Reasons for Determination

Application for merger authorisation

lodged by
Australia and New Zealand Banking Group Limited
in respect of
its proposed acquisition of Suncorp Bank
Merger authorisation number: MA1000023

4 August 2023
Commissioners: Catriona Lowe, Mick Keogh, Anna Brakey, Liza Carver, Peter Crone, Stephen Ridgeway

Executive summary

Australia and New Zealand Banking Group Limited (ANZ) has sought merger authorisation in relation to its proposal to acquire 100% of the issued shares of SBGH Limited (which owns 100% of the shares of Suncorp Bank) and related assets from Suncorp Group Limited (the Proposed Acquisition).

The ACCC must not grant an authorisation unless it is satisfied in all the circumstances that the Proposed Acquisition:

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

a) would result, or be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Acquisition.[1]

As the ACCC is not satisfied under either test, it cannot make a determination granting authorisation of the Proposed Acquisition. The ACCC therefore denies authorisation and dismisses the application.

The statutory framework

Merger authorisation provides statutory protection from legal action for an alleged contravention of section 50 of the Competition and Consumer Act 2010 (Cth) (the Act), which prohibits the acquisition of shares or assets if the acquisition would have or be likely to have the effect of substantially lessening competition in any market. Authorisation is a public and official act of some seriousness.[2]

The ACCC may grant authorisation if one of the two conditions, set out in paragraphs a) and b) above, is fulfilled. The fulfilment of one of these conditions is a necessary precondition to the grant of authorisation, as it enlivens the ACCC's discretion to grant authorisation. If neither condition is fulfilled, authorisation must not be granted. To be 'satisfied' requires an affirmative belief.

Information before the ACCC

The ACCC received more than fifty submissions, 27 witness statements, and 12 expert reports. The ACCC commissioned a further 3 expert reports.

The ACCC has also used its compulsory evidence gathering powers to require the merger parties and other third parties to provide information and documents. Through this process the ACCC has received more than 200,000 documents.

To test the information before it and to gather further information to assist the ACCC's understanding of the issues, the ACCC conducted compulsory examinations of a number of individuals.

1 Section 90(7)(a) and (b) of the *Competition and Consumer Act 2010* (Cth).

2 *Application by Medicines Australia Inc* [2007] A CompT 4, [128].

Context for the ACCC's assessment

Financial services are central to how Australian consumers live and do business. Banks play a pivotal role in this system, particularly in facilitating traditional retail and business deposit-taking and lending activities.

Competitive banking markets deliver better price and service choices to consumers and businesses. A lack of competition in banking markets can have significant effects, noting that more than a third of Australian households have a mortgage, with loans totalling around 2 trillion dollars.

Australia's retail banking sector is an established oligopoly, in which the four major banks collectively hold 72% of banking system assets.[3] It is among the most concentrated banking sectors in the world and has been for many years. In the 1960s and 1970s, the major banks, of which there were up to eight, accounted for around 80% of banking assets in Australia. While this share declined to around 65% following deregulation and the entry of foreign banks in the 1980s, the market share of the major banks, of which there are now only four, has subsequently gradually increased to its current level.[4] It is also one of the most profitable banking sectors in the world, and has been for a sustained period.[5]

There is a long history of regulators and policy-makers identifying and seeking to address competition concerns in the banking sector, including reports from the Productivity Commission and the ACCC. These reports have found that the 'major banks' market power is a defining feature of the financial system' and highlighted significant concerns including observations that there is an 'accommodative and synchronised approach to pricing' between the major banks, which was 'not unexpected and is enabled by the oligopoly market structure in which the big four banks collectively have about an 80% share'.[6]

In the period since these reports were published, changes have occurred and there has been evidence of an increase in competition in home loans, including most recently through banks making increasing use of promotional and cashback offers. However, recent intense competition in home loans appears to have been short lived. Public comments from several bank CEOs have stated that these promotions were resulting in loans 'being written below the cost of capital' or were 'value destroying', and that they wanted to 'step back' or compete on aspects other than price.[7] The market conditions were 'atypical'.[8] At the same time, the returns on equity for the major banks have increased since 2020.[9]

There are high barriers to sustainable new entry and expansion of sufficient scale to competitively constrain the incumbents, particularly the major banks. The concentrated

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3 ACCC calculations based on Australian Prudential Regulation Authority (APRA), Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. The share of banking system assets is calculated by dividing each entity's "total resident assets" by the total value of "total resident assets" reported by all ADIs. APRA's monthly ADI statistics do not included Credit Unions and Building Societies with less than $200m in total assets.

