Submission on the Commission's THL/Apollo SOUI

Executive summary

Our client has reviewed the Commerce Commission's ("**Commission**") Statement of Unresolved Issues ("**SOUI**") in relation to the proposed THL/Apollo merger ("**Merger**") and agrees with the Commission's conclusions expressed in its SOUI that the Commission cannot be satisfied that the Merger would not have, or would not be likely to have, the effect of substantially lessening competition.

As the Commission is aware, to grant clearance, the Commission must be satisfied the Merger will not substantially lessen competition in any market. Any reasonable doubt about this, or concern that a substantial lessening of competition may occur, is enough to require the Commission to decline clearance. In this case, not only is there sufficient doubt to require that clearance not be granted, the evidence overwhelmingly demonstrates that the Merger *will* substantially lessen competition by combining the number one and number two players in the market. It will result in a single entity with a very large and unmatched market share (whichever way the relevant market is defined). That market share is very large across the board, but is particularly dramatic in the most lucrative 4-6 berth motorhome segment, where barriers to entry and expansion are most significant. It will combine the two closest competitors. THL and Apollo are the only two vertically integrated companies who operate large fleets across all market segments and utilise flex pricing to regularly set and vary prices. Only a long tail of smaller operators will remain, who are unable to provide any meaningful competitive constraint on the merged entity.

Market shares alone demonstrate why the Commission cannot be satisfied

Irrespective of how the markets are defined, our client submits that basic economic screening tools demonstrate that the Commission's starting point must rightly be that, absent compelling evidence to the contrary, it cannot be satisfied that the Merger will not substantially lessen competition.

Concentration indicators

Table 1 below sets out the total market shares of the three largest suppliers ("**CR_3**") and combined share of the merging parties for both "all motorhomes and campervans" and for "4-6 berth motorhomes and campervans" from 2019-2021.[1] Post-Merger these markets will become

[1] [REDACTED]

highly concentrated with the merging parties being the dominant market leader with a combined share of [REDACTED] of all motorhomes and campervans and [REDACTED] of 4-6 berth motorhomes and campervans. The Merger, therefore, clearly exceeds the Commission's concentration indicators.

Furthermore, irrespective of whether market dynamics return to a pre-Covid world (i.e. 2019) or continue to be impacted by Covid (i.e. 2020 and 2021), the Merger still clearly exceeds the Commission's concentration indicators.

Table 1: CR_3 post-transaction and combined share of THL and Apollo from 2019-2021

	2019		**2020**		**2021**	
	CR_3	**Combined share**	**CR_3**	**Combined share**	**CR_3**	**Combined share**
All motorhomes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4-6 berth	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Herfindahl-Hirschman Index indicators

The Herfindahl–Hirschman Index ("**HHI**") is a common measure of market concentration of an industry (i.e. the size of firms in relation to the industry they are in) which is used to determine market competitiveness. Table 2 below sets out the HHIs for these markets both before and after the Merger from 2019-2021.

Table 2: HHIs from 2019-2021

	2019			**2020**			**2021**		
	Before	**After**	**Δ**	**Before**	**After**	**Δ**	**Before**	**After**	**Δ**
All motorhomes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4-6 berth	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The US DOJ and FTC "generally consider markets in which the HHI is between 1,500 and 2,500 points to be moderately concentrated, and consider markets in excess of 2,500 points to be highly concentrated" and "transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power".[2] Similarly, in its Merger Guidelines, the Australian Competition and Consumer Commission ("**ACCC**") has outlined that it is more likely to identify horizontal competition concerns where the post-merger HHI exceeds 2,000.[3]

These markets have increasingly become more concentrated over the last three years during the pandemic. However, the merging parties, given their size and degree of vertical integration, have weathered the pandemic better than other suppliers. The HHIs post-Merger are around double what the US agencies would ordinarily describe as highly concentrated markets, and between double and triple the threshold that the ACCC uses to identify likely horizontal competition concerns. In addition, the delta arising from the Merger is over ten times higher than the delta that the US agencies would presume is likely to enhance market power.

Our client submits that the HHI analysis is a clear signal that the Merger raises competition concerns and is likely to have a lasting anticompetitive effect on the structure of the market to the long-term detriment of consumers.

