

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Application to Tribunal for Review

File Number: ACT 1 of 2023

File Title: APPLICATIONS BY AUSTRALIA AND NEW ZEALAND
BANKING GROUP LIMITED AND SUNCORP GROUP LIMITED



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

REGISTRAR

Dated: 25/08/2023 3:05 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



FORM I

(subregulation 20(1))

APPLICATION TO TRIBUNAL FOR REVIEW

SUNCORP GROUP LIMITED APPLICATION FOR REVIEW OF AUSTRALIAN COMPETITION AND CONSUMER COMMISSION MERGER AUTHORISATION DETERMINATION MA1000023

1. Suncorp Group Limited (**Suncorp Group**) applies to the Australian Competition Tribunal (**Tribunal**) pursuant to s 101 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) for a review of the determination of the Australian Competition and Consumer Commission (**Commission**) dated the 4th day of August 2023 (Commission file no. MA1000023) (**Determination**).
2. Suncorp Group's interest in the Determination is as follows:
 - (a) On 2 December 2022, pursuant to s 88(1) of the CCA, Australia and New Zealand Banking Group Limited (**ANZ**) applied to the Commission for the merger authorisation to which the Determination relates (**Application**). Suncorp Group was not the applicant for merger authorisation.
 - (b) The Application concerned ANZ's proposal to acquire from Suncorp Group 100% of the issued share capital in SBGH Limited (**Suncorp Holdings**), either directly or via a related body corporate of ANZ, and certain real estate and intellectual and other property rights held by other Suncorp Group entities to facilitate the operation of Suncorp-Metway Limited (**Suncorp Bank**), in accordance with a Share Sale and Purchase Agreement (**SSPA**) between ANZ and Suncorp Group executed on 18 July 2022 (collectively, the **Proposed Acquisition**). The SSPA is itself confidential to both ANZ and Suncorp Group.
 - (c) Suncorp Group owns 100% of the shares in Suncorp Holdings, which in turn owns 100% of the shares in Suncorp Bank. Suncorp Bank and its subsidiaries own and operate Suncorp Group's banking business in Australia. Suncorp Holdings is a non-operating holding company (that is, Suncorp Holdings does not itself carry on a business other than the business of ownership of Suncorp Bank and Suncorp Bank's subsidiaries).
 - (d) The Proposed Acquisition is conditional upon, among other things, authorisation relevantly being granted by the Commission or the Tribunal.
 - (e) Suncorp Group also owns and operates, by way of other entities, various insurance businesses in Australia and in New Zealand, which provide a range of personal and commercial insurance products by way of a suite of brands including AAMI, Suncorp Insurance, GIO and Apia. Those insurance businesses do not form part of the



Proposed Acquisition and Suncorp Group will continue to operate them if the Proposed Acquisition proceeds.

- (f) The Commission's Determination dismissed the Application and therefore declined to grant merger authorisation for the Proposed Acquisition.
- (g) Suncorp Group's interests are adversely affected by the Determination, because without the merger authorisation sought by ANZ, its proposed sale of Suncorp Holdings to ANZ will not be completed.

3. Suncorp Group is dissatisfied with the Determination in the following respects:

- (a) the Determination was not the objectively correct or preferable decision;
- (b) in particular, the Determination states that merger authorisation must not be granted on the basis that the Commission was not satisfied that the Proposed Acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition in relevant markets. Further, the Determination states that merger authorisation must not be granted on the basis that the Commission was not satisfied that the Proposed Acquisition would result, or would be likely to result, in a benefit to the public that would outweigh any detriment to the public that would result or be likely to result from the Proposed Acquisition. Both of those conclusions were (and are) incorrect;
- (c) in the premises of (a) and (b), upon a proper application of the applicable statutory criteria in s 90(7) of the CCA, the objectively correct or preferable decision is that:
 - (i) the statutory test for authorisation is satisfied in respect of the Proposed Acquisition; and
 - (ii) the merger authorisation sought in the Application should be granted.

4. The determination which Suncorp Group seeks from the Tribunal is as follows:

- (a) under s 102(1) of the CCA, the Commission's Determination dated 4 August 2023 be set aside; and
- (b) under ss 88(1) and 102(1) of the CCA, a determination granting to ANZ unconditional merger authorisation for the Proposed Acquisition, as contemplated by the Application.

5. Particulars of the facts and contentions upon which Suncorp Group intends to rely in support of the application for review, and a statement of the issues as Suncorp Group sees them, is attached as **Attachment A** to this application.



6. The address for service for the purpose of regulation 21 of the *Competition and Consumer Regulations 2010* (Cth) is:

c/o Linda Evans

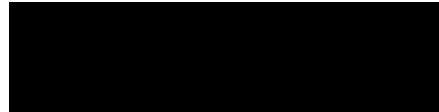
Herbert Smith Freehills

ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000

Email: Linda.Evans@hsf.com.

Dated this 25th day of August 2023.

Signed on behalf of the applicant, Suncorp Group



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Linda Evans
Herbert Smith Freehills
Solicitors for the applicant, Suncorp Group

History

Form I amended by SR No 330 of 1995, reg 10.1 and 10.2, effective 6 November 1995; SR No 20 of 1996, reg 10.2, effective 31 January 1996; SR No 280 of 2010, Sch 1, effective 1 January 2011 (as amended by SR No 337 of 2010).



