

## Statement of Issues

Public version

### Trade Me/PropertyNZ

23 April 2021

#### Introduction

1. On 18 February 2021, the Commerce Commission registered an application (the Application) from Trade Me Limited (Trade Me) to acquire 100% of the shares or assets of PropertyNZ Limited (Homes), which owns and operates the homes.co.nz website (the Proposed Acquisition).<sup>1</sup>
2. To clear an application, the Commission must be satisfied that an acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. This Statement of Issues (Sol) sets out the potential competition issues we have identified following our initial investigation. This is so Trade Me and Homes (the Parties) and other interested parties can provide us with submissions relating to those issues.
4. In reaching the preliminary views set out in this Sol, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues). Our views may change, and new competition issues may arise, as the investigation continues.

#### The concerns we are testing

5. We are still to conclude on the relevant markets in this investigation. However, at this stage, the focus of our investigation is whether the Proposed Acquisition would substantially lessen current or potential competition due to:
  - 5.1 horizontal unilateral effects from a loss of competition between Trade Me and Homes in the supply of online listings for sale to real estate agents and agencies as a result of the Proposed Acquisition; and/or
  - 5.2 conglomerate effects in the supply of online listings for sale to real estate agents and agencies.
6. We are also continuing to test whether the Proposed Acquisition is likely to substantially lessen competition due to:

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<sup>1</sup> 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/>.

- 6.1 horizontal unilateral effects in the market for the supply of online listings for rent to real estate agents and agencies;
  - 6.2 horizontal unilateral effects in the market for digital advertising; and
  - 6.3 vertical foreclosure effects in relation to the supply of property information and data.
7. At this time, we are not investigating further, and do not require any further information from the Parties or interested parties in respect of, the possible loss of competition from coordinated effects.<sup>2</sup>
8. We explain our reasons below and invite submissions on our position.

### Process and timeline

9. We have agreed with Trade Me an extension of time for making a decision from the initial 40 working day statutory timeframe until 4 June 2021.
10. The Commission would like to receive submissions and supporting evidence from the Parties and other interested parties on the issues raised in this Sol. We request responses by close of business on **10 May 2021**, including a public version of any submission made.
11. All submissions received will be published on our website with appropriate redactions.<sup>3</sup> All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on **17 May 2021**.
12. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) so that we can work with you to accommodate your needs where possible.

### Background to the industry

13. In the real estate industry, sellers of real estate seek to transact – either on their own behalf or represented by a real estate agent – with potential buyers of real estate. Sellers can advertise their real estate to buyers via a range of different platforms, including print publications such as the Property Press, social media like Facebook,

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<sup>2</sup> This is because we do not consider that any relevant market is likely to be susceptible to coordination, on the basis that: prices to agents/agencies are negotiated on a bilateral basis; the Proposed Acquisition may increase the asymmetry between Trade Me and its rivals; the firms that would remain in the market post-acquisition have different strategies and different prices; and one competitor in the market – realestate.co.nz – has a different ownership structure given its 50% shareholding by five real estate agencies.

<sup>3</sup> Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each piece of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

the website of the seller's real estate agency (if the seller is represented by an agent), and online real estate platforms such as those operated by the Parties.

14. Online real estate platforms are 'multi-sided' in the sense that they seek to facilitate direct or indirect interactions between several different groups of market participants on different 'sides' of the platform.
  - 14.1 First, the platforms connect sellers/renters of real estate with potential buyers/tenants, by allowing sellers/renters to place advertising (ie, listings) on the platform.
  - 14.2 Second, the platforms connect agents/agencies to future potential sellers/renters of real estate, by selling marketing opportunities to those agents/agencies.
  - 14.3 Third, the platforms connect advertisers of various products and services (sometimes related, but not limited, to the real estate industry) to the platforms' audiences, by selling digital advertising products.
  - 14.4 Fourth, the platforms connect an audience of consumers with property data/information.
15. In seeking to facilitate interactions between different groups of market participants, online platforms display 'network effects'. Network effects mean that the value of a platform increases with the number of users that it attracts. In the case of online platforms, sellers/renters of real estate, agents/agencies, and general advertisers, all wish to reach the largest audience possible. Online real estate platforms are therefore incentivised to attract as many 'eyeballs' as they can. This can be achieved by means such as:
  - 15.1 increasing the number of listings on the platform;
  - 15.2 providing other products and services that consumers value, such as property-related data and information, valuations, or editorial content; and
  - 15.3 investing in brand marketing to enhance consumer awareness of the platform.

## **The Parties**

### **Trade Me**

16. Trade Me operates an online marketplace and classified advertising platform (trademe.co.nz). It also operates the dedicated real estate platform Trade Me Property (trademe.co.nz/property).
17. Trade Me Property provides a platform for both real estate sellers/renters to advertise their properties to potential buyers/tenants. Both private individuals and agents/agencies are able to list real estate on the Trade Me Property platform.

18. Trade Me also operates the 'Property Insights' microsite of the Trade Me Property website ([trademe.co.nz/property/insights](http://trademe.co.nz/property/insights)). Consumers can search Property Insights for free for any street address, suburb or city, and will be presented with property-related data/information on all properties in New Zealand (to the extent Trade Me holds that data), including an estimated valuation range for the property, council data, rateable value (RV) information and a history of any significant upgrades to the property.
19. Trade Me<sup>4</sup> submits that it provides property-related data/information as an adjunct to its primary business as a listings platform.<sup>5</sup>

### Homes

20. Homes operates a free online property data and information resource for consumers ([homes.co.nz](http://homes.co.nz)). Consumers can search for property information by entering a property's address, suburb, or city. For each property, Homes provides a range of property-related data/information, including a valuation called a 'HomesEstimate'. This is Homes' estimate of the market value of a property based on a proprietary formula. It draws on information such as public data, registered valuers' valuations and real estate agents' comparable market analyses.<sup>6</sup>
21. As on Trade Me, this information is made available to consumers for free. Homes seeks to monetise that consumer attention by selling to agents, agencies and other advertisers the opportunity to market themselves to Homes' audience in a number of different ways.
22. Homes also features online listings for sale and rent on its platform.
23. Trade Me has submitted that "Just as Trade Me Property offers property data and information as an adjunct to its main listings business, Homes does the reverse; Homes offers listings as an adjunct to its property data and information product."<sup>7</sup>

### Other industry participants

24. The main competing real estate platforms are:
  - 24.1 *Realestate.co.nz*: Realestate.co.nz is owned 50% by five of the largest real estate agencies in New Zealand (Barfoot and Thompson, Harcourts, Ray White, LJ Hooker and Bayleys), with the remaining 50% owned by the Real Estate Institute of New Zealand (REINZ). Realestate.co.nz offers listings for sale and for rent, as well as some property data/information on properties that are not for sale (including a valuation range).

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<sup>4</sup> For ease of reference, in the rest of this document we refer to "Trade Me Property" as "Trade Me".

<sup>5</sup> The Application at [35].

<sup>6</sup> <https://homes.co.nz/homesestimate>

<sup>7</sup> The Application at [35].

- 24.2 *OneRoof.co.nz*: OneRoof is 80% owned by the media organisation NZME Limited, and 20% owned by Hougarden.com Limited (Hougarden). We discuss Hougarden below.
- 24.2.1 OneRoof offers listings for sale and for rent, as well as property-related information on properties that are not for sale (including a valuation range).
- 24.2.2 OneRoof was established in 2018, and so is a relatively new entrant to this space. Its entry appears to have been reasonably successful, which may in part be due to NZME’s ability to leverage its media assets in order to promote and grow the OneRoof platform.<sup>8</sup> Because NZME’s media assets (such as the NZ Herald) are concentrated predominantly in Auckland, we understand that OneRoof has a larger presence in the Auckland region than in other regions,<sup>9</sup> and it states publicly that it offers more listings than Trade Me in Auckland.<sup>10</sup>
25. In addition to these large online real estate portals, Trade Me has identified several other entities that also offer listings for sale and/or rent:
- 25.1 *Facebook*: Facebook offers a product called Facebook Marketplace, which is a searchable online listings platform.<sup>11</sup> Currently Facebook’s search functionality for properties for sale is limited to price, but Facebook also offers a more advanced search functionality for rental properties;
- 25.2 *Hougarden*: Hougarden is a 20% shareholder in OneRoof. It operates the largest Chinese-language real estate platform in New Zealand, with just over 50% of site visits coming from mainland China;<sup>12</sup> and
- 25.3 *Neighbourly*: Neighbourly is a private neighbourhood website owned by Stuff Limited. It allows real estate agents to list properties for sale within a particular neighbourhood.
26. Finally, there are several further entities that supply property data/information, but which do not currently feature listings on their websites:

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<sup>8</sup> For example, as of November 2020, OneRoof had the most residential for sale listings in Auckland. As of September 2020 it was the fastest-growing real estate site in New Zealand with +92% YoY growth. It refers to itself as a “strong #2 in market”. See <http://nzx-prod-s7fsd7f98s.s3-website-ap-southeast-2.amazonaws.com/attachments/NZM/363265/335128.pdf>. OneRoof offers agents free ads on NZ Herald as part of their OneRoof advertising packages (see <https://advantage.oneroof.co.nz/>)

<sup>9</sup> <http://nzx-prod-s7fsd7f98s.s3-website-ap-southeast-2.amazonaws.com/attachments/NZM/363265/335128.pdf>.

<sup>10</sup> <https://www.nzherald.co.nz/business/oneroof-reaches-biggest-audience-ever-in-september/WJQMZ44RBSQDJQ56ETJWFGQQQI/>

<sup>11</sup> <https://www.facebook.com/marketplace/auckland/propertyforsale>

<sup>12</sup> <https://about.hougarden.com/>

- 26.1 *CoreLogic*: CoreLogic is a provider of valuations, property information, analytics, property-related risk management and geospatial location intelligence in Australia and New Zealand. It operates the consumer-facing website PropertyValue.co.nz, which provides some property data/information for free to consumers, with additional data/information available if users log in to the website, and further data/information available in paid packages. CoreLogic has also recently entered into a partnership with Trade Me under which CoreLogic will enhance Trade Me’s Property Insights database and Trade Me will provide CoreLogic with additional datapoints to improve the offerings on CoreLogic’s platforms;<sup>13</sup> and
- 26.2 *Valocity*: Valocity is a New Zealand-based international property data expert which specialises in providing property valuation services to lenders. It operates the consumer-facing website MyValocity.co.nz. Like CoreLogic, some of this data/information is offered for free, some is behind a free login, and some is paid for as part of a package. Valocity also provides valuation services to OneRoof.<sup>14</sup>
27. Real estate platforms engage with and appeal to various customer groups. The extent to which an individual platform monetises each group differs according to the competitor’s particular business strategy. These groups are:
- 27.1 *Property vendors (typically represented by a real estate agent)*. Platforms may charge vendors a base listing fee,<sup>15</sup> and additional ‘premium’ listing upgrade fees which promise additional exposure for the listing in question. Alternatively, the platform may offer the base listing for free in order to maximise the volume of listings on its website (in the hopes that this will attract more viewers on the other side of the platform);
- 27.2 *Real estate agents and agencies*. Platforms sell real estate agents/agencies the ability to market themselves in various ways to the real estate-interested audience accessing the platforms;
- 27.3 *Advertisers*. Platforms sell digital advertising (banner and display ads,<sup>16</sup> etc) to various advertisers. Some of these advertisers may not have a specific interest in reaching a real estate-interested audience, but simply wish to reach as many eyeballs on as many different platforms as they can. Others may be hoping specifically to reach a real estate-interested audience to sell

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<sup>13</sup> <https://www.corelogic.co.nz/news/get-deeper-property-insights-trade-me#.YHepN-gzbD4>

<sup>14</sup> <https://www.oneroof.co.nz/property-valuations>

<sup>15</sup> A ‘base’ listing is the lowest-cost option for listing a property on a platform. Generally a base listing receives no special or priority placement on the platform’s interface, meaning that it is presented along with all other base listed properties on the platform that meet the search criteria. As a result, some vendors choose to pay extra for a premium listing, which elevates the listing in question to a ‘premium’ placement on the platform – generally fixed at the top of the webpage to maximise viewers. Platforms typically offer a number of different 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.

<sup>16</sup> Display ads are any advertisements that appear in the digital space. Banner ads are a common kind of display ad, which generally appear as a ‘banner’ across the top of a webpage.

them products related to property ownership, such as home DIY materials, home appliances, or mortgage opportunities; and

- 27.4 *The audience.* The audience comprises consumers that browse the platforms in order to view listings and property data/information. Generally the audience is able to use the real estate platforms for ‘free’ (ie, they do not pay a monetary price); however their attention is ‘sold’ by the platforms to the customer groups on the other side of the platform, including vendors, agents/agencies, and advertisers. Platforms are also able to collect data from consumers on their search behaviour and preferences and may be able to derive value from that data in various ways. Some platforms may also require users to register and log in to use the platform (or parts of it), which increases the non-monetary cost to the audience of engaging with that platform. Finally, some suppliers such as Property Value and MyValocity also offer paid packages of property data/information.

## **The relevant markets**

### **Background**

28. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services that fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.
29. When assessing relevant markets we consider whether in response to a small price increase in the relevant products:
- 29.1 customers would easily switch to alternative products or locations (known as ‘demand side’ substitution); and
- 29.2 firms would easily switch production to the products or locations in question without incurring significant costs (known as ‘supply side’ substitution).

### **What the Applicant has submitted**

30. Trade Me has submitted that there are national markets for the supply of:<sup>17</sup>
- 30.1 advertising for real estate for sale to agents and agencies;
- 30.2 advertising for real estate for rent to agents and agencies;
- 30.3 digital advertising; and
- 30.4 property data, information, and listings to consumers.

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<sup>17</sup> The Application at [48].

31. For reasons that we set out below, in this document we have instead defined national markets for the supply of:
- 31.1 online listings for sale to agents and agencies;
  - 31.2 online listings for rent to agents and agencies;
  - 31.3 digital advertising; and
  - 31.4 property data, information, and listings to consumers.

### **The market for the supply of online listings for sale to agents and agencies**

#### *What the Applicant has submitted*

32. Trade Me submits that there is a single market for the supply of real estate advertising to real estate professionals (ie agents and agencies).<sup>18</sup>
33. Trade Me argues that this market includes 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). However, it submits that even if the market were narrowed to include online listings only, the Proposed Acquisition would not result in a substantial lessening of competition.<sup>19</sup>

#### *The Commission's current view*

34. At this stage the Commission considers that the market is limited to the supply of online listings for sale to agents and agencies. It does not consider that the market includes:
- 34.1 print listings; or
  - 34.2 other digital advertising which is not property listings.
35. The Commission has formed this view because:
- 35.1 at this point we have seen little evidence to suggest that the price of print advertising materially constrains the price of digital advertising. We consider that an increase in the price of online listings is unlikely to result in a significant number of agents switching to print advertising;
  - 35.2 the majority of the evidence that we have received to date suggests that print listings and online listings are unlikely to be substitutes, and may in fact be complements:
    - 35.2.1 print listings are not searchable and do not update as quickly as online portals; and

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<sup>18</sup> The Application, at [55].

<sup>19</sup> The Application, at [57].



- 35.2.2 some interviewees have claimed that print is used as a means to reach buyers that are less active (for example, who may be interested in buying in the next six months) and in rural areas where fewer people use the internet.<sup>20</sup> Agents/agencies wish to reach both sets of people, and any marketing campaign therefore “needs to cover both”;<sup>21</sup> and
- 35.3 display and banner advertising is more commonly used to advertise agent brands. It is not searchable in the same way as a listing.
36. As we have noted above, vendors are able to purchase base listings, or upgrade to a range of premium listing options. We are continuing to consider whether base and premium listing products should fall within the same product market, or whether they are more appropriately analysed in separate product markets.
37. We invite submissions on:
- 37.1 the extent to which property vendors and real estate agents/agencies are likely to consider print listings to be a substitute for online listings. For example, if the price of listing a property online rose by 5-10% would vendors switch to listing exclusively in print publications?;
- 37.2 whether there are any differences between the kind of consumers that use online listings platforms and the kind of consumers that use print publications; and
- 37.3 the extent to which property vendors and real estate agents/agencies are likely to consider other display and banner advertising substitutable for a property listing. For example, if the price of listing a property online or in print rose by 5-10% would vendors switch to exclusively using display or banner advertisements?

### **The market for the supply of online listings for rent to agents and agencies**

#### *What the Applicant has submitted*

38. The Applicant has submitted that there is a market for advertising for real estate for rent which is separate to its defined market for advertising for real estate for sale. It submits that there are two main reasons for defining separate markets:<sup>22</sup>
- 38.1 First, the rental listing market is predominantly an online market. While there may be some constraint from print media, print is not as strong a constraint in the rental market as it is in the for-sale market.
- 38.2 Second, the customer set in the rental market is more diffuse, with a significantly smaller proportion of total listings being managed by a real

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<sup>20</sup> [ ].

<sup>21</sup> [ ].

<sup>22</sup> The Application, at [59] et seq.

estate professional, and with those real estate professionals themselves being a more fragmented group than in the case of for-sale property.

*The Commission's current view*

39. There may be little demand-side substitutability between online listings for rent and listings for sale. Vendors or agents/agencies listing a property for sale are unlikely to switch to listing a rental property if the cost of listings for sale increased (or the quality decreased).
40. However, the Commission considers that a case could be made for including both online listings for sale and listings for rent in the same market, on the basis of supply-side substitutability. In general, all online platforms that list properties for sale generally also list properties for rent.
41. At this stage the Commission is considering separate markets for the supply of online listings for sale and listings for rent, although defining the markets in this way does not affect our overall analysis of the impact of the Proposed Acquisition relative to a combined market for both online listings for sale and for rent.

**The market for digital advertising**

*What the Applicant has submitted*

42. Trade Me submitted that it is useful to consider a separate market for digital advertising, encompassing:
  - 42.1 all other types of general digital advertising (like search and display advertising), besides display advertising for specific listings of the kind included in the listings for sale and listings for rent markets discussed above; and
  - 42.2 the types of marketing partnerships that Homes has developed. For example:<sup>23</sup>
    - 42.2.1 the Homes website contains a calculator allowing consumers to estimate the property's 'solar potential' (ie the amount of solar power a home might be able to collect). This is sponsored by Harrisons Energy Solutions. Homes also features a 'home inspiration' section, with sponsors like Mitre 10 and Resene; and
    - 42.2.2 Homes offers Premium Agent and Premium Branch products, which allow real estate agents and branches respectively to market themselves to consumers viewing properties, including through display advertising connected to properties that have recently been sold by the agent/branch in question.

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<sup>23</sup> The Application, at [22].

43. This market would include competitors such as media organisations NZME and Stuff, but also the international technology companies Google and Facebook, who use sophisticated data to target advertising to customer groups.

*The Commission's current view*

44. The Commission is considering whether to define a single market for digital advertising, or whether it is appropriate to define a narrower market for digital advertising on real estate platforms.
45. This narrower real estate-specific market may be appropriate where there are advertisers (such as real estate agents) that consider other platforms are not close substitutes for real estate listing platforms.
46. This may be the case, for example, if real estate platforms are a more effective way of connecting the advertiser with potential customers such that the advertiser would not switch to advertising on alternative platforms. As part of our analysis, we are considering whether real estate agents who advertise to potential clients (property vendors) on real estate platforms would, in response to an increase in price or decrease in quality, easily switch to digital advertising on alternative platforms.
47. We invite submissions on whether there are any advertisers that would be unwilling to switch to advertising on alternative platforms because they consider real estate platforms to be the most effective way to reach potential customers.

**The audience market**

*What the Applicant has submitted*

48. Trade Me has submitted that there is a market for the supply of property data, information and listings to consumers. It notes however that 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. Trade Me's view is that the precise scope of the market is unlikely to be material to the Commission's assessment.<sup>24</sup>
49. As explained above, real estate platforms are multi-sided, facilitating interactions between several distinct customer groups – advertisers (including real estate agents, private individuals looking to market their listings, and general advertisers) on one side of the platform, and the audience on another side of the platform.
50. Trade Me has submitted that, as a result of the interdependencies between the different 'sides' of the platform, the Commission should focus its analysis on the competitive impact of the Proposed Acquisition on the advertising side of the platform.<sup>25</sup>

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<sup>24</sup> The Application, at [71] and [72].

<sup>25</sup> The Application at [75]. This would follow the approach the Commission took in *Trade Me Limited / Limelight Software Limited* [2018] NZCC 1 at [90].

*The Commission's current view*

51. The Commission is considering whether it is appropriate to define a single audience market encompassing property data, information, and listings, or whether this market should be subdivided into more discrete product markets. Our current understanding is that there is likely to be minimal demand-side substitution between property data/information on the one hand and listings on the other. There may, however, be a degree of supply-side substitution between the two, as evidenced by the fact that all major online real estate platforms provide both data/information and listings. We note that this evidence may also point towards listings and property data/information being complements. At this stage, the Commission has not reached a concluded view on whether property data/information on the one hand and listings on the other should be defined as separate product markets.
52. The Commission is also considering whether it is appropriate to segment the audience market by different customer groups. Some interviewees have advised us that:
- 52.1 there may be a distinction between the audience groups that engage with real estate platforms in order to buy real estate (buyers), and those that engage with the platforms to investigate selling real estate (vendors). For example, a potential vendor may seek a valuation on a real estate platform in order to understand what other properties in the vendor's street or suburb have recently sold for;<sup>26</sup> and
- 52.2 there may also be a distinction between 'active' buyers that are purposefully and actively seeking to purchase a property, and 'passive' buyers who are open to the idea of purchasing a house, but who are not making active efforts to do so. Some interviewees indicated that online real estate platforms appealed to active buyers because they allow more targeted search functionality for buyers that know what they want.<sup>27</sup> For example, print advertising (like the Property Press) is for the passive buyer to read with their morning coffee, and potentially stumble across an attractive opportunity. Agents/agencies wish to reach both sets of people, and any marketing campaign therefore "needs to cover both".<sup>28</sup> This may demonstrate the complementarity (rather than substitutability) of the print and online platforms.
53. At this stage there do not appear to us to be any bright lines between the platforms that appeal more to an active audience set than a passive one, or appeal more to property buyers than to vendors. Rather, it is likely that each platform, as a result of its brand position, interface, and functionality, attracts different ratios of active and passive buyers and vendors.

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<sup>26</sup> [ ].

<sup>27</sup> [ ].

<sup>28</sup> [ ].

54. Nor do we understand that agents/agencies have any practical ability to distinguish or discriminate accurately between these different groups, beyond forming qualitative impressions on the number of “genuine enquiries” they receive via the various platforms as noted above. On this basis, we do not propose to define separate audience markets for these different potential audience segments. We will, however, take into account any potential differences between the platforms in our competition assessment.
55. The Commission is also considering whether it should focus its analysis on the competitive impact of the Proposed Acquisition on the advertising side of the platform (as Trade Me has proposed), or whether it is also appropriate to separately analyse the audience side of the platform. Regardless of the approach, our analysis takes into account the relationships between the different sides of the platform.
56. We invite submissions on:
- 56.1 whether customers on any side of a real estate platform are likely to consider listings and property data/information substitutable for each other;
  - 56.2 whether the audience that engages with real estate platforms can be subdivided into different groups with different preferences, behaviours or characteristics, such as:
    - 56.2.1 sellers of real estate vs buyers of real estate; or
    - 56.2.2 ‘active’ vs ‘passive’ buyers; and
  - 56.3 whether, to the extent that there are any appropriate subcategories that can be drawn within the total audience, real estate platforms have any practical ability to target, distinguish between, or price discriminate against, these subcategories.

### **Summary on market definition**

57. In summary, we invite further views and information from the Parties and interested parties on:
- 57.1 in the case of the online listings for sale market:
    - 57.1.1 the extent to which property vendors and real estate agents/agencies are likely to consider print listings to be a substitute for online listings. For example, if the price of listing a property online rose by 5-10% would vendors switch to listing exclusively in a print publication?;
    - 57.1.2 whether there are any differences between the kind of consumers that use online listings platforms and the kind of consumers that use print publications; and
    - 57.1.3 the extent to which property vendors and real estate agents/agencies are likely to consider other display and banner advertising

substitutable for a property listing. For example, if the price of listing a property online or in print rose by 5-10% would vendors switch exclusively to a display or banner advertisement?;

57.2 in the case of the market for digital advertising, whether real estate platforms are able to charge advertisers (or a subset of advertisers) a premium for advertising on the real estate platform relative to what those advertisers would be charged for advertising on a non-specialist website (such as stuff.co.nz or nzherald.co.nz);

57.3 in the case of the audience market:

57.3.1 whether customers on any side of a real estate platform are likely to consider listings and property data/information substitutable for each other;

57.3.2 whether the audience that engages with real estate platforms can be subdivided into different groups with different preferences, behaviours or characteristics, such as sellers of real estate vs buyers of real estate, or 'active' vs 'passive' buyers; and

57.3.3 whether, to the extent that there are any appropriate subcategories that can be drawn within the total audience, real estate platforms have any practical ability to target, distinguish between, or price discriminate against, these subcategories.

## **With and without scenarios**

58. Assessing whether a substantial lessening of competition is likely requires us to 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 to determine whether competition is likely to be substantially lessened by comparing those scenarios.

59. Trade Me has submitted that, without the Proposed Acquisition:

59.1 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;<sup>29</sup> and

59.2 Homes will continue its focus on engaging the homeowner, widening its property data set, and offering additional digital advertising services to that audience, albeit without being able to access Trade Me's datasets and audience.<sup>30</sup>

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<sup>29</sup> The Application, at [40].

<sup>30</sup> The Application, at [44].

60. In dynamic sectors, the likely future growth trajectory of merger parties can be an important part of the counterfactual. This is because a static, status quo counterfactual may understate the loss of competition from a merger if the target is likely to become a stronger competitor in a relevant market in the foreseeable future.
61. The Commission has not yet reached a view on whether Homes is currently a material constraint on Trade Me. However, even if it is not, the Proposed Acquisition could nevertheless give rise to competition issues if, without the Proposed Acquisition, there is a real chance that Homes could grow to become a material constraint on Trade Me's conduct.
62. Therefore, we continue to consider whether without the Proposed Acquisition:
- 62.1 Homes will grow in the future; or
- 62.2 there are reasons to think that Homes' growth will begin to accelerate in the future, for example because it will have access to more capital than it historically has, or because it will be introducing a new product/service or other innovation that will materially increase the number of customers on the platform.
63. Homes appears to have contributed innovative products/services to the New Zealand real estate industry. Its philosophy is to provide free property data to New Zealanders, which it says will increase efficiencies within the property market and improve the knowledge of fair market values for properties.<sup>31</sup> After Homes' 'soft launch' entry into the market in 2015, Trade Me followed suit by creating Property Insights.<sup>32</sup> When OneRoof entered the market in 2018, its product offering also contained free property data/information.<sup>33</sup> More recently, Trade Me has introduced a series of marketing packages for agents via its OneHub interface.<sup>34</sup> Historically, Homes has offered a suite of agent-facing marketing products, whereas Trade Me has offered none.
64. As Trade Me notes in the Application, Homes has also recently changed its pricing structure, such that basic listings on its platform are now effectively free.<sup>35</sup> This change has led to an increase in the number of listings on the Homes website.
65. We understand that over time, as more open data is made available by government, Homes aims to add transport details, demographic information, suburb profiles, bond data and accessibility data.<sup>36</sup> Homes already has technology allowing it to incorporate data such as the Auckland Unitary Plan, to show homeowners how the

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<sup>31</sup> <https://www.data.govt.nz/manage-data/open-data/showcase/homes-co-nz/>

<sup>32</sup> <https://www.stuff.co.nz/business/85233659/trade-me-launches-new-property-information-tool>

<sup>33</sup> <https://www.nzherald.co.nz/business/nzmes-property-portal-oneroof-officially-launches-today/WPPEJVR3W4MIPDYTS447PKDJ3E/>

<sup>34</sup> <https://www.onehub.co.nz/>

<sup>35</sup> The Application, at [24].

<sup>36</sup> <https://www.data.govt.nz/manage-data/open-data/showcase/homes-co-nz/>

proposed Plan would influence their property and local suburbs.<sup>37</sup> Homes has advised us that

[  
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66. We invite submissions on:
- 66.1 the level of competitive constraint that Homes is likely to exert on Trade Me and other market participants in the counterfactual; and
  - 66.2 the likelihood of Homes becoming a more significant competitive constraint on Trade Me in any market in the future – including through the introduction of new products/services or other innovations.

### **Horizontal unilateral effects relating to the supply of online listings for sale to agents and agencies**

67. 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 a market participant can profitably increase prices above the level that would prevail without the merger (and/or reduce quality).
68. Besides price and quality, another important dimension of competition that can be affected by a proposed merger is innovation competition between firms to introduce demand-enhancing new products or cost-reducing production processes. In this document, references to a 'reduction in quality' also include a reduction in innovation.
69. We are investigating whether, post-acquisition, the combined entity would be able to profitably sustain an increase in prices or decrease in quality to customers in the market for the online supply of listings for sale, such that competition would be substantially lessened.

### **Closeness of competition between Trade Me and Homes**

70. Trade Me has submitted that itself and Homes are not close competitors in the market for the supply of listings for sale to agents and agencies. In particular, Trade Me has argued that Homes is a relatively small participant in the market, and is not an unusually disruptive competitive force.<sup>39</sup> Homes is therefore not a material constraint on Trade Me now, and there is no reason to expect that it will grow to become one in the future.

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<sup>37</sup> <https://www.data.govt.nz/manage-data/open-data/showcase/homes-co-nz/>

<sup>38</sup> Interview with Homes, 2 March 2021.

<sup>39</sup> The Application, at [79].



71. On that basis, Trade Me has submitted that the Proposed Acquisition will not substantially lessen competition in the market for the supply of online listings for real estate for sale to agents and agencies.

*Extent of current constraint*

72. It is unclear from feedback received to date whether Homes is a material constraint on Trade Me. In the Application the Parties have advised that Trade Me Property attracts [ ] unique audience per month, compared to Homes' [ ]. Trade Me Property advertises [ ] properties for sale per month, compared to Homes' [ ]. We have not seen evidence that Trade Me sets its pricing for listings with references to Homes.
73. Even if Homes does not materially constrain Trade Me's pricing directly, we are also considering the extent to which Homes currently incentivises Trade Me to innovate to a greater extent than it would if Homes was not present in the market.

*Extent of future constraint*

74. As noted above, a focus of our investigation is the likelihood of Homes becoming a stronger competitive constraint in the future without the Proposed Acquisition. In this regard, we have received mixed feedback on Homes' potential to grow into a larger competitive constraint in the future.
- 74.1 Some interviewees did not consider that Homes was likely to effectively constrain Trade Me in the market for the supply of listings for sale in the future.<sup>40</sup>
- 74.2 Some interviewees expressed the belief that Homes did have the potential to become a strong competitor for the supply of listings for sale, and that Homes would be assisted in this growth by several strong features of its service offering, including an accurate valuation tool, a superior user interface and faster search functionality.<sup>41</sup>
- 74.3 Some interviewees identified that Homes is a beneficial presence in the online space and is innovating and growing in an interesting way.<sup>42</sup> These interviewees suggested that rather than growing to compete directly with Trade Me, Homes was more likely to innovate by creating products or tapping into a customer base that Trade Me does not currently produce or target.<sup>43</sup>
75. We invite submissions on the likelihood of Homes growing to become a greater competitive constraint on Trade Me in the market for listings for sale in the future.

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<sup>40</sup> [ ].

<sup>41</sup> [ ].

<sup>42</sup> [ ]. [ ].

<sup>43</sup> [ ].

### Constraint from rivals, including potential entry or expansion

76. Trade Me submits that the merged entity would be constrained in its conduct by the competitors set out above, including OneRoof, Realestate.co.nz, Facebook, Hougarden, and Neighbourly, as well as by print media.

77. Trade Me has submitted that CoreLogic and Valocity could also both begin offering free listings on their websites in the same way that Homes does today.

78. We are considering the extent to which to the merged entity would be constrained by its rivals post-acquisition. Our current understanding is that compared to its rivals Trade Me has the largest audience size and the highest number of property listings on a national basis, as well as a familiar brand name. We provide further information about Trade Me’s competitors in paragraphs 24 and 25. We note that:

78.1 [ ];<sup>44</sup>

78.2 [ ];<sup>45</sup> and

78.3 [ ].

79. As part of this analysis, we are considering whether any of Trade Me’s existing rivals would be likely to expand to become stronger constraints on the merged entity post-acquisition. We note that:

79.1 OneRoof has publicly signalled its ambitions to expand the number of listings on its platform, as well as its total audience, and, ultimately, revenue.<sup>46</sup> Some interviewees have stated that they expect OneRoof to “react” to the Proposed Acquisition and to continue to invest in its platform;<sup>47</sup>

79.2 Trade Me has submitted that it expects Facebook to improve its search functionality for properties for sale, and it considers that it is well-placed to expand quickly given its strong audience position;<sup>48</sup> and

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<sup>44</sup> For example,  
[

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<sup>45</sup> [ ].

<sup>46</sup> <http://nzx-prod-s7fsd7f98s.s3-website-ap-southeast-2.amazonaws.com/attachments/NZM/363265/335128.pdf>

<sup>47</sup> [ ].

<sup>48</sup> The Application, at [104].

- 79.3 some interviewees have told us that Realestate.co.nz has demonstrated a willingness to invest in expansion in the past,<sup>49</sup> but others suggested that Realestate.co.nz is better understood as a “follower” in the market rather than a “leader”.<sup>50</sup>
80. We are also considering whether there are different competitive constraints operating in respect of base listing prices than in respect of the various premium listings upgrades available on the different platforms.
81. Finally, we are considering whether CoreLogic or Valocity are potential competitors in the listings space.  
[ ]<sup>51</sup>
82. We invite submissions on:
- 82.1 the extent to which the loss of Homes as an independent competitor in the market may reduce the incentives of Trade Me and/or the other competitors in the market to develop innovative products and services compared to the counterfactual;
- 82.2 the extent to which other online real estate platforms currently supplying listings for sale to agents and agencies are likely to be able to constrain the behaviour of the merged entity including:
- 82.2.1 the extent to which those competing real estate platforms might be likely to expand to place a greater constraint on the merged entity if the Proposed Acquisition were to proceed; and
- 82.2.2 the extent to which these firms impose different competitive constraints in respect of base listing prices than in respect of the various premium listings upgrades available on the different platforms; and
- 82.3 the likelihood that a potential entrant could establish a competing online real estate platform if the merged entity sought to increase prices or decrease quality including:
- 82.3.1 the investment that would be required in order to facilitate that entry; and
- 82.3.2 the circumstances that would make entry/expansion into the market for online listings for sale more or less attractive.

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49 [ ].

50 [ ].

51 [ ].

### **Constraint from countervailing power**

83. We are investigating the extent to which customers would be able to resist any attempt by the merged entity to increase prices or reduce the quality of its service after the Proposed Acquisition.
84. In general, the ultimate customers for listings for sale are property vendors. It is the vendor that typically pays to list their property on a real estate platform, although the price that they pay may be negotiated by real estate agents/agencies.
85. Based on current information, it appears that large real estate agencies operating at the national level may have some ability to negotiate commercially with the platforms, but at this stage we do not consider that those agencies have material countervailing power against Trade Me, given the current evidence described in paragraph 78 above. For the same reasons, we do not consider that those real estate agencies are likely to have countervailing power against the merged entity.
86. We invite submissions on the extent to which real estate agents and agencies may be able to resist any price increase or quality decrease by the merged entity.

### **Impact on the 'audience' side**

87. As noted above the 'advertiser' and 'audience' sides of the market are closely linked. We are still considering how this relationship will affect the likelihood and impact of a substantial lessening of competition in the online listings for sale market. This may depend on the options that audiences have. For example:
- 87.1 the reduction in competition in the online listings for sale market could result in a loss of innovation in the provision of property information/data and/or reduced numbers or quality of listings. If audiences lack good options to switch to, they would be harmed by this decrease in innovation; however
- 87.2 if there is a strong reaction from audiences as they migrate to a competing platform or platforms (notwithstanding they may not previously have been considered good substitutes), then that would reduce the value of the platform to advertisers.
88. Alternatively, the Proposed Acquisition may harm the audience side by increasing the merged entity's ability or incentive to raise the non-monetary cost of using the platform to consumers by introducing soft paywalls such as having to log in to get a property valuation or other property information. Further, if a consequence of these login requirements is that the platform in question is able to collect additional data on consumers, this may increase the platform's ability to target advertisements to the audience, increasing barriers to entry for potential competitors. Relevantly, we note that:
- 88.1 Trade Me and Homes offer valuations without a login;
- 88.2 Oneroof requires parties to login to access valuations; and

- 88.3 both Corelogic and Valocity provide some information without a login, some via a login, and offers some paid expert reports.  
[ ]<sup>52</sup>

### **Summary of current views on horizontal unilateral effects relating to the supply of online listings for sale to agents and agencies**

89. We are not currently satisfied that the Proposed Acquisition would not be likely to result in a substantial lessening of competition in the market for the supply of online listings for sale to agents and agencies.
90. This is because we cannot rule out at this stage the prospect that Homes is an innovative and dynamic industry participant which could, without the Proposed Acquisition, grow to exert greater competitive constraint on Trade Me. We are not currently satisfied that the loss of potential competition that would result from the Proposed Acquisition in this scenario is likely to be remedied by:
- 90.1 expansion by existing rivals and new entry; and/or
- 90.2 the ability of customers to resist a price increase.
91. We invite further information and submissions on these points.

### **Horizontal unilateral effects relating to the supply of online listings for rent to agents and agencies**

#### **What the Applicant has submitted**

92. Trade Me submitted that the Proposed Acquisition would not result in a substantial lessening of competition in the market for the supply of online listings for rent to agents and agencies, on the basis that:
- 92.1 Homes is a relatively small participant in that market; and
- 92.2 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.

#### **The Commission's current view**

93. Our market inquiries to date have largely supported Trade Me's submissions in relation to the market for online listings for rent. As a result, the Commission's current view is that the Proposed Acquisition is not likely to substantially lessen competition in that market, although we continue to test this view. We invite submissions on this.

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<sup>52</sup> [ ]

## **Horizontal unilateral effects relating to the supply of digital advertising**

### **What the Applicant has submitted**

94. As noted above, Trade Me submitted that the digital advertising market includes Google and Facebook, which dominate digital advertising in New Zealand. By comparison with Google and Facebook, Trade Me and Homes are very small participants in the market.<sup>53</sup>
95. On that basis, Trade Me submitted that the Proposed Acquisition would not substantially lessen competition in the market for the supply of digital advertising.
96. Trade Me has also argued that, even if the Commission defined a narrower market for digital advertising on real estate-related websites the Proposed Acquisition would not substantially lessen competition. Trade Me says that given their sophisticated data and their ability to target specific customer sets (including individuals interested in real estate) Google and Facebook are present even in this narrower market.

### **The Commission's current view**

97. Based on the information received to date, the Commission considers that, if the market is defined as a single market for the supply of digital advertising, the Proposed Acquisition would be unlikely to result in a substantial lessening of competition. This is due in particular to Trade Me and Homes' relatively small shares in this market,<sup>54</sup> and the existence of large competitors, notably Google and Facebook.
98. However, as noted above, the Commission continues to consider the appropriate market definition. We are considering whether any group of advertisers may consider real estate platforms to be a more effective way of connecting the advertiser with potential customers such that the advertiser would not switch to advertising on alternative platforms.
99. At this point, it is unclear whether any advertisers would consider real estate platforms to be so uniquely effective in reaching certain customers that they would be prepared to pay a higher price to advertise on those platforms. For example, advertisers who advertise their products or services to house buyers or owners may also be able to reach such audiences through Google and Facebook. We continue to consider whether these alternatives would be sufficient to replace any lost competition between Trade Me and Homes.

## **Conglomerate effects for the supply of online listings for sale to real estate agents and agencies**

100. 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

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<sup>53</sup> The Application, at [121] and [122].

<sup>54</sup> Trade Me has advised that Trade Me and Homes' combined FY20 revenue in online search advertising represents a very small amount of the total market. The Application, at [122].

unrelated products, complements or “weak substitutes” which are sufficiently different not to be considered as part of the same product market.<sup>55</sup> 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.<sup>56</sup>

101. For example, a merged firm may be able to foreclose rivals by:
  - 101.1 providing bundled discounts to customers who buy its products together rather than separately (bundling); or
  - 101.2 refusing to sell one product to customers unless they also buy a second product from it (tying).<sup>57</sup>
102. Bundling and tying strategies can foreclose competition if the customer base available to suppliers of individual products is sufficiently reduced.

### **The conditions relevant to a conglomerate theory of harm**

103. In the present case, to test concerns over conglomerate effects we are considering whether:
  - 103.1 post-acquisition the merged entity would create an ability to foreclose through bundling or tying. For example, we are testing whether:
    - 103.1.1 Trade Me and Homes offer products or services that are complementary (or somehow related) to a set of customers, which the Proposed Acquisition would bring together.<sup>58</sup> This will include testing whether the products are in separate markets, but which a significant number of customers would purchase or use together; and
    - 103.1.2 the merged entity could offer a bundle of those products that rivals cannot easily match. For example, we are testing whether Trade Me or Homes is the dominant supplier of at least one of the products in the bundle, which makes it difficult for rivals to offer a similar bundle, and there are no other different bundles that rivals could offer that would be similarly attractive;
  - 103.2 post-acquisition the merged entity would have an incentive to foreclose through bundling or tying, and this adversely affects competition. We are considering whether the Proposed Acquisition creates an opportunity to earn

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<sup>55</sup> 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)

<sup>56</sup> Mergers and Acquisitions Guidelines (July 2019), at [5.11].

<sup>57</sup> Mergers and Acquisitions Guidelines (July 2019), at [5.13].

<sup>58</sup> This does not require that each party does not offer any product in the two markets. For example, if one party only offers a weak product in the related market, then it might benefit from merging with a party that has a strong product in that market.

additional profits over and above that which Trade Me could earn from its existing market position. This could occur because (for example):

103.2.1 there are economies of scale or scope to operating platforms. The bundle results in customers (and their revenues) switching to the merger entity, meaning rivals cannot reach an efficient scale. There are no other alternative means to operate efficiently; and/or

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

104. We continue to consider whether these conditions are met for any products and services that the merging parties offer. Our current views based on the evidence we have received so far is set out below.

#### **Would the merged entity have the ability to foreclose?**

105. We consider Trade Me and Homes main strengths (in terms of the information contained on their platforms) may be complementary for some types of customers. For example:<sup>59</sup>

105.1 Trade Me's main strength is providing listings; and

105.2 Homes' main strength is providing valuations and other property information.

106. On the audience side, both house buyers and vendors may find this information complementary. For example:

106.1 a house buyer may seek listings but then also wish to obtain further information about the house including the likely value of the house (to judge affordability and to inform a price offer). Alternatively, the house buyer might research property values in an area and then seek further information about what houses are listed in that area; and

106.2 a potential vendor may be interested in finding out the value of their house and also what similar houses are selling nearby.

107. The merged entity could 'bundle' through linking its websites in such a way that a consumer using Trade Me to view a listing could easily navigate to Homes for valuations rather than other websites, and vice versa.<sup>60</sup>

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<sup>59</sup> We recognise that Trade Me also provides property valuation and listings through Property Insights and Homes provides listings. This will limit the difference that the Proposed Acquisition will make in terms of the ability to bundle. However, as Trade Me and Homes appear to be weaker in, respectively, property valuation/information and listings, the Proposed Acquisition will enhance the ability of the merged entity to offer an attractive bundle compared to the firms separately.

<sup>60</sup> Such improvements would often involve benefits to audience members. In this case the greater convenience of obtaining different types of information. Our assessment requires that any adverse competitive effects offsets such benefits.



108. On the agent side, some agents may find Trade Me and Homes complementary due to the different audiences they attract. For example:
- 108.1 an agent may wish to list on both platforms to ensure the listing is immediately seen both by audiences that start with listings and then move to property values and those that start with valuations and then move to listings; and
  - 108.2 an agent may wish to purchase listings on Trade Me to reach buyers but also purchase agent advertising on Homes to reach property owners who may become the agent's future clients when they decide to sell.
109. The merged entity could provide a bundled product for agents that provides an incentive to list on both platforms. The merged entity could also offer packages for both listings and agent advertising.<sup>61</sup> The merged entity could effectively become a 'one-stop-shop' that makes it unnecessary for agents to purchase advertising services elsewhere.
110. At this point, we consider that there may be products or services that the merged entity could bundle for either audiences or agents.
111. To the extent that the merged entity would offer these bundles, we are assessing whether rivals could easily match that bundle.
- 111.1 We continue to assess the competitive position that Trade Me or Homes may hold in respect of the products or services in the potential bundle.
    - 111.1.1 As noted above, comments of some real estate agents indicate that Trade Me Property is "must have" in most agents' advertising campaigns and therefore tend to have most listings. However, other websites (such as realestate.co.nz and OneRoof) also appear to have a large proportion of listings. In particular, realestate.co.nz is owned by five of the largest real estate agencies in the country, and so is always likely to have access to those listings.
    - 111.1.2 There are other websites aside from Homes that offer valuations and property information. However, the comments from some agents suggest Homes is the most effective in terms of offering an attractive and easy-to-navigate website.
  - 111.2 We continue to assess whether rivals could offer other types of bundles that are similarly attractive to agents. For example, whether OneRoof could counter any bundles that the merged entity offered with bundles that combined its real estate platform with its online and print media.

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<sup>61</sup> This bundle would only be effective if the agent made the decision for both of these purchases. If for example the vendor drove the listing decision then the two services (listings and agent advertising) may not be linked closely enough to be attractive as a bundle.

112. At this point, we are not yet satisfied that rivals could offer an equally attractive bundle. For example, we are still considering whether rival platforms would be able to offer both listings and valuations/property information to the same standard as the merged entity and, if not, the barriers to achieving that standard.
113. We invite submissions on whether:
- 113.1 audiences and agents are likely to find ‘bundles’ of the nature described attractive;
  - 113.2 there are any components of the bundles described that rivals to the merged entity would find difficult to replicate; and
  - 113.3 if so, whether there are other means for rivals to compete against the merged entity.

**Would the merged entity have the incentive to foreclose?**

114. We continue to assess whether the merged entity (if it had the ability to foreclose) would have the incentive to foreclose.
115. The merged entity may have the incentive to foreclose if the strategy resulted in rivals losing customers (and revenues) and failing to achieve an efficient scale. In some cases platform markets can result in a “winner takes all” outcome. For example, a real estate platform may increase its audience and so become more attractive for agents, agents increase their listings on the platform and so becomes more attractive to audiences (and so on). We are still assessing whether the conditions in the present case for this to occur.
116. First, we are assessing whether the merged entity’s bundle would make it less likely agents and/or audiences would use other websites (and therefore make it less likely for those websites to earn revenues). At present the evidence suggests that both agents and audiences use a range of sites (that is, they ‘multi-home’). That is:
- 116.1 vendors (represented by agents) tend to list properties on a number of property platforms simultaneously (rather than listing exclusively on one platform); and
  - 116.2 we understand that individual consumers on the ‘audience’ side appear to view multiple real estate platforms.
117. If the merged entity offers a ‘one-stop-shop’ agents and audience may not feel the need to search further and may tend to ‘single-home’ on the platform operated by the merged entity. However, that may not be the case. If there are benefits to using more than the one website and the cost to do so is low, agents and audiences may continue to do so.
118. At this point, it is unclear whether agents and audience, having taken advantage of the bundles, would be less likely to multi-home. However, we consider that it is at least possible and continue to seek further evidence to test this.

119. Second, to the extent that the merged entity's bundle reduces multi-homing (and reduces the revenues the rivals can earn) we are considering whether this would material affect their ability to operate efficiently and raise barriers to entry. This may not be the case if, for example:
- 119.1 rivals can operate efficiently at smaller scale; and/or
  - 119.2 rivals can differentiate themselves sufficiently so they can continue to attract audiences (although if so, they may not be a direct competitor to the merged entity). For example, OneRoof may be able to generate audiences through NZ Herald.
120. At this point, we consider there are likely to be economies of scale relating to the platforms. That is, the average costs of platforms are likely to fall as they increase their audiences and advertisers. We are still considering whether platforms can use other advantages to offset those scale effects.
121. We invite submissions on:
- 121.1 the extent to which agents and audiences multi-home (ie use several online real estate platforms in parallel) and whether this will be materially affected if the merged entity was to offer attractive bundles;
  - 121.2 if a reduction in multi-homing would materially affect the ability of rivals to operate efficiently; and
  - 121.3 if a reduction in multi-homing would materially raise barriers to entry.

## **Vertical effects**

122. 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.
123. 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.
124. One entity has indicated to us a concern that the Proposed Acquisition could remove a potential supplier of certain data, in circumstances where it would be difficult for that entity to obtain that data elsewhere.
125. At this point, it is unclear that Trade Me and Homes supply any inputs that could be used to foreclose rivals. In the case of several key data sources, such as council data and Land Information New Zealand (LINZ) data, the Parties do not appear to supply this data, and it is obtainable in any case from the respective regional councils and

LINZ, or potentially from other entities that have aggregated that data, such as CoreLogic, Valocity, and Headway Systems Limited. Another data source, listings data, is held by both Parties and could in theory be on-sold by each of them. It is sought-after by other industry participants because it can be added as an additional datapoint in valuation algorithms, potentially improving their accuracy. The Proposed Acquisition could in theory eliminate Homes as a provider of listings data to these companies. However:

125.1 real estate agents may be reluctant to permit their listings to be on-sold to third parties by real estate platforms.<sup>62</sup> Unless Homes has been able to negotiate with its agent/agency customers for the right to on-sell their listings to third parties, Homes is not likely to be a potential supplier of listings in the counterfactual; and

125.2 it is unclear that listings data is essential to compete in any market, as there are websites that provide valuations without that data.

126. At this stage, we do not consider that the Proposed Acquisition is likely to substantially lessen competition through vertical foreclosure. However, we are continuing to consider this theory of harm, and we welcome submissions in relation to it.

### **Next steps in our investigation**

127. The Commission is currently scheduled to decide whether or not to give clearance to the Proposed Acquisition by 4 June 2021. However, this date may change as our investigation progresses.<sup>63</sup> In particular, if we need to test and consider the issues identified above further, the decision date may extend.

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

### **Making a submission**

129. We are continuing to undertake inquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further evidence and other relevant information and documents that the Parties or any other interested parties are able to provide regarding the issues identified in this Sol.

130. If you wish to make a submission, please send it to us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference "Trade Me/PropertyNZ" in the subject line of your email, or by

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<sup>63</sup> The Commission maintains a clearance register on our website at <http://www.comcom.govt.nz/clearances-register/> where we update any changes to our deadlines and provide relevant documents.

mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **10 May 2021**.

131. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would be likely to unreasonably prejudice the commercial position of the supplier or subject of the information.