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# BLACKTOP

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**Sam Holmes**  
Senior Investigator  
Competition  
Commerce Commission

**David Shaharudin**  
Principal Advisor  
Competition  
Commerce Commission

**By email:** sam.holmes@comcom.govt.nz

david.shaharudin@comcom.govt.nz

## Public version

Dear Sam and David,

### Trade Me / Homes – Trade Me’s response to the Statement of Issues

1. I write on behalf of Trade Me in response to the Statement of Issues issued by the Commission regarding Trade Me’s acquisition of Homes (**PropertyNZ Limited**).
2. Trade Me remains of the view that the Commission can be satisfied that Trade Me’s acquisition of Homes will not, and will not be likely to, substantially lessen competition in any market. Indeed, Trade Me believes that the acquisition is likely to spur additional competition and innovation in all markets, rather than suppress or undermine that competition.
3. There are some aspects of the Statement of Issues that Trade Me agrees with. Specifically, Trade Me agrees with the Commission that the acquisition is unlikely to substantially lessen competition in the rental listings market<sup>1</sup> or in any market through vertical foreclosure.<sup>2</sup> Given Trade Me agrees with the Commission’s preliminary views on these issues, this letter does not address those issues further.
4. Trade Me also agrees with the view that the acquisition is unlikely to substantially lessen competition in the digital advertising market, primarily due to the existence of large competitors such as Google and Facebook.<sup>3</sup>
5. In relation to the question posed in the Statement of Issues about the scope of the digital advertising market, Trade Me does not consider that there is any basis for defining the digital advertising market in a way that would exclude Google and Facebook (and other real estate related websites) from the market. Google and Facebook are and will remain strong competitors in any properly defined market and on that basis alone the Commission can be satisfied that there would be no lessening of competition, let alone a substantial one, in any digital advertising market. The basis for Trade Me’s view is explained in Section A of this letter.

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<sup>1</sup> Statement of Issues at [93].

<sup>2</sup> Statement of Issues at [126].

<sup>3</sup> Statement of Issues at [97].

6. The balance of this letter – Sections B, C, and D – addresses the Commission’s current views on the scope of the listings market and whether Trade Me’s acquisition of Homes would be likely to substantially lessen competition in the market for the supply of listings either via horizontal effects or conglomerate effects.<sup>4</sup>
7. In short, Trade Me says that the Commission can be satisfied that there is no likelihood of a substantial lessening of competition because:
  - 7.1 the evidence demonstrates that Homes is not currently a material competitive constraint in the listings market, and has not been in the past;
  - 7.2 there is no evidence that there is a real chance that the nature and level of constraint Homes provides in the listings market would increase in the future absent the merger;
  - 7.3 even if Homes’ participation in online listings were to increase in the future absent the merger, the level of constraint that would result would not be so material that removing Homes as an independent participant would substantially lessen competition given the capabilities of OneRoof and realestate.co.nz as well as the potential for other entry from adjacent markets; and
  - 7.4 there is no basis for concluding that the combination of Homes and Trade Me would foreclose other listings providers such as OneRoof and realestate.co.nz because:
    - 7.4.1 any bundled offer from the merged entity could be replicated by other providers (indeed, OneRoof and realestate.co.nz already provide valuation and property information alongside listings) and there is no reason why, if Trade Me could offer listings and digital advertising services together as a bundle, OneRoof and realestate.co.nz could not;
    - 7.4.2 the ability of an agent to buy a bundle of digital advertising services on Homes and listings on Trade Me would not cause real estate agents – and more pertinently, vendors – to reduce the extent to which they list properties on other listing sites or to list their properties only for sale on Trade Me;
    - 7.4.3 audiences would not cease to visit multiple listings sites if Homes and Trade Me were linked; and
    - 7.4.4 as far as Trade Me is aware, there are no markets in the world where a market has ‘tipped’ to a winner takes all outcome with one online listings provider or one real estate platform.
8. Information in this letter that is confidential to Trade Me and Homes is highlighted in yellow (i.e., [Confidential]), information that is confidential to Trade Me is highlighted in blue (i.e., [Trade Me Confidential]), and information that is confidential to third parties is highlighted in grey (i.e., [3<sup>rd</sup> Party Confidential]).

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<sup>4</sup> Statement of Issues at [5].