Our client acknowledges that these are just static economic tools that are used to screen mergers for potential issues. However, these static tools nonetheless demonstrate that the Commission needs to continue to very carefully scrutinise any qualitative claims being made by the merging parties that the Merger will not substantially lessen competition given such qualitative claims would be contrary to these quantitative indicators.

COVID-19 does not just impact THL and Apollo

The Commission has understandably had to consider this Merger in the shadow of the COVID-19 pandemic. All parties acknowledge that this has caused huge disruption to the New Zealand tourism industry. However, our client wishes to emphasise that the pandemic does not provide a justification for such a sweeping industry consolidation.

[REDACTED] heavily impacted by the resulting market conditions, as has every competitor of THL and Apollo and every other part of the motorhome rental supply chain. By virtue of their vertically integrated operations and "build, rent, sell" model, THL and Apollo have arguably

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[2] See https://www.justice.gov/atr/herfindahl-hirschman-index

[3] ACCC. November 2008. Merger Guidelines. Retrieved from https://www.accc.gov.au/system/files/Merger%20guidelines%20-%20Final.PDF

been able to weather the pandemic better than most others. They are likely the two most well positioned market players to operate profitably, and compete vigorously with each other, over the next one to three years if the merger does not go ahead.

Our client submits:

- If anything, the impact of the pandemic has been far greater on smaller motorhome rental operators. They started with less capital reserves and have had less access to new capital to fund operations while borders have been closed. They do not have multiple brands targeting every segment and have less ability to pivot to domestic tourism or mitigate lost rental revenue with increased manufacturing and vehicle sales.

- Smaller rental operators (already on the financial brink) will now face the prospect of competing with a single huge entity with the ability to manipulate pricing, control access to new inventory, and reduce the viability of online travel agents ("**OTAs**") and web aggregators as a channel to market. These operators have lean management teams (particularly after two years without international tourism).

- Consumers have also faced a tough two years. Even those who have not lost loved ones or suffered serious illness themselves have been dealing with lockdowns, managing work, childcare and other responsibilities without being able to leave their homes for long periods. Many have been separated from family living abroad by closed borders. The opportunity to re-charge and re-fresh via international holidays has not been an option. Permitting such a reduction of competition in the market now would hit those consumers who have long been looking forward to finally being able to travel again, just at the point when it is finally becoming possible.

- COVID-19 makes it more important than ever that the Commission not permit a transaction likely to result in a substantial lessening of competition, just at the point where some light is emerging at the end of the tunnel for the most affected parties. If the Merger is allowed to go ahead, the impact on smaller operators and consumers could be felt for decades. Whereas in the counterfactual scenario, both THL and Apollo are likely to be able to return to healthy levels of profitability as international travel returns, without the same harm to other industry players or consumers.

- The concentration indicator and HHI analysis shows that irrespective of the assumptions used regarding when the market will return to normal, the Merger will irreversibly change the structure of the market to the detriment of all market participants.

Green shoots of recovery

Despite incredibly tough market conditions for the last two years, our client is beginning to see some genuine green shoots of recovery. [REDACTED].[4] [REDACTED].

In assessing a post-COVID recovery, our client emphasises several important changes that market participants have made during the pandemic. This impacts comparisons to the pre-pandemic period and judgments about how competition in the short and medium term will be affected.

All operators have significantly reduced their fleet sizes. This means that even with materially lower levels of demand than 2019 (perhaps only slightly more than today) we are likely to see average prices increase from 2019 levels. [REDACTED]. Our client expects it will soon be the case for motorhomes in New Zealand as well. If anything, the impact of reduced fleet sizes on rental pricing may be greater for motorhomes than car rentals.[5]

Our client notes that rental operators have also significantly reduced their cost base to survive the pandemic (e.g. by reducing staff). As booking numbers begin to recover (even without the Merger) rental operators are therefore likely to be charging higher unit prices for rentals with lower costs than before the pandemic. This will enable rental operators to be profitable even with lower numbers of actual bookings than 2019. It is unlikely to be necessary to wait until international tourism numbers return to the same levels as 2019 for rental operators to be profitable and (if the Merger were to go ahead) for the reduced competition to impact consumers in the short term.

[REDACTED]. When reduced cost bases and higher prices are factored in, booking numbers will not need to rise much further for the industry to return to profitability.

The trend line is also encouraging. [REDACTED]:

[REDACTED]

[4] [REDACTED]

[5] This effect has been well document in the context of car rentals. See, for example https://www.wsj.com/articles/looking-to-rent-a-car-expect-higher-prices-long-waits-and-slim-pickings-11640341983

[REDACTED]

This trend is most evident for bookings from Australians traveling to New Zealand. [REDACTED]:

[REDACTED]

Our client notes that the New Zealand government reduced border restrictions first for Australia and is slowly rolling out looser restrictions to other countries. The significant growth in Australian bookings [REDACTED] is, therefore, potentially a good indicator of what will happen to visitors from other countries as New Zealand's border restrictions are removed [REDACTED] the New Zealand government's announcement on 11 May 2022, that it will *bring forward* the full border re-opening to 31 July 2022. Our client expects further fuel to be provided to these sparks of recovery over the coming weeks.

It remains early days, but our client believes [REDACTED] that it is definitely possible that motorhome rental operators return to pre-pandemic levels of profitability far earlier than expected (even if overall booking numbers are still down). Equally, our client's view is that even a moderate return of international tourists will force prices up, and any excess capacity will cease acting as a constraint on the merged entity far sooner than anticipated by the Commission in the SOUI. The fact that "fleet rationalisation" is a key part of the "strategic rationale" of the Merger will in turn further reduce any competitive constraint arising from short-term pandemic-related excess capacity – with THL, post-Merger, intended to reduce the combined fleet by ~1,250 vehicles across the various countries the parties operate in.[6] Given Apollo is said to have 2,700 vehicles in its rental fleet, the proposed capacity reduction arising from the Merger amounts to almost half of all of Apollo's rental fleet across those countries.[7] This suggests that the rationale for the Merger is similar to THL's 2012 acquisitions of Kea and United ("**2012 Merger"**), in which THL's documents referred to the "strategic rationale" for that 2012 Merger being "[l]ow returns, excess capacity in New Zealand" and "[m]anaged fleet reduction to meet demand".[8] In particular, as was reported in the media at the time of the 2012 Merger, such

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[6] THL / Apollo. Proposed merger of thl and Apollo. (10 December 2021). Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/Announcements2021/211210-Investor-Presentation.pdf

[7] THL / Apollo. Proposed merger of thl and Apollo. (10 December 2021). Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/Announcements2021/211210-Investor-Presentation.pdf

[8] THL's NZ Rentals Business, Kea Campers and United Campervans Merger. Transformation of the New Zealand Rental Motorhome Industry. (3 September 2012). Retrieved from http://www.thlonline.com/SiteCollectionDocuments/Announcements/3Sep12%20-%20THL%20Investors%20Presentation%20%E2%80%93%20thl%20to%20merge%20its%20NZ%20rentals%20business%20with%20KEA%20Campers%20and%20United%20Campervans.pdf

a transaction appeared to be motivated to avoid the competition that would otherwise occur from additional capacity remaining in the market in the absence of that transaction:[9]

> *"Clearly, excess capacity is an issue, but if you're a campervan operator it may not be a good time to unilaterally trim your vehicle fleet – that could just hand market share to competitors. It's a classic dilemma. Everyone would be better off if everyone cuts capacity, but each individual would be better off if everyone cut capacity except them. So the industry sits there playing a game of chicken, watching margins ebb away as they wait for rivals to cut first. Industry consolidation solves the problem…"*

Subsequently in 2015, it was reported that THL had been successful in "selling off excess capacity" and "fattening margins":[10]

> *"Tourism Holdings, the largest campervan rental business in Australia and New Zealand, more than doubled first-half profit, beating expectations, after cutting costs and fattening margins... Tourism Holdings has improved earnings across its businesses by selling off excess fleet capacity and focusing on margins."*

There appears to have been a similar rationale for THL's 2018 acquisition of Jucy's large motorhome business (i.e. to sell capacity, and increase margins), with THL's CEO commenting in its Shareholder Annual Review at the time:[11]

> *"This year in New Zealand, we negotiated the purchase of large motorhomes from a competitor (Jucy). This was a very positive opportunity for thl and has seen thl further expand its large motorhome offering. Jucy no longer offers large motorhomes for rent in New Zealand or Australia. We have been able to sell most of those vehicles, contributing a margin in line with our overall expectations."*

Our client believes it is critical the Commission does not undermine the fragile beginnings of a recovery by clearing a merger which will have such a significant and long-lasting detrimental impact on competition.

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[9] (9 September 2012). Tim Hunter. THL counts on Campervan merger. Sunday Star Times. Retrieved from https://www.pressreader.com/new-zealand/sunday-star-times/20120909/282711929215301

[10] (26 February 2015). Tourism Holdings beats forecast. NZ Herald. Retrieved from https://www.nzherald.co.nz/business/tourism-holdings-beats-forecast/4OVX7B426D44IWG4R2OP6YZVT4/?c_id=62&objectid=11407957

[11] THL. 2018. Shareholder Annual Review. Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/AnnualResultsDocs2018/thl-FY18-Shareholder-Annual-Review.pdf

Evidence of lack of competitive constraints in previous THL mergers

Our client does not consider that either the remaining long tail of smaller motorhome or campervan rental operators (whether assessed inside or outside the market), peer-to-peer ("**P2P**") platforms, alternative accommodation and transport options would provide a realistic competitive constraint on the merged entity in practice. Further, our client does not consider entry or expansion to be likely, sufficient in extent or timely.

Our client believes that evidence for this can be found from looking at the results of previous industry consolidations. In particular, the 2012 Merger (i.e. THL's acquisition of Kea and United in 2012).

At the time, THL assessed Kea's market share at 7% and United's at 11%.[12] According to the analysis sponsored by THL at the time, the 2012 Merger would increase THL's market share from 27% to 45%.[13] Our client notes as an aside that this analysis did not consider alternative accommodation or transport options as part of the market or mention them as a competitive constraint. It did mention Apollo remaining as a significant competitor, together with Jucy, Spaceships and Pacific Horizon ([REDACTED] estimate their market shares at only [REDACTED] respectively). THL then went on to describe some other "smaller, third tier operators" such as Escape Rentals, Wicked Campers, WenderKreisen Travel, Iconic Motorhomes New Zealand, Rentamotorhome NZ, Adventure Deluxe Motorhomes.[14] A number of these "third tier" operators have since gone out of business.

Apollo is, therefore, the only remaining competitor of any scale that was not previously absorbed into THL by the 2012 Merger.

THL does not appear to have sought clearance from the Commission for the 2012 Merger. Accordingly, the Commission may not have had the opportunity to fully assess that transaction or the impact it had on the motorhome rental market. Our client would urge the Commission to take the opportunity now to prevent the removal of the last remaining competitor of any meaningful scale in the New Zealand market.

Our client considers that what happened following the 2012 Merger is also particularly relevant to assessing what may happen if THL and Apollo merge now. [REDACTED] in the years following the 2012 Merger, there was a significant increase in the average price per day charged to consumers for New Zealand rentals:

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[12] Cameron Partners, *Tourism Holdings Limited: Independent Report* (24 September 2012), page 22-23. Retrieved from https://bit.ly/3FCYOMn
[13] Cameron Partners, page 23.
[14] Cameron Partners, page 24.

[REDACTED]

[REDACTED]. After the 2012 Merger occurred, a steady increase in price each year could be observed. Three years after the 2012 Merger, average daily price had increased by [REDACTED] from 2012 levels.

[REDACTED]:

Year	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2011	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2012	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]. The merger was clearly successful from THL's perspective in terms of the primary assessed benefit of "fleet capacity rationalisation."[15] Our client observes that the prospect of even marginal numbers of customers switching from THL to other operators was not enough to constrain THL following the 2012 Merger, and our client does not believe it would be enough to constrain it this time. If anything, our client expects the impact on prices following this Merger is likely to be far more significant, as prices in 2012 were, of course, somewhat mitigated by Apollo continuing to be a competitive constraint.

[REDACTED].

That the 2012 acquisition was "transformative" to the market structure of the New Zealand market has been noted by investment analysts, such as Edison Investment Research:[16]

[15] Cameron Partners, page 7.

[16] Edison Investment Research Limited. Tourism Holdings. Retrieved from https://www.edisoninvestmentresearch.com/?ACT=18&ID=12597

> *"In the last two years there has been a reduction in the total New Zealand fleet of an estimated 800 vehicles. The merger of THL with United and Kea in November 2012 for NZ$69.5m comprised equity of NZ$7.4m, cash of NZ$54.1m and deferred contingent consideration of NZ$8.0m. This acquisition was part of the transformation of the New Zealand rental motorhome industry and means that THL now controls about 45% of the total market in New Zealand… THL's fleet rationalisation programme saw the fleet reduce from 2,500 vehicles in November 2012 to 2,019 vehicles in 30 June 2014.*
>
> *The merger means THL has the competitive advantages in the New Zealand market that come with size and scale. Competitive advantages include:*
>
> - *Well recognised brands.*
> - *The financial capacity to turn the fleet over more frequently, so it is younger.*
> - *A comprehensive product range in terms of size and standard of fitout. This allows THL to appeal to a number of different market segments.*
> - *A revenue base that allows THL to invest more marketing dollars than its competitors.*
> - *A focus on using new technologies to reach customers who are influenced not only by traditional marketing methods but also by social media."*

Craigs Investment Partners similarly noted in 2018:[17]

> *"The market for RV rentals in NZ, with an estimated supply of around 4,500 motorhomes, is largely consolidated with the top three players accounting for 75% of supply. THL has led the industry consolidation by acquiring its two main rivals Kea and United rentals in 2012 which resulted in **an estimated 20% reduction in supply between 2012-2015**, addressing overcapacity that prevailed during the GFC. This also boosted THL's market share from 27% in 2012 to around 45%, making it the largest player in NZ. **Apollo is currently THL's largest competitor** and listed on the ASX in 2016 with a mandate to grow. Jucy (not listed), the third largest player, is mainly in the smaller campervan market where THL does not have a major presence." [Emphasis added]*

Our client submits that a combination of THL and Apollo would be even more transformative again, and the differences between the "size and scale" advantages of a combined THL / Apollo and the next competitor would be even greater again than those that arose from the 2012 Merger.

Countervailing power of wholesalers, travel agents and web consolidators

[REDACTED] notes the Commission's conclusion in the SOUI that it is not satisfied that the countervailing power of wholesalers, travel agents and web consolidators would constrain the merged entity. [REDACTED] how little ability wholesalers, agents or web consolidators ("**Agents**") will have in practice to constrain the merged entity given how much larger it will be than the remaining competitors. Not only would Agents

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[17] Weekly Stock Comment: Tourism Holdings. (19 April 2018). Retrieved from: https://craigsip.com/insights/overview/stock-comment-2018/04/tourism-holdings

have no ability to exercise sufficient countervailing market power, the Merger is likely to materially reduce (or undermine altogether) the current level of competitive restraint that Agents provide in respect of THL and Apollo as separate entities.

The merged entity will control such a large part of the market, [REDACTED] an Agent could not in practice prefer even a combination of remaining competitors. There are simply not enough alternative operators available to direct bookings to (that would counteract what could be lost from the merged entity). [REDACTED]. Far from Agents exercising sufficient countervailing power to constrain the merged entity, Agents will have little option but continuing to deal with the merged entity on whatever terms (e.g. reduced commission, reduced inventory) it seeks to impose.

At the same time as losing revenue due to terms renegotiation, [REDACTED].

These effects will be exacerbated by the reduced levels of motorhome fleet as international tourism begins to recover and by supply chain difficulties preventing rental operators from acquiring new fleet or new entrants entering at sufficient scale.

In the counterfactual scenario, Agents will continue to encourage vibrant price and non-price competition between THL and Apollo, as well as the other operators. The presence of alternative options will enable the negotiation of viable commercial terms for Agents and ensure that [REDACTED].

Relevant market

Our client's view is that the distinction the Commission has identified between campervans and motorhomes is an important one, whether ultimately assessed as inside or outside the relevant market. There are material differences between what is required to operate a business renting out a near new fleet of bespoke manufactured 4-6 berth motorhomes versus a fleet of old model campervans.

Acquiring, maintaining and replacing 4-6 berth motorhomes is more capital intensive and requires manufacturing capability or a close relationship with a manufacturer (preferably one not already operating in the rental market itself or subject to exclusive arrangements with another rental operator). These 4-6 berth motorhomes are rented out at premium prices, but achieving those prices requires quite a different marketing strategy targeting a different type of customer.

The barriers for new entrants in motorhomes are larger than in campervans, and the additional requirements for a campervan operator looking to expand into motorhomes are not that dissimilar to those of a new entrant.

In our client's view it is simpler for an existing motorhome rental supplier to begin competing at the margins with campervan operators, compared to the other way around. A motorhome operator can easily just hang onto its older stock of vehicles a few years longer, renting them out to first mid-market and then budget segments as they age. In contrast, our client submits that it is an altogether more difficult task for a campervan operator to raise the capital and develop the new relationships with manufacturers to begin competing in near new motorhomes. The two examples THL gives of this having happened (Tui and WenderKreisen) both remain very small operators (e.g. <2% market share). The extent of their "move" into motorhomes may only amount to a handful of extra vehicles, rather than a genuine competitive threat to THL or Apollo.

In our client's view each of these practical distinctions are relevant no matter how the Commission ultimately defines the relevant market. Whether inside or outside the market, our client considers it clear that no campervan operators have the size or scale to constrain the merged entity in practice.

P2P

Our client remains firmly of the view that P2P motorhome rental platforms would provide only a very weak constraint on the merged entity. Our client believes these platforms should be assessed as falling outside the relevant market. However, regardless of whether the Commission considers them as inside or outside the market, the critical point is that they have very little impact on commercial motorhome rental operators such as THL or Apollo.

THL has argued that P2P has had greater growth in markets outside New Zealand, such as the United States or Australia and that this growth *may* eventually be replicated in New Zealand. Our client does not accept this, and believes that New Zealand will only ever be a very small market for P2P motorhome rental. Our client's view is that if P2P were ever going to take off in New Zealand, it was while the borders were shut, yet booking numbers in New Zealand have remained modest during that time. However, even if the Commission were to accept THL's argument that New Zealand is likely to see similar growth in P2P, as is said to have occurred recently in Australia, the ACCC's preliminary view in its Statement of Issues for the Merger is that P2P does "not provide a strong constraint on traditional RV rental suppliers, and only compete[s] for a subset of customers."[18] Even if P2P booking volumes increased to the same extent as in Australia (which in our client's view is unlikely), it would still not provide a strong constraint. Furthermore, if THL genuinely believed that P2P was likely to be a significant growth area in New Zealand, our client considers it is difficult to see why THL's board would have decided to close Mighway and SHAREaCAMPER if those businesses were not sold to Camplify[19] (that would appear to be a decision that is wholly inconsistent with the identification of P2P as a future growth area).

Even if P2P were to expand significantly in New Zealand (despite all these difficulties) beyond the level currently seen in Australia, our client submits that it is difficult to see P2P constraining the merged entity, given the merged entity would hold a material ownership stake in, and have an ongoing strategic and commercial relationship with,[20] Camplify, one of the largest P2P operators (indicating that they would be "associated" persons for the purposes of the Commerce Act).

As the traditional tourism industry has begun to show green shoots of recovery (even more so in Australia than New Zealand) Camplify's ASX share price has reduced significantly. From a high of AUD$4.44 on 31 December 2021, it was down to $2.13 on 25 May 2022 - a decline of 52% in less than five months. [REDACTED] P2P may decline in popularity once the pandemic recedes. [REDACTED].

The merging parties' own public statements support the Commission's preliminary findings

If the merging parties are to discharge the burden of satisfying the Commission why the Merger will not have the effect of substantially lessening competition in a market, our client's view is that the merging parties need to explain why the arguments made in the clearance application appear to contradict public statements they have made over the years. From our client's perspective, the high market shares of the merging parties, combined with the merging parties' own views of market dynamics as expressed in public statements, further demonstrates why the Commission cannot be satisfied that the Merger will not substantially lessen competition in any relevant market.

The merged parties are close competitors

[18] ACCC, *Statement of Issues: THL – proposed acquisition of Apollo* (28 April 2022) at [63].
[19] Camplify Co (NZ) Limited, Tourism Holdings Limited and TH2connect LP [2022] NZCC 8 at [25].
[20] Camplify Co (NZ) Limited, Tourism Holdings Limited and TH2connect LP [2022] NZCC 8.

In its Statement of Issues, the Commission stated that it "continue[s] to be of the view that the Parties are each other's closest competitor in the supply of motorhome rental services".[21] This is supported by public statements made by THL.

When Apollo was first listed in 2017, in response to the question "Apollo are generally regarded as your largest competitors and they are now listed. How has that changed the way you think and operate?" THL's CEO commented that:[22]

> *"There is no doubt that I think this has been positive for thl. **The primary gain for us that we now accurately benchmark our performance**. This benefits us and our shareholders. **We can all see where we have performed on a relative basis and where we need to improve**. The management team in thl have enjoyed the challenge and, whilst we remain focused on our plans, we are aware of where we have shortfalls on a relative basis and can improve." [**emphasis added**]*

This demonstrates that THL actively benchmarks themselves against Apollo, who our client considers is the key competitive constraint preventing THL from increasing prices or degrading quality. If the Merger proceeds, this constraint will be lost from the market to the detriment of the customers.

In addition, THL has also separately noted the importance of Apollo as a competitor, and that there is a separate "large motorhome market" where Apollo is a key competitor:

> *"Main competitors: Apollo Jucy"*[23]

> *"Apollo seen as only significant competitor in large motorhome market"*[24]

> *"THL led an industry consolidation in 2012, buying 2 of 4 main competitors in the large motorhome market"*[25]

THL has also publicly acknowledged the importance that scale plays in these markets, which our client submits is material given the Merger will remove the only other international competitor that is of a similar scale to THL. Namely, THL has stated that:

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[21] Commission, *Statement of Issues THL/Apollo* (11 March 2022) at [64].

[22] *thl Shareholder Annual Review 2017*, page 18. Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/ShareholderDocs2017/thl-Shareholder-Annual-Review-FY17.pdf

[23] *Investor Presentation Tourism Holdings Limited October 2014 – Presented to Australian Fund Managers,* slide 13. Retrieved from http://www.thlonline.com/SiteCollectionDocuments/Investors/InvestorPresentation.pdf

[24] This was in relation to the Australian market but the same is considered true in New Zealand. See *Tourism Holdings Investor Introduction and Update September 2015,* slide 7. Retrieved from http://www.thlonline.com/SiteCollectionDocuments/Investors/thl-Investor-update-August-2015.pdf

[25] *Tourism Holdings. Investor Introduction and Update September 2015,* slide 7.

*"Secondly, as we grow we will **use the scale benefits to stay competitive**." **[emphasis added]**[26]*

*"We are aware of those views and understand the theory behind them. thl is an asset intensive business and the motorhomes are a replicable asset. There are two key elements to that which I would consider aren't necessarily being accounted for appropriately. **First is our competitive advantages – primarily scale, experience and market penetration**. We do believe our channels to market, our brands, their heritage and the technology that we have developed enable us to create and sustain demand that provides us with a competitive advantage. **Along with scale on an international basis, we have the opportunity to sustain our customer base**. "* **[emphasis added]**[27]

THL already is dominant in these markets

Our client agrees with the Commission's preliminary finding that the Merger 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" and that the merged entity would unlikely be constrained by any of the factors that the merging parties have contended. In fact, our client's perspective is that previous statements made by THL already indicate that THL has a degree of market power that it is able to exploit, and that the removal of Apollo as its closest and only significant competitor of scale will exacerbate the situation.

Namely, THL has previously observed that:

*"We are here for the long term and have the capacity to acquire, where appropriate, and withstand poorer market trading conditions. We are consistently told by our trade partners that **we can demand a price beyond what the competition does**, due to our product quality, customer service, innovation and, importantly, as a consistent partner who operates with integrity" [**emphasis added**]*[28]

*"Leveraging off our years of experience as the **world's leading RV rental provider**, we were well-positioned to adapt our operational experience to support COVID-19 containment needs worldwide." [**emphasis added**]*[29]

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[26] *thl Shareholder Annual Review 2017,* page 14.
[27] *thl Shareholder Annual Review 2017*, page 18.
[28] *Tourism Holdings Limited Annual Meeting – 31 October 2019 - Chairman and CEO Address*, slide 31. Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/AnnualMeetingDocs2019/NZX-Media-Release-thl-Annual-Meeting-31-October-2019-Chairman-and-CEO-Address.pdf
[29] *thl Integrated Annual Report 2020,* page 26. Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/AnnualResultsDocs2020/thl-FY20-Annual-Results.pdf

*"The **relative size of our fleet** per head of population in New Zealand meant that we could **make a particularly big impact** in this market." [**emphasis added**]*[30]

Barriers to entry are not low as claimed by the merging parties

THL has made submissions to the Commission that there are low barriers to entry and expansion in the motorhome and rental market. From our client's perspective, the submissions made by THL to the Commission are difficult to reconcile with previous statements made by THL, which demonstrate that:

- there are barriers to entry;
- the market is stable with limited new entry over the years; and
- that THL does not consider new entry to be a threat to its business.

In particular, our client notes that THL has previously observed that:

*"Secondly is the barriers to entry. **The business model is build/rent and sell. Each aspect of the model requires a different type of infrastructure and licences. The asset intensity of the industry also creates its own barrier. Throughout the global financial crisis, we saw a sustained tightening in the credit requirements for our industry internationally**. **Today there are strong equity requirements and covenant packages that ensure a disciplined approach to capital deployment and returns is critical**. These are qualities that thl has had for many years and any new competitors need to abide by." [**emphasis added**]*[31]

*"From a competitive standpoint, we have seen a **reasonably stable market**. We have seen one new competitor with McRent, a European-based operator, creating a joint venture business in New Zealand. We understand McRent will be commencing rental hire in the 17/18 summer season. They are expected to have less than 100 vehicles and we believe the market can sustain that additional capacity." [**emphasis added**]*[32]

[30] *thl Integrated Annual Report 2020*, page 30.
[31] *thl Shareholder Annual Review 2017*, page 18.
[32] *thl Shareholder Annual Review 2017*, page 27.

*"From a competitive standpoint, the market has **remained stable** in the last 12 months. The McRent business commenced, as expected, but there have been **no other competitors of note**." [**emphasis added**]*[33]

*"The competitive landscape [of New Zealand rentals] has **remained stable** in the last 12 months, with **no significant changes** to the market." [**emphasis added**]*[34]

*"Everybody appears focused on debt reduction. This will be fundamental to those operators with a lower level of equity in their business. In fact, **one of our competitive advantages is our strong balance sheet relative to others that enables us to invest in new fleet and expand before others as the market allows**." [**emphasis added**]*[35]

*"Continued risk of new or existing competitors disrupting market although **risk to thl is decreasing**" [**emphasis added**]*[36]

*"We are seeing a **reduction in fleet sizes** in all of the markets we operate in. Some businesses have changed hands, **some have exited the market** and some have hibernated to varying degrees." [**emphasis added**]*[37]

Concluding remarks

Based on the evidence that the Commission has received to date, our client cannot see how the Commission could be satisfied that the Merger would not substantially lessen competition in a market. In summary, our client's view is that:

- The arguments that the applicant has made to the Commission as part of this clearance process appear wholly inconsistent with public statements it has made in other contexts – the Commission, therefore, needs to carefully scrutinise any such arguments;

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[33] *thl Shareholder Annual Review 2018*, page 32. Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/AnnualResultsDocs2018/thl-FY18-Shareholder-Annual-Review.pdf

[34] *thl Integrated Annual Report 2019,* page 58. Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/AnnualResultsDocsFY19/thl-FY19-Integrated-Report.pdf

[35] 2020 NZX Release Annual Shareholders' Meeting Chairman's Address, page 11. Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/ShareholderDocs2020/201030-NZX-Release-Annual-Meeting-Address.pdf

[36] *thl Integrated Annual Report 2021*, page 48. Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/AnnualResultsDocs2021/thl-FY21-annual-results.pdf

[37] *thl FY21 Interim Results Presentation*, slide 38. Retrieved from http://www.thlonline.com/FinancialInvestorInformation/Documents/HalfYearResultsDocs2021/thl-FY21-investor-presentation.pdf

- The Merger would result in a dominant firm with a market share of [REDACTED] for all motorhomes and campervans and [REDACTED] for 4-6 berth motorhomes and campervans that will be almost 11 and 13 times respectively the size of the next largest competitor;

- The Merger would eliminate THL's closest competitor in the market and the only other vertically-integrated international competitor of scale from the market;

- There is already evidence that THL is able to act unconstrained from the actions of other competitors and customers, which undermines the credibility of any argument that the merged parties will be constrained post-Merger; and

- Any constraint arising from the current excess supply of motorhomes due to the pandemic is merely temporary and is already showing signs of abating such that the Commission should not place any weight on that constraint beyond the end of this year (and, furthermore, a key strategic rationale for the Merger appears to be to reduce capacity to avoid the competition that would otherwise arise from additional capacity remaining in the market).

Our client therefore submits that the Commission must decline to grant clearance. Specifically, in this case, not only is there sufficient doubt that means clearance cannot be granted, the evidence overwhelmingly demonstrates that the Merger *will* substantially lessen competition by combining the number one and number two players in the market.