Restriction of Publication of Part Claimed

Expert economist's report regarding ANZ/Suncorp.

Professor Stephen P. King

The Purcell Group
15 Purcell St.
North Melbourne
Vic. 3051

March 3, 2023

Introduction

1. I am currently a Professor of Practice in the Department of Economics at Monash University, and a Commissioner with the Australian Productivity Commission. Before joining Monash University in January 2009, I was a Member of the Australian Competition and Consumer Commission (ACCC) and Chair of the ACCC's Mergers Review Committee from 2004 to 2009. Since 2003, I have been a Lay Member of the High Court of New Zealand. I have a PhD in Economics from Harvard University.
2. I have extensive experience in microeconomics and industrial economics, both through my current work with the Productivity Commission and my previous work as a Member of the ACCC, a Member of the Economic Regulation Authority of WA, a Member of the National Competition Council and through my academic work and other professional activities. I was one of the three Commissioners who oversaw the Productivity Commission's 2018 Inquiry into Competition in the Australian Financial System. I am a researcher in the field of competition and regulation and have published my research in both Australian and International refereed economics journals. My curriculum vitae is attached to this report as Annexure 1.
3. I have been asked to provide my opinion on certain matters relating to ANZ's proposed acquisition of Suncorp Bank. In particular, I have been asked to prepare an independent economic expert report that could be submitted to the ACCC in relation to the Authorisation Application that considers whether the Proposed Transaction will:
    a. have the effect, or would be likely to have the effect, of substantially lessening competition in any market in Australia; and/or
    b. result, or be likely to result, in a benefit to the public, and whether that benefit would outweigh any detriment to the public that would result, or be likely to result, from the Proposed Transaction
4. The letter of instruction is attached to this report as Annexure 2.
5. I have read and have complied with the Federal Court of Australia's Expert Evidence Practice Note (GPN-EXPT) and Harmonised Expert Witness Code of Conduct which is attachment A to Annexure 2.
6. I have prepared this report myself and all views and opinions expressed in this report are my own. I have made all the inquiries which I believe are desirable and

appropriate (save for any matter identified explicitly in this report). No matters of significance which you regard as relevant have, to my knowledge, been withheld from me.

[redacted]

(Stephen Peter King)

Summary of expert economic opinion

7. In my opinion and as a matter of economics:
   a. The most likely anticompetitive impacts of the acquisition of Suncorp Bank by ANZ arise in the supply and demand of home loans and agribusiness banking services. While anticompetitive impacts may arise for other products, I do not consider them in this report.
   b. The relevant markets for competition analysis are:
      i. The national market for retail home loans; and
      ii. local/regional agribusiness banking markets, particularly those local/regional agribusiness banking markets either fully located or substantially located within Queensland.
   c. The acquisition of Suncorp Bank by ANZ is best considered relative to two alternative counterfactuals:
      a. The 'status quo' counterfactual. Under this counterfactual Suncorp Group would continue to operate Suncorp Bank.
      b. The 'alternative buyer' counterfactual. Under this counterfactual Suncorp Bank will be acquired by another mid-tier bank, specifically Bendigo and Adelaide Bank.
   d. Compared to the 'status quo' counterfactual, the acquisition of Suncorp Bank by ANZ is a substantial lessening of competition in the national market for retail home loans. In part, this substantial lessening of competition arises because the acquisition will stabilise the existing coordinated conduct between the major banks.
   e. Compared to the 'alternative buyer' counterfactual, the acquisition of Suncorp Bank by ANZ is a clear substantial lessening of competition in the national market for retail home loans. In part, this substantial lessening of competition arises because the acquisition will stabilise the existing coordinated conduct that occurs between the major banks. The acquisition will also prevent the creation of a mid-tier 'challenger bank'. Such a 'challenger bank' could extend Bendigo and Adelaide Bank's strategy as a regional, community-focussed bank and, together with

Macquarie Bank, can create significant competitive tension in the market, further undermining the coordinated conduct of the major banks.

f. Compared to either counterfactual, the acquisition of Suncorp Bank by ANZ is a likely substantial lessening of competition in at least some local/regional agribusiness banking markets located substantially within Queensland. The exact identification of the relevant markets where competition is substantially lessened would require market-by-market analysis of the relevant local/regional agribusiness markets in Queensland. If, however, the ACCC considers that the relevant market encompasses the entire state of Queensland, then my conclusion remains unchanged.

    i. While there is inadequate data available to me to determine relevant market shares, the reduction in competition arises because of the status of ANZ and Suncorp Bank as two very significant competitors in the provision of agribusiness banking services across a range of regional locations in Queensland; the overlap of ANZ's and Suncorp Bank's agribusiness operations in Queensland; and the removal of Suncorp as an effective and independent competitor in a range of local/regional agribusiness markets across Queensland in a situation where it is unlikely that entry, expansion or customer switching will offset any substantial lessening of competition.

Background to the proposed acquisition

8. On July 18, 2022, ANZ banking group announced that it intended to buy Suncorp Bank from the Suncorp Group.[1] On December 2, 2022, the ACCC announced that it had received an Application from ANZ for merger authorisation for the acquisition of Suncorp Bank by ANZ.[2] The ACCC is scheduled to make a Determination on the authorisation by June 12, 2023.[3]
9. Under the authorisation process, "[t]he ACCC may not grant authorisation unless it is satisfied that either:
    a. the proposed acquisition would not be likely to substantially lessen competition or
    b. the likely public benefit from the proposed acquisition outweighs the likely public detriment, including any lessening of competition".[4]
10. The announcement by ANZ indicates that there will be limited changes to the (public facing) operations of Suncorp bank post-acquisition. Suncorp bank will continue to operate under its existing Authorised Deposit-taking Institution (ADI) license and there will be "no changes to the total number of Suncorp Bank branches in Queensland for at least three years from completion".[5] Further, "ANZ has licenced the Suncorp Bank brand for five to seven years".[6] The press release also notes that ANZ will make a range of 'financial contributions' to Queensland although it is unclear whether any of these depend on the acquisition.

---

[1] "ANZ accelerates Australia retail and Commercial", news release, https://media.anz.com/posts/2022/07/anz-accelerates-australia-retail-and-commercial

[2] Ashurst (2022) "ANZ proposed acquisition of SBGH Limited", *Application for merger authorisation*, December 2.

[3] See https://www.accc.gov.au/public-registers/mergers-registers/merger-authorisations-register/anz-proposed-acquisition-of-suncorp-bank

[4] "Merger authorisation", ACCC, https://www.accc.gov.au/business/mergers/merger-authorisation

[5] *Op. cit.* note 1.

[6] *Ibid.*

Approach to analysing the competition impacts of a merger

11. The general economic approach to determining whether a proposed acquisition will substantially lessen competition is outlined in the *ACCC's Merger Guidelines* (*Guidelines*).[7] In this report I apply the principles from these *Guidelines* to the proposed acquisition of Suncorp Bank by ANZ.

The forward-looking nature of merger analysis

12. The *Guidelines* (paragraph 3.14) note that merger analysis is forward looking into the effects or likely effects of a merger. Mergers are prohibited "if they would have the effect or be **likely** to have the effect, of substantially lessening competition".[8] The *Guidelines* note that this prohibition arises where there is a 'real chance' of a substantial lessening of competition.

13. The *Guidelines* note that "[m]erger analysis requires comparing likely future states — the future **with** the merger and the future **without** the merger".[9] The *Guidelines* note that, when considering the future state without the merger (the counterfactual) the ACCC will use "information about the state of competition prevailing at the time of the merger to inform its assessment of the likely future state of competition without the merger".[10] However, the *Guidelines* also note that "if it can be established with strong and credible evidence that, in the absence of the merger, a particular alternative firm would acquire the target, the relevant counterfactual may involve a competitive outcome that differs from the status quo".[11]

Market analysis

14. The *Guidelines* note that a "market is the product and geographic space in which rivalry and competition take place".[12] Further "a market includes goods or services that are substitutable for, or otherwise competitive with, the goods or services under analysis.

[7] Australian Competition and Consumer Commission (2008, revised 2017) *Merger Guidelines*, available at https://www.accc.gov.au/system/files/Merger%20guidelines%20-%20Final.PDF accessed February 1, 2023.
[8] *Guidelines* at 3.15, emphasis in original
[9] At 3.16, emphasis in original
[10] At 3.17.
[11] At 3.20.
[12] At 4.6.

Accordingly, substitution is key to market definition".[13] There are "two key dimensions of substitution in characterising markets: the product dimension and the geographic dimension".[14] The *Guidelines* note the relevance of both demand-side and supply-side substitution.

15. The *Guidelines* note that the "starting point for delineating relevant markets to assess a merger under s. 50 of the Act is identifying the products and geographic regions actually or potentially supplied by the merger parties. The ACCC then focuses on defining markets in areas of activity where competitive harm could occur. This must be assessed on a case-by-case basis".[15]

16. The *Guidelines* note that different customer groups may face different substitution possibilities. "If suppliers can discriminate, a customer that has limited substitution possibilities receives different terms and conditions from suppliers to a customer that has strong substitution possibilities. In this situation it may be appropriate to consider two separate markets for merger analysis".[16]

Anticompetitive effects of a merger

17. The *Guidelines* note a wide range of ways that a merger can substantially lessen competition including through the removal or an actual or potential competitive constraint,[17] and by assisting firms to implicitly or explicitly coordinate prices.[18]

18. The *Guidelines* note that a substantial lessening of competition is linked to an increase in market power. The *Guidelines* note that an increase in market power that results from a merger that substantially lessens competition, may lead to a variety of market behaviour that harms consumers including an increase in price(s), lower quality products without compensating price reductions, a reduction in the range of products offered, lower customer service standards or a change to other parameters of the market that are

[13] At 4.7.
[14] At 4.8.
[15] At 4.10.
[16] At 4.37.
[17] At 5.5.
[18] At 6.1.

relevant to competition. The Guidelines note that the "exact nature of competitive detriment … will vary depending on the particular circumstances".[19]

19. Analysis of the competitive impact of a merger involves consideration of a range of merger factors, including, but not limited to, those listed in s.50(3) of the *Competition and Consumer Act (2010)*.[20] The *Guidelines* note that "competitive constraints are not static and strategic behaviour by market participants can affect competition. The significance of the merger factors, and the weight that is placed on them, will depend on the actual matter under investigation".[21]

[19] At paragraph 3.3 and textbox on p.8.
[20] At 3.9.
[21] At 3.11.

Background on the banking industry

20. The Productivity Commission's (PC's) 2018 Inquiry into *Competition in the Australian Financial System* notes that Australia's banking system is dominated by four large businesses: Westpac, CBA, Nab and ANZ.[22] There are a range of much smaller banks with the larger members of this group including Macquarie, Bendigo and Adelaide Bank, Suncorp, ING and Bank of Queensland (which acquired ME bank in 2021). I will refer to the group of larger, but small, banks as mid-tier banks. However, I note that there are significant differences between these mid-tier banks in terms of recent growth and strategy. For example, Macquarie Bank has a share of home loans significantly greater than the other mid-tier banks (paragraphs 105-106). Bendigo and Adelaide Bank has differentiated itself from other banks through its strategy (paragraphs 112-114).

21. The PC noted that, as at the end of 2017, the size of Australia's banks was bifurcated. The four large banks each had shares of 15% or more. In contrast, the 'biggest' of the remaining banks had a share of less than 2.5% at that time.[23] Further, this pattern of dominance of shares was broadly reflected in all products considered by the PC.

22. The *Application for merger authorisation* (*Application*) notes that there have been some changes to banking market shares since 2017. At paragraph 39(a), the *Application* notes that "Macquarie Bank has significantly expanded its banking business over the last 5 years". While Macquarie Bank has increased its share of assets in recent years, it remains small compared to the major banks, having a share of assets of around 4.5 to 5% compared to the smallest of the major banks, ANZ, which has a share of assets of around 13 to 13.5%.[24] As such, the Australian banking industry continues to be dominated by the four major banks – Westpac, CBA, Nab and ANZ – with a range of 'mid-tier' banks, such as

---

[22] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June.

[23] The PC based its market share comparisons on 'bank share of assets held on bank domestic books'. Since 2018 APRA has changed the format of its monthly banking statistics. To ensure comparability with market share figures reported below, I note that, as reported in APRA's April 2018 Monthly Banking Statistics (archived), the shares of the major banks based on 'total resident assets' were 16% for ANZ, 21% for CBA, 19% for NAB and 23% for Westpac. Macquarie was the next largest bank with a market share of 2.2%. The PC's conclusion about market shares remains true based on 'total resident assets'.

[24] Shares based on 'total resident deposits' and 'total resident assets' from APRA "Monthly authorised deposit-taking institution statistics" December 2022, released 31 January 2023.

Macquarie Bank, Suncorp Bank, and Bendigo and Adelaide Bank, and a large number of very small banks.

23. The acquisition involves the merger of one of the major banks, ANZ, with a mid-tier bank, Suncorp Bank. While Suncorp Bank is significantly smaller than ANZ on a national basis, the acquisition will significantly impact ANZ's national size and scale.[25]

Market Power

24. The PC concluded that "[t]he major banks' market power is a defining feature of the financial system".[26] This conclusion on the market power of the four major banks was echoed by the ACCC in its submission to the PC's Inquiry.[27]

25. The PC discusses a range of factors that impact on competition in banking and enable the four major banks to maintain their market power. In particular, it notes that:

> "The major banks hold substantial market power, reflecting their structural advantages.
>
> - The major banks have very well-known brands and substantial geographic reach. Consumers tend to perceive them as safe and stable, and levels of switching are low.
> - As a result. of both their size and scope, and a status of 'too big to fail', the major banks benefit from lower operating costs, including lower costs of funds".[28]

Funding:

26. The PC noted that "[t]he most powerful advantage that larger banks have over smaller ADIs, and one that gives them substantial market power, is their ability to raise funds at lower costs" and these lower costs of funding "enable the bigger banks to maintain their profits …".[29]

---

[25] Ashurst (2022) "ANZ proposed acquisition of SBGH Limited", *Application for merger authorisation*, December 2, at paragraph 3.8.b.

[26] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.4.

[27] ACCC (2017) *Productivity Commission Inquiry into competition in the Australian financial system*, submission, September, at p.3.

[28] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.97.

[29] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at.p.99.

27. As the PC notes, the "[l]arger banks have better credit ratings, and as a result, investors and depositors are willing to lend them funds at lower rates".[30]

28. The PC notes the importance of 'implicit government guarantees' in enabling the four major banks to maintain better credit ratings and lower costs of funds. This mirrors the Regional Banks' submission to the PC's Inquiry[31] which noted that the major banks gained a funding advantage from the perception that they were 'too big to fail' and implicitly had government protection for debt that was unavailable to smaller banks. The submission stated that this advantage was not fully neutralised by the Major Bank Levy.[32] Similarly, the submission noted that the approach to risk-weightings for prudential purposes used by APRA provided a significant advantage to those banks who could adopt an internal risk model (the 'IRB banks'). At the time of the PC Inquiry, these IRB banks were the four major banks, Macquarie and ING.

29. There have been changes to the regulations around banking since the PC Inquiry. However, the funding advantage to the four major banks, which the PC noted as a significant source of major bank market power, continues. For example, see paragraph 121 of the Statement of Clive van Horen.[33]

Switching costs and price discrimination

30. The PC notes that there is significant "consumer inertia" in banking with "[l]ow levels of customer switching".[34] The PC notes that "switching [is] least likely among those who have a home loan with a major bank".[35]

31. The PC noted that there are a large number of "barely differentiated" banking products available to consumers. It also noted that, this "huge product variety" did not reflect competition. Rather it "provides latitude for exploitative price discrimination, with

---

[30] *Ibid.*
[31] Regional Banks (2017), "Levelling the playing field in retail banking" *Submission to the Productivity Commission*, September (Second submission March 2018)
[32] *Ibid.* section 5.1.
[33] "Based on my experience in the industry, I understand that the Major Banks enjoy what I would describe as an implicit government guarantee. That is, from an investor perspective, these banks are 'too big to fail' and therefore benefit from an implicit government guarantee which is reflected in their ratings from ratings agencies. As a result, they benefit from a cheaper cost of capital and wholesale funding." Further, "[c]ombined with ANZ, Suncorp Bank will have better access to capital and funding".
[34] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.7. See also section 5.1.
[35] *Ibid.*

associated profit opportunities". The PC also noted the link between "exploitation of existing customers" through price discrimination and "low levels of customer switching".[36]

32. The *Application* at figure 12 shows only a minimal change in the annual switching rates between 'major financial institutions' since June 2018, when the PC's Inquiry report was published and I have seen no other information to suggest that switching has noticeably increased or that switching costs for consumers have notably decreased over the past 4.5 years.[37] As such, I consider that the PC's conclusions on switching costs and its implications for competition remain valid.
33. Further, price discrimination is still occurring between customers, particularly for home loans. For example, paragraph 24.c in the Statement by John Campbell notes that a home loan can involve a "discretionary discount" that is "a further discount negotiated between the customer and ANZ".[38]
34. The PC notes the poor implications of low switching and customer discrimination. "As a result, a minority of active consumers may be unable to drive competition in the market as a whole, because providers isolate those consumers into a separate sub-market".[39]
35. The PC considers the consequences of this customer discrimination for home loans and the price discrimination reflected in interest rates received under new home loans compared to existing loans. "[C]ustomers with new home loans receive a discount of around 0.3%-0.4% on the applicable interest rate, relative to existing customers".[40] The PC noted that its conclusions were in line with similar findings by both the ACCC and the Reserve Bank of Australia (RBA).[41]

---

[36] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.12-13.

[37] I note that during early to mid 2021, during the COVID 19 pandemic, switching rates did get as high as 4% (figure 12). However, as the dotted line in figure 12 shows, this increased switching was 'off trend' and there is no indication that these higher switching rates have continued in 2022.

[38] The Statement, at paragraph 25 notes that 'discretionary discounts' do not 'typically' apply to fixed rate loans or Simplicity PLUS loans.

[39] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.167. See also finding 5.3.

[40] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at Box 5.6.