## A. The scope of the digital advertising market

9. Trade Me understands that the Commission is considering whether any group of advertisers may consider real estate platforms to be a more effective way of connecting with potential customers such that the advertiser would not switch to advertising on alternative platforms.<sup>5</sup>
10. Trade Me submits that in response to a price increase for digital advertising on real estate platforms, at the very least agents and agencies (and other advertisers) would switch to other digital advertising providers including Google (especially at the agency level), Facebook (including Instagram) (at both the agent and agency level), as well as others.<sup>6</sup>
11. Google and Facebook, in particular, provide a very effective digital means for advertisers to reach their target audience and would (and do) act as a strong constraint. An agent or agency may promote themselves through their Facebook page or on Instagram, including by boosting their posts to target a specific audience. An agency (or an agent) may purchase Google Ad words that relate to the buying and selling of property in their area or nationally, or that are specific to their brand.<sup>7</sup> This is a particularly effective way to target advertisements to vendors and buyers that they most want to reach.
12. Therefore, Trade Me submits that even if real estate related digital advertising were considered separate from other digital advertising (which Trade Me does not believe is the case), Google and Facebook would be significant participants in a real-estate related digital advertising market, as would OneRoof, and realestate.co.nz.
13. Furthermore, specifically in relation to agents and agencies, Trade Me believes that there are a large range of other options for agents and agencies to advertise their services and market their brand. These range from advertising in print media, radio, television, billboards, and buses (among others), to sponsorship opportunities, direct emails and messaging to buyers and potential sellers, and local marketing through leaflet drops. All these options impose a constraint on digital advertising services supplied to real estate agents.
14. In market research undertaken for Trade Me in December 2020 (attached as Confidential Attachment A), agents were asked “Outside of vendor paid advertising, what tools do you invest in to promote yourself”? Of the [Trade Me Confidential] agents that responded ([Trade Me Confidential] skipped the question), [Trade Me Confidential]% said they used social media (Facebook, Instagram, LinkedIn), [Trade Me Confidential]% said they used flyers and mail drops, [Trade Me Confidential]% said they used print advertising, [Trade Me Confidential]% said they used community sponsorship, [Trade Me Confidential]% said they had a personal website, and [Trade Me Confidential]% said they used Google.<sup>8</sup> [Trade Me Confidential]% said they used Homes’ premium agent package.
15. For these reasons, Trade Me believes that the Commission can be satisfied that the acquisition would not substantially lessen competition in any digital advertising market.

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<sup>5</sup> Statement of Issues at [46].

<sup>6</sup> While Trade Me does not have data on agent and agency spend, Trade Me submits that if the Commission requested this data, it would demonstrate the constraint Google and Facebook provide.

<sup>7</sup> For example, [Trade Me Confidential]. Trade Me also understands that [Trade Me Confidential] purchase Google Ad Words, including in respect of their brand name.

<sup>8</sup> [Trade Me Confidential].

## B. The scope of the listings market

16. Trade Me holds a different view to the Commission about the scope of the listings market. While the Statement of Issues indicates that the Commission considers this is limited to online providers (Trade Me, OneRoof, realestate.co.nz and, to a far lesser extent, Homes, among others),<sup>9</sup> Trade Me remains of the view that the listings market also includes print for the reasons explained in the Clearance Application.
17. Trade Me's view is based on the reality that when vendors are faced with advertising decisions, they choose how to allocate money between print and digital channels,<sup>10</sup> and those channels are substitutable ways of reaching potential buyers.
18. Trade Me accepts that over time the split of advertising spend is moving away from print to online. However, the speed of that migration is dependent on the prices online providers charge for their listings compared to traditional print advertising because, even as audience attention moves more online, print, and digital channels are still substitutable ways of reaching potential buyers. In that way, Trade Me says that print acts as a strong constraint for listings prices.
19. That said, Trade Me's position remains that the outcome of this application for clearance does not turn on whether print and online advertising of listings are in the same market.<sup>11</sup>
20. Therefore, for the purposes of responding to the Statement of Issues, Trade Me has adopted the Commission's online listings market. For the reasons explained below, Trade Me submits that the Commission can be satisfied that the acquisition would not substantially lessen competition even in this narrowly defined online only market.

## C. Removal of Homes as an independent participant in the listings market

21. Trade Me agrees with the Commission that whether removing Homes as an independent participant will be likely to substantially lessen competition in the listings market, depends on the materiality of the constraint Homes can be expected to provide absent the acquisition having regard to all other constraints.
22. Trade Me submits that the Commission can be satisfied that:
  - 22.1 Homes currently provides little, if any, constraint, in the listings market;
  - 22.2 Homes is unlikely to provide increased constraint in the future; and
  - 22.3 even if Homes' participation in online listings were to increase in the future absent the merger, the level of constraint that would result would not be so material that removing Homes as an independent participant would substantially lessen competition given the capabilities of OneRoof and realestate.co.nz as well as the potential for other entry from adjacent markets.

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<sup>9</sup> Statement of Issues at [31.1].

<sup>10</sup> Trade Me research shows that the average marketing spend by vendors is \$[Trade Me Confidential]. Trade Me, and online advertising more generally, is competing with print to obtain as significant part of that spend as it can. When deciding how to allocate their advertising budget, vendors are simultaneously presented with both print and digital options by agents and decide between those options, or how much to spend on each of those options. Refer for example [Trade Me Confidential] provided with the Clearance Application.

<sup>11</sup> Clearance Application at [57].

23. I address each of these points in turn.

***Homes currently provides no constraint in the listings market***

24. Trade Me disagrees with the comment in the Statement of Issues that: “It is unclear from feedback received to date whether Homes is a material constraint on Trade Me”.<sup>12</sup>
25. From Trade Me’s perspective, the evidence is clear that Homes is not a material constraint in the listings market today and never has been.
26. First, as the Statement of Issues records, there is no evidence that Trade Me sets its pricing for listings with reference to Homes or is otherwise constrained in the listings market by Homes.<sup>13</sup> **[Trade Me Confidential]**.
27. Second, Homes is not a listings site. That is, listings is not what Homes is known for or what its audience visits the site for. No doubt having listings is helpful to keep its audience interested and engaged on the site for longer, which then provides an audience for its digital advertising products. This is different to Trade Me, OneRoof, and realestate.co.nz, which are focussed on selling listings to agents and agencies primarily.
28. This different focus can be seen in the fact that Homes decided over 18 months ago to make its base listings available to real estate agents for free if they also advertise on Homes. In effect, Homes decided not to offer listings as a standalone product to agents and agencies but rather to offer them for free as part of supporting its digital advertising products. Reflecting this, Homes’ listings per month remain materially lower than Trade Me’s (an average of **[Confidential]** per month on Homes<sup>14</sup> versus **[Trade Me Confidential]** on Trade Me<sup>15</sup>).
29. The most natural interpretation of Homes’ decision to go from charging separately for listing properties on Homes to providing a free option of listing properties on Homes to agents that also advertise on Homes is that listings on Homes were not providing material value to agents as a product in and of themselves. However, listings still have value to Homes in terms of being able to attract an audience for its digital advertising products.
30. While the Statement of Issues says that base listings on Homes have increased since listings were made free,<sup>16</sup> this is an entirely unsurprising fact. Agents and agencies that advertise themselves on Homes but previously did not see sufficient value in listings on Homes could now add listings to Homes for no additional charge. Why would they not take advantage of that?
31. In any event, the important point in terms of the competitive dynamic is that Trade Me has not reacted to Homes’ changed approach in the listings market. This is reflected in **[Trade Me Confidential]**, which have followed a consistent trend before and after Homes’ changed approach for base listings in October 2019.

**[Trade Me Confidential]**<sup>17</sup>

<sup>12</sup> Statement of Issues at [72].

<sup>13</sup> Statement of Issues at [72].

<sup>14</sup> Clearance Application at [27].

<sup>15</sup> Clearance Application at [7].

<sup>16</sup> Statement of Issues at [64].

<sup>17</sup> **[Trade Me Confidential]**.

32. Homes' constraint on Trade Me can be contrasted with the constraint OneRoof imposes on Trade Me. OneRoof's core offering is listings and, unlike Homes, listings is what the site is set up for, what OneRoof is known for, and what its audience visits for. Trade Me understands that, [Trade Me Confidential]. In September 2020, OneRoof advertised that "it had more houses for sale in Auckland than Trade Me". Trade Me believes that [Trade Me Confidential].