4 Michelle Bullock, 'Big Banks and Financial Stability' (Speech, Economic and Social Outlook Conference, 21 July 2017).

5 As explained further in the ACCC's reasons for determination, the ACCC has examined the return on equity and the net interest margins of Australian major banks and compared these to major banks in other comparable jurisdictions. While relative profitability (under both measures) has declined in more recent years, major Australian banks (collectively) remain among the five most profitable countries as measured by return on equity, and with the exception of the USA, the highest as measured by net interest margin.

6 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, pp 2, 4-5; ACCC, Residential Mortgage Price Inquiry Final Report, November 2018, p 8.

7 For example, Ross McEwan, CEO of NAB, reported on 6 May 2023; Peter King, CEO of Westpac, reported on 7 May 2023; Marnie Baker, CEO of BEN, reported on 20 February 2023; Patrick Allaway, CEO of BOQ, reported on 20 April 2023.

8 Australian Financial Review, 'CBA back in business but warns credit growth will slow', 15 February 2023.

9 ACCC analysis of data submitted by ANZ. ANZ, ANZ response to ACCC RFI dated 21 June 2023, 27 June 2023.

nature of the banking industry, with the major banks maintaining significant market shares and high profits over a considerable time, has largely remained unchallenged by new entrants and smaller players. In competitive markets, the credible threat of entry and/or expansion plays an important role in constraining the price, adding a discipline to improve services and influencing investment decisions of incumbents. In the Australian banking sector, few challengers have entered, grown sustainably, and competed effectively.

The most significant factors influencing these barriers include the need for scale, funding costs, regulatory requirements, low levels of customer switching, the importance of reputation and brand recognition, and the importance of access to distribution networks.

The history of attempted entry and expansion demonstrates the challenges new and growing banks face in trying to expand to a scale that gives them access to the same advantages as the major banks. An exception to this is Macquarie Bank, which has expanded its retail banking business significantly in the past 10 years. The ACCC notes the unique nature of this expansion owing to the broader position of Macquarie Group. Additionally, Macquarie Bank's expansion has been targeted,[10] and it has not replicated the full suite of products and services offered by major banks to retail and business customers.

The likely future with and without the Proposed Acquisition

To assess the likely competitive effects of, and the public benefits and detriments likely to result from, the Proposed Acquisition, the ACCC compares the future with (the factual) and without (the counterfactual) the Proposed Acquisition for which authorisation is sought. Factual-counterfactual analysis is a tool to assist in assessing the effects that are likely to flow from the Proposed Acquisition, and the likely extent and impact of those effects.

In the future with the Proposed Acquisition, ANZ submits that its increased scale will enable continual and more efficient investment in digital transformation and innovation. ANZ claims that this will allow it to better compete against the other three major banks. The ACCC accepts that the Proposed Acquisition will likely give ANZ an ability to spread its fixed costs over a larger customer base through increased scale, and this may allow it to achieve some cost efficiencies. However, it is highly uncertain whether this will fundamentally change ANZ's future competitive position; or whether in the absence of the Proposed Acquisition ANZ's ability to be an effective competitor will merely be '*marginally less'* than if the Proposed Acquisition proceeds.[11]

While a range of scenarios may occur if the Proposed Acquisition does not proceed, the ACCC considers that two have a realistic prospect of occurring: one is a continuation of the status quo – that is, that Suncorp Bank remains a part of Suncorp Group (No-Sale Counterfactual); and the other is that Suncorp Bank is acquired by or merges with a second-tier bank; specifically, with Bendigo and Adelaide Bank (Bendigo Merger Counterfactual).