[41] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.167-168.

Integration

36. The PC notes that the major banks' market power is "reinforced by integration".[42]

37. The PC expressed specific concern about integration with mortgage aggregators, and the poor incentives that applied to the mortgage aggregator/broker channel.[43] It noted that "[t]he benefits to lenders of aggregator ownership appear to be gaining market share (largely through white label loans), potentially greater control of the broker distribution channel and competitors' use of it, and the scope to recoup a portion of commissions paid".[44]

38. The PC noted that mortgage brokers are the source of more than half of all home loans, and the particular importance of mortgage brokers to smaller lenders. The *Application* at 33 provides recent data that is consistent with this.[45]

39. The PC also expressed concerns around mortgage broker remuneration and conflicting incentives. While the PC made recommendations to reform broker commissions and clawback arrangements, my understanding is that, other than the introduction of a 'best interest' obligation, these recommendations have not been implemented.[46]

Implications for competition

40. The PC finds that competition in the banking system is limited:

> "Price competition in the banking system is limited. Although institutions claim that they compete in loan markets by discounting, such behaviour is not indicative of a competitive market when price obfuscation is common and discounts are specific to groups of customers.
>
> Competition on product features and service is more evident. But the large number of marginally different products appears

---

[42] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.6.

[43] As the Statement by John Campbell notes at 70, "[a]lmost all mortgage brokers are affiliated with an aggregator". See also the *Application* at 5.57.

[44] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.20.

[45] Ashurst (2022) "ANZ proposed acquisition of SBGH Limited", *Application for merger authorisation*, December 2, at 33: "In home loans … during the period January to March 2022, 69.5% of all new home loans were broker originated. In the case of ANZ, mortgage brokers account for 55-60% of home loan applications and, for Suncorp, 70% of home loan applications". See also at 5.58 which notes the significant growth in the percentage of all new home loans in Australia that were broker originated since the publication of the PC's report.

[46] See Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at chapter 11.

more reflective of a capacity for price discrimination than competition".[47]

41. The PC finds that, as a result of their market power, "…the major banks have the ability to pass on cost increases and set prices that maintain high levels of profitability – with minimal loss of market share. The smaller banks and non-bank financial institutions typically follow the pricing trend set by the major banks, and are not a significant competitive constraint on the major banks' market power".[48]
42. The PC notes the market power of the four major banks *as a group*. It notes for the four major banks that "the individual power in the market may change, but as a group they remained the dominant force that controls the market".[49] The ACCC echoes these concerns about a lack of vigorous price competition between the major banks in its *Residential Mortgage Price Inquiry*.[50] The ACCC notes the "oligopoly market structure" for residential mortgages and that the banks engage in an "accommodative and synchronised approach to pricing".[51]
43. The structure of the Australian banking industry, with a small number of dominant banks interacting repeatedly over time, is conducive to 'coordinated conduct' by these major banks. Coordinated conduct arises where a small number of businesses, such as Australia's major banks, recognise their on-going strategic interdependence. The businesses moderate their individual levels of competition in order to raise both the overall level, and their share of, total profitability. Coordinated conduct leads to the businesses acting as a group and not engaging in vigorous competition.
44. The ACCC, in its *Residential Mortgage Price Inquiry*, provides an example of "accommodative and synchronised pricing behaviour" by the major banks. It analyses an interest rate rise by ANZ and considers that ANZ's behaviour reflects its recognition of

[47] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June, Finding 3.1.
[48] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June, Finding 3.2.
[49] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.104.
[50] Australian Competition and Consumer Commission *Residential Mortgage Price Inquiry final report*, November 2018 at p.6.
[51] *Ibid.*

strategic interdependence between the major banks and a 'follow the leader' strategy.[52] In my opinion, this example indicates coordinated conduct between the major banks. While the ACCC's example is based around a specific regulatory 'benchmark' the ACCC notes that the conduct is consistent with the major banks "history of such behaviour".[53]

45. The lack of vigorous competition, and potential for coordinated conduct between the major banks, has significant implications for competition analysis. For example, it means that market shares and market concentration analysis must consider actual or potential coordinated conduct. Treating the major banks as 'vigorous and independent competitors' would be false and would overstate the level of competition in a relevant market.

[52] "We consider that ANZ was unlikely to have chosen to increase its interest rates without the expectation that its competitors would follow its lead", Australian Competition and Consumer Commission *Residential Mortgage Price Inquiry final report*, November 2018 at p.8.

[53] *Ibid.*

Counterfactuals for merger analysis

46. As noted in paragraph 12 above, merger analysis is forward looking, and requires consideration of the future "with and without the merger". The future state without the merger is called the 'counterfactual'. As noted in paragraph 13 above, a counterfactual is often based on the state of competition prevailing at the time of the merger. On this basis, a counterfactual for acquisition of Suncorp Bank by ANZ is the continuation of Suncorp Bank as a separate entity that competes with ANZ on a range of banking services.
47. However, as noted in paragraph 13, an alternative counterfactual may be relevant if there is strong and credible evidence that the future state of competition, absent the acquisition under investigation, is likely to differ from the current state of competition.
48. The *Application for Merger Authorisation* (*Application*) states that, "if the proposed acquisition [of Suncorp Bank by ANZ] does not proceed, Suncorp Bank would continue to be held by Suncorp Group and operated in accordance with the approved business plan for Suncorp Bank".[54]
49. I have been instructed to consider two counterfactuals when analysing the competitive impacts of the acquisition of Suncorp Bank by ANZ:
    a. ***The status quo counterfactual***. Under this counterfactual Suncorp Group would continue to operate Suncorp Bank.
    b. ***The alternative buyer counterfactual***. Under this counterfactual, Suncorp Bank will be acquired by another mid-tier bank, specifically Bendigo and Adelaide Bank.
50. Whether either the 'status quo' or the 'alternative buyer' counterfactual is 'likely' is a matter for evaluation by the ACCC. However, I would note that the ACCC does not need to conclude that only one of these alternative counterfactuals is 'likely'. As the ACCC *Merger Guidelines* note[55] the term 'likely' in the context of merger analysis refers to a 'real chance' and does not mean that something is 'more likely than not'. It is possible that both of the relevant counterfactuals can have a 'real chance' of occurring, although obviously they could not both be 'more likely than not'. If it is considered that both of the counterfactuals have a 'real chance' and that the acquisition of Suncorp Bank by ANZ

[54] Ashurst (2022) "ANZ proposed acquisition of SBGH Limited", *Application for merger authorisation*, December 2, at paragraph 6.
[55] At 3.15

would lead to a substantial lessening of competition relative to either of these 'real chance' counterfactuals then the acquisition is likely to substantially lessen competition.[56]

51. Given the possibility for there to be alternative relevant counterfactuals, my analysis below will consider the competitive effects of the acquisition of Suncorp Bank by ANZ against *both* the 'status quo' and 'alternative buyer' counterfactuals.

52. I will present my conclusions about the competitive impact of the acquisition separately for each counterfactual. In that way, my analysis will remain relevant regardless of the conclusions of the ACCC about the counterfactual.

[56] The practical application of merger analysis to multiple 'likely' counterfactuals is summarised in the New Zealand Commerce Commission Merger Guidelines (May 2022) at paragraphs 2.30 to 2.32:
"As something can be likely even when the chance of it occurring is less than 50%, there may be multiple scenarios that are likely without the merger (and with the merger). We first assess the possible scenarios that might arise without the merger and discard those that are unlikely. We then compare the state of competition in each likely scenario without the merger, to the likely state of competition with the merger. If competition would be substantially lessened in the scenario with the merger compared to any one of those likely states of competition without the merger, then the merger will have a likely effect of substantially lessening competition". (Available at https://comcom.govt.nz/__data/assets/pdf_file/0020/91019/Mergers-and-acquisitions-Guidelines-May-2022.pdf accessed February 1, 2023). It should be noted that the New Zealand competition test for mergers in s.47(1) of the *Commerce Act* (1986) mirrors the test in s.50 Australia's *Competition and Consumer Act* (2010).

Determination of the relevant markets.

53. As noted in paragraph 15 above, the ACCC *Merger Guidelines* note that the "starting point for delineating relevant markets to assess a merger under s. 50 of the Act is identifying the products and geographic regions actually or potentially supplied by the merger parties".

Product overview

54. The PC considers a number of products in its 2018 report including Personal products (deposits, personal loans, housing loans); Business products (separated by business size) and payments products (issuing and acquiring).[57]
55. The *Application* at paragraph 10 and paragraph 4.19 notes the products in which ANZ and Suncorp Bank overlap. In paragraph 4.20 and Table 3 it is stated that "the current areas of overlap between the parties" are:
    - (for 'personal' products) home loans, transaction accounts and deposit/term products.
    - (for 'business' products) SME Banking, Agribusiness banking and asset/equipment finance.
56. The *Application* (paragraph 4.23) notes that "banking products are supplied directly to consumers, although the parties' lending products are also supplied to customers after being originated by brokers".
57. At paragraph 4.24, the *Application* considers "a wide range of products, services and equipment that are customary for the operation of a full-service bank". These include "funds from wholesale markets".

Geographic regions overview

58. The *Application* at paragraph 11 states that all the markets in which ANZ and Suncorp Bank both provide products are national. However, on the information provided in the *Application*, it is far from clear that this conclusion about the geographic nature of markets is correct as a matter of economics.
59. For example, at paragraph 12(a), the *Application* notes "that less than 20% of Australians prefer to do any banking activities in branches". However, the *Application* does not

[57] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at p.106.

analyse whether or not this subgroup face price or product discrimination that would suggest that they act as customers in specific regional markets.

60. In my opinion, it would be inappropriate, as a matter of economics, to simply assume that the relevant markets are national, as is stated in the Application. Rather, an analysis of the geographic scope of the relevant markets must be carried out on a market-by-market basis.

Specific focus in this report

61. In this report I will concentrate on the markets associated with two specific products which, from the material available to me, appear to raise the most significant competition concerns. These products are home loans and agribusiness banking products.

62. There are other markets that are impacted by the acquisition of Suncorp Bank by ANZ that do not involve either home loans or agribusiness banking products. These include markets involving other commercial lending products and deposit products. I do not analyse these other markets in this report. There may be anti-competitive consequences of the acquisition in markets that involve these other products, however any analysis of those consequences is beyond the scope of this report.

Home loans

63. The information available to me clearly indicates that there is a **national market for retail home loans** where the acquisition of Suncorp Bank by ANZ might substantially lessen competition. This market includes significant sub-markets of consumers who face price discrimination.

    a. There is significant supply-side substitution between ANZ and Suncorp Bank in the supply of retail home loans:

        i. Suncorp Bank and ANZ both actively compete in the supply of retail home loans. Indeed, Suncorp appears to be increasingly active as an effective competitor.[58]

        ii. Both ANZ and Suncorp Bank use similar distribution channels for the supply of retail home loans. That said, I note that most mid-tier banks

[58] For example, the *Application* at 3.8.a notes that "Suncorp Bank has also had positive business momentum, particularly in home loans where it has experienced approximately 12% of net home lending growth for the six-month period to June 2022".

such as Suncorp Bank are more reliant on brokers as a distribution channel than major banks such as ANZ.[59]

iii. The 'production technology' used by both ANZ and Suncorp Bank to 'manufacture' retail home loans is similar. Both banks operate as a 'platform' in the sense that they offer a range of retail deposit products to consumers and the funds raised by these deposits are a key source of (low cost) funds for the manufacture of retail home loans. Both banks also demand wholesale funds (such as debt issuance) to provide an input for retail home loans. Both banks are also subject to significant regulation (most notably, by APRA) around their activity in raising funds for retail home loans although the impact of this regulation differs between ANZ and Suncorp Bank.

b. There is significant demand-side substitution between retail home loans supplied by ANZ and Suncorp Bank:

i. Consumers who either do not have an existing home loan or who are choosing a bank that is not their current supplier, have a high degree of substitutability between ANZ and Suncorp in the demand for a retail home loan. At a broad level the retail home loan products offered by ANZ and Suncorp are 'homogeneous products' although there may be a range of specific differences between the products, for example, in terms of price (interest rate) and terms and conditions.

ii. Consumers who currently have a retail home loan with either ANZ or Suncorp Bank face switching costs when moving their demand to any other bank. (See paragraphs 30 and 32). These switching costs can lead to significant price discrimination (See paragraphs 31, 33, 34 and 35). The difference in substitutability between different groups of consumers could indicate distinct markets for retail home loans for consumers who are 'locked in' to either ANZ or Suncorp Bank. However, in my opinion, it is economically preferable to analyse retail

[59] As noted above, different mid-tier banks have developed different strategies over time. For example, Bendigo and Adelaide Bank is less dependent on brokers than some other mid-tier banks and has a strategy of partnering with local communities through its 'community bank' model.

home loans as a single product market where there are significant submarkets involving consumers who have higher switching costs and are vulnerable to price discrimination.

iii. Consumers view different retail home loans from different banks as close substitutes but "home loan products are not readily substitutable for other products".[60]

c. Retail home loans are distinct and different to business loans where a house is used to secure the loan. On the supply side, I understand that banks generally use different approaches to the supply of business loans compared to retail home loans.[61] On the demand side, there may be a 'grey area'. For example, a consumer with a retail home loan who decides to commence a small business may use the funds associated with the loan to fund the business (e.g. through a drawdown facility). However, this overlap at the margin does not appear to expand the market to one involving all loans that are secured by property. In my opinion, as a matter of economics, it is preferable for competition analysis to consider a separate retail home loan market.

d. Banks may be viewed as a 'platform' that provides services to depositors and to lenders at the same time. The link between deposits and lending means that ANZ's funding targets for deposits are "correlated to forecast lending across lending products".[62] The 'platform' nature of retail deposits and retail lending products, including home loans, does not mean that retail home loans are part of a single broader platform market:

i. Retail deposits are not the only source of funds for banks seeking to manufacture retail home loans. While the cost of funds, and the access to 'cheap' retail deposit funds[63] has significant implications for competition in the supply of retail home loans, this does not mean that retail deposits and wholesale funds are in the same market as retail

[60] *Application* at paragraph 6.5.

[61] For example, Table 1 in the Statement of Clive van Horen indicates that Business Banking and Home lending are different parts of Suncorp Bank, each with its own EGM who reports directly to Mr van Horen.

[62] Statement of Yiken Yang at paragraph 13.

[63] The Statement of Yiken Yang at 14.a notes that "[t]ransaction accounts tend to pay no interest or low interest rates when compared to savings accounts or term deposits".

home loans. Rather, retail deposits and wholesale funds are best viewed as inputs to the manufacture of retail home loans.

ii. The mere existence of a 'platform' does not imply the existence of a single market. Indeed, the PC noted that, where it was dealing with two-sided markets, it would consider "both product markets for each platform, for example the market for deposits and the market for loanable funds, noting linkages between the markets where relevant".[64] The PC also noted that "[t]his is consistent with the way the ACCC deals with two-sided markets in its merger assessments".[65]

e. The geographic scope of the retail home loan market is national.

i. Both the large fraction of retail home loans that originate through the mortgage broker distribution channel, and the ability of many consumers to be able to use digital technology to apply for a retail home loan, indicates that the relevant market is national.[66] For example, see the Statement of Clive van Horen at paragraph 31 and the Statement by John Campbell at paragraph 48.

ii. The *Application* at paragraph 6.20 notes that "In CBA/Bankwest and Westpac/St George, the ACCC concluded that the relevant market was for the supply of home loans on a national basis".

iii. Consumers who currently have a retail home loan with either ANZ or Suncorp Bank face switching costs when moving their demand to any other bank. (See paragraphs 30 and 32). These switching costs can lead to significant price discrimination (See paragraphs 31, 33, 34 and 35). The difference in substitutability between different groups of consumers could indicate distinct geographic markets for retail home loans in regions where relevant consumers are locked in to either Suncorp Bank or ANZ and have few effective opportunities for substitution. For example, I note that Suncorp Bank's presence in

---

[64] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June note 6 at p.79

[65] *Ibid*

[66] See *Application* at 6.30-6.32.

Queensland is significantly greater than elsewhere in Australia.[67] This suggests there may be a geographic market for home loans that is narrower than the national market and focussed on consumers that face high switching costs and price discrimination in home loans. Such a market would involve localised competition, for example for consumers who rely on a branch presence or do not actively access internet-based services. However, in my opinion, it is economically preferable to analyse retail home loans as a single national geographic market where there are significant geographic submarkets involving consumers who have higher switching costs and are vulnerable to price discrimination.

Focus on the national market for retail home loans

64. The national market for retail home loans appears to be particularly relevant for competition analysis regarding the acquisition of Suncorp Bank by ANZ. For example:
    a. The national market for retail home loans is characterised by dominance and coordinated conduct of the major banks, as discussed in paragraphs 42-45.
    b. Recent significant growth in retail home loans by Macquarie Bank suggest that mid-tier banks, such as Suncorp Bank may be able to provide significant competitive constraint on major banks, such as ANZ, in the supply and demand of home loans in the future.
    c. Gaining 'market share' from Suncorp Bank in home loans appears to be an important factor in ANZ interest in purchasing Suncorp Bank. As the *Application* notes at paragraph 3.8.a "[t]he proposed acquisition will provide immediate growth in areas that are attractive to ANZ – in particular, home loans, …".
    d. The national market for retail home loans exhibits significant price discrimination which suggests that some groups of customers may be particularly impacted by the acquisition.

[67] For example, as of June 30, 2021, Suncorp Bank had 88 branches, 62 of which (approximately 70%) were in Queensland. See APRA Statistics, "ADI's points of presence database" June 2021, Issued October 20, 2021.

Agribusiness

65. The information available to me clearly indicates that there are **local/regional agribusiness banking markets**. These markets involve the supply and demand of a range of financial products relevant to agriculture-based businesses. The relevant agribusiness markets involve the supply and demand of a 'cluster' of banking products. The geographic dimensions of the agribusiness markets are relatively narrow, and in general should be considered 'regional markets' that may involve only parts of a state and are in general no broader than a state (although a regional market may overlap state borders).

    a. Demand-side substitution between agribusiness products and other business banking products is limited.

        i. There are specific products that are designed for businesses that are focussed on agriculture.[68] For example, this includes farm management deposit accounts "which qualify for certain tax concessions under a government initiative that helps primary producers cope with uneven cashflows".[69] More broadly, agribusiness products require flexibility "due to cash flow variations that are experienced as a result of seasonal variations (namely weather), economic conditions and commodity price fluctuations".[70]This indicates limited substitution in demand, as agribusiness customers demand specific products rather than broader business banking products.

    b. Supply-side substitution between agribusiness products and other business banking products is limited.

        i. Agribusiness banking involves specialised knowledge and understanding of farm assets "including their productive capacity, value, potential for improvement, natural capital (such as soil type and

[68] For example, the statement of Mark Stephen Bennett (paragraph 7) refers to "… businesses that have a specialised risk profile linked to underlying agricultural production, commodity, and industry characteristics.

[69] *Application* at 6.43.b. See also paragraph 91 of the witness statement of Clive van Horen and statement of Mark Bennett at 39.

[70] Statement of Mark Bennett at 36.

water sources), and biodiversity".[71] Agribusiness bankers require special knowledge and skills.[72]

ii. The supply of agribusiness products is "relationship-focussed" and involves "business bankers engaging face to face with ... agribusiness customers at the customer's premises".[73] The relationship-focussed business model for agribusiness customers is used by both ANZ and Suncorp Bank.[74]

iii. The relationship-focussed nature of agribusiness banking is reflected in the 'bespoke' pricing for agribusiness products.[75] It is also reflected in the reaction of agribusiness customers "if their banker moves out of their region or to another bank".[76]

c. The geographic dimension of substitution is at a local or regional level.

i. The "relationship-focused method of engaging with agribusiness customers" so that "the customer feels greater connection or proximity to credit decisions"[77] indicates that the market is relatively narrow with geographic substitution limited by the area able to be reasonably covered in person by a relevant manager who can attend a customer's premises.[78]

ii. When describing competition in agribusiness, Clive van Horen focuses on 'regional competition' with Rabobank, NAB and CBA.[79]

iii. When describing the potential for a new agribusiness lender to be established, Mark Bennett notes the requirement to have "appropriately skilled and qualified bankers in or within reasonable

[71] Statement of Mark Bennett at 35. Note that specialised training and tools are required even by those bankers dealing with the smallest and least complex agribusiness customers. See Statement of Mark Bennett at 57.
[72] Statement of Mark Bennett at 63, 64 and 85.
[73] Statement of Clive van Horen at 90.
[74] Statement of Clive van Horen at 95
[75] Statement of Clive van Horen at 96.
[76] Statement of Mark Bennett at 107.
[77] Statement of Clive van Horen at 92.
[78] See also Statement of Mark Bennett at 91 who notes the importance of trust and personal relationships and 92 where he discusses need for bankers to visit 'the customer's business'. Also see Statement of Mark Bennett at 109 and 112.
[79] Statement of Clive van Horen at 95.

travelling distance of the customers it seeks to attract".[80] This indicates the relatively localised scope of agribusiness banking markets.

d. The relationship-focused nature of the agribusiness market indicates that there are likely to be a group or cluster of banking products that are best considered as a package for agribusiness.

   i. Clive van Horen states that "[t]he majority of Suncorp Bank's agribusiness customers will have a relationship with at least one other bank. Suncorp Bank tends to provide mainly lending products to its agribusiness customers as its customers' secondary bank".[81] This suggests that there may be a market for agribusiness lending rather than a broader market for agribusiness products. However, it appears that there are few barriers to substitution in supply for an agribusiness lender to provide other banking products that are suitable for agribusiness clients, although the converse may not be true given the relationship-focused nature of agribusiness lending. As such, supply side substitution suggests that a cluster market for agribusiness products, including relationship-focused agribusiness lending, is appropriate for competition analysis.

66. It might be argued that the market is broader than agribusiness banking. For example, there is some overlap in supply of banking products between agribusiness and other regional businesses. For Suncorp Bank a typical agribusiness relationship manager's portfolio of customers "may include a mix of agribusinesses and regional businesses".[82] Similarly, "ANZ also treats businesses that are adjacent to agricultural businesses as agribusinesses. Adjacent businesses are businesses … [that] are part of the farming supply chain and face risks that are linked to seasonal and commodity cycles, as farming businesses do".[83]

67. However, this does not indicate that there is a broader market encompassing agribusiness and business banking products, but rather that some regional businesses may demand

[80] Statement of Mark Bennett at 191.b.i.
[81] Statement of Clive van Horen at 99.
[82] Statement of Clive van Horen at 90.
[83] Statement of Mark Bennett at 9.

products in the agribusiness market if the market-specific business model for agribusiness banking suits their demand. I have seen no evidence suggesting that agribusiness products and broader business products are substitutable in supply, and

a. the specific products designed for agribusiness; and
b. the specific and separate structures put in place by banks for agribusiness;[84]

strongly indicate that agribusiness products are not part of a broader 'business banking' market.

68. In my opinion, the agribusiness markets relevant for this matter are best considered to involve a bundle or a cluster of banking products, rather than just agribusiness lending. However, this distinction does not significantly impact the competition analysis presented below and my analysis of the anticompetitive effects of the acquisition on agribusiness markets remain valid if, in the alternative, it was determined that the relevant markets should be restricted to agribusiness lending.

69. That said, the relevant agribusiness markets for analysing the competitive effects of the acquisition of Suncorp Bank by ANZ do not include 'asset' or 'equipment' finance. The supply and demand of agricultural asset finance involves distinct characteristics that separates it from other agribusiness products, including financial options and a range of providers who are not substitutes in supply for other agribusiness financial products.[85] At ANZ agricultural asset finance is run differently to the rest of agribusiness.[86]

Focus on the local/regional agribusiness banking markets

70. Regional agribusiness banking markets located in Queensland appear to be particularly relevant for competition analysis regarding the acquisition of Suncorp Bank by ANZ. While market share data in specific regional markets is not available, there is significant overlap in the agribusiness banking operations of ANZ and Suncorp Bank in some regional agribusiness banking markets in Queensland, and both ANZ and Suncorp Bank are significant and vigorous competitors in these markets. The acquisition of Suncorp Bank by ANZ could substantially reduce competition in one or more of these markets.

---

[84] As a simple example, ANZ conducts specific agribusiness research for its customers and publishes a bi-monthly newsletter called "ANZ Agri Infocus". See Statement of Mark Bennett at 143.
[85] For example, see Statement of Mark Bennett at 41 and 182.d.
[86] Statement of Mark Bennett at 66.

Other markets

71. As noted in paragraphs 63 and 65, the 'national market for retail home loans' and the multiple 'local/regional markets for agribusiness banking', in my opinion, are the key markets for analysing the competitive effects of the acquisition of Suncorp Bank by ANZ. However, there are other markets that may also face competitive impacts from the acquisition.

72. For example, as discussed in paragraph 63.d, there is a close link between home loans and deposit products. There will be one or more markets in deposit products that are impacted by the acquisition. Further, the close link between home loan and deposit products indicates that competitive impacts on home loans and some deposit markets might be similar. For example, Macquarie Bank is an increasingly strong competitor in the market for home loans as noted in paragraphs 105 and 106. Because of the close link between deposit products and lending products it is therefore unsurprising, that "Macquarie is a strong competitor which has achieved significant growth in deposits, significantly greater than other banks …".[87]

73. Similarly, in addition to agribusiness banking products, other commercial lending products, such as loans to small and medium sized enterprises are likely to be impacted by the acquisition of Suncorp Bank by ANZ.

74. I have not defined or analysed these other markets in this statement. While the acquisition may have anticompetitive effects in some of these other markets, in my opinion, the markets where a substantial lessening of competition is most likely to arise because of the acquisition of Suncorp Bank by ANZ are
    a. The national market for retail home loans; and
    b. One or more local/regional agribusiness banking markets.

Comparison with markets presented in the Application

75. Paragraph 6.1 of the *Application* presents the markets that ANZ submits are relevant for considering the competitive effects of the merger. These includes a market for home loans in Australia. This is broadly consistent with the national retail home loan market that I consider relevant for competition analysis in this matter.

---

[87] Statement of Yiken Yang at paragraph 38.d.

76. Paragraph 6.1 also claims that there is "a market for the supply to business customers of commercial banking products, comprising a cluster of products encompassing: commercial lending products in Australia; deposit products … in Australia; merchant services in Australia; and risk management products in Australia".

77. This single 'national business cluster market' is inconsistent with my analysis above. It is also inconsistent with the information provided in the *Application.*

    a. On the product dimension, the market groups all business products together regardless of business size or orientation. It includes large, SME and agribusiness products despite the fact that the 'overlapping' products noted in Table 3 of the *Application* clearly separates out SME Banking, Agribusiness banking and asset/equipment finance. Paragraph 6.94 notes that Suncorp Bank operates "three business portfolios" separating SME, agribusiness and commercial property services. See also the Statement of Clive van Horen at paragraph 65. Further, Paragraph 68 of the Statement of Clive van Horen indicates that each of SME, agribusiness and property finance has a different strategy within Suncorp Bank. Similarly, paragraph 6.127 of the *Application* notes that "[m]any banks or lenders will tailor elements of their offering to particular customer segments, such as agribusiness, commercial property and SME".

    b. While noting the demand side differences between business products, the *Application* appears to argue that there is supply side substitutability. While from a financial perspective, different business products (and indeed different financial products) can be 'manufactured' from the same sources of funds, this does not mean that there is supply-side substitutability. Indeed, paragraph 6.128 of the *Application* highlights that both lending and deposit products for agribusiness are different to other business products. Further, the claim of a single national, all-business market ignores the clear evidence from the *Application* and other documents that 'relationships' can be important for some business banking, such as agribusiness banking.[88]

[88] *Application* at 6.122.a.

78. As the analysis above indicates, there are significant differences between agribusiness banking and other business banking products in terms of both supply-side and demand-side substitution. Further, as shown above, there are clear geographic factors that limit the geographic scope of any market that includes agribusiness products to a 'local' or 'regional' area. Agribusiness products are not in a national market from either a supply or a demand perspective.

Competition analysis

Competition analysis for the national market for retail home loans

Market shares

79. Market share figures for the national market for retail home loans are presented in table 12 of the *Application*. I have also considered the data provided by APRA in January 2023.[89] This data contains a number of important features:

    a. The market is dominated by the four major banks. As at December 2022, CBA had a 25.80% market share; Westpac had a 21.4% market share; NAB had a 14.8% market share and ANZ had a 13.14% market share. Together the four major banks had a 75% market share.[90]

    b. The total market share of the four major banks has decreased by around 10% of market share over the decade from 2012 to 2022. Much of this loss of market share has been due to increased market share by Macquarie Bank (4.45%), BOQ (1%), Bendigo and Adelaide Bank (0.53%) and other mid-tier banks.[91] There has been no significant loss of market share to any entrants over the decade.

    c. Over the period from 2012 to 2022, either ANZ or NAB has had the lowest market share of the four major banks. However, ANZ's loss of market share, in percentage terms (approximately 15.8% of its initial market share), is greater than the percentage loss for NAB (11.3%) over the same period.[92]

    d. While ANZ currently has the lowest market share in home loans of the major banks, the acquisition of Suncorp Bank will raise ANZ's market share to 15.5%, above NAB's market share.

    e. The dispersion in market shares of the major banks (as measured by the standard deviation) has decreased slightly over the decade, reducing from 5.22

---

[89] APRA *Statistics* "Monthly authorised deposit-taking institution statistics" December 2022 (released 31 January 2023)

[90] Using the slightly older data in Table 12, CBA had a 25.80% market share; Westpac had a 21.54% market share; NAB had a 14.89% market share and ANZ had a 13.02% market share. Together the four major banks had a 75.25% market share.

[91] Based on market share at end of December 2022, less the 2012 market share presented in table 12 of the *Application*.

[92] These are the percentage change in percentage market shares over the decade for ANZ and NAB, based on December 2022 shares less the 2012 market shares presented in table 12 of the *Application*.

in 2012 to 5.11 as at December 2022. At the same time however, the market share gap between the major bank with the largest market share in both 2012 and 2022, CBA, and the major bank with the smallest market share in both 2012 and 2022, ANZ, has increased by approximately one percent of market share or around 8%.[93]

f. An acquisition of Suncorp Bank by ANZ will significantly *reduce* the dispersion in markets shares of the four major banks in the national market for retail home loans.

    i. The standard deviation in market shares will fall from 5.1 to 4.51.

    ii. The gap between the largest and smallest market share for the four major banks will fall from 12.7% to 11% with NAB replacing the merged ANZ/Suncorp Bank as the major bank with the smallest market share in home loans. This is a percentage reduction in the gap of approximately 13.3%.[94]

    iii. The gap between the largest bank (CBA) and ANZ in market share will fall from 12.7% to 10.3%. This is a percentage reduction in the gap in market shares of approximately 18.9%.[95]

g. An acquisition of Suncorp Bank by Bendigo and Adelaide Bank would raise the market share of the combined entity to 5.2%. The combined entity would have a market share that exceeds the current largest mid-tier bank, Macquarie Bank. However, the combined entity's market share would still be less than half of ANZ's market share.

80. In summary, the market share data presented in table 12 of the *Application* together with the December 2022 authorised deposit-taking institution statistics released by APRA on January 31, 2023, shows that, from a competition perspective:

[93] The 'market share gap' between CBA and ANZ was 11.74% in 2012 and 12.7% in December 2022. This is an increase of approximately 8% in the size the market share gap over the decade. The slight fall in the standard deviation of market shares despite the increasing gap between CBA and ANZ is largely due to both Westpac's and NAB's market shares moving closer to the average market share of the four major banks in 2022 compared to 2012.

[94] This is calculated by taking the change in the market share gap as a percentage of the 2022 pre-acquisition market share gap.

[95] This is calculated by taking the change in the market share gap, with the post-acquisition market share for the merged entity being the sum of the ANZ and Suncorp Bank market shares pre-acquisition, as a percentage of the 2022 pre-acquisition market share gap.

a. The national retail home loan market is dominated by the four major banks. This dominance has decreased over the past decade, largely due to competition from Macquarie Bank and, to a lesser extent, BOQ and Bendigo and Adelaide Bank.
b. If the acquisition of Suncorp Bank by ANZ proceeds, then this will 'stabilise' the relationship between the four major banks, reducing the disparity in their market shares that has developed over the past decade. In particular, it will raise ANZ's market share making it closer to the average market shares of the other major banks.

Coordinated conduct and the major banks

81. As discussed in paragraphs 42-45 above, both the PC and the ACCC have noted the lack of vigorous conduct between the four major banks and that they face limited competition from other lenders outside the group of major banks. In my opinion, the conduct of the four major banks, as discussed by the PC and ACCC, can be characterised as 'coordinated conduct'.
82. The ACCC *Merger Guidelines* (at 6.3) discuss the potential impact of an acquisition on coordinated conduct. The market features noted by the ACCC, such as a small number of businesses with each business aware of, and responding to, the behaviour of the other businesses over a significant period of time, are all found in the national market for retail home loans.
83. The *Guidelines* (at 6.13) note that "[i]nterdependence and coordination may therefore be facilitated by a merger that creates firms with similar market shares … . Where there is firm asymmetry, smaller firms … may have more to gain from competing rather than from refraining from competition".
84. In other words, anti-competitive coordinated conduct is more difficult to sustain when there are smaller businesses who may find that competition is more profitable than ongoing coordination. Reducing the dispersion in market shares between relevant businesses can either increase the likelihood of coordinated conduct or stabilise on-going coordinated conduct. This is particularly the case where a merger would increase the market share of a smaller business that might otherwise "have more to gain from competing rather than from refraining from competition". In this situation, a merger that

reduces the disparity of market shares among businesses that are engaging in coordinated conduct will act to stabilise that conduct and reduce the likelihood that competition will increase in the foreseeable future. Such a 'stabilising' merger can lead to a substantial lessening of competition, relative to the counterfactual of increased competition.

85. As noted in paragraph 79.f, the acquisition of Suncorp Bank by ANZ will significantly reduce the market share dispersion among the major banks. This will facilitate and stabilise the on-going coordinated conduct by the major banks:
    a. The reduced dispersion in market shares among the major banks will reduce 'firm asymmetry' and, as noted by the ACCC, this facilitates coordinated conduct.
    b. The increase in the market share of ANZ, which is currently the smallest of the major banks, changes the incentives for ANZ and increases ANZ's incentives to maintain the current coordinated conduct between the major banks rather than 'breaking out' and unilaterally increasing competition.

86. In my opinion, as a matter of economics, the changes to market share resulting from the acquisition of Suncorp Bank by ANZ will stabilise the on-going anti-competitive coordinated conduct by the major banks in the national market for retail home loans. The merger will change the incentives facing ANZ and reduce ANZ's incentives to arrest its declining market share in home loans through competition.

Misuse of concentration measures when there is coordinated conduct

87. From an economic perspective, considerable care must be taken when analysing concentration measures that are developed from market shares when considering competition in a market which is characterised by coordinated conduct. As noted in paragraph 81, based on the information available to me, in my opinion and as a matter of economics, the current conduct of the four major banks can be characterised as 'coordinated conduct'.

88. If businesses are engaging in coordinated conduct, then they are not behaving as independent competitors. Rather their strategic interdependence means that their behaviour will be less competitive, and potentially substantially less competitive, than if they were engaging in active competition.

89. This interdependence means that concentration analysis based on market shares can be substantially misleading.

90. For example, the *Guidelines* at 7.9, note that "[t]he ACCC typically measures concentration with reference to market shares, concentration ratios, and the Herfindahl-Hirschman Index (HHI)". However, such analysis when applied to a market that exhibits coordinated conduct prior to the acquisition under analysis, must consider how to deal with the market shares of the businesses engaging in the coordinated conduct. To treat such businesses as 'independent' when constructing a measure of market concentration, such as the HHI, would potentially significantly overstate the level of competition in the market.[96]

91. To see this, consider the acquisition of Suncorp Bank by ANZ. Based on the information in table 12 of the *Application*, the HHI for the national retail home loan market when coordinated conduct is not allowed for, would be 1577. The change in the HHI due to the acquisition of Suncorp Bank by ANZ on this 'unadjusted' basis would be approximately 63.[97] Both the level of concentration indicated by the HHI and the change due to the merger would fall into the 'moderately concentrated' and 'unlikely to have adverse competitive consequences' guideline under the US Department of Justice *Horizontal Merger Guidelines* (at 1.51.b).[98]

92. In contrast, if the coordinated conduct between the four major banks led them to behave as if they were a single business from the perspective of competition analysis, then the pre-merger HHI would be 5715 and the change in HHI due to the acquisition would be approximately 361. Both the level of concentration indicated by the HHI and the change due to the merger would fall into the 'highly concentrated' and 'likely to create or enhance market power or facilitate its exercise" guideline under the US Department of Justice *Horizontal Merger Guidelines* (at 1.51.c).

93. The presence of coordinated conduct means that the market shares of the major banks cannot be treated as if they were independent businesses for concentration analysis. That

[96] As discussed in paragraph 206, Dr William's makes the economic error of failing to consider the coordinated conduct between the major banks when constructing and using HHI measures. As a result, his HHI analysis is substantially flawed.

[97] I have calculated the HHI figures using the data in table 2 of APRA *Statistics* "Monthly authorised deposit-taking institution statistics" December 2022 (released 31 January 2023).

[98] The ACCC *Guidelines* do not provide equivalent guidelines based on the HHI for mergers, so that I have relied on the US Department of Justice *Guidelines* here.

said, treating the major banks as if they were a single business for concentration analysis is likely to overstate the degree of coordination. However, two conclusions follow from the above analysis when considering the competitive implications of the acquisition of Suncorp Bank by ANZ against a background of coordinated conduct by the four major banks:

a. The coordinating banks account for approximately three quarters of the national market for retail home loans and the acquisition of Suncorp Bank can be considered to significantly increase concentration once this existing coordinated conduct is taken into account; and
b. Competition analysis based on simplistic measures of concentration, such as the HHI, that are not adjusted for existing coordinated conduct will be misleading and will not provide any economically relevant insight into the nature of competition or the competitive impact of the acquisition on competition.

Switching costs

94. As discussed in paragraphs 30 to 35, switching costs in banking in general are high, leading to price discrimination between consumers.
95. In particular, switching costs are high in the national market for retail home loans.
96. The ACCC notes that "[a]t each stage in the switching process … borrowers face challenges or frictions".[99] Further, "[s]witching a home loan from one lender to another is more complex and lengthy compared to switching between suppliers of many other products and services".[100] As the ACCC notes, switching costs can be inferred by behaviour of consumers in the market for home loans, including through price discrimination.[101]
97. The ACCC highlights a range of switching costs that exist in the market for home loans. For example, the ACCC notes that "the opaque nature of discretionary discounts means that borrowers incur significant search costs to discover a given lender's home loan

[99] ACCC *Home loan price inquiry: Final report*, November 2020 at vi.
[100] ACCC *Home loan price inquiry: Final report*, November 2020 at p.7.
[101] ACCC *Home loan price inquiry: Final report*, November 2020 at vii and p.10. The ACCC presents evidence of price discrimination. For example, "borrowers with home loans greater than 10 years old were, on average, paying around 104 basis points above the average interest rate for new loans" (p.viii).

price".[102] It also notes that 'pain points' in the process of discharging an existing home loan in order to move to an alternative provider, discourage switching.[103]

98. There is some evidence that, despite remaining high, switching costs in the national market for retail home loans have reduced over the past two decades.

    a. Customer churn (external refinancing) as a percentage of all home loan financing, has increased over the past two decades albeit that:

        i. churn (by external refinancing) remains a minority of all home loan financing activity;

        ii. churn does not eliminate (and may exacerbate) price discrimination; and

        iii. it is far from clear whether this increased churn is reflected more generally in increased competition in the market. [104]

99. High switching costs will tend to stabilise the coordinated conduct of the major banks. High switching costs make it more difficult:

    a. for other banks to compete customers away from the major banks; and

    b. for a major bank such as ANZ, that is facing a falling share of the national home loan market and, as a result, may find it profitable to cease to engage in coordinated conduct, to compete customers away from the other major banks.

100. In this sense, reduced switching costs can help to destabilise coordinated conduct, particularly where there is an imbalance in market shares among the businesses engaging in that conduct.

101. In summary, switching costs are high in the national home loan market. This undermines competition and supports the coordinated conduct of the major banks. At the same time, there appears to be some decline in switching costs over the past two decades. This decline, if it continued, could help to destabilise the current anti-competitive coordinated conduct of the major banks.

[102] ACCC *Home loan price inquiry: Final report*, November 2020 at p.36.
[103] ACCC *Home loan price inquiry: Final report*, November 2020 at chapter 4.
[104] See Paragraph 78 and Figure 3 in the Statement by John Campbell.

Entry and expansion

102. There is significant entry into the national retail home loan market.[105] However, these entrants are all small sized and very slow growing businesses. Some new entrants use new technology,[106] but the PC notes that few of these fintechs "consider themselves to be challenger banks" and concludes that "fintechs are not, on present indications, likely to have the kind of competitive disruptive effect that would alter the market power of the major banks in the foreseeable future".[107]

103. As noted in paragraph 79.b, on the basis of market shares, no new entrant has made significant inroads into the national market for retail home loans over the past decade. I have seen no evidence to indicate that this will change in the foreseeable future. As a result, competition in the national market for retail home loans is limited to competition between the existing market participants.

104. There has been innovation in the national home loan market. However, such innovation has not changed the bifurcated structure of supply in the market, the coordinated conduct between the major banks, or the inability of smaller banks to overcome existing barriers to competition. Indeed, recent innovations help to highlight the competitive barriers faced by both small existing banks and new banks. A new entrant or a small bank that innovates is likely to find that innovation is rapidly copied by the major banks, limiting any return on that innovation. For example, the Statement by John Campbell at paragraph 99 notes that both ANZ and CBA have recently launched a 'rate reducing home loan'. This product innovation was introduced to the market in 2020 by Athena Home Loans.[108] The ability of the major banks to copy innovations by new entrants and small lenders can limit the growth of those potential competitors and reinforce the status of the major banks.

105. There is evidence that the mid-tier banks can provide significant competitive pressure in the national market for retail home loans if they can achieve a minimum level of scale and are 'well run'. In particular, Macquarie Bank has been a significant competitor in the

---

[105] For example, see the Statement by John Campbell at 57.
[106] For example, see the Statement by John Campbell at 60.c.
[107] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at findings 4.3 and 4.4.
[108] Statement by John Campbell at 60.a.

market over the past decade with its market share rising from 0.49% in 2012 to 4.8% in 2022.[109]

a. The Statement of John Campbell at paragraph 52.d concludes that "[t]he rapid expansion of Macquarie's home loan business over the last 3 to 4 years has been one of the key features of competition in relation to home loans over that period". He also notes that "Macquarie bank is known for being able to deliver fast decisions on home loan applications and has strong prudential relationships and engagement with mortgage brokers".

b. When considering refinancing of home loans by Suncorp Bank customers to another bank, Clive van Horen notes that "Macquarie Bank is overrepresented as compared to its national home lending share".[110]

c. When discussing the importance of turnaround time for a bank to be an effective competitor in home loans, Clive van Horen notes that "from July 2021 to August 2022, Macquarie Bank has continuously had the quickest or second quickest turnaround times amongst key competitors".[111]

d. The Statement by John Campbell at paragraph 52.d refers to APRA data that shows "as at September 2022, Macquarie's year-on-year growth is 5.01x system and its month-on-month growth is 3.14x system. By way of contrast, year-on-year growth for the four largest banks (ANZ, CBA, Westpac and NAB) is 0.78x system and month-on-month growth is 0.94x system".

106. Two important factors that contribute to Macquarie Bank's recent competitive success are:

a. Processes that reduce switching costs for consumers such as having rapid loan approval turnaround times and availability of loan products to customers through brokers; and

b. Having a scale that allows Macquarie Bank to be an IRB bank and to access lower costs of funds, such as deposit funds, and reduces the 'funding gap' that underpins the major banks market power.[112]

---

[109] *Application* at table 12.
[110] Statement of Clive van Horen at 50.
[111] Statement of Clive van Horen at 51. See also the Statement by John Campbell at paragraph 60 which refers to Macquarie Bank's competitive impact on home loan pricing and turnaround times.
[112] *Application* at 12.e and 7.60.d. See also paragraphs 105 to 108 in this report.

107. It should be noted that Macquarie is the exception among the mid-tier banks. In contrast to Macquarie bank's significant increase in market share in recent years, other mid-tier banks have had mixed changes in market share in the national market for retail home loans over the past decade.

108. Some mid-tier banks have increased market share, albeit at a significantly slower rate than Macquarie Bank.

a. Bendigo and Adelaide Bank has raised its market share from 2.25% in 2012 to 2.83% in 2022.
b. BOQ has raised its market share from 1.97% in 2012 to 2.97% in 2022.
c. HSBC has raised its market share from 0.68% in 2012 to 1.36% in 2022.
d. AMP has raised its market share from 0.65% in 2012 to 1.06% in 2022.[113]

109. Other mid-tier banks have lost market share in recent years. For example, ING's market share fell from 3.28% in 2012 to 2.72% in 2022.

110. While not reflected in market shares, Clive van Horen at paragraph 44, notes that Suncorp Bank "has been working to sustainably grow its home lending portfolio.[114]

111. In summary, there has been an expansion in the market shares of some of the mid-tier banks over the past decade. While market share gains have generally been modest, the success of Macquarie Bank shows that a mid-tier bank can successfully and aggressively compete with the major banks in the national market for retail home loans. In part, this success requires a mid-tier bank to gain a scale and size so that it is able to overcome the 'funding gap' that underpins the major banks' market power.

Strategic differentiation by mid-tier banks

112. Some mid-tier banks have adopted alternative strategies to appeal to customers. For example, Bendigo and Adelaide Bank, under the Bendigo Bank brand, has adopted a Community Bank model. Bendigo and Adelaide Bank, *Results presentation* (for the half year ended 31 December 2022), at p. 48, states that there are "302 Community Bank branches across Australia". Under this model there has been "[o]ver $292m in community contributions" as at 31 December 2022.

[113] *Application* at table 12.
[114] See also Statement of Clive van Horen at 53.

113. The community/branch focussed strategy of Bendigo and Adelaide Bank provides a significant point of difference, for example, compared to ANZ. Bank. Based on the APRA *ADI's points of presence database*, at 30 June 2022, Bendigo and Adelaide bank had 459 branches and 272 other face-to-face points of presence. At the same time, and despite having a significant larger market share, ANZ had only 414 branches and 25 other face-to-face points of presence.[115]

114. Bendigo and Adelaide Bank also appears to be a significant bank in terms of on-line presence, particularly in terms of home loans. The Bendigo and Adelaide Bank 'Results presentation' (for the half year ending 31 December 2022) at page 11 states that "8.9% of home loan settlements [are] coming through digital channels" and Bendigo and Adelaide's on-line home loan presence is "[c]urrently accounting for [approximately] 25% of digital mortgages in Australia".

115. Differentiation in the strategic models adopted by businesses to attract customers is a core element of competition.

Competition in the factual

116. If ANZ acquires Suncorp Bank then there will be the removal of a competitive constraint to ANZ and the other major banks in the national market for retail home loans. Based on market shares, it appears that Suncorp Bank has not been a particularly effective competitor over the past decade in the national market for retail home loans. [116] However, it is currently working to 'sustainably grow its home lending portfolio' as noted by Clive van Horen.

117. The acquisition will allow ANZ to increase its profits from home loans as Suncorp Bank is able to access cheaper funds through ANZ's ownership. As noted in the Statement of Adrian Wade at paragraph 47, post-acquisition, including during the hold separate period, but also after Suncorp Bank is integrated with ANZ, Suncorp Bank's cost of funds will fall. Adrian Wade, at paragraph 48, notes that he is "not able to comment on whether these funding cost savings would be passed on to customers in the form of lower prices". I have

---

[115] See APRA Statistics, ADI's points of presence database, June 2022 (issued 19 October 2022). The difference between a 'branch' and 'other face-to-face point of presence' is explained on the basis of service levels in the APRA glossary available on the APRA website.

[116] The *Application* at table 12 notes that Suncorp Bank's share in the national market for retail home loans has fallen from 2.79% in 2012 to 2.39% in 2022.

seen no information to suggest that any significant pass through would occur, and in my opinion, as a matter of economics and based on the nature of competition in the market, I consider that significant pass through of lower funding costs to home loan customers is unlikely. Rather, the reduced funding costs on the Suncorp Bank home loans that are acquired by ANZ will simply lead to increased home loan profits for ANZ.

118. If ANZ acquires Suncorp Bank then it will facilitate and stabilise the on-going coordinated conduct by the major banks.

a. The acquisition of Suncorp Bank will allow ANZ to 'buy market share' in the home loan market. In this sense, the acquisition will enable ANZ to arrest its decline in market share for home loans that has occurred since 2017.[117] But that improvement in ANZ's market share will not reflect increased competitive vigour. Rather ANZ will simply have purchased a portfolio of home loans through its acquisition of Suncorp Bank, to bolster its falling market share.

b. As noted in paragraphs 85 and 86, by raising the market share of ANZ, which currently has the smallest market share in home loans of the major banks, the acquisition will underpin the ongoing coordinated conduct between the major banks. It will enable this by reducing asymmetry and dispersion between the major banks' market shares. It will also change the incentives of ANZ, as the smallest of the major banks, so that ANZ is more likely to support ongoing coordinated conduct among the major banks rather than engaging in independent active competition to arrest its declining market share in home loans.

119. In summary, if ANZ acquires Suncorp Bank then the existing lack of competition in the national market for retail home loans, which is underpinned by the coordinated conduct of the major banks, will continue uninterrupted. The acquisition will stabilise the existing coordinated conduct. ANZ's profits from home loans will rise as it 'buys market share' and Suncorp Bank will be removed from the market as a mid-tier competitor. Macquarie Bank, through its scale and access to funding, will continue as an effective competitor to the major banks and slowly chip away at the market share of the major banks. Other mid-tier banks, such as Bendigo and Adelaide Bank, will continue to compete, albeit hampered by

[117] *Application* at table 12.

their small scale and the funding gap that underpins the major banks market power. However, overall the factual will be a continuation of the status quo with little effective competition in the national market for retail home loans.

Competition in the 'status quo' counterfactual

120. If ANZ does not acquire Suncorp Bank, and Suncorp Bank continues to operate under the ownership of the Suncorp Group, then this will enable Suncorp Bank to continue as a mid-tier provider in the national market for retail home loans. By itself, this will lead to a modest increase in competition compared to the factual.

121. More importantly, however, if ANZ is unable to acquire Suncorp Bank it will remain as the smallest of the major banks in the home loan market in terms of market share. ANZ will be unable to 'buy market share' to arrest the steady decline in its share of home loans that has occurred since 2017. ANZ's relative benefits from coordinated conduct with the other major banks in the national market for retail home loans, as opposed to competitive conduct, will continue to fall. The ongoing coordinated conduct of the major banks will not be stabilised and it is likely that this coordinated conduct will become more unstable over time as ANZ's market share in home loans falls further behind those of the other major banks.

122. In summary, under the 'status quo' counterfactual, Suncorp will continue as an independent mid-tier competitor and there will be an increasing likelihood that the coordinated conduct exhibited by the major banks in the national market for retail home loans will fail and that active competition will break out between the major banks.

Competition in the 'alternative buyer' counterfactual

123. If ANZ does not acquire Suncorp Bank, and Suncorp Bank is acquired by another mid-tier bank, such as Bendigo and Adelaide Bank then this will:

    a. Result in the ongoing, *increasing* likelihood that coordinated conduct between the major banks will fail and be replaced by active competition (beyond the increase discussed in paragraph 121); and

    b. Create a mid-tier bank that will have the size and scope to overcome the barriers that exist to competition in the national market for retail home loans, and as a result, will be able to vigorously compete in that market.

124. For the purpose of the analysis here, I will concentrate on the counterfactual where Bendigo and Adelaide Bank acquires Suncorp Bank. However, my conclusions would broadly continue to hold if Suncorp Bank was purchased, say, by BOQ.

125. If Bendigo and Adelaide Bank merged with Suncorp Bank then:

a. This would immediately create a mid-tier bank of significant scale in terms of market share. Using the data from the *Application* at table 12, the combined market share of Bendigo and Adelaide Bank would rise to 5.22% from 2.83%.

b. Bendigo and Adelaide Bank would have a higher market share than Macquarie bank and could leverage its enhanced scale to increase its access to lower cost funds such as deposit funding.

c. Bendigo and Adelaide Bank would be able to extend its strategic model (paragraph 112 to 114) to a broader range of customers, further differentiating from both the major banks and other mid-tier banks.

d. Bendigo and Adelaide Bank would be able to increase the level of competition in the national market for retail home loans

126. The increased ability of the larger Bendigo and Adelaide Bank to effectively compete would, in my opinion and as a matter of economics, be a substantial increase in competition compared to the current level of competition in the national market for retail home loans:

a. Vigorous competition by Macquarie Bank has been the key competitive factor in the national market for retail home loans in the past decade. See paragraphs 105 and 106. By reducing the barriers to expansion, a merger of Bendigo and Adelaide Bank and Suncorp Bank would create another mid-tier bank that could potentially provide an equivalent and additional degree of competitive vigour in the national market for retail home loans over the next decade.

b. Macquarie Bank has increased its market share in home loans by a factor of 4 over the past decade. While this pace of expansion is unlikely to continue over the next decade, even if Macquarie Bank and a larger Bendigo and Adelaide Bank were each able to significantly increase their share of home loans over the next decade then this would lead to two 'challenger' mid-tier banks to the major banks with shares in the national market for retail home loans of between 7% and 11%.[118]

c. Some, and potentially most, of the increased market shares for Macquarie Bank and Bendigo and Adelaide Bank over the next decade would come from the major banks, including ANZ. Any steady decrease in the market shares for the major banks would undermine the ability of the major banks to maintain their current coordinated conduct. This is most obvious for ANZ. If both Macquarie Bank and Bendigo and Adelaide Bank significantly increase their market share in home loans over the next decade, then this is likely to be associated with a significant decrease in ANZ's market share of home loans. In such a situation it is likely that ANZ would be forced to 'retaliate' by increasing its level of competition in the market. Put simply, the ability of the major banks to act "as a group" that "controls the market", as noted by the PC, would be substantially weakened.

127. As noted in paragraph 112, Bendigo and Adelaide Bank has chosen to differentiate itself through its 'community banking' model and through digital innovation. By acquiring Suncorp Bank, Bendigo and Adelaide Bank would be able to continue to engage in innovative and competitive strategies to better compete in the national retail home loan market.

128. In summary, under the 'alternative buyer' counterfactual, Suncorp will be acquired by another mid-tier bank such as Bendigo and Adelaide Bank. This will create a bank with the scale to reduce and potentially overcome the barriers to expansion that currently exist in the national market for retail home loans. Together the enhanced mid-tier bank created by the merger and Macquarie bank would create considerable competitive tension in the market. This competitive tension will significantly undermine the existing coordinated conduct of the major banks and, at a minimum, it is likely that ANZ will cease to engage in this coordinated conduct and will increase its active competition against the other major banks. The result will be a substantial increase in the level of competition in the national market for retail home loans.

[118] For example, if both Macquarie Bank and a merged Bendigo and Adelaide/Suncorp Bank doubled their market shares over the next decade then this would result in market shares of 9.8% for Macquarie Bank and 10.4% for Bendigo and Adelaide Bank.

Conclusion on whether the acquisition of Suncorp Bank by ANZ will likely substantially lessen competition in the national market for retail home loans

Alternative buyer counterfactual

129. In my opinion, as a matter of economics, compared to the 'alternative buyer' counterfactual, the acquisition of Suncorp Bank by ANZ will clearly substantially lessen competition.

130. The acquisition will not simply continue the current state of competition. Rather it will help to stabilise on-going coordinated conduct between the major banks. This conduct significantly limits competition in the national market for retail home loans.

131. In contrast, if Suncorp Bank is acquired by another mid-tier bank, such as Bendigo and Adelaide Bank, then this will create a significant competitive participant in the market. The new bank created by the acquisition, together with Macquarie Bank, would apply significant competitive pressure to the major banks, particularly ANZ. It is very likely that this competitive pressure will destabilise the on-going coordinated conduct of the major banks. In particular, it is very likely that ANZ will be forced to increase the level of its competitive conduct, including active competition against the other major banks. Such an increase in competition would be highly significant, and indeed game changing, for the market.

132. In my opinion, and as a matter of economics, the increased competition in the national market for retail home loans that will arise under the 'alternative buyer' counterfactual means that the acquisition of Suncorp Bank by ANZ will clearly substantially lessen competition relative to this counterfactual.

Status quo counterfactual

133. In my opinion, as a matter of economics, compared to the 'status quo' counterfactual, the acquisition of Suncorp Bank by ANZ will lead to a substantial lessening of competition.

134. The acquisition will not simply continue the current state of competition. Rather it will help to stabilise on-going coordinated conduct between the major banks. This conduct significantly limits competition in the national market for retail home loans.

135. In contrast, if Suncorp continues to operate under the ownership of Suncorp Group, it will provide a modest direct competitive constraint on the major banks. However, by

being unable to acquire Suncorp Bank and 'buy market share' in the national market for retail home loans, ANZ's position as the weakest of the major banks in that market is likely to continue. The disparity in market share between ANZ and the average market share of the other major banks may continue to rise over time. This will undermine the incentives for ANZ to continue to engage in coordinated conduct with the other major banks and raises the likelihood of competition between the major banks 'breaking out' to the benefit of home loan customers. Such an increase in competition would be highly significant, and indeed game changing, for the market.

136. In my opinion, as a matter of economics, the increased competition in the national market for retail home loans that will arise under the 'status quo' counterfactual means that the acquisition of Suncorp Bank by ANZ will substantially lessen competition relative to this counterfactual

Conclusion

137. If the acquisition of Suncorp Bank by ANZ does not proceed, and Suncorp Bank is acquired by another mid-tier bank such as Bendigo and Adelaide Bank, then, for the reasons summarised in paragraphs 129 to 132, the acquisition of Suncorp Bank by ANZ, in my opinion and as a matter of economics, is a clear substantial lessening of competition.

138. If the ACCC considers that the 'status quo' counterfactual is likely, then, for the reasons summarised in paragraphs 133 to 136, the acquisition of Suncorp Bank by ANZ, in my opinion and as a matter of economics, is a substantial lessening of competition.

139. The ACCC may be concerned about having multiple counterfactuals. As I note in paragraph 50 above, from an economic perspective, there is no significant problem in having two counterfactuals that are both 'likely'. If, however, the ACCC feels that it can only consider one counterfactual for merger analysis, then it is possible to consider a 'joint' counterfactual recognising that Suncorp will continue in that counterfactual either as a stand-alone bank or through merger with another mid-tier bank. Compared to this joint counterfactual, the acquisition of Suncorp Bank by ANZ will increase, and likely significantly increase, the stability and ongoing likelihood of coordinated conduct by the major banks. By preventing the potential break down of this anticompetitive conduct, the acquisition of Suncorp Bank by ANZ is a substantial lessening of competition.

140. As discussed in paragraph 81, in my opinion and as a matter of economics, the major banks are currently engaging in coordinated conduct. If in contrast, the ACCC concludes that the behaviour of the major banks falls short of coordinated conduct then, under this alternative characterisation of current competition, much of my analysis presented above remains relevant. In particular, the pressures on ANZ to significantly increase its level of competition in the national market for retail home loans clearly remains under the 'alternative buyer' counterfactual. In the face of falling market share, the inability to 'buy market share' through merger, and the presence of two significant mid-tier competitor banks, ANZ will likely increase its level of competition, including increasing its activity to gain market share from the other major banks. This in turn will likely induce a competitive response from the other major banks, leading to a significant increase in competition in the market.

141. In summary, even if current conduct by the major banks falls short of coordinated conduct, in my opinion and as a matter of economics, the acquisition of Suncorp Bank by ANZ is a clear substantial lessening of competition compared to the 'alternative buyer' counterfactual.

142. The situation is less clear against the status quo counterfactual. ANZ's attempt to buy market share through the acquisition of Suncorp Bank may indicate that ANZ is under increasing pressure to compete more vigorously in the national market for retail home loans. Acquiring Suncorp Bank will reduce this pressure on ANZ. In contrast, if ANZ is unable to purchase Suncorp Bank it may find that increased competition in the market is its next best alternative. In this sense, and even in the absence of coordinated conduct, the acquisition of Suncorp Bank by ANZ, as a matter of economics, may be considered a substantial lessening of competition against the status quo counterfactual.

Competition analysis for local/regional agribusiness banking markets

Market participants

143. Before it is possible to consider competition in a relevant local or regional agribusiness banking market, it is important to clarify the businesses that participate as active suppliers in the market.

144. As noted in paragraph 69, the relevant markets do not include 'equipment' or 'asset' finance.

145. Banks, such as Suncorp Bank and ANZ face "some competition to provide finance to agribusiness customers from agricultural suppliers who supply seasonal finance (usually without taking land as security) to assist their own customers in buying their products or using their services ...".[119] However, for the reasons outlined in paragraphs 182 to 184 of the Statement of Mark Bennett, these 'seasonal finance providers' are, at best a marginal competitive constraint on agribusiness banks. They are not active and on-going competitors in the market for agribusiness banking.

146. Similarly, there are some 'technology financiers' who compete with banks in the supply of agribusiness banking products. However, for the reasons outlined in paragraph 188 of the Statement of Mark Bennett, these 'technology financiers' provide little competitive impact at present, and their largest impact may be to spur the uptake of new technologies by the existing agribusiness banks.

147. Agribusiness banks may also face 'competition' in the provision of finance by federal government's Regional Investment Corporation (RIC). However, the RIC is constrained, both in its total lending and because the RIC "can only lend 50% of the farmer's total commercial debt".[120] In that sense, while the RIC may reduce agribusiness lending by private banks, it is 'inframarginal'. While concessional loans provided by the RIC may displace some of the funds that an agribusiness would have otherwise sourced from a private bank, the agribusiness is still reliant on other agribusiness financiers for the remainder of their debt, and for any marginal debt. There will be active competition by agribusiness banks for the agribusiness debt that falls beyond the RIC funding rules.

---

[119] Statement of Mark Bennett at 181.
[120] Statement of Mark Bennett at 190.

148. It follows from the above that the relevant participants as suppliers in a local or regional agribusiness banking market will be the banks that choose to actively participate in that market.

Geographic scope of the relevant agribusiness markets

149. Suncorp bank is a strong competitor in the agribusiness markets in Queensland. [121] It competes directly with ANZ for agribusiness customers in Queensland.[122] As such, I will concentrate my analysis of competition on agribusiness markets that are within, or largely within, the state of Queensland.

150. As discussed in paragraphs 65.c above, the geographical extent of individual agribusiness markets is regional. It is highly *unlikely* that all of the state of Queensland would form a single agribusiness banking market. Rather the need for relationship-focussed banking and travel to customers' businesses (see paragraphs 65.c.iii above) strongly indicate that a large state such as Queensland would be composed of several (potentially overlapping) agribusiness markets.

151. The Queensland Rural Industry Development Corporation publication *Queensland rural debt survey 2021* breaks debt data down by eight regions of Queensland. I understand that these regions reflect data collection regions used by ABARES. These regions are Cape York and the Gulf; Central North; Charleville-Longreach; Eastern Darling Downs; Northern Coastal – Mackay to Cairns; Southern Coastal – Curtis to Moreton; West and South West; and Western Downs and Central Highlands.

152. The *Application* at table 34 provides a list of ANZ agribusiness locations in Queensland. There are 15 locations spread across Queensland. Similarly, table 35 provides a list of nominated areas in Queensland, each of which is separately serviced by Suncorp agribusiness managers. There are 18 areas spread across Queensland.

    a. There is a direct overlap between ANZ and Suncorp's agribusiness locations for the towns of Cairns, Townsville, Mackay, Rockhampton, Emerald, Roma, Dalby, Toowoomba, Goondiwindi and Ayr.

    b. There may be further overlap in agribusiness locations, but I am unable to be certain from the data. For example, ANZ has an agribusiness location in

[121] Paragraph 98 of the witness statement of Clive van Horen. See also Statement of Mark Bennett at 169.
[122] Statement of Mark Bennett at 170-171.

Atherton in Northern Queensland. Suncorp has an agribusiness region labelled 'Northern Queensland'. However, it is unclear if Suncorp Bank and ANZ are engaging in agribusiness competition with each other in these areas due to the vagueness of the descriptor "Northern Queensland".[123]

c. Given the relationship-focused nature of agribusiness banking, and as a matter of economics, I would expect a supplier of agribusiness banking services to organise their operations to maximise profits allowing for the geographic region that can be serviced by a particular agribusiness manager and operation. In that sense, the geographic locations where ANZ and Suncorp Bank centre their agribusiness operations provide a strong indicator of relevant separate markets based on supply and demand considerations. In particular, I would expect there to be limited substitution between separate regions identified by the banks. [124]

d. While there may be a range of 'back office' processes that occur at a broader geographic level (either state or national) that are inputs to the production of agribusiness banking products, the relevant focus of competition is where suppliers and agribusiness clients directly interact. This is at the local/regional areas identified by ANZ and Suncorp Bank.

153. The purposive nature of market definition indicates that competitive analysis of the acquisition of Suncorp Bank by ANZ for agribusiness banking should focus on regional markets where the two banks' agribusiness operations directly overlap. It is in these local/regional markets where the acquisition of Suncorp Bank by ANZ is most likely to substantially lessen competition. At a minimum analysis should consider the local/regional agribusiness markets centred on each of Cairns, Townsville, Mackay, Rockhampton, Emerald, Roma, Dalby, Toowoomba, Goondiwindi and Ayr.

154. As I note below, there are data limitations when analysing local/regional market competition in agribusiness banking. Data is not available to me at the market level. It is

[123] While Suncorp provides the name and phone number of their Northern Queensland Agribusiness Manager on their website, as far as I am aware they do not publish a physical address.

[124] There may be some substitution at the geographic margins of different regions. However, given the relationship-focussed nature of agribusiness banking, even this substitution will be limited unless an agribusiness manager in one region actively builds relations with the clients of agribusiness managers in neighbouring regions. I have seen to information to indicate this occurs.

also possible that the ACCC considers, in contradiction to my conclusions on local/regional markets above, that the relevant market for analysis of agribusiness banking should encompass all of the state of Queensland. To ensure that my analysis includes this possibility I will also consider the competitive impact of the acquisition of Suncorp Bank by ANZ *as if* there were a Queensland market for agribusiness banking.

Market shares

155. Mark Bennett comments on market shares in agribusiness in Queensland:

> [W]hile I do not have access to reliable market share data for agribusiness banking in Queensland (or in any other State), in my view, NAB and Rabobank are the first and second largest agribusiness banks in Queensland, respectively, Suncorp Bank is third, and ANZ is fourth.[125]

156. This information indicates that the acquisition of Suncorp Bank by ANZ would result in the merger of the third and fourth largest agribusiness bank providers in Queensland.

157. I have been provided with reports prepared by Kynetec which summarise estimates of farm lending at a state level and Bendigo and Adelaide Bank's share of farm lending. The September 2022 report by Kynetec estimates that Bendigo and Adelaide Bank has a [redacted] share of farm lending in Queensland.

158. The Suncorp Group *Investor Pack* (Financial results for the full year ending 30 June 2021, release date 9 August 2021) at page 42 states that Suncorp Bank's total agribusiness portfolio in Queensland was $2,875m.[126] The Kynetec report on farm lending as at June 2021 estimates that the total farm lending in Queensland was [redacted]. Based on these figures, and on the assumption that they are comparable, Suncorp Bank's estimated share of farm lending in Queensland as at June 30 2021 was approximately [redacted].

159. I do not have access to the data on agribusiness shares for other banks for Queensland. Further, recognising that the relevant agribusiness banking markets are local/regional, I have no data on market shares for competition analysis in the relevant agribusiness banking markets in Queensland.

---

[125] Statement of Mark Bennett at 205.

[126] Unfortunately, the 2022 *Investor Pack* does not appear to separately report Suncorp Bank's total agribusiness portfolio for Queensland.

160. I would note that any conclusions drawn on the basis of state-wide shares of agribusiness in Queensland may understate (and potentially significantly understate) the competitive impact of the acquisition on certain regional agribusiness banking markets, such as those listed in paragraph 153.

161. While the acquisition may merge the third and fourth largest providers of agribusiness banking in Queensland as a whole, it may involve an even greater increase in concentration in some of the individual regional/local agribusiness banking markets.

162. As discussed in paragraph 153, the purposive nature of market definition starts by considering areas of overlap between Suncorp Bank and ANZ in the supply of agribusiness products. A preliminary and incomplete list of the relevant markets is provided in paragraph 153. Competitive analysis in each market would consider the relevant market shares and increase in concentration created by the merger in each market. Unfortunately, I do not have those market shares. As a result, my competition analysis will have to consider general features of agribusiness competition, recognising that specific features may vary from market to market.

163. In my opinion, and as a matter of economics, competition analysis by the ACCC on the impact of the acquisition of Suncorp Bank by ANZ for agribusiness banking would need to first consider concentration and market shares of ANZ and Suncorp Bank in each relevant local/regional agribusiness market. At a minimum this analysis would cover the relevant markets in Queensland. Paragraph 153 provides a preliminary and incomplete list of these markets in Queensland. Assuming that each of these markets is substantial, the acquisition of Suncorp Bank by ANZ would substantially lessen competition if it substantially lessened competition in one or more of these agribusiness markets.

Entry and expansion

164. Competition in agribusiness is customer specific and involves a range of factors other than simply price. As noted in paragraph 65.c, relationships are important for agribusiness banking.[127] These relationships, at an individual banker level, can be critical to the relevant bank. They can also be highly local.[128] Indeed, Mr Bennett notes that these

[127] Statement of Mark Bennett at 119: “Much of the competition in agribusiness banking is competition among banks to develop and maintain relationships with customers and potential customers”.

[128] Statement of Mark Bennett at 111: “An agribusiness banker’s reputation is critical to their success”. Further, at paragraph 112: “In regional areas, ANZ’s reputation depends on the personal reputation of its bankers in that

relationships can go deeper than simply the relationship between an agribusiness customer and their own banker.[129]

165. The relationship-focussed nature of agribusiness competition means that "ANZ and several other banks maintain a high contact service model …".[130]

166. To successfully enter and compete in a regional agribusiness banking market would require significant investment in human resources by a bank and is likely to require a significant lead-in period to establish relevant relationships.[131] This would involve a banker-by-banker approach, because, as Mr Bennett notes "[c]ompetition for relationships … occurs at the level of individual bankers".[132] Further, there is considerable competition for agribusiness bankers making it difficult for a new entrant to gain appropriate staff.[133]

167. The multi-dimensional and relationship-focussed nature of agribusiness banking can make it difficult for a new entrant to gain market share and creates switching costs for customers. For example, Mr Bennett notes that "agribusiness customers often already have a second or third bank in mind as a possible alternative banker who they could approach if their banker or bank let them down. This can be a banker with whom they have had some contact over a long period of time".[134] Mr Bennett also notes the importance of reputation at an individual banker level for attracting new customers.[135]

168. In summary, the relationship-focussed nature of agribusiness banking means that there exist substantial barriers to entry for a bank wishing to enter a local or regional agribusiness banking market. It may be easier for a bank that already has a physical presence in a region to expand into agribusiness banking if its local bankers are well

---

region. What customers and potential customers think about ANZ, and so their willingness to bank with ANZ, is heavily influenced by how our people are seen by people in the local community: how they act, what they do, and what they do not do. When bankers live in a country town, they're highly visible".

[129] "Agribusiness customers often seek to develop connections with people at their bank in addition to their own banker, to help them connect with the bank as an organisation, rather than just at the relationship level" (Statement of Mark Bennett at 96).

[130] Statement of Mark Bennett at 120.

[131] See Statement of Mark Bennett at 122 where he notes the 'multi-year effort' often required to build relationships with potential clients.

[132] Statement of Mark Bennett at 121.

[133] See Statement of Mark Bennett at 129 which states that "[a]ttracting and retaining good agribusiness bankers is a key area of focus for, and competition between, banks. Banks regularly go out of their way to attract the best agribusiness bankers, who even, absent a macro level labour shortage, can be difficult to source".

[134] Statement of Mark Bennett at 100.

[135] "[A]n agribusiness banker's reputation in their community is important to their ability to attract work from new customers in their region" (Statement of Mark Bennett at 102).

known and have the specific human capital required for agribusiness banking (see paragraph 166 above).

169. As a consequence, entry and potential entry is unlikely to provide a significant competitive constraint in a local or regional agribusiness banking market. It is possible that expansion may provide a competitive constraint subject to the relevant bank already having the physical presence and relationships relevant for agribusiness banking.

170. Entry at the broker level may occur if an existing agribusiness banker leaves their bank to start working as a broker and is able to 'take their customers with them'.[136] However, as noted in paragraph 37, brokers are a distribution channel for the banks. They do not compete directly with the banks although they may facilitate competition between the banks.[137]. In this sense, brokers are more relevant to customer switching costs, as discussed below.

Switching costs

171. The relationship-focused nature of agribusiness banking creates significant switching costs for customers. A customer who wishes to switch from their existing agribusiness bank may need to invest in building a relationship with an alternative provider prior to switching. As discussed in paragraph 167, some agribusiness customers invest in these relationships so that they have a viable option to switch if their existing 'bank or banker let them down'.

172. Mark Bennett (paragraphs 104-106) discusses the difficulties of agribusiness customers, particularly small and medium agribusiness customers, to switch banks and both the importance and cost of 'dual banking relationships' for switching. These factors impede agribusiness customers switching banks, albeit as Mr Bennett notes, the switching costs are not insurmountable.

173. As discussed in paragraphs 30 to 35, the PC notes the relationship between low customer switching and price discrimination. There appears to be significant price discrimination in agribusiness banking.[138]

[136] Statement of Mark Bennett at 133 and 148.

[137] Statement of Mark Bennett at 154. Note however that "[b]rokers can often be focused on price, but bankers seek to compete on other factors such as relationship … which customers value and are willing to pay for"

[138] For example, see the Statement of Mark Bennett at 125 which states that "there can be material differences in banks' pricing to individual agribusiness customers at any given point in time, and within a given district or sector, …".

174. Brokers can potentially reduce switching costs for customers. However, while there are some agribusiness brokers, "brokers are not used as widely in agribusiness as they are in other areas, …".[139] That said, it appears that some agribusiness customers will invest in a relationship with a broker as well as their agribusiness banker. For example, Clive van Horen notes that broker-orientated customers "will have relationships with brokers as well as with Suncorp bank relationship managers".[140] As discussed in paragraph 167 by investing in these dual relationships an agribusiness customer can gain a switching option if they need it in the future.

175. In summary, there are significant switching costs for agribusiness consumers. In order to reduce future switching costs, some agribusiness customers develop 'dual relationships' with alternative banks, bankers or brokers. In this sense, the barriers to switching for consumers in agribusiness banking are high but not insurmountable.

Competition in the factual

176. If ANZ acquires Suncorp Bank and if the opinion of Mark Bennett, re-stated in paragraph 155, is correct, then the acquisition of Suncorp Bank by ANZ will merge the third and fourth largest providers of agribusiness banking services in Queensland. It is possible that the acquisition of Suncorp Bank by ANZ will lead to a significantly greater increase in concentration in at least some local/regional agribusiness banking markets in Queensland. However, I do not have access to the data needed to confirm this.

177. The acquisition will bring together two active and effective competitors in Queensland so that their direct competition ceases. In my opinion, and as a matter of economics, a merger of two very significant competitors in local/regional markets where: competition is relationship-focussed; entry barriers are significant; expansion depends on an 'on the ground' presence and a long-term investment in relationships; there are substantial switching costs for consumers; and there is significant price discrimination, will likely substantially reduce competition in agribusiness banking across the state of Queensland and in at least some of the local/regional agribusiness banking markets within Queensland where Suncorp Bank and ANZ currently actively compete.

[139] Statement of Mark Bennett at 151.
[140] Paragraph 1039 of the witness statement of Clive van Horen

178. As noted in paragraph 153, there is significant overlap between the agribusiness operations of ANZ and Suncorp Bank at the local/regional market level in Queensland. Further, at the level of specific local/regional agribusiness banking markets, the acquisition of Suncorp Bank by ANZ is likely to result in a greater reduction in competition, and potentially a significantly greater reduction of competition, than at the state-wide level. That said, I am unable to precisely identify the exact markets where the reduction in competition will be greatest because of a lack of data. The reduction in competition is likely to be greatest in at least some of those markets listed in paragraph 153 where both ANZ and Suncorp Bank have active and on-going agribusiness operations.

Competition in the 'status quo' counterfactual

179. If ANZ does not acquire Suncorp Bank and Suncorp Bank continues to operate under the ownership of the Suncorp Group, then this will enable Suncorp Bank to continue to act as a significant, independent competitor in the relevant local/regional agribusiness banking markets in Queensland and across Queensland as a whole. Competition will continue at, or may intensify from, its current level. The Statement of Clive van Horen notes (Paragraph 68.b) that "Suncorp's focus is to grow its agribusiness portfolio". If, in the absence of the acquisition by ANZ, Suncorp Bank increases its competitive intensity in some local/regional agribusiness banking markets in Queensland then this will intensify competition overall in the relevant market(s).

Competition in the 'alternative buyer' counterfactual

180. If ANZ does not acquire Suncorp Bank and Suncorp Bank is acquired by Bendigo and Adelaide Bank then this:

   a. Will marginally increase concentration in the supply of agribusiness banking services at the state level in Queensland. From the data presented in paragraphs 157 and 158, a merger between Suncorp Bank and Bendigo and Adelaide Bank will lead to a competitor with a Queensland share of [redacted] based on farm lending.

      i. This increase in share of the combined entity at a state level appears modest given that Bendigo and Adelaide Bank's share in Queensland is only [redacted].

b. May increase the ability of the combined Suncorp Bank and Bendigo and Adelaide Bank to effectively compete in agribusiness markets across Australia.

i. The activities of Suncorp Bank and of Bendigo and Adelaide Bank in agribusiness, across Australia and outside Queensland, are largely complementary. Bendigo and Adelaide bank has its largest estimated state shares in South Australia ([redacted]), Western Australia ([redacted]), Victoria ([redacted]) and Tasmania ([redacted]). Suncorp Bank's estimated share of farm lending in each of these states is trivial. In New South Wales, Bendigo and Adelaide Bank has an estimated share of farm lending of [redacted]. The estimated share for Suncorp Bank is [redacted], so that the merged entity will have a state-wide share of farm lending of approximately [redacted].[141]

ii. The acquisition of Suncorp Bank by Bendigo and Adelaide Bank would enable the combined entity to effectively 'leverage' off the Rural Bank brand. The Statement of Mark Bennett at paragraph 175 notes that the Rural Bank brand is "synonymous with agribusiness banking" and "Bendigo Bank seems to have aspirations to grow under the Rural Bank brand …".

Conclusion on whether the acquisition of Suncorp Bank by ANZ will likely substantially lessen competition in one or more local/regional agribusiness banking markets

Status quo counterfactual

181. In my opinion, as a matter of economics, compared to the 'status quo' counterfactual, the acquisition of Suncorp Bank by ANZ is likely to result in a substantial lessening of competition in at least some of the local/regional markets in Queensland. The exact identification of those markets however requires market-by-market analysis. I do not have the data or details to carry out such an analysis.

[141] All state-wide estimates for shares of farm lending are calculated in the same way as in paragraphs 157 and 158, using the data in the September 2022 and September 2021 report by Kynetec and in the Suncorp Group *Investor Pack* (Financial results for the full year ending 30 June 2021, release date 9 August 2021) at page 42.

182. This reduction in competition reflects the status of ANZ and Suncorp Banks as the third and fourth largest providers of agribusiness banking services at the state-level in Queensland, as stated by Mark Bennett; the overlap of ANZ's and Suncorp Bank's agribusiness operations in Queensland and the removal of Suncorp as an effective and independent competitor in a range of local/regional agribusiness markets across Queensland.

183. For the reasons stated in paragraphs 164 to 175 above, I consider that it is unlikely that entry, expansion or customer switching will offset any substantial lessening of competition.

184. While I consider that the ACCC would need to undertake relevant local/regional agribusiness banking market analysis to precisely identify the markets where the acquisition of Suncorp Bank by ANZ will lead to a substantial lessening of competition compared to the 'status quo' counterfactual, in my opinion, and as matter of economics, the acquisition is likely to substantially lessen competition.

185. If the ACCC considered that the relevant agribusiness banking market encompassed all of Queensland then, in my opinion and as a matter of economics, for the reasons outlined in paragraphs 182 and 183, the acquisition of Suncorp Bank by ANZ will likely result in a substantial lessening of competition.

Alternative buyer counterfactual

186. In my opinion, and as a matter of economics, compared to the alternative buyer counterfactual, the acquisition of Suncorp Bank by ANZ is likely to substantially lessen competition in at least some local/regional agribusiness banking markets in Queensland. In particular, I note that while the acquisition of Suncorp Bank by Bendigo and Adelaide Bank would lead to a modest increase in market share for the merged entity in the supply of agribusiness banking services in Queensland, the complementary nature of the two banks in the provision of agribusiness banking services across Australia, and the strength of the Rural Bank brand, mean that competition is potentially increased by the acquisition of Suncorp Bank by Bendigo and Adelaide Bank compared to the status quo.

187. My conclusion would remain unchanged if, in contrast to the analysis above, the ACCC determined that the relevant agribusiness banking market encompassed all of Queensland.

Conclusion

188. Regardless of whether the ACCC considers that the 'status quo' counterfactual or the 'alternative buyer' counterfactual is most appropriate for competition analysis, for the reasons summarised in paragraphs 181 to 187, the acquisition of Suncorp Bank by ANZ, in my opinion and as a matter of economics, is a likely substantial lessening of competition. In my opinion, the exact identification of the relevant markets where competition is substantially lessened would require market-by-market analysis of the relevant local/regional agribusiness markets in Queensland. If, however, the ACCC considers that the relevant market encompasses the entire state of Queensland, then my conclusion remains unchanged.

Other matters

Comment on the claimed funding cost public benefits of the acquisition of Suncorp Bank by ANZ

189. The *Application* notes a range of claimed public benefits associated with the acquisition of Suncorp Bank by ANZ. I have not considered these claimed benefits in detail as many of them go to the internal operations of a bank and to details of prudential regulation that are beyond my areas of expertise. However, as a matter of economics, the discussion around the claimed benefits around the reduced wholesale funding costs appears to be incomplete.

Reduced funding costs and the transfer of risk

190. The *Application* claims that one of the benefits of the acquisition is reduced wholesale funding costs to Suncorp Bank comparted to the 'status quo' counterfactual.[142] The benefit arises because ANZ has a lower cost of funding than Suncorp Bank. This funding advantage enjoyed by the major banks is discussed at paragraphs 26 to 29.

191. Before a reduction in the cost of wholesale funds can be claimed as a benefit it is necessary to ensure that the cost is not simply transferred to another party. A key element of wholesale funding costs is the risk that is borne by the suppliers of wholesale funds. If the merged entity is able to access lower wholesale funding costs because there is a reduction in the risk borne by the suppliers of wholesale funds then this reduction in risk needs to be understood before it can be claimed as a public benefit of the acquisition

192. For example, if ANZ currently is viewed as 'too big to fail', so that it is implicitly underwritten by the government, then ANZ will benefit from a lower cost of wholesale funds compared to another bank that is not 'too big to fail'. The 'too big to fail' guarantee will reduce the risk borne by the suppliers of wholesale funds to ANZ and, as a result, reduce ANZ's wholesale funding costs. However, the fact that ANZ gains lower wholesale funding costs in this situation compared to another bank that is not 'too big to fail' is not a 'benefit'. It is merely a transfer of risk to the government and taxpayers. ANZ's shareholders will gain but only due to a hidden subsidy from the government.

[142] *Application* at 8.19 to 8.33.

193. If Suncorp Bank currently does not have an implicit ‘too big to fail’ guarantee, but it will gain that implicit guarantee if it is acquired by ANZ, then I would expect that, post-acquisition, Suncorp Bank will be able to access wholesale funding at a lower cost. The ‘too big to fail’ guarantee gained by Suncorp Bank will reduce the risk of Suncorp Bank from the perspective of wholesale funders. However, that reduction in risk, and subsequent reduction in wholesale funding costs to Suncorp Bank, will represent a transfer of risk, not a real benefit. The government will face greater risk, by extending the ‘too big to fail’ guarantee from just ANZ to the combination of ANZ and Suncorp Bank. In this situation there is no overall economic benefit associated with the reduced funding costs. Rather the reduced funding costs simply reflect a transfer of risk from the private sector to the government and taxpayers.

194. In summary, and as a matter of economics, a reduction in wholesale funding costs for Suncorp Bank as a result of its acquisition by ANZ may be a benefit to the individual companies, but it is not necessarily a broader economic benefit. For there to be a broader economic benefit, the reduction in wholesale funding costs must reflect a reduction in risk. If it simply reflects a transfer of risk, for example to taxpayers, it is not an economic benefit.

Statement of Dr Philip Williams

195. I have read the Statement of Dr Philip Williams dated 1 December 2022.

196. The approach used by Dr Williams to determine the markets relevant for analysing the competitive effects of the acquisition of Suncorp Bank by ANZ is inconsistent with both the approach outlined in the ACCC's Merger Guidelines and the standard economic approach adopted in merger analysis. As discussed in paragraph 15, the "starting point for delineating relevant markets to assess a merger under s. 50 of the Act is identifying the products and geographic regions actually or potentially supplied by the merger parties. The ACCC then focuses on defining markets in areas of activity where competitive harm could occur. This must be assessed on a case-by-case basis".[143] In contrast, Dr Williams starts by identifying the 'buyers' who are served by ANZ and Suncorp Bank.[144] He then divides the 'buyers' into borrowers and depositors, arguing that "because funds can be placed in many alternatives other than banks" any competition concerns will only relate to borrowers.[145] However, this appears to simply be an assertion as no evidence on substitution or switching costs for deposit products is provided.

197. Dr Williams then uses the HHI, a measure of market concentration, to define the relevant markets for competition analysis. However, this approach makes no economic sense. The HHI can only be used after a relevant market is defined. Put simply, the HHI, and other concentration measures, are tools for competitive analysis of a market. They are not able to be used in any coherent way to define a market for competition analysis.

198. Dr Williams considers the HHIs for different categories of lending on arbitrary geographic areas, without considering substitution across products. For example, Dr Williams does not consider whether housing lending as a product is in the same market or a separate market to other forms of lending. Rather he simply looks at each product and total lending. Dr Williams then considers the concentration in lending products using the HHI at a national level without considering whether or not there is a national market, based on substitution, for any of the lending products that he is analysing. Finally, Dr Williams rejects the 'putative national markets' as initial candidate markets for merger

[143] *Guidelines at* 4.10.
[144] At paragraph 34.
[145] At paragraph 35.a.

analysis because none of them is concentrated enough.[146] In this sense, Dr Williams' analysis lacks any economic foundations. Positing a market without any information on substitution, then rejecting the market if it is not sufficiently concentrated has no basis in economics and competition analysis.

199. Dr Williams then continues this unusual analysis, for example positing a market for 'the supply of loans by banks to Queensland agribusiness'. However, because Dr Williams starts at a broad state level and does not consider either demand-side or supply-side substitution he fails to consider local/regional agribusiness markets in Queensland. Indeed, his approach to market definition appears to be driven by the availability of measures of product shares, regardless of whether the product shares have any competitive relevance or are robust.[147] This is most obvious when "[b]ecause of the difficulty of defining and analysing a market for lending to SME, I reject this as an initial candidate market".[148] So regardless of the reality of competition, if Dr Williams does not have the relevant data he simply removes the market from competitive analysis.

200. Having defined two putative markets based on the level of concentration in those putative markets, Dr Williams now turns to substitution as a means to expand the markets.[149] Note that this is a one-sided test. For example, for agribusiness, Dr Williams cannot reduce his market below the state level because he starts at that level and then seeks to broaden the market. Any issues of the market being geographically smaller than the state of Queensland are simply ignored.

201. Dr Williams analysis of substitution is, at best, superficial. For example, he notes that there are national structures within ANZ[150] and that "Suncorp Bank's home loan products are also priced nationally".[151] He then states, on this basis, and giving no regard to the price discrimination in home loans noted by the PC and the ACCC, that "it would be inappropriate to confine the housing loan market to Queensland" and "[b]ecause of

[146] At paragraph 42.
[147] For example, see table 3, and his statement at paragraph 49 that "the market share data on which these estimates are based may have high standard errors."
[148] At paragraph 52. That said, and despite the lack of consistency, he proceeds "with Queensland housing lending as a second initial candidate market" despite being "unable to find data for such an initial candidate market to apply [his] threshold tests" (paragraph 53).
[149] At paragraph 55.
[150] At paragraph 63.
[151] At paragraph 64.

national pricing, it would seem inappropriate to confine the housing loan market to Queensland".[152]

202. Dr Williams' then turns to competition analysis and his "assessment of slc"[153] Dr Williams only considers the 'status quo' counterfactual and does not consider the 'alternative buyer' counterfactual.[154]

203. For Queensland agribusiness lending, Dr Williams appears to base his conclusion that the acquisition of Suncorp Bank by ANZ will not substantially lessen competition on two factors. First, on concentration. However, this is circular given that Dr Williams defined the relevant market on the basis of concentration. Second, on his conclusion that "the proposed merging parties are not particularly close competitors". While relevant parts of the statement are redacted, it appears that this conclusion is based on ANZ serving larger customers who are not served by Suncorp Bank. However, as a matter of economics, it is the ability of different banks to provide a competitive constraint through demand-side or supply-side substitution that should be the focus of competition analysis for agribusiness banking. Dr Williams does not consider these competitive constraints and I have seen no evidence to indicate that there are barriers, for example, to ANZ actively competing for agribusiness customers currently served by Suncorp Bank.

204. For the reasons presented in paragraphs 181 to 185, I consider that Dr Williams' conclusion about the absence of a substantial lessening of competition in relevant agribusiness markets in Queensland, relative to the status quo counterfactual, is incorrect, as a matter of economics.

205. Despite Dr Williams stating at paragraph 70 that a relevant 'initial candidate market' for competition analysis is "the supply of loans by banks to purchasers of housing in Queensland", he does not carry out any competition analysis on this market. For the reasons stated in paragraph 63.e, I consider that the relevant market for retail home loans is national, not restricted just to Queensland. For the reasons stated in paragraphs 137 and 138, in my opinion, and as a matter of economics, the acquisition of Suncorp Bank by

[152] At paragraph 65.
[153] At section 5.
[154] At paragraph 101

ANZ will substantially lessen competition in the national retail home loan market when compared to either the 'status quo' or the 'alternative buyer' counterfactual.

206. Even if Dr Williams' approach to market definition was correct as a matter of economics (which, in my opinion, it is not) his use of HHI concentration measures is inappropriate and ignores the evidence on coordinated conduct by the major banks. As noted at paragraphs 87 to 93, competition analysis based on simplistic measures of concentration, such as the HHI, that are not adjusted for existing coordinated conduct will be misleading and will not provide any economically relevant insight into the nature of competition or the competitive impact of the acquisition on competition.

Curriculum Vitae

Name: Stephen Peter King.

Position: Commissioner (part time), Productivity Commission.

Professor of Economics (part time), Monash University, Melbourne.

Nationality: Australian.

Education: Ph.D. Harvard University, 1991.

A.M. Harvard University, 1989.

M.Ec. Monash University, 1987.

B.Ec. (Hon). A.N.U., 1985.

Honours: Distinguished Public Policy Fellow Award, Economics Society of Australia, 2021.

F H Gruen Distinguished Fellow, Australian National University, July-December, 2020.

Monash Business School Award for Teaching Excellence, Monash University, 2015.

Teaching award, Department of Economics, Monash University, 2014.

Monash Student Association award for outstanding teaching in the Faculty of Business and Economics, 2014.

Inaugural John Freebairn Lecturer in Public Policy, University of Melbourne, 2013.

Colin Clark Lecturer, University of Queensland, 2011.

Professorial Fellow, Melbourne Business School, The University of Melbourne, 2005 – 2010.

Elected a Fellow of the Academy of the Social Sciences in Australia, 2005.

Selected as a Distinguished Alumni, Faculty of Economics and Commerce, Australian National University, 2005.

Award for Good Teaching and Teaching Innovation, Faculty of Economics and Commerce, The University of Melbourne, 1999 and 2004.

E. Yetton Best Paper Award, *Australian Journal of Management*, 1999.

Wells Prize, Department of Economics, Harvard University, 1992-93.

Harvard University, Department of Economics scholarship, 1987-1991.

Frank Knox Memorial Fellowship, 1987-1989.

University Medal, A.N.U., 1985.

Gowrie Scholarship, 1980-1985.

Previous Employment:

Commissioner (full time), Productivity Commission, July 2016 – December 2021.

Professor of Economics, Monash University, January 2012 – June 2016.

Member, National Competition Council, December 2011 – June 2016.

Member, Economic Regulation Authority, Western Australia, December 2010 – June 2016 (including Chairman from November 2014 to November 2015).

Dean, Faculty of Business and Economics, Monash University, January 2009 – December 2011.

Member, Australian Competition and Consumer Commission, June 2004 – January 2009.

Professor of Economics, Department of Economics, The University of Melbourne, January 1998 – June 2005.

Professor of Management (Economics), Melbourne Business School, The University of Melbourne, January 2002 – June 2004.

Research Fellow, Economics Program, Research School of Social Sciences, The Australian National University, July 1994 – December 1997.

Lecturer (Economics), The University of Melbourne, July 1991 – June 1994.

Section Leader, Introductory Economics (Ec.10), Harvard College, September 1988 – June 1991.

Lecturer, Mathematics for Economists, Harvard University summer school, 1989 and 1990.

Tutor (Economics), Monash University, Sep. 1985 – Aug. 1987.

Graduate Analyst, C.R.A. Services, Jan. 1985 – Aug. 1985.

Specialisation: Applied Microeconomic Theory, Industrial Organisation and Regulation.

Teaching:

(At Monash University):

Principles of Microeconomics (ECC1000), 2013-2016.

Law and Economics (ECC4720), 2010, 2011.

(At The Melbourne Business School):

MBA Managerial Economics, 2003.

MBA Economics and Public Policy, 2002.

(At The University of Melbourne):

Graduate Industrial Organisation (316-616), 1991-1993.

Graduate Microeconomics (316-611), 2000-2001.

Undergraduate Privatisation and Deregulation (316-323), 1992, 1993 and 1998.

Undergraduate Intermediate Microeconomics (316-202), 1992-1994, 2004.

Undergraduate Introductory Microeconomics (316-102), 1998-2001.

Undergraduate Competition and Strategy (316-210), 1999.

(At The Australian National University):

Economics 1(H) – Covidenomics (ECON1100), 2020.

Graduate Australian Competition Policy (ECON 8030), 1996.

(The Australian Graduate School of Management, external):

"The Wealth of Organisations", Graduate Management Diploma, 1992-1994.

Journal Editing: Co-Editor, *The Economic Record*, 2012-2015.

Editor, *The Australian Economic Review*, 1999-2001.

Associate Editor, *The Australian Economic Review*, 1993-1998, 2002-present.

Member, International Editorial Board, *International Journal of the Economics of Business*, 2013 – present.

Member, Editorial Board, *B.E. Journals in Economic Analysis and Policy*, 2001-2004.

Journal Refereeing:

Abacus, Agenda, American Economic Review, Australian Business Law Review, Australian Economic Papers, Australian Economic Review, Australian Journal of Agricultural Economics, Australian Journal of Political Science, Canadian Journal of Economics, Competition and Consumer Law Journal, Economic Journal, Economics Letters, Economics Papers, Economic Record, European Economic Review, Federal Law Review, Geneva Papers on Risk and Insurance, Information Economics and Policy, International Journal of Industrial Organization, International Journal of the Economics of Business, Journal of Economic Behavior and Organization, Journal of Economics and Management Strategy, Journal of Mathematical Economics, Journal of Political Philosophy, Journal of Public Economic Theory, Labour Economics, Management Science, Operations Research, Policy, RAND Journal of Economics, Review of Industrial Organization, Sydney law Review, Theory and Decision, UNSW Law Journal.

Conference Organisation:

Joint Organiser, Annual Economics Ph.D. Conference, The Australian National University, December 1994, November 1996, and Monash University, November 2014.

Joint Organiser, Economic Theory Workshop, The University of Melbourne, February 1999 and February 2004; The Australian National University, February 1995 and February 1998; and Monash University 2016.

Joint Organiser, ACCC, ANU and University of Melbourne conference on Incentive Regulation and Overseas Developments, Sydney, November 1999.

Joint Organiser, ACCC and University of Melbourne conference on Electricity Transmission Network Pricing, The University of Melbourne, December 1998.

Session Organiser, 25th Annual Conference of Economists, The Australian National University, September 1996.

Joint Organiser, Annual Industry Economics Conference, The Australian National University, July 1996.

Joint Organiser, Center for Economic Policy Research and Center for Law and Economics Workshop on Non-pricing issues of access, The Australian National University, August, 1995.

Joint Organiser, Conference on Economic Rationalism?: Economic Policies for the 90s, The University of Melbourne, February 1993.

Inquiries:

(At the Productivity Commission):

Australia’s maritime logistics system, 2020-21.

NBN Co (Australian Government Competitive Neutrality Complaints Office, Investigation No. 18), 2022

Australian Business Growth Fund (Australian Government Competitive Neutrality Complaints Office, Investigation No. 17), 2021

Australia’s prison dilemma (research paper), 2021

Innovations in care for chronic health conditions, 2020-21

The social and economic benefits of improving mental health, 2018-2020

Economic regulation of airports, 2018-19

Australian Hearing (Australian Government Competitive Neutrality Complaints Office, Investigation No. 16), 2018

Competition in financial services, 2017-18

User choice and competition in human services, 2016-17

(At the Economic Regulation Authority):

Western Australian microeconomic reform, 2014

Western Australian prisons, 2014

Western Australia's home indemnity insurance arrangements, 2012

Efficient costs and tariffs of the Water Corporation, Aqwest and the Busselton Water Board, 2012

Benefits and costs of shared corporate services within the public sector, 2011

Efficiency of Synergy's costs and electricity tariffs, 2011

(Other):

Chair, Expert Panel, Review of Pharmacy Remuneration and Regulation, Department of Health, November 2015 – 2017.

Member of National Competition Policy review team for NT motor accident compensation legislation, 2000.

Member of National Competition Policy review team for ACT taxi and hire car regulations, 1999-2000.

Member of National Competition Policy review team for Victorian Private Agents Legislation, 1999.

Other Professional Activities:

Member, Department of Economics Executive, Monash University, 2016.

Member, Business Council of Australia Competition Review Working Group, 2014-2016.

Co-Director, Monash Business Policy Forum, 2012-2016.

Member, CEDA Council on Economic Policy, 2012-2020.

Member, Panel B Committee, Academy of the Social Sciences in Australia, 2012-2014.

Member, Advisory Board, Monash Centre for Regulatory Studies, 2011- 2014.

Member, EQUIS Peer Review Team (Victoria University, Wellington), July 2011.

Member, International Board of Management, Association of MBAs, UK, 2011-2012.

Member, Advisory Board, BB&M Education Group, 2011-2014.

Chair, Board of Studies, Monash College, 2009-2012.

Chair, Review Committee, School of Economics, ANU, 2008.

Member, Advisory Board, Centre for Regulation and Market Analysis, University of South Australia, 2007 – 2008.

Member, Advisory Board, Graduate Program in Competition Law, University of Melbourne, 2007 – 2008.

Member, Industry Advisory Committee, Melbourne Centre for Financial Studies, 2005 – 2008.

Member, Competition and Consumer Committee (formerly Trade Practices Committee), Law Council of Australia, 2004 – present.

Lay Member of the High Court of New Zealand (under the Commerce Act), 2003 – 2008, 2009-2014, 2016-2021, 2022-27 (sitting on *Woolworths/Foodstuffs/The Warehouse appeal against NZCC, 2007*).

Consultant, Charles River Associates (Asia Pacific), 2002 – 2004.

Co-founder and Director, CoRE Research, 2001 – 2004, 2009 – 2014.

Associate Director, Economic Theory Centre, The University of Melbourne, 2001 – 2004.

Member, Management Committee, Intellectual Property Research Institute of Australia, 2002 – 2003.

Member, Executive Committee, Prime Minister's Home Ownership Task Force, 2002-2003.

Member, Victorian Infrastructure Planning Council, 2000-2002.

Deputy Head, Economics Department, The University of Melbourne, 2000-2001.

Expert testimony:

Expert testimony (witness statement) on hold-separate undertaking (re: ACCC v IVF Finance) to the Federal Court of Australia, 2021.

Expert testimony (witness statement) on conditions of authorisation (re: Sea Swift) to the Australian Competition Tribunal, 2016.

Expert testimony (witness statement) on abuse of market power (re: ACCC v Visa Inc and others) to the Federal Court of Australia, 2015.

Expert testimony on the economics of taxation (re: Plenary Conventions *v* the State of Victoria), Arbitration, 2014-15.

Expert testimony (witness statement) on abuse of market power (re: Cyclopet v ANSTO & Petnet and NSW Health) to the Federal Court of Australia, 2014.

Expert testimony on abuse of market power (re: Apple Inc *v* Samsung Electronics Co.) to the Federal Court of Australia, 2012-14.

Expert testimony (witness statement) on competitive disadvantage (re: Forestry Tasmania & Ombudsman) to the Supreme Court of Tasmania, 2010.

Expert testimony (witness statement) on access regulation (re: Fortescue Metals Group and others) to the Australian Competition Tribunal, 2009.

Expert testimony (witness statement) on the value of the single desk to AWB (re: ASIC v Lindberg) to the Victorian Supreme Court, 2009.

Expert testimony on vertical integration in electricity (re: AGL v ACCC) to the Federal Court of Australia, 2003.

Expert testimony on electricity (re: review of a NEMMCO determination on the SNI Interconnector) to the National Electricity Tribunal, 2002.

Expert testimony (witness statement) on telecommunications access pricing (re: AAPT and Telstra) to the Australian Competition Tribunal, 2002.

Expert testimony on regulation to Victorian Supreme Court re: TXU v ORG, 2001.

Expert testimony (witness statement) on market definition for ophthalmologists to High Court of New Zealand, 2001.

Expert testimony on electricity distribution to Victorian ORG appeal tribunal, 2000.

Expert testimony to the Federal Court of Australia re: ACCC v Safeway, 1999.

Expert testimony (witness statement) to the Federal Court of Australia re: ACCC v Telstra, 1999.

Expert testimony to Australian Competition Tribunal on Natural Gas Supply, 1997.

Publications

***Economics Journal Articles (refereed)*:**

1. "Capping bundle discounts: Two regulatory rationales", with Martin Byford, *Journal of Industrial Economics*, 69(2), (2021), 270-304.
2. "Pricing with cookies: Behavior-based price discrimination and spatial competition", with Chongwoo Choe and Noriaki Matsushima, *Management Science*, 64, (2018), 5669-5687.
3. "Housing property rights and subjective wellbeing in urban China", with Zhiming Chen, Russell Smyth and Haining Wang, *European Journal of Political Economy*, 45 (Supplement), (2016), 160-174.
4. "Countervailing power and input pricing: When is a waterbed effect likely?", *International Journal of the Economics of Business*, 20(3), (2013), 325-340.
5. "Buyer groups, antitrust and outsiders", *Economic Record*, 89, (2013), 1-18.
6. "Does tort law reform help or hurt consumers?", *Economic Record*, 86, (2010), 563-577.
7. "Public or private? Towards a taxonomy of optimal ownership and management regimes", with Rohan Pitchford, *Economic Record*, 84, (2008), 366-77.
8. "Perfect price discrimination and costless arbitrage", with Joshua Gans, *International Journal of Industrial Organization*, 25, (2007), 431-440.
9. "Patent Length and the Timing of Innovative Activity", with Joshua Gans, *Journal of Industrial Economics*, 55, (2007), 772-772 (Webnote).
10. "Paying for loyalty: product bundling in oligopoly", with Joshua Gans, *Journal of Industrial Economics*, 54, (2006), 43-62.
11. "Competitive neutrality in access pricing", with Joshua Gans, *Australian Economic Review*, 33, (2005), 128-136.
12. "Patent renewal fees and self-funding patent offices", with Joshua Gans and Ryan Lampe, *Topics in Theoretical Economics*, 4, (2004), article 6.
13. "Push or Pull? The Relationship between Development, Trade and Primary Resource Endowment" with Mei Wen, *Journal of Economic Behavior and Organization*, 53, (2004), 569-591.

14. “Access holidays and the timing of infrastructure investment”, with Joshua Gans, *Economic Record*, 80, (2004), 89-100.
15. “The housing lifeline: A housing affordability policy”, with Joshua Gans, *Agenda*, 11, (2004), 143-155.
16. “Network externalities, price discrimination and profitable piracy” with Ryan Lampe, *Information Economics and Policy*, 15, (2003), 271-290.
17. “Approaches to regulating interchange fees in payments systems” with Joshua Gans, *Review of Network Economics*, 2, (2003), 125-145.
18. “The neutrality of interchange fees in payment systems” with Joshua Gans, *Topics in Economic Analysis and Policy*, 3, (2003), article 1.
19. “Contestability, complementary inputs and contracting: the case of harbour towage”, with Joshua Gans, *Australian Economic Review*, 36, (2003), 415-427.
20. “Anti-insurance: Analysing the health insurance system in Australia”, with Joshua Gans, *Economic Record*, 79, (2003), 473-486.
21. “A theoretical analysis of credit card reform in Australia”, with Joshua Gans, *Economic Record*, 79, (2003), 462-472.
22. “Access holidays for network infrastructure investment” with Joshua Gans, *Agenda*, 10, (2003), 163-178.
23. “Exclusionary contracts and competition for large buyers” with Joshua Gans, *International Journal of Industrial Organization*, 20, (2002), 1363-1381.
24. “Regulating termination charges for telecommunications networks” with Joshua Gans, *Australian Journal of Management*, 27, (2002) 75-86.
25. “The economic consequences of DVD regional restrictions” with Emily Dunt and Joshua Gans, *Economic Papers*, 21, (2002), 32-45.
26. “Sequential parimutuel games” with Robert Feeney, *Economics Letters*, 72, (2001), 165-173.
27. “Numbers to the people: regulation, ownership and local number portability” with Joshua Gans and Graeme Woodbridge, *Information Economics and Policy*, 13, (2001), 167-180.
28. “Using 'bill and keep' interconnect arrangements to soften network competition” with Joshua Gans, *Economics Letters*, 72, (2001), 413-420.

29. “Regulating endogenous customer switching costs” with Joshua Gans, *Contributions to Theoretical Economics*, 1, (2001), article 1, 1-29.
30. “Mobile network competition, customer ignorance and fixed-to-mobile call prices” with Joshua Gans, *Information Economics and Policy*, 12, (2000), 301-327.
31. “Options for electricity transmission pricing in Australia” with Joshua Gans, *Australian Economic Review*, 33, (2000), 145-160.
32. “The Role of Undertakings in Regulatory Decision-Making” with Teresa Fels and Joshua Gans, *Australian Economic Review*, 33, (2000), 3-16.
33. “First author conditions” with Maxim Engers, Joshua Gans and Simon Grant, *Journal of Political Economy*, 107, (1999), 859-883. (Reprinted in *Publishing Economics: Analyses of the academic journal market in economics*, (J. Gans ed) Edward Elgar, 2000).
34. “Myopic corporate behavior with optimal management incentives” with Gerry Garvey and Simon Grant, *Journal of Industrial Economics*, 47, (1999), 231-250.
35. “Light handed regulation of access in Australia: negotiation with arbitration” with Rodney Maddock, *Information Economics and Policy*, 11, (1999), 1-22.
36. “On relative performance contracts and fund manager's incentives” with Jurgen Eichberger and Simon Grant, *European Economic Review*, 43, (1999), 109-134.
37. “Price discrimination, separation and access: protecting competition or protecting competitors?”, *Australian Journal of Management*, 24, (1999), 21-35.
38. “Talking down the firm: short-term market manipulation and optimal management compensation” with Gerald Garvey and Simon Grant, *International Journal of Industrial Organization*, 16, (1998), 555-570.
39. “Privatization in Australia: understanding the incentives in public and private firms”, with Rohan Pitchford, *Australian Economic Review*, 31, (1998), 313-328.
40. “The behavior of declining industries”, *Economic Record*, 74, (1998), 217-230.
41. “Oligopoly and overtime”, *Labour Economics*, 4, (1997), 149-165.
42. “The fiscal dividend myth of an income/GST tax switch” with Simon Grant, *Australian Economic Papers*, 36, (1997), 167-178.
43. “Access pricing under rate-of-return regulation”, *Australian Economic Review*, 30, (1997), 243-255.

44. “Information externalities, stock-based incentives and managerial behaviour” with Simon Grant and Ben Polak, *Journal of Economic Surveys*, 10, (1996), 1-21.
45. “Competition and almost essential facilities: making the right policy choices” with Rodney Maddock, *Economic Papers*, 15, (1996), 28-37.
46. “Efficiency and access: analysing the draft access code for Australian electricity transmission”, A*ustralian Economic Review*, 29, (1996), 292-298.
47. “Russian Roulette Competition Policy” with Anthony Marshall, *Policy*, 12, (1996), 3-6. (With reply to response in *Policy*, 13, (1997), 16-17).
48. “Search with free-riders”, *Journal of Economic Behavior and Organization*, 26, (1995), 253-271.
49. “Guaranteeing access to essential infrastructure” *Agenda*, 2, (1995), 423-431.
50. “Privatization and reformation”, *Economic Record*, 71, (1995), 18-26.
51. “Competition: The missing link in Australia's privatisation program”, *Policy*, 10, (1994), 12-16.
52. “The treatment of deductions under a sales tax”, with Simon Grant, *Australian Economic Papers*, 33, (1994), 21-26.
53. “Penalty rates and enterprise bargaining”, *Australian Economic Review*, 26, (1993), 58-64.
54. “What is Privatisation?”, *Economic Papers*, 11, No.3., (1992), 57-64.
55. “Is perfect information perfectly useless?” *Economics Letters*, 39, (1992), 415-418.
56. “Implementing the core of a two-person pure allocation game without free disposal or integer games” with Simon Grant, Steven Peterson and Ben Polak, *Economics Letters*, 37, (1991), 223-227.

Law Journal Articles (refereed):

57. “Contested mergers and the ACCC’s proposed merger reforms”, with Holly Cao and Graeme Samuel, *Australian Business Law Review*, 50(1), (2021), 34-62.
58. “Collective bargaining by business: Economic and legal implications”, *UNSW Law Journal*, 36, (2013), 107-138.

59. "The shaky foundations of consumer protection law and policy", with Rhonda Smith, *Competition and Consumer Law Journal*, 18, (2010), 71-88.
60. "Does competition law adequately protect consumers?", with Rhonda Smith, *European Competition Law Review*, 28, (2007), 412-444.
61. "The role of the hypothetical monopolist test in market definition under the *Merger Guidelines*", *Competition and Consumer Law Journal*, 14, (2006), 89-99.
62. "The use of empirical methods in merger investigations", *Australian Business Law Review*, 34, (2006), 227-236.
63. "The public benefits standard for merger authorizations", *Australian Business Law Review*, 34, (2006), 38-48.
64. "Potential anticompetitive effects of bundling", with Joshua Gans, *Australian Business Law Review*, 33, (2005), 30-35.
65. "When are regulated access prices competitively neutral? The case of telecommunications in Australia", with Joshua Gans, *Australian Business Law Review*, 32, (2004), 407-414.
66. "Tradeoffs in trade mark protection – an economic analysis", with Alexandra Folie, *Australian Intellectual Property Journal*, 15, (2004), 87-93.
67. "Structural and Behavioural Market Power under the Trade Practices Act: An Application to Predatory Pricing," (with Anthony Niblett and Joshua Gans) *Australian Business Law Review*, 32, (2004), 83-110.
68. "The economics of National Competition Policy", *Law in Context*, 20, (2002), 6-33.
69. "Imputation rules and a vertical price squeeze" with Rodney Maddock, *Australian Business Law Review*, 30, (2002), 43-60.
70. "The role of interchange fees in credit card associations: competitive analysis and regulatory options" with Joshua Gans, *Australian Business Law Review*, 29, (2001), 94-122.
71. "Short of a merger: the competitive effects of horizontal joint ventures", *Competition and Consumer Law Journal*, 6, (1998), 227-245.
72. "Pricing for infrastructure access", *Competition and Consumer Law Journal*, 4, (1997), 203-219.

***Non-refereed Journal Articles (including invited articles)*:**

73. “Technology and competition economics”, *International Journal of the Economics of Business* (25th anniversary issue), 25, (2018), 109-118.
74. “Competition policy and the competition policy review”, *Australian Economic Review*, 48, (2015), 402-409.
75. “The sharing economy: What challenges for competition law?”, *Journal of European Competition Law and Practice*, 6, (2015), 729-734.
76. “Governing the ungovernable: the market, technology and you”, *Insights*, 15, (2014), 55-61.
77. “Two-sided markets”, *Australian Economic Review*, 46, (2013), 247-258.
78. “Competition regulation in Australia: A report card” (Twenty-first Colin Clark Lecture, November 2011), *Economic Analysis and Policy*, 42, (2012), 17-35.
79. “Big bang telecommunications reform”, with Joshua Gans, *Australian Economic Review*, 43, (2010), 179-186.
80. “Using microeconomics to protect competition”, *Australian Economic Review*, 43, (2010), 217-224.
81. “The 2008 ACCC Merger Guidelines: How and why have they changed?”, *UNSW Law Journal*, 32, (2009), 263-274 (reprinted in *UNSW Law Journal Forum: Reforms in Competition Law*, 15, (2009), 32-38).
82. “Where to next on credit card reforms?”, with Joshua Gans, *The Melbourne Review*, 4, (2008), 42-48.
83. “The structure and funding of the school system”, with Malcolm Anderson, Brian Caldwell and Peter Dawkins, *Australian Economic Review*, 38, (2005), 83-90.
84. “Supermarkets and shopper dockets: the Australian experience”, with Joshua Gans, *Australian Economic Review*, 37, (2004), 311-16.
85. “Reviewing the Trade Practices Act: the Dawson Committee inquiry”, *Australian Economic Review*, 35, (2002), 423-429.
86. “The funding of higher education in Australia: overview and incentives”, *Australian Economic Review*, 34, (2001), 190-194.
87. “National competition policy”, *Economic Record*, 73, (1997), 270-284.
88. “Competitive tendering and contracting out: An introduction”, *Australian Economic Review*, 27, (1994), 75-78.

89. “Microeconomics for year twelve”, *Australian Economic Review*, 26, (1993), 76-88.

Research Books:

90. *Finishing the job: real-world policy solutions in health, housing, education and transport*, with Joshua Gans, Melbourne University Press, 2004.

91. *Unlocking the infrastructure? The reform of public utilities in Australia*, with Rodney Maddock, Allen and Unwin, 1996.

Chapters in Books and Published Conference Volumes

92. "How not to reform electricity transmission: lessons from Australia”, in *On the grid: Australian electricity in transition*, G. Roger (ed), Monash University Press, 2022.
93. “Do digital platforms need updated merger laws?”, in *The evolution of antitrust in the digital era: Essays on competition policy”* (v.2), David Evans, Allan Fels and Catherine Tucker (eds), Competition Policy International, Boston, 2021.
94. “Team Turnbull’s challenge is to fix our economic malaise”, in *Politics, policy and the chance of change: The Conversation 2015 Yearbook*, Melbourne University Press, Melbourne, 2015.
95. “Economic and ethical foundations of fair pricing and fair trading: Contempory practice and jewish tradition”, with Shimon Cowen, in *Applied Jewish values in social sciences and psychology*, M. Ben-Avie, Y. Ives and K. Loewenthal (eds), Springer Ingternational, Switzerland, 2016.
96. “Fixing the superannuation policy mess” with Rodney Maddock, in *The super challenge of retirement income policy*, CEDA, Melbourne, 2015.

97. “Income contingent loans for low income households” with Joshua Gans, in *Government managing risk: Income contingent loans for social and economic progress*, Bruce Chapman (ed.), Routledge, 2006.
98. “Wireless communications” with Joshua Gans and Julian Wright, in *Handbook of Telecommunications Economics* (v.2.), Sumit Majumdar, Ingo Vogelsang and Martin Cave (eds), North Holland, Amsterdam, 2005.
99. “Future directions for competition policy”, in *Reforming Australia: new policies for a new generation*, Peter Dawkins and Mike Steketee (eds), Melbourne University Press, 2004.
100. “Regulating interconnection pricing” with Joshua Gans, p.55-85 in *Australian Telecommunications Regulation* (3rd. ed), Alasdair Grant (ed), Communications Law Centre, UNSW Press, 2004. (with Richard Hayes and Joshua Gans, 4th. ed., CCH, 2012).
101. “Competition policy and regulation” in *The Cambridge Handbook of Social Sciences in Australia*, Ian McAllister, Steve Dowrick and Riaz Hassan (eds), CUP, 2003.
102. “Corporatisation and the behaviour of Government Owned Corporations” in *From Bureaucracy to Business Enterprise: Legal and policy issues in the transformation of government services*, Michael J. Whincop (ed), Ashgate, Sydney, 2003.
103. “Commentary: the economics of penalties and the penalty of being an economist”, in *Competition law at the turn of the century: a New Zealand perspective*, Mark Berry and Lewis Evans (eds), Victoria University Press, Victoria, NZ, 2003.
104. “Why privatisation? Lessons from Australia”, p.14-25 in *Privatisation: A review of the Australian experience*, Margaret Mead and Glenn Withers (ed), CEDA, Melbourne, 2002.
105. “Access: what, where and how”, p.63-93 in *Achieving better regulation of services*, (conference proceedings), Productivity Commission, Melbourne, 2000.
106. “Issues in access” with Rodney Maddock, p.19-30 in *1999 Industry Economics Conference: conference proceedings*, Productivity Commission, Melbourne, 1999.

107. "Rail access and rail reform" with Rodney Maddock, p.219-229 in *1999 Industry Economics Conference: conference proceedings*, Productivity Commission, Melbourne, 1999.

108. "Privatisation: does reality match the rhetoric?", p.23-41 in *1998 Industry Economics Conference: conference proceedings*, Productivity Commission, Canberra, 1999.

109. "Economics", p.93-100 in *Challenges for the social sciences and Australia*, (Prepared by the Academy of Social Sciences Australia) Commonwealth of Australia, 1998.

110. "Comments on the effects of microeconomic reforms on product and factor markets", p.65-72 in *Microeconomic reform and productivity growth*, (Productivity Commission and Australian National University) Commonwealth of Australia, 1998.

111. "Principles of price cap regulation", p.45-53 in *Infrastructure regulation and market reform: principles and practice*, (M. Arblaster and M. Jamison eds.) Commonwealth of Australia, 1998.

112. "Infrastructure access: the case of electricity in Australia", p.183-194 in *1996 Industry Economics Conference: conference proceedings*, Productivity Commission, AGPS, Canberra, 1996.

113. "Asset valuation and access to essential infrastructure facilities under Part IIIA of the Trade Practices Act 1974", p.94-116 in *Deregulation of public utilities: current issues and perspectives*, (Megan Richardson ed.) Centre for corporate law and securities regulation, The University of Melbourne, Melbourne, 1996.

114. "Bottlenecks and regulation in telecommunications", with Rod Maddock and David Shavin, p.289-312 in *Communications Research Forum, volume 1*, Bureau of Transport and Communications Economics, AGPS, Canberra, 1995.

115. "What an industry economist needs to know", p.77-84 in *1995 Industry Economics Conference: papers and proceedings*, Bureau of Industry Economics, AGPS, Canberra, 1995.

116. “Comments on Privatisation and market forces: their role in infrastructure provision”, p.166-168 in *Economic Rationalism: Dead End or Way Forward?*, (Stephen King and Peter Lloyd eds.) Allen and Unwin, 1993.

117. “Auctions and Privatisation: A non-technical survey”, with Simon Grant, p.134-149 in *Privatisation: The financial implications*, (Kevin Davis and Ian Harper eds.) Allen and Unwin, 1993.

***Books Edited*:**

118. *How Big Business Performs: Private Performance and Public Policy,* with Peter Dawkins and Michael Harris, Allen and Unwin, 1999.

119. *Economic Rationalism: Dead End or Way Forward?* with Peter Lloyd, Allen and Unwin, 1993.

***Text Books*:**

120. *Principles of Microeconomics (Australian edition)*, with Joshua Gans and N. Gregory Mankiw, Harcourt Brace, Sydney, 1999 (second edition 2003, third edition 2005, fourth edition 2009, fifth edition 2012, sixth edition 2015, seventh edition 2018).

121. *Principles of Economics (Australian edition)*, with Joshua Gans, Robin Stonecash and N. Gregory Mankiw, Harcourt Brace, Sydney, 2000 (second edition 2003, third edition 2005, fourth edition 2009, fifth edition 2012, sixth edition 2015, seventh edition 2018, eight edition 2020). (Fourth edition, winner, Tertiary (Adaptation) Teaching and Learning Award, The Australian Educational Publishing Awards, 2009).

***Monash Business Policy Forum (co-authored policy papers)*:**

122. *Reforming free-to-air broadcasting in Australia*, March 2015.

123. *Rationalising Rustic Regulators: How should Australia’s national economic regulators be reorganised*, July 2014.

124. *Agenda for National Competition Policy Inquiry*, November 2013.

Attachment 2

2 March 2023

Professor Stephen King
The Purcell Group

Dear Professor King

Third party submission by Bendigo and Adelaide Bank Limited (BEN) in relation to application by Australia and New Zealand Banking Group Limited (ANZ) for merger authorisation in relation to its proposal to acquire 100% of the issued shares of SBGH Limited (SBGH) (which owns 100% of the shares of Suncorp Bank) from Suncorp Group Limited (Suncorp Group) (the Proposed Acquisition) (Authorisation Application)

1 We refer to our engagement letter to you dated 26 August 2022. Defined terms in that letter have the same meaning in this letter (unless otherwise indicated).

2 On behalf of BEN, we are instructed to seek your expert opinion, in the form of a written report, in connection with the Authorisation Application.

3 This letter sets out instructions for the preparation of your expert report.

Documents provided for the purpose of preparing your report

4 For the purposes of preparing your expert report, we have provided you with copies of the following documents:

(a) non-confidential and publicly available versions of ANZ's application and supporting documents (including expert reports and witness statements relied on by ANZ);

(b) data from the Australian Prudential Regulation Authority (APRA) on monthly authorised deposit-taking institution statistics and points of presence of authorised deposit-taking institutions;

(c) data from Kynetec regarding farm lending at a state level; and

(d) investor presentation packs and public statements made by each of Suncorp Bank and BEN.

Questions

5 Please answer the following questions based on your training, study and/or experience in economics and your review of the materials identified in paragraph 4 and the assumptions set out in paragraph 6:

In your opinion, will the Proposed Acquisition:

(a) *have the effect, or would be likely to have the effect, of substantially lessening competition in any market in Australia*; *and/or*

(b) *result, or be likely to result, in a benefit to the public, and whether that benefit would outweigh any detriment to the public that would result, or be likely to result, from the Proposed Acquisition?*

Assumptions

6 In answering the questions set out in paragraph 5, please consider your answer for each of the following counterfactuals:

(a) assuming the future without the Proposed Acquisition involves BEN acquiring Suncorp Bank; and

(b) assuming the future without the Proposed Acquisition is the status quo where Suncorp Bank will continue to operate under the ownership of Suncorp Group.

Expert witness code of conduct

7 We ask that you prepare your report in accordance with the requirements of the Federal Court's Expert Evidence Practice Note (GPN-EXPT) (**Practice Note**), which includes the Harmonised Expert Witness Code of Conduct (Code). A copy of the Practice Note (including the Code) was enclosed with your letter of engagement.

8 Under the Code, your report must clearly state the following:

(a) your name and address;

(b) an acknowledgement that you have read this code and agree to be bound by it;

(c) your qualifications as an expert to prepare the report;

(d) the assumptions and material facts on which each opinion expressed in the report is based (this letter of instructions may be annexed);

(e) the reasons for and any literature or other material utilised in support of each such opinion;

(f) (if applicable) that a particular question, issue or matter falls outside your field of expertise;

(g) any examinations, tests or other investigations on which you have relied, identifying the person who carried them out and that person's qualifications;

(h) the extent to which any opinion which you have expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;

(i) a declaration that you have made all the inquiries which you believe are desirable and appropriate (save for any matter identified explicitly in the report), and that no matters of significance which you regard as relevant have, to your knowledge, been withheld from the court;

(j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

9 We look forward to receipt of your report in due course.