Statement of Unresolved Issues

Trade Me Limited / PropertyNZ Limited

30 June 2021

Introduction

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

2.   The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

3.   Since registering the Application, we have published:

    3.1   a Statement of Preliminary Issues (SoPI) setting out the issues that we considered important at the start of our investigation in deciding whether or not to grant clearance;[2] and

    3.2   a Statement of Issues (SoI) setting out the potential competition issues that we had identified following our initial investigation.[3]

4.   The SoPI and the SoI also provided background information about Trade Me and Homes (together, the Parties) and the real estate industry in which they operate. These documents are available on our website, along with public versions of the submissions we received following publication of the SoPI and SoI.

5.   This Statement of Unresolved Issues (SoUI) sets out the potential competition issues that have not been resolved to date and that we therefore continue to test. This is so

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

[2]   SoPI dated 10 March 2021 is available at https://comcom.govt.nz/__data/assets/pdf_file/0026/244277/Trade-Me-Limited-and-PropertyNZ-Limited-Statement-of-Preliminary-Issues-10-March-2021.pdf.

[3]   SoI dated 23 April 2021 is available at https://comcom.govt.nz/__data/assets/pdf_file/0020/253334/Trade-Me-Limited-and-PropertyNZ-Limited-Statement-of-Issues-23-April-2021.pdf.

that the Parties and other interested parties have an opportunity to comment and provide us with additional information.

6.   In reaching the preliminary views set out in this SoUI, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition issues may arise, as the investigation continues.

7.   We invite interested parties to provide comments on the likely competitive effects of the Proposed Acquisition. We request that parties who wish to make a submission do so by 14 July 2021. All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on 21 July 2021.

The concerns we have been testing

The issues where we still have concerns

8.   We are currently not satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition due to horizontal unilateral effects resulting from a loss of competition in the supply of:

8.1   online classified advertising for residential real estate for sale to agents and agencies (the listings market); and

8.2   listings information and other property-related data and information (including editorial content) to the audience (the audience market).

9.   Our unresolved concerns in relation to the supply of the above services arise from our current view that:

9.1   Homes has been expanding within the listings market and audience market, and will continue to expand in future in the counterfactual.

9.2   Trade Me likely holds significant market power in the listings market. Homes growth would make it a significant competitor to Trade Me in the listings market. The Proposed Acquisition would eliminate that potential competition and raise barriers to entry, and this will have a flow-on effect of reducing competition in the audience market as a result of network effects.

9.3   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 with the Proposed Acquisition.

10. For these reasons, we are not yet satisfied that the Proposed Acquisition would be unlikely to substantially lessen competition in the listings market. We are still considering whether the flow-on effects on competition in the audience market would be substantial.

11. We discuss these outstanding concerns in more detail further below.

The issues where we no longer have concerns

12. On the basis of the information we have gathered to date, we do not have concerns in relation to:

    12.1 horizontal unilateral effects in the supply of classified advertising for residential real estate for rent to agents and agencies. This is because Homes is a small player in the rental market with few listings and there is a broad range of competitors in the market;

    12.2 horizontal unilateral effects in the supply of digital advertising to advertisers. This is because the evidence suggests that advertisers (including real estate agents and agencies) are likely to have a broad set of competitive options available to them;

    12.3 vertical effects in any market. This is because the evidence does not support that the Proposed Acquisition would result in any competitor being foreclosed from accessing any category of data/information; and

    12.4 conglomerate effects in any market through bundling products or services. The bundles we are considering are likely within the same market. As such, we consider that it is more appropriate in this case to analyse these bundles in the context of a strengthening of network effects as part of our assessment of horizontal unilateral effects.

Process and timeline

13. We have agreed an extension with Trade Me until 6 August 2021 from the initial 40 working day statutory timeframe in which to decide on the Application.

14. We would like to receive submissions and supporting evidence from the Parties and other interested parties on the issues raised in this SoUI. We request responses by close of business 14 July 2021, including a public version of any submission made.[4] Please read the instructions for making a submission, which can be found on page 34 of this document.

15. All submissions received will be published on our website with appropriate redactions. All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on 21 July 2021.

16. Submissions and cross-submissions should be provided within the notified submission timeframe. This ensures that we continue to progress the investigation in a timely fashion. We may place less weight on submissions received after our

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[4] Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). At the same time, a schedule must be provided which sets out each of the pieces of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

deadline. Parties wishing to make a submission that are unlikely to meet our deadline should let us know beforehand and explain why.

The parties

Trade Me Limited

17.   Trade Me operates an online marketplace and classified advertising platform (trademe.co.nz) where real estate sellers/renters can advertise their properties to potential buyers/tenants. It also operates the dedicated real estate platform Trade Me Property (trademe.co.nz/property).

18.   Trade Me Property is the largest online property listings site in New Zealand, both by total audience and number of listings.[5] [6] Of the main dedicated property platforms in New Zealand (Trade Me Property, Realestate.co.nz, OneRoof, and Homes), Trade Me is the only platform that:

18.1   charges a fee for base listings; and

18.2   allows private vendors (ie those vendors not represented by an agent) to list on the platform.

19.   Along with a property listing, Trade Me presents other useful information to the audience, including a mortgage calculator, the location of nearby schools, the potential purchaser's commute time to work from that property, and the rateable value of other properties in the area.

20.   Trade Me also operates the 'Property Insights' microsite of the Trade Me Property website (trademe.co.nz/property/insights). Consumers can search Property Insights for free for any street address, suburb or city, and will be presented with property-related data/information on individual properties (to the extent Trade Me holds that data), including an estimated valuation range for the property, council data, rateable value (RV) information and a history of any significant upgrades to the property. Property Insights also contains a section on property news and advice, which includes articles on a range of property-related topics.[7]

21.   Trade Me submits that it provides property-related data/information as an adjunct to its primary business as a listings platform.[8]

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[5]   The standard means by which platforms measure audience numbers is "unique audience". Unique audience is the total number of unique people that visited a site during a specified time period. For example, a person that visited a website three times in the period would only be counted once. Unique audience is an important metric for platforms (as opposed to similar platform visits) as it reflects the number of eyeballs viewing the platform. For ease, we refer to just "audience" in the paper.
[6]   See Confidential Annex 1.
[7]   https://www.trademe.co.nz/c/property/property-news
[8]   The Application at [35].

Homes

22.   Homes operates a free online property data and information resource for consumers (homes.co.nz). It launched in 2016. Consumers can search for property information by entering a property's address, suburb, or city. For each property, Homes provides a range of property-related data/information, including a valuation estimate called a 'HomesEstimate'. This estimate is based on a proprietary formula. It draws on information such as public data, registered valuers' valuations and real estate agents' comparable market analyses.[9] It also features a section called Homes Inspiration, which acts as a mood board of interior design tips (filterable by room), which can be sponsored by companies offering interior design products (such as Resene and Mitre 10).[10]

23.   Homes' strategy is to monetise consumer attention by selling to agents, agencies and other advertisers the opportunity to market themselves to Homes' audience in different ways, including banner, display, and native advertising.

24.   Homes also features online listings for sale and rent on its platform. We understand that month-to-month it lists a large proportion, ~[ ]%, of the total monthly residential properties for sale that are advertised on Trade Me, and this number has been increasing.[11] Unlike Trade Me, Homes does not charge agencies for base listings.

25.   Along with a property listing, Homes shows the audience other information, such as a home loan repayment calculator, a direct link to contact Kiwibank for home loan inquiries, an estimated rental yield calculator, a solar power calculator (which is sponsored by Harrisons Energy Solutions), as well as other expense estimates (such as home internet (sponsored by Sky Broadband).

26.   Trade Me submits that "Just as Trade Me Property offers property data and information as an adjunct to its main listings business, Homes does the reverse; Homes offers listings as an adjunct to its property data and information product."[12]

Other industry participants

27.   The main competing real estate platforms are:

27.1   *Realestate.co.nz*: Realestate.co.nz offers listings for sale and for rent, as well as some property data/information on properties (including a valuation range). Realestate.co.nz is owned 50% by five of the largest real estate agencies in New Zealand (Barfoot and Thompson, Harcourts, Ray White, LJ Hooker and Bayleys), with the remaining 50% owned by the Real Estate Institute of New Zealand (REINZ). Along with a property listing, Realestate.co.nz also shows the audience information such as an automated valuation, nearby recently sold properties, schools in the area, broadband

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9   https://homes.co.nz/homesestimate
10   https://homes.co.nz/inspiration
11   See Figure 5 in Confidential Annex 1.
12   The Application at [35]

availability (provided by Broadband Compare), and a mortgage calculator (provided by Kiwibank)

27.2 *OneRoof.* OneRoof offers listings for sale and for rent, as well as property-related information on properties (including a valuation range). OneRoof is 80% owned by the media organisation NZME Limited (NZME), and 20% owned by Hougarden.com Limited (Hougarden). OneRoof was established in 2018 but has grown swiftly.[13] This may in part be due to NZME's ability to leverage its media assets to promote and grow the OneRoof platform.[14] Because NZME's media assets (such as the NZ Herald) are concentrated predominantly in Auckland, OneRoof has a larger presence in the Auckland region than in other regions.[15] Along with a property listing, OneRoof shows audiences information such as nearby schools, a commuter map, various home loan and repayment calculators. OneRoof real estate news and editorials which feature both on the OneRoof website and on NZMEs news websites (such as the NZ Herald).

28. Other entities that offer listings on their online platforms include the following.

28.1 *Facebook*: Facebook offers a product called Facebook Marketplace, which is a searchable online listings platform.[16] Currently Facebook's search functionality for properties for sale is limited to price, but Facebook also offers a more advanced search functionality for renters searching for properties to rent.

28.2 *Hougarden*: Hougarden operates the largest Chinese-language real estate platform in New Zealand, with just over 50% of site visits coming from mainland China.[17] Hougarden is a 20% shareholder in OneRoof.

28.3 *Neighbourly*: Neighbourly is a private neighbourhood website owned by Stuff Limited.[18] Neighbourly allows real estate agents to list properties for sale within a particular neighbourhood.[19]

29. Finally, there are several further entities that supply property data/information, but which do not currently feature listings on their websites:

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

[14] OneRoof offers agents free ads on NZ Herald as part of their OneRoof advertising packages (see https://advantage.oneroof.co.nz/)

[15] OneRoof "New Zealand Media and Entertainment Investor Day" (16 November 2020) at 105.

[16] https://www.facebook.com/marketplace/auckland/propertyforsale

[17] https://about.hougarden.com/

[18] Neighbourly "What is Neighbourly?" <https://www.neighbourly.co.nz>.

[19] https://www.neighbourly.co.nz/public/property

29.1 *CoreLogic*: CoreLogic is a provider of valuations, property information, analytics, property-related risk management and geospatial location intelligence in Australia and New Zealand. It operates the consumer-facing website PropertyValue.co.nz, which provides some property data/information for free to consumers, with additional data/information available if users log in to the website, and further data/information available in paid packages. CoreLogic has also recently entered into a partnership with Trade Me under which CoreLogic will enhance Trade Me's Property Insights database and Trade Me will provide CoreLogic with additional datapoints to improve the offerings on CoreLogic's platforms;[20] and

29.2 *Valocity*: Valocity is a New Zealand-based international property data expert which specialises in providing property valuation services to lenders. It operates the consumer-facing website MyValocity.co.nz. Like CoreLogic, some of this data/information is offered for free, some is behind a free login, and some is paid for as part of a package. Valocity also provides valuation services to OneRoof.[21]

Background to the industry

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

30. The merging parties operate property platforms that seek to attract audiences through the provision of property listings, property data/information, and other content such as editorial articles, and then advertisers the opportunity to advertise to those audiences. Property platforms such as those operated by the merging parties do not directly facilitate real estate transactions. Rather, the platforms provide information to the audience and facilitate phone or email communication between sellers and potential buyers, in the hope that an audience member will then initiate an "off platform" transaction with a relevant seller on the other side of the platform.

31. A simplified diagram of the main groups of advertisers and audiences that the platforms serve is below.[22]

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20 https://www.corelogic.co.nz/news/get-deeper-property-insights-trade-me#.YHepN-gzbD4
21 https://www.oneroof.co.nz/property-valuations
22 This is a simplified version of the markets and the size of the ovals do not reflect the actual size of the groups.

Figure 1: The groups that property platforms serve
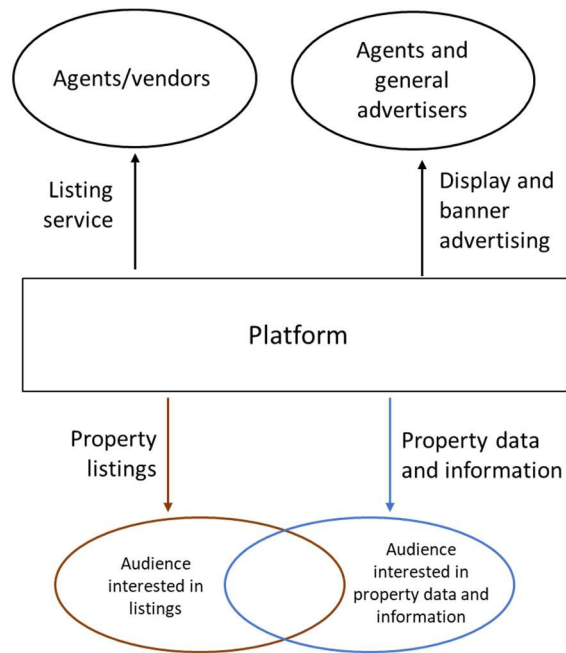
Notes: (i) Arrows denote the supply of goods or services by the platform. Ovals denote buyers/consumers of those goods and services.

32.   On the listings side, the main groups that the platforms sell advertising to are vendors, agents and general advertisers. Vendors use the platform to list their properties. Vendors will often take advice on where to list their house from an agent. It is the agent that typically monitors how many referrals a listing receives so is well-positioned to identify the most effective way to advertise. (For this reason we refer to the "agent/vendor" as the purchaser of such services in the SoUI). Platforms also sell advertising space on their websites for agents and general advertisers seeking to offer their services to the websites' audience.

33.   On the audience side the main types of information that the platforms provide are (i) property listings and (ii) property-related data/information, including editorial articles (for ease, we use the term to "property information" to refer collectively to property data, information and editorial content). Property listings might include residential or commercial houses for sale or rent. Property information might include: an estimate of the house value, the size of property, past sale prices, news articles and so forth. General advertising to the audience could also be viewed as information provided but is not the primary attraction.

34.   The audience of a platform like Homes or Trade Me is likely to include individuals with different real estate goals/interests. For example, they may be "active" buyers (ie those that are looking to buy a house immediately), "passive" buyers (ie those who are not actively buying but are open to the possibility of buying), active and passive sellers, property investors, real estate agents, curious homeowners, or a combination of the above.

35. Although the users of the platform share a common interest in property-related information, each type of audience member may be attracted to different aspects of a real estate website. This is illustrated by the overlapping circles in Figure 1 above. For example, a buyer is likely to be most interested in listings, but also in the estimated value of their house. A homeowner may want to know the value of their house but is also curious to know which neighbours are selling their house. The interest that a user has in a website may change as they transition from one set of needs to another.[23] While there are many ways this could occur, one example is set out below.

35.1 A homeowner may view a real estate platform to:

35.1.1 read articles on homeownership or investing;

35.1.2 get interior design tips;

35.1.3 get information on expected rental yield;

35.1.4 get information on expected yield of solar panels in a particular location; and/or

35.1.5 get information on the value of their property and the prices at which other properties in their neighbourhood sold for.

35.2 The homeowner may at some point decide that they want to:

35.2.1 sell their existing property; or

35.2.2 buy another property.

35.3 If the homeowner has decided to move to another house, the decision to sell may be accompanied by the need to buy another property, and vice versa.[24] Such a homeowner will likely spend time researching the value of their own property, and/or obtaining information about possible homes they wish to purchase (including an estimate of its value, property size and other features).

35.4 At some point in this process, the homeowner will generally:

35.4.1 choose a real estate agent to represent them in the buying and/or selling processes; and

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[23] OneRoof has also identified this "property cycle". See Investor Presentation 2020, p 119, available at http://nzx-prod-s7fsd7f98s.s3-website-ap-southeast-2.amazonaws.com/attachments/NZM/363265/335128.pdf.

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

35.4.2 decide (often in consultation with an agent) where to list their current property for sale, and where to browse for a new property.

35.5 After having sold their property and purchased a new one, the homeowner may continue researching the housing market for a period to validate their selling/purchasing decision, to look for home improvement information, and to stay informed.

36. Beyond the active stages of buying and selling (by charging for listings), a real estate platform can earn revenues at each stage of the process above, including by:

36.1 capturing the attention of the audience at the earliest possible stage (ie the passive researching stage), and providing them with a positive experience, in the hopes that they choose to use the platform for the more active stages of the process as well; and

36.2 retaining the attention of the audience in between their 'active' phases of buying and selling, by engaging them with data/information so that their attention can be sold to advertisers.

37. Trade Me has told us that "property owners who may not be active in the typical buyer stages of the property lifecycle, represent a significant potential audience" which presents a range of opportunities, including "keeping Trade Me Property top of mind when looking to buy/sell".[25]

Multi-homing between platforms

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

39. We have received evidence indicating that multi-homing is a feature of property platforms.[26] For example, house buyers are likely to look for houses on several websites and potentially through print media as well. This is likely because:

39.1 multi-homing is relatively low cost:

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

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[25] Application at [38].

[26]

[

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39.1.2 multi-homing across a range of different online platforms is very simple and incurs no monetary cost;[27] and

39.2 there is a high benefit to multi-homing:

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

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

40. We would like to gather additional information regarding the reasons that audiences multi-home. For example, we welcome additional information on why users of Trade Me might also multi-home to another real estate platform, notwithstanding that the second real estate platform may have fewer listings than Trade Me.

41. Similarly vendors and agents are likely to multi-home with their listings (ie list their property in multiple places). On some platforms, agents/vendors can list for free whereas other platforms charge a price for a listing. The agent/vendor may still want to list on those platforms that charge to ensure they give themselves the best opportunity to have the listing seen by the person with the highest valuation.

Network effects

42. Indirect network effects occur where the value of the platform to users on one side of the platform rises with the number of users on the other side of the platform.

43. In the case of real estate platforms, there are various interacting network effects involving end-users. The primary example of these network effects involve listings. This is illustrated below.

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

Figure 2: Network effects for listings
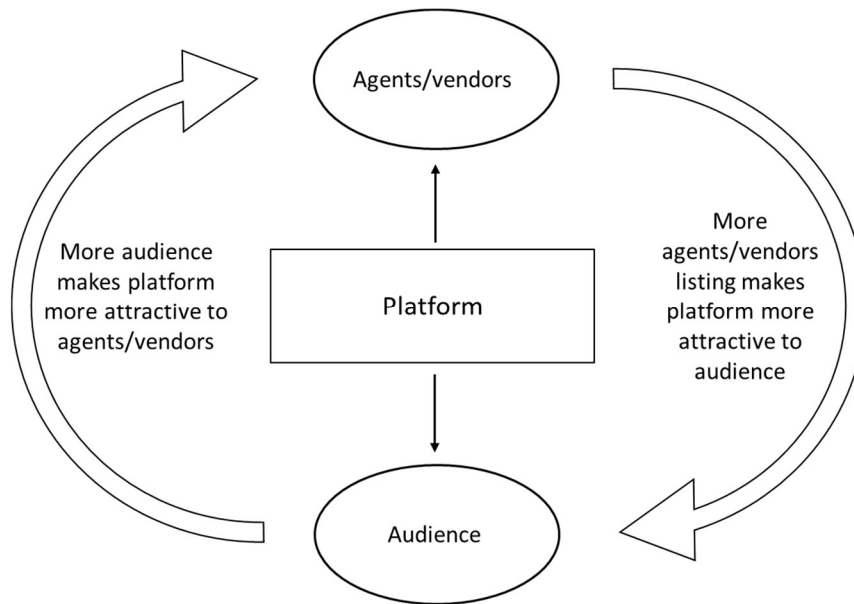
44. In this example, the platform offers a location for vendors/agents to list their properties and for buyers to view those listings. Each side benefits from the presence of the other on the platform:

   44.1 vendors/agents want their listing to be seen by as many potential buyers as possible so will want to list on the platform with the most buyers; and

   44.2 potential buyers will tend to visit platforms that have more listings to give themselves the best chance to find a house that best meets their needs/preference.

45. These network effects mean larger platforms can benefit from positive feedbacks from their size. In extreme cases networks effects can result in a "winner takes all" scenario, in which the market tips entirely towards a single platform. This is less likely to occur when users multi-home, although larger platforms will still have an advantage over small ones. Similarly, multi-homing is an indicator that "tipping" to a winner-takes-all scenario has not occurred.

46. There are other network effects that arise specifically from the interaction of users on property platforms. A platform that grows its listings could also grow its audience for property information because, as we have noted above, an audience member interested in listings may also be interested in property information (and vice versa), whether concurrently or earlier/later in time. Additionally, the platform could use its listing information to enhance its property information offering (for example, by including sales information or using listing information to enhance its valuation model). This could increase the risk of the market tipping in favour of that single platform in the future. Indeed, the fact that a market has not yet tipped towards a single platform does not mean that it is not at risk of doing so in the future.

47. There is a related market for digital advertising (including agent advertising and general advertising), in which network effects mostly flow one way. For example:

47.1 advertisers see greater value in platforms with a larger audience on the other side; but

47.2 the audience will normally see less value in platforms with increased volume of advertising. An exception may be real estate-related advertising partnerships like solar estimates or interior design suggestions, or contact information for real estate agents, which the real estate-interested audience may benefit from viewing.

48. Thus, the value of the platform to advertisers increases with the size of the audience, but consumers may not value a platform as highly if it gains advertisers. This is not always the case. Some advertisers may offer information that relates to, or is complementary with, the reasons that the audience are using the website in the first place.

49. Ultimately, platforms all seek to take advantage of network effects as much as possible. They can achieve this in different ways:

49.1 A platform that mainly focuses on listings will rely more heavily on the network effects between buyers and sellers (more buyers visiting the site will attract more sellers wanting to list their property and vice versa). This creates an incentive to build users of the platform on both sides.

49.2 A platform mainly focusing on selling advertising will be incentivised to focus on growing and increasing the engagement of its audience (to demonstrate value to the advertisers on the other side of the platform). Expanding the number of listings would likely assist this.

50. In practice real estate platforms engage to varying degrees in selling listings and selling advertising to agents, and their efforts to attract audiences overlap.

The relevant markets

Our approach to market definition

51. We define markets in the way that we consider best isolates the key competition issues that arise from the proposed acquisition. In many cases this may not require us to precisely define the boundaries of a market. As the High Court confirmed in *NZME & Fairfax v Commerce Commission* "market definitions are but a tool used in various competition law contexts to provide a framework for analysis of the relevant competition law concern".[28]

52. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.[29]

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[28] *NZME Limited & Fairfax Media Limited v Commerce Commission* [2017] NZHC 3186 at [42].
[29] Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 (HC) at [81].

53. In our SoI, we identified separate markets for the supply of:[30]

   53.1 online classified advertising for residential real estate for sale to agents and agencies (the listings market); and

   53.2 listings information and other property-related data and information to the audience (the audience market).

54. The diagram below shows these markets in relation to the groups of platform users we described earlier. We explain the relationship between these markets in more detail below and in the competition analysis.

Figure 3: The relationship between the markets
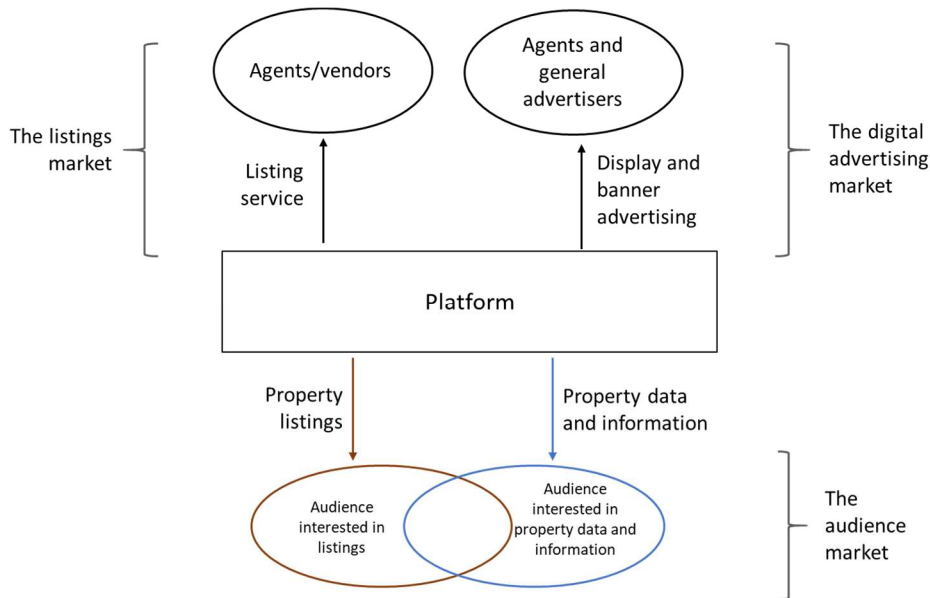
Notes: (i) Arrows denote the supply of goods or services by the platform. Ovals denote buyers/consumers of those goods and services.

55. As noted earlier, property platforms serve two different types of general customer: advertisers on one side of the platform, and consumers (or 'audience') on the other. These platforms are characterised by network effects, meaning that competitive conditions in one market (or platform side) affect and are affected by competitive conditions in other markets (or sides). In assessing competitive constraint, it is important to recognise the true nature of the focal businesses, which are digital platforms.

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[30] We also identified other markets in the SoI including a market for digital advertising and a market for listings for rent. However, as noted above we do not currently have concerns in relation to these markets.

The listings market

56. In the listings market, platforms compete to offer a listings service to agents/vendors. This is illustrated at the top left of Figure 3.

57. Trade Me submits that listings in print publications are a competitive constraint on online listings. It submits that vendors will choose how to allocate money between print and digital channels and will substitute between these in response to price changes.

58. We defined a market for online listings on the basis that digital and print appeared to target different types of buyers (that is, digital targets active buyers, and print passive buyers) so were more likely to be complements than substitutes. This distinction flows from the physical differences between the digital and print formats. Digital listings provide a complete, up-to-date and searchable list of the houses available for sale. This is likely to appeal to active buyers because they can more easily find a house that meets their requirements. Print listings do not offer the same searchability or other functionality. However, agencies identified print as capable of reaching passive buyers; ie, those readers who are not immediately interested in buying but might become a buyer if they happened to notice a house they like.

59. Since publishing the SoI we have received further information from some agencies on this point. We asked agencies if they would be likely to switch to print if the price, relative to digital, changed. The response was mixed.

   59.1 One agency did not think such substitution would occur as digital and print target different sectors of the market: online markets target active buyers, whereas print can reach active and inactive buyers.[31]

   59.2 One agency stated print was in decline and a decrease in price would not change the trend.[32]

   59.3 One agency stated that vendors would switch to print.[33]

60. We also note that
   [
        ].[34] This suggests that buyers using online listings platforms are unlikely to see print as a good substitute as print has many fewer listings.

61. We consider that the evidence supports a market limited to online listings. However, we recognise that there may be some small degree of constraint from outside the market from print.

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[31]   [   ].
[32]   [   ].

[33]   [   ].

[34]   [   ].

The audience market

62. In the audience market, platforms provide property content on their websites to attract audiences. As Figure 3 above shows there are two main types of content that platforms provide:

    62.1   property listings; and

    62.2   property data/information (such as an estimate of the value, size of the property, editorial content, and so forth).

63. This content attracts audiences. Due to the differences in the nature of the two groups of content, the audiences that they each attract will not be the same. However, there is likely to be overlap between those audiences. For example, a buyer who looks at property listings and finds a house they like may also look at information and data about that property, or editorial articles about price trends in the suburb in question.

64. Trade Me submits that:[35]

    64.1   there is a market for the supply of property data, information and listings to consumers (which would include both audiences identified in the lower part of Figure 3);

    64.2   the market could in theory be split into separate markets for property data and information on the one hand, and property listings on the other (which would separate the two audiences identified in the lower part of Figure 1); however

    64.3   the precise scope of the market is unlikely to be material to the Commission's assessment.

65. In our SoI we identified that platforms, due to their brand position, interface, and functionality, are likely to attract a different mix of audiences.[36] However, there were no bright lines between the different audiences and no easy way to distinguish between them. For the purpose of our analysis we defined a market that included all audiences in the SoI.

66. We continue to consider this market appropriate. This accords with the Applicant's proposed market definition. Where relevant we take account any differences in the audiences that a platform attracts in the competition analysis.

The interdependence between the listings and audience market

67. Trade Me submits that, due to the interdependencies between the different 'sides' of the platform, the Commission should focus its analysis on the competitive impact

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[35]   Trade Me "Letter in response to the SoI" (25 May 2021) at [17].
[36]   The SoI at [53]-[54].

of the Proposed Acquisition on the 'paid' side of the platform (ie the listings and advertising markets in the upper half of Figure 3).[37]

68. Our approach in this case is to assess the Proposed Acquisition with reference to separate listings and audience markets. This reflects that there are some differences in the nature of competition in the two markets. However, these markets are closely connected due to the network effects we have described above. For this reason, our competition analysis discusses the two markets together.

With and without scenarios

69. Assessing whether a substantial lessening of competition is likely requires us to:

69.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual); and

69.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.

The Parties' view of the counterfactual

70. The Applicant submits that, without the Proposed Acquisition:

70.1 Trade Me would explore developing its Property Insights microsite further, and may be able to achieve some of the benefits that the Proposed Acquisition would bring, but this would likely take longer, and represent higher risk, than the Proposed Acquisition;[38] and

70.2 Homes will continue its focus on engaging the homeowner, widening its property data set, and offering additional digital advertising services to that audience, albeit without being able to access Trade Me's datasets and audience.[39]

71. Homes further submits that it has a lack of control over listings at present (because it has not demonstrated sufficient additional value relative to other existing online alternatives).[40] It says that it does not see this situation changing in the counterfactual and, as a result, it considers a comprehensive set of listings to be a "nice to have", but its business is not predicated on that being the case. Homes therefore says that in the counterfactual, while it will "continue to seek to work with real estate agencies to make listings available on its site, its strategic focus will remain on developing aspects of its offering within its control". These aspects

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[37]   The Application at [75].
[38]   The Application, at [40].
[39]   The Application, at [44].
[40]   Homes submissions on Statement of Issues (10 May 2021) at [8].

generally relate to the provision of property data/information and the monetization of that data through advertising partnerships with agents and businesses.[41]

The Commission's view of the counterfactual

72. The Commission's current view is that the appropriate counterfactual against which to analyse the Proposed Acquisition is a forward-looking one in which Homes is likely to continue to expand its competitive position within the listings and audience markets.

73. Our reasons for reaching this view are as follows.

Homes has been expanding within the listings market and audience market

74. Based on the evidence available to us, Homes has been growing in the listings and audience markets.

75. Unlike Trade Me and Realestate.co.nz, which have historically focused on buyers and offered a narrow core property listings product, and have historically invested less in providing other data/information,[42] Homes seeks to appeal to as broad a range of real estate-interested audiences as possible.[43] Homes therefore provides a range of products and services both to the audience and to real estate agents and advertisers. Like Trade Me it offers this information without a soft paywall.

76. Notwithstanding that Homes has to date had more success attracting homeowners and other more passive audience groups to its platform,[44] it appears to be expanding and building a sustainable position in the listings side of the platform as well.

76.1 Homes has sought to increase the number of listings on its site and has achieved this.[45] Homes has been increasing the number of listings that it advertises on its platform,
[

]. It has been increasing

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41   Homes submissions on Statement of Issues (10 May 2021) at [8] to [11].
42   Realestate.co.nz offers property data/information, although to a lesser degree than Homes. It has recently announced improvements to its valuation product. Trade Me says
[   ]. It has recently begun offering an agent advertising product called "Suburb Ownership".
43   In the internal document
[

]. In the
internal document
[

].

44   [   ].

45   A Homes internal document indicates that [   ].

its total monthly audience over time (see Figure 6).[46]

76.2 Homes appears to be attracting more buyers. It
[
].[47]

76.3 Homes, [   ].[48]

Homes is likely to continue to expand in future

77. Our current view is that Homes is likely to continue expanding in future.

78. First, Homes has now established automatic listing feeds with most of the large agencies, which means it can expect listings to grow as agents take advantage of the feed. This is because while establishing automatic feeds involves some upfront expenditure, [   ]
once the automatic feed is established agents can upload listings to that platform with the click of a button..

79. Second, Homes' ongoing development of new products and services will continue to attract audiences to its platform.
[
]:

79.1 [   ];[49]

79.2 [   ];[50]

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[46] In the Trade Me internal document
[
].

[47] [   ]

[48] Commerce Commission interview with Homes (2 March 2021).

[49]
[
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[50]
[
].

79.3   [   ];[51]

79.4   [   ];[52] and

79.5   [   ].[53]

80.   We consider that the factors set out above are likely to cause the Homes platform to continue to grow in attractiveness to its audience, increasing Homes' total audience as well as the engagement of that audience with the platform.

81.   This audience growth is likely to include attracting more potential buyers. This is because:

      81.1   Homes is likely to continue to directly increase the number of buyers that visit the Homes website as it increases the total number of listings it has on its website and optimises the presentation of those listings; and

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

82.   Should Homes grow its audience (and in particular, its audience of potential buyers), we expect that it would continue to increase in attractiveness to agents/vendors as a place to list property for sale, as a result of the network effects referenced above. As it increases in value, Homes may become more successful in [   ], further increasing its total listings.[54]

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[51]   [   ].

[52]   [

    ].

[53]   [

    ].

[54]   [   ]
[   ].

Summary

83.   In summary we consider that in the counterfactual Homes will likely continue to expand its competitive position within the listings and audience markets.

84.   We invite submissions on:

   84.1   any factors that might limit the growth of Homes in the listing and audience markets; and

   84.2   any potential changes in the industry, technology or audience habits that might make Homes a more effective competitor compared to rivals (such as a downturn in the market).

Horizontal unilateral effects in the listing and audience markets

85.   Horizontal unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged company can profitably increase prices above (and/or reduce quality below) the level that would prevail without the merger.

86.   At this stage our current view is that:

   86.1   Trade Me likely holds significant market power in the listings market;

   86.2   Homes growth would make it a significant competitor to Trade Me in the listings market;

   86.3   the Proposed Acquisition would eliminate that potential competition and raise barriers to entry, and this will have a flow-on effect of reducing competition in the audience market as a result of network effects; and

   86.4   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 with the Proposed Acquisition.

87.   We discuss each of these elements in turn below. We discuss the listing and audience markets together because the network effects mean the two markets are closely related.

Trade Me is likely to have significant market power

88.   The evidence appears to show that Trade Me is likely to have significant market power in the listing market, with flow-on effects to its position in the audience market.

89.   First, most comments of agents [   ] suggest that Trade Me is a critical part of the average property marketing campaign. For example:

89.1   One agency described Trade Me as
[   ].[55] Another
agency stated that [   ]. [56] [57]

89.2   [   ], a Trade Me market research document identified that
[   ].[58] A consumer research
document that Trade Me commissioned stated
[   ].[59]

90.   Second, the data we have for number of listings and audience size show Trade Me is
[   ] its rivals.[60]

90.1   Trade Me has a strong position in terms of the number of listings it has on its
website. It [   ].
Listings are important because buyers are more likely to visit platforms that
have a full list of properties for sale. Attracting buyers will in turn attract
agents/vendors to list on the platform. As identified above, agencies view
Trade Me as a critical part of the market campaign and so will commonly
choose to list on Trade Me. Unlike other platforms, Trade Me allows private
listings which would add to its listing inventory.[61]

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[55]   The agency also identified that Trade Me was "undercooked" for depth of information on property
(which it thought was a reason Trade Me was seeking to buy Homes) and that OneRoof was superior for
information. The agency considered that the benefit from Trade Me was in the value it offered and if it
did not offer that value, people would use other sites. Commerce Commission interview with
[   ].

[56]   The agency stated that the choice on where to list is based on numbers and the agency can show the
value of Trade Me and Realestate.co.nz. Commerce Commission interview with [   ].

[57]   Another agency identified Trade Me, One Roof and Realestate.co.nz as options and that they all compete
on the same basis. The agency said that the number of enquiries from the listing is critical and it viewed
Realestate.co.nz as giving the best quality leads. The agency stated it used Trade Me (despite there being
free alternatives) as the agent must use best endeavours to get best buyers. Commerce Commission
interview with [   ]. Another agency said that Trade Me had brand recognition and provides
strong exposure for the listing. The agency said that Trade Me was attractive because of the amount of
visitors to its site, and told us that vendors often requested to list on Trade Me. Commerce Commission
interview with [   ].

[58]   [   ].

[59]   The same document showed [   ].

[60]   [   ].

[61]   Trade Me
[   ].
Commerce Commission interview with [   ]. There was a period where OneRoof achieved more
listings in Auckland than Trade Me (and promptly advertised that achievement). Trade Me
[   ]. See paragraph 119.1 for more
details.

90.2 Trade Me appears to have a very large unique audience. It appears [   ].[62] Audience numbers are an important indicator of value to advertisers. Trade Me focuses on listings and so these audience numbers are likely to be skewed towards active buyers. The numbers set out in Figure 6 may underestimate Trade Me's position. We understand that these figures are based on website audience, but we note that, [   ].

91. Third, Trade Me's market power may be reflected in the price that it charges for its listings. Trade Me achieves [   ] listings even though it charges for base listings. In comparison Homes and OneRoof do not charge for base listings. Trade Me also [   ],[63] [   ].[64]

92. As Trade Me charges for base listings, [   ].[65] The ability to charge for listings when others do not, reflects the greater value that agents and vendors place on Trade Me compared to competitors. This is consistent with the existence of market power.

93. We invite submissions on whether Trade Me has existing market power in the listings and audience markets.

Homes' future growth is likely to significantly constrain Trade Me

94. At this stage, we consider that Homes' expected growth, identified in the counterfactual section, will likely make it into a significant competitor to Trade Me. We consider this will be the case even if Homes' focus is not in the listing markets, due to network effects. The Proposed Acquisition will strengthen Trade Me's existing market power by eliminating a potential competitor.

95. Trade Me submits that Homes currently focuses on digital advertising and does not impose a constraint on Trade Me in the listings market. It further submits that agents do not see value in Homes as a listings platform, and that to the extent Homes values listings data, it is because it uses listings to "attract an audience for its digital

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[62] The figures in the charts are based on "unique audience". As noted, unique audience is the total number of unique people that visited a site during a specified time period.

[63] [   ]. Commerce Commission interview with [   ].

[64] See for example Annex 1, Figure 2 which shows that [   ]. One agency said Trade Me [   ]. Commerce Commission interview with [   ]. One agency said that if Trade Me were to increase prices it is likely that it would not affect traffic but that the revenue will come from something else such as print. Commerce Commission interview with [   ].

[65] [   ].

advertising products".[66] It argues that Homes has existed for six years but has not, in that time, innovated in the listings market or imposed a competitive constraint on the other operators.[67] With respect to Trade Me's views of its own competitive constraints, Trade Me has submitted that:[68]

95.1   [   ]; and

95.2   [

         ].

96.   Trade Me argues that this is the best indicator of Homes' future competitive constraint.[69]

97.   Regardless of Homes' focus, we note that:

97.1   it has been increasing its total monthly listings (see Annex 1, Figure 4); and

97.2   a significant proportion of buyers use Homes.[70]

98.   If Homes increases the total monthly listings on its website (which we currently think is likely), the value of its website will rise to potential buyers. If more potential buyers start to use its website, the value of its website will rise to agents/vendors ([   ]). This dynamic would exist regardless of Homes' strategic focus, or its reasons for prioritising the acquisition of listings as a dataset. The growth in listings could also have other flow on benefits for Homes. For example, the listings may further enrich the property information set that some audience are seeking. This will encourage more agencies to advertise on Homes.

99.   There are several ways in which Homes' growth in the manner envisaged above could impact Trade Me. Trade Me [   ]. It can monetise base listings because agents/vendors see value in listing on the Trade Me platform. A key driver of this value is the size of the audience that Trade Me offers to agents and vendors.[71] We consider Homes' growth could threaten Trade Me's value to agents and vendors and in doing so adversely impact its revenues.

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[66]   Trade Me response to Statement of Issues, at [29].
[67]   Trade Me response to Statement of Issues, at [37].
[68]   [   ].

[69]   Trade Me response to Statement of Issues, at [37].
[70]

        [

                                                                                    ].
[71]   See for example above n 70.

99.1 The competition could reduce Trade Me's audience, because at least some of Trade Me's audience could:

99.1.1 switch to using Homes, reducing Trade Me's total audience; or

99.1.2 use Trade Me less often, or for shorter periods of time, reducing total engagement with the platform and reducing its attractiveness of agents and advertisers.

99.2 Even if Trade Me's own audience does not decrease, Homes could increase the value of its platform such that Trade Me's relative value declines. That is, agents/vendors realise that there are viable alternatives, forcing Trade Me to act more competitively.[72]

100. Due to network effects, the loss of audience or listings would have a compounding effect on Trade Me.[73]

101. In either case, Trade Me (and other platforms that remain in the market) will be incentivised to react, including by:

101.1 reducing price/increasing quality in the listings market, to convince agents/vendors that there is still value in Trade Me as a listings platform; and/or

101.2 introducing new products and services in the audience market to retain audience.

102. The Proposed Acquisition would eliminate the potential competition of Homes meaning customers would not enjoy these benefits. Customers may instead face the prospect of higher prices and reduced innovation compared to the counterfactual.

103. We are also considering whether Homes' growth could also impact Trade Me's revenues earned from agent advertising products. This could be the case, for example, where agents see value in increased listings or audience when advertising their own services.

104. It is likely that agents would see value in a larger audience when advertising their services, for the same reasons that any advertiser values a greater number of

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[72]

[

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[73]

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eyeballs. We welcome further information on the extent to which agents place value on a platform with more listings when considering where to advertise themselves to the audience.

105.   In light of the above, we are currently not satisfied that the Proposed Acquisition would not remove a significant constraint to Trade Me in both the listings and audience markets.

The Proposed Acquisition would substantially lessen competition in the listings market, with potential flow-on effects to the audience market

106.   The Proposed Acquisition will eliminate the future competition that Homes would impose on Trade Me. This will strengthen Trade Me's existing market position. We are also considering whether the Proposed Acquisition could raise barriers to entry and expansion and further entrench Trade Me's market position.

107.   The Proposed Acquisition of Homes means that the merged entity would:

107.1   have a larger audience as a result of adding Homes' audience (which includes at least some buyers) to Trade Me's;

107.2   catch audience members earlier in the property funnel, increasing the likelihood that, when a property information audience member becomes part of the listing audience (that is, an active buyer), they use Trade Me;[74] and

107.3   have a strong position in the provision of property information to the audience side of the market.

108.   By combining strengths in both listings and property information, the Proposed Acquisition may:

108.1   in the audience market, reduce the amount of audience (including potential buyers) that engage with competing real estate platforms; and, therefore

108.2   in the listing market, reduce the relative attractiveness of competing platforms for advertisers.[75]

109.   As noted earlier, the evidence shows multi-homing between different listings platforms by potential buyers of real estate. In general, we expect that property buyers – especially active buyers – will remain incentivised to consult different listings platforms throughout the buying process. However, the extent of multi-homing may reduce if buyers have their needs meet by the merged entity's platform.

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[74]

[

].

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

For example, audience may visit rival platforms less frequently. This would affect the perceived value of those websites.

110. Although initially the merged entity's combined platform may be preferred by consumers, over time this will raise barriers to entry and expansion for rivals competing with Trade Me. Rivals may be impacted by the loss of network effects. Where there are significant network effects this can compound or accelerate the losses experienced by rivals. Those platforms may find it more difficult to build audiences and become a less attractive location for agents/vendors to list, in turn becoming less attractive for audiences. Rivals that wish to enter and expand would face higher barriers due to the need to have a platform that could match the merged entity for both listings and property information, and swiftly build a comparable audience.

The remaining actual and potential competition are unlikely to be sufficient to offset this substantial lessening of competition

111. At this point we are not satisfied that the collective constraint of other competitors will be sufficient to replace the lost competition from the Proposed Acquisition.[76] This is both because the future constraint imposed by current rivals is unclear and the Proposed Acquisition will likely raise barriers to entry and expansion.

112. Besides Homes, the other online real estate platforms competing most closely with Trade Me currently are:

112.1 Realestate.co.nz; and

112.2 OneRoof.

113. Trade Me submits that both of these entities "already offer property information and valuation services to audiences as part of their websites", and would, in the counterfactual, be at least equally – and potentially more – able to expand and increase their constraint on Trade Me.[77]

Realestate.co.nz

114. At present Realestate.co.nz appears to be a constraint on Trade Me in the listings market.

114.1 Trade Me's internal documents indicate that
[   ].[78]

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76   We take into account the limited constraint from print when reaching this conclusion.
77   Trade Me, "Letter in response to the SoI" (25 May 2021) at [58] and [61].
78   [   ].

114.2 Historically, there is evidence that competition with Realestate.co.nz has motivated Trade Me to develop the range of products/services it offers in the audience market.[79]

114.3 Realestate.co.nz attracts a significant number of listings.
[   ].[80] Agencies consider Realestate.co.nz's strengths are its brand name and rate of referrals.[81]

115. However, at this stage we are not satisfied that Realestate.co.nz is likely to maintain or increase the level of constraint it exerts on the merged entity in future. This is because:

115.1 [   ].[82]

115.2 Realestate.co.nz does not appear to be offering new products and services additional to their listings function at the rate of other platforms.
[   ]. It is unclear whether Realestate.co.nz is well-placed to match the more complete offering of the merged entity, which would provide listings as well as property information. We are considering whether its ownership structure (50% owned by REINZ and 50% by five of the largest agencies in New Zealand), may limit its ability and incentive to develop new products and services.

116. [   ], Trade Me's internal documents indicate that,
[
      ]:

116.1 [   ];[83]

116.2 [   ];[84]

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[79]
[
                                                      ].
[80] See the Figures in Confidential Annex 1.
[81] One agency said Realestate.co.nz provided higher quality enquires than Trade Me.
[   ] One agency said that Realestate.co.nz had good awareness and that it put all its stock on the platform.
[
      ]. [   ] said Realestate.co.nz's advantage was its domain name. [   ]
[   ] said Realestate.co.nz had strong international traffic. [   ].

[82] See the Figures in Confidential Annex 1.
[83] [   ].
[84] [   ].

116.3 [   ];[85]

116.4 [   ];[86]

116.5 [
];[87]

116.6 [

];[88]

117. [   ] In an email that Trade Me provided,
[

].[89]

118. If Realestate.co.nz is not a strong constraint in the future it will not be considered a good alternative by agencies if the merged entity was to raise prices (or to otherwise worsen service or quality) in future.

OneRoof.co.nz

119. OneRoof is a relatively new entrant, having started in 2018. Nevertheless, it appears to already represent some competitive constraint:

119.1 Due to NZME's particularly high penetration in Auckland, OneRoof has been able to increase its total number of Auckland listings to the point that they are at least equal to Trade Me and, occasionally, higher.[90] As soon as OneRoof had achieved more listings than Trade Me in Auckland, OneRoof placed advertisements on NZME's media assets advertising that fact.
[

].[91]

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[85]   [   ].
[86]   [   ].
[87]   [   ].
[88]   [   ].
[89]   [   ].
[90]   NZME claims that as of November 2020, OneRoof had the most residential for sale listings in Auckland. OneRoof "New Zealand Media and Entertainment Investor Day" (16 November 2020) at 105, 106.
[91]

   [

].

119.2 Trade Me's internal documents indicate that
[

].[92]

120. Given the evidence before us, we think OneRoof is likely to expand further, based on its:

120.1 recent growth in listings and total audience;[93]

120.2 publicly-announced pipeline of product developments;[94] and

120.3 financial support and referral traffic from majority-owner NZME Limited.

121. We are continuing to consider whether this potential expansion by OneRoof would be of a sufficient likelihood, extent, and timeliness to offset a substantial lessening of competition arising from the Proposed Acquisition. If 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.

122. At this stage the evidence indicates that OneRoof has grown in both listings and total audience, and
[   ].[95]
Agencies also appear to consider OneRoof to be a closer competitor to Trade Me for listings than they consider Homes to be.[96]

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[92]

[

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[93] See Figures 2 and 3 in Confidential Annex 1.
[94] "NZME 2020 Investor Day Presentation" (16 November 2020), at pp 115-124. Accessed at http://nzx-prod-s7fsd7f98s.s3-website-ap-southeast-2.amazonaws.com/attachments/NZM/363265/335128.pdf.
[95] See the Figures in Confidential Annex 1.
[96]

[

].

123. Trade Me therefore submits that OneRoof's (and Realestate.co.nz's) growth prospects are superior to Homes'. It states that
[

].[97]

124. We are continuing to consider whether there are any factors that may undermine the likelihood or ability of OneRoof to expand to constrain Trade Me in the counterfactual. For example, we note that:

124.1 OneRoof's main strength is in Auckland where it benefits from NZME's other media assets (such as the NZ Herald). OneRoof's monthly listings and audience are not as high outside of Auckland. It may take more time for OneRoof to become a major constraint on Trade Me in those regions;

124.2 OneRoof has been in the market for a short time, and it remains to be seen whether it will provide an ongoing return deemed acceptable to NZME;

124.3 at present, one of OneRoof's comparative advantages against Trade Me is the fact that its website is closer to Homes' in appealing to a broad range of property-related audience. If the Proposed Acquisition proceeded, OneRoof may lose that comparative advantage; and

124.4 the Proposed Acquisition would also provide the merged entity with enhanced scale [   ], making it more difficult for OneRoof to compete and attract paid listings.

125. We also recognise that the Proposed Acquisition will allow the merged entity and gain audience. This gain in network effects will raise barriers to expansion to firms such as OneRoof.

126. Given the above, we cannot at this stage rule out the real chance of a counterfactual scenario in which Homes grows to constrain Trade Me but OneRoof does not.

Other potential competitors

127. Other current and potential competitors are those firms that offer some of the products and services of the main platforms. For example:

127.1 Property Value is run by CoreLogic and offers property valuations and property reports.[98] It does not provide listings.

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97 [   ].
98 Property Value "About us" <www.propertyvalue.co.nz>

127.2 MyValocity is run by Valocity Limited. Like CoreLogic, it offers property valuations and property reports.[99] It does not provide listings.

127.3 Neighbourly is a platform run by Stuff, designed to allow neighbours to connect to one another online.[100] Neighbourly has a property section on its website called "homed", which has some listings.

127.4 Facebook offers a product called Facebook Marketplace, which is a searchable online listings platform.[101] Currently Facebook's search functionality for properties for sale is limited to price, but Facebook also offers a more advanced search functionality for rental properties.

128. At this stage these platforms lack the features of Trade Me or Homes and appear to be of a smaller scale. We consider that the barriers to entry and expansion that these and other potential competitors face are likely to be high.

128.1 The Proposed Acquisition will result in the combination of Trade Me's strong position in listings and Home's strong position in property data and information. Rivals seeking to entry the market will now need to compete against an entity offering both.

128.2 The network effects present in the market means that a new entrant would need to find a way to reach a scale that attracts both audience and agents/vendors to list. The new entrant will need to have an existing audience that it can use or invest significantly in advertising to attract audiences. The firms that may be potential entrants may have better use of their capital than to risk entry. The new entrant may face a coordination problem in needing to convince multiple agencies to provide listings before an audience is guaranteed.

129. An illustration of the barriers to entry that rivals will face is the current degree of constraint faced by some of the newer platforms. Homes
[   ]. OneRoof entered in 2018 and appears to have reached profitability, having benefited from the advertising and referrals it receives via NZMEs media assets.[102] Despite their growth, neither Homes nor OneRoof is yet able to charge for base listings and
[   ].

130. We continue to assess the ability of potential competitors to expand and replace the lost competition from the Proposed Acquisition.

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99   MyValocity "Home" <https://myvalocity.co.nz/>
100 Neighbourly "About us" <www.neighbourly.co.nz>
101 https://www.facebook.com/marketplace/auckland/propertyforsale
102 OneRoof achieved a breakeven contribution in 2020. See NZME "2020 Full Year Results: For the year ending 31 December 2021" (24 February 2021) at 20.

Summary

131. We are not yet satisfied that the collective constraint imposed by other competitors would be sufficient to replace the competition lost from the Proposed Acquisition.

132. We invite further submissions on the constraint imposed by other competitors in the future, especially whether:

132.1 Realestate.co.nz and/or One Roof would be able to expand in response to a price increase or quality decrease imposed by Trade Me; and

132.2 other platforms such as PropertyValue, MyValocity and Neighbourly could develop and expand to compete more closely to the merged entity.

Conglomerate effects

133. In the SoI we considered whether the Proposed Acquisition could give rise to conglomerate effects. These can occur if an acquisition increases the 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.[103] We identified that to test this we were considering whether:

133.1 post-acquisition the merged entity would create an ability to foreclose through bundling or tying because:

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

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

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

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

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

134. We identified several possible ways in which Trade Me could bundle its services.

134.1 On the audience side, Trade Me has strength in listings while Homes has strength in providing property information. The merged entity could "bundle" this property information through linking the websites.

134.2 On the advertising side, the merged entity could offer bundles that:

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

> 134.2.1 allow agents to list on both Trade Me and Homes' platforms; or
>
> 134.2.2 allows agents to buy packages that combine listings and general advertising.

135. We consider that Trade Me may create bundles of this nature.[104] However, we are satisfied that these bundles are unlikely to give rise to conglomerate effects. In the SoI we were still considering whether there were separate markets for different types of audiences (such as a listings audience and property information audience). Because conglomerate effects involve a leveraging of market power from one market to another, we were also investigating whether bundling up these different types of audience could constitute conglomerate effects. However, we have now defined a single 'audience' market, meaning that the combination of Trade Me's and Home's audiences will occur in the same market.

136. Conduct of this nature can be assessed in different ways. Given the platform nature of the businesses in question, we consider that it is more appropriate in this case to analyse the combination of these audiences in the context of a strengthening of network effects as part of our assessment of horizontal unilateral effects. The impact of the merged entity offering deals to list on both platforms is also considered as part of the horizontal unilateral effects analysis.

137. Finally, we do not consider further the impact of the merged entity bundling listings and general advertising. Listings are for the benefit of vendors whereas general advertising is for the benefit of agents. These services are not complements and are only weakly related, so are unlikely to be a natural pair of services to bundle.

Next steps in our investigation

138. The Commission is currently scheduled to make a decision on whether or not to give clearance to the proposed acquisition by 6 August 2021. However, this date may change as our investigation progresses.[105]

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

Making a submission

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

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[104] In its response to the SoI, Trade Me [   ]. In a Trade Me internal document
[   ]   ].

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

mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on 14 July 2021.

141. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website.

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

Confidential Annex 1

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