33. Third, Trade Me has not invested in Property Insights since its launch. If Homes' offering were a significant constraint in the listings for sale market, one would have expected Trade Me to respond competitively to Homes' offering by investing in Property Insights given offering listings for sale is Trade Me's core offering. The fact Trade Me has not done so is indicative of Homes' lack of constraint in the market for the provision of listings for sale.

***Homes is unlikely to provide increased constraint in the future***

34. Trade Me accepts that the clearance test is forward looking. What will happen in the future requires a pragmatic and commercial assessment based on the information available.<sup>18</sup>

35. Nevertheless, as the Commission recognises in its Merger Guidelines the forward-looking nature of the test does not mean that the current state of competition in the market is irrelevant. Indeed, the Commission recognises:

Often the best guide of what would happen without the merger is what is currently happening (i.e., the status quo). However, where a market is likely to undergo changes that will affect competition in the without-the-merger scenario, we take these changes into account.<sup>19</sup>

36. Trade Me is not aware of any information that would suggest that the listings market is one that is likely to undergo changes that would mean that the nature of the constraint currently provided by Homes would increase in the future.

37. Trade Me submits that the status quo – i.e., Homes continuing to focus on digital advertising and a lack of constraint in the listings market – is the best guide as to the future. Importantly, this is not a case where there is an absence of evidence about the impact of a new entrant. Homes has been in the listings market for six years. And during those six years it has not innovated in the listings market and has not been successful in imposing a competitive constraint on the other operators. The question is whether there is evidence to support a conclusion that Homes' constraint in the market for the sale of listings is likely to increase to a material level.

38. Trade Me understands that Homes will provide its own evidence on whether the nature of the constraint imposed by it will change in the future. But certainly, Trade Me does not perceive a real threat that the nature of the constraint Homes provides will materially alter in the future absent the acquisition.<sup>20</sup>

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<sup>18</sup> Merger Guidelines at [2.35].

<sup>19</sup> Merger Guidelines at [2.36].

<sup>20</sup> To avoid any doubt, fear of Homes expanding in listings to become a constraining competitive force forms no part of Trade Me's rationale for this acquisition and there is no evidence Trade Me is aware of that would suggest otherwise.

39. Rather, as stated in the Clearance Application, Trade Me would expect Homes to continue to focus on its property information / real estate related advertising services rather than seeking to compete with Trade Me, OneRoof and realestate.co.nz's listings services.

Absent the acquisition, Trade Me understands that 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>21</sup>

40. Trade Me's view is consistent with other feedback recorded in the Statement of Issues. The Statement of Issues records that some interviewees told the Commission that Homes was unlikely to be a constraint on Trade Me in the future,<sup>22</sup> while others suggested that Homes was more likely to try to differentiate itself rather than compete directly with Trade Me.<sup>23</sup>
41. Trade Me believes these statements are both correct: Homes is unlikely to be a constraint in the listings market but may seek to grow its digital advertising business, including by adding non-listings features to attract its audience.
42. Trade Me notes that the incentive for Homes to add non-listings features and grow its digital advertising business will be shared by the combined Trade Me / Homes. In reality, the combined Trade Me / Homes is likely to have a greater ability (and so might also have a greater incentive) to build this side of the Homes business. Therefore, at worst there would be no difference between the factual and the counterfactual in this respect, and there is every chance that the merger would be beneficial for competition.
43. Trade Me acknowledges that some interviewees have indicated to the Commission that Homes has "the potential to become a strong competitor for the supply of listings for sale".<sup>24</sup> <sup>25</sup> The rationale for that view are factors interviewees perceive would support that growth including "an accurate valuation tool, a superior user interface and faster search functionality".<sup>26</sup>
44. Trade Me submits that these features provide no basis for concluding the level of constraint provided by Homes in the market for the supply of listings is likely to transform from what it currently is.
45. In respect of Homes' valuation tool, it is not clear that Homes' valuation tool is any more accurate than any other tool or why having an accurate valuation tool would provide a strong foundation for becoming a strong competitor in the sale of listings. A valuation tool is different in kind to a listings focussed website and search function. This is illustrated by Trade Me's success in the market for the sale of listings to agents and agencies without having invested in Property Insights.

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<sup>21</sup> Clearance Application at [44].

<sup>22</sup> Statement of Issues at [74.1].

<sup>23</sup> Statement of Issues at [74.3].

<sup>24</sup> Statement of Issues at [74.2].

<sup>25</sup> Note that while [74.2] of the Statement of Issues refers to the proposition having been made by "interviewees", footnote 41 refers to only one interview. It is not clear whether there are additional interviews where this proposition was put forward. It is accepted that the same comment applies to [74.1] (where one interview is cited at footnote 40). In contrast, footnote 42 to [74.3] cites two interviews for the first proposition made, although footnote 43 then cites a third interview in support of a proposition that the first two interviewees are said to have made.

<sup>26</sup> Statement of Issues at [74.2].

46. Moreover, Homes' valuation tool has been in place since launch in 2015 and was in place when Homes decided to deprioritise the sale of listings in 2019. It is therefore difficult to see why Homes' valuation tool would now transform into a strong lever for expansion to allow Homes to compete strongly to sell listings when it has not been in the past six years.
47. A similar comment can be made in respect of Homes' alleged superior interface and faster search functionality. This has not enabled Homes to become a strong competitor in the market for the sale of listings. The interface and fast search functionality referred to relates to Homes' core offering of valuations and property information, not listings. As noted in the Clearance Application, Homes' search function is focussed on enabling consumers to search for a specific address to obtain information relating to that property.<sup>27</sup> Homes' search function is not set up for searching listings in the way that Trade Me, OneRoof, and realestate.co.nz's search functions are. It is therefore difficult to see how a search function and interface not optimised for listings can be regarded as an advantage Homes enjoys.
48. More generally, Trade Me acknowledges that Homes has successfully developed a property valuation and information site and successfully sells digital advertising on that site. That success is a key reason why Trade Me wishes to acquire Homes.
49. However, that is different from being a repeated source of innovation in the industry or specifically in the market for the sale of listings. From Trade Me's perspective, whatever Homes' track record in property information and valuations, Trade Me does not regard Homes as being particularly innovative outside of property information and valuations, and certainly not in the market for the sale of listings. Prior to 2019, when it effectively moved away from selling listings, Homes sold listings to agents in the same way as the other providers.
50. Trade Me submits that there is no reason to anticipate that Homes would suddenly become a particularly innovative provider in the market for the sale of listings even if it could be regarded as having been innovative in relation to property information and valuations. Nor is there any reason to believe that Homes' presence would result in innovation that would not otherwise occur in the listings market given the competition between Trade Me, OneRoof, and realestate.co.nz.
51. Finally, while taking nothing away from Homes' success in building its business, Trade Me also believes that the Statement of Issues tends to overstate the level of innovation Homes has introduced in non-listings markets.
52. For example, Trade Me submits that it is important to place Homes' launch in mid-2015 in context. Valuation and property information services were available online prior to 2015.<sup>28</sup> Moreover, it would be incorrect to say that Trade Me's launch of Property Insights was in response to Homes' entry. Trade Me had already taken the decision to roll out Property Insights prior to Homes' launch and did so before becoming a shareholder in Homes. In fact, a key reason for the relationship between Trade Me and Homes in 2015 and 2016 was that Trade Me recognised that Homes had already gained access to the necessary council data and Trade Me saw the ability to gain that data from Homes as opposed to collecting the data itself as being of benefit to Trade Me. When the relationship with Homes finished, Trade Me acquired the data directly from councils (within a very short period of time, approximately

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<sup>27</sup> Clearance Application at [36].

<sup>28</sup> See a description of services available in *Re PropertyIQ New Zealand Limited and Terralink International Limited* [2013] NZCC 22.



60 days). Today, various third parties collate and supply the data and Trade Me acquires the data through a third party.

53. This history is consistent with Trade Me's view that it was not Homes' entry that drove the introduction of Property Insights, but rather that the increased availability of council and other data was a common cause for these new products coming to market. Trade Me understands that prior to 2015, most data was collected for councils by QV.co.nz and was available exclusively for its use. Access to this information opened up and it was the new availability of data which spurred Homes and Trade Me to develop these products.
54. For all these reasons, and contrary to the position stated in the Statement of Issues,<sup>29</sup> Trade Me submits that the Commission can rule out the likelihood of Homes providing a material additional competitive constraint in the market for the sale of listings in the future. Based on the information before the Commission, such a conclusion would be purely speculative.