ANZ and Suncorp Group contend that the most likely counterfactual absent the Proposed Acquisition is a continuation of the status quo, in which Suncorp Group continues to own Suncorp Bank (i.e. the No-Sale Counterfactual). Based on the evidence, the ACCC considers that while this is a realistic counterfactual, it is not the only realistic counterfactual.

The likelihood of an alternative counterfactual, in which Bendigo and Adelaide Bank acquires or merges with Suncorp Bank, has been contested by the merger parties. The ACCC has considered the conflicting evidence from Suncorp Group and Bendigo and Adelaide Bank,

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10 See for example, Macquarie, 'Operational Briefing, Presentation to Investors and Analysts', 11 February 2020, p.48, where Macquarie describes its strategic focus on the, 70% LVR tier; and its reliance on originating loans through brokers.

11 ANZ oral submission to the ACCC, 16 June 2023, [15].

and assessed both the evidence's cogency and reliability, as well as the incentives each has to pursue a transaction in the event that the Proposed Acquisition does not proceed.

The genesis for the Proposed Acquisition is Suncorp Group's desire to become a pureplay insurer. Suncorp Group's internal documents evidence that over the course of several years it has considered ways to improve shareholder value, and overcome any 'conglomerate discount' – that is, the fact that the combined Suncorp Group was considered to be valued below the sum of its insurance and banking parts. This led Suncorp to the view that a cash sale to a major bank would realise the largest financial benefits to its shareholders and to it approaching ANZ. However, this was not the only option considered and a regional merger was also considered in detail, with specific reference to Bendigo and Adelaide Bank. In undertaking its valuation assessment in 2022, advice from Suncorp Group's external consultants considered there to be three alternatives: seek a cash offer from another major bank; merge with Bendigo and Adelaide Bank; or retain Suncorp Bank. The second best option to the ANZ offer was a merger with a regional bank, with Bendigo and Adelaide Bank the preferred partner. Over the course of these reviews, strategic analysis repeatedly concluded that a regional bank merger with Bendigo and Adelaide Bank would be value accretive.

Taking all the evidence into account, the ACCC considers that there is a realistic commercial likelihood that absent the Proposed Acquisition, Bendigo and Adelaide Bank would make an offer to acquire Suncorp Bank, and that such an offer would be considered and accepted by Suncorp Group following negotiations, with implementation likely taking a number of years.

Relevant to the ACCC's consideration of the competitive effects of the Proposed Acquisition, the ACCC's view is that the Bendigo Merger Counterfactual would likely create a larger second-tier bank that would be better placed to grow its market share through increased competition and trigger a stronger competitive response from the major banks.

Competitive effects

In undertaking this competition assessment, the ACCC has focused on the areas of overlap between ANZ and Suncorp Bank, noting the higher degree of geographic overlap between ANZ and Suncorp Bank in Queensland and northern New South Wales.

The ACCC's assessment is not dependent on defining the product or geographic dimensions of the relevant markets narrowly. The ultimate assessment would be the same even if the affected competition were regarded as limited to competitively significant segments of broader product or geographic markets.[12]

Based on the products and services where ANZ and Suncorp Bank compete most closely, the ACCC considers it appropriate to consider the Proposed Acquisition in the context of the product markets for home loans; retail deposits (including transactions and savings accounts, and term deposits); small to medium (SME) banking and agribusiness banking products. These are discussed below.

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[12] The ACCC notes that a lessening of competition in a significant section of a market can constitute a substantial lessening of competition in the market. In *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 44 ALR 173, at [192] Smithers J said "Although the words "substantially lessened in a market" refer generally to a market, it is the degree to which competition has been lessened which is critical, not the proportion of that lessening to the whole of the competition which exists in the total market. Thus a lessening in a significant section of the market, if a substantial lessening of otherwise active competition may, according to circumstances, be a substantial lessening of competition in a market". This was referred to with approval by the Full Court in *Rural Press Ltd v ACCC* (2002) 118 FCR 236 at [131] and *Singapore Airlines Ltd v Taprobane Tours WA Pty Ltd* (1991) 104 ALR 633 at 658 (French J, with whom Spender and O'Loughlin JJ agreed).

