

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: Affidavit

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: 12/09/2023 1:38 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: Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited for review of Australian Competition and Consumer Commission Merger Authorisation Determination MA1000023

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

AFFIDAVIT

Affidavit of: **Lara Oksana Gray**

Address: Darling Park Tower 3, Level 16, 201 Sussex Street, Sydney NSW 2000

Occupation: General Counsel and Company Secretary

Date: 12 September 2023

I Lara Oksana Gray, General Counsel and Company Secretary, Darling Park Tower 3, Level 16, 201 Sussex Street, Sydney NSW 2000, affirm:

1. I am the Regional General Counsel & Company Secretary Australia for Rabobank Australia Limited (**Rabobank**).
2. I am authorised to make this affidavit on Rabobank's behalf in support of the directions sought by Rabobank on 12 September 2023 (**Proposed Directions**).
3. I make this affidavit from my own knowledge, except where otherwise indicated. Where I depose to matters on the basis of information provided to me, I believe those matters to be true and correct. Where matters I depose to are based upon information and belief, I have set out the basis of that information and belief.

Filed on behalf of (name & role of party)	Rabobank Australia Limited
Prepared by (name of person/lawyer)	Lynsey Edgar
Law firm (if applicable)	Baker McKenzie
Tel +61 2 9225 0200	Fax +61 2 9225 1595
Email	lynsey.edgar@bakermckenzie.com
Address for service (include state and postcode)	Tower One, Level 46, 100 Barangaroo Avenue, Barangaroo NSW 2000

Background

4. Rabobank seeks directions in respect of the confidentiality regime put in place in these proceedings under Direction 5 made on 29 August 2023, including amendments to the confidentiality regime annexed to those directions.
5. Between December 2022 and April 2023, Rabobank produced information and documents to the Australian Competition and Consumer Commission (**ACCC**) in response to mandatory notices issued pursuant to section 155 of the *Competition and Consumer Act 2010* (Cth) (**s155 Notices**). Rabobank claimed confidentiality over all documents and information produced in response to the s155 Notices.
6. Rabobank also provided:
 - (a) a confidential submission to the ACCC on 18 January 2023; and
 - (b) a confidential response to an ACCC request for information on 26 June 2023, following on from a s155 Notice.
7. I was involved in the preparation of Rabobank's responses to the s155 Notices and the submissions and responses referred to in paragraph 6.
8. Rabobank understands from the ACCC that documents and information were also provided to the ACCC by the Australian Prudential Regulatory Authority (**APRA**) on a confidential basis and that these documents and information include information confidential to Rabobank (**Rabobank APRA Documents**). A copy of a letter from the AGS to Rabobank dated 7 September 2023 which includes a list of the Rabobank APRA Documents is at **Annexure LOG1** to this affidavit.

Confidentiality of Rabobank's documents

9. Rabobank is not a listed company. It, therefore, has disclosure obligations that are less onerous than listed banks.
10. The information and documents which Rabobank produced to the ACCC under the s155 Notices included:
 - (a) internal communications between Rabobank management and the Board of Rabobank;
 - (b) Board papers, Board minutes and Board sub-committee minutes;
 - (c) Chief Executive Officer reports, Chief Financial Officer reports, Chief Risk Officer dashboard reports, business plans, people strategy and strategy reports;
 - (d) detailed data regarding products, funding, liquidity, customer information, book size and portfolio; and

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J. Hendry

- (e) detailed information about Rabobank's pricing decisions for its products.
11. The types of information referred to in paragraph 10 are not ordinarily within the public domain.
 12. Rabobank operates in the niche market of agribusiness lending and its confidential strategy is crucial to the success of its business.
 13. Each of the Applicants and Bendigo and Adelaide Bank Limited (**BABL**) are competitors of Rabobank in the specialised area of agribusiness lending.
 14. The documents and information which Rabobank produced to the ACCC and which are subject to a confidentiality claim by Rabobank contain information which would be of significant value to each of the Applicants and BABL.

Nature of the Highly Confidential Documents

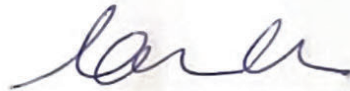
15. I have reviewed each of the documents identified on the list of "Highly Confidential Documents" in Rabobank's Proposed Directions (**Highly Confidential Documents**), apart from the Rabobank APRA Documents. In my roles as General Counsel and Company Secretary, I am aware of the type of information that Rabobank provides to APRA.
16. The Highly Confidential Documents can broadly be divided into the following categories:
 - (a) Documents prepared for the consideration of Rabobank's Board including Board papers and other reporting (such as CEO reports);
 - (b) Minutes of meetings of Rabobank's Board and Board sub-committees; and
 - (c) Responses to ACCC requests for information and submissions to the ACCC.
17. The Highly Confidential Documents contain detailed and specific information which outlines Rabobank's strategic priorities and plans in relation to aspects of its business, including but not limited to business growth, risk management and culture plans.
18. When the Highly Confidential Documents are read together, they provide a detailed picture of Rabobank's business and strategy, which would be useful to a competitor.
19. In relation to the documents that have been identified as Highly Confidential Documents, each document includes information which is commercially and competitively sensitive, including for the following reasons:
 - (a) The documents include detailed information regarding Rabobank's strategic decisions and directions including, but not limited to, pricing strategy and decisions, its evaluation of competitors and its technology, digital and product distribution strategies;

- (b) Papers prepared for Rabobank's Board set out the proposed strategy for Rabobank's Australian business with an outlook to 2026, including a strategic roadmap for the period 2022 – 2026;
- (c) The response to the ACCC's request for information includes detailed information and data regarding Rabobank's products and services provided to its agribusiness customers, that is, Rabobank's key products and services;
- (d) The documents contain detailed commentary around the competitive environment in agribusiness lending, plans for strategy execution and Rabobank's financial performance; and
- (e) Based on my understanding of the types of information Rabobank provides to APRA, I expect the Rabobank APRA Documents contain data sets which were prepared for regulatory reporting purposes and provide detailed and comprehensive information on Rabobank's lending mix and customer base.

20. The documents produced exclusively for Rabobank's Board would ordinarily have access strictly restricted to a select group including the Executive Team and directors of Rabobank.

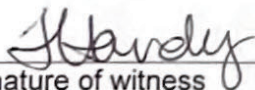
Affirmed by the deponent
 at Bellevue Hill
 in New South Wales
 on 12 September 2023

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 Signature of deponent

Before me:



 Signature of witness

Jeremy Vincent Hardy, Solicitor

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2023

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

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

ANNEXURE LOG1

The following 3 pages is the annexure marked LOG1 referred to in the affidavit of Lara Oksana Gray affirmed on 12 September 2023 before me:


.....
Signature



Our ref. 22005854

7 September 2023

George Nguyen & Chalisa Parekowhai
 Rabobank Australia Limited
 Level 16, Darling Park Tower 3
 201 Sussex Street
 SYDNEY NSW 2000
 via email:
George.Nguyen@rabobank.com;
Chalisa.parekowhai@rabobank.com
 CC: Lara.Gray@rabobank.com;
Jeff.Davis@rabobank.com

Australian Government Solicitor
 Level 33, 300 George Street Brisbane QLD 4000
 GPO Box 1408 Brisbane QLD 4001
 T 07 3360 5600
www.ags.gov.au

Canberra
 Sydney
 Melbourne
 Brisbane
 Perth
 Adelaide
 Hobart
 Darwin

Dear Mr Nguyen & Ms Parekowhai

Applications by Australia and New Zealand Banking Group Limited (ANZ) and Suncorp Group Limited (Suncorp) – ACT 1 of 2023 – Notice of ACCC's intent to disclose APRA material

1. We refer to the above proceedings (the **Tribunal Proceedings**), to our letter dated 1 September 2023 (the **Confidentiality Letter**), and to the Tribunal's directions dated 29 August 2023, a copy of which is enclosed (the **Directions**).

Disclosure of information relating to your organisation

2. As you may be aware, the Australian Prudential Regulation Authority (**APRA**) provided documents and information to the ACCC on a confidential basis subject to certain conditions (**APRA Approval**) to assist with the ACCC's consideration of the Proposed Acquisition (the **APRA material**).
3. The APRA material includes information that relates to your organisation, as described in **Annexure 1**.
4. We note that direction 12 of the Directions states that the ACCC is not required to serve the APRA material on the Applicants and BABL. The ACCC's intention in seeking direction 12 was to ensure that the ACCC was not required to produce the APRA material in the proceedings until and at such time as the ACCC had met the conditions under the APRA Approval.
5. The APRA Approval requires the ACCC to provide the relevant ADIs with 5 days' notice of its intention to disclose APRA material before that material is disclosed in the Tribunal Proceedings.
6. Accordingly, we are writing to notify you that, in addition to the material described in the Confidentiality Letter, the ACCC also intends to produce to the Applicants and BABL the APRA material described in Annexure 1 **on 14 September 2023**. That material will be treated in accordance with the confidentiality regime established under the Directions.

Next steps

7. The ACCC will be seeking to have direction 12 varied so that it can produce the APRA material to the external lawyers for the Applicants and BABL subject to the confidentiality regime once it has complied with its notification obligations under the APRA Approval. If your organisation wishes to apply to the Tribunal for further directions with respect to the confidential APRA information described in this letter, it should apply, or at least communicate its intention to apply, to the Tribunal **on or before 12 September 2023**.
8. Any correspondence to the Tribunal should be addressed to Justice Halley's Associate (Associate.HalleyJ@fedcourt.gov.au) and the Registry (CompetitionTribunalRegistry@fedcourt.gov.au) and copied to AGS as well as the external solicitors for the Applicants and BABL (justin.jones@ashurst.com, linda.evans@hsf.com and diana.biscoe@webbhenderson.com).
9. If you have any questions, please contact Alice Hancock, Senior Lawyer at alice.hancock@ags.gov.au or (02) 9581 7418.

Yours sincerely



Chris Steger
Senior Executive Lawyer
T 07 336 05799
M 0487 275 889
chris.steger@ags.gov.au

ANNEXURE 1

ARF form code	Relevant period
ARF_320_0	Period ending 31/01/2017 to period ending 30/06/2019
ARF_330_0_L	Period ending 31/03/2017 to period ending 31/12/2022
ARF_330_1_L	Period ending 31/03/2017 to period ending 31/12/2022
ARF_330_2_L	Period ending 31/03/2017 to period ending 31/12/2022
ARF_330_3	Period ending 31/03/2017 to period ending 31/12/2022
ARF_331_0_D	Period ending 31/03/2017 to period ending 30/06/2020
ARF_730_0	Period ending 30/09/2019 to period ending 30/09/2022
ARF_730_1	Period ending 30/06/2021 to period ending 30/06/2022
ARF_741_0	Period ending 31/07/2019 to period ending 31/10/2022
ARF_742_OAB	Period ending 31/07/2019 to period ending 31/10/2022
ARF_747_OAB	Period ending 31/07/2019 to period ending 31/10/2022
ARF_750_0	Period ending 30/06/2017 to period ending 30/06/2022
QADIP	Period ending 30/06/2017 to period ending 30/09/2022