***Even if Homes did increase its participation in the future, there is no reason to believe that this would be a material additional constraint compared to the constraints from existing providers and potential new entrants***

55. Even if Homes could be expected to grow in the market for the sale of listings in the future (or was regarded as a constraint now), the acquisition would only be likely to substantially lessen competition if the level of competition would be materially greater if Homes were present compared to if it were not, i.e., the focus of the clearance test is on the difference in competition with and without the merger.
56. Critical to whether there is a material difference in competition is the extent of the additional constraint Homes would impose above and beyond that imposed by OneRoof and realestate.co.nz and the ability and incentive for other providers to expand, or new entrants to enter and fill any gap left by Homes in this market.
57. Trade Me submits that any additional constraint provided by Homes in listings is minimal and there is no reason to believe that Homes is in a unique position to expand and constrain Trade Me in a way that OneRoof and realestate.co.nz cannot. Indeed, if anything, Homes is likely to be in a weaker position from which to expand and constrain Trade Me.
58. Homes does nothing today that OneRoof and realestate.co.nz do not also do or could not do in the future. OneRoof and realestate.co.nz already offer property information and valuation services to audiences as part of their websites. They have the same access to data that Homes does, but have more listings, more resources, and a greater audience for listings than Homes.<sup>30</sup> Moreover:
- 58.1 OneRoof has the ability to and does leverage its diversified media businesses to advertise OneRoof across all NZME channels. Its diversified model gives it the ability to bundle together print and online listings, online listings and digital advertising, and content together with listings and digital advertising. NZME (OneRoof's 80% owner) has stated publicly that OneRoof is one of NZME's three strategic priorities

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<sup>29</sup> Statement of Issues at [90].

<sup>30</sup> See table at [91] of the Clearance Application.

for the future,<sup>31</sup> and so the Commission can be satisfied that OneRoof will continue to receive backing and investment.

- 58.2 Realestate.co.nz is a well-known brand owned by real estate agents and so will always have access to listings from the major agencies, who will also have an incentive to ensure that realestate.co.nz grows and prospers.
59. Trade Me's own research from December 2020 shows that OneRoof and realestate.co.nz **[Trade Me Confidential]**.  
**[Trade Me Confidential]**
60. And finally, to the extent the Commission regarded Homes as being likely to impose a material additional constraint to that imposed by OneRoof and realestate.co.nz, there would be nothing to stop another provider in an adjacent market filling the competitive space that Homes could be said to have vacated. That could be an existing provider in an adjacent market (e.g., Property Value, My Valocity), a provider like Facebook (already used by many agents) or Google (which has started to trial its own motor listings<sup>32</sup>), a provider in print listings facing a declining market but with a known property brand and pre-existing access to listings (e.g., Property Press), or a new entrant into an adjacent real estate market (e.g., relab.co.nz).
61. Quite simply, Homes is not in a unique position to expand compared to these providers. If Homes identified a profitable opportunity to expand in listings absent the acquisition and could do so, any of these providers would be able to do the same.
62. In summary, Trade Me submits that even if Homes could be expected to increase its participation in the market for the sale of listings in the future, the Commission can be satisfied that the acquisition would not be likely to substantially lessen competition because:
- 62.1 Homes would not add materially to existing competition from OneRoof and realestate.co.nz; and
- 62.2 in any event, any additional constraint it could be said to add could be provided by a provider in an adjacent market entering and expanding in the same way the Commission theorises Homes could.

#### **D. Conglomerate effects in the listings market**

63. Trade Me accepts that because Trade Me and Homes each have a different focus, the Commission needs to be satisfied that the combination of the two products will not be likely to substantially lessen competition in the listings market (however defined) via conglomerate effects.
64. As the Statement of Issues records:

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<sup>31</sup> See NZME Market Announcement "Momentum builds as NZME releases three-year strategy" (16 November 2020). Available at <https://www.nzx.com/announcements/363265>

<sup>32</sup> See <https://aimgroup.com/2021/04/30/googles-own-car-listings-pilot-could-be-extended-to-u-k/>

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>33</sup>

65. Trade Me understands that the conglomerate effects that the Commission is testing to be a leverage of market power from digital advertising on Homes to listings on Trade Me via:
- 65.1 Trade Me offering a bundle of Homes' digital advertising services with Trade Me's listings that would result in real estate agents (in reality, vendors) no longer choosing to list properties on competing listing sites, OneRoof and realestate.co.nz; and/or
- 65.2 Trade Me linking its Trade Me listings with Homes' property information and valuation services in a way that would mean that audiences would no longer visit other listings sites, OneRoof and realestate.co.nz.
66. These outcomes are referred to in the Statement of Issues as creating a 'one-stop shop'.<sup>34</sup>
67. The Statement of Issues refers to these outcomes as being "at least possible".<sup>35</sup> As an initial point, a possible outcome is not one that meets the statutory test of 'likelihood'. Put another way, the Commission is not entitled to decline clearance because of merely possible effects.
68. In any event, Trade Me submits that even describing these outcomes as possible is an overstatement. The evidence of existing agent (i.e., vendor) and audience behaviour, the relative lack of significance of Homes in digital advertising, the existence of alternative providers of valuation and property information, the public availability of all data required for valuations, the existence of other 'one-stop shops' today, and the lack of impact of the acquisition on any of those features means the prospect of such an outcome occurring is no more than negligible.
69. This conclusion is consistent with Trade Me's understanding of real estate platforms in other markets internationally. Trade Me is not aware of any real estate market where a "winner takes all" outcome has eventuated.<sup>36</sup>
70. In terms of the behaviour being tested by the Commission:
- 70.1 Trade Me accepts that it might in the future choose to link the Trade Me and Homes sites in the way described in the Statement of Issues (noting Trade Me already has its Property Insights microsite linked on its listings).
- 70.2 Bundling listings (sold effectively to vendors via agents) and real estate advertising services sold to real estate agents or agencies is more complex. Section 128 of the Real Estate Agents Act 2008 requires agents to identify for vendors the source and amount of all rebates, discounts, or commissions that the agent will or is eligible to receive in respect of those expenses. In other words, a real estate agent would have to disclose to a vendor the discount the agent was receiving on other services provided by Trade Me. This is ultimately likely to mean that providing such a bundle would be practically difficult.

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<sup>33</sup> Statement of Issues at [100].

<sup>34</sup> Statement of Issues at [117].

<sup>35</sup> Statement of Issues at [118].

<sup>36</sup> Cf Statement of Issues at [115].

71. In any event, Trade Me would only link or bundle these offers if they were of benefit to audiences and real estate agents, respectively, and to Trade Me/Homes.
72. Generally, such outcomes are seen as pro-competitive and likely to enhance consumer welfare. Consumers are faced with lower prices, and competitors are forced to respond via lower pricing or through innovation. That is likely to result from any bundle of the type described by the Commission in the Statement of Issues. This merger is not one of those rare situations where such a consumer welfare enhancing bundle is likely to harm competition by denying OneRoof or realestate.co.nz access to listings or audiences.
73. As the Statement of Issues highlights, “the evidence suggests that both agents and audiences use a range of sites (that is, they ‘multi-home’)”.<sup>37</sup> That is, in today’s market, audiences and agents (vendors) already see benefits in visiting or listing on multiple listings sites. It is difficult to see why bundling or linking the Trade Me and Homes products would change that behaviour.
74. Dealing with agents first, the Statement of Issues notes that “vendors (represented by agents) tend to list properties on a number of property platforms simultaneously (rather than listing exclusively on one platform)”.<sup>38</sup> This is consistent with the fact that Trade Me, OneRoof, and realestate.co.nz all have a high percentage of properties listed in New Zealand. It is also notable that listing on multiple sites occurs notwithstanding that Trade Me is apparently regarded as “must have” by some agents.<sup>39</sup>
75. The conglomerate theory of harm set out in the Statement of Issues relies on Trade Me offering discounted services for a bundle of listings and digital real estate advertising in a way that would cause real estate agents (in reality, vendors) to no longer list properties on OneRoof or realestate.co.nz.
76. Even putting aside the practical difficulties with such a bundle discussed above, as the Statement of Issues records, vendors (and agents) see value in listing on multiple listings sites today. Trade Me submits that there is no reason to think that the agents (and vendors) that would benefit from such a bundle would not continue multi-homing when placing listings. There is no logical link that would allow such a bundle to have that effect.
77. Properties are usually a person’s most significant asset. Vendors want to attract the highest interest they can and sell their property for the highest price they can. Faced with a bundle, they would simply benefit from lower prices which might, if anything, result in more listings on other sites if they have relatively fixed advertising budgets and view the discounts offered by Trade Me / Homes as an effective increase in the proportion of those budgets that they have available to spend on other sites.
78. Put simply, the incentives for agents and vendors to list on multiple websites would remain the same regardless of whether Trade Me offered a bundle and, therefore, could not have a foreclosing effect.
79. Turning to the audience side, Trade Me’s own research from December 2020 shows that **[Trade Me Confidential]**% of audiences used only Trade Me to browse listings. Of the

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<sup>37</sup> Statement of Issues at [116].

<sup>38</sup> Statement of Issues at [116.1].

<sup>39</sup> Statement of Issues at [111.1.1].

remaining [Trade Me Confidential]%, [Trade Me Confidential]% used Trade Me and other listing sites and/or print, while [Trade Me Confidential]% did not use Trade Me at all.

80. It is not clear to Trade Me why linking the Homes and Trade Me sites would lead to the [Trade Me Confidential]% of property audiences that do not use Trade Me switching to only use Trade Me, or why the [Trade Me Confidential]% of audiences that multi-home would no longer visit multiple listings sites. Such a conclusion would require one to believe that there would be a fundamental change in consumer behaviour.
81. The available evidence demonstrates that such a fundamental change is highly improbable given:
- 81.1 a property is likely to be the (or one of the) most important and valuable assets a person owns or is seeking to buy, and entail a large proportion of a person's net worth;
  - 81.2 the costs of multi-homing are extremely low, especially compared to the value of the properties involved;
  - 81.3 audiences already multi-home across listings sites even though:
    - 81.3.1 all sites have a relatively high number of listings (the merger adds no additional listings to Trade Me's listing service); and
    - 81.3.2 OneRoof and realestate.co.nz (and Trade Me) already offer valuation/property information of a similar type to Homes.
82. Indeed, the fact that OneRoof and realestate.co.nz already offer valuation/property information and listings is difficult to reconcile with the Statement of Issues' comment that other providers would not be able to replicate the Trade Me/Homes bundle. While Homes is a good business and Trade Me sees upside in purchasing it, with all due respect to Homes, its position is not unique.
83. Put simply, it is difficult to see why audiences would choose not to visit OneRoof and realestate.co.nz (at least) simply because the Homes and Trade Me sites were linked.
84. For all these reasons, it is difficult to see how OneRoof and realestate.co.nz could be foreclosed in the listings market and therefore difficult to see how it could be concluded that there was a real chance of a substantial lessening of competition in the listings market.
85. For completeness, Trade Me submits that foreclosure in the opposite direction is also implausible. That is, Trade Me could not, through this acquisition, foreclose competition in the digital advertising market given the existence of significant competitors.

#### **Final comments**

86. As stated at the start of this letter, Trade Me remains of the view that its acquisition of Homes is unlikely to substantially lessen competition in any market.
87. Indeed, Trade Me believes that the acquisition is likely to spur additional competition and innovation in all markets, rather than suppress or undermine that competition.

- 87.1 The combined Trade Me / Homes will have the same or a greater incentive to drive Homes' digital advertising business in competition with other digital advertising and general advertising providers to the benefit of users in that market.
- 87.2 Trade Me will retain the same strong incentive to innovate and compete strongly with listings providers such as OneRoof and realestate.co.nz, all to the benefit of vendors and buyers.
- 87.3 To the extent Trade Me / Homes offers bundles that deliver value for their customers, those customers will benefit both directly from the Trade Me / Homes offer, and indirectly via the competitive response that can be expected from OneRoof and realestate.co.nz in the listings market, and other digital advertising or general advertising providers in the advertising market.
88. Trade Me therefore requests that the Commission grant the clearance sought. If you need any further information, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink that reads "David Blacktop". The signature is written in a cursive, flowing style.

**David Blacktop**

Director

T (09) 377 0592 / M 021 366 284

**Confidential Attachment A: December 2020 research**

**[Trade Me Confidential]**