The ACCC's assessment considers both the likely unilateral and coordinated effects.

Unilateral effects arising from a merger refer to changes in firms' behaviour and market outcomes that are profitable in the absence of any firm facing and responding to the prospect of future profits and punishments.

Mergers have coordinated effects when they alter the nature of interdependence between rivals such that coordinated conduct is more likely, more complete or more sustainable. Coordinated effects may arise from tacit coordination that does not involve prohibited cartel conduct. The ACCC considers that the activities of the merger parties that are most susceptible to coordination both with and without the Proposed Acquisition are home loans and retail deposits, which are considered in the analysis below. The ACCC notes that the markets for SME banking and agribusiness banking products may also be susceptible to coordination, however relative to home loans and deposits the likely effects of the Proposed Acquisition are less concerning because of the more heterogeneous/differentiated (relationship driven) nature of these products and services. Consequently, these have not been the primary focus of the ACCC's assessment.

The ACCC's analysis is focused on effects that are likely to occur in the short to medium term (5 to 7 years). This period takes into account the fact that the commercial arrangements between ANZ and Suncorp Bank contemplate integration occurring over many years.

Home loans

Home loans comprise loans and related services to customers to finance the construction or purchase of residential property for owner-occupation or investment. These loans include those provided to customers switching from an existing loan with a current bank to a new loan with another bank (or to a new loan product within the same bank) to finance the same property. The ACCC has considered the effects of the Proposed Acquisition in the context of a national market for the supply of home loans. No submissions to the ACCC proposed an alternative market definition relating to the supply of home loans.

In its analysis, the ACCC has considered the extent to which the Proposed Acquisition would enable ANZ and other banks to profitably raise their prices, worsen the quality of their services, or reduce their pace or extent of innovation, both through unilaterally-profitable actions as well as through coordinated actions.

Unilateral effects

It is well accepted that the removal of a competitor from a market through acquisition is likely, other things being equal, to reduce constraints on the remaining firms and thereby lessen competition to some degree. In relation to the national market for the supply of home loans there are two factors which suggest the Proposed Acquisition may raise concerns.

First, to the extent Suncorp Bank has differentiated its home loan offerings from its rivals, the Proposed Acquisition could manifest in a loss of quality or choice for consumers.

Second, there are high barriers to entry and expansion (particularly for banks other than Commonwealth Bank, Westpac, ANZ, NAB and Macquarie Bank). This limits the constraint that the threat of entry and/or expansion is likely to impose.

There are however three main factors that indicate these concerns may not be significant.

First, while the market is concentrated, the market share increment which will result from the Proposed Acquisition is relatively small, and the ACCC does not consider Suncorp Bank to be a particularly vigorous competitor in terms of the pricing of home loans.

Second, ANZ and Suncorp Bank do not appear to be especially close competitors in the supply of home loans, and the evidence does not suggest that Suncorp Bank and ANZ are winning a disproportionate amount of business from one another.

Third, there remains constraint from other banks including Commonwealth Bank, Westpac, and NAB. There is also constraint impose by Macquarie Bank, albeit focused on particular segments.

Balancing these factors, while there is likely to be some lessening of competition in this scenario arising from the unilateral effects of the Proposed Acquisition, the ACCC considers it is unlikely to be substantial.

Coordinated effects

Coordinated effects in the market for home loans may manifest in any one or more of the following ways: higher prices or interest rates; market share division or customer allocation; reduced investment or service quality (including slower application turnaround times); and less aggressive advertising and marketing strategies.

The ACCC considers that coordination is most likely to involve the major banks engaging, either expressly or tacitly, in a 'live and let live' style of conduct or pattern of behaviour to achieve 'soft' or 'muted' price or non-price competition sufficient to either maintain and/or protect their existing market shares and/or to not challenge the status quo. It is the prospect of this style of conduct and pattern of behaviour that the ACCC has focused on in undertaking its competition assessment.

The ACCC notes that this is a finely balanced assessment that takes into account competing factors. In undertaking this assessment, the ACCC has drawn upon the framework produced by an independent expert engaged by the ACCC, Professor Nicolas de Roos.

