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:	Concise Statement of Facts, Issues and Contentions
File Number:	ACT 1 of 2023
File Title:	APPLICATIONS BY AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED AND SUNCORP GROUP LIMITED

REGISTRAR

Dated: 8/09/2023 3:47 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.

COMMONWEALTH OF AUSTRALIA

***Competition and Consumer Act 2010* (Cth)**

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2023

Re: Application by Australia and New Zealand Banking Group Limited and Suncorp Group Limited for review of Australian Competition and Consumer Commission Merger Authorisation Determination MA1000023-1

Applicant: Australia and New Zealand Banking Group Limited and Suncorp Group Limited

CONCISE STATEMENT OF FACTS, ISSUES AND CONTENTIONS

ANZ

PART A: KEY FACTS

The parties

1. Australia and New Zealand Banking Group Limited (**ANZ**) is a financial services group that provides banking services to retail and business customers in Australia and New Zealand, and to institutional customers internationally. ANZ is headquartered in Victoria. [redacted].

2. Suncorp Group Limited (**Suncorp Group**) is an ASX listed provider of insurance and banking services, the latter offered through Suncorp-Metway Limited (**Suncorp Bank**). Suncorp Group is, and is currently required by the *State Financial Institutions and Metway Merger Act 1996* (Qld) (the **Metway Merger Act**) to be, headquartered in Queensland. [redacted]

The proposed acquisition

3. Pursuant to the share sale purchase agreement (**SSPA**) between ANZ and Suncorp Group:

   (a) ANZ proposes to acquire all of the issued share capital in SBGH Limited (which is the immediate holding entity of 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 (together, the **proposed acquisition**).

4. 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 Australian Competition and Consumer Commission (**Commission**) or Australian Competition Tribunal (**Tribunal**) to authorise the proposed acquisition, or a declaration made by the Federal Court of Australia that the proposed acquisition would not contravene s 50 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (and subject to there being no lodgement of a relevant application for review of the declaration or a notice of appeal); and

   (c) the 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).

5. 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% of ANZ's total lending (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 better balance. In this respect, greater geographic diversity provides lower risk and exposure to economic downturns and other events that affect particular geographies;

   (c) increased scale in Australian retail and business banking, which will enable ANZ to more efficiently make investments required for meeting customer expectations in digital capability and ongoing regulatory change (including by defraying the costs of its digital transformation over a larger customer base, improving its ability to compete effectively); and

   (d) substantial cost synergies phased in over four to six years with a net present value of approximately [redacted].

6. Suncorp Group's rationale for the proposed acquisition is set out in paragraph 9 of Attachment A, Particulars of Facts and Intentions and Statement of Issues, to Suncorp Group's application to the Tribunal for review (the **Suncorp Review Application**). In particular, the proposed acquisition will enable Suncorp Group to operate as a dedicated insurance business.

The Queensland Commitments

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

(a) [redacted] in order to satisfy 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:

[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 five years, [redacted]; and

(iv) establish partnerships with two Queensland universities to support development of technology skills in banking and finance [redacted];

(b) [redacted] on 15 June 2023, in order to satisfy 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) [redacted]

(ii) [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 valued at $3 million, develop a Suncorp Regional Hub in Townsville and contribute at least $3 million to community or educational initiatives specified by the State.

Overlap markets

8. ANZ and Suncorp Bank relevantly overlap in the supply of the following banking products and services:

(a) the supply of home loans: which includes loans to finance purchasing residential property or refinancing, and includes investment property loans and new loans or refinancing to undertake renovations;

(b) the supply of retail deposit products: which includes transaction accounts, savings accounts and term deposits; and

(c) the supply of banking products and services to SME and agribusiness customers, including deposit products, commercial lending products, risk management products, and commercial cards (but Suncorp Bank only distributes commercial cards issued by NAB under its white label agreement).

9. ANZ and Suncorp Bank compete with a range of banks, as well as non-bank lenders, in relation to the supply of these banking products and services.

10. The markets in which home loans, banking products and services to SME and agribusiness customers are supplied are the relevant markets in relation to which the Commission determined it could not be satisfied that the proposed acquisition would not be likely to substantially lessen competition.[1] Key facts about those markets are identified in the contentions in **Part C** below.

PART B: ISSUES ON THE REVIEW

11. 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?

12. What counterfactual(s) appropriately should be considered in assessing whether the criteria in s 90(7)(a) of the CCA are satisfied? In particular, in the future without the proposed acquisition, is there a real commercial likelihood that Bendigo and Adelaide Bank (**Bendigo**) would acquire Suncorp Bank and become a materially more effective competitor?

13. 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 sub-issues:

    (a) In considering the likelihood of coordinated effects in the national market for home loans:

        (i) is the market conducive to coordination between the major banks?

        (ii) would the proposed acquisition increase the likelihood of coordination 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 effects on the relevant market in which banking products and services are supplied to SME customers:

        (i) is Suncorp Bank's offering materially differentiated?

        (ii) would the removal of Suncorp Bank have a meaningful competitive effect, 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 banking products and services are supplied to agribusiness customers:

        (i) is Suncorp Bank's offering materially differentiated?

        (ii) would the removal of Suncorp Bank have a meaningful competitive effect, including in light of existing competitors and the threat of entry or expansion?

14. 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

[1] Commission's reasons for Determination dated 7 August 2023 (**Decision**) [6.276], [6.578] and [6.751].

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 sub-issues:

(a) would the ability of Suncorp Group 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 ANZ's application for merger authorisation on 2 December 2022 pursuant to s 88(1) of the CCA (**Application**) and 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) is the increased contribution to the major bank levy a substantial, merger-specific benefit?

(e) are the lower funding costs and greater access to wholesale funding that Suncorp Bank would enjoy if the proposed acquisition proceeds, substantial, sufficiently certain and merger-specific?

(f) do the Queensland Commitments result from the proposed acquisition, and if so, would they 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?

15. Is the Tribunal satisfied, in all the circumstances, that the proposed acquisition:

(a) would not have the effect, or would not be likely to have the effect, of substantially lessening competition?

(b) would result, or be likely to result, in a benefit to the public that outweighs the detriment to the public that would result, or be likely to result from the proposed acquisition?

PART C: ANZ’S CONTENTIONS ON REVIEW

The relevant markets

16. The relevant markets for assessing the competitive effects of the proposed acquisition are:

(a) a national market for home loans;[2] and

(b) a national market for business banking products and services (including for SME and agribusiness customers).

17. The supply of banking products and services to SME and agribusiness customers are part of a national market for business banking products and services for reasons that include:

(a) The products and services supplied to SME and agribusiness customers are the same as other business banking products; with the exception of Farm Management Deposit accounts for eligible agribusiness customers who are primary producers and qualify for the tax deductions under the Commonwealth farm management deposit scheme.

(b) SME and agribusiness customers are generally managed by ANZ in the same way as other business customers and have access to relationship managers if their total

[2] Decision [6.43].

business limits exceed a certain level and/or due to the complexity of their banking needs; with agribusiness customers (like certain other types of SME customers) having access to a relationship manager specialised in agribusiness.

(c) The products and services supplied to business banking customers (including SME and agribusiness customers) are supplied nationally and pricing and policy is determined at a national level.

(d) Structural changes, including digitisation, have reduced the importance of having a local presence for business banking customers (including SME and agribusiness customers). Business banking customers largely conduct banking remotely. Although some customers, particularly agribusiness customers, value a personal relationship with a relationship manager, that manager need not be based locally.

18. Although the Commission assessed the competitive effects of the proposed acquisition on SME and agribusiness banking by reference to a separate Queensland market (as a proxy for local or regional markets) for the supply of SME banking products and services[3] and agribusiness banking products and services,[4] this is not the objectively correct or preferable approach.

19. ANZ and Suncorp Bank also overlap in the national market for retail deposit products.[5] The Commission was correctly satisfied that the proposed acquisition would not have the effect, and would not be likely to have the effect, of substantially lessening competition in that market.[6] Accordingly it is not necessary for the Tribunal to consider the effects of the proposed acquisition in that market.

20. The Commission otherwise did not consider it appropriate to analyse any other market[7] and it is not necessary for the Tribunal to do so.

The counterfactual

21. If the proposed acquisition does not proceed, the only commercially realistic counterfactual is one in which Suncorp Group continues to operate Suncorp Bank (referred to as the **no-sale** or **status quo counterfactual**). In this counterfactual, Suncorp Group will continue to operate Suncorp Bank in accordance with the approved business plan for Suncorp Bank. [redacted]

22. An alternative counterfactual, in which Bendigo and Suncorp Bank merge (the **Bendigo merger counterfactual**) is not commercially realistic for the following reasons.

(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

[3] Decision [6.438], [6.451]-[6.453].

[4] Decision [6.605], [6.627]-[6.628].

[5] Decision [6.295], [6.297].

[6] Decision [6.396].

[7] Decision [6.4].

(ii) Bendigo's shareholders would be required to approve the acquisition (see paragraph 22(f)) and would need to be provided with all of the information relevant to making that decision.

