

Determination

Trade Me Limited and PropertyNZ Limited [2021] NZCC 11

The Commission:	Anna Rawlings Dr John Small Vhari McWha
Summary of application:	An application from Trade Me Limited to acquire 100% of the shares or assets of PropertyNZ Limited
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission gives clearance to the proposed acquisition.
Date of determination:	5 August 2021

Confidential material in this report has been removed. Its location in the document is denoted by [].

The Proposed Acquisition

1. On 18 February 2021, the Commerce Commission registered an application (the Application) from Trade Me Limited (Trade Me) for clearance to acquire 100% of the shares or assets of PropertyNZ Limited (Homes), which owns and operates the homes.co.nz website (the Proposed Acquisition).¹

Our decision

2. The Commission gives clearance to the Proposed Acquisition as it is satisfied it will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. Trade Me and Homes operate online property platforms (for ease, we refer to these as ‘platforms’). These platforms seek to attract audiences by displaying property listings, property data/information and other content such as editorial articles (for ease, we use ‘property information’ to refer collectively to property data, information and editorial content). Platform owners sell listings space to real estate agents and, in the case of Trade Me, to private vendors as well. They sell advertising space to advertisers, including in Homes’ case selling brand advertising space to real estate agents.
4. The merging parties have historically had different focuses. Trade Me has focused on providing its audience with property listings. Homes has focused on providing property information. That said, Homes has been growing its listings and audience numbers.
5. In our Statement of Unresolved Issues (SoUI), we identified two provisional concerns with the Proposed Acquisition.
 - 5.1 First, we had concerns that Homes could grow to become a significant competitor to Trade Me for listings, and that the Proposed Acquisition could remove this constraint.
 - 5.2 Second, we were concerned that combining Trade Me’s strong position in listings with Homes’ strong position in property information could raise entry barriers or make it more difficult for existing rivals to expand.
6. However, on the basis of the evidence before us, including new evidence received since we published our SoUI, we are satisfied that neither of these scenarios is likely.
 - 6.1 Despite Homes’ growth in listings and total audience, the evidence showed that buyer ‘engagement’ (such as audience clicking on listings and contacting the listing agent) with its property listings was low compared to Trade Me (and other rivals) and was not increasing at a rate which would make it a strong competitor for listings in the relevant period. This is important because, according to real estate agencies we interviewed, buyer

¹ A public version of the Application is available on our website at: <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/>.

engagement is the most important metric that real estate agents look at when choosing where to advertise or list a property. We assessed 'engagement' by looking at how many times a listing was viewed and the number of email and phone enquiries the listing generated.

- 6.2 Trade Me's rivals already offer both listings and property information on their platforms, and provide active and developing competition to Trade Me. While combining the Trade Me and Homes websites will likely produce benefits for Trade Me, we are satisfied the Proposed Acquisition would not create a significant additional advantage over rivals or make new entry or expansion significantly harder.

Our framework

7. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines (our guidelines).²

The substantial lessening of competition test

8. As required by the Act, we assess mergers and acquisitions using the substantial lessening of competition test.
9. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).³
10. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise prices above the price that would exist in a competitive market (the 'competitive price'),⁴ or reduce non-price factors such as quality or service below competitive levels.

When a lessening of competition is substantial

11. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.⁵ Some courts have used the word 'material' to describe a lessening of competition that is substantial.⁶

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

³ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

⁴ Or below competitive levels in a merger between buyers.

⁵ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

⁶ *Ibid* at [129].

12. As set out in our guidelines, there is no bright line that separates a lessening of competition that is substantial from one which is not. What is substantial is a matter of judgement and depends on the facts of each case.⁷
13. A lessening of competition or an increase in market power may manifest itself in a number of ways, including higher prices or reduced services.⁸
14. While we commonly assess competition effects over the short term (up to two years), the relevant timeframe for assessment depends on the circumstances. A longer timeframe will be appropriate if, on the evidence, competition effects are likely to arise in later years.⁹

When a substantial lessening of competition is likely

15. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility but does not mean that the effect needs to be more likely than not to occur.¹⁰

The clearance test

16. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.¹¹ If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.

The parties

Trade Me Limited

17. Trade Me operates an online marketplace and classified advertising platform (trademe.co.nz). Trade Me also operates the Trade Me Property platform (trademe.co.nz/property) where real estate sellers/renters can advertise their properties to potential buyers/tenants. (References to Trade Me include Trade Me Property).
18. Trade Me is the largest online property listings site in New Zealand, both by total audience and number of listings.¹² Along with property listings, Trade Me presents other information including a mortgage calculator, the location of nearby schools, estimated commute times and the rateable value of other properties in the area.

⁷ *Mergers and Acquisitions Guidelines* above n2 at [2.23].

⁸ *Ibid* at [2.21].

⁹ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [131].

¹⁰ *Ibid* at [111].

¹¹ Section 66(3)(a).

¹² The standard means by which platforms measure audience numbers is “unique audience”. Unique audience is the total number of unique people that visited a site during a specified time period. For example, a person that visited a website three times in the period would only be counted once. Unique audience is an important metric for platforms (as opposed to similar platform visits) as it reflects the number of eyeballs viewing the platform. For ease, we refer to just “audience” in the paper.

19. Trade Me also operates the 'Property Insights' microsite of the Trade Me Property website (trademe.co.nz/property/insights). Consumers can search Property Insights for free for any street address, suburb or city to find property-related data/information on individual properties. This includes an estimated value, council data, rateable value (RV) information and a history of any significant upgrades to a property. Property Insights also contains a section on property news and advice, which includes articles on a range of property-related topics.¹³

Homes

20. Homes operates a free online property data and information resource for consumers (homes.co.nz). Homes launched in 2016. Consumers can search for property data/information by entering a property's address, suburb, or city.
21. The information that Homes provides includes an estimated value called a 'HomesEstimate'. This estimate is based on a proprietary formula. It draws on information such as public data, registered valuers' valuations and real estate agents' comparable market analyses.¹⁴
22. Homes' website also features a section called Homes Inspiration, which contains interior design tips, which can be sponsored by companies offering interior design products (such as Resene and Mitre 10).¹⁵
23. In addition, Homes features online listings of property for sale and rent on its platform. The number of sales listings that it displays has been increasing in recent times, and it now displays around [] of the listings found on Trade Me's website.¹⁶
24. Along with a property listing, Homes presents other information, such as a home loan repayment calculator, a direct link to contact Kiwibank for home loan inquiries, an estimated rental yield calculator, a solar power calculator (which is sponsored by Harrison's Energy Solutions), as well as expense estimates (such as home internet sponsored by Sky Broadband).
25. Part of Homes' strategy is to monetise consumer attention by selling to agents, agencies and other advertisers the opportunity to market themselves to Homes' audience in different ways, including banner, display, and native advertising.

Other online property platforms

26. The other main online property platforms are Realestate.co.nz and OneRoof.
27. Realestate.co.nz offers listings for sale and for rent, as well as some property information. Realestate.co.nz is 50% owned by five of the largest real estate agencies in New Zealand (Barfoot and Thompson, Harcourts, Ray White, LJ Hooker and

¹³ <https://www.trademe.co.nz/c/property/property-news>

¹⁴ <https://homes.co.nz/homesestimate>

¹⁵ <https://homes.co.nz/inspiration>

¹⁶ Based on information provided by the parties.

Bayleys), with the remaining 50% owned by the Real Estate Institute of New Zealand (REINZ).

28. For each property listing, Realestate.co.nz also presents information such as an estimated value, nearby recently sold properties, schools in the area, broadband availability (provided by Broadband Compare), and a mortgage calculator (provided by Kiwibank). Realestate.co.nz has recently launched an automated valuation model (AVM) using REINZ unconditional sales data.¹⁷
29. OneRoof offers listings for sale and for rent, as well as property information (including an estimated value). OneRoof is 80% owned by the media organisation NZME Limited (NZME), and 20% owned by Hougarden.com Limited (Hougarden). OneRoof was established in 2018 and has grown swiftly.¹⁸ For each property listing, OneRoof presents information such as nearby schools, a commuter map, various home loan and repayment calculators. OneRoof also creates real estate news and editorials which feature both on the OneRoof website and on NZME's news websites (such as the NZ Herald).
30. In the course of our investigations we gathered a range of information from Realestate.co.nz and OneRoof and other market participants to help our assessment.

Background to the industry

The different kinds of audience that can be attracted to online property platforms

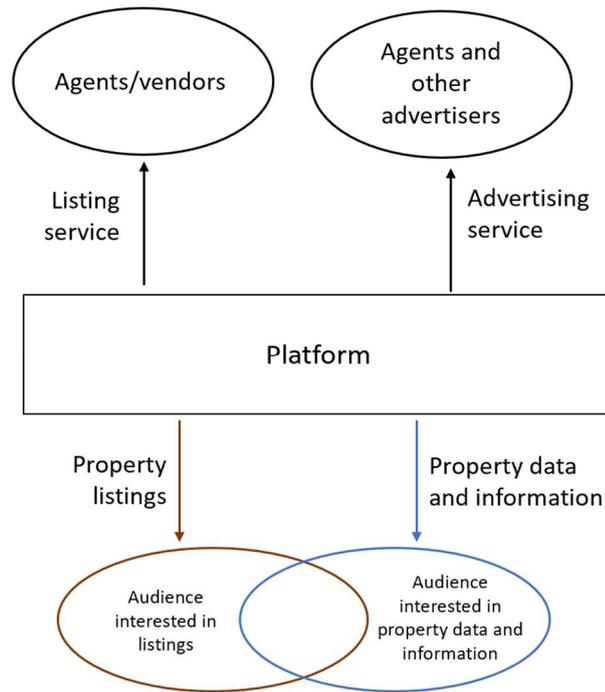
31. Trade Me and Homes operate platforms. These platforms seek to attract audiences by displaying property listings, property data/information, and other content such as editorial articles, and then selling the opportunity to advertise to those audiences.¹⁹
32. A simplified diagram of the main groups of advertisers and audiences that platforms serve is below.

¹⁷ Realestate.co.nz claims the unconditional sales data is a "key advantage" over other AVMs. Realestate.co.nz "REINZ launches next generation automated valuation model" (29 March 2021).

¹⁸ For example, OneRoof says that: as of November 2020, OneRoof had the most residential for sale listings in Auckland; and, as of September 2020, was the fastest-growing real estate site in New Zealand with +92% YoY growth. OneRoof refers to itself as a "strong #2 in market". OneRoof "New Zealand Media and Entertainment Investor Day" (16 November 2020) at 105, 106.

¹⁹ Online property platforms such as those operated by the merging parties do not directly facilitate real estate transactions. Rather, platforms provide information to the audience and facilitate phone or email communication between sellers and potential buyers, in the hope that an audience member will then initiate an "off platform" transaction with a relevant seller on the other side of the platform.

Figure 1: The groups that online property platforms serve



Notes: (i) Arrows denote the supply of goods or services by platforms. Ovals denote buyers/consumers of those goods and services; (ii) The size of ovals and any overlap is not indicative of the relative size of the groups or the overlap in audience interests.

33. On the listings side, the main groups that platforms sell advertising to are vendors, agents and other advertisers. Vendors use a platform to list their properties and will often take advice from an agent on where to list their property. It is the agent that typically monitors how many leads property listings generate, and the agent is therefore well-positioned to identify the most effective way to advertise and to make recommendations to vendors about where to list their property. (For this reason, we refer to the purchaser of such services as the 'agent/vendor').
34. Platforms also sell advertising space on their websites to agents for brand advertising or advertising real estate services generally (as opposed to specific listings), and general advertisers. Platforms may also sell sponsored content space. For example, the price to purchase broadband for the property might be provided along with information about the supplier.
35. On the audience side the main types of information that platforms provide are (i) property listings and (ii) property information. Property listings might include residential or commercial houses for sale or rent. Property information might include an estimate of the house value, the size of property, past sale prices, and news articles.

36. The audience of a platform is likely to include individuals with different real estate goals/interests. For example, they may be ‘active’ buyers (ie those that are looking to buy a house immediately), ‘passive’ buyers (ie those who are not actively buying but are open to the possibility of buying), active and passive sellers, property investors, real estate agents, and/or curious homeowners.
37. Although users of a platform share a common interest in property-related information, different audiences are likely to be attracted to different aspects of a platform. This is illustrated by the overlapping circles in Figure 1 above. For example, a buyer may be most interested in listings, but may also be interested in the estimated value of the house they are looking at. A homeowner may want to know the value of their house but also be curious to know which neighbours are selling their house. The interest that a user has in a website may change as they transition from one set of needs to another.²⁰ While there are many ways this could occur, one example is set out below.
- 37.1 A homeowner may view a platform to:
- 37.1.1 read articles on homeownership or investing;
 - 37.1.2 get interior design tips;
 - 37.1.3 get information on expected rental yield;
 - 37.1.4 get information on expected yield of solar panels in a particular location; and/or
 - 37.1.5 get information on the value of their property and the prices at which other properties in their neighbourhood have sold for.
- 37.2 That homeowner may at some point decide that they want to:
- 37.2.1 sell their existing property; or
 - 37.2.2 buy another property.
- 37.3 If the homeowner has decided to move to another house, the decision to sell may be accompanied by the need to buy another property, and vice versa.²¹ Such a homeowner will likely spend time researching the value of their own property, and/or obtaining information about possible homes they wish to purchase (including estimates of each property’s value, property size and other features).

²⁰ OneRoof has also identified this “property cycle”. See NZME “New Zealand Media and Entertainment Investor Day” (16 November 2020) at 119.

²¹ In March 2021 around one-quarter of all house purchases were made by “movers”. Investors (defined as owning multiple houses) accounted for around 41% and first home buyers around 22%. Corelogic “Investors seem to have been rushing to beat tighter LVRs” (16 February 2021) <www.corelogic.co.nz>

- 37.4 At some point in this process, the homeowner will generally:
- 37.4.1 choose a real estate agent to represent them in the buying and/or selling processes; and
 - 37.4.2 decide (often in consultation with an agent) where to list their own property for sale, and where to browse for a new property.
- 37.5 After selling their property and purchasing a new one, the homeowner may continue researching the housing market for a period to validate their selling/purchasing decision, to look for home improvement information, and to stay informed.
38. For these reasons it can be difficult to draw clear distinctions between different audiences and their needs and preferences.

How online property platforms generate revenues

39. Online property platforms employ different strategies to generate revenue from the activities listed above.
40. Platforms can generate revenue from the process of buying and selling houses by charging for listings. Platforms may offer different prices for different types of listings.
- 40.1 Base listings are the lowest cost option. A base listing normally receives no special or priority placement on a platform's interface, meaning that it is presented along with all other base listed properties on the platform that meet the search criteria. Some platforms offer base listings for free.
 - 40.2 Premium or upgraded listings are more expensive. The listing in question is elevated to a 'premium' placement on the platform, for example fixed at the top of the webpage to maximise views. Platforms may offer several premium upgrade options, which differ in the precise placement and size of the listing on the webpage, as well as the length of time that the listing will occupy that position.
41. A platform can also generate revenue through selling display and banner advertising. There are various ways to make the platform attractive to advertisers. For example, the platform may seek to attract audiences through offering property information of different types and/or by encouraging a high number of listings by offering basic listings for free.
42. An online property platform can take action at each stage of the stylised lifecycle above to increase the potential for revenue. It could do this by, for example:
- 42.1 capturing the attention of the audience at the earliest possible stage (ie the passive researching stage), and providing them with a positive experience, in the hopes that they choose to use the platform for the more active stages of the process as well; and

42.2 seeking to retain the attention of the audience in between their ‘active’ phases of buying and selling, by engaging them with data/information so that their attention can be sold to advertisers.

43. Trade Me submitted that “property owners who may not be active in the typical buyer stages of the property lifecycle, represent a significant potential audience” which presents a range of opportunities, including “keeping Trade Me Property top of mind when looking to buy/sell”.²²

Multi-homing between platforms

44. Multi-homing refers to the practice of using more than one provider to meet the demand for a service. For example, a house buyer that multi-homes would browse more than one website for house listings. Multi-homing is more likely to occur when the costs of consuming multiple services are low, and when there are benefits to doing so. As set out below, the extent of multi-homing can affect the nature of competition.

45. The evidence before us indicates that multi-homing is a feature of property platforms.²³ For example, house buyers are likely to look for houses on several websites and potentially through print media as well. This is likely because:

45.1 multi-homing is relatively low cost:

45.1.1 buying a house can be a lengthy process, and buyers therefore have time to consider their options;

45.1.2 multi-homing across a range of different online platforms is very simple and incurs no monetary cost;²⁴ and

45.2 there is a high benefit to multi-homing:

45.2.1 the purchase of a house is a significant investment, which the average buyer enters into infrequently, meaning that they are motivated to ensure they find the best possible option;

45.2.2 as agents/vendors take different approaches to listings, it is possible a house is listed on one platform and not on another (or it may be listed more prominently with better photos on one than it is on another); and

²² Application at [38].

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²⁴ Noting that the audience pays for the use of the platform with its attention, as well as with any data that the platform collects while the audience is browsing the platform.

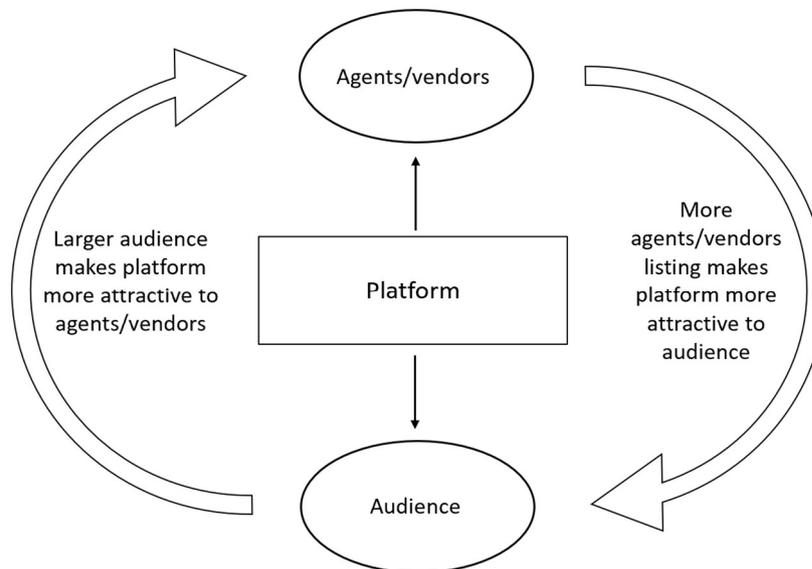
45.2.3 to the extent that platforms are differentiated in the type and volume of property information that they provide about, or adjacent to, a listing, a potential buyer may discover new relevant information on each platform.

46. Vendors and agents are also likely to multi-home with their listings (ie list their property in multiple places). On some platforms, basic listings are free whereas other platforms charge for all types of listing. The agent/vendor may still want to list on those platforms that charge to ensure they give themselves the best opportunity to have the listing seen by the person who is likely to purchase the house for the highest price. However, multi-homing may be less likely for premium listings where the costs of paying for additional upgraded listings may outweigh the benefit for the vendor.

Network effects

47. Indirect network effects occur where the value of the platform to users on one side of the platform rises with the number of users on the other side of the platform.
48. In the case of real estate platforms, there are various interacting network effects involving end-users. The primary example of these network effects involves listings. This is illustrated below.

Figure 2: Network effects for listings



49. In this example, the platform offers a location for vendors/agents to list their properties and for buyers to view those listings. Each side benefits from the presence of larger groups on the other on the platform:
- 49.1 vendors/agents want their listing to be seen by as many potential buyers as possible so will want to list on the platform with the most buyers; and

- 49.2 potential buyers will tend to visit platforms that have more listings to give themselves the best chance of finding a house that meets their needs/preference.
50. These network effects mean larger platforms can benefit from more positive feedback as a consequence of their size. Network effects can result in a ‘winner takes all’ scenario, in which the market ‘tips’ entirely towards a single platform. Tipping is less likely to occur when users multi-home. In markets where multi-homing is prevalent and network effects are not strong enough to cause the market to tip, large platforms may co-exist with smaller rivals.
51. There are other network effects that arise through the interaction of users on online property platforms. A platform that grows its listings could also grow its audience for property information because, as we have noted above, an audience member interested in listings may also be interested in property information (and vice versa), whether concurrently or earlier/later in time.
52. Platforms also supply digital advertising (including agent advertising and general advertising), in which case network effects mostly flow one way. For example:
- 52.1 advertisers see greater value in platforms with a larger audience on the other side; but
- 52.2 the audience and advertisers will normally see less value in platforms with increased volume of advertising. An exception may be real estate-related advertising partnerships like solar estimates or interior design suggestions, or contact information for real estate agents, which the real estate-interested audience may seek and/or benefit from viewing.
53. Platforms seek to take advantage of network effects as much as possible. They can achieve this in different ways:
- 53.1 A platform that mainly focuses on listings will rely more heavily on the network effects between buyers and agents/vendors (more buyers engaging with the site will attract more agents/vendors wanting to list their property and vice versa). This creates an incentive to increase the number of users on both sides of the platform.
- 53.2 A platform mainly focusing on selling advertising will be incentivised to focus on growing and increasing the engagement of its audience (to demonstrate value to the advertisers on the other side of the platform). Expanding the number of listings and the variety of property information is likely to assist this.
54. In practice, online property platforms engage, to varying degrees, in selling both advertising to agents and others and listings space to agents, and their efforts to attract different audiences overlap.

Market definition

Our approach to market definition

55. We define markets in the way that we consider best isolates the key competition issues that arise from the proposed acquisition. In many cases this may not require us to precisely define the boundaries of a market. As the High Court confirmed in *NZME & Fairfax v Commerce Commission* “market definitions are but a tool used in various competition law contexts to provide a framework for analysis of the relevant competition law concern, in this case constraints on competition”.²⁵ The High Court also stated that the “parameters of any market as defined are not necessarily determinative of the analysis of competitive constraints on the conduct of participants in that market. Where the market is appropriately defined in narrow terms, constraints from outside the market must still be taken into account if they operate on the state of competition”.²⁶
56. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.²⁷

The Applicant’s view

57. Trade Me submitted that there is a single market for the supply of real estate advertising to real estate professionals (ie agents and agencies), which included both print and online classified advertising (ie ‘listings’), as well as other digital advertising of the property in question (such as display and banner advertising).²⁸ Trade Me argued that listings in print publications provide a competitive constraint on online listings.²⁹ It submitted that vendors will choose how to allocate money between print and digital channels and will substitute between these in response to price changes. Trade Me submitted that even if the market was narrowed to include online listings only, the Proposed Acquisition would not result in a substantial lessening of competition.³⁰
58. Trade Me also submitted that there is a market for the supply of property data, information and listings to consumers.³¹ Trade Me submitted the market could in theory be split into separate markets for property data and information on the one hand, and property listings on the other.³² However, it did not believe the precise scope of the market was material to the Commission’s assessment.
59. Trade Me submitted that, due to the interdependencies between the different ‘sides’ of the platform, the Commission should focus its analysis on the competitive

²⁵ *NZME Limited & Fairfax Media Limited v Commerce Commission* [2017] NZHC 3186 at [42].

²⁶ *NZME Limited & Fairfax Media Limited v Commerce Commission* [2017] NZHC 3186 at [43].

²⁷ Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 (HC) at [81].

²⁸ The Application at [55].

²⁹ Trade Me “Submission on the Statement of Issues” (10 May 2021) at [18].

³⁰ The Application at [57].

³¹ The Application at [48.4].

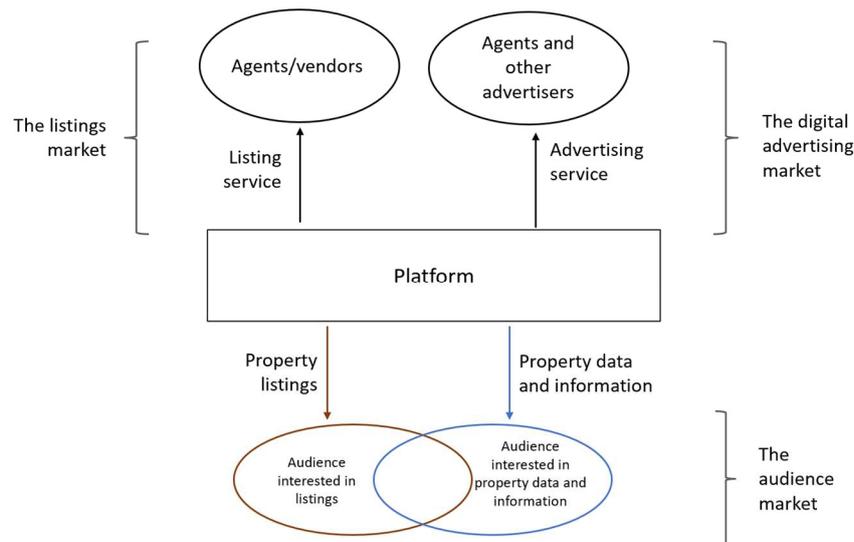
³² The Application at [72].

impact of the Proposed Acquisition on the ‘paid’ side of the platform (ie the supply of listings and advertising).³³

The Commission’s view

60. For the purposes of our assessment, we defined separate markets for the supply of:³⁴
- 60.1 online classified advertising for residential real estate for sale to agents and agencies (the listings market); and
 - 60.2 listings information and other property-related data and information to the audience (the audience market).
61. The diagram below shows these markets in relation to the groups of platform users we described earlier. We explain the relationship between these markets in more detail below and in the competition analysis.

Figure 3: The relationship between the markets



Notes: (i) Arrows denote the supply of goods or services by the platform. Ovals denote buyers/consumers of those goods and services. (ii) The size of ovals and any overlap is not indicative of the relative size of the groups or the overlap in audience interests.

62. As noted earlier, online property platforms serve two different types of general customer: advertisers on one side of the platform, and consumers (or ‘audience’) on the other. These platforms are characterised by network effects, meaning that

³³ The Application at [75].

³⁴ We also considered market definition for other products that the merging parties may overlap including digital advertising and listings for rent. We did not need to conclude on these market definitions as we did not have concerns in relation to these products. See paragraphs 99-110.

competitive conditions in one market (or platform side) affect and are affected by competitive conditions in other markets (or sides).

The listings market

63. In the listings market, platforms compete to offer a listings service to agents/vendors. This is illustrated at the top left of Figure 3.
64. We defined a market for online listings only. The main reason for this is that digital and print platforms appear more likely to be complements than substitutes. This distinction flows from the physical differences between the digital and print formats.
- 64.1 Digital listings provide a complete, up-to-date and searchable list of the houses available for sale. This is likely to appeal to active buyers because they can more easily find a house that meets their requirements.
- 64.2 Print listings do not offer the same searchability or other functionality and have fewer listings.³⁵ Agencies identified print as capable of reaching passive buyers (ie those readers who are not immediately interested in buying but might become a buyer if they happened to notice a house they like). Print listings might be purchased as a complement to online listings but are not seen as a substitute.
65. We asked agencies if they would be likely to switch to print if the price, relative to digital, changed. The response was mixed.³⁶ However, on balance, we consider that agencies are not likely to forgo digital advertising in favour of print advertising alone. We used a market limited to online listings. However, we recognise that there may be some degree of constraint from outside the market from print.

The audience market

66. In the audience market, platforms provide property-related content on their websites to attract audiences. As Figure 3 above shows there are two main types of content that platforms provide:
- 66.1 property listings; and
- 66.2 property information (such as an estimate of the value, size of the property, and editorial content).

³⁵

[].

³⁶ One agency did not think such substitution would occur as digital and print target different sectors of the market; ie online markets target active buyers, whereas print can reach active and inactive buyers. []. One agency stated print was in decline and a decrease in price would not change the trend. []. One agency stated that vendors would switch to print. [].

67. This content attracts audiences. Due to the differences in the nature of the two groups of content, the audiences will tend to be different, although there may be some overlap between them to the extent that individuals may be interested in both property listings and property information. For example, a buyer who looks at property listings and finds a house they like may also look at information about that property, or editorial articles about price trends in the suburb in question.
68. We consider that platforms, due to their brand position, interface, and functionality, are each likely to attract a different mix of audiences. However, there are no bright lines between the different audiences. For the purpose of our analysis we define a market that included all audiences. This accords with the Applicant's proposed market definition. Where relevant we take into account in our competition analysis any differences in the audiences that a platform attracts.

The interdependence between the listings and audience markets

69. Our approach in this case is to assess the impact of the Proposed Acquisition in both the listings and audience markets. However, these markets are closely connected due to the network effects we have described above. For this reason, our competition analysis below discusses the two markets together, but explains how the Proposed Acquisition would impact each market where appropriate.

With and without scenarios

70. Assessing whether a substantial lessening of competition is likely requires us to:
- 70.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual); and
- 70.2 determine whether competition is likely to be substantially lessened in the factual scenario compared to the counterfactual scenario.

The Parties' view of the counterfactual

71. The Applicant submitted that, without the Proposed Acquisition:
- 71.1 Trade Me would explore developing its Property Insights microsite further, and may be able to achieve some of the benefits that the Proposed Acquisition would bring, but this would likely take longer, and represent higher risk, than the Proposed Acquisition which is intended to supplement Trade Me's offering by:³⁷
- 71.1.1 providing Trade Me with the opportunity to show its property listings to Homes' unique audience;

³⁷ The Application at [39].

- 71.1.2 adding Homes' experience in selling digital advertising services to real estate professionals and other advertisers, which is not an area Trade Me says that it has traditionally focused on;
- 71.1.3 providing Trade Me access to the data that Homes gathers by allowing users to register, claim their property, and update their property information on its website; and
- 71.1.4 increasing Trade Me's enterprise value.
- 71.2 Homes would continue its focus on engaging with homeowners, widening its property data set, and offering additional digital advertising services to its audience, albeit without being able to access Trade Me's dataset of listings and audience.³⁸
72. Homes submitted that, at present, it is not a significant constraint on Trade Me in the listings market because it has not demonstrated sufficient additional value relative to other existing online alternatives.³⁹ It argued that it does not see this situation changing in the counterfactual and, as a result, it considered a comprehensive set of listings to be a 'nice to have', but its business is not predicated on that being the case. Homes therefore submitted that in the counterfactual, while it will "continue to seek to work with real estate agencies to make listings available on its site, its strategic focus will remain on developing aspects of its offering within its control".⁴⁰ These aspects generally relate to the provision of property information and the monetisation of that data through advertising partnerships with agents and businesses.⁴¹

The Commission's view of the counterfactual

73. The Commission considers that the appropriate counterfactual against which to analyse the Proposed Acquisition is one in which Homes will grow the number of property listings and the audience on its site. However, we do not consider that an increase in listings and audience on its site necessarily equates to an increase in buyer engagement with listings. Buyer engagement with listings is sought after by those looking to list properties for sale.
74. Homes offers products and services that appeal to a broad range of real estate-interested users, including audiences, agencies, and advertisers.⁴² Homes has to date

³⁸ The Application at [44].

³⁹ Homes "Homes submissions on Statement of Issues" (10 May 2021) at [8].

⁴⁰ Homes "Homes submissions on Statement of Issues" (10 May 2021) at [10] and [11].

⁴¹ Homes "Homes submissions on Statement of Issues" (10 May 2021) at [8] to [11].

⁴² In the internal document

[

]. In the internal document

[

].

focused upon, and had more success attracting, homeowners and passive buyers (those not actively seeking to buy property) to its platform.⁴³ We consider that in the counterfactual Homes would likely increase the number of active buyers visiting its site.

74.1 First, Homes has established automatic listing feeds with most of the large agencies. Once an automatic feed is established with an agency, individual agents who are responsible for listing homes can upload that listing to the platform with a click of a button. We would expect Homes to continue to increase the number of listings as agents take advantage of the automatic feeds that have been put in place and all the agents’ listings are added to Homes.

74.2 Second, Homes has been increasing its total monthly audience.⁴⁴ Homes is planning to continue developing new products and services to improve its offering.⁴⁵ We expect Homes would likely continue to attract audiences to its platform in the counterfactual.⁴⁶ We consider that this audience growth is likely to include more active buyers. This is because:

74.2.1 Homes would directly increase the number of active buyers that visit the Homes website as it increases the total number of listings on its website and optimises the presentation of those listings; and

74.2.2 Homes would indirectly increase the number of active buyers that are attracted to the Homes website by continuing to engage, and increase its brand recognition, with consumers at other stages of the property ‘funnel’, including vendors and homeowners, who may at some point in the future become active buyers.

⁴³ [].

⁴⁴ In the Trade Me internal document [].

⁴⁵ The Application at [44]; and Homes “Homes submissions on Statement of Issues” (10 May 2021) at [8].

⁴⁶ For example, a Homes internal document indicates that []
Another internal document states that []

].

75. The potential increase in active buyers is relevant because it could suggest that Homes would become a stronger constraint on Trade Me for listings in the counterfactual. This was the focus of the SoUI and our investigation.
76. However, as we explain further in the next section, although there has been growth in the number of active buyers visiting the website, and we consider they will continue to grow, the evidence (including additional information we received since the SoUI) showed that this growth to date has not been significant. In addition, the growth to date has not led to a significant increase in engagement with listings on the Homes platform (such as audience clicking on listings and contacting the listing agent), which is the key metric that advertisers are looking for when choosing a platform upon which to list property for sale. There is no evidence that the growth of buyers or engagement is likely to significantly accelerate in the foreseeable future.

Horizontal unilateral effects

Introduction

77. Horizontal unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged company can profitably increase prices above (and/or reduce quality below) the level that would prevail without the merger. A reduction of competition could manifest in different ways. This could include an increase in listing fees, a reduction in the quality of the listing, and/or a reduction in platform innovation.
78. Our investigation focused on assessing the horizontal unilateral effects that might arise from the Proposed Acquisition in the listings market. To date, Trade Me and Homes have had different focuses: Trade Me is the leading provider of a listings site in New Zealand, while Homes has focused on providing property information in the audience market. Both Realestate.co.nz and OneRoof also provide both listings and property information – Realestate.co.nz utilising REINZ data; OneRoof in partnership with Valocity. We assessed whether, despite Trade Me and Homes currently focusing on different areas, the Proposed Acquisition had the potential to adversely affect competition.⁴⁷ The concern we tested was as follows.
- 78.1 Homes has been expanding in both the listings and audience markets and would likely continue to expand in future in the counterfactual.
- 78.2 Trade Me may hold significant market power in the listings market. Homes' growth may make it a significant competitor to Trade Me in the listings market. The Proposed Acquisition would eliminate that potential competition and raise barriers to entry and expansion, and may have a flow-on effect of reducing competition in the audience market as a result of network effects.

⁴⁷ Commerce Commission "Trade Me Limited and PropertyNZ Limited - Statement of Unresolved Issues", (30 June 2021).

- 78.3 The remaining actual and potential competition in the markets in question may not be sufficient to replace the constraint lost with the Proposed Acquisition.
79. We are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the listings market due to horizontal effects. This is primarily because:
- 79.1 Homes is unlikely to become a strong constraint in the listings market; and
- 79.2 the Proposed Acquisition is unlikely to significantly raise barriers to entry and expansion in that market.

Homes’ audience engagement with listings suggests it is unlikely to become a strong constraint on Trade Me in the listings market

80. Trade Me submitted that Homes currently focuses on digital advertising and does not impose a constraint on Trade Me in the listings market. It further submitted that agents do not see value in Homes as a listings platform, and that to the extent Homes values listings data, it is because it uses listings to “attract an audience for its digital advertising products”.⁴⁸ It argued that Homes has existed for six years but has not, in that time, innovated in the listings market or imposed a competitive constraint on the other operators.⁴⁹ Trade Me argued that this is the best indicator of Homes’ future competitive constraint.⁵⁰
81. As we explain below, the evidence did not support the view that Homes is likely to become a strong constraint in the listings market. This is because Homes:
- 81.1 has not attracted sufficient audience engagement in the listings market to suggest a strong constraint on Trade Me in the listings market; and
- 81.2 is unlikely to change its strategy in the counterfactual to focus more on audience engagement with listings and become a stronger competitor for listings.

The evidence does not show Homes’ current strategy is increasing buyer engagement with listings to a level that will impose a strong constraint on Trade Me

82. Agencies told us that when vendors are considering where to list properties, a key consideration is whether the platform in question can show that the audience will engage with the listing by, for example, phoning or emailing the agent.⁵¹

⁴⁸ Trade Me “Trade Me’s response to Statement of Issues” at [29].

⁴⁹ Trade Me “Trade Me’s response to Statement of Issues” at [37].

⁵⁰ Trade Me “Trade Me’s response to Statement of Issues” at [37].

⁵¹ For example, [] told us that “What we’re interested in primarily in terms of our vendor reporting to come back is how many people looked at [], and how long were they on the site looking at the property at []. And did that convert to a conversation.” Interview with []. [] told us that “at a high level [agents] look at visitors and enquiries. Enquiries are what we’re interested in. That

83. We tested the extent to which buyers were using Homes to engage with listings by obtaining data from the main platforms on the level of engagement on their listings: number of views and the number of occasions a viewer clicked to reveal the agent's phone number or email on the listing.⁵²

84. If Homes was becoming a stronger competitor to Trade Me with its current strategy we would expect to see Homes' engagement metrics growing, towards a rate that agencies would likely see it as an alternative to Trade Me for listings in the coming years. However, the data did not show this. (See charts in **Attachment A**).

84.1 Despite increasing the number of listings, the audience engagement on Homes' listings were well below the level that Trade Me's listings achieved.

84.1.1 Figure 4 shows that the listings on Homes are viewed significantly less than on Trade Me. Between January and April 2021, a listing on Homes was viewed on average [] times per month. An average listing on Trade Me had [] views per month ([]x Homes).

84.1.2 Figure 5 shows that listings on Homes are far less likely than listings on Trade Me to generate email enquiries. A listing on Homes will get an average of [] email enquiries (ie there is a [] chance that if a listing is placed on Homes a potential buyer will contact an agent based on that listing). This compares to [] email enquiries per listing for Trade Me ([]x more enquiries per listing than Homes).

84.1.3 Figure 6 shows that listings on Homes are far less likely than Trade Me to generate phone enquiries. The agent's phone number associated with a listing on Homes was revealed (for example, by clicking on the 'Call' button on a listing) on average [] times per listing (ie there is a [] chance that a single potential buyer would request the listing agent's phone number based on a listing on Homes). This compares to more than [] clicks for listings on Trade Me.

84.2 The charts also show that Homes' engagement metrics are also not growing at a pace that would allow it to catch up with Trade Me within the period relevant to our competition assessment. To the extent that Homes is currently increasing its audience engagement with listings, []. The data does not suggest that Homes is likely to grow its value to agents/vendors such that it becomes a significant constraint on Trade Me under its current strategy.

85. Homes provided us with [

aspect is probably the most important aspect." Interview with [].

⁵² The listing includes the agent responsible for the property. A viewer must click a button to reveal the contact details. This provides an indicator of how much engagement the listing is generating.

]

85.1 []

85.2 []

86. []

86.1 []

86.2 []

87. This evidence shows that Homes does not appear to be attracting significant engagement by buyers with listings on its platform compared to Trade Me. Accordingly, the evidence does not support that, under its current strategy, Homes is likely to become a material competitor to Trade Me in the listing market.

Homes is not likely to change its strategy to compete more directly for listings

88. We also considered whether Homes would be likely to change its strategy to accelerate its growth in listings and audience engagement with listings. We did not see any evidence (such as internal documents) to suggest it was planning such a strategy shift nor do we consider it likely that Homes would be incentivised to do so.

89. Homes’ strategy to date has been to market itself to agents, vendors, and general consumers as the ‘home of homeowners’ – a platform which offers consumers interesting property insights, and offers agents a unique opportunity to target their own personal advertising to vendors and homeowners.⁵⁴ As a result,

⁵³ [

]

⁵⁴

[]

[].⁵⁵ Consistent with this, Homes told us that
[]
[]].

90. Homes would likely need to invest heavily to remodel its business (in marketing and changing its website) to be viewed as a listings platform to materially rival Trade Me. As an illustration,
[].⁵⁶
The investments required to make the strategic shift would need to be weighed up against the potential risks. It seems unlikely that Homes would be incentivised to jeopardise its strategic niche of monetising the provision of property information (and the revenue that Homes derives from it) by effecting a strategic shift to the listings market which features a strong market leader (Trade Me), as well as other platforms hosting real estate listings (we discuss the constraint from these platforms further below).

The Proposed Acquisition is unlikely to significantly raise barriers to entry and expansion

91. We also considered whether the acquisition could increase barriers to entry or expansion via network effects. By combining strengths in both listings and property information, we considered whether the Proposed Acquisition could:
- 91.1 in the audience market, reduce the amount of audience (including potential buyers) that engage with competing real estate platforms; and/or
 - 91.2 in the listing market, reduce the relative attractiveness of competing platforms to advertisers.⁵⁷
92. The Applicant submitted that the Proposed Acquisition would not increase barriers due to network effects. It argued that, while online property platforms involve some degree of network effects they are not strong enough to result in the listing market tipping (as made evident from the fact the listing market has not tipped despite Trade Me and Realestate.co.nz operating since 2005 and 1996 respectively, and OneRoof entering in 2018).⁵⁸ The Applicant submitted that one explanation is that multi-homing is low-cost but yields high benefits.
93. While Trade Me will likely gain some benefit from the Proposed Acquisition, we do not consider that it is likely to increase Trade Me's audience or level of engagement

⁵⁵ Homes "Homes' submission on the SoUI" (14 July 2021) at [14].

⁵⁶ []].

⁵⁷ The merged entity may be more attractive to agents/vendors simply through its greater audience numbers. It could also make itself more attractive by offering bundles that allow agents/vendors to list on both Trade Me and Homes.

⁵⁸ Trade Me "Trade Me submission on SoUI" (18 July 2021) at 4.

on Trade Me’s listings to such an extent as to significantly increase the impact of network effects.

94. First, Trade Me already offers both listings and property information (through Trade Me Property and Property Insights respectively). Homes’ property information offer may be better and may improve Trade Me’s overall offer. However, it will not significantly change the composition of what Trade Me is offering. This makes it less likely that the Proposed Acquisition will significantly change the merged entity’s position in the audience market compared to rivals.
95. Second, there is little evidence to suggest that Trade Me’s engagement will improve significantly as a result of acquiring Homes’ audience.
- 95.1 As Trade Me identified in the application, a potential benefit to the Proposed Acquisition was “the opportunity to show Trade Me’s property listings to Homes’ unique (from Trade Me Property) audience of []”.⁵⁹ However, as identified earlier, multihoming is a feature of the market. Much of Homes’ audience already uses Trade Me.⁶⁰ This suggests any uplift in engagement with Trade Me listings from Homes’ unique audience of [] is unlikely to be large.
- 95.2 Trade Me may be able to provide its audience with access to Homes’ property information and in so doing increase the likelihood that buyers engage with agents through Trade Me. We have little evidence to assess how much audience Trade Me could gain in this way. However, any uplift in engagement is unlikely to be large.
- 95.2.1 If it was easy to move audiences from property information to listings, we would have expected Homes to have had much greater success with listings. However, to date its engagement on listings are low compared to Trade Me.
- 95.2.2 A buyer would only stop looking at other platforms if the inconvenience of moving from Homes to Realestate.co.nz or OneRoof was large enough to offset the benefits of checking other platforms. However, the evidence suggests that there is a low cost to multi-homing, and a potentially high benefit of checking other platforms. It therefore seems highly unlikely that most buyers would stop searching after visiting Trade Me.
96. For these reasons we are satisfied that the Proposed Acquisition will not significantly affect the ability of rival platforms to compete in the listing market.

⁵⁹ The Application at [39.1].

⁶⁰ [

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The constraint from current and potential competitors

97. Post-Acquisition, Realestate.co.nz and OneRoof will continue to compete in the listing and audience markets against the merged entity and provide active and developing competition to Trade Me. Given that we are satisfied the Proposed Acquisition will not eliminate a significant competitor to Trade Me, or significantly affect the ability of rival platforms to compete in the listing and audience markets, it is unnecessary to reach a view on the likely constraint that these competitors would impose.

Summary

98. The evidence does not support a counterfactual that Homes will become a strong competitor for listings in any relevant time period or that the Proposed Acquisition would significantly affect the ability of rival platforms to compete in the market. As such we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the listings market due to horizontal effects.

Other theories of harm that we considered

99. Over the course of the investigation we have considered other ways that the Proposed Acquisition might affect competition. We are satisfied that the Proposed Acquisition would not, or would not be likely to, cause a substantial lessening of competition as a result of any of the effects listed below.

Horizontal unilateral effects for the supply of classified advertising for residential real estate for rent

100. Trade Me submitted that the Proposed Acquisition would not result in a substantial lessening of competition for the supply of online listings for rent to agents and agencies, on the basis that:
- 100.1 Homes is a relatively small participant in that market; and
- 100.2 the main area of competition in the market is and will remain between Trade Me, Facebook, Realestate.co.nz and OneRoof, with Facebook being a particularly fast-growing competitive constraint.
101. Our market enquiries indicated Homes was a small player for the supply of rentals and there is a broader range of competitors for rental listings compared to listings for sale.

Horizontal unilateral effects for the supply of digital advertising to advertisers

102. Trade Me submitted that Google and Facebook dominate digital advertising in New Zealand and that, by comparison, Trade Me and Homes are very small participants for the supply of digital advertising.⁶¹

⁶¹ The Application at [121] and [122].

103. The results of our market enquiries indicated that advertisers (including real estate agents and agencies) are likely to have a broad set of competitive options available to them for digital advertising.

Vertical effects in any market

104. Vertical effects can occur where there is a merger or agreement between firms operating at different levels of a supply chain (eg, a wholesaler and a retailer) that creates the ability and incentive for a vertically integrated merged entity to engage in strategies that weaken competitive constraints in the upstream or downstream markets that the business competes in.
105. These strategies may involve refusing to supply, or raising the cost of, upstream inputs that rivals need to compete with the merged entity in downstream markets. Alternatively, a merged entity may have the ability and incentive to prevent or raise rivals' costs of accessing customers, therefore limiting their ability to compete with the merged entity in upstream markets.
106. We did not identify any inputs that Trade Me and Homes supply that could be used to foreclose rivals. The most important data that platforms use include council data and Land Information New Zealand (LINZ) data which the Parties do not control. The Proposed Acquisition could in theory eliminate Homes as a provider of listings data to other companies. However, we consider this is unlikely.
- 106.1 Real estate agents are unlikely to permit their listings to be on-sold to third parties by real estate platforms.⁶²
- 106.2 It is unclear that listings data is essential to compete in any market, as there are websites that provide valuations without that data.

Conglomerate effects in any market

107. Conglomerate mergers involve firms that are not competitors in the same product market, and which are not in a supply relationship. The products of the firms can be unrelated products, complements or 'weak substitutes' which are sufficiently different not to be considered as part of the same product market.⁶³ A conglomerate merger may increase a merged firm's ability and/or incentive to foreclose competitors by leveraging its market power in one market into another market where it currently faces stronger competition.⁶⁴
108. We considered whether:

⁶² [] indicated that there would likely be "plenty of protections" in [] contract with Trade Me to prevent it on-selling listings (Interview with []; [] indicated it was not willing to sell listings data to others (Interview with []).

⁶³ OECD "Conglomerate Effects of Mergers" (June 2020) available at: [https://one.oecd.org/document/DAF/COMP\(2020\)2/en/pdf](https://one.oecd.org/document/DAF/COMP(2020)2/en/pdf)

⁶⁴ Mergers and Acquisitions Guidelines (July 2019) at [5.11].

108.1 the merged entity could foreclose through bundling or tying because:

108.1.1 Trade Me and Homes offer products or services that are complementary (or somehow related) for a set of customers, which the Proposed Acquisition would bring together; and

108.1.2 the merged entity could offer a bundle of those products that rivals cannot easily match; and

108.2 the merged entity would have an incentive to foreclose its competition through bundling or tying, and this foreclosure would adversely affect competition, for example because:

108.2.1 there are economies of scale or scope to operating platforms; and/or

108.2.2 it raises barriers to entry as new entrants must enter by supplying both markets.

109. The main conglomerate theory we considered was whether Trade Me could make use of its strength in listings and Homes' strength in property information through linking the websites. We consider that Trade Me may create 'bundles' of this nature.⁶⁵ However, conglomerate effects involve a leveraging of market power from one market to another. We defined a single 'audience' market, meaning that the combination of Trade Me's and Home's audiences will occur in the same market. Conduct of this nature can be assessed in different ways. Given the platform nature of the businesses in question, we have instead considered the combination of these audiences in the context of a strengthening of network effects as part of our assessment of horizontal unilateral effects.

110. We also considered whether the merged entity could bundle listings and digital advertising. However, listings are for the benefit of vendors whereas general advertising is for the benefit of agents. These services are not complements and are only weakly related, so are unlikely to be a natural pair of services to bundle.

Overall conclusion – no likely substantial lessening of competition

111. We are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

⁶⁵ In its response to the SOI, Trade Me [

] In a Trade Me internal document

[

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Determination on notice of clearance

112. Pursuant to section 66(3)(a) of the Act, the Commerce Commission determines to give clearance to Trade Me to acquire 100% of the shares or assets of Homes.

Dated this 5th day of August 2021

Anna Rawlings
Chair

Attachment A: Charts

Figure 4: Average listing views, Monthly (February 2017 to June 2021)

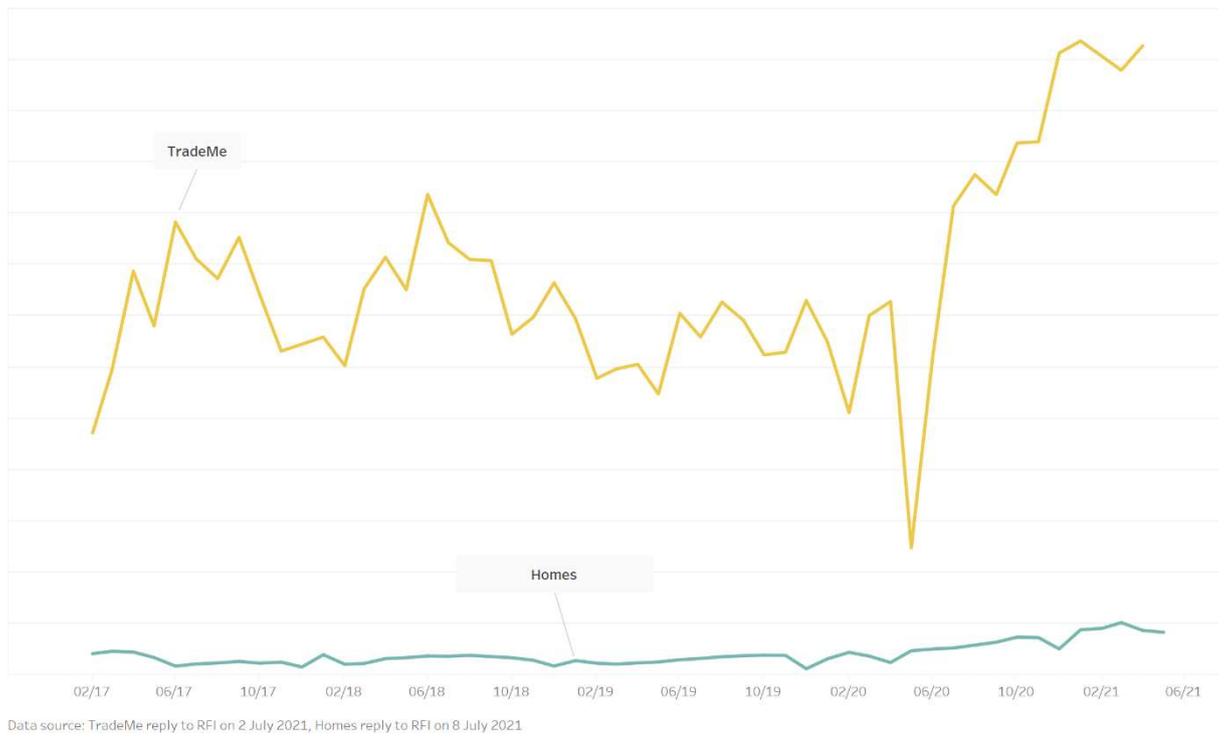


Figure 5: Average email enquiries of a listing, Monthly (February 2017 to June 2021)

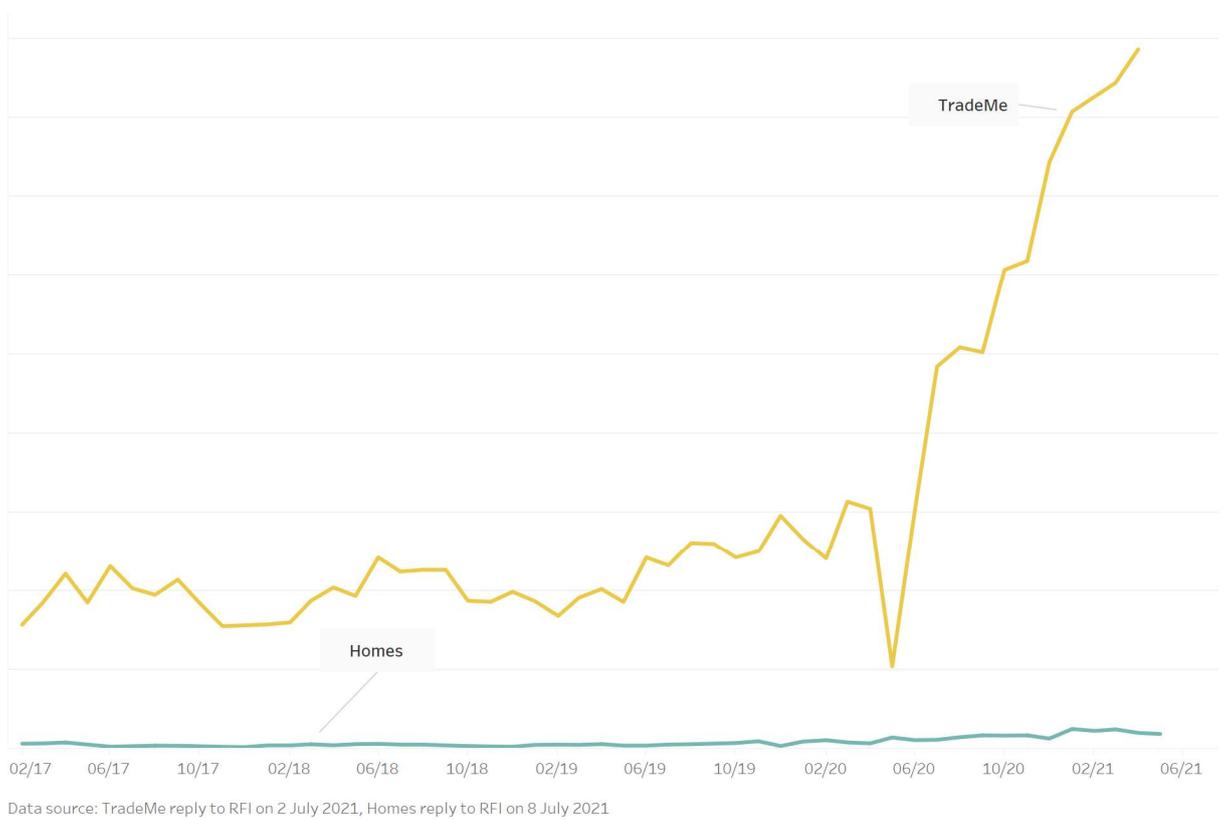
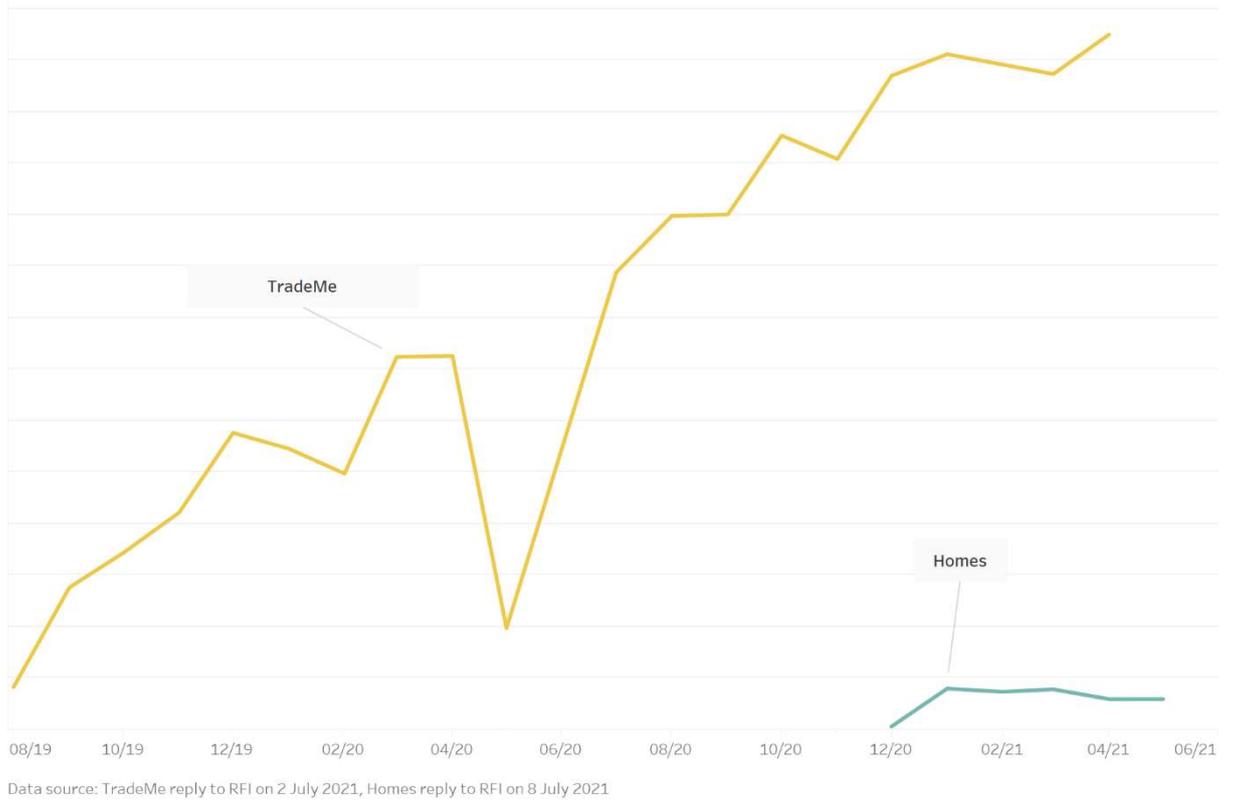


Figure 6: Average clicks on 'reveal phone number' per listing, Monthly (August 2019 – June 2021)



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