There are a variety of features of the home loan market which will continue to exist both with and without the Proposed Acquisition.

First, while the Proposed Acquisition reduces the number of suppliers of home loans by one, it is primarily coordination between the four major banks that is the most likely cause for concern, and the Proposed Acquisition will not alter this.

Second, CBA and Westpac will continue to be materially larger in market shares than ANZ and NAB, meaning that there is disparity within the group of potentially coordinating firms.

Third, the Proposed Acquisition is unlikely to have any impact on current trends in respect of barriers to entry or consumer frictions, which the ACCC considers have already been declining, albeit incrementally, overtime.

Fourth, factors that currently make it easier for the major banks to initiate and/or sustain coordination, such as market stability, communication devices, and price transparency, are unlikely to be impacted by the Proposed Acquisition significantly.

However, there are some consequences of the Proposed Acquisition which mean that coordination is more likely. The most significant is that the Proposed Acquisition increases the symmetry between ANZ, Commonwealth Bank, NAB and Westpac.

This is because the Proposed Acquisition closes the gap in market share of the home loans market between ANZ and the other three majors. While the increase in ANZ's market share appears small, it has a significant impact, moving ANZ into the position of the third largest bank in Australia. The Proposed Acquisition will also alter ANZ's funding base. The Proposed Acquisition will, in effect, reduce one of ANZ's key points of differentiation from the other three major banks, which is that it has a more diverse funding base. While the size of this effect is proportional to the size of the Suncorp Bank business, it operates to move ANZ closer to the other three major banks in terms of its asset and liability composition in key areas such as Australian housing lending; Australian non-financial business lending; resident deposits and short-term borrowing.

The Proposed Acquisition also further increases ANZ's domestic focus towards retail banking. While, by ANZ's own estimation, it is the most international bank of its peer group (being the four major banks in Australia) by a long way, for several years it has sought to unwind its super-regional strategy by withdrawing from retail banking in Asia and focus more on its core Australian business.[13] The Proposed Acquisition means that ANZ would acquire an additional 1.2 million Australian customers for its domestic retail banking business, rather than needing to grow its business organically. Mr Elliott has commented publicly that the Proposed Acquisition is 'the equivalent of many years of organic system growth'. The ACCC considers that in the absence of the Proposed Acquisition, ANZ would likely seek to continue to grow organically, and in doing so, would likely continue to be incentivised to compete harder than the other major banks to grow its domestic market share; conversely, the Proposed Acquisition would likely make ANZ's income and profits more dependent on market conditions in Australia, and its incentive to coordinate on home loans correspondingly greater.

An additional consideration relevant to the Bendigo Merger Counterfactual is that a combined Bendigo/Suncorp Bank will likely attenuate the ability and incentive of the major banks to engage in or sustain coordination more effectively than Bendigo and Adelaide Bank alone.

For example, this may occur because a combined Bendigo/Suncorp Bank could pursue a different competitive strategy from the major banks (for example with different business models or targeting different niches in the competitive fringe), which would make it a more effective challenger firm than each currently is. This would alter the competitive dynamics because another disruptor in the market would reduce the ability and incentive of the major banks to engage in cooperative behaviour. Even though Macquarie Bank already exists in the market as an effective competitor, having more challenger firms with different business models or targeting different niches in the competitive fringe would decrease the ability of the major banks to initiate and sustain coordination.

The ACCC considers that a combined Bendigo/Suncorp Bank would both strengthen and diversify the competitive fringe of challenger banks in a way that is likely to reduce the ability and incentive of the major banks to engage in coordination. On this basis, the ACCC considers that the likelihood or extent of coordinated effects arising from the Proposed Acquisition is likely to be even greater when assessed against this counterfactual.

Having regard to the importance of competition between the major banks in the home loan market, the significant cost and scale advantages they enjoy over other banks and the high barriers to entry and expansion, the competitive impact of any coordination between the major banks emerging would be substantial. Taking all of the above evidence into account,

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13 Bluenotes, LONGREAD: the bank we're building, 9 November 2021; The Sydney Morning Herald, The Sydney Morning Herald, ANZ boss eyes institutional bank investment, 12 June 2023.

the ACCC considers the Proposed Acquisition is likely to increase the incentives of the major banks to engage in coordination, materially increasing the likelihood of coordination being initiated and/or sustained by the major banks. On this basis, the ACCC is not persuaded that the Proposed Acquisition is not likely to result in a substantial lessening of competition in the market for home loans on the basis of coordinated effects.

Therefore, taking into account the considerations in relation to unilateral and coordinated effects, the ACCC is not satisfied in all the circumstances that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition in market for home loans.

Retail deposits

In the ACCC's Statement of Preliminary Views, it notes that it was giving consideration to the likely competitive effects in the national market for retail deposits. The boundaries of this market have been uncontentious, and the ACCC has received (relative to other markets) very little material on this issue.

In relation to unilateral effects, the ACCC considers that many of the same analytical considerations are likely to apply as those discussed under the analysis of the home loans market above. The ACCC considers there is likely to be some reduction in competition compared to the No-Sale Counterfactual from removing the Suncorp Bank offering from the market. The reduction in competition from the Proposed Acquisition may be greater when it is compared to the Bendigo Merger Counterfactual, to the extent that a merged Bendigo/Suncorp Bank could be perceived by depositors as offering increased security – a key non-price attribute of competition in retail deposits. In both cases, there are high barriers to entry and expansion and therefore the prospect of new (and timely and sufficient) entry or expansion are unlikely to impose much constraint.

Against this, the ACCC has balanced the small aggregation of market share, the fact that ANZ and Suncorp Bank do not appear to be particularly close competitors in this market, and the constraint imposed by other competitors. These factors combined with the size of Suncorp Bank make substantial unilateral impacts unlikely. Therefore, the ACCC concludes that while the Proposed Acquisition is likely to result in some lessening of competition in the market for retail deposits, substantial unilateral effects are unlikely.

In relation to coordinated effects, the ACCC considers that the market for retail deposits exhibits a number of features that suggest it is similarly conducive to coordination as the market for home loans. However, a key difference is that home lending is the key use to which retail deposits are traditionally put and, accordingly, banks tend to set their deposit interest rates with the aim of meeting home lending funding targets or objectives (i.e. banks need to raise deposits to fund growth in home lending). Therefore, the ACCC considers that in practice, the major banks are likely to be less motivated to coordinate in relation to retail deposits (such as by offering lower rates) than in relation to home lending. While the Proposed Acquisition is likely to make the market for retail deposits more conducive to coordination, the ACCC considers that the home loan funding-related demands for deposits of most major banks mean that a substantial lessening of competition as a result of coordinated effects is not likely.

Therefore, taking into account the considerations in relation to unilateral and coordinated effects, the ACCC is satisfied in all the circumstances that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition in the supply of retail deposits.

The ACCC notes that independent of its consideration of the Proposed Acquisition, on 14 February 2023 the Treasurer directed the ACCC to hold an inquiry under Part VIIA of the Act to examine competition and consumer issues affecting retail deposit products.[14]

Small to medium enterprise banking products in Queensland

ANZ and Suncorp Bank overlap in the supply of business banking products and services to small to medium enterprise customers in Queensland.

The ACCC notes that there are important interrelationships between retail banking markets. For example, banks may target customer segments such as “business owners and home owners”. Customers that have both business and home loan relationships with a bank borrow more money and less likely to switch banks relative to customers that only have a home loan or only have a business relationship with a bank. [15] This interrelationship exists because many business banking business customers have pre-existing relationships with their bank through the use of retail products. Additionally some customers may use the same products for both personal and business use (e.g. small business customers may use personal banking products to fund their business).

The Proposed Acquisition results in a loss of consumer choice and competitive constraint resulting from the removal of Suncorp Bank’s offerings from markets in Queensland. that the ACCC considers Suncorp Bank is a competitive bank in SME banking, particularly in certain segments, and in relation to its pricing and strong customer service propositions.

The ACCC notes that the removal of Suncorp Bank occurs in a context where the supply of SME banking products in Queensland is concentrated, and the Proposed Acquisition would result in a significant aggregation of market share.

However, balanced against this, the ACCC notes that Suncorp Bank and ANZ do not appear to be each other’s closest competitor given the differences in their strategic focus, geographic presence.[16]

Moreover, other competitors including the major banks, Bank of Queensland (which has similarities to Suncorp Bank), Bendigo and Adelaide Bank and Judo Bank may be viable alternatives for some SME customers.

Barriers to entry and expansion, particularly for small banks and new entrants, are not insignificant. They include acquiring the right personnel to manage customer relationships where necessary, and providing the facilities or services required by specific groups of SME customers, such as those who rely on branches for cash or those who require complex transactional banking services. The lack of scale and resources for small banks may hamper their ability to expand and to compete on price, further diminishing the competitive constraints they pose. Additionally, customer “stickiness” and their tendency to use their personal banks for business banking may mean that they are at a major disadvantage vis-a-vis major banks in gaining business customers. New entrants face additional barriers in becoming an authorised deposit-taking institution. These factors combined mean that the prospect of new entry or expansion at a sufficient scale to impose a credible constraint is low.

In the Bendigo Merger Counterfactual, as in the factual, Suncorp Bank would be removed as a competitor, and this may also raise some level of concern. However, any such concerns

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[14] ACCC, Retail Deposits Inquiry 2023, accessed 03 August 2023.

[15] **[Redacted - Confidential]**.

[16] **[Redacted - Confidential]**.

will not be as extensive, given Bendigo and Adelaide Bank's relative lack of presence in Queensland. Additionally, the ACCC considers that a merged Bendigo/Suncorp Bank entity may also be a more effective competitor than either bank is separately.

While it is finely balanced, the ACCC is not satisfied that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition in a market or markets for the supply of SME banking services to customers in Queensland.

Agribusiness banking products in Queensland

ANZ and Suncorp Bank overlap in the supply of business banking products and services to agribusiness customers in Queensland. Locations where both Suncorp Bank and ANZ have an agribusiness presence include Ayr, Bundaberg, Cairns, Dalby, Emerald, Mackay, Rockhampton, Roma, Goondiwindi, Townsville, and Toowoomba.

Agribusiness customers have distinct banking requirements that are quite different to other business customers, and there is a greater emphasis on relationship management and expectations of local industry knowledge.

Relationship management services are important in agribusiness banking. Relationship managers support the financial needs of primary producers. They often physically travel to the farms of primary producers and will establish ongoing relationships. The ACCC considers this model of service is driven both by customer preference, and the fact that the diverse nature of agribusiness creates a preference for banks to adopt this model to ensure that they fully understand and can assess the risk of each customer.

Suncorp Bank imposes an important competitive constraint on ANZ and other banks supplying agribusiness banking products in Queensland, principally through its pricing, customer service, and its ability and willingness to serve non-standard agribusiness banking needs. Suncorp Bank has a strong local presence and reputation as an agribusiness lender which is highly valued by agribusinesses in Queensland.

The ACCC considers that if ANZ acquires Suncorp Bank, there is little incentive for ANZ to maintain Suncorp Bank's relationship management model and focus on service quality. Rather, ANZ has strong incentives to align Suncorp Bank's agribusiness customer relationship model with its own, particularly after the integration period.

Given the diversity in agribusiness customers' characteristics and banking needs, having a range of competitors with differentiated offerings will yield better competition outcomes across different product dimensions, geographic areas and customer segments.

The ACCC has considered the number and the type of competitors that would continue to impose constraints in areas where ANZ and Suncorp Bank's agribusiness operations overlap. The ACCC considers major banks would continue to act as a constraint particularly in relation to competitive facets such as price. However, these banks provide a lesser level of constraint in relation to other facets such as customer service and care; and ability and willingness to serve non-standard agribusiness banking customers.

Outside of the major banks and Suncorp Bank, the other main competitor in Queensland is Rabobank. The ACCC considers that Rabobank will continue to act as a constraint in this market.[17] On the evidence available, the ACCