Trade Me / PropertyNZ

Expert Economic Opinion on the NZCC's Statement of Unresolved Issues

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Confidential to Others

Confidential to multiple parties

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1. INTRODUCTION

1. I have been asked by Blacktop lawyers, on behalf of Trade Me Limited (**Trade Me**), to prepare this report containing my expert economic opinion on the Statement of Unresolved Issues (**SOUI**) published by the New Zealand Commerce Commission (**NZCC**) on 30 June 2021 concerning the proposed acquisition by Trade Me of PropertyNZ Limited (**Homes**).

1.1. Qualifications

2. I am a Vice President of Charles River Associates (CRA), a global consulting firm comprised of a range of experts in economics, finance and strategy, with offices in Australia and throughout Europe and North America. I live in Sydney and manage CRA's Sydney office.

3. I have been employed by CRA since October 2004. From then until January 2014 I was based in CRA's London office within CRA's European Competition Practice. I became a Vice President in 2011. Since January 2014 I have been based in Sydney.

4. Prior to joining CRA, I worked in 1997 and 1998 as an economist for the Australian Competition and Consumer Commission (the ACCC) and in 1999 and 2000 as a competition lawyer with Mallesons Stephen Jaques (now King & Wood Mallesons), before studying and earning a Masters degree in Economics and a PhD in Business Administration from the University of California, Berkeley. I also hold a Bachelor of Economics (with first class honours) and a Bachelor of Laws (with first class honours) from the Australian National University.

5. My roles with CRA have involved advising firms and authorities, preparing expert reports and giving expert testimony in the context of a wide variety of competition law matters (including market investigations, merger proposals and reviews, authorisation applications, allegations of anti-competitive behaviour and damages claims) across a range of jurisdictions including the European Union and European Member States as well as Australia and New Zealand. My experience has involved many sectors of the economy, including retail, manufacturing, mining, banking, transport, health, telecoms, broadcasting and digital markets. I have also published numerous papers and presented at many forums on competition matters. My CV is included in the **Annex** to this report.

6. By reason of the above I have particular expertise in two sub-fields of economics: (i) industrial organisation; and (ii) competition economics (i.e. the economics of competition law).

1.2. Compliance with the New Zealand High Court's Code of Conduct for Expert Witnesses

7. I have read the New Zealand High Court's Code of Conduct for Expert Witnesses in Schedule 4 of the High Court Rules 2016 and agree to comply with it in providing this report. In particular, I understand and agree that I am not an advocate for any party and that I have an overriding duty to assist the Court (and the NZCC) impartially on relevant matters within my area of expertise.

1.3. Overview of this report

8. The SOUI expresses unresolved concerns in relation to horizontal unilateral effects resulting from a loss of competition in the supply of:

a. Online classified advertising for residential real estate for sale to agents and agencies (the listings market); and

b. Listings information and other property-related data and information to the audience (the audience market).[1]

9. These concerns are based on the NZCC holding the following views:

a. First theory of harm: Homes has been expanding within the listings market,[2] in the counterfactual Homes will grow to become a significant competitor to and constraint on Trade Me in the listings market, and the proposed acquisition would eliminate that future competition and constraint in the listings market and strengthen Trade Me's market power (this is a "loss of potential competition" theory of harm);[3] and

b. Second theory of harm: The proposed acquisition could raise barriers to entry and expansion with a flow-on effect of reducing competition in the audience and listings markets as a result of network effects (this is a foreclosure theory of harm).[4]

10. The NZCC also holds the view that there is a real chance that the remaining actual and potential competition in the markets in question would not be sufficient to replace the constraint lost due to the proposed acquisition.[5]

11. Based on my own review of the materials provided to the NZCC by Trade Me and Homes and the evidence referred to in the SOUI, I arrive at different views to those expressed in the SOUI in relation to:

a. The likely significance of the constraint from Homes on Trade Me in the listings market in the counterfactual and the loss of competition in that market (the first theory of harm);

b. The risk of foreclosure as a result of network effects in the audience and listings markets (the second theory of harm); and

c. The sufficiency of actual and potential competitors to constrain the merged entity if the proposed acquisition were to occur.

12. The remainder of this report presents, in turn, my views on the SOUI's two theories of harm (including the sufficiency of actual and potential competitors to constrain the merged entity).

13. I am aware of the broader global context of the NZCC's review of this proposed acquisition, which occurs at a time when theories of harm based on loss of potential competition and tipping – in particular in digital markets characterised by network effects – are of particular concern, and competition authorities have incentives to send signals of vigilance to firms contemplating acquisitions in these markets.

14. There are good reasons for concerns in some instances, particularly in markets that are dominated by firms that would otherwise be unconstrained and where the target has the

1 SOUI, paragraph 8.

2 SOUI, paragraph 9.1.

3 SOUI, paragraphs 9.2, 86.2-86.3 and 94-105.

4 SOUI, paragraphs 9.2, 86.3 and 106-110.

5 SOUI, paragraphs 9.3 and 86.4.

potential to disrupt the status quo, and in markets where a proposed acquisition poses a real risk of "tipping".

15. However, in my view this is not the signal case. As I explain in the remainder of this report:

 a. The markets in this case are characterised by a number of capable and well-resourced competitors aside from the target, rather than dominated by a single unconstrained firm;

 b. There are non-trivial obstacles for Homes to overcome in order to expand into the listings market in the counterfactual and Homes itself does not consider itself a potential competitor to Trade Me due, in part, to those obstacles, and also a strategy of remaining focused on supply of services in an adjacent market (digital advertising);

 c. Although indirect network effects are present and important, multi-homing is a significant and enduring feature of the markets in question, mitigating against a likelihood of tipping; and

 d. Customers enjoy significant countervailing buyer power in the form of industry ownership of the largest competitor to the acquirer, which is a further mitigant against anti-competitive effects.

2. THE FIRST THEORY OF HARM: LOSS OF POTENTIAL COMPETITION IN THE LISTINGS MARKET

16. The first theory of harm expressed in the SOUI is that the proposed acquisition would eliminate future "significant" competition and constraint from Homes in the listings market.[6] The basis for this theory of harm is that Homes has been expanding within the listings market[7] and the view that Homes is likely to grow to become a significant competitor to and constraint on Trade Me in that market absent the acquisition.[8]

17. More specifically, I understand the NZCC's view is that even if Homes does not focus on competing in the listings market (i.e. even if Homes lists properties only as one of many ways to retain the attention of its *homeowner* audience), it will (even if inadvertently) grow its audience of prospective *home buyers* to such an extent as to make it so valuable as a website for agents/vendors to attract prospective home buyers as to become a significant constraint on Trade Me in the listings market.[9]

18. For Homes to become a significant constraint on Trade Me in the counterfactual, two things are needed:

 a. First, Homes would need to become a significant destination for home buyers seeking to find properties for sale; and

 b. Second, realestate.co.nz and OneRoof must not effectively constrain Trade Me on their own. For example, if we think of agent/vendor listing decisions in a bargaining

6 SOUI, paragraphs 94-105.

7 SOUI, paragraph 9.1.

8 SOUI, paragraphs 9.2, 86.2-86.3 and 94-106.

9 SOUI, paragraphs 94 and 98.

framework, what matters are their outside options if negotiations with Trade Me break down. If agents/vendors are able to use the outside options of realestate.co.nz and/or OneRoof to effectively constrain Trade Me, the additional constraint that Homes might come to represent, even if it were to continue to grow in the audience and listings markets, will be limited, and conversely the loss of that constraint would not represent a substantial lessening of competition.

19. Regarding these two conditions, my own reading of the evidence is very different to the NZCC's. On my reading of the evidence:

   a. Homes is not likely to become a significant destination for home buyers looking for properties for sale. Homes has and will continue in the counterfactual to have a brand and reputation as a website providing valuations and other property information *to homeowners*, rather than as a website *for home buyers* searching for properties for sale, and Homes attracts and will continue to attract an audience that is *predominantly comprised of homeowners rather than home buyers*;

   b. realestate.co.nz and OneRoof both have substantial reputations as listings sites for *home buyers*, are well-resourced and focused on competing in the listings market and growing their audiences of prospective *home buyers,* and are and will in all likelihood remain significant constraints on Trade Me in the listings market.

20. Given the above, there is no "real risk" that the proposed acquisition will eliminate a significant competitor or constraint on Trade Me in the listings market. Homes faces substantial obstacles to becoming a significant player in listings and, in any event, Trade Me will be constrained by two significant listings-focused competitors. Even if Homes were to continue to grow in the listings market, and even if its brand were to come to be perceived by most home buyers as a comprehensive listings site, there is no "real risk" that it will come to represent so significant a constraint on Trade Me that its loss as a competitor in that market would represent a substantial lessening of competition, because Trade Me will continue to be constrained by both realestate.co.nz and OneRoof.

21. The following sub-sections elaborate.

2.1. Homes is not likely to become a significant destination for home buyers looking for properties for sale

22. My reading of the evidence is that in the counterfactual Homes will continue to be a site mainly for homeowners and will not become a significant destination for home buyers looking for properties for sale. The following is the basis for this view.

2.1.1. Behaviours and attitudes of home buyers and agents/vendors

23. The behaviours and attitudes of home buyers and agents/vendors provide important evidence on the brand positioning of Homes, Trade Me and other market participants, and the current and future extent of competition and constraint from Homes in the listings market. This evidence, which I review below, reveals that Homes is not currently viewed as a site for connecting buyers and sellers of property and is not currently a significant competitor in the listings market. I also explain why there are likely to be significant obstacles in the way of Homes shifting the existing perceptions of Homes' brand and patterns of behaviour.

Behaviour of home buyers

24. Agents/vendors list properties for sale on property sites to gain exposure for and generate active buyer interest in those properties. Good measures of the competitive significance of property sites in the listings market are therefore the number of views per listing and the number of enquiries/referrals of prospective home buyers to agents per listing via each site.

a. I understand that on average [redacted][10]

b. The available data on enquiries per listing is presented below. As can be seen from this data, [redacted]

Table 1: Enquiries per listing for Trade Me, realestate.co.nz and Homes (May 2021)

Site	Listings	Enquiries	Enquiries per Listing
Trade Me	[redacted]	[redacted]	[redacted]
Realestate.co.nz	[redacted]	[redacted]	[redacted]
Homes	[redacted]	[redacted]	[redacted]

Sources: [redacted].

25. This data demonstrates that home buyers are [redacted], and consequently agents/vendors are unlikely to view Homes as a significant alternative in the listings market. While [redacted] these appear to be market wide developments rather than specific to Homes, with [redacted]. This can be seen in [redacted].[11] [redacted] as demonstrated above.

26. Consistent with this:

a. Homes reports that [redacted];[12] and

b. [redacted]

10 This is based on [redacted] compared to [redacted].

11 I have also had reference here to the spreadsheet named [redacted]

12 [redacted]

[redacted][13] [redacted]
[redacted].[14]

27. In summary, the evidence on the behaviour of home buyers suggests that Homes is not currently a significant site for active home buyers seeking to identify properties for sale, and that Homes is regarded by active home buyers very differently to Trade Me, realestate.co.nz and OneRoof. In other words, although the Homes site includes listings, Homes is not a competitive force in the listings market.

Behaviour and attitudes of agents/vendors

28. Consistent with the above, the statements attributed to agents in the SOUI present a consistent picture that agents perceive Homes to be a site for homeowners and sellers rather than buyers, and do not see Homes as an important site on which to list properties for sale. In particular:[15]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

29. To be clear, although agents/vendors do not appear to value listing properties for sale on Homes, agents do value advertising their services on Homes. This is logical, because there is an important audience on Homes for agents in the form of potential future vendors (i.e. homeowners that may wish to sell their property). [redacted] This distinction is explained in Homes' response to the SOUI.[16]

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13 [redacted]

14 [redacted]

15 SOUI, footnote 96.

16 See Homes' response to the SOUI, paragraphs 3 and 4.

Considerable effort and expense would be required to change the existing perceptions of Homes and patterns of behaviour

30. Significant investment will usually be required to develop a brand that is widely recognised as a site for home buyers and that attracts a large active home buyer audience (which is what is needed to be a significant competitor and constraint in the listings market, as views of listings by active home buyers are what agents and vendors seek).[17]

31. For Homes, while it has a strong brand, that brand is currently associated with property information for homeowners, and as the evidence referred to above demonstrates, that brand is not currently attracting many active home buyers or generating many leads for agents.

32. In my view, considerable effort and expense would likely be required in order to change consumer perceptions and patterns of behaviour. To invest in this would also come with the risk of a loss of focus on Homes' broader strategy and brand perception as the [redacted].

33. OneRoof has successfully entered and expanded in the listings market in recent years. However, there are a number of important differences between OneRoof's entry and expansion in the listings market and expansion by Homes in that market.

    a. First, OneRoof has benefitted from the financial strength of, and cross-promotion from, the NZME media business, as well as direct linking from NZME's digital sites including nzherald.co.nz. I also understand that the NZ Herald print newspaper already had a significant number of listings at the time of OneRoof's entry, and that NZME rebranded the print listings publication to OneRoof, giving the OneRoof digital site a substantial immediate reputation for listings.

    b. Second, OneRoof was able to shape consumer perceptions of its brand as it entered and expanded as it did not have a different pre-existing brand perception, whereas Homes has an established perception among consumers as a site for homeowners rather than home buyers, which would need to be shifted.

    c. Third, OneRoof entered and expanded at a time when there were only two other significant brands associated with listings of properties for sale (realestate.co.nz and Trade Me), whereas expansion by Homes would need to occur in the context of three significant existing brands in that space. The listings market is therefore more "crowded" today, which is reflected in [redacted].[18]

34. Having said this, if the NZCC considers that Homes would be able without much effort to change perceptions and expand in the listings market, then as a matter of consistency it should consider that a number of other players with significant audiences of their own and already providing listings could expand in that market, including Stuff/Neighbourly, Hougarden and Facebook.

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17 For this reason, a good measure of competitive significance in the listings market is the number of referrals of prospective home buyers to agents via each site.

18 [redacted].

2.1.2. Trade Me's view of the constraint from Homes in the listings market

35. As the SOUI records, Trade Me considers that [redacted].[19]

36. Consistent with this, Trade Me's internal documents indicate that [redacted],[20] [redacted],[21] and [redacted][22] Trade Me's internal documents also [redacted].[23] Homes [redacted]

37. This all indicates that [redacted]

2.1.3. Homes' view of its brand and prospects for growth in the listings market

38. Homes' brand and reputation is associated with providing a broad set of property information for *homeowners*. This is apparent from the evidence referred to above on home buyer and agent/vendor behaviour and attitudes to Homes as a listings site, as well as from [redacted].[24]

39. Homes' submission in response to the SOUI confirms that [redacted].[25] The reason for this focus is that [redacted].[26]

40. Consistent with this, the Google search engine results page (SERP) contains the following description below the blue link to the Homes site: "Explore free estimated values, sales histories & council records of homes in your area. 1.7 million NZ properties on a beautiful

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19 SOUI, paragraph 95.

20 SOUI, paragraphs and 114.1 and 119.2.

21 SOUI, paragraph 114.2.

22 SOUI, paragraph 119.1.

23 SOUI, footnote 92.

24 [redacted].

25 [redacted]

26 [redacted]

map interface".[27] There is no mention here of properties for sale. This reflects a brand positioning as a property information site for homeowners, rather than a listings site.[28]

41. My reading of Homes' evidence is that in the counterfactual Homes will seek to maintain this brand perception rather than devote capital and other resources to having its brand become associated with a marketplace for buyers and sellers of property to meet. My reading of Homes' evidence is also inconsistent with the idea that it might inadvertently become a competitor in the listings market without a conscious strategy and investment. According to Homes:

a. [redacted][29]

b. [redacted].[30] [redacted] [redacted][31] [redacted][32] and

c. [redacted][33]

42. According to Homes, [redacted].[34] Homes explains that it [redacted].[35]

43. These statements are consistent with the evidence on home buyer behaviour that I summarised earlier, including the [redacted]

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27 The Google SERP description is generated based on the content of a page as well as references to it that appear on the web. See https://developers.google.com/search/docs/advanced/appearance/good-titles-snippets.

28 By contrast, the Google SERP description for realestate.co.nz and OneRoof are, respectively: "Search for real estate, houses for sale, rentals, commercial and businesses for sale at realestate.co.nz. New Zealand's industry owned property website" and "OneRoof enhances New Zealand's latest real estate with the latest property and market insights to help make your property decisions easier."

29 [redacted]

30 [redacted].

31 [redacted].

32 [redacted]

33 [redacted].

34 [redacted]

35 [redacted]

44. I have reviewed a number of Homes' internal documents, including its [redacted]. On my reading, these documents are consistent with Homes' submissions to the NZCC. The documents are dominated by [redacted]

a. [redacted]

b. [redacted]

c. [redacted]

d. [redacted]

e. [redacted]

45. In summary, Homes' submissions to the NZCC and its internal documents present a consistent picture that Homes [redacted]

46. The greater future significance of Homes as a constraint on Trade Me that the SOUI anticipates is based on a view that Homes will realise considerable network effects in the listings market from growing in the audience market. The inconsistency of this view with Homes' expectations for its own future is striking. The SOUI attempts to reconcile the inconsistency by suggesting that even if Homes does not have a strategic focus on growing in the listings market, Homes will inadvertently become a significant constraint on Trade Me via indirect network effects Homes itself is not anticipating. This strikes me as highly speculative: to maintain this theory of harm the NZCC must have confidence that it is a better judge of the future potential of a business than the business itself.

2.1.4. The evidence and arguments in the SOUI

47. In this sub-section I review the evidence and arguments in the SOUI. I consider that the view in the SOUI that Homes is likely to significantly constrain Trade Me in the listing market in the counterfactual is unsubstantiated by the evidence presented in the SOUI and speculative.

Paragraphs 69-84 of the SOUI

48. The SOUI's consideration of the counterfactual in paragraphs 69-84 only leads the NZCC to a view that "Homes will likely continue to expand its competitive position within the listings and audience markets".[36] The evidence in these paragraphs does not justify a conclusion that Homes is likely to *significantly constrain* Trade Me in the listings market in the counterfactual, but confirms that Homes' focus is and will continue to be on growing a broad audience interested in property information, rather than attracting prospective home buyers and competing in the listings market.

   a. In paragraph 75 the SOUI explains that "Homes seeks to appeal to as broad a range of real estate-interested audiences as possible" and the material referred to in the associated footnote 43 [redacted]

   b. Footnote 44 refers to [redacted] This reflects Homes' focus on providing property information to *homeowners* rather than providing comprehensive listings information to *home buyers* and being known as one of the leading places for sellers and buyers of property to meet.

   c. While Homes' ongoing development of new products and services may continue to attract audiences to its platform (paragraph 79), these developments confirm Homes' continuing focus on growing a broad property-information interested audience, rather than a shift in focus to becoming a major competitor in listings.

      i. [redacted]

      ii. [redacted]

36 SOUI, paragraph 83 and see also paragraph 72.

iii. [redacted]

d. While it is true that Homes has [redacted] (paragraph 76.1), and it may also be true that [redacted] (footnote 45), this is consistent with Homes' submission to the NZCC that "it has not demonstrated sufficient additional value" relative to other listings sites and while it will "continue 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" where these aspects "generally relate to the provision of property data/information and the monetization of that data through advertising partnerships with agents and businesses" (paragraph 71).[38]

e. The increase in Homes' audience over time (also referred to in paragraph 76.1), which is captured well in [redacted] is not informative of the extent of Homes' current or future constraint on Trade Me and other players in the listings market because: (i) I understand the audience measure for Homes captures Homes' entire audience which is predominantly homeowners, rather than prospective home buyers specifically; and (ii) as can be seen [redacted]

f. I understand that the NZCC has not shared with Trade Me's advisors the [redacted] on which the SOUI bases its statements in paragraph 76.2 that "Homes appears to be attracting more buyers" and that [redacted] This document has also not been shared with me. I therefore cannot comment on these statements.

g. Finally, [redacted] (paragraph 76.3), this has been achieved on the basis of [redacted] and has no bearing on whether it is or will become a significant competitor and constraint in the listings market.

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37 The reference to "filters" is not necessarily a reference to filters solely for searching "for sale" listings. The Homes site includes filters for searches for properties "for sale", "sold" and "for rent". It also does not currently include filters for searching for "all homes", which seems to be a gap in its filtering that might be addressed with technical development.

38 Footnote 49 of the SOUI also refers to [redacted]

Paragraphs 94-105 of the SOUI

49. To summarise these paragraphs, the NZCC's view is that even if Homes does not focus on competing in the listings market (i.e. even if Homes lists properties only as one of many ways to retain audience attracted to its site mainly for valuations and other property information), it will (inadvertently) grow its audience of prospective *home buyers* to such an extent as to make it so valuable as a website for agents/vendors to attract prospective home buyers as to become a significant constraint on Trade Me in the listings market.

50. This is a theory based on network effects transferring growth by Homes in the audience market into growth by Homes in the listings market to such an extent as to make Homes a *significant constraint* on Trade Me in the listings market notwithstanding the existence of two listings-focused competitors that are presently viewed by agents as Trade Me's closest competitors and constraints.

51. I do not see any evidence in the SOUI to support this theory. The only evidence in this part of the SOUI is in paragraph 97, where the SOUI states that "regardless of Homes' focus", Homes has "increased its total monthly listings" and "a significant proportion of buyers use Homes". The basis for the statement that "a significant proportion of buyers use Homes" is [redacted]. Again, I understand that this document has not been shared with Trade Me's advisors and it has not been shared with me. It is therefore not clear to me [redacted]. The evidence I have reviewed suggests that only a small proportion of home buyers *searching for properties* (less than [redacted]) use Homes when doing so, and only a very small proportion (less than [redacted]) use Homes as their first choice.[39]

52. Reflecting the lack of evidence, the theory presented in the SOUI appears entirely speculative. In particular:

    a. Paragraphs 98 and 99 contain a large number of "if"'s, "may"'s and "could"'s;

    b. It is not substantiated that Homes would be used significantly more by home buyers (paragraphs 98-99). Hurdles in the way of this – including investment by Homes in repositioning its brand/reputation amongst home buyers – are ignored. It is also not substantiated that more home buyers using Homes would translate into substantially more value for agents/vendors in the form of substantially more views of listings and substantially more enquiries;

    c. It is not substantiated that audiences would *switch* to using Homes and use Trade Me less or less often or for shorter periods, rather than use Homes in addition, let alone that any reduction in use of Trade Me might be to such an extent as to materially reduce Trade Me's attractiveness to agents and advertisers (paragraph 99.1);

39 [redacted]

d. It is not substantiated that growth of the Homes site would produce a situation in which agents/vendors would realise they have viable alternatives (given that there would already be realestate.co.nz and OneRoof) (paragraph 99.2); and

e. It is not substantiated that the growth of the Homes site would have the "compounding effect on Trade Me" that the SOUI contemplates (paragraph 100 and footnote 73). The SOUI refers here to [redacted]. It is not clear why growth of Homes should affect Trade Me disproportionately to realestate.co.nz and OneRoof. Therefore, unless the SOUI contemplates Homes becoming "#1", there is no basis for contemplating Trade Me losing its "#1" position due to growth of Homes.

2.1.5. Conclusion

53. My reading of the evidence is that Homes is, and in the counterfactual will continue to be, a site mainly for homeowners, and will not become a significant destination for home buyers looking for properties for sale. This is based on:

a. Evidence on behaviours and perceptions of home buyers and agents/vendors and the investment required to change those perceptions and patterns of behaviour;

b. Trade Me's view of the constraint it faces from Homes;

c. Homes' own view of its brand and prospects for growth in the listings market and the effort, expense and risk that would be required to change perceptions of home buyers and agents/vendors so that Homes might become known as a key site for searching for homes for sale; and

d. The evidence and arguments in the SOUI, which do not persuade me that there is a likelihood that Homes will grow to become a significant player and constraint in the listings market.

2.2. Realestate.co.nz and OneRoof are significant constraints on Trade Me today and this is not likely to change in the counterfactual

54. As I explain below, my reading of the evidence is that realestate.co.nz and OneRoof both have substantial reputations as listings sites for *home buyers*, are focused on competing in the listings market and growing their audiences of prospective *home buyers,* and are and will in all likelihood remain significant constraints on Trade Me in the listings market.

2.2.1. Countervailing buyer power of agents via realestate.co.nz

55. In my view, realestate.co.nz represents a significant constraint on Trade Me, not only due to its size of home buyer audience and perception among home buyers as a significant listings site, but also because it is owned by Trade Me's largest customers and is therefore a ready vehicle for agents to exercise countervailing buyer power.

56. Realestate.co.nz is the second largest site in the listings market today after Trade Me, when measured in terms of both [redacted]

[redacted].[40] Its significance as a competitor in the listings market and as a constraint on Trade Me is confirmed in the statements of agents reported in the SOUI.

a. As the SOUI records, "[a]gencies consider realestate.co.nz's strengths are its brand name and rate of referrals".[41] As explained earlier, rates of referrals (i.e. enquiries) are a key metric for competitiveness in the listings market.

b. Although [redacted][42]

c. [redacted][43]

57. Reflecting these views of agents, the SOUI records that [redacted] and Trade Me's range of products/services offered to home buyers have been shaped by competition with realestate.co.nz.

58. Moreover, realestate.co.nz is owned by the industry (50% by five large agencies and 50% by REINZ). These large agencies and REINZ have strong incentives to maintain realestate.co.nz as an effective alternative to and constraint on Trade Me. The idea that realestate.co.nz serves a role as a vehicle for agents to constrain Trade Me in the listings market is not just theoretical, but a view held by participants in the industry.[44]

59. The SOUI nonetheless suggests that realestate.co.nz may not maintain or increase its level of constraint in the listings market in the future.[45] In doing so, the SOUI suggests that realestate.co.nz's listings numbers and audience figures "have not materially grown for some time". This is not apparent from the listings and audience data that I have seen.[46]

60. The SOUI also suggests that realestate.co.nz is not offering new products or services at the rate of other platforms or innovating. However, I understand that realestate.co.nz offers valuations and other property information, recently invested in a new website, and, as the

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40 [redacted]

41 SOUI, paragraph 114.3.

42 SOUI, footnote 81.

43 SOUI, footnote 56.

44 [redacted]

45 SOUI, paragraph 115.

46 The data on listings in [redacted] suggests that [redacted] and the data on unique audience in [redacted] suggests that [redacted]

SOUI records, "has recently announced improvements to its valuation product".[47] This contradicts the SOUI's view that realestate.co.nz is not innovating and not being invested in by its owners. Moreover, as realestate.co.nz is a site focused on listings, it should not be expected to offer new products or services (e.g. home design ideas) at the rate of Homes and OneRoof, which have broader strategies. This will not detract from realestate.co.nz's competitiveness in the listings market.

61. The SOUI also refers to [redacted]. In my view, [redacted] In particular, the statements of agents reported in the SOUI and the listings and audience data that I have viewed do not suggest [redacted].[48]

2.2.2. Current and future effectiveness of OneRoof as a constraint

62. The SOUI explains that "[i]f OneRoof is likely to expand to a similar or greater level of competitive constraint on Trade Me as Homes in the counterfactual, then the Proposed Acquisition may not result in a substantial lessening of competition".[49] In my view, on the available evidence there is a very high likelihood of this and no real risk of the converse.

63. Although OneRoof only entered the listings market in 2018, its unique audience [redacted] (as of June 2021)[51] and it is [redacted].[52]

64. The SOUI acknowledges that OneRoof "appears to already represent some competitive constraint", with similar numbers of listings as Trade Me in Auckland, [redacted][53] [redacted]

a. [redacted]

b. [redacted] and

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47 SOUI, footnote 42.

48 See paragraph 56 and footnote 46 above.

49 SOUI, paragraph 121.

50 See [redacted].

51 This is based on [redacted].

52 [redacted]

53 SOUI, paragraph 119 and footnote 92.

c. [redacted][54]

65. By contrast, as explained above, Homes does not currently represent any competitive constraint on Trade Me, [redacted].

66. Moreover, as the SOUI acknowledges, agencies consider OneRoof to be a closer competitor to Trade Me than Homes.[55] That is arguably an understatement: Trade Me appears to consider OneRoof to be [redacted], and on my reading of the statements of the agencies reported in the SOUI, most identify OneRoof as an important competitor (with one observing OneRoof to be superior to Trade Me in terms of property information) and Homes as [redacted] from a listings market perspective.[56]

67. The SOUI also takes the view on the evidence that OneRoof is "likely to expand further" based on its recent growth in listings and audience, pipeline of product developments and financial support and referral traffic from NZME".[57] I agree with this view and would add that NZME has a strategic imperative to grow its digital presence in order to transition from print, is well-resourced to do so and has stated that its "[s]trategic priority is creating New Zealand's leading real estate platform."[58] The prospects for growth of Homes in the listings market are much dimmer, as explained earlier.

68. Notwithstanding all this, the SOUI lists four "factors that may undermine the likelihood or ability of OneRoof to expand to constrain Trade Me"[59] and the NZCC concludes that it "cannot at this stage rule out the real chance of a counterfactual in which Homes grows to constrain Trade Me but OneRoof does not".[60] Only the first two of the factors relate to the counterfactual (the last two concern the situation if the proposed acquisition were to proceed).

    a. Regarding the first factor – OneRoof's current strength in Auckland – while it may take more time for OneRoof to grow its listings presence throughout the rest of New Zealand I see no reason to doubt this will occur, since NZME main digital site (nzherald.co.nz) is a national site, it has radio and other print assets that are nationwide, as well as some regional print assets, and I understand OneRoof is intended to be a national site.

    b. Regarding the second factor – whether OneRoof will provide an ongoing return deemed acceptable to NZME – I note the material in Trade Me's response to the SOUI including that OneRoof is already producing an 8% EBITDA margin, and I agree with Trade Me's view that "there is no reason to believe that OneRoof is likely to exit the market, and certainly no reason to think it is more likely to exit than Homes".

54 SOUI, footnote 92.

55 SOUI, paragraph 122.

56 SOUI, footnotes 55-57, 61 and 96.

57 SOUI, paragraph 120.

58 NZME, 2020 Interim Results Presentation, page 23.

59 SOUI, paragraph 124.

60 SOUI, paragraph 126.

69. I therefore consider that the NZCC can confidently rule out there being a real chance of a counterfactual in which Homes grows to constrain Trade Me but OneRoof does not.

2.3. Asymmetric analysis of Homes compared to realestate.co.nz and OneRoof

70. The confidence that the SOUI expresses regarding the future for Homes in the listings market (indirectly via growth in the audience market) is in stark contrast to the uncertainty the SOUI expresses regarding the future of the far more significant existing competitors in the listings market: realestate.co.nz and OneRoof.

71. The SOUI considers it "likely" that, through network effects, Homes will become a "significant competitor" and will "significantly constrain" Trade Me in the listings market in the counterfactual even if Homes does not have a strategic focus on listings.[61] By contrast, the future constraint in the same market from realestate.co.nz and OneRoof is said to be "unclear",[62] with the SOUI "not satisfied" that realestate.co.nz is likely to maintain or increase the level of constraint it exerts in the future[63] and unable to rule out a "real chance of a counterfactual in which Homes grows to constrain Trade Me but OneRoof does not".[64]

72. This is despite:

    a. realestate.co.nz being backed by five of the largest real estate agencies plus the Real Estate Institute of New Zealand (REINZ), giving the main customers of Trade Me a ready vehicle to exert countervailing buyer power in circumstances where those customers have strong incentives to ensure no player monopolises the listings market;

    b. OneRoof being owned by the major media entity NZME, which has a strategic imperative to increase its digital presence in the context of declining print revenues, the ability to cross-promote and direct significant volumes of internet traffic to OneRoof and recently stated that its "[s]trategic priority is creating New Zealand's leading real estate platform",[65] and OneRoof being recognised by the SOUI as a greater current constraint on Trade Me than Homes; and

    c. Both these players offering valuations and other property information in their listings along with high-quality listings search functionality, and both having deliberate strategies to compete in the listings market (unlike Homes) and significantly greater presence and constraining effect than Homes in that market (whether measured in terms of brand awareness, views of listings, referrals of potential buyers to agents, or salience in Trade Me's competitor reckoning).

2.4. Summary

73. The NZCC has reached a view that, against Homes' own plans and expectations for its future and despite its own brand and reputation being for a different service, and

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61 SOUI, paragraphs 94 and 98.

62 SOUI, paragraph 111.

63 SOUI, paragraph 115.

64 SOUI, paragraph 126.

65 NZME, 2020 Interim Results Presentation, page 23.

notwithstanding that Trade Me faces competition in listings from at least two established listings-focused competitors, Homes is likely to grow from the current situation in which it is largely irrelevant in the listings market to become a *significant* constraint on Trade Me via (unintentional) indirect network effects that follow from Homes' more general audience growth. I consider this to be a highly speculative and implausible theory of harm given the evidence reviewed in this section.

74. Mergers are often characterised by reference to the number of significant competitors without and with the merger: for example, many mergers are characterised as "four to three", meaning that the merger will change the market from a market with four significant players to a market with three significant players. In my view, the proposed acquisition's effect on the listings market is best characterised as a "three to three", with one of those three acquiring a fringe player that is unlikely to become a significant fourth listings player.

3. THE SECOND (FORECLOSURE) THEORY OF HARM

75. I understand the NZCC is concerned that the proposed acquisition may not only eliminate future competition from Homes in the listings market, but may also raise barriers to entry and expansion, and that this may result in a flow-on effect of reducing competition in the audience and listings markets as a result of network effects.[66]

76. The NZCC's views in this regard are set out further in paragraphs 107-110 of the SOUI. I understand the views expressed in the SOUI to be the following.

a. The merged entity would have:

i. A larger audience than Trade Me would have in the counterfactual, due to both adding Homes' active buyer audience and catching audience members that may become active buyers earlier in the "property funnel";[67] and

ii. A stronger position in property information than Trade Me would have in the counterfactual;[68]

b. These things together may reduce the audience that engage with competing real estate platforms and reduce the relative attractiveness of competing platforms for agents/vendors in the listings market[69] because:

i. Some active buyers that in the counterfactual would use Homes for property information and competing platforms (not Trade Me) when searching for listings may use Trade Me when searching for listings and reduce their use of competing platforms; and

ii. As the merged entity would offer both listings and property information, active buyers may multi-home less and visit competing platforms less frequently;[70]

66 SOUI, paragraphs 9.2 and 86.3 and 106.

67 SOUI, paragraphs 107.1 and 107.2.

68 SOUI, paragraph 107.3.

69 SOUI, paragraph 108.

70 SOUI, paragraph 109.

c. Over time, this may raise barriers to entry and expansion for competing platforms due to network effects: agents/vendors may be less likely to list on competitor platforms with smaller audiences, which in turn may further reduce their audiences, with further effects on agent/vendor incentives to list on those platforms. In addition, barriers to entry and expansion would be higher because a successful platform would need to match the merged entity with respect to both listings and property information.[71]

77. In summary, the theory of harm is that the proposed acquisition may generate network effects in favour of the merged entity from both increased audience and a better product offering (i.e. better property information that can be combined with listings) that may weaken competition in both the audience market and the listings market.[72]

78. This is a foreclosure theory of harm – i.e. a theory based on weakening or exclusion of competitors – and so there should be a concern only if there is a real risk of foreclosure in this sense. I use the term "foreclosure" here to describe the weakening of competitors to such an extent that there would be no effective constraints on the merged entity (whether or not competitors would be excluded entirely).

79. The particular foreclosure concern here is a "tipping" concern[73] in the context of indirect network effects.[74] I use the term "tipping" to refer to a situation in which network effects result in one player realising a market position in which it is not effectively constrained by other players, even if other players may not be excluded from the market altogether.

80. Network effects and competition can coexist, and mergers in markets characterised by network effects do not necessarily raise competition concerns.[75] There is only cause for concern if the merger would create network effects that are likely to be so strong as to "tip" the market to a situation in which the merged entity would not be effectively constrained.

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71 SOUI, paragraph 110.

72 While the SOUI describes this as a theory of harm based on "flow-on" effects of reducing competition "in the audience market" (paragraphs 9.2 and 86.3), I understand it as a theory of harm based on indirect network effects affecting both the audience *and listings* markets.

73 Although the SOUI does not explicitly refer to "tipping" in paragraphs 106-110, the SOUI's earlier discussion of network effects in paragraphs 45-46 emphasises "winner takes all" and "tipping" as the potential concern associated with network effects. Also, while paragraph 110 describes the concern in terms of increasing network effects in favour of the merged entity that increase barriers to entry and expansion for rivals, tipping of the markets to the merged entity appears to be the concern being descr bed: the SOUI explains that "where there are significant network effects this can compound or accelerate the losses experienced by rivals" and that rivals will then find it "more difficult to build audiences and become a less attractive location for agents/vendors to list, in turn becoming less attractive to audiences".

74 In economics, network effects exist when the value of a product or service to users increases with the number of other users of the product or service. Direct (same-side) and indirect (cross-side) network effects are often distinguished. Phone networks and social media networks are examples of networks with direct, same-side network effects: the more people that have phones or that use a particular social media service, the more valuable each network is to each of them. Many platforms, however, exh bit indirect network effects, where the value to participants on one side of the platform (e.g. agents/vendors) increases with the number of participants on the other side of the platform (e.g. home buyers).

75 This was appreciated by the European Commission in its decision not to oppose the acquisition by Facebook of WhatsApp: see European Commission, Case No COMP/M.7217 – Facebook/WhatsApp, 3 October 2014 at paragraph 130. As the European Commission stated there, a case by case assessment is required.

81. The theory of harm described in the SOUI contemplates an improvement in the merged entity's product offering compared to Trade Me's offering (i.e. the combination of Homes' property information with Trade Me's listings). In general, competition policy and competition authorities do not worry about merged firms being able to offer better products – this is generally pro-competitive and of benefit to customers, and likely to incentivise investment and innovation by other firms, further enhancing competition and outcomes for customers. For this reason, there should only be a concern if there is a real risk of "tipping" in the sense just described, leading to a market in which the merged entity is not effectively constrained.

3.1. The "goldilocks" conditions required for this theory of harm

82. The SOUI is suggesting there is a real risk that the proposed acquisition will result in the audience and listings markets tipping where they would not otherwise. For this to occur, things would need to be "just right". For example, network effects inherent in the markets cannot be so weak that two or more effective competitors could remain post-merger, and they cannot be so strong that there would be tipping to one player even in the counterfactual (whether that player be Trade Me, realestate.co.nz, OneRoof or even Homes).

83. More formally, the conditions for the theorised harm to transpire are the following:

a. First, network effects inherent in the markets must be sufficiently strong that the markets are prone to tipping;

b. Second, network effects must not be strong enough for the markets to tip to one player in the counterfactual (i.e. network effects need to be of a strength consistent with effective competition in the counterfactual); and

c. Third, the proposed acquisition must strengthen network effects sufficiently for the markets to tip.

84. I consider that there is no "real risk" that the conditions are "just right" in this sense.

a. As I explain below, the audience and listings markets are not prone to tipping: important conditions for network effects to be strong enough for "tipping" to occur are not present and are not likely to be present following the proposed acquisition.

b. Even if following the acquisition there would be a situation conducive to tipping by providing the *merged entity* with an unmatchable combination of listings and property information and resulting in a higher degree of single-homing (as contemplated in paragraphs 109-110), the SOUI anticipates a counterfactual in which *Homes* would be a significant listings competitor with a similar number of listings as the merged entity and the same property information that the merged entity would have. It follows that if the conditions would be conducive to single-homing and tipping *to the merged entity* if the proposed acquisition were to proceed, they should be conducive to single-homing and tipping *to Homes* in the SOUI's counterfactual.

c. As I also explain below, the proposed acquisition is not likely to strengthen network effects significantly.

3.2. The audience and listings markets are not prone to tipping

85. Around the world, real estate platform markets are typically characterised by multiple platforms. In New Zealand, the listings and audience markets have not tipped previously and in fact there have been two notable instances of entry: first, entry by Trade Me in 2005

when there was only realestate.co.nz; and second, entry by OneRoof in 2018 when there was only realestate.co.nz and Trade Me. The entry by OneRoof is recent and occurred after many years in which realestate.co.nz and Trade Me co-existed without tipping occurring. Both entries have occurred despite network effects and in situations where the incumbent players have enjoyed considerable audience and listing number advantages over the entrants.

86. This suggests that network effects are not so strong in these markets as to cause tipping. That the market did not tip in New Zealand during the many years when realestate.co.nz and Trade Me co-existed, and, indeed, significant entry occurred, gives comfort that the market is not likely to tip following the proposed acquisition.

87. A number of conditions are necessary for indirect network effects to be strong enough for markets to be prone to "tipping". Among these, of particular relevance for the NZCC's assessment of the proposed acquisition, are:

a. Single-homing on each side of the market;

b. Other barriers to entry and expansion such as access to content or investments in brand/reputation; and

c. The absence of countervailing buyer power.[76]

88. For the reasons that I provide in the following sub-sections, these conditions for tipping are not present and are not likely to be present following the proposed acquisition:

a. The listings and audience markets are and will continue to be characterised by multi-homing (Section 3.2.1);

b. Barriers to expansion for realestate.co.nz and OneRoof are low (Section 3.2.2); and

c. Real estate agents enjoy significant countervailing buyer power (Section 3.2.3).

89. Therefore, while network effects are important for every competitor in these markets, they are not likely to be so strong as to result in foreclosure.

3.2.1. Multi-homing is a feature of real-estate markets that is unlikely to change

90. Whether users single-home or multi-home can have a significant impact on whether network effects in a market are strong enough to facilitate tipping. In general, multi-homing is seen as an important mitigant against tipping in markets characterised by network effects.[77] This is because users that prefer to multi-home and that can do so with minimal cost maintain scope for multiple platforms to be used and enjoy scale even if one platform may have some competitive advantages. By contrast, when users are happy to single

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76 The European Commission in its decision not to oppose the acquisition by Facebook of WhatsApp considered both the extent of single-homing and other barriers to entry when deciding that tipping was not likely in that case (European Commission, Case No COMP/M.7217 – Facebook/WhatsApp, 3 October 2014, paragraphs 131-134).

77 See, for example, David Evans and Richard Schmalensee (2007), "The Industrial Organisation of Markets with Two-Sided Platforms", *Competition Policy International*, 3(1), Spring 2007, pages 151-179 at 166. See also Bruno Jullien and Wilfried Sand Zantman (2020), "The Economics of Platforms: A Theory Guide for Competition Policy", *TSE Digital Center Policy Paper Series*, Toulouse School of Economics, July 2020, at page 6; and Kate Collyer, Hugh Mullan and Natalie Timan (2017), "Measuring Market Power in Multi-Sided Markets", *CPI Antitrust Chronicle*, September 2017, at page 3.

home or face barriers to multi-homing, there is a risk that the vast majority may come to use a single platform, denying scale to other platforms.

91. This was recognised by the European Commission in both Google/DoubleClick and Facebook/WhatsApp.

a. In *Google/DoubleClick* the European Commission observed a prevalence of multi-homing and evidence that ad networks competed even with a relatively small number of partners on the publisher side. The prevalence of multi-homing suggested that the participation by a publisher or an advertiser in one ad network (e.g. Google's AdSense) would not imply they would be unable or unwilling to participate in another ad network, and this was a major factor in the European Commission concluding that Google would lack the ability to foreclose competitors in ad intermediation markets through leveraging DoubleClick's leading position in ad serving.[78]

b. In *Facebook/WhatsApp*, the European Commission observed that a majority of users of consumer communications apps had installed and were using two or more of those apps and that multi-homing was facilitated by the ease of downloading these apps, which was generally also free, and the ease of using multiple apps. This meant that the fact that a large number of users would be using the merged entity's apps would not preclude use of competitor apps.[79]

92. Similarly, in the present case, the majority of agents/vendors multi-home and the majority of home buyers multi-home, and multi-homing for home buyers is facilitated by the ease of opening a new tab in a browser window and navigating to a different site where listings are provided for free to audiences.

a. Even in the counterfactual, some home buyers will single home. For example, according to research conducted for Trade Me, [redacted].[80] And of the [redacted], it is likely that some single home on realestate.co.nz and others single home on OneRoof.

b. However, according to the same research, [redacted] and the SOUI accepts that "the evidence shows multi-homing between different listings platforms by potential buyers of real estate".[81]

93. It follows that for the SOUI's second theory of harm to be maintained there needs to be a real risk of a *fundamental change* in the behaviours of prospective home buyers and agents/vendors towards single homing. I consider this highly unlikely for a number of reasons.

a. First, the merged entity would not gain a significant advantage in terms of property information compared to its two main competitors. While the proposed acquisition would enable Trade Me to offer Homes' property information within its listings including Homes' valuations, realestate.co.nz and OneRoof already offer similar

78 See European Commission, Case No COMP/M.4731 – Google/DoubleClick, 11 March 2008, at paragraphs 304-310. See also RBB Economics (2008), *Google/DoubleClick: The search for a theory of harm*, RBB Brief 26, June 2008, pages 3-4.

79 See European Commission, Case No COMP/M.7217 – Facebook/WhatsApp, 3 October 2014, at paragraph 133.

80 [redacted]

81 SOUI, paragraph 109.

property information (including valuations) as Trade Me would be able to offer post acquisition. Apart from valuations, the other property information that Homes would provide to Trade Me if the acquisition proceeded (e.g. utility or solar estimates) is not likely to be information that is particularly important for prospective home buyers. Moreover, even if the property information presented by Homes today is superior in some respect to the property information that realestate.co.nz and OneRoof currently present, if quality of property information is as important for competitiveness in the listings market as the SOUI suggests it might be, then realestate.co.nz and OneRoof are able and likely to respond by improving the quality of their property information (noting that none of this information is proprietary).

b. Second, the costs to home buyers of multi-homing are low, and as long as there is some differentiation between listings sites (whether in terms of the listings each presents, the ranking of listings or in other respects such as the property information included within the listings), home buyers have strong incentives to continue to multi-home because of the significance of the home buying decision – buyers have strong incentives to be aware of all properties for sale in an area and all information on those properties and therefore to multi-home even if one site has almost all the information.

c. Third, agents/vendors have strong incentives to multi-home (i.e. list properties for sale on multiple sites) as long as one site cannot offer close to 100% coverage of home buyers, due to the increase in expected sale price that more potential buyers represent. Moreover, even if one site offers close to 100% coverage of home buyers, agents/vendors have incentives to multi-home because the more times a prospective home buyer sees a property listing the more likely that listing is to be processed positively by or retained in the home buyer's brain.

3.2.2. Barriers to expansion for realestate.co.nz and OneRoof are low

94. Even if a larger proportion of home buyers were to single home post acquisition (because they consider they can get all the information they need from the merged entity), tipping would not be likely to occur if barriers to expansion of other existing players (in particular, realestate.co.nz and OneRoof) are low. If the proportion of single homing buyers were to increase, realestate.co.nz and OneRoof would have strong incentives to enhance their offerings to increase their own proportions of single homing buyers, and if barriers to expansion are low, they should be able to do so, mitigate tipping and maintaining a competitive equilibrium despite network effects.

95. I consider barriers to expansion for realestate.co.nz and OneRoof to be low.

a. Access to data/information. According to the SOUI, no competitor would be foreclosed from accessing any category of data/information (see para 12.3), although it should be acknowledged that access to comprehensive listings information is not always available (e.g. Homes does not have access to listings from two major real estate agencies). Realestate.co.nz and OneRoof already have close to comprehensive listings of properties for sale.

b. Brand/reputation. In my view non-trivial investments will usually be required in branding and developing a reputation among New Zealanders as a listings site in order to compete effectively in the listings market. However, realestate.co.nz has already established this reputation and does not face these barriers and OneRoof appears to have overcome these barriers with the backing of New Zealand's largest media business (NZME) including the nationwide highly visited nzherald.co.nz site. Investment hurdles remain in the path of Homes, which does not have the same ready access to free promotion and linking as OneRoof and would have the complication of repositioning its brand as a listings brand for home buyers as well as a property information site for homeowners. However, regardless of my view, the SOUI appears to regard these hurdles as low even for Homes, since it considers expansion by Homes to be likely in the counterfactual even without Homes investing significantly in brand/reputation as a listings site.

96. Since barriers to expansion are low for realestate.co.nz and OneRoof, tipping is not likely even if the extent of single homing were to increase post acquisition. This is because, even if more home buyers were to start to single home with Trade Me, realestate.co.nz and OneRoof should be able to respond and expand their own single homing audiences. Agents/vendors will then need to continue to multi-home to have their listings widely viewed by prospective home buyers.

3.2.3. Countervailing buyer power

97. Tipping is also unlikely if buyers are able to self-supply the service. Since buyers (in this case, agents/vendors) would be harmed by a market that tipped to a single supplier, they have incentives to counter tipping by promoting and supporting their own service, including by ensuring their own service maintains a comparable number of listings and comparable property information and other features to attract prospective home buyers. The existence of realestate.co.nz as an industry-sponsored listings site is therefore a further important mitigant against tipping in the New Zealand listings market.

3.3. The proposed acquisition is not likely to strengthen network effects significantly

98. I have explained above why the audience and listings markets are not prone to tipping. Even if that were not the case, the proposed acquisition is not likely to strengthen network effects significantly.

99. The SOUI points to the merged entity having a larger audience "as a result of adding Homes' audience (which includes at least some buyers) to Trade Me's".[82] I understand that Trade Me estimates the unique audience visiting Homes that do not visit Trade Me to be [redacted]. This compares to Trade Me's 12-month average unique audience of [redacted][83] Since Homes is currently perceived as a site for homeowners seeking property information and not as a site for searching for listings,[84] it is likely that the vast majority of the [redacted] unique audience that visit Homes and do not visit Trade Me are not active buyers. It follows that the incremental home buyer audience that might find their way to Trade Me following the proposed acquisition will be small compared to Trade Me's existing home buyer audience.

100. For example, even if we were to assume (conservatively in my view) that half of the [redacted] were to be incremental home buyer audience for Trade Me, this would increase Trade Me's

82 SOUI, paragraph 107.1.

83 [redacted]

84 See Section 2.1.1 above and in particular [redacted] (paragraphs 26.a and 26.b above).

unique home buyer audience by [redacted] In my view it is implausible that an increase in unique audience for Trade Me of [redacted] would be likely to result in a fundamental change in the market. Moreover, in all likelihood the incremental home buyer audience for Trade Me from acquiring Homes would be much less than [redacted].

101. The SOUI also points to the merged entity having a "strong position in the provision of property information".[85] However, as explained earlier,[86] the merged entity would not gain a significant advantage in terms of property information compared to its two main competitors, as realestate.co.nz and OneRoof already offer valuations and the other property information that Trade Me would gain from Homes (e.g. utility or solar estimates) is not likely to be information that is particularly important for prospective home buyers. Moreover, property information is not exclusive to Homes, and if quality of property information is important for competitiveness in the listings market and the merged entity were to gain an advantage in this respect, then realestate.co.nz and OneRoof will be able and likely to respond by improving the quality of their property information.

4. CONCLUSION

102. In my view there is no real risk of either of the SOUI's two theories of harm transpiring and that these theories of harm are implausible.

103. First, it is implausible that Homes, an uninterested fourth largest player in the listings market, will grow inadvertently to become a significant constraint on Trade Me in the counterfactual given the investment required for such growth and the context of markets in which there will be two other significant players focused on competing in listings. The asymmetric development necessary for this theory of harm – i.e. that Homes will grow to become a significant constraint in listings, but realestate.co.nz and OneRoof will become ineffective – is also implausible on the evidence I have reviewed.

104. Second, it is implausible that the additional audience that Trade Me might gain from acquiring Homes and the additional property information Trade Me might be able to include within its listings would result in foreclosure of reaelestate.co.nz and OneRoof and a weakening of competition. While the markets are characterised by network effects, tipping of the markets towards Trade Me is implausible because it would require a fundamental change in audience and agent/vendor behaviour towards single-homing. It would also require an inability of realestate.co.nz and OneRoof to respond and match the property information that the merged entity would be able to provide, however both realestate.co.nz and OneRoof already provide valuations with their listings, and the other property information that Homes might contribute to Trade Me is of limited relevance for prospective home buyers.

85 SOUI, paragraph 107.3.

86 See paragraph 93.a.

ANNEX: CURRICULUM VITAE OF DR GEOFF EDWARDS

Dr Geoff Edwards is a Vice-President in the European and Asia-Pacific Competition Practices of Charles River Associates (CRA), a global economic consulting firm with offices in Sydney and throughout Europe and North America.

Dr Edwards has extensive experience providing economic advice and opinions in competition and regulatory proceedings, including in the context of market investigations, merger proposals and reviews, authorisation applications, allegations of anti-competitive behaviour (unilateral and coordinated) and damages claims. Dr Edwards has advised firms and authorities on competition matters in relation to a wide range of sectors including retail, manufacturing, mining, banking, transport, health and digital markets and has extensive experience in telecoms and broadcasting.

Prior to joining CRA in 2004, Dr Edwards worked as an economist in the mergers and telecommunications branches of the ACCC and as a competition lawyer at Mallesons Stephen Jaques (now King and Wood Mallesons), before earning a Masters in Economics and a PhD from the University of California, Berkeley.

Experience Summary

2011 – present	*Vice President*, CRA International, London and Sydney
2007 – 2010	*Principal*, CRA International, London
2005 – 2006	*Associate Principal*, CRA International, London
2004 – 2005	*Senior Consultant*, Lexecon Ltd, London (acquired by CRA in 2005)
2001 – 2004	*MEc and PhD*, Haas School of Business, University of California, Berkeley
1999 – 2000	*Lawyer*, Mallesons Stephen Jaques Solicitors, Sydney
1997 – 1998	*Economist*, ACCC, Canberra and Melbourne

Competition and Regulatory Consulting Experience (2013 – 2021)

- Expert reports on market definition, effects on competition and public benefits and detriments prepared on behalf of Industry Committee Administration (ICA) in the context of ICA's application to the ACCC for authorisation of the amalgamation of BPAY Group Pty Ltd and BPAY Pty Ltd, EFTPOS Payments Australia Limited and NPP Australia Limited (2021).
- Advice and support including expert reports for Liberty Global in the context of the proposed joint venture between Liberty Global's Virgin Media and Telefonica's O2 in the United Kingdom (2020 – 2021).
- Advice to an African broadcaster in the context of an inquiry into the broadcasting sector (2017 – 2021).
- Advice to an MNO in the context of an investigation into alleged margin squeeze between its retail prices and its wholesale charges for national roaming and for mobile virtual network operator (MVNO) access (2013 – 2021).
- Advice to an MNO in relation to allegations that it has abused a dominant position by engaging in customer lock-in practices (2013 – 2021).
- Two expert reports submitted to the ACCC on behalf of NewsCorp Australia in the context of consultation over the ACCC's proposed News Media Bargaining Code. The CRA reports recommended bilateral negotiations over collective negotiations and proposed final offer

arbitration (FOA) as a way to resolve negotiation breakdowns. Both bilateral negotiations and FOA were recommended to Parliament by the ACCC and included in legislation passed by Parliament in 2021 (2020).

- Advice to two MNOs in the context of a proposed merger in Denmark (2020).
- Advice to an MNO in relation to an investigation concerning the effects of the pricing of a national roaming agreement on the network roll out of another MNO (2016 – 2020).
- Support to Telenor and the Nordic Entertainment Group (NENT) in the context of the European Commission's investigation of their proposed joint venture bringing together their direct-to-home (DTH) satellite television distribution assets. CRA's work has included GUPPI and vertical arithmetic modelling submitted to the Commission (2019 – 2020).
- Analysis and advice on the prospects for merger clearance of a proposed transaction in the pathology sector (2019).
- Advice to a private equity group in relation to a contemplated merger of software providers (2019).
- Support to an integrated fuel supplier in the context of the NZCC's market investigation of retail fuel in New Zealand (2019).
- Advice to a shipping company in relation to the competition risks of a contemplated acquisition of another shipping company (2019).
- Expert reports and testimony in the context of proceedings before the Federal Court of Australia in *ACCC v Ramsay*. This matter concerned an alleged refusal by Ramsay to provide surgeons access to one of its private hospitals if the surgeons utilised, were involved in or had an interest in a rival private day surgery in Coffs Harbour (2018 – 2019).
- Advice and support to an online hotel booking platform operator in the context of an ACCC investigation of narrow MFN clauses in agreements with hotels (2018 – 2019).
- Advice to an African broadcaster in relation to its defence of a number of complaints concerning wholesale access to premium sports channels and exclusive agreements for sports rights (2012 – 2019).
- Expert reports prepared for Transurban and submitted to the ACCC in the context of the ACCC's investigation of Transurban's proposed acquisition of a majority interest in the WestConnex project (three significant toll road concessions in the Sydney region) (2018).
- Advice to a major malt producer on the competition law risks of a contemplated acquisition of another major malt producer (2018).
- Advice to the NZCC in relation to its investigation of a contemplated merger of quarries producing road and concrete aggregate products. The advice concerned relevant markets and whether harmful horizontal or vertical effects were likely (2018). The merger was abandoned once the NZCC's opposition was expressed.
- Advice to a major coal producer in relation to a proposed acquisition of a share of a further coal mine and marketing agreements for the output of that mine (2018).
- Advice to an online travel agent (OTA) on various competition issues (2018).
- Advice in relation to a contemplated merger in the marine engineering sector (2017 – 2018).

- Advice to a major integrated fuel supplier in the context of a proposed acquisition of a large number of retail fuel sites and authorisation of other commercial arrangements (2017–2018).
- Advice and reports on the treatment of certain costs in the context of a legislative requirement to price certain services at cost, and modelling of the costs of those services (2017-2018).
- Advice in relation to a gas joint marketing agreement (2017).
- Advice to a mobile network operator (MNO) in relation to an investigation of alleged abuse of collective dominance concerning wholesale mobile access services (2017).
- Preparation of a report and testimony in the context of arbitration proceedings concerning an IP licensing agreement between Migrata and HemoCue in relation to technology for the testing of substances in fluids such as hemoglobin, and royalties claimed under that agreement (2017).
- Advice to a major coal producer in relation to contemplated acquisitions of further coal mines and interests in the coal supply chain (2016 – 2017).
- Advice to PMP (a major catalogue and magazine printer in Australia) in relation to its acquisition of IPMG (a rival printer) in the context of the ACCC's informal merger clearance process (2016 – 2017).
- Advice to MTN (an MNO in South Africa) in the context of an allegation of margin squeeze and other exclusionary abuses relating to on-net / off-net price differentials (2013 – 2017).
- Advice to an integrated coal producer and rail haulage supplier in relation to the competition law risks of a sale of its rail haulage business (2016)
- Advice to a number of financial institutions in relation to a proposal to collectively negotiate with mobile wallet providers, including two reports in support of an application to the ACCC for authorisation of collective negotiations (2016).
- Advice on rebate structures and alternatives in the manufacturing industry (2016).
- Advice to an Australian purchasing authority in relation to a Freedom of Information Act request that raised the issue of whether release of the information might adversely affect future competition by facilitating information exchange between competitors (2016).
- Advice to a company that had inadvertently acquired sole control of a vertically related entity, raising potential vertical concerns in relation to a planned divestment of part of its shareholding (2016).
- Advice to Telstra on international approaches to national roaming in the context of the ACCC's Consultation on National Roaming (2016).
- Advice to Sky UK in relation to Ofcom's consultation on "making (cross-platform) switching easier", including the preparation of a report that examined in detail Ofcom's estimates of the consumer benefits of the proposal (2016).
- Advice to a vertically integrated European pay TV channel producer and DTH platform operator/distributor on a contemplated merger with a cable operator (2016).
- Advice to a vertically integrated European pay TV channel producer and DTH platform operator/distributor on a contemplated acquisition of a DTT platform distributor (2016).

- Advice to a vertically integrated European pay TV channel producer and DTH platform operator/distributor on a contemplated acquisition by a major telecommunications supplier and IPTV platform operator/distributor (2016).
- Advice to a European sports channel producer in relation to wholesale channel pricing to comply with European competition law (2016).
- BT/EE and Three/O2: assistance to an interested third-party in the context of the investigations of these significant mergers of UK telecoms operators by the CMA and the European Commission respectively (2015 – 2016).
- Tullet Prebon/ICAP: advice to the merging parties in a friendly merger of inter-dealer brokers (2015 – 2016).
- Assistance to a competition authority in the context of an investigation of a merger in the healthcare industry – the merger was abandoned (2015).
- Preparation of a report for the Australian Retail Credit Association (ARCA) in support of ARCA's application for authorisation by the ACCC of the Principles of Reciprocity and Data Exchange (PRDE), a multilateral framework agreement to govern the voluntary contribution of personal credit information by credit providers to credit reporting bureaus (2015).
- Advice to a payment card scheme concerning the implementation of the European Commission's Interchange Fee (ICF) Regulation, including issues surrounding non-circumvention of the ICF cap and separation of scheme and processing activities (2015).
- Research and advice for a confidential client on structural separation in various industries including telecommunications, energy, rail and airports (2015).
- MNO sale: Advising the owner of an African MNO on the prospects for merger clearance of a sale of the MNO to a number of alternative potential buyers and potential remedies (2015).
- Report for MTN (South Africa) in the context of review proceedings brought by Cell C in relation to ICASA's September 2014 Call Termination Regulations (2015).
- Report for ETNO on *Economic Replicability Testing for NGA Services*, published in March 2015, coinciding with ETNO's Let's get the Fibre Rolling event in Brussels. The report recommended a consistent and proportionate approach across Europe to the parameters and procedures of economic replicability tests with the aim of promoting investment in next generation access (NGA) services while safeguarding competition (2015).
- Advice to Channel Ten in the context of Foxtel's acquisition of 15% of Channel Ten, including the preparation of a report on the effects of the transaction (2015).
- Advice to an African pay TV operator in relation to an allegation of excessive pricing of channel bouquets (2015).
- Preparation of a report for a European channel supplier in the context of the defence of a damages claim concerning the pricing of sports channels (2015).
- Advice to a pay TV operator in relation to a contemplated acquisition of a Free-to-Air (FTA) channel (2015).
- Preparation of a report for Digita (Finland) commenting on a draft SMP Decision and remedies proposed by the national regulator (FICORA) concerning access to antenna locations and antenna capacity (2015).

- Reports for MTN (South Africa) concerning the level of mobile termination rates and asymmetric rates for small players (2014).
- Advice to a UK water utility on competition law compliance of its non-household retail and wholesale prices in the context of the UK *Water Act* and associated regulations (2014).
- Advice to BT in relation to a number of margin squeeze complaints concerning retail broadband offers before Ofcom (2012 – 2014).
- Advice over many years to a major European incumbent telecoms company on how to avoid margin squeeze complaints with regard to various services, including the building of detailed margin squeeze models for internal regulatory governance processes (2010 – 2014).
- Advice on a contemplated merger of two large full service banks in two European member states (2013).
- Advice to a major European incumbent telecoms company on: (i) alternative methods of regulating wholesale local access (WLA) services in a next generation access (NGA) environment to prevent margin squeeze, considerations; (ii) economically sensible approaches to conceptual and modelling issues in assessments of margin squeezes in the context of NGA services; and (iii) important considerations in addition to the technical margin squeeze test that may allay concerns of anti-competitive behaviour (2013).
- Benchmarking analysis for an African broadcaster to understand the relative performance of its various operations in different countries (2013).
- Advice to a vertically integrated European pay TV channel producer and DTH platform operator/distributor on a contemplated acquisition of a rival premium pay TV channel packager (2013).
- Advice to a cable operator and a premium sports channel packager on a proposed sale by the cable operator of 25% of the channel packager to a competitor of the cable operator (a fixed telecoms incumbent). The transaction would have left the cable operator with a 25% share, and a third-party with 50%. The transaction raised potential vertical foreclosure concerns (input foreclosure and customer foreclosure) and our advice included consideration of non-compete clauses (2013).
- Advice to a European ferry operator on the potential to bring a complaint under Article 102 or under the State Aid laws against a competitor (2012 – 2013).
- Advice to Thomson Reuters in the context of a European Commission investigation concerning Reuters Instrument Codes (RICs) (2010 – 2013).
- Advice to BT in its defence of Ofcom's investigation of complaints by THUS plc and Gamma regarding BT's pricing of its Wholesale Calls product and its control of upstream call origination and call termination services (2009 – 2013).
- Advice to an African broadcaster in relation to investigations by the national broadcasting regulator concerning whether to establish an ex ante regulatory regime, including preparation of an international study of economic regulation of broadcasting and advice on arguments against regulatory intervention (2008 – 2013).

Publications

- "The Relevance of Economics in US, EU and Australian Competition Law," with Jennifer Fish, in D. Healy, M. Jacobs and R. Smith (eds.), *Research Handbook on Methods and Models of Competition Law*, Edward Elgar, Chapter 4 (2020).
- "Veering Left in Retail Merger Enforcement", *Competition & Antitrust Law 2020: Expert Guide*, CorporateLiveWire, pages 8-10 (2020).
- "The Market for Legislative Influence over Regulatory Policy," with Rui J P de Figueiredo, Jr. 34 *Advances in Strategic Management* (Strategy Beyond Markets), 193 – 232 (2016).
- "When is a Margin Squeeze not an Abuse?" with Mike Walker, 34(10) *European Competition Law Review*, 509-511 (2013).
- "Dominance and Market Power in EU Competition Law Enforcement," with Andrea Coscelli, in Geradin D. and I Lianos (eds.), *Research Handbook in European Competition Law,* Cheltenham, UK and Northampton, MA, US, Edward Elgar, Chapter 6 (2013).
- "Margin Squeezes and the Inefficient 'Equally Efficient' Operator," 32(8) *European Competition Law Review*, 402-405 (2011).
- "Parallel Trade in Pharmaceuticals: More Harm than Good?" with Andrea Coscelli and Alan Overd, 29(8) *European Competition Law Review* 490-492 (2008).
- "Does Private Money Buy Public Policy? Campaign Contributions and Regulatory Outcomes in Telecommunications," with Rui J P de Figueiredo, Jr. 16(3) *Journal of Economics and Management Strategy* 547-576 (2007).
- "Efficiency and Anti-Competitive Effects of Tying," with Andrea Coscelli, in C.D. Ehlermann and M. Marquis (eds.), *European Competition Law Annual 2007: A Reformed Approach to Article 82 EC,* Hart Publishing, Oxford (2007).
- "Small Business Reforms to Section 46: Panacea, Placebo or Poison?" 34(4) *Australian Business Law Review* 255 (2006).
- "The Effects of Public Ownership and Regulatory Independence on Regulatory Outcomes: A Study of Interconnect Rates in EU Telecommunications," 29(1) *Journal of Regulatory Economics* 23 (2006).
- "The Hole in the Section 46 Net: The *Boral* Case, Recoupment Analysis, the Problem of Predation and What to do About it," 31(3) *Australian Business Law Review* 151 (2003)."
- "The Perennial Problem of Predatory Pricing," 30(3) *Australian Business Law Review* 170 (2002).
- "Melway – a TCE Perspective," 10(2) *Trade Practices Law Journal* 77 (2002).

Presentations

- "Australian Merger Enforcement and Reform in Global Context", 2021 Competition Law Conference, Sydney, Australia (May 2021)
- "SLC Assessments in the Context of Disruptive Technologies", Law Council of Australia's Competition and Consumer Committee Workshop, Melbourne, Australia (August 2017).
- "Use and Misuse of Section 46", Comments on Luke Woodward and Matt Rubinstein's presentation to the 2016 Competition Law Conference, Sydney, Australia (May 2016).

- "The Use of Economic Expert Evidence in Europe", ACCC/UNISA 13th Annual Competition Law and Economics Workshop, Adelaide, Australia (October 2015).
- "Developments in Europe: The End of Economics?", ACCC/UNISA 13th Annual Competition Law and Economics Workshop, Adelaide, Australia (October 2015).
- "The Economics of Online Geographic Price Discrimination", International Competition Network (ICN) Annual Conference, Sydney, Australia, (May 2015).
- "Economic Replicability testing for NGA Services", ETNO's *Let's get the Fibre Rolling* Event, Brussels, Belgium, (March 2015).
- "Margin Squeeze Developments and Bundling of Telephony and Pay TV", IBC Conference on Competition Law and Regulation in the Telecoms, Internet and Broadcasting Sectors, Brussels, Belgium (November 2013).
- "Access to Content in the Context of Bundled Offers: When to Worry and What to Do", 4th Workshop on the Economics of ICTs, Evora, Portugal (April 2013).
- "Competition Law versus Sector Regulation: Pay TV Broadcasting in the UK", UCL Global Competition Law and Economics Series Conference, Competition Law and the State: International and Comparative Perspectives, Hong Kong (March 2011).
- "Australian Competition Law from 10,000 Miles Away", CRA International Asia-Pacific Annual Summit, Canberra, Australia (December 2005).
- "Predatory Pricing and Margin Squeezes", Ofcom Workshop Series in Intermediate and Advanced Competition Economics, London, UK (February 2005).
- "Does Regulatory Independence Matter?", London Business School Global Communications Consortium, London, UK (October 2004).
- "Predatory pricing and the interpretation of the unilateral anti-competitive conduct provision in Australian law", 2003 Trade Practices Workshop of the Business Law Section of the Law Council of Australia, Melbourne, Australia (August 2003).