ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.107]-[3.108].

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111. We consider that there are several entry and expansion conditions that are likely to prevail in the short-term which make it unlikely that entry and expansion would occur during that timeframe. These are uncertain demand, supply chain shortages and (consequently) limited access to capital.¹⁰¹ We do not anticipate any operators looking to enter or expand while border and/or travel restrictions remain in place as there are unlikely to be profitable opportunities to do so. If the opportunity arose, the Parties and other industry participants all highlighted issues in sourcing new motorhomes as affecting their ability to expand.¹⁰² Although entry and expansion conditions may ease in the medium term as demand increases with the return of international tourism, as discussed earlier, it is difficult to predict with certainty what the lasting effects of the pandemic will be and, in addition, how long the supply chain issues described above will persist.
112. The removal of pandemic-related border and travel restrictions, and return of demand for motorhome rental services, is likely to encourage small-scale entry (eg, up to around 20 vehicles), and potentially expansion by existing motorhome rental operators beyond pre-pandemic fleet levels.¹⁰³ However, we are not currently satisfied that large-scale entry and expansion to the extent necessary to constrain the merged entity is likely in the medium term. We consider that such entry and expansion is likely to remain difficult during this period due to:
- 112.1 the need to match motorhome rental fleet sizes with consumer demand for motorhome sales at the end of a rental vehicle's rental life;
- 112.2 ongoing supply constraints; and
- 112.3 the need to establish distribution channels.
113. We are continuing to investigate, and invite further submissions on, conditions of entry in the supply of motorhome rental services, including evidence around the timeframe within which supply constraints may cease in the medium term.

¹⁰¹ Wilderness response to the Commerce Commission's Sol (24 March 2022),

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¹⁰² THL response to the Commerce Commission's Sol (24 March 2022) at [7.5(b)(ii),] Apollo 2021 Annual Report, Commerce Commission interview with Apollo (15 February 2022), submission from Wilderness to the Commerce Commission (24 March 2022),

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¹⁰³ We consider pre-pandemic fleet numbers to be a useful benchmark of the levels to which we could reasonably expect motorhome rental operators to expand to easily in the medium term.

Likelihood of entry or expansion in motorhomes

114. The possibility of entry or expansion in itself is insufficient to constrain the merged entity. Entry or expansion must be likely, sufficient in extent, and timely before it could constrain the merged entity and prevent a substantial lessening of competition.¹⁰⁴
115. On the basis of the evidence currently before us (discussed below), we consider that, taken together, the above entry and expansion conditions (ongoing supply constraints, the limit placed by demand for motorhome sales on sizes of rental fleets,) are likely to amount to a major impediment for any party intending to enter or expand, and to the likelihood of entry or expansion which would constrain the merged entity.
116. For entry or expansion by motorhome rental operators to constrain the merged entity, we consider that it would need to involve entry on a reasonably large scale in terms of fleet numbers. This is because motorhome rental operators with only a small number of motorhomes available can necessarily only pose a limited constraint – they may compete vigorously on price or service but once their fleet capacity is booked out, any constraint they pose on the merged entity falls away. The scale of necessary entry or expansion would not need to be to the same extent as the merged entity, but would need to be substantially greater than the size of most existing motorhome rental operators (individually) in order to capture sufficient demand from marginal customers. Smaller motorhome rental operators may struggle to gain traction with wholesalers, travel agents and web consolidators, and may also face higher proportionate (sunk) costs marketing directly to end consumers.¹⁰⁵
117. To the extent that competitive constraint is affected by the range in quality (budget to premium) and/or the physical sizes of motorhomes offered for rent (two, four and six berth), any entry or expansion may need to cover a range of vehicle types and target a range of customers to provide sufficient constraint.
118. At this time, we have insufficient evidence to be satisfied that existing motorhome rental operators are likely to expand sufficiently in scale or extent (even in an incremental manner), or that other parties have plans to enter the motorhome rental market in a timely manner.
119. Existing competing motorhome rental operators are only planning modest expansion in the medium term, with these plans mainly involving returning fleet back over time to pre-pandemic levels.¹⁰⁶

¹⁰⁴ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.95] and [3.98].