ATTACHMENT A

PARTICULARS OF FACTS AND CONTENTIONS AND A STATEMENT OF ISSUES

A. KEY FACTS

ANZ

1. ANZ is an ASX-listed banking corporation and the smallest of Australia's four major banks – the other three “**Major Banks**” being Commonwealth Bank of Australia (**CBA**), National Australia Bank (**NAB**) and Westpac Banking Corporation (**WBC**).
2. ANZ supplies a broad range of banking products and services to retail and business customers in Australia and New Zealand, and to institutional customers globally. It operates six divisions:
 - (a) Australia Retail (providing banking services to retail customers across Australia);
 - (b) Australia Commercial (providing banking services to commercial and private banking customers across Australia);
 - (c) Institutional (providing banking services to institutional and business customers across Australia, New Zealand, Asia, Europe and America, including Papua New Guinea and the Middle East);
 - (d) Corporate Centre (which provides internal services to ANZ's organization globally);
 - (e) New Zealand (providing banking services to retail, commercial and private banking customers in New Zealand); and
 - (f) Pacific (providing banking services to retail, small to medium sized enterprises, institutional customers and governments located in the Pacific Islands).
3. As at the date of the Application, **[Confidential to ANZ]** [REDACTED]
[REDACTED]
[REDACTED].

Suncorp Group and Suncorp Bank

4. Suncorp Group is headquartered in Brisbane, Queensland, and operates in Australia and New Zealand only. It is an ASX-listed corporation that provides insurance and banking products and services in Australia and New Zealand. It has three core businesses:
 - (a) Insurance in Australia (providing a range of personal and commercial insurance products through a number of brands including AAMI, Suncorp Insurance, GIO and Apia);
 - (b) Banking (providing banking services to retail and business customers in Australia through Suncorp Bank). As at 30 June 2022, Suncorp Bank had approximately 1.2 million customers **[Confidential to Suncorp]** [REDACTED]
[REDACTED]; and



(c) Suncorp New Zealand (providing a range of personal and commercial insurance products to customers in New Zealand).

5. In Australia, as at September 2022, Suncorp Bank has approximately a 2.4% share of home lending. Its business banking services comprise four portfolios (commercial, small-to-medium enterprise (**SME**), property finance and agribusiness (which includes other regional customers)). Suncorp Bank has a less than 2% share of commercial banking products in Australia.

The Proposed Acquisition

6. Pursuant to the SSPA between ANZ and Suncorp Group:
- (a) ANZ proposes to acquire all of the issued share capital in Suncorp Holdings (which is the immediate holding entity for Suncorp Bank);
 - (b) ANZ proposes to acquire certain “Property Assets” (including leases and plant and equipment) held by other Suncorp Group entities, to facilitate the operation of Suncorp Bank; and
 - (c) among other things, Suncorp Group must procure Suncorp Bank and Suncorp Corporate Services Pty Ltd to execute a Transitional Trade Mark Licence Deed at least one business day prior to completion of the Proposed Acquisition.
7. The Proposed Acquisition is subject to three conditions precedent:
- (a) approval by the Federal Treasurer under the *Financial Sector (Shareholdings) Act 1998* (Cth);
 - (b) a final determination by the Commission or Tribunal to authorize the Proposed Acquisition, or a declaration made by the Federal Court of Australia that the Proposed Acquisition would not contravene s 50 of the CCA (and subject to there being no lodgment of a relevant application for review of the declaration or a notice of appeal); and
 - (c) the *State Financial Institutions and Metway Merger Act 1996* (Qld) (**Metway Merger Act**) being either repealed or amended such that it does not apply to any holding company of Suncorp Bank or ANZ or its related bodies corporate, with reference to certain agreed amendments and agreed commitments to the Queensland Government set out in Schedule 17 to the SSPA (or as otherwise agreed between the parties and the Queensland Government).
8. ANZ’s rationale for the Proposed Acquisition is that it will deliver the following benefits to ANZ, and to the customers of ANZ and Suncorp Bank:
- (a) increasing ANZ’s exposure to Queensland, which has had higher annual growth than the rest of Australia over the past two decades and is Australia’s largest interstate migration destination;



- (b) increasing ANZ's Queensland retail customer base from approximately 1.1 million to approximately 1.8 million customers and the Queensland proportion of ANZ's total lending from 14% to 19% (measured by gross loans and advances as at 1 May 2022) based on Suncorp Bank's geographically complementary lending portfolio, bringing ANZ's Australian business into a better balance. In this respect, greater geographic diversity provides lower risk and exposure to economic downturns and other events that impact particular geographies;
- (c) increased scale in Australian retail and commercial banking that will enable ANZ to more efficiently make investments required for meeting customer expectations in digital capability and ongoing regulatory change; and
- (d) substantial cost synergies phased in over four to six years with a net present value of approximately **[Confidential to ANZ]** \$ [REDACTED].

9. Suncorp Group's rationale for the Proposed Acquisition is that:

- (a) Suncorp Group has achieved limited operational and customer synergies from its conglomerate bancassurance model (i.e., operating a banking business and an insurance business);
- (b) divesting Suncorp Bank continues a process of simplifying Suncorp Group's business, giving it a singular focus on its insurance division and thus generating operational efficiencies;
- (c) it will leave Suncorp Group better placed to manage the increasing risks, reinsurance costs and natural hazard challenges that it faces in insurance markets;
- (d) it will allow Suncorp Group to focus solely on and invest in growth opportunities to develop its insurance business, without having to split its capital allocations between its insurance and banking divisions; and
- (e) a singular focus on its insurance businesses is also important given anticipated volatility in insurance and reinsurance markets. That singular focus will mean that Suncorp Group is better placed to invest in and manage underwriting challenges and generate operational efficiencies to address increasing costs.

The Queensland Commitments

10. ANZ and Suncorp Group have made the following commitments to the State of Queensland (together, the **Queensland Commitments**):

- (a) **[Confidential to ANZ]** [REDACTED], in order to satisfy part of a condition precedent relating to the *Metway Merger Act*, ANZ entered into an Implementation Agreement with the State of Queensland under which it committed to do the following upon completion of the Proposed Acquisition:

- (i) **[Confidential to ANZ]** [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED];
- (ii) **[Confidential to ANZ]** [REDACTED]
 [REDACTED];
- (iii) establish a tech hub in Brisbane (**Tech Hub**) for technology specialists in digital, cloud and data, and hire or place 700 individuals into the Tech Hub over 5 years; and
- (iv) establish partnerships with two Queensland universities to support development of technology skills in banking and **[Confidential to ANZ]** [REDACTED]
 [REDACTED];
- (b) on 15 June 2023, in order to satisfy part of a condition precedent relating to the *Metway Merger Act*, Suncorp Group entered into an Implementation Agreement with the State of Queensland under which it committed to do the following upon completion of the Proposed Acquisition:
- (i) **[Confidential to Suncorp]** [REDACTED]
 [REDACTED]
 [REDACTED];
- (ii) **[Confidential to Suncorp]** [REDACTED]
 [REDACTED]; and
- (iii) make various investments in Queensland including developing a disaster response centre of excellence in Brisbane employing more than 100 persons, spending \$12 million on an event control centre platform, maintain and grow its Disaster Response Team by 20 full-time positions (the value of this commitment is \$3 million), develop a Suncorp Regional Hub in Townsville and contribute at least \$3 million to community or educational initiatives specified by the State.

The supply of home loans in Australia

11. The supply of home loans includes loans to finance purchasing residential property or refinancing, and includes investment property loans and new loans or refinancing to undertake renovations. In relation the national market for the supply of home loans, further key facts relating to the supply of home loans are identified in the contentions below, and Suncorp Group also refers to and repeats paragraph 24 of “Attachment A” to ANZ’s application to the Tribunal for review of the Determination filed on 25 August 2023 (**ANZ’s Facts and Contentions**).

The supply of commercial banking services

12. Suncorp Bank segments its business banking customers into four portfolios: commercial, SME, property finance and agribusiness (which includes other regional customers). Its portfolio is more strongly weighted to **[Confidential to Suncorp]** [REDACTED] than ANZ's portfolio.
13. Further key facts relating to the supply of commercial banking services are identified in the contentions below with respect to SME and agribusiness banking, and Suncorp Group refers to and repeats paragraphs 25 to 27 of ANZ's Facts and Contentions.

Retail deposits and credit cards

14. In relation to the supply of retail deposits and retail credit cards, it is unnecessary to assess these markets in detail, for the reasons described at paragraphs 35 and 36 below.

Public benefits

15. In relation to the public benefits which would be likely to result from the Proposed Acquisition, Suncorp refers to and repeats paragraphs 84 to 86 of ANZ's Facts and Contentions.

B. ISSUES

16. What are the relevant markets for the purposes of analysing whether the Proposed Acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition within the meaning of s 90(7)(a) of the CCA?
17. What counterfactual(s) appropriately should be considered in assessing whether the criteria in s 90(7)(a) of the CCA are satisfied? In particular, is there a real commercial likelihood that Bendigo and Adelaide Bank Limited (**Bendigo**) would acquire Suncorp Bank and become a materially more effective competitor in the future without the Proposed Acquisition?
18. Having regard to the appropriate counterfactual(s), would the Proposed Acquisition have the effect or likely effect of substantially lessening competition in any of the relevant markets within the meaning of s 90(7)(a) of the CCA? This raises the following key sub-issues:
 - (a) In considering the likely competitive effect on the national market for home loans:
 - (i) Is this market conducive to coordination between the major banks?
 - (ii) Would the Proposed Acquisition increase the likelihood of coordination between the Major Banks being initiated and/or sustained relative to the appropriate counterfactual(s), such that if this coordination occurred it would have a meaningful competitive impact?
 - (b) In considering the likely competitive effect on the relevant market in which SME banking services are supplied relative to the appropriate counterfactual(s):

- (i) Would the Proposed Acquisition remove any materially differentiated offering of Suncorp Bank?
 - (ii) If so, would that have a meaningful competitive impact, including in light of existing competitors and the threat of entry or expansion?
- (c) In considering the likely competitive effect on the relevant market in which agribusiness banking products are supplied relative to the appropriate counterfactual(s):
- (i) Would the Proposed Acquisition remove a strong regional bank with a differentiated service-focused offering?
 - (ii) If so, would that have a meaningful competitive impact, including in light of existing competitors and the threat of entry or expansion?
19. Having regard to the appropriate counterfactual(s), would the Proposed Acquisition result, or be likely to result, in a benefit to the public that would outweigh any identified detriment to the public that would result, or be likely to result, from the Proposed Acquisition for the purposes of s 90(7)(b) of the CCA? This raises the following key sub-issues:
- (a) Would the ability of Suncorp to have a singular insurance focus if the Proposed Acquisition proceeds be a substantial, merger-specific benefit?
 - (b) Are the estimated cost synergies set out in the Application and the further material provided to the ACCC substantial, sufficiently certain and merger-specific?
 - (c) Are the increased prudential safety benefits set out in the Application substantial, sufficiently certain and merger-specific?
 - (d) Are the lower funding costs that Suncorp Bank would enjoy if the Proposed Acquisition proceeds substantial, sufficiently certain and merger-specific?
 - (e) Do the Queensland Commitments result from the Proposed Acquisition?
 - (f) If so, relative to the appropriate counterfactual(s), would the Queensland Commitments generate benefits that are substantial, sufficiently certain and merger-specific?
 - (g) What (if any) meaningful competitive detriments would be likely to result from the Proposed Acquisition?

C. CONTENTIONS

Relevant markets

20. The key relevant markets for the purpose assessing whether the criteria in s 90(7) are satisfied are:
- (a) the national market for the supply of home loans;¹

¹ ACCC Reasons [6.43].



- (b) the national market for the supply of commercial banking products and services (which includes SME and agribusiness banking products and services). There is a national market for commercial banking products and services, which includes the supply of commercial banking products to SME and agribusiness, including because:
- (i) with the exception of farm management deposit accounts (**FMDAs**), which are only offered to agribusiness customers given the terms on which FMDAs can be made available having regard to Division 393 of the *Income Tax Assessment Act 1997* (Cth) and Subdivision 398-A of the *Tax Administration Act 1953* (Cth), the banking products and services required by SME, agribusiness and other commercial customers are the same – i.e., it makes no difference whether the customer is categorised as an SME, agribusiness or commercial property customer;
 - (ii) the same credit policy and pricing assessment framework applies to all of Suncorp Bank's business banking customers nationally, regardless of any differences in the profile or needs of agribusiness or SME customers. Pricing is also determined at a national level;
 - (iii) commercial banking products typically are administered using centralised IT systems, policies and procedures;
 - (iv) SME and agribusiness customers typically are managed in the same way as other commercial customers – all of Suncorp Bank's business banking customers (including its agribusiness customers) who have borrowings from Suncorp Bank are serviced via a relationship-focused model and agribusiness customers are not necessarily serviced by specialist agribusiness bankers;
 - (v) SME customers largely conduct banking remotely (via telephone and/or online), and relationship managers do not need to be based locally, even for agribusiness customers; and
 - (vi) personnel are recruited to work in Suncorp Bank's agribusiness portfolio based on their overall business banking technical competency, attitude and passion for the industry, rather than their technical knowledge, which Suncorp Bank builds once they are recruited.

21. Although the Commission assessed the competitive impact of the Proposed Acquisition on SME and agribusiness banking by reference to separate Queensland markets (as a proxy for local or regional markets) for the supply of SME banking products and services² and agribusiness banking products and services,³ this is not the objectively correct or preferable approach.

² ACCC Reasons [6.438], [6.451] – [6.453].

³ ACCC Reasons [6.605], [6.627] – [6.628].



22. It is not necessary to assess in detail any other markets in which ANZ and Suncorp Bank overlap, such as the national market for the supply of retail deposits⁴ or the national market for the supply of credit cards. The Commission concluded correctly that the Proposed Acquisition would not be likely to substantially lessen competition in the retail deposits market,⁵ and otherwise did not consider it appropriate to analyse any other market.⁶

The Counterfactual

23. In the future without the Proposed Acquisition, competition in the relevant markets would be likely to remain as it would in the *status quo* – that is, Suncorp Bank would continue to operate under the ownership of Suncorp Group (the **Status Quo Counterfactual**).
24. In the future without the Proposed Acquisition, there is no realistic commercial likelihood that, in the relevant timeframe, Bendigo would acquire Suncorp Bank and become a materially more effective competitor than Suncorp Bank and/or Bendigo on their own (**Bendigo/Suncorp Bank Counterfactual**).
25. In particular, there is no realistic commercial likelihood that Bendigo would acquire Suncorp Bank, given that:
- (a) any offer by Bendigo to acquire Suncorp Bank likely would be comprised wholly or mostly of Bendigo scrip, and, as a result:
 - (i) Suncorp Group's board would need to consider the likely value of the merged Bendigo and Suncorp Bank before it could approve or recommend the sale; and
 - (ii) Bendigo's shareholders would be required to approve the acquisition and would need to be provided with all of the information relevant to making that decision;
 - (b) the value of a merged Bendigo and Suncorp Bank likely would be adversely affected by significant funding cost dis-synergies (the S&P Global credit rating applied to Suncorp Bank would fall from A+ to **[Confidential to Suncorp]** under Bendigo ownership);
 - (c) realising any synergies would be difficult, and more difficult than suggested by analyses prior to the current year, including because of difficulties in closing branches, reducing offices, or reducing headcount. In that regard, Bendigo likely would need to give the Queensland Government a commitment not to close branches or incur net job losses in Queensland for at least three years and make other commitments to the Queensland Government equivalent to those provided by ANZ and Suncorp Group;
 - (d) Suncorp Group's board would not approve or recommend a sale to Bendigo unless the consideration offered exceeded Suncorp Bank's current value based on its present organic

⁴ ACCC Reasons [6.295], [6.297].

⁵ ACCC Reasons [6.396].

⁶ ACCC Reasons [6.4].



plan before factoring in the benefit from unwinding any conglomerate discount that presently applies to Suncorp Group's share price. **[Confidential to Suncorp]** [REDACTED]

- [REDACTED]
- [REDACTED]
- (e) **[Confidential to Suncorp]** [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED];
- (f) in any event, Bendigo acquiring Suncorp Bank would be earnings dilutive for Bendigo shareholders if Suncorp Bank were sold at the multiples at which Bendigo trades. For a combined Bendigo-Suncorp bank to achieve earnings neutrality within the next 2 years, Suncorp Bank would need to be sold to Bendigo at a value which is significantly below this level, being significantly less than the value which would be delivered by way of the Proposed Acquisition or the value generated by way of Suncorp Group continuing to operate Suncorp Bank. An offer by Bendigo to acquire Suncorp Bank with a consideration that is equal to or exceeds Suncorp Bank's current value (calculated by reference to its present organic plan) would likely be significantly value dilutive for Bendigo's current shareholders, who therefore would be unlikely to approve the acquisition;
- (g) in addition, any potential acquisition of Suncorp Bank by Bendigo would face substantial, and likely insurmountable, execution risks both before and (if it proceeded that far) after completion. Such risks would include:
- (i) the need to obtain shareholder approval from Bendigo and possibly Suncorp Group shareholders;
 - (ii) the need to immediately procure replacement wholesale funding of approximately **[Confidential to Suncorp]** \$ [REDACTED] due to Suncorp Bank's lower credit rating once Suncorp Bank is no longer considered a core business of the Suncorp Group / under Bendigo ownership;
 - (iii) the ongoing higher funding costs that Suncorp Bank would face due to Suncorp Bank's lower credit rating under Bendigo ownership **[Confidential to Suncorp]** [REDACTED];
 - (iv) the need for Bendigo to undertake a **[Confidential to Suncorp]** [REDACTED] equity capital raising to cover total integration costs and ensure sufficient capital in the combined entity (and more if any of the consideration for acquiring Suncorp Bank were to be paid in cash);

- (v) the difficulty, complexity and cost of integrating the different technology platforms presently operated by Bendigo and Suncorp Bank, and integrating the businesses more generally;
 - (vi) the complexity associated with negotiating a repeal of, or amendment to, the *Metway Merger Act*. This legislation requires that Suncorp Bank (and any holding company and subsidiary of it) locate its head office in Queensland and that its managing director be ordinarily resident in Queensland. A resolution purporting to change the articles of Suncorp Bank (and any holding company and subsidiary of it) which is inconsistent with the Act has no effect. The Queensland Treasurer can also seek injunctive relief for relevant contraventions of the Act. As a consequence, unless an acquirer could negotiate the *Merger Metway Act* being relevantly repealed or amended, any proposed acquirer of Suncorp Bank would need to have its head office and its principal operational offices in Queensland, or relocate its offices to Queensland; and
 - (h) these execution risks also would need to be taken into account by Suncorp Group's board and likely would weigh heavily against approving or recommending the sale.
26. Further matters would weigh heavily against Suncorp Group's board approving or recommending the sale, **[Confidential to Suncorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
27. In addition, even if Bendigo were to acquire Suncorp Bank, it is unlikely that the combined bank would be materially more competitive than Bendigo and/or Suncorp Bank on their own, because:
- (a) Suncorp Bank would incur increased funding costs under Bendigo ownership **[Confidential to Suncorp]** [REDACTED];
 - (b) the time, complexity and cost involved in integrating the technology platforms of each bank would hamper their ability to compete in the short to medium term; and
 - (c) even with the additional scale brought about by acquiring Suncorp Bank, the combined bank still would be very small relative to the Major Banks and would be unlikely to be viewed as systemically important such that it would receive a credit rating uplift due to an implied government guarantee.
28. Accordingly, for the purpose of assessing the criteria in s 90(7), only the Status Quo Counterfactual arises. That is, it is necessary only to compare the future with the Proposed Acquisition to the future without the Proposed Acquisition in which the *status quo* continues.



No likely substantial lessening of competition in the national home loans market

29. The Proposed Acquisition is unlikely to have the effect of substantially lessening competition in the national home loans market, principally for the following reasons:
- (a) the national home loans market is intensely competitive with over 100 home loans providers;
 - (b) more than half of all new home loans are originated by a mortgage broker, which reduces search costs for consumers and promotes competition between banks;
 - (c) the Proposed Acquisition would only minimally increase concentration, with ANZ's national share increasing from 13.02% to 15.41% once combined with Suncorp Bank;
 - (d) Macquarie Bank is a particularly vigorous and effective competitor in the supply of home loans, having grown its national share from 0.49% in 2012 to 4.71% in July 2022, and likely will continue to be with and without the Proposed Acquisition;
 - (e) Suncorp Bank is no more competitive than other mid-tier banks in the supply of home loans (and not as effective as Macquarie Bank). It has not been a key driver of pricing, innovation or product development in the market. Instead, Suncorp Bank's significance as a competitor is commensurate with its relatively modest and static market position;
 - (f) ANZ and Suncorp Bank are not particularly close competitors in the supply of home loans, with Suncorp accounting for a very small proportion of lending refinanced to or from ANZ and with more lending refinanced from Suncorp to CBA, Westpac, Macquarie and NAB than to ANZ; and
 - (g) there has been significant entry and expansion by new and innovative home loan providers, and barriers to entry and expansion are low.
30. In relation to the likelihood of coordinated effects arising from the Proposed Acquisition, and contrary to the Commission's findings, it is not the case that:
- (a) the national home loan market is currently likely to be conducive to coordination;⁷
 - (b) the Proposed Acquisition would increase symmetry between the Major Banks with respect to their market share, funding base and level of domestic focus, and therefore increase their incentive to coordinate relative to the Status Quo Counterfactual;⁸ and/or
 - (c) if the Bendigo/Suncorp Bank Counterfactual is to be considered, a combined Bendigo/Suncorp Bank would strengthen and diversify the competitive fringe in a way that would decrease the incentive of the Major Banks to coordinate such that purported

⁷ ACCC Reasons [6.255].

⁸ ACCC Reasons [6.261] – [6.265].



coordination effects would be even greater relative to the Bendigo/Suncorp Bank Counterfactual.⁹

31. The Proposed Acquisition would be unlikely to have the effect of substantially lessening competition in the national home loans market on the basis of coordinated effects, because:
- (a) strong competition in the national home loans market is not a recent or temporary phenomenon and has been present for a number of years. The sustained growth and strength of brokers has underpinned this competition – this competition and the role of brokers is inconsistent with the market being conducive to coordination between the Major Banks;
 - (b) with and without the Proposed Acquisition, there is no real commercial likelihood of coordination occurring between the Major Banks, because there are numerous providers of home loans operating throughout Australia, brokers commonly participate in arranging home loans, consumer switching friction is not substantial and discounting on a customer-by-customer basis makes home loan interest rates insufficiently transparent for coordination to be initiated and sustained;
 - (c) the Proposed Acquisition would not be likely to materially increase the level of symmetry between the Major Banks – in particular, the market shares of the Major Banks would remain asymmetric (and the Commission’s expert economist rejected this as a basis for finding increased likelihood of coordinated effects), the Major Banks differ on other attributes such as turnaround times and this would not change, the Major Banks have differing customer focuses and the relative size of their retail and business portfolios vary, and ANZ’s funding base (i.e., sourcing a greater proportion of its funding from retail deposits) and focus would not materially change; and
 - (d) if the Bendigo/Suncorp Bank Counterfactual were to be considered (which it should not be for the reasons described at paragraphs 25 to 28 above), a combined Bendigo/Suncorp Bank would not decrease the incentive of the Major Banks to coordinate.

No likely substantial lessening of competition in any markets in Queensland for SME banking services

32. As stated above, SME and agribusiness banking form part of the same national commercial banking products market. In this market, the Proposed Acquisition is unlikely to have the effect of substantially lessening competition, principally because:
- (a) the Proposed Acquisition would only minimally increase concentration, with ANZ’s national share increasing by less than 5% (and in most products by less than 3%) once combined with Suncorp Bank;

⁹ ACCC Reasons [6.268] – [6.270].

- (b) ANZ and Suncorp Bank are not particularly close competitors, with Suncorp Bank predominantly focused on **[Confidential to Suncorp]** [REDACTED] and ANZ losing the most volume to the Major Banks rather than other banks; and
 - (c) the commercial banking products market has experienced significant new entry and expansion in recent years, and barriers to entry and expansion in commercial banking products are not significant.
33. If local or regional SME banking markets in Queensland are the correct markets for assessing the competitive effect of the Proposed Acquisition, the Proposed Acquisition would be unlikely to have the effect of substantially lessening competition in these markets, principally because:
- (a) it would not increase concentration in SME banking markets in Queensland to any substantial degree and there would remain many banks and other lenders competing to supply SME lending products in Queensland;
 - (b) none of the local areas in Queensland where ANZ and Suncorp Bank branches overlap would have fewer than four branches of competitor banks;
 - (c) there is growing competition from non-bank lenders and fintechs in SME banking, and brokers originate a significant and increasing proportion of new SME loans (as well as in agribusiness), which reduces customer search costs and promotes competition;
 - (d) **[Confidential to Suncorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
 - (e) ANZ and Suncorp Bank are not particularly close competitors in the supply of SME banking services, with each not featuring significantly in each other's refinancing switching data, and each targeting different segments of the SME market;
 - (f) insofar as Suncorp Bank's relationship-focused model for SME banking services confers a competitive advantage valued by customers, ANZ would have a strong incentive to retain those customers by maintaining that model and it would be irrational for ANZ to discontinue this (and thus unlikely that it would), so this relationship-managed offering would not be lost in the future with the Proposed Acquisition;
 - (g) further, Suncorp Bank's relationship-managed model is not unique and ANZ itself offers a relationship-managed service to its SME banking customers, with its service being comparatively "higher touch" compared with other Major Banks, so there is unlikely to be any material loss of relationship-managed services relative to the future without the Proposed Acquisition; and

- (h) in any event, SME banking customers are increasingly demanding more digitally-oriented services in contrast to “bricks and mortar” or face-to-face banking services, which reduces the significance of the relationship-managed model.

No likely substantial lessening of competition in any markets in Queensland for agribusiness banking products

34. If regional agribusiness banking markets in Queensland are the correct markets for assessing the competitive effect of the Proposed Acquisition, the Proposed Acquisition would be unlikely to have the effect of substantially lessening competition in these markets, principally because:

- (a) there will remain a range of strong competitors in agribusiness banking in Queensland, including the Major Banks (NAB, CBA and Westpac), Rabobank and other mid-tier banks including Bank of Queensland, Rural Bank and Judo Bank;
- (b) **[Confidential to Suncorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- (c) ANZ and Suncorp Bank are not particularly close competitors, with Suncorp Bank predominantly focused on customers with agribusiness lending **[Confidential to Suncorp]** [REDACTED] and ANZ less focused on small agribusiness customers and more focused on larger agribusiness customers;
- (d) in towns where ANZ and Suncorp Bank overlap, there would continue to be at least three other banks supplying agribusiness banking products in each of these locations;
- (e) to the extent to which Suncorp Bank is seen as a competitor to other banks, this will continue with the Proposed Acquisition;
- (f) while Suncorp Bank offers its customers a relationship-based agribusiness banking service, this is not unique to Suncorp Bank, and ANZ offers a relationship-based model for customers with total business limits of **[Confidential to ANZ]** [REDACTED] – so relationship-based agribusiness banking will not be lost in the future with the Proposed Acquisition;
- (g) in any event, going forward Suncorp Bank will generally **[Confidential to Suncorp]** [REDACTED]
[REDACTED]; and
- (h) barriers to entry and expansion for existing banks are not high, because servicing agribusiness customers depends more on agribusiness bankers who are able to service the relevant region as opposed to a physical branch.



No likely substantial lessening of competition in any other markets

35. The Proposed Acquisition is unlikely to have the effect of substantially lessening competition in the national retail deposits market, whether based on either unilateral effects or coordinated effects,¹⁰ because:
- (a) the market for deposit products is not concentrated and the proposed acquisition will result in a *de minimis* increase in market concentration;
 - (b) Suncorp Bank **[Confidential to Suncorp]** [REDACTED] in the supply of deposit products;
 - (c) Suncorp Bank is not a particularly close competitor to ANZ in the supply of deposit products;
 - (d) switching and multi-banking is common and increasingly easy, and the differences between banks have reduced, including because the Australian Government guarantee for deposits under \$250,000 makes switching to smaller banks safe; and
 - (e) there is a credible prospect of effective entry and expansion which will competitively constrain the combined business if the Proposed Acquisition were to proceed.
36. The Proposed Acquisition is also unlikely to have the effect of substantially lessening competition in the national credit card market because Suncorp Bank is not a supplier of credit cards (i.e., Suncorp Bank merely distributes NAB-issued white-labelled credit cards).

The Proposed Acquisition is likely to result in public benefits that would outweigh any public detriments

37. The Proposed Acquisition would be likely to result in a number of substantial public benefits relative to the appropriate counterfactual, principally including the following benefits.
38. First, by divesting Suncorp Bank, Suncorp Group would be able to have singular focus on its insurance business and **[Confidential to Suncorp]** [REDACTED]. This would be likely to generate operational efficiencies and assist Suncorp Group to meet increasing risks and challenges in providing insurance, thereby enabling it to better meet the needs of its insurance customers.
39. Second, by combining Suncorp Bank with ANZ, ANZ would be required to hold additional capital against Suncorp Bank's assets to comply with prudential safety requirements. This increase in capital adequacy would be likely to amount to a material public benefit to depositors in ANZ in terms of the increased safety and soundness of their deposits, and to the public more generally through reduced systemic risk. The Proposed Acquisition will also increase ANZ's major bank levy

¹⁰ ACCC Reasons [6.366], [6.395].



payments. This represents a public benefit because it is not merely offsetting an increase in systemic risk.