(b) The value of a combined Bendigo/ Suncorp Bank would likely be adversely affected by significant funding cost dis-synergies. The S&P Global credit rating applied to Suncorp Bank would fall from A+ to [redacted] 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 would likely need to give the Queensland Government a commitment [redacted] 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 plan before factoring in the benefit from unwinding any conglomerate discount that presently applies to Suncorp Group's share price. [redacted].

(e) [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 two 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 would therefore 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 [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 [redacted];

(iv) the need for Bendigo to undertake a [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; and

(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 seek injunctive relief for relevant contraventions of the Act. As a consequence, unless an acquirer could negotiate the *Metway Merger 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.

(h) These execution risks would need to be taken into account by Suncorp Group's Board and would likely weigh heavily against approving or recommending the sale.

23. Consequently, the only counterfactual that need be analysed for the purposes of the Tribunal's assessment is the status quo counterfactual. To the extent that the Tribunal has regard to the Bendigo merger counterfactual at all, it should accord less weight to any competitive detriments said to arise in that counterfactual, having regard to the degree of likelihood of that counterfactual occurring.

24. Even if a Bendigo/ Suncorp Bank merger occurred (which is commercially unlikely) a combined Bendigo/ Suncorp Bank is not likely to be a materially more effective competitive constraint than Bendigo or Suncorp Bank alone in any relevant market, including for the following reasons.

(a) Neither Bendigo nor Suncorp Bank is a particularly strong competitor and neither has a market leading position or offering in any relevant market in the factual. There is no evidence to suggest that combining them would create a more effective competitor.

(b) A merger of Bendigo and Suncorp Bank is likely to present technological and customer integration and cultural alignment challenges, which would likely hinder the merged entity's ability to integrate and compete effectively. That difficulty would not be faced by ANZ at all or to the same degree.

(c) A combined Bendigo/ Suncorp Bank is not likely to benefit from lower funding costs, cost synergies, or achieve significant scale benefits. In particular:

(i) a combined Bendigo/ Suncorp Bank is not likely to benefit from an improved credit rating and reduced wholesale funding costs, compared with Bendigo's current position and would have a worse credit rating than Suncorp Bank's existing position;

(ii) a combined Bendigo/ Suncorp Bank is not likely to extract more significant cost synergies than in the proposed acquisition, including because it would be required to pay the major bank levy;

(iii) a combined Bendigo/ Suncorp Bank is not more likely to achieve advanced IRB accreditation (or at all), and not more likely than Bendigo would be in the factual, or Suncorp Bank would be in the status quo counterfactual. Even if a merged Bendigo/ Suncorp Bank achieved advanced IRB accreditation, that is not likely to lead to any capital benefit and more competitive pricing (and in any event not in the near term); and

(iv) the scale of a combined Bendigo/ Suncorp Bank would be insufficient to materially change either bank's existing competitive position. A combined Bendigo/ Suncorp Bank would continue to be very small compared to the major banks. A merged Bendigo/ Suncorp Bank is not likely to be able to compete more effectively on price than either bank alone.

The proposed acquisition would not have, or likely have, the effect of substantially lessening competition in the home loans market

25. The proposed acquisition is not likely to substantially lessen competition in the national home loans market.

26. The Commission correctly concluded the proposed acquisition was not likely to substantially lessen competition as a result of unilateral effects.[8] The proposed acquisition is by the fourth largest bank, of the ninth largest bank in backwards-looking market shares (which are materially different to forward-looking market shares in new loans). Any change to competitive dynamics is necessarily at the margins, with seven other banks larger than Suncorp Bank — which is no more vigorous or effective a competitor than other small competitors — continuing to compete.

27. The Commission also correctly did not conclude that there is past or present coordination in the market.[9] However, the Commission was wrong to conclude that the market is currently conducive to coordination between the major banks[10] and that proposed acquisition is likely to increase the likelihood of coordination being initiated or sustained by the major banks.[11]

The market is not currently conducive to coordination

28. The home loans market is not currently conducive to coordination between the major banks and the proposed acquisition will not make it more conducive to coordination. To the contrary:

[8] Decision [6.164]-[6.171].

[9] Decision [6.181]-[6.185].

[10] Decision [6.255].

[11] Decision [6.261]-[6.265], [6.268]-[6.270].

(a) The market is not concentrated. There are over 100 home loan providers in the market and the proposed acquisition will not materially increase concentration.[12]

(b) There is strong competition in the market, particularly among the major banks and Macquarie Bank, as well as other second tier banks, including Bendigo and Bank of Queensland (**BOQ**), which manifests itself in both price and non-price competition, and the proposed acquisition will not reduce that competition. Strong price competition is not temporary but is rather consistent with longer-term trends. Competition has steadily increased as a result of, among other factors, regulatory changes promoting competition, intense scrutiny of the banking industry, changes in technology and consumer preferences that make switching easier, and the rapidly growing influence of brokers for both home loans and business banking. Brokers: (i) account for a large and increasing share of customer acquisition (over half of the total market, including based on quarterly data average for 2022 [redacted]% for ANZ, [redacted]% for Suncorp Bank and [redacted]% for Macquarie Bank); (ii) increasingly refer customers to non-major banks; (iii) reduce search and switching costs for customers, and (iv) are required to prioritise the best interests of customers. This is inconsistent with the market being conducive to coordination between the major banks.

(c) The effect of competition is reflected in data showing that major banks, including Westpac and ANZ, have lost market share over time to non-major banks, and their return on equity (**ROE**) and net interest margin (**NIM**) have progressively declined since 2000, despite the fact that NIM should have increased in response to APRA's tighter capital standards since 2015.

(d) There is a lack of symmetry among the major banks and, as explained further at paragraph 29(b), the proposed acquisition will not change that:

  (i) The existing backwards-looking market shares of the four major banks are not symmetrical: ANZ’s existing market share of 13% is approximately half of CBA’s 25.8% share, with 21.5% held by Westpac and 14.9% by NAB. Forward-looking market shares of new loans are even more asymmetrical: for instance, Macquarie Bank’s share of new loans is approximately 12%.

  (ii) The major banks are differentiated in other attributes, such as turnaround times.

  (iii) There is a lack of symmetry among the major banks in their funding base, product and geographical diversity.

(e) Discretionary discounting (or “opaque pricing”) of home loans makes pricing not sufficiently transparent among the major banks to facilitate coordination. The degree to which banks have an understanding of competitor pricing is delayed, imperfect, indirect and inferential, and the proposed acquisition will not change that.

(f) Consumer choice frictions are not substantial, and the proposed acquisition will not increase consumer choice frictions. Brokers have contributed to reducing search and switching costs, and facilitated price transparency for consumers, repricing and refinancing. This is reflected in increased refinancing and repricing and the significant

[12] Application [7.7(a)].

proportion of customers who have their home loan with a lender that is not their main financial institution. Regulatory reform has also made switching easier, and banks have encouraged switching through streamlined switching processes, cashback offers and introductory rate pricing.

(g) Barriers to entry and expansion are surmountable and are likely to continue to decline: in particular, regulatory requirements are not insurmountable and branches are no longer necessary for entry or expansion, and the proposed acquisition will not halt or slow that decline. Macquarie Bank's meaningful and recent rapid growth (to more than double its market share in the past five years), without relying on a branch network, demonstrates the ability of new entrants to enter and expand, including by targeting particular customer segments.

(h) Major banks lead innovation in home loans and respond to innovation by other banks and fintechs in an increasingly digital market, and the proposed acquisition will not remove major banks' incentive to continue to innovate and respond to innovation, nor will it reduce innovation.

The proposed acquisition is not likely to meaningfully increase the likelihood of coordination being initiated or sustained by the major banks

29. It is wrong to conclude that the proposed acquisition is likely meaningfully to increase the likelihood of coordination being initiated or sustained by the major banks. To the contrary:

(a) The proposed acquisition will result in a *de minimis* increase in concentration. The proposed acquisition is by the fourth largest bank, of the ninth largest bank by home loans and by banking assets generally. The proposed acquisition will not change the number of hypothetically coordinating banks.

(b) It is wrong to characterise the proposed acquisition as materially increasing symmetry among the major banks, and therefore increasing their incentive to coordinate.[13]

(i) The *de minimis* increase in ANZ's market share as a result of the proposed acquisition does not materially increase the symmetry in market shares between the smaller and larger of the major banks. The proposed acquisition will increase ANZ's backwards-looking market share by 2.4% to 15.4% (roughly equivalent to the amount of market share ANZ has lost over the preceding five years). Forward looking market shares are likely to be even less symmetrical. Any such small increase in market share gives ANZ no more incentive to coordinate whether it is the third or fourth largest bank.

(ii) The proposed acquisition will not reduce ANZ's incentive to compete in order to replace ongoing attrition in its lending book ([redacted]) resulting from refinancing to other banks, property sales and principal repayments.

(iii) The proposed acquisition does not affect other differentiated attributes that are important to customers and competition, such as turnaround times.

[13] Decision [6.261]-[6.265].

(iv) The proposed acquisition does not materially alter ANZ's funding base or domestic focus so as to change ANZ's incentives to compete or coordinate. Nor does the proposed acquisition otherwise materially increase the degree of symmetry between the major banks' cost structures.

(c) The proposed acquisition will have no material effect on any other feature of the market which might affect how conducive it is to coordination (or competition) including multi-market contact, communication devices, price transparency, consumer choice frictions, innovation, market stability, barriers to entry and expansion, or frequency of interaction between the major banks.

(d) Suncorp Bank is not a particularly vigorous or effective a competitor in the market for the supply of home loans in Australia, and has not been a key driver of pricing, innovation, or product development. Removing Suncorp Bank is thus not likely to materially affect ANZ's incentives to compete or constrain any potential coordination. ANZ is presently strongly incentivised to compete against the major banks and — given its size relative to CBA and Westpac with or without the proposed acquisition — will be equally incentivised to compete to retain the Suncorp Bank customers it obtains as a result of the proposed acquisition (who could easily refinance away from ANZ) and to continue to win new customers.

(e) A merged Bendigo/ Suncorp Bank should not be considered, or alternatively should be given little weight for the reasons in paragraph 22 and 23 above, but, in any event, is unlikely to increase ANZ's incentives to compete or constrain any hypothetical coordination. A merged Bendigo/ Suncorp Bank is not likely to be a more effective competitor in home loans.

The proposed acquisition would not have, or likely have, the effect of substantially lessening competition in respect of the supply of banking products and services to SME customers

30. When the supply of banking products and services to SME customers are properly considered as part of a national market for business banking products and services, the proposed acquisition is not likely to have the effect of substantially lessening competition. That is because:

(a) the market is not concentrated and the proposed acquisition would only minimally increase concentration in the market;

(b) the market is competitive and will remain so after the proposed acquisition;

(c) ANZ and Suncorp Bank are not particularly close competitors; and

(d) ANZ will be constrained by the threat of new entry and expansion, given barriers to entry and expansion are low and there has been significant new entry and expansion.

31. Further, even assessing the proposed acquisition by reference to a Queensland market (as a proxy for local/ regional markets) for SME customers the proposed acquisition is not likely to result in a substantial lessening of competition.

Suncorp Bank's offering is not materially differentiated

32. Suncorp Bank's offering in respect of SME customers is not materially differentiated.

(a) [redacted]. Suncorp Bank is not a price leader.

(b) Suncorp Bank's relationship management model is not unique or better than ANZ's. ANZ also uses a relationship management model and one that provides a "higher touch" approach to managing its business customers than its competitors. ANZ is undertaking automation and digitisation to reduce manual work and thus increase time for customer engagement. Automation and digitisation improve speed and quality of service and free up staff capacity to perform higher-value work conducive to better customer experiences and cost reduction. [redacted] By comparison, [redacted]. Further (and noting the ratio of customers to relationship managers is an imperfect proxy), different ratios for ANZ and Suncorp Bank's smaller customers reflect those differences in automation and digitisation. ANZ and Suncorp Bank have comparable ratios for medium-sized businesses.

(c) To the extent that Suncorp Bank's relationship management model for SME customers confers any competitive advantage over ANZ's, ANZ will be incentivised to maintain that model in order to retain the Suncorp Bank customers it acquires as a result of the proposed acquisition. There is thus unlikely to be a material loss of relationship-managed services in the future with the proposed acquisition.

(d) Suncorp Bank's brand recognition and presence is not unique: major banks such as ANZ similarly benefit from brand recognition (indeed, more so than smaller banks), and Suncorp Bank's brand recognition in Queensland does not make Suncorp Bank a particularly strong competitor.

The removal of Suncorp Bank is not likely to have a meaningful competitive impact, including in light of existing competitors and the threat of entry or expansion

33. The removal of Suncorp Bank is not likely to have any meaningful competitive impact on the supply of banking products and services to SME customers.

(a) While there is no precise definition of what constitutes an SME customer, the data available to ANZ does not indicate that the supply of banking products and services to SME customers is concentrated nationally or in Queensland. The proposed acquisition would not substantially increase concentration in the supply of banking products and services to SME customers in Queensland.

(b) ANZ faces effective competition from a range of competitors supplying SME customers nationally and in Queensland, including major banks, BOQ (with a scale, physical presence and product range similar to Suncorp Bank), Bendigo and Judo Bank. Brokers play an increasing role in driving competition, are critical for new entry and expansion (particularly for new, online and non-bank lenders), have contributed to customer switching, and originate a significant proportion of new SME loans ([redacted] for ANZ and [redacted] for Suncorp Bank). SME customers can and do switch and multi-bank, and levels of switching and multi-banking have increased.

(c) None of the local areas in Queensland in which ANZ and Suncorp Bank branches overlap will have fewer than four alternative bank branches following the proposed acquisition. (In any event, having a bank branch is not necessary to compete for or supply banking products and services to SME customers in any town, including through Bank@Post, and relationship managers do not need to be based locally.)

(d) ANZ is and will be constrained by the threat of expansion and new entry. Barriers to entry and expansion are not high, particularly for SME lending and for expansion by existing banks including Bendigo and BOQ. The regulatory environment is conducive to competition and supports new entry, and banker acquisition and branch set up is unlikely to act as a barrier. Competition from new entrants is an existing feature of the market: Judo Bank and Macquarie Bank are examples of successful new entry and competition from non-bank lenders and fintechs is growing.

(e) Competitive constraint (whether from new or existing entrants) comes from competition in particular industry segments and 'unbundled' products and services. It is not necessary to offer a full range of deposit and lending products to be an effective competitor.

(f) Suncorp Bank and ANZ are not each other's closest competitors, given that there is little overlap in the industry segments in which Suncorp Bank and ANZ compete for SME customers, and that they have different geographic presence and capabilities to serve medium and larger business customers. This is evidenced by very limited refinancing between ANZ and Suncorp Bank.

(g) A merged Bendigo/ Suncorp Bank (which should not be considered or alternatively should be given little weight for the reasons in paragraph 22 and 23 above) is unlikely to be a more effective competitor at all, or in supplying SME customers where neither bank (and particularly Bendigo) imposes a strong constraint. To the extent that a combined Bendigo/ Suncorp Bank would impose a constraint similar to Suncorp Bank alone, there is no increase in competitive constraint in that counterfactual.

The proposed acquisition would not have, or likely have, the effect of substantially lessening competition in respect of the supply of banking products and services to agribusiness customers

34. When the supply of banking products and services to agribusiness customers are considered as part of a national market for business banking products and services (see paragraph 17) the proposed acquisition is not likely to have the effect of substantially lessening competition (see paragraph 30).

35. Further, even assessing the proposed acquisition by reference to a Queensland market (as a proxy for local/ regional markets) for agribusiness customers, the proposed acquisition is not likely to result in a substantial lessening of competition.

Suncorp Bank's agribusiness product offering is not materially differentiated

36. Suncorp Bank's offering in respect of the supply of banking products and services to agribusiness customers is not materially differentiated.

(a) Suncorp Bank is no more vigorous or effective a competitor than any other competitor. Suncorp Bank does not impose a particular competitive constraint that is not replicated by other banks. Suncorp Bank does not lead the market or drive competition on price.

(b) In particular, Suncorp Bank's relationship management model is not unique and is (and is able to be) replicated by other banks. ANZ's and Suncorp Bank's approaches to managing agribusiness customers are comparable, with ANZ offering relationship management to customers with total business limits of [redacted]. To the extent Suncorp Bank currently offers a relationship management model to small customers where ANZ does not, [redacted].

(c) Given the importance of relationship management to supplying business customers (including agribusiness customers) from both a demand and supply perspective, the need to win new customers and business to account for the ongoing attrition in the agribusiness portfolio ([redacted]), ANZ will not have an incentive to cease offering a relationship management model to customers, including to Suncorp Bank customers it acquires as a result of the proposed acquisition.

The removal of Suncorp Bank would not have a meaningful competitive effect, including in light of existing competitors and the threat of entry or expansion

37. The removal of Suncorp Bank is not likely to have any meaningful competitive effect on the supply of banking products and services to agribusiness customers.

(a) The supply of banking products and services to agribusiness customers is not concentrated nationally and is only moderately concentrated in Queensland. The proposed acquisition is likely to result in a moderate increase in concentration in Queensland, where Suncorp Bank has a greater presence, but will still remain relatively unconcentrated.

(b) Competition is vigorous nationally and in Queensland. ANZ faces effective competition from a range of agribusiness banks and lenders nationally and in Queensland. Following the proposed acquisition, NAB and Rabobank will remain the largest agribusiness suppliers in Queensland and will continue, along with other major banks, Bendigo/Rural Bank and BOQ, to impose a competitive constraint on ANZ. Brokers drive material amounts of competition in agribusiness and agribusiness customers can and do switch banks.

(c) In each of the towns in which ANZ and Suncorp Bank overlap, there are at least three other banks (one or more of CBA, NAB, Westpac or Rabobank) with a physical presence in that town, and only two towns which will not have a regional or second-tier bank (both of which are within reasonable drive times of other larger towns with more competitors).

(d) ANZ is and will be constrained by the threat of new entry and particularly expansion. Barriers to entry, including by acquiring agribusiness bankers, are not high (as demonstrated by Judo Bank's recent entry and capture of agribusiness bankers from ANZ). Barriers to expansion are likely to be low, particularly for existing smaller banks (as demonstrated by Rabobank's successful growth). ANZ is likely to be constrained by the threat of expansion from Rabobank in the limited number of towns which would not have a regional or second-tier presence following the proposed acquisition, and more generally by BOQ, Judo Bank and Bendigo.

(e) ANZ and Suncorp Bank compete in Queensland, but are not each other's closest competitor (ANZ faces a greater competitive constraint from NAB and Rabobank than Suncorp Bank). ANZ and Suncorp Bank have complementary propositions for supplying business banking products and services to agribusiness customers and are likely to diverge further in a status quo counterfactual. [redacted]. Unlike ANZ, Suncorp Bank does not have the same capacity to service [redacted].

(f) A Bendigo-merger counterfactual should not be considered or alternatively should be given little weight for the reasons in paragraph 22 and 23 above, but, in any event, a combined Bendigo/ Suncorp Bank is not likely to be a more vigorous or effective competitor than Bendigo or Suncorp Bank alone, such that there is no increase in competitive constraint in that counterfactual. Bendigo is not a significant competitor in the locations in which ANZ and Suncorp Bank overlap and in those locations an acquisition by Bendigo would simply mean that Suncorp Bank has a different owner.

The proposed acquisition would result, or be likely to result, in a net public benefit

38. The proposed acquisition gives rise substantial public benefits. Each of the identified public benefits is substantial, sufficiently certain, and merger-specific.

39. First, the proposed acquisition will enable Suncorp Group to focus on, and invest in, developing its insurance business, including investing in digitisation, and will have better access to capital, allowing it to become a more efficient and competitive insurance business. Those benefits are substantial, and merger-specific because the only commercially realistic possibility of such a divestment arises from the proposed acquisition.

40. Second, the proposed acquisition is likely to achieve integration synergies that are substantial, merger-specific and sufficiently certain.

(a) The estimated costs savings of the proposed acquisition are substantial even taking into account dis-synergies from integration and Suncorp Bank's separation and stranded costs: in the order of annual costs savings of $260 million within six years from completion (with a net present value of approximately [redacted] after accounting for integration costs and Suncorp Group's additional separation costs).

(b) The vast majority of the synergies are merger-specific and result from the elimination of duplicate fixed costs and ANZ performing functions at a lower cost than Suncorp Bank on its own, in circumstances where ANZ has already made significant investment in transforming its technology estate, while Suncorp Bank has not. Only a very small proportion of ANZ's estimated full run rate synergies (relating to branch closures) could be realised by Suncorp Bank without the proposed acquisition.

(c) The estimates are sufficiently certain: the basis on which ANZ has estimated the synergies is robust and transparent and the resulting estimates are conservative.

(d) These effects are likely to enhance productive efficiency and be passed through to consumers in the form of lower costs or better products (including through technological investment).

41. Third, the proposed acquisition will improve the prudential safety of Suncorp Bank, by subjecting it to the capital requirements of a domestic systemically important bank (**D-SIB**). This will benefit Suncorp Bank depositors in terms of the increased safety and soundness of their deposits, and taxpayers and the broader public more generally through reduced residual systemic risk in the Australian financial system. Although not possible to quantify precisely, any material reduction in the risk of bank failure is a significant public benefit.

42. Fourth, the combined banking business of ANZ and Suncorp Bank will substantially increase ANZ's contribution to government through the major bank levy of approximately $24 million per year by reason of Suncorp Bank's liabilities becoming subject to that levy. This represents a public benefit because it is not merely offsetting an increase in systemic risk.

43. Fifth, the lower funding costs and greater access to wholesale funding that Suncorp Bank would enjoy if the proposed acquisition proceeds are substantial, sufficiently certain and merger-specific. 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 is likely to result in material cost savings passed through to consumers, and 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. As part of ANZ, Suncorp Bank is also likely to have greater assurance of continued access to wholesale funding during periods of financial stress, benefitting from ANZ's status as a larger bank. As a result, Suncorp Bank customers will benefit from greater assurance that they will continue to be able to access credit from Suncorp Bank during periods of financial stress, and a corresponding benefit accrues to the broader public by reason of the incremental economic activities that may be funded by Suncorp Bank during those periods.

44. Sixth, the Queensland Commitments result from the proposed acquisition, and generate benefits that are substantial, sufficiently certain and merger-specific.

(a) There will be substantial direct benefits to the Queensland economy and Queenslanders as set out in the Queensland Commitments given by ANZ and Suncorp Group to the State of Queensland and described in paragraph 7 above.

(b) [redacted] As recorded in the Implementation Agreements, the commitments are certain and are [redacted]

[redacted]

(c) These commitments and investments would not be made absent the proposed acquisition. ANZ would not make the investments to which it has committed, or invest to the same extent, in the future without the proposed acquisition. [redacted] ANZ is bound to give effect to those commitments regardless of whether there is economic benefit to be obtained. Suncorp Group similarly would not otherwise make the investments in Queensland to which it has committed (including in the Bendigo merger counterfactual), because the funding for those investments is made possible only through the value realised as a result of the proposed acquisition.

(d) The Implementation Agreements by which the Queensland Commitments are made are causally related to (and not merely coincident with) the proposed acquisition and the effects of the Implementation Agreements are thus effects or results of the proposed acquisition for the purposes of assessing whether the criteria in s 90(7)(b) of the CCA is satisfied.

(i) ANZ and Suncorp Group have given the Queensland Commitments to the State of Queensland pursuant to the Implementation Agreements referred to in paragraph 7 above. The Implementation Agreements were entered into after the SSPA, as a direct result of the proposed acquisition, are conditional on the proposed acquisition completing, and cannot be terminated by ANZ or Suncorp Group if the proposed acquisition completes.

(ii) 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., ANZ) (the condition precedent). In order to bring about this result, it was necessary for ANZ and Suncorp Group to give the Queensland Commitments as recorded in the Implementation Agreements: those commitments are therefore an effect of, or a result of, the proposed acquisition.

45. In any future without the proposed acquisition, including for the reasons set out at paragraphs 22 to 24, there would be no commercially realistic likelihood that such public benefits would be achieved, or achieved to any similar extent.

46. The proposed acquisition does not give rise to any, or any material, public detriments.

(a) Any detriment arising from a lessening of competition in markets for home loans, retail deposits, and business banking products and services is not meaningful for the reasons identified in paragraphs 19 and 25 to 34 above.

(b) No further meaningful detriment arises by “removing the best and most meaningful opportunity for another second-tier bank to bolster its ability to effectively challenge the major banks through a step change in scale” that would “further entrench an oligopoly structure”.[14] The "Australian banking industry" is not a market in which such a detriment can properly be assessed. When assessed by reference to the relevant markets, the proposed acquisition is not likely to result in such a detriment in any relevant market for the reasons described above. In particular:

(i) the relevant markets are competitive and there is no established oligopoly of the major banks in any relevant market;

(ii) scale is not necessary for effective competition: there is no minimum efficient scale to compete and there is effective competition from smaller players — including Macquarie Bank, Judo Bank and Rabobank who have achieved organic growth in the relevant markets;

(iii) there are other second-tier banks of similar scale to Suncorp Bank, such that an acquisition of Suncorp Bank cannot be said to be the last or “best and most meaningful” opportunity for a second tier or regional bank to acquire meaningful scale; and

(iv) a Bendigo/ Suncorp Bank merger (or indeed any other second tier merger counterfactual) will not materially increase the competitive effectiveness of the merged second tier bank.

47. Having regard to the substantial public benefits described in paragraphs 38 to 44 above, and the absence of any, or any material, public detriments as described in paragraph 46 above, the proposed acquisition would be likely to result in a substantial net public benefit for the purposes of s 90(7) of the CCA.

Determination

48. In all the circumstances, and having regard to the facts in Part B and the contentions in Part C, the Tribunal should be satisfied that:

(a) the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition; and

(b) the proposed acquisition would result, or be likely to result, in a benefit to the public, and the benefit would outweigh any detriments to the public that would result, or be likely to result, from the proposed acquisition.

49. Accordingly, the correct or preferable decision is for the Tribunal to set aside the Determination and grant unconditional merger authorisation for the proposed acquisition.

50. A number of aspects of the Commission’s reasons in the Determination refer to evidence, submissions and other information which are said to be confidential. While ANZ’s external legal representatives have been provided with those aspects of the reasons (apart from Protected Information under s 56 of the *Australian Prudential Regulation Authority Act 1998* (Cth)), much of the underlying evidence, submissions and other information remains largely redacted and inaccessible to ANZ and its external legal representatives. In these

[14] Decision [7.112], [7.133].

circumstances, ANZ foreshadows that, following review of that confidential/redacted material, ANZ may apply to the Tribunal for leave, or otherwise for a relevant direction from the Tribunal, to amend or supplement this Concise Statement of Facts, Issues and Contentions.

R Higgins SC & A Lord

Ashurst

8 September 2023