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- 120. The evidence suggests that campervan rental operators are unlikely to expand into motorhomes.¹⁰⁷
- 121. In terms of new entry, the only example in the last ten years of entry into motorhome rental services of any scale has been McRent. While we consider further new entry is possible in the medium term, there is insufficient evidence to conclude that entry is likely.¹⁰⁸ THL [].¹⁰⁹
- 122. On the basis of the available evidence, we consider that while small scale entry or expansion may occur and capture an estimated market share (based on fleet size) of []%, it is unlikely to occur in a timely manner. Entry or expansion sufficient in scale is unlikely to occur in response to an increase in price in any relevant timeframe. The prospect of an existing or potential competitor entering or expanding on a sufficient scale to constrain the merged entity is unlikely in the time frame we are considering (ie, within the medium term).
- 123. We are continuing to investigate, and invite further submissions on, the likelihood of entry and/or expansion constraining the merged entity, including whether the combined entry and expansion by a few motorhome rental operators could collectively provide sufficient constraint in the medium term.

Constraint from motorhomes rented on peer-to-peer platforms

- 124. We continue to assess the extent to which the merged entity (and other motorhome rental operators) face existing or potential competitive constraint from customers being able to rent a motorhome or RV through peer-to-peer platforms. In doing so, we are considering:
 - 124.1 how the prices at which motorhomes are rented via peer-to-peer platforms compare to the prices of motorhome rental operators;
 - 124.2 the extent to which motorhome rental operators are competing for the same customers that rent motorhomes through peer-to-peer platforms; and
 - 124.3 other factors that may influence the constraint that the motorhomes listed for rent on peer-to-peer platforms provide on motorhome rental operators.

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¹⁰⁷ [] We also note that Jucy entered the motorhome rental market in 2015 but subsequently withdrew.

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What we said in our Sol and submissions received

125. In our Sol, we stated a preliminary view that the motorhomes listed for rent on peer-to-peer platforms may not provide a strong constraint on motorhome rental operators (and the merged entity) in the medium term.¹¹⁰
126. THL submits that in addition to facing vigorous competition from existing motorhome operators and constraints from excess capacity in the marketplace as a result of the pandemic, the merged entity would continue to be constrained by competition from privately owned vehicles available to rent through peer-to-peer platforms.¹¹¹ THL further submits that:
- 126.1 owners on peer-to-peer platforms tend to price lower than motorhome rental operators during peak seasons and benefit from the absence of fixed overheads compared to motorhome rental operators;¹¹²
- 126.2 peer-to-peer listings have increased substantially worldwide, with the potential to do so in the New Zealand market, meaning that peer-to-peer platforms would provide increasing (and significant) constraint on the merged entity. THL considers that the development of peer-to-peer platforms in New Zealand is behind the rest of the world but has significant capacity for growth. This is both from there being a number of privately-owned RVs in New Zealand not currently listed on a peer-to-peer platform, and from the potential for a major international peer-to-peer platform operator to expand in, or enter the New Zealand market;¹¹³
- 126.3 the prices at which motorhomes are rented on peer-to-peer platforms would have an increasing impact on the merged entity's motorhome rental pricing and expects peer-to-peer platforms to gain traction when demand for motorhome rentals returns to pre-pandemic levels;¹¹⁴
- 126.4 international tourists are likely to use, and there are no material limitations on them using, peer-to-peer platforms to rent motorhomes in New Zealand;¹¹⁵ and
- 126.5 peer-to-peer platforms are a key disruptor to the RV rental industry.¹¹⁶
127. Wilderness submits that the potential for growth of peer-to-peer platforms in New Zealand is not as great as THL has suggested.¹¹⁷
128. [] submits that the motorhomes rented via peer-to-peer platforms are not rented in the same market in which motorhome rental operators rent motorhomes. It also

¹¹⁰ Commerce Commission Sol at [91].

¹¹¹ The Application at [1.3].

¹¹² The Application at [6.22] and THL response to the Commerce Commission's Sol (24 March 2022) at [5.2].

¹¹³ The Application at [6.22] and THL response to the Commerce Commission's Sol (24 March 2022) at [5.2]-[5.8].

¹¹⁴ THL response to the Commerce Commission's Sol (24 March 2022) at [5.13]-[5.14].

¹¹⁵ THL response to the Commerce Commission's Sol (24 March 2022) at [5.16]-[5.21].

¹¹⁶ THL response to the Commerce Commission's Sol (24 March 2022) at [5.9].

¹¹⁷ Wilderness response to the Commerce Commission's Sol (24 March 2022).

disagrees with THL's view that peer-to-peer platforms would provide increasing and significant constraint on the merged entity. It submits that peer-to-peer motorhome rentals in New Zealand are at a fledgling state, with the success of peer-to-peer RV rental platforms being far from guaranteed.¹¹⁸

Our current view

129. On the basis of the available evidence (discussed below) and having considered submissions received, we are not satisfied that the motorhomes and other RVs for rent on peer-to-peer platforms are likely to sufficiently constrain the merged entity. This is because we are not satisfied that enough customers would switch to renting on peer-to-peer platforms to sufficiently constrain the merged entity. The motorhomes listed for rent on peer-to-peer platforms may not provide a strong constraint on motorhome rental operators (and the merged entity) in the medium term.

Peer-to-peer motorhome listings and motorhome rental operators

130. From the perspective of some rental customers, the motorhomes listed for rent on peer-to-peer platforms are likely substitutes for the motorhomes available for rent from motorhome rental operators. We acknowledge THL's submissions on the constraint provided by peer-to-peer platforms and that []¹¹⁹ However, competing motorhome rental operators have been more dismissive of the extent of constraint from peer-to-peer platforms.¹²⁰
131. There are an estimated maximum 535 motorhomes currently available for rent on peer-to-peer platforms (this being 178 on Mighway, 281 on SHAREaCAMPER, 71 on Camplify, 5 on Outdoorsy).¹²¹ However this figure is overstated as it is not adjusted for a motorhome being listed on multiple platforms or to exclude the motorhomes listed on these platforms by smaller motorhome rental operators.
132. No estimates are available on the likely number of motorhome listings that will be on peer-to-peer platforms in the medium term. Having said that, we consider that the number of motorhomes available for rent on peer-to-peer platforms is likely to grow in future (from the pool of tens of thousands of privately-owned RVs that could be listed) and therefore bring New Zealand closer to other overseas countries where peer-to-peer platforms are more developed. While this is likely to increase the number of

¹¹⁸ E-mail from [] to the Commerce Commission (7 April 2022).

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[

] and Wilderness response to the Commerce Commission's Sol

(24 March 2022).

¹²¹ Data extracted from peer-to-peer platforms on 22 April 2022, by selecting motorhome as vehicle type in the searches on platforms with flexible date availability for late May 2022.

privately owned motorhomes listed for rent on peer-to-peer platforms and potentially increase their substitutability for those rented from motorhome rental operators, we do not necessarily consider that the growth of peer-to-peer platforms is likely to be on the same scale as say the USA or Australia, where the composition of the privately-owned RV fleet is different to that of New Zealand.¹²² We are currently not satisfied that peer-to-peer platforms will grow to an extent to effectively constrain the merged entity.

- 133. We are continuing to investigate, and invite further submissions on, the extent to which motorhomes listed for rent on peer-to-peer platforms are likely substitutes for the motorhomes available for rent from motorhome rental operators, and to which the motorhomes listed on such platforms would constrain the merged entity in the medium term.

Pricing of peer-to-peer platforms compared with motorhome rental operators

- 134. Evidence indicates that the prices at which motorhomes are rented via peer-to-peer platforms may at times be cheaper than the prices of motorhome rental operators (eg, during peak seasons), but can also be more expensive than motorhome rental operators. We have been told that private motorhome owners that list their motorhomes for rent via peer-to-peer platforms often list them for rent at a flat price year round, in contrast to motorhome rental operators whose pricing will fluctuate based on supply and demand (and in peak and off peak seasons).¹²³ At times, this means that some motorhome rental customers may be incentivised to switch to renting motorhomes at cheaper prices via peer-to-peer platforms.

- 135. However, on the basis of the available evidence, it remains unclear that the prices at which motorhomes are rented via peer-to-peer platforms materially impact on the prices of motorhome rental operators. Evidence indicates that motorhome rental operators set their pricing primarily with reference to the pricing of other motorhome rental operators (and general economic indicators), rather than based on the prices at which motorhomes are rented via peer-to-peer platforms.¹²⁴ We have not seen any direct evidence that motorhome rental operators have responded when prices on peer-to-peer platforms are lower.

- 136. THL has provided some evidence in relation to the USA market, [] after peer-to-peer sharing of

¹²² In Australia, we understand that there are a lot more towable RVs listed for rent on peer-to-peer platforms than is the case in New Zealand and that these are more popular in Australia.

¹²³ []

¹²⁴ []

motorhomes and other RVs became more popular.¹²⁵ However, it is unclear that this [] should be wholly or even partially attributed to the rise of peer-to-peer platforms, as there are numerous other factors that could cause prices to fall.

137. In light of the above, our view is that the evidence indicates that the pricing of peer-to-peer platforms is likely to provide only a limited constraint on motorhome rental operators.
138. We are continuing to investigate, and invite further submissions on, the extent to which the prices at which motorhomes are listed for rent on peer-to-peer platforms are likely to constrain the pricing of the merged entity in the medium term.

Target customers and other factors influence use of peer-to-peer platforms

139. Evidence (discussed below) suggests that motorhome rental operators may not necessarily be competing for the same customers that rent motorhomes through peer-to-peer platforms and may be focused on different customer segments. We also received some evidence (discussed below) to suggest that international travellers may be less likely to switch to peer-to-peer rentals.
140. Some motorhome and campervan rental operators and other industry participants expressed the view that peer-to-peer platforms appear to focus on domestic tourists, while motorhome rental operators focus on international travellers.¹²⁶
141. Data currently before us does not provide a clear indication of the mix of customers that are likely to use peer-to-peer platforms to rent motorhomes in the medium term. Data on Highway bookings prior to the pandemic indicates that []% of bookings were made by international tourists.¹²⁷ However, []¹²⁸ We have also received evidence indicating from Australia (where peer-to-peer platforms are more established), that prior to the pandemic more bookings were made via platforms by domestic tourists than international tourists, although we acknowledge that demand for driveable RVs in Australia may impact on the situation there.¹²⁹
142. Camplify has publicly highlighted how it is different to motorhome rental operators. It has indicated that it focuses on offering choice for domestic tourists who want access to a range of RVs (both driveable and towable) to rent from within their local

¹²⁵ THL response to the Commerce Commission's Sol (24 March 2022) at [5.13]-5.14].

¹²⁶ []

[] and e-mail from [] to the Commerce Commission (7 April 2022).

¹²⁷ THL response to the Commerce Commission's Sol (24 March 2022) at [5.17].

¹²⁸ []

¹²⁹ []

neighbourhoods, while motorhome rental operators focus on international tourists via rental depots close to airports.¹³⁰ However, we acknowledge that Camplify and other international peer-to-peer platforms may bring to New Zealand the eyeballs of motorhome rental customers familiar with their platforms overseas, such that any operations within New Zealand will include international tourists.¹³¹

143. We also received evidence indicating that international travellers may be less likely to switch to peer-to-peer rentals. This includes:¹³²

143.1 the geographic spread of vehicle pick-up locations, which for peer-to-peer rentals can include the inconvenience of travelling to a private residence to collect a motorhome, or the motorhome only being available for rent from a location outside of an international arrival port (this may be beneficial to domestic tourists who can rent a motorhome within their local area);

143.2 that one-way rentals (where pick up and drop off are in different locations) are generally not available through peer-to-peer platforms; and

143.3 less flexibility and back-up support (or the perception of such) in the event of a vehicle breakdown.

144. We acknowledge that peer-to-peer platform operators (or the RV owners that rent through the platforms) may be able to take steps to mitigate some of these issues and that some have taken, or may be taking, steps to do so. We understand that some platform operators may be offering roadside assistance services.¹³³ RV owners could choose to offer one-way rentals for additional fees or offer services to drop off a vehicle at a location more convenient to a customer. However, customers may also want to be confident they will not encounter issues renting via a peer-to-peer platform. We note that evidence from THL itself suggests that

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145. While we note THL’s response to our discussion of these limitations in our Sol (see above at [126.4]), we consider that peer-to-peer platforms are less likely to address these issues, including in a timely manner. The consequence of this is that domestic

¹³⁰ Camplify Prospectus (17 May 2021) at 24.

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¹³³ []

¹³⁴ []

tourists may be more likely to rent motorhomes through peer-to-peer platforms than international tourists.

146. We are continuing to investigate, and invite further submissions on, the extent to which motorhomes listed for rent on peer-to-peer platforms are competing for the same customers as motorhome rental operators, including any evidence of rental customers switching between motorhome rental operators and motorhomes listed for rent on peer-to-peer platforms.

The influence that the merged entity may have on Camplify

147. Camplify is currently, or will soon be, the largest peer-to-peer platform operator in New Zealand.¹³⁵ As the data at [131] shows, almost all the motorhomes currently available for rent via peer-to-peer platforms in New Zealand are rented through what are, or will be, Camplify platforms.

148. After completion of the Proposed Acquisition and Camplify's acquisition of THL's peer-to-peer platforms, THL would be likely to ultimately hold 22-23% of the shares in Camplify and have a seat on Camplify's Board of Directors.¹³⁶ Camplify and THL have also expressed an intention to enter an ongoing strategic and commercial relationship. This relationship will involve:¹³⁷

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

148.2 Camplify and THL working together on opportunities to grow each other's businesses, including via cross-promotional marketing benefits such as THL marketing Camplify's peer-to-peer RV rental platform.

149. THL submits that the merged entity is unlikely to have an ability to bring real pressure to bear on Camplify's decision making process. While THL acknowledges that the merged entity would have some ability to influence Camplify's decisions, it submits that that influence would not be substantial. THL further submits that the merged entity and Camplify would be incentivised to operate as standalone businesses.¹³⁸ That said, THL also commented to us in an interview relating to our investigation of the sale of Mighway and SHAREaCAMPER to Camplify that [].¹³⁹

150. Based on the current distribution of shares in Camplify, the merged entity would be the largest shareholder in Camplify. While Apollo currently is already the largest

¹³⁵ As noted earlier, on 24 March 2022, the Commission gave clearance to Camplify to acquire the Mighway and SHAREaCAMPER platforms from THL. We are yet to be told that this acquisition has completed, but it is aimed to be completed by 30 April 2022. Camplify ASX Announcement (25 March 2022). With the completion of this transaction, THL will become a shareholder in Camplify.

¹³⁶ The Application at [6.5].

¹³⁷ Camplify/Mighway and SHAREaCAMPER application at [3.3], Camplify ASX Announcement (25 October 2021) and THL NZX announcement (26 October 2021).

¹³⁸ The Application at [6.5]-[6.6].

¹³⁹ Commerce Commission interview with THL (11 March 2022).

shareholder in Camplify, the merged entity's shareholding would be even higher. In addition, the merged entity and Camplify would have an ongoing strategic and commercial relationship that has not existed between Apollo and Camplify to date.

151. At this stage, we are not satisfied that THL would not have a material influence on Camplify, influencing Camplify's incentives to compete with the merged entity.
152. We are continuing to investigate, and invite further submissions on, the influence that the merged entity may have on Camplify, including evidence that the Parties can provide on the degree of influence that Apollo currently has, and has had to date, on Camplify's decision making and strategies.

Countervailing power of wholesalers, travel agents and web consolidators

153. A merged entity's ability to increase prices profitably may be constrained by countervailing power of buyers. Countervailing power goes beyond the ability of a customer to switch to other suppliers. A customer's size and importance is not sufficient in itself to amount to countervailing power. Countervailing power exists when a customer possesses a special ability to substantially influence the price the merged entity charges. It must be sufficient to prevent a substantial lessening of competition.¹⁴⁰

What we said in our Sol and submissions received

154. In our Sol, we did not express a preliminary view on this issue, noting that we were continuing to consider the countervailing power of wholesalers, travel agents and web consolidators and the extent to which they would constrain the merged entity in the medium term.¹⁴¹
155. THL submits that traditional wholesalers (who pre-purchase motorhome rental bookings and then on-sell them as part of a package) possess strong countervailing power and expects them to continue exerting such power on the merged entity.¹⁴² It further submits that if an agent is not happy with the products, services or its commission from a particular supplier, the agent will either not promote that supplier's products or terminate its agreements with that supplier.¹⁴³

Our current view

156. We acknowledge the importance of wholesalers, travel agents and web consolidators for generating bookings from international tourists. However, the size and breadth of the merged entity's offering may give it an advantage over rivals in being able to supply, and also when negotiating with, wholesalers, travel agents and web consolidators.
157. With the Proposed Acquisition, wholesalers, travel agents and web consolidators would lose the benefits of existing competitive tension between THL and Apollo. By

¹⁴⁰ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.113]-[3.115].

¹⁴¹ Commerce Commission Sol at [99].

¹⁴² The Application at [6.41]-[6.43].

¹⁴³ THL response to the Commerce Commission's Sol (24 March 2022) at [8.2].

removing Apollo as a major option for wholesalers, travel agents and web consolidators, the Proposed Acquisition is likely to materially reduce the range of options available to such parties and may limit their ability to negotiate competitive arrangements for motorhomes offered for rent. If wholesalers, travel agents and web consolidators have no credible alternatives to the merged entity (and alternatives to replace Apollo), they may in be forced to accept lower commission rates and margins as well as more restrictive terms and conditions from the merged entity. Some concerns have been raised with us around this possibility.¹⁴⁴ The size and breadth of the merged entity’s offering may give it an advantage over its rivals when negotiating with wholesalers, travel agents and web consolidators simply because some wholesalers, travel agents and web consolidators being unwilling to deal with smaller suppliers.

158. Wholesalers, travel agents and web consolidators may have the ability to give preferential treatment to some motorhome rental operators, including competitors to the merged entity. Given that wholesalers, travel agents and web consolidators represent an important source of bookings and revenue for many motorhome rental companies, including the Parties, wholesalers, travel agents and web consolidators threatening to do so could provide some constraint on the merged entity (which may deter it from engaging in any conduct that would have an adverse impact on the relationship, such as trying to negotiate lower commission rates). However, for any exercise of countervailing power of this nature to constrain the merged entity, the threat would need to be credible. Wholesalers, travel agents and web consolidators would need credible alternatives to the merged entity to whom they could potentially give preferential treatment. In the case of online travel agents and web consolidators, they may also need to be willing to list motorhomes for rent sorted by a default method other than price (which is currently the norm) in order to actively promote one supplier over another.

159. Post-acquisition, there is evidence to suggest that some wholesalers, travel agents and web consolidators may look to start working with other motorhome rental operators to replace the competitive tension lost with the Proposed Acquisition.¹⁴⁵ However, some other wholesalers, travel agents and web consolidators said that there were no other operators with the fleet size and breadth of rental offering of THL and Apollo that they would satisfy their requirements and volume or to replace the merged entity’s business.¹⁴⁶ We note that wholesalers, travel agents and web consolidators switching to competitors to the merged entity would not constitute an exercise of countervailing power.

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160. We are not satisfied that the countervailing power of wholesalers, travel agents and web consolidators would constrain an exercise of market power by the merged entity.
161. We are continuing to investigate, and invite further submissions on, the extent to which the countervailing power of wholesalers, travel agents and web consolidators would constrain an exercise of market power by the merged entity, including evidence from the Parties of any exercise of countervailing power by wholesalers, travel agents and web consolidators in the past.

Constraint from alternative accommodation and transport options

What we said in our Sol and submissions received

162. In our Sol, we stated a preliminary view that alternative travel and accommodation options pose only a weak constraint, as we had seen limited evidence of the price of motorhomes factoring into consumer decisions to travel to New Zealand and between travel options.¹⁴⁷
163. THL submits that alternative travel and accommodation options pose a strong constraint on RV rental operators.¹⁴⁸ It submits that the merged entity would continue to be constrained by alternative accommodation and transport options that tourists can use.¹⁴⁹
164. THL submits that there are several decisions faced by international tourists that act as a constraint on the New Zealand motorhome rental market. These decisions include whether to select New Zealand as a destination, choose a self-drive holiday, and then opt for a motorhome rather than numerous other accommodation and travel options available to the traveller, including hotels, rental cars, motels, and Airbnb. THL submits that consumers compare the cost of travel by motorhome to the cost of alternative transport and accommodation options (particularly a rental car and motel/hotel package) before selecting their travel option.¹⁵⁰
165. THL further submits that customers can (and do) substitute other accommodation and transport options for motorhome rentals and considers that it would be difficult for the merged entity to price discriminate between the tourists who would consider other options and those who are committed to RV travel. THL submits that there is a strong relationship between its RV pricing and hotel pricing, with hotel pricing providing a price ceiling for motorhome pricing.¹⁵¹
166. Wilderness submits that an increase in motorhome rental prices or a reduction in the quality of motorhome rental services is unlikely to have a material impact on the number of international tourists who choose to travel to New Zealand and opt to travel by motorhome. However, it also submits that some visitors do compare the

¹⁴⁷ Commerce Commission Sol at [102].

¹⁴⁸ THL response to the Commerce Commission's Sol (24 March 2022) at [6.2].

¹⁴⁹ The Application at [1.3].

¹⁵⁰ The Application at [6.25]-[6.32].

¹⁵¹ THL response to the Commerce Commission's Sol (24 March 2022) at [6.4]-[6.6].

price of a motorhome rental with the cost of car rental plus hotel stays, noting that if motorhome rental prices got too far out of line with car and hotel rates it would expect to see a decline in demand.¹⁵²

Our current view

167. We consider that alternative transport and accommodation options are available to tourists and may be an alternative option for some customers. We have seen some evidence showing that tourists are taking into account alternative options, such as hotels and motels when deciding on their accommodation and travel arrangements. There is also some evidence that any price increases in motorhome rentals may influence tourists' choice of accommodation and transport options.¹⁵³
168. However, we consider that such constraints are likely to be stronger for domestic tourists who already have their own vehicle and may just need accommodation, than for international tourists. To date, we do not consider that the price of motorhomes factors to any significant extent into consumer decisions to travel to New Zealand and in their decisions between travel options. Some industry participants consider that people choosing to rent motorhomes are completely different to those who may hire rental cars and stay in motels and hotels.¹⁵⁴
169. At this stage, while they may be an option for some customers, we are not satisfied that alternative transport and accommodation options would constrain an exercise of market power by the merged entity.
170. We continue to investigate, and invite further submissions on, the constraint provided by alternative travel and accommodation options on motorhome rental operators, including evidence of rental customers switching between renting motorhomes and booking other accommodation and transport options.

Constraints collectively

171. We have considered whether all the constraints identified above when taken together are sufficient to prevent a substantial lessening of competition in the supply of motorhome rental services. We are currently not satisfied that is the case.
172. Currently we are not satisfied that adding all constraints from within and outside the relevant market together would collectively prevent a substantial lessening of competition in the relevant market and so allay our concerns about the competitive effects of the Proposed Acquisition.
173. Central to this view is the scale, size and breadth of the Parties motorhome rental offerings. The Parties' offerings cover a range of different quality motorhomes

¹⁵² Wilderness response to the Commerce Commission's Sol (24 March 2022).

¹⁵³ Wilderness response to the Commerce Commission's Sol (24 March 2022),

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(budget, premium) and different sized motorhomes (two, four, six-berth). Other suppliers of motorhome rental services operate substantially smaller fleets to the Parties and appear to be more limited in their focus (eg, in terms of the quality of rental service offered or because they target only specific types of customers). This impacts on the competitive constraint that competing motorhome rental operators would likely provide, individually and collectively. The scale, size and breadth of the merged entity's offering is not easily replicated without substantial investment and we consider that it is unlikely that competitors would expand or enter on a sufficient scale to effectively constrain the merged entity. The size and breadth of the merged entity's offering may give it an advantage over its rivals in being able to supply, and also when negotiating with, wholesalers, travel agents and web consolidators.

174. Taken together, we are currently not satisfied that all constraints from within and outside any relevant market discussed above would be sufficient to constrain an exercise of market power by the merged entity and prevent a substantial lessening of competition due to unilateral effects.
175. We invite further submissions on the extent to which constraints collectively would be sufficient to constrain an exercise of market power by the merged entity.

Competition concern: coordinated effects

176. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all, or some, of its remaining rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across the market.¹⁵⁵
177. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the suppliers in the market to be acting in a coordinated way.¹⁵⁶ Such behaviour need not be unlawful, and includes tacit collusion, such as accommodating price responses or parallel conduct. Not all mergers that increase concentration in a market are likely to increase the risk of coordinated effects.

What we said in our Sol and submissions received

178. In our Sol, we were not satisfied that the relevant market is not vulnerable to coordination, or that the Proposed Acquisition would not be likely to change conditions in that market to make coordination more likely, more complete or more sustainable. We expressed this view because we had identified features of the market that may create the conditions for coordination, but noted that we were continuing to assess coordinated effects.¹⁵⁷
179. THL submits that the Proposed Acquisition would not result in coordinated effects as it does not enhance the ability for the Parties and other competitors to coordinate

¹⁵⁵ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.84].

¹⁵⁶ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.84].

¹⁵⁷ Commerce Commission Sol at [110]-[113].

their behaviour, and that the market is not vulnerable to coordination. In particular, THL submits that:¹⁵⁸

179.1 there would be at least 12 “major” rental operators operating in the relevant market post-acquisition, with a high degree of product differentiation and heterogeneity of suppliers in terms of size and cost structure;

179.2 there is no transparency of volumes of sales and fleet capacity;

179.3 the extensive use of distributors (eg, wholesalers, travel agents) to whom pricing is not public or scrapable means that the Commission has overstated the transparency of pricing in the relevant market; and

179.4 the Proposed Acquisition would not result in the removal of a particularly aggressive or destabilising competitor.

180. Wilderness submits that Apollo is a destabilising competitor, whose pricing strategy is at odds with THL and other motorhome rental operators.¹⁵⁹

Our current view

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

Is the market vulnerable to coordination?

182. A range of market features are commonly accepted as making a market more vulnerable to coordination. That is, these are market features that make it more likely that suppliers would be able to successfully coordinate their behaviour to increase their profits. Not all need to be present for a market to be vulnerable to coordination. Nor does the existence of some or all of these features inevitably mean that suppliers would engage in coordinated behaviour.

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

¹⁵⁸ The Application at [6.44], THL response to the Commerce Commission’s Sol (24 March 2022) at [9.1] and NERA report on behalf of THL provided to the Commerce Commission (24 March 2022).

¹⁵⁹ Wilderness response to the Commerce Commission’s Sol (24 March 2022).

184. However, we have also identified some market conditions which make the market less vulnerable to coordination. These include a degree of product differentiation and the heterogeneity of firms in terms of size and cost structure.
185. We are continuing to investigate, and invite further submissions on, the extent to which market conditions may make the relevant market vulnerable to coordination.

Would the Proposed Acquisition make coordination more likely, complete, or sustainable?

186. Where a merger materially enhances the prospects for any form of coordination between businesses, the result is likely to be a substantial lessening of competition. This could happen if the Proposed Acquisition is likely to change conditions in the supply of motorhome rental services so that coordination is more likely, more complete, or more sustainable. In assessing this, we are considering:

186.1 whether key characteristics of the market would be likely to change with the Proposed Acquisition; and

186.2 whether the loss of Apollo as an independent competitor would likely make coordination more likely, complete, or sustainable.

187. We consider that the key characteristics identified above that make coordination more likely, including pricing visibility, are likely to remain unchanged as a result of the Proposed Acquisition. However, the Proposed Acquisition would lead to further concentration in the supply of motorhome rental services. This change in market structure could make it easier to establish and sustain coordinated conduct because it is easier to coordinate with fewer remaining competitors in the market. We do not currently consider that any coordination would likely be disrupted by entry or expansion. In a concentrated market, firms may also have less incentive to deviate from a coordinated outcome.
188. Additionally, if Apollo is an aggressive or destabilising competitor, the loss of Apollo as a competitor in the supply of motorhome rental services could make coordination in the relevant market more likely.
189. We are continuing to investigate, and invite further submissions on, whether the loss of Apollo as a competitor in the supply of motorhome rental services could make coordination in the relevant market more likely.

Next steps

190. We are currently scheduled to decide whether or not to give clearance to the Proposed Acquisition by 30 June 2022. However, this date may change as our investigation progresses.¹⁶⁰ In particular, if we need to test and consider the issues identified above further, the decision date may extend.

¹⁶⁰ The Commission maintains a clearance register on our website at <https://comcom.govt.nz/case-register/case-register-entries/thl-australia-pty-ltd-apollo-tourism-and-leisure-ltd> where we update any changes to our deadlines and provide relevant documents.

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

Making a submission

192. We are continuing to undertake inquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further evidence and other relevant information and documents that the Parties or any other interested parties are able to provide regarding the issues identified in this SoUI.
193. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference "THL/Apollo" in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **31 May 2022**.
194. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would be likely to unreasonably prejudice the commercial position of the supplier or subject of the information.