

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Apollo Tourism & Leisure Ltd (ACN 614 714 742), THL Group (Australia) Pty Ltd (ACN 055 966 222), and Tourism Holdings Rentals Limited ARBN 655 142 028, a foreign company registered in its original jurisdiction of New Zealand as Tourism Holdings Limited

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1. Persons giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by:
- (a) Tourism Holdings Rentals Limited ARBN 655 142 028, a foreign company registered in its original jurisdiction of New Zealand as Tourism Holdings Limited (*thl*);
 - (b) THL Group (Australia) Pty Ltd (ACN 055 966 222) (*thl Acquirer*); and
 - (c) Apollo Tourism & Leisure Ltd (ACN 614 714 742) (**Apollo**),
- (together, the **Undertaking Signatories**).

2. Background

The parties to the proposed acquisition

- 2.1. *thl* is a foreign company registered in its original jurisdiction of New Zealand. It is headquartered in New Zealand and is listed on the New Zealand Stock Exchange. In Australia it is registered as Tourism Holdings Rentals Limited ARBN 655 142 028. *thl* is a global tourism company operating a range of tourism related businesses in Australia, New Zealand, the United States and the United Kingdom. Its activities in Australia relate to the recreational vehicle (**RV**) industry, which includes its principal activity as a motorhome, campervan and 4WD camper rental business. *thl's* Australian RV rental brands are *Maui*, *Britz* and *Mighty Campers*. *thl Acquirer*, a wholly owned subsidiary of *thl*, is the entity through whom *thl* intends to undertake the Proposed Acquisition.
- 2.2. Apollo is headquartered in Australia and listed on the Australian Securities Exchange. It is a tourism leisure company with operations in Australia, New Zealand, Canada, Germany, the United Kingdom and Ireland. In Australia, its principal activities are the manufacture, rental, sales, and distribution of RVs. Apollo's Australian RV rental brands are *Star RV*, *Apollo*, *Cheapa Campa* and *Hippie Camper*.

The Proposed Acquisition

- 2.3. *thl* proposes to acquire shares in Apollo, through *thl Acquirer*, pursuant to a scheme of arrangement under the *Corporations Act 2001* (Cth) such that, on completion, *thl* will hold 100% of the shares in Apollo (**Proposed Acquisition**).

The ACCC's review

- 2.4. On 28 January 2022, the ACCC commenced its public review of the Proposed Acquisition.
- 2.5. The ACCC undertook market inquiries and considered information provided by the Undertaking Signatories, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.
- 2.6. On 28 April 2022, the ACCC released a Statement of Issues outlining preliminary competition concerns with the Proposed Acquisition. The parties offered an undertaking to the ACCC in response to the competition concerns raised in the Statement of Issues and consultation on the proposed undertaking was commenced on 6 September 2022.

The ACCC's competition concerns

- 2.7. The ACCC has concluded that, in the absence of this Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of motorised RVs for rent in Australia (**Relevant Market**).
- 2.8. The ACCC was concerned that the Proposed Acquisition would remove Apollo and *thl* as each other's closest and largest competitor and this loss of competition would give *thl* the ability to profitably increase prices and/or decrease quality or service levels.
- 2.9. The ACCC's review concluded that, in the absence of this Undertaking:
- (a) other existing RV rental suppliers lack the scale to replace the competition lost by the Proposed Acquisition;
 - (b) peer-to-peer platforms do not provide a strong source of competitive constraint on traditional RV rental suppliers and are not likely to in the foreseeable future; and
 - (c) the threat of new entry or expansion by other traditional RV rental suppliers is not sufficient to provide a strong competitive constraint on a combined *thl* / Apollo.
- 2.10. The Undertaking Signatories do not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the Relevant Market. However, to address the ACCC's concerns, the Undertaking Signatories have offered this Undertaking pursuant to section 87B of the Act.

The Undertaking remedy

- 2.11. The objective of this Undertaking is to address the ACCC's competition concerns as set out above that would otherwise arise as a consequence of the Proposed Acquisition.
- 2.12. This Undertaking aims to achieve this objective by placing obligations on the Undertaking Signatories as set out below:
- (a) to ensure that the Divestiture Business is sold to an Approved Purchaser that will result in the creation or strengthening of a viable, effective, stand-alone, independent and long term competitor for the Relevant Market;
 - (b) to ensure the purchaser of the Divestiture Business has all the necessary associated assets and rights to compete effectively with *thl* in the Relevant Market;
 - (c) to maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture; and
 - (d) to provide for the effective oversight of the Undertaking Signatories' compliance with this Undertaking.
- 2.13. This Undertaking includes the approval of Star RV Australia Fleet Pty Limited as the Approved Purchaser. Star RV Australia Fleet Pty Limited is ultimately owned by Jucy Group (2022) Limited, in which Next Capital Tourism Holdings Pty Ltd holds a controlling interest.

3. Commencement of this Undertaking

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by the Undertaking Signatories; and

- (b) this Undertaking so executed is accepted by the ACCC,
(the **Commencement Date**).

4. Cessation of Ongoing Obligations

Withdrawal

- 4.1. Either *thl* or Apollo may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

- 4.4. Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 9, 11, 12, 13, 14, 15, 16, and 17 survive completion of the obligations in clauses 5, 6, 7, 8, and 10, Schedule 4, and Confidential Schedules 5, 6 and 7 of this Undertaking.

5. Divestiture of the Divestiture Business

Apollo may divest the Divestiture Business before the Control Date

- 5.1. Prior to the Control Date, Apollo may, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Business only to an Approved Purchaser. If Apollo elects to divest, or cause the divestiture of, the Divestiture Business pursuant to this clause 5.1, then it must:
- (a) divest, or cause the divestiture of, the Divestiture Business by:
 - (i) the sale, assignment, transfer and/or licence all of the assets in Schedule 4 to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement before the Control Date;
 - (ii) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.5 to 5.6;
 - (iii) the transfer of any Transferred Personnel required pursuant to clauses 5.8 to 5.9;
 - (iv) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.10 to 5.11; and
 - (v) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.13 to 5.14; and
 - (b) comply with the requirements of clauses 5.5 to 5.15 as if the references to *thl* in those clauses were references to Apollo.

Divestiture by *thl* after the Control Date

- 5.2. If, at the Control Date, Apollo has not completed divesting, or causing the divestiture of, the Divestiture Business pursuant to clause 5.1, *thl* must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Business only to an Approved Purchaser. From the Control Date, *thl* must comply with clauses 5.4(b) - (e), regardless of whether Apollo divested, or caused the divestiture of, the Divestiture Business pursuant to clause 5.1.
- 5.3. In the event that clause 10 applies, *thl* must not authorise the Approved Divestiture Agent to divest the Divestiture Business to a purchaser other than an Approved Purchaser.
- 5.4. Subject to clause 5.2, *thl* must divest, or cause the divestiture of, the Divestiture Business by:
- (a) the sale, assignment, transfer and/or licence of all of the assets in Schedule 4 to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement and within the Initial Sale Period, otherwise clause 10 applies;
 - (b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.5 to 5.6;
 - (c) the transfer of any Transferred Personnel required pursuant to clauses 5.8 to 5.9;
 - (d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.10 to 5.11; and
 - (e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.13 to 5.14.

Consents

- 5.5. *thl* must:
- (a) obtain or assist the Approved Purchaser to obtain, as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Business;
 - (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
 - (c) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents;
 - (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
 - (e) enter an agreement with the Approved Purchaser and approved by the ACCC, or vary any existing Approved Transitional Supply Agreement as required by the Approved Purchaser, in relation to any goods or services that are required for the operation of the Divestiture Business which may be affected by any failure to gain a Consent.
- 5.6. If, seven Business Days before completion of the divestiture of the Divestiture Business, the Approved Purchaser does not, or is otherwise unable to, obtain one or more Consents, then *thl* must:
- (a) immediately provide to the ACCC in writing details of the:
 - (i) Consents that have not been obtained;
 - (ii) reasons why the Consents have not been obtained; and
 - (iii) information or material required to obtain the Consents;

- (b) continue to do everything in its power to satisfy clause 5.5 as soon as possible after the completion of the divestiture of the Divestiture Business (and until such time as clause 5.5 is satisfied).
- 5.7. Even if *thl* has complied with clauses 5.5 to 5.6, it remains a breach of this Undertaking if *thl* is unable to effect the divestiture of the Divestiture Business by reason that one or more Consents are not obtained.

Transferred Personnel

- 5.8. At the option of the Approved Purchaser, *thl* must transfer to the Approved Purchaser:
 - (a) all employees; and;
 - (b) all service providers under a contract for service;who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the Divestiture Business and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).
- 5.9. When fulfilling its obligations under clause 5.8, *thl* must:
 - (a) encourage all Transferred Personnel to remain with the Divestiture Business, including offering incentives based on industry practice;
 - (b) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Divestiture Business;
 - (c) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any obligations to provide services to the Undertaking Signatories;
 - (d) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business; and
 - (e) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to the Undertaking Signatories for a period of 12 months after the completion of the divestiture of the Divestiture Business.

Technical Assistance

- 5.10. At the option of the Approved Purchaser, *thl* must supply or cause to be supplied, to the Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Divestiture Business.
- 5.11. *thl* must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, provides for the supply of Technical Assistance:
 - (a) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
 - (b) at cost and otherwise on arm's length terms.
- 5.12. To avoid doubt, *thl* must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Technical Assistance Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a

renewal or extension of an Approved Transitional Technical Assistance Agreement, the ACCC will have regard to the criteria set out in clauses 5.10 and 5.11.

Transitional Supply Agreement

- 5.13. At the option of the Approved Purchaser, *thl* must ensure the continued supply to the Approved Purchaser, under an Approved Transitional Supply Agreement, of any goods or services that are required by the Approved Purchaser in order for the Approved Purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor in the Relevant Market.
- 5.14. *thl* must ensure that any Approved Transitional Supply Agreement, and any renewal or extension of an Approved Transitional Supply Agreement:
- (a) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;
 - (b) provides for the supply of the included goods and services at cost price; and
 - (a) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.15. To avoid doubt, *thl* must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Supply Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Supply Agreement, the ACCC will have regard to the criteria set out in clauses 5.13 and 5.14.

6. Process for approving a proposed purchaser

Potential purchasers

- 6.1. *thl* must provide the ACCC and Approved Independent Auditor with:
- (a) the identity of any person who expresses an interest in acquiring the Divestiture Business;
 - (b) the status of negotiations with each person; and
 - (c) a copy of each person's offer to acquire the Divestiture Business, where relevant;
- at the following times:
- (d) as soon as possible following the Commencement Date for those persons who express interest before the Commencement Date;
 - (e) after the Commencement Date, within 10 Business Days of each person expressing the interest and/or providing an offer;
- regardless of whether the person subsequently withdraws or is declined.

Provision of a notice for a Proposed Purchaser

- 6.2. To seek ACCC approval for a Proposed Purchaser, *thl* or the Approved Divestiture Agent must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including a draft sale and purchase agreement, a draft transitional technical assistance agreement (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).
- 6.3. A Proposed Purchaser Notice may not be provided to the ACCC during the last 20 Business Days of the Initial Sale Period.

Purchaser approved at the time the Undertaking was accepted

- 6.4. At the time this Undertaking was accepted, the ACCC also considered information of the type required in a Proposed Purchaser Notice and approved Star RV Australia Fleet Pty Limited as the Approved Purchaser of the Divestiture Business, subject to clause 6.8.
- 6.5. ACCC approval of Star RV Australia Fleet Pty Limited as the Approved Purchaser of the Divestiture Business included approval of:
- (a) the Sale and Purchase Agreement as the Approved Sale and Purchase Agreement;
 - (b) the Transitional Services Agreement as the Approved Transitional Technical Assistance Agreement; and
 - (c) the Vehicle Supply Agreement as the Approved Transitional Supply Agreement.

Approval of a Proposed Purchaser after the Commencement Date

- 6.6. The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice, which includes consideration of:
- (a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
 - (b) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.10 and 5.11; and
 - (c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.13 and 5.14.
- 6.7. Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.6, the factors to which the ACCC may have regard include whether the:
- (a) draft sale and purchase agreement is consistent with this Undertaking;
 - (b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (c) Proposed Purchaser is independent of the Undertaking Signatories;
 - (d) Proposed Purchaser is of good financial standing;
 - (e) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (f) Proposed Purchaser is able to conduct the Divestiture Business effectively; and
 - (g) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.
- 6.8. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

7. Divestiture Business Protection

Protection of the Divestiture Business

- 7.1. From the Commencement Date, the Obligated Party must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Business (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as necessary to allow completion of the Proposed Acquisition.

The Obligated Party's obligations in relation to the Divestiture Business prior to completion of divestiture

- 7.2. Without limiting this clause 7, the Obligated Party must, from the Commencement Date until completion of the divestiture of the Divestiture Business, take all steps available to it to:
- (a) ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Commencement Date;
 - (b) continue to provide access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Commencement Date;
 - (c) continue to provide administrative and technical support for the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Commencement Date and in accordance with any plans established before the Commencement Date;
 - (d) continue existing Agreements relating to the Divestiture Business with customers, suppliers and/or other third parties that are in place at the Commencement Date;
 - (e) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
 - (f) maintain the supply of those goods and services that are part of the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Commencement Date;
 - (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Business as at the Commencement Date; and
 - (h) carry out promotion and marketing of the products which form part of the Divestiture Business in accordance with any plans established before the Commencement Date.

Personnel of the Undertaking Signatories

- 7.3. From the Control Date until completion of the divestiture of the Divestiture Business, *thl* must:
- (a) in consultation with the Approved Independent Manager, replace any
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business;

who leave or will leave the Divestiture Business before divestiture;

- (b) not terminate or vary the terms of employment or engagement (or agree to do any of those things) of any of the
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business; and
- (c) not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Business as at the Control Date to any other business operated by *thl*.

7.4. As soon as practicable after the Commencement Date, the Undertaking Signatories must direct their respective personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with their respective obligations under this Undertaking.

The Obligated Parties' ongoing obligations in relation to the Divestiture Business

7.5. To the extent an Obligated Party has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.10 to 5.15 of this Undertaking in relation to the Divestiture Business, the Obligated Party must not sell, assign, transfer, and/or licence directly or indirectly any of the assets necessary to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

7.6. Subject to clause 7.7, the Undertaking Signatories must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Business gained through:

- (a) ownership and / or management of the Divestiture Business; or
- (b) fulfilling any obligations pursuant to this Undertaking.

7.7. Clause 7.6 does not apply to information that the Undertaking Signatories requires to:

- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
- (b) carry out its obligations pursuant to this Undertaking,

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of the Undertaking Signatories who need to know the information to carry out the permitted purpose.

8. Independent Management of the Divestiture Business

Obligation to appoint an Approved Independent Manager

8.1. *thl* must appoint and maintain an Approved Independent Manager to manage the Divestiture Business, from the Control Date until the completion of the divestiture of the Divestiture Business in accordance with this Undertaking.

Process for approving a Proposed Independent Manager

8.2. At least 15 Business Days before the Control Date, *thl* must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Manager Notice**), including draft

terms of appointment and a draft separation and management plan.

- 8.3. If clauses 8.12, 8.13 or 8.14 apply, *thl* must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs.
- 8.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.
- 8.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Business;
 - (b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of the Undertaking Signatories;
 - (c) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Manager

- 8.6. After receiving a written notice from the ACCC of its approval of the Proposed Independent Manager, the draft terms of appointment and draft separation and management plan, *thl* must by the Control Date:
 - (a) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 8.7. If:
 - (a) the Approved Independent Manager has not been appointed by the Control Date;
 - (b) the Approved Independent Manager has not been appointed within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clauses 8.12, 8.13 or 8.14; or
 - (c) the ACCC has not received a Proposed Independent Manager Notice in accordance with clauses 8.2 or 8.3,

then clause 8.8 applies.

- 8.8. If clause 8.7 applies, the ACCC at its discretion may:
 - (a) identify and approve a person as the Approved Independent Manager, including approving the draft terms of appointment of the Approved Independent Manager and the draft separation and management plan; and/or
 - (b) direct *thl* to appoint a person who the ACCC has deemed is an Approved Independent Manager.

Obligations and powers of the Approved Independent Manager

8.9. *thl* must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:

- (a) maintain their independence from the Undertaking Signatories, apart from appointment to the role of Approved Independent Manager and / or Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with the Undertaking Signatories for the period of their appointment;
- (b) act in the best interests of the Divestiture Business at all times including ensuring that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;
- (c) not use any confidential information gained through the management of the Divestiture Business other than for performing their functions as Approved Independent Manager;
- (d) make only those Material Changes to the Divestiture Business which the ACCC does not object to;
- (e) operate and manage the Divestiture Business to the maximum extent practicable, in a manner which is financially and operationally separate from the Undertaking Signatories;
- (f) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to this Undertaking.
- (g) provide the following reports directly to the ACCC:
 - (i) a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and
 - (ii) an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or the Undertaking Signatories' compliance with this Undertaking; and
- (h) follow any direction given to them by the ACCC in relation to the performance of their functions as Approved Independent Manager pursuant to this Undertaking.

8.10. *thl* must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:

- (a) manage and operate the Divestiture Business according to the Approved Separation and Management Plan until the completion of the divestiture of the Divestiture Business;
- (b) provide any information requested by *thl* pursuant to the protocol in the Approved Separation and Management Plan;
- (c) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Divestiture Business requested by *thl* which is not covered by the protocol in the Approved Separation and Management Plan;
- (d) renew or replace upon expiry Material Contracts and enter into new contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
- (e) engage, redeploy or make redundant personnel employed in the Divestiture Business as the Approved Independent Manager determines necessary; and

- (f) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform their functions as the Approved Independent Manager.

thl's obligations in relation to the Approved Independent Manager

8.11. Without limiting its obligations in this Undertaking, *thl* must:

- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
- (b) maintain and fund the Approved Independent Manager to carry out their functions, including:
 - (i) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of their functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
 - (ii) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Divestiture Business; and
 - (iii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform their functions as the Approved Independent Manager; and
- (c) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out their obligations as the Approved Independent Manager, including:
 - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Divestiture Business, and for the Divestiture Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Business required by the Approved Independent Manager;
 - (iii) providing to the Approved Independent Manager any information or documents that they consider necessary for managing and operating the Divestiture Business or for reporting to or otherwise advising the ACCC; and
 - (iv) not requesting information or reports regarding the Divestiture Business from the personnel of the Divestiture Business except through the Approved Independent Manager; and
 - (v) not appointing the Approved Independent Manager, or have any Agreements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

Resignation, revocation or termination of the Approved Independent Manager

- 8.12. *thl* must immediately notify the ACCC in the event that the Approved Independent Manager resigns or otherwise stops acting as the Approved Independent Manager before the completion of the divestiture of the Divestiture Business.
- 8.13. The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.14. The ACCC may approve any proposal by, or alternatively may direct, *thl* to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

9. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 9.1. The Undertaking Signatories must appoint and maintain an Approved Independent Auditor to audit and report upon the Undertaking Signatories' compliance with this Undertaking.

Process for approving a Proposed Independent Auditor

- 9.2. Within 2 Business Days after the Commencement Date, the Undertaking Signatories must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3. The Independent Auditor is to be appointed for a term of two years. Within 15 Business Days of the end of the Independent Auditor's term, *thl* must provide the ACCC with a new Proposed Independent Auditor Notice. A person who is, or who has been, the Independent Auditor is eligible for reappointment as the Independent Auditor.
- 9.4. If clauses 9.18, 9.19 or 9.20 apply, the Undertaking Signatories must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs.
- 9.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of the Undertaking Signatories;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 9.7. After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, the Undertaking Signatories must within 2 Business Days of receipt of that notice:

- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

9.8. If:

- (a) the Approved Independent Auditor has not been appointed within 2 Business Days of receipt of the notice in clause 9.7;
- (b) the Approved Independent Auditor has not been appointed within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.18, 9.19, or 9.20; or
- (c) the ACCC has not received a Proposed Independent Auditor Notice in accordance with clauses 9.2, 9.3 or 9.4,

then clause 9.9 applies.

9.9. If clause 9.8 applies, the ACCC at its absolute discretion may:

- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
- (b) direct the Undertaking Signatories to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

9.10. The Undertaking Signatories must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (a) maintain their independence from the Undertaking Signatories, apart from appointment to the role of Approved Independent Auditor and / or Approved Independent Manager, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with any of the Undertaking Signatories for the period of their appointment;
- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) oversee and monitor the forward booking allocation procedure described in the Approved Sale and Purchase Agreement;
- (d) approve the final allocations of the Apollo Australian Divestment Forward Bookings as identified in the forward booking allocation procedure described in the Approved Sale and Purchase Agreement;
- (e) oversee and monitor any adjustments to be made to the Apollo Australian Divestment Fleet in accordance with the terms of the Approved Sale and Purchase Agreement;
- (f) monitor the physical delivery of the Apollo Australia Divestment Fleet to the Approved Purchaser;
- (g) where requested by the ACCC, assess the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business against the factors (as relevant) in clause 6.7;
- (h) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 9.12;

- (ii) an immediate report of any issues that arise in relation to the performance of their functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
 - (iii) where requested by the ACCC, a report on the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business following an assessment under clause 9.10(g); and
- (i) follow any direction given to them by the ACCC in relation to the performance of their functions as Approved Independent Auditor under this Undertaking.
- 9.11. The Undertaking Signatories must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
- (a) access the facilities, sites or operations of the Divestiture Business and any of the Undertaking Signatories' other businesses as required by the Approved Independent Auditor;
 - (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out their functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
 - (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform their functions as the Approved Independent Auditor.

Compliance Audit

- 9.12. The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:
- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
 - (b) a full audit of the Undertaking Signatories' compliance with this Undertaking;
 - (c) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
 - (d) all of the reasons for the conclusions reached in the Audit Report;
 - (e) any qualifications made by the Approved Independent Auditor in forming their views;
 - (f) any recommendations by the Approved Independent Auditor to improve:
 - (i) the Approved Audit Plan;
 - (ii) the integrity of the auditing process;
 - (iii) the Undertaking Signatories' processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) the Undertaking Signatories' compliance with this Undertaking; and
 - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 9.13. The Approved Independent Auditor is to provide an Audit Report to the ACCC at the following times:

- (a) within 15 Business Days after the Commencement Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
 - (b) every fortnight from the date of the Establishment Audit until one month after the divestiture of the Divestiture Business is completed;
 - (c) every three months after the date of provision of the last Audit Report pursuant to clause 9.13(b), until the ACCC confirms in writing to *thl* that it is satisfied that the Undertaking Signatories have fulfilled all obligations pursuant to this Undertaking; and
 - (d) if requested by the ACCC, a final report due three months after the last report provided pursuant to clause 9.13(c).
- 9.14. The Approved Independent Auditor is to provide each Undertaking Signatory a non-confidential copy of each Audit Report provided to the ACCC under clause 9.13 as soon as possible after provision to the ACCC.
- 9.15. The Undertaking Signatories must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- 9.16. The Undertaking Signatories must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

The Undertaking Signatories' obligations in relation to the Approved Independent Auditor

- 9.17. Without limiting its obligations in this Undertaking, the Undertaking Signatories must:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
 - (b) maintain and fund the Approved Independent Auditor to carry out their functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of their functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform their functions as the Approved Independent Auditor; and
 - (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out their functions as the Approved Independent Auditor, including:
 - (i) directing any of the Undertaking Signatories' personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Business and any of the Undertaking Signatories' other businesses as required by the Approved Independent Auditor;

- (iii) providing to the Approved Independent Auditor any information or documents they consider necessary for carrying out their functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
- (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
- (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 9.18. The Undertaking Signatories must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 9.19. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.20. The ACCC may approve any proposal by, or alternatively may direct, the Undertaking Signatories to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking and/or the Approved Terms of Appointment or the Approved Independent Auditor fails to perform their role to an adequate standard.

10. Failure to divest the Divestiture Business within the Initial Sale Period

Divestiture of the Unsold Business

- 10.1. In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Sale Period, the Divestiture Business becomes an unsold business (**Unsold Business**) and the provisions of this clause 10 apply.

Obligation to appoint an Approved Divestiture Agent

- 10.2. From the end of the Initial Sale Period, *thl* must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Business.

Process for approving a Proposed Divestiture Agent

- 10.3. At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of the Divestiture Business has not been completed, *thl* must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**) including draft terms of appointment, a draft business sale agreement, and draft marketing and sale plan.
- 10.4. If clauses 10.14, 10.15 or 10.16 apply, *thl* must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs.
- 10.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.

- 10.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Divestiture Agent, the factors to which the ACCC may have regard include whether the:
- (a) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
 - (b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of the Undertaking Signatories;
 - (c) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
 - (d) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

Appointment of the Approved Divestiture Agent

- 10.7. After receiving written notice from the ACCC of its approval of the Proposed Divestiture Agent, the draft terms of appointment, draft business sale agreement and draft marketing and sale plan, *thl* must within two Business Days:
- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 10.8. If:
- (a) the Approved Divestiture Agent has not been appointed within 10 Business Days after the Divestiture Business becomes an Unsold Business;
 - (b) the Approved Divestiture Agent has not been appointed within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 10.14, 10.15 or 10.16; or
 - (c) the ACCC has not received a Proposed Divestiture Agent Notice in accordance with clauses 10.3 or 10.4,
- then clause 10.9 applies.

- 10.9. If clause 10.8 applies, the ACCC may, at its absolute discretion:
- (a) identify and approve a person as the Approved Divestiture Agent, including approving the draft terms of appointment of the Approved Divestiture Agent, draft business sale agreement and draft marketing and sale plan; and/or
 - (b) direct *thl* to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

Obligations and powers of the Approved Divestiture Agent

- 10.10. *thl* must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:
- (a) divest the Unsold Business only to an Approved Purchaser, at no minimum price;
 - (b) maintain their independence from the Undertaking Signatories, apart from appointment to the role of Approved Divestiture Agent, including not form any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this

Undertaking with the Undertaking Signatories for the period of their appointment;

- (c) not use any confidential information gained through the divestiture of the Unsold Business other than for performing their functions as Approved Divestiture Agent;
- (d) follow the Approved Marketing and Sale Plan;
- (e) use their best endeavours to enter into a binding agreement for the divestiture of the Unsold Business as quickly as possible using the Approved Business Sale Agreement;
- (f) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to this Undertaking;
- (g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
 - (i) information regarding the implementation of the Approved Business Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking their duties by month and to the date of the report;
 - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d));
 - (v) the efforts made to sell the Unsold Business;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Business; and
 - (viii) any other information required by the ACCC;
- (h) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
 - (i) any moneys derived from the divestiture of the Unsold Business;
 - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling their duties; and
 - (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d));
- (i) immediately inform the ACCC of:
 - (i) any issues that arise in relation to the implementation of the Approved Business Sale Agreement and any Approved Marketing and Sale Plan;
 - (ii) non-compliance with this Undertaking by any person named in this Undertaking;
 - (iii) any offers for the Unsold Business;

- (j) accept any offer for the Unsold Business upon instruction from *thl* given in accordance with clause 10.13(d); and
 - (k) follow any direction given to them by the ACCC in relation to the performance of their functions as Approved Divestiture Agent pursuant to this Undertaking.
- 10.11. *thl* must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:
- (a) negotiate with purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Agent in their sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
 - (b) execute any agreements with the Approved Purchaser required pursuant to clause 6.6;
 - (c) upon instruction pursuant to clause 10.13(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Business Sale Agreement; and
 - (d) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform their functions as the Approved Divestiture Agent.
- 10.12. Any irrevocable power of attorney granted pursuant to clause 10.11 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 10.14, 10.15 and 10.16, or in the event that the Unsold Business is divested in accordance with this Undertaking.

thl's obligations in relation to the Approved Divestiture Agent

- 10.13. Without limiting its obligations in this Undertaking, *thl* must from the end of the Initial Sale Period:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
 - (b) maintain and fund the Approved Divestiture Agent to carry out their functions, including:
 - (i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of their functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform their functions as the Approved Divestiture Agent;
 - (iii) paying such fees as are agreed between the Approved Divestiture Agent and *thl* (but not fees contingent on the price to be obtained for the Unsold Business); and
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and *thl* within 15 Business Days after the end of the Initial Sale Period, *thl* agrees to pay such fees as are directed by the ACCC;
 - (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out their functions as the Approved Divestiture Agent, including:

- (i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 10;
 - (ii) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Agent; and
 - (iii) providing to the Approved Divestiture Agent any information, documents or other assistance they consider necessary for carrying out their functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;
- (d) within three Business Days after receiving notice from the ACCC pursuant to clause 6.6, *thl* must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.6 and
- (e) other than in accordance with clause 10.13(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Business.

Resignation, revocation or termination of the Approved Divestiture Agent

- 10.14. *thl* must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Business.
- 10.15. The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 10.16. The ACCC may approve any proposal by, or alternatively may direct, *thl* to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

11. Notification of key dates and ACCC requests for information

- 11.1. *thl* must notify the ACCC and each Undertaking Appointment in writing of:
- (a) the anticipated date of the Control Date, at least five Business Days before that date;
 - (b) the anticipated date of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), at least five Business Days before that date;
 - (c) the occurrence of the Control Date, within one Business Day of that date; and
 - (d) the occurrence of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), within one Business Day of that date.
- 11.2. The ACCC may direct any Undertaking Signatory in respect of its compliance with this Undertaking to, and the applicable Undertaking Signatory must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the applicable Undertaking Signatory's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.

- 11.3. Any direction made by the ACCC under clause 11.2 will be notified to the applicable Undertaking Signatory, in accordance with clause 18.2 or 18.3 (as applicable).
- 11.4. In respect of any of the Undertaking Signatories' compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.5. Each Undertaking Signatory will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.4.
- 11.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 11.7. The ACCC may in its discretion:
- (a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.8. Nothing in this clause 11 requires the provision of information or documents in respect of which any of the Undertaking Signatories has a claim of legal professional or other privilege.

12. Disclosure of this Undertaking

- 12.1. Each of the Undertaking Signatories and the ACCC agree that Confidential Schedules 5 and 6 will remain confidential until after the completion of the divestiture of the Divestiture Business or Unsold Business and, subject to this clause 12, Confidential Schedule 7 will remain confidential.
- 12.2. Each of the Undertaking Signatories acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Confidential Schedules 5, 6 and 7.
- 12.3. Each of the Undertaking Signatories acknowledges that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 12.4. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:

- (a) required by law;
- (b) permitted by section 155AAA of the Act;
- (c) necessary for the purpose of enforcement action under section 87B of the Act;
or
- (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.

12.5. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13. Obligation to procure

13.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of any of the Undertaking Signatories to take or refrain from taking some action, the applicable Undertaking Signatory will procure that Related Body Corporate to take or refrain from taking that action.

14. No Derogation

14.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by any of the Undertaking Signatories of any term of this Undertaking.

14.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that any of the Undertaking Signatories does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

15. Change of Control

15.1. In the event that a Change of Control is reasonably expected to occur, the applicable Undertaking Signatory for that Change of Control must:

- (a) notify the ACCC of this expectation as soon as practicable; and
- (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on the applicable Undertaking Signatory pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified the applicable Undertaking Signatory in writing that a section 87B undertaking under this clause is not required.

16. Costs

16.1. The Undertaking Signatories must pay all of their own costs incurred in relation to this Undertaking.

17. Jurisdiction

17.1. *thl* irrevocably submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.

- 17.2. Unless and until notified in writing by *thl* to the ACCC of the appointment of another person as agent within Australia, *thl* appoints *thl* Acquirer, as its agent for the purposes of service of process in relation to this Undertaking.

18. Notices

Giving Notices

- 18.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@accc.gov.au
Attention: Executive General Manager
Merger, Exemptions & Digital Division

With a copy sent to: mergersru@accc.gov.au
Attention: Director, Remedies Unit
Policy, Coordination & Remedies Branch
Merger, Exemptions & Digital Division

- 18.2. Any notice or communication to Apollo pursuant to this Undertaking must be sent to:

Name: *Apollo*
Address: 698 Nudgee Road, Northgate QLD 4103
Email Address: Luke@apollocamper.com.au
Attention: Luke Trouchet, CEO Apollo Tourism and Leisure Limited

With a copy sent to:

Name: Jones Day
Address: Level 41, Aurora Place, 88 Phillip Street, Sydney
Email Address: Prudencesmith@JonesDay.com
Attention: Prudence Smith

- 18.3. Any notice or communication to *thl* and/or *thl* Acquirer pursuant to this Undertaking must be sent to:

Name: *thl*
Address: 83 Beach Road Auckland, Auckland
Email Address: grant.webster@thlonline.com
Attention: Grant Webster, CEO Tourism Holdings Limited

With a copy sent to:

Name: MinterEllison
Address: Waterfront Place, 1 Eagle Street Brisbane QLD 4000
Email Address: kathryn.finlayson@minterellison.com
Attention: Kathryn Finlayson

18.4. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

18.5. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

18.6. An Undertaking Signatory must notify the ACCC of a change to its contact details within three Business Days.

18.7. Any notice or communication will be sent to the most recently advised contact details for each Undertaking Signatory and subject to clauses 18.4 and 18.5, will be taken to be received.

19. Defined terms and interpretation

Definitions in the Dictionary

19.1. A term or expression starting with a capital letter:

(a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or



(b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

19.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by Apollo Tourism & Leisure Ltd (ACN 614 714 742) pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director
Name of director - Luke Trouchet	Name of director – Karl Trouchet
Date 26/9/22	Date 26-9-22

Executed by Tourism Holdings Rentals Limited ARBN 655 142 028, a foreign company registered in its original jurisdiction of New Zealand as Tourism Holdings Limited:


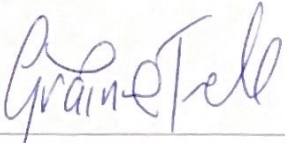

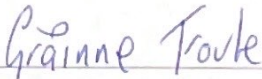
Signature of director	Signature of a director/company secretary (delete as appropriate)
Name of director (print)	Name of director/company secretary (print)
Date	Date

Executed as an Undertaking

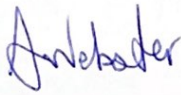
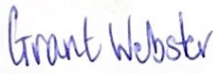
Executed by Apollo Tourism & Leisure Ltd (ACN 614 714 742) pursuant to section 127(1) of the *Corporations Act 2001* by:

Signature of director	Signature of a director
Name of director - Luke Trouchet	Name of director – Karl Trouchet
Date	Date

Executed by Tourism Holdings Rentals Limited ARBN 655 142 028, a foreign company registered in its original jurisdiction of New Zealand as Tourism Holdings Limited:

	
Signature of director	Signature of a director/company secretary (delete as appropriate)
	
Name of director (print)	Name of director/company secretary (print)
Date	Date

Executed by THL Group (Australia) Pty Ltd (ACN 055 966 222) pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of a director/company secretary (delete as appropriate)
	
Name of director (print)	Name of director/company secretary (print)
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:


Date

and signed on behalf of the Australian Competition and Consumer Commission:

Chair

Date

Executed by THL Group (Australia) Pty Ltd (ACN 055 966 222) pursuant to section 127(1) of the *Corporations Act 2001* by:

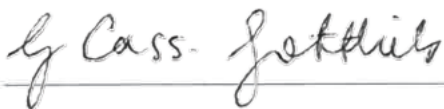
	
Signature of director	Signature of a director/ company secretary (delete as appropriate)
	CATHERINE MELDREW
Name of director (print)	Name of director/ company secretary (print)
Date	Date 23/9/2022

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

27 September 2022

Date

and signed on behalf of the Australian Competition and Consumer Commission:



Chair

27 September 2022

Date

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Apollo means Apollo Tourism & Leisure Ltd (ACN 614 714 742).

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

Approved Business Sale Agreement means the standard form contract for the divestiture of the Unsold Business which has been approved by the ACCC in accordance with the terms of this Undertaking.

Approved Divestiture Agent means the person approved by the ACCC and appointed under clause 10 of this Undertaking.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 9 of this Undertaking.

Approved Independent Manager means the person approved by the ACCC and appointed under clause 8 of this Undertaking.

Approved Marketing and Sale Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Business.

Approved Purchaser means the person approved by the ACCC under clause 6 of this Undertaking.

Approved Sale and Purchase Agreement means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which the Obligated Party will divest the Divestiture Businesses to the Approved Purchaser and Approved Purchaser will acquire the Divestiture Business from the Obligated Party.

Approved Separation and Management Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Manager will:

- (a) separate the Divestiture Business from any business to be retained by *thl*; and
- (b) manage and operate the Divestiture Business independently of *thl* and any retained business.

Approved Terms of Appointment means the terms of appointment for the Approved Independent Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.

Approved Transitional Supply Agreement means any agreement, for the supply of goods or services (other than Technical Assistance) by Apollo or *thl* to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Approved Transitional Technical Assistance Agreement means any agreement, for the supply of technical assistance by Apollo or *thl* to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given to it in clause 9.12 of this Undertaking.

Apollo Australian Divestment Fleet has the meaning given to it in Schedule 4 of this Undertaking.

Apollo Australian Divestment Intellectual Property has the meaning given to it in Schedule 4 of this Undertaking.

Apollo Australian Divestment Leases has the meaning given to it in Schedule 4 of this Undertaking.

Apollo Australian Divestment Records has the meaning given to it in Schedule 4 of this Undertaking.

Apollo Australian Divestment Forward Bookings has the meaning given to it in Schedule 4 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Change of Control means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Apollo to any other person or entity that may impact compliance with this Undertaking in its entirety;
- (b) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of *thl* to any other person or entity that may impact compliance with this Undertaking in its entirety;
- (c) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of *thl* Acquirer to any other person or entity that may impact compliance with this Undertaking in its entirety;
- (d) the sale or transfer of any assets necessary, or which may be necessary, to enable Apollo to continue to comply with this Undertaking in its entirety;
- (e) the sale or transfer of any assets necessary, or which may be necessary, to enable *thl* to continue to comply with this Undertaking in its entirety; or
- (f) the sale or transfer of any assets necessary, or which may be necessary, to enable *thl* Acquirer to continue to comply with this Undertaking in its entirety.

Commencement Date means the date described in clause 3.1 of this Undertaking.

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

Consents means any Government Consents or Third Party Consents.

Corporations Act means the *Corporations Act 2001* (Cth).

Divestiture Business means the items described in Schedule 4 to this Undertaking.

Entities Connected has the meaning given by section 64B of the Corporations Act.

Establishment Audit has the meaning given to it in clause 9.13(a) of this Undertaking.

Government Consents means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

Holding Company has the meaning given by section 9 of the Corporations Act.

Initial Sale Period is defined in clause 1 of Confidential Schedule 5 to this Undertaking.

Material Change means any change to the structure, attributes, extent or operations of the Divestiture Business or product or service sold by a Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Business.

Material Contract means any Agreement that is necessary for the operation of the Divestiture Business.

Obligated Party means:

- (a) before the Control Date, Apollo; or
- (b) on and from the Control Date, *thl* and *thl* Acquirer.

Proposed Acquisition is defined in clause 2.3 of this Undertaking.

Proposed Divestiture Agent means a person named in a Proposed Divestiture Notice.

Proposed Divestiture Agent Notice has the meaning given to it in clause 10.3 of this Undertaking.

Proposed Independent Auditor means a person named in a Proposed Independent Auditor Notice.

Proposed Independent Auditor Notice has the meaning given to it in clause 9.2 of this Undertaking.

Proposed Independent Manager means a person named in a Proposed Independent Manager Notice.

Proposed Independent Manager Notice has the meaning given to it in clause 8.2 of this Undertaking.

Proposed Purchaser means a person named in a Proposed Purchaser Notice.

Proposed Purchaser Notice has the meaning given to it in clause 6.2 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001*.

Related Entities has the meaning given to it by section 9 of the *Corporations Act 2001*.

Related Parties has the meaning given to it by section 228 of the *Corporations Act 2001*.

Relevant Market has the meaning given to it in clause 2.7 of this Undertaking.

Sale and Purchase Agreement means the sale and purchase agreement between Apollo Motorhome Holidays Pty Limited, Apollo Motorhome Holidays Limited, *thl* Acquirer, *thl*, Star RV New Zealand Fleet Limited, Star RV Australia Fleet Pty Limited and Jucy Group (2022) Limited, in the form approved by the ACCC and attached as Confidential Schedule 7.

Subsidiary has the meaning given by section 9 of the Corporations Act.

Technical Assistance includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Business, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

Third Party Consents means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

thl means Tourism Holdings Rentals Limited (ARBN 655 142 028), a foreign company registered in its original jurisdiction of New Zealand as Tourism Holdings Limited.

thl Acquirer means THL Group (Australia) Pty Ltd (ACN 055 966 222).

Transferred Personnel has the meaning given to it in clause 5.8 of this Undertaking.

Transitional Services Agreement means the transitional services agreement referenced in the Sale and Purchase Agreement as at the Commencement Date, in the form approved by the ACCC and attached as part of the Sale and Purchase Agreement at Confidential Schedule 7.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Undertaking Appointment means the Approved Independent Manager, the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

Undertaking Signatories has the meaning given to it in clause 1 of this Undertaking.

Unsold Business has the meaning given to it in clause 10.1 of this Undertaking.

Vehicle Supply Agreement means the vehicle supply agreement referenced in the Sale and Purchase Agreement as at the Commencement Date, in the form approved by the ACCC and attached as part of the Sale and Purchase Agreement at Confidential Schedule 7.

2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;

- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes any other personal identifier;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, each Undertaking Signatory will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;

- (ii) a party includes its successors and permitted assigns; and
- (iii) a monetary amount is in Australian dollars.

Schedule 2 – Proposed Purchaser Notice Form

This form sets out the information required by the ACCC in relation to a Proposed Purchaser.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

1. Method of Delivery to the ACCC

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – Apollo/*thl/thl* Acquirer Undertaking

Address: mergers@acc.gov.au

Attention: Executive General Manager – Merger, Exemptions & Digital Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit – Policy, Coordination & Remedies Branch, Merger Exemptions & Digital Division

2. Information Required

The ACCC requires the following information in order to assess a Proposed Purchaser.

2.1 Proposed Purchaser details:

- (a) Name of the Proposed Purchaser;
- (b) Address;
- (c) Contact name;
- (d) Telephone number;
- (e) Other contact details.

2.2 A submission containing the following information:

- (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;
- (b) details of the Proposed Purchaser's experience in the relevant market(s);
- (c) the names of the owner(s) and the director(s) of the Proposed Purchaser;
- (d) details of any of the following types of relationships between the Undertaking Signatories and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:

- (i) any of the Undertaking Signatories and the Proposed Purchaser are Associated Entities;
 - (ii) any of the Undertaking Signatories is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with any of the Undertaking Signatories;
 - (iv) any of the Undertaking Signatories and the Proposed Purchaser are Related Entities;
 - (v) any of the Undertaking Signatories and the Proposed Puchaser are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with any of the Undertaking Signatories is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) any of the Undertaking Signatories and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
 - (viii) the Proposed Purchaser is a supplier of any of the Undertaking Signatories or has been in the past three years;
 - (ix) any of the Undertaking Signatories is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between any of the Undertaking Signatories and the Proposed Purchaser that allows one to affect the business decisions of the other;
- (e) a section addressing the following factors, including any information adverse to the Proposed Purchaser, in the power, possession or control of the Obligated Party:
- (i) whether the draft sale and purchase agreement is consistent with this Undertaking;
 - (i) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (ii) whether the Proposed Purchaser is of good financial standing;
 - (iii) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (iv) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
 - (v) whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser; and
 - (vi) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

2.3 Please also attach to this form:

- (a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking.
- (b) the finalised draft of any transitional technical assistance agreement for approval by the ACCC in accordance with this Undertaking.
- (c) the finalised draft of any transitional supply agreement for approval by the ACCC in accordance with this Undertaking.
- (d) any documents required to support the information provided by the Obligated Party pursuant to this form.

Schedule 3 – Undertaking Appointment Form

This form sets out the information required by the ACCC in relation to proposed appointment of the following positions under the Undertaking:

- Independent Manager;
- Independent Auditor; or
- Divestiture Agent,

(the **Undertaking Appointment**).

This form is to be used for each of the above appointments.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

1. Method of Delivery to the ACCC

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed [only include relevant Undertaking Appointment i.e. Independent Manager/Independent Auditor/Divestiture Agent] Notice – Apollo/*thl/thl* Acquirer Divestiture Undertaking

Address: mergers@acc.gov.au

Attention: Executive General Manager – Mergers, Exemptions & Digital Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit - Policy, Coordination & Remedies Branch, Mergers, Exemptions & Digital Division

2. Information Required

The ACCC requires the following information in order to assess a proposed Independent Manager, Independent Auditor or Divestiture Agent (i.e. the relevant Undertaking Appointment).

2.1 Proposed Undertaking Appointment details:

- (a) the name of the Proposed Undertaking Appointment; and
- (b) the name of the proposed Undertaking Appointment's employer and contact details including:
 - (i) Address;
 - (ii) Contact name;
 - (iii) Telephone number;

(iv) Other contact details.

2.2 A submission containing the following information:

- (a) details of the Undertaking Appointment's qualifications and experience relevant to their proposed role pursuant to the Undertaking;
- (b) the names of the owner(s) and the director(s) of the Undertaking Appointment's employer;
- (c) details of any of the following types of relationships between any of the Undertaking Signatories and the Undertaking Appointment or the Undertaking Appointment's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) any of the Undertaking Signatories and the Undertaking Appointment's employer are Associated Entities;
 - (ii) any of the Undertaking Signatories is an Entity Connected with the Undertaking Appointment's employer;
 - (iii) the Undertaking Appointment's employer is an Entity Connected with any of the Undertaking Signatories;
 - (iv) any of the Undertaking Signatories and the Undertaking Appointment's employer are Related Entities;
 - (v) any of the Undertaking Signatories and the Undertaking Appointment's employer are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with any of the Undertaking Signatories is a Related Party, Related Entity or Entity Connected with the Undertaking Appointment;
 - (vii) any of the Undertaking Signatories and the Undertaking Appointment or the Undertaking Appointment's employer have a contractual relationship or had one within the past three years, other than those attached to this form;
 - (viii) the Undertaking Appointment's employer is a supplier of any of the Undertaking Signatories or has been in the past three years;
 - (ix) any of the Undertaking Signatories is a supplier of the Undertaking Appointment's employer or has been in the past three years; and
 - (x) any other relationship between any of the Undertaking Signatories and the Undertaking Appointment or the Undertaking Appointment's employer that allows one to affect the business decisions of the other; and
- (d) details of any existing or past contractual relationships between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC within the past three years.

2.3 A document outlining the terms of appointment for the proposed Undertaking Appointment. This should identify the basis on which fees will be paid, including disclosure of any proposed performance-based fees.

3. Specific Information required for Undertaking Appointments

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

Proposed Independent Auditor

- 3.1 A finalised draft audit plan for the Divestiture Business, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the establishment audit and the Audit Report.

Proposed Divestiture Agent

- 3.2 The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with *thl*. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
- 3.3 The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business.




Proposed Independent Manager

- 3.4 The finalised draft separation and management plan for the Divestiture Business detailing the measures and timing to be implemented by *thl* and the Approved Independent Manager in order to fulfil *thl*'s and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with *thl* to achieve the objectives of the Undertaking including:
- (a) the intended mode of operation of the Divestiture Business until completion of its divestiture;
 - (b) separation measures to ensure the Divestiture Business is operated in a manner which is financially and operationally separate from *thl*, including the:
 - (i) separation of the books and records of the Divestiture Business from those of *thl*;
 - (ii) severance of the Divestiture Business's participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Business;
 - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business; and
 - (iv) severance of arrangements to share personnel and plant between the Divestiture Business and any businesses to be retained by *thl*, to the extent possible without compromising the viability of the Divestiture Business;
 - (c) details of contracts for the provision of goods or services to the Divestiture Business which will expire after the completion of the divestiture of the Divestiture Business to the Approved Purchaser and the actions which will be taken to ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to the Divestiture Business;
 - (d) personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Business has access to all personnel necessary to operate the Divestiture Business;
 - (e) any Material Changes to the Divestiture Business required in order to fulfil *thl*'s and the Approved Independent Manager's obligations pursuant to the Undertaking;
 - (f) the cooperation required from the Independent Manager with *thl* in relation to the divestiture of the Divestiture Business, including:
 - (i) the activities to be conducted by the Independent Manager that are necessary for the effective operation of the Divestiture Business, having regard to the nature of the Divestiture Business (including the extent to which the Divestiture Business already

has a management structure in place prior to the proposed acquisition that will be retained during the hold separate period);

- (ii) the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Divestiture Business will be managed;
- (iii) the method by which the Independent Manager and *thl* will preserve the confidentiality of the Divestiture Business's competitively sensitive information from *thl* and its advisers throughout this process; and
- (iv) a protocol whereby the Approved Independent Manager can provide any information requested by *thl* without disclosing the details of the Divestiture Business's competitively sensitive information to *thl*.

Schedule 4 – Divestiture Business

<p>Apollo Australian Divestment Fleet</p>	<p>The number of four to six berth used motorhomes from Apollo's rental fleet in Australia set out in Part A of Confidential Schedule 6, being around 80% of Apollo's four to six berth motorhomes in its rental fleet in Australia and comprising the newest motorhomes in the fleet, determined approximately three weeks prior to the Control Date.</p> <p>Apollo will also assign the benefit of its rights and interests in all manufacturer warranties (including all original equipment manufacturer warranties) applicable to all motorhomes comprising the Apollo Australian Divestment Fleet and an initial supply of consumables for motorhomes to be transferred including but not limited to linen, towels, pots and pans.</p>									
<p>Apollo Australian Divestment Forward Bookings</p>	<p>The benefit of all of Apollo's rights and interests in the Apollo Australian Divestment Forward Bookings.</p> <p>The Apollo Australian Divestment Forward Bookings comprise the customer bookings for the hire of the Apollo Australian Divestment Fleet made prior to the Control Date in the ordinary course of conducting its business where the hire period commences after the Control Date and that are to be assigned to the Approved Purchaser, in accordance with the principles and methodology agreed with the Approved Purchaser.</p>									
<p>Apollo Australian Divestment Intellectual Property</p>	<p>The Star RV brand and all associated intellectual property in Australia as provided below as well as the goodwill in respect of the Star RV intellectual property that subsists in Australia, including the exclusive right to hire motorhomes under the Star RV brand in Australia in succession to Apollo.</p> <p>Divestiture brand trade marks</p> <p>The Star RV brand's Australian registered word and logo trademarks, listed below will be assigned to the Approved Purchaser.</p> <table border="1" data-bbox="464 1267 1407 1706"> <thead> <tr> <th data-bbox="464 1267 1018 1339">Trademark</th> <th data-bbox="1018 1267 1254 1339">Entity</th> <th data-bbox="1254 1267 1407 1339">Trademark number</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 1339 1018 1597">  </td> <td data-bbox="1018 1339 1254 1597"> Apollo Motorhome Holidays Pty Ltd </td> <td data-bbox="1254 1339 1407 1597"> 1842090 </td> </tr> <tr> <td data-bbox="464 1597 1018 1706"> STAR RV </td> <td data-bbox="1018 1597 1254 1706"> Apollo Motorhome Holidays Pty Ltd </td> <td data-bbox="1254 1597 1407 1706"> 1473762 </td> </tr> </tbody> </table> <p>Domain names</p> <p>The following domain names will be transferred to the Approved Purchaser:</p> <ul style="list-style-type: none"> • www.starrv.com.au • www.starrv.co.nz • www.starrv.com 	Trademark	Entity	Trademark number		Apollo Motorhome Holidays Pty Ltd	1842090	STAR RV	Apollo Motorhome Holidays Pty Ltd	1473762
Trademark	Entity	Trademark number								
	Apollo Motorhome Holidays Pty Ltd	1842090								
STAR RV	Apollo Motorhome Holidays Pty Ltd	1473762								

	The books, records and files relating to the prosecution and maintenance of the Australian trademarks and domain names referred to above.
Apollo Australian Divestment Leases	The benefits of all Apollo's rights and interests in the leases for rental branches/depots set out in Part B of Confidential Schedule 6 will be assigned to the Approved Purchaser.
Apollo Australian Divestment Records	<p>All records relating to the Apollo Australian Divestment Fleet including:</p> <ul style="list-style-type: none"> • ownership records for the motorhomes; • workshop and material accident history for the motorhomes; • included inventory for the motorhomes; • manuals for the motorhomes; and • details of all current chassis manufacturer warranties for the motorhomes. <p>All records relating to the Apollo Australian Divestment Forward Bookings.</p> <p>All records comprising the relevant vendor's rights and interests in the Apollo Australian Divestment Intellectual Property, and the Apollo Australian Divestment Leases.</p>

Confidential Schedule 5

Confidential Schedule 6

Confidential Schedule 7