40. Third, the Proposed Acquisition would result in Suncorp Bank benefiting from ANZ's higher credit rating (S&P Global "AA" versus its current "A+" rating under Suncorp Group). This would be likely to reduce Suncorp Bank's wholesale funding cost to a substantial degree and constitutes a productive efficiency. This cost saving would be unlikely to be materially offset by any increased Major Bank Levy that ANZ would pay based on adding Suncorp Bank's assets, or by any higher capital requirements or greater systemic risk.
41. Fourth, the Proposed Acquisition would be likely to result in cost synergies for ANZ with a net present value of approximately **[Confidential to ANZ]** \$ [REDACTED] after accounting for integration costs and Suncorp Group's additional separation costs. These cost synergies are likely to result from a combination of eliminating duplicative project spend, technology rationalisation, eliminating duplicate roles, improvements to processes, particularly through increased automation, and branch closures.
42. Fifth, the Queensland Commitments would be likely to result in material public benefits to the State of Queensland that otherwise would not be likely to occur. For example:
 - (a) The disaster recovery centre and employment commitments given by Suncorp Group were made possible only because of the size of the consideration to be paid by ANZ for Suncorp Bank. Suncorp Group would not, and would not be able to, pursue these initiatives in the same way or to the same extent in the Status Quo Counterfactual or the Bendigo/Suncorp Bank Counterfactual;
 - (b) **[Confidential to ANZ]** [REDACTED]
[REDACTED]; and
 - (c) The Tech Hub commitment given by ANZ has been estimated to potentially contribute **[Confidential to ANZ]** \$ [REDACTED] in economic activity to the State of Queensland. ANZ would not have committed to establishing such a Tech Hub in Queensland without the Proposed Acquisition. Nor would ANZ be likely to engage **[Confidential to ANZ]** [REDACTED]
[REDACTED].
43. The Queensland Commitments are causally connected to (and not merely coincident with) the Proposed Acquisition. They are a necessary and likely consequence of the Proposed Acquisition, and therefore amount to a likely result of the Proposed Acquisition for the purposes of assessing whether the criteria in s 90(7) of the CCA are satisfied. In this respect:
 - (a) ANZ and Suncorp gave the Queensland Commitments to the State of Queensland pursuant to Implementation Agreements **[Confidential to ANZ]** [REDACTED]



(referred to at paragraph 10 above). The Implementation Agreements were entered after the SSPA, do not form part of the SSPA, and are conditional on completion of the Proposed Acquisition occurring;

- (b) the Queensland Commitments given in those agreements are a direct result of the Proposed Acquisition. The SSPA is conditional on the *Metway Merger Act* being repealed or amended such that it does not apply to any holding company of Suncorp Bank (i.e., if the Proposed Acquisition proceeds, ANZ). In order to bring about this result, it was necessary for ANZ and Suncorp to give the Queensland Commitments as recorded in the Implementation Agreements: they are therefore an effect of, or a result of, the Proposed Acquisition in that ANZ’s Queensland Commitments in the ANZ Implementation Agreement result from the Proposed Acquisition, and Suncorp’s Queensland Commitments in the Suncorp Implementation Agreement likewise result from the Proposed Acquisition;
- (c) the effects of the Proposed Acquisition include the effects of the Queensland Commitments which result from the Proposed Acquisition and are necessary to permit the Proposed Acquisition to proceed;
- (d) ANZ would not make the Queensland Commitments, or would not make them to the same extent, in the future without the Proposed Acquisition. For example, ANZ’s commitments make it certain that it will establish a Tech Hub in Queensland [Confidential to ANZ] [REDACTED] that it otherwise would not have done. [Confidential to ANZ] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; and
- (e) absent the Proposed Acquisition, Suncorp would not otherwise have made the Queensland Commitments, because the funding for those investments is made possible only through the value to be realised as a result of the Proposed Acquisition.

44. The Commission concluded that the Proposed Acquisition would be likely to result in two detriments to the public:

- (a) the detriment arising from a lessening of competition it had identified in markets for home lending, retail deposits, SME banking services and agribusiness banking products; and



- (b) the detriment arising from depriving mid-tier banks of the opportunity to acquire Suncorp Bank and become a more effective competitor by gaining a step-change increase in scale.
45. Neither of these detriments would be likely to result from the Proposed Acquisition. Any lessening of competition in the relevant markets (including from depriving mid-tier banks of the opportunity to acquire Suncorp Bank, which necessarily must be analysed in the context of a market) would not be meaningful for the reasons identified above. Further, as to the hypothesis that mid-tier banks, as a matter of fact, would be deprived of the opportunity to become more effective competitors by acquiring Suncorp Bank, this rises no higher than mere possibility or speculation, for the reasons identified above in the context of the counterfactual.
46. Having regard to paragraphs 37 to 45 above, the Proposed Acquisition would result, or be likely to result, in benefits to the public, and the benefits would outweigh any possible detriment to the public that would result, or be likely to result, from the Proposed Acquisition. The relevant public benefits arising need only be assessed by reference to the detriment to the public that would result, or be likely to result, from the Proposed Acquisition. In respect of the Proposed Acquisition, for the reasons stated in paragraph 45 above, either the possibility of any relevant public detriment arising is non-existent, or it can properly be assessed as immaterial. In these circumstances, when the public benefits set out above are appropriately weighed, the Proposed Acquisition would be likely to generate a substantial net public benefit for the purposes of s 90(7) of the CCA.

Determination sought and confidential parts of the Determination

47. The objectively correct or preferable determination would be for the Tribunal to determine as follows:
- (a) under s 102(1) of the CCA, that the Commission's Determination dated 4 August 2023 be set aside; and
- (b) under ss 88(1) and 102(1) of the CCA, that ANZ be granted unconditional merger authorisation for the Proposed Acquisition, as contemplated by the Application.
48. Suncorp Group notes that a number of aspects of the Commission's reasons in the Determination refer to evidence and submissions which are said to be confidential. Those aspects of the reasons (and the evidence and submissions themselves) largely have been redacted and are inaccessible to Suncorp Group. In these circumstances, Suncorp Group foreshadows that, following review of that confidential/redacted material, Suncorp Group may apply to the Tribunal for leave, or otherwise for a relevant direction from the Tribunal, to amend or supplement this review application.

Dated: 25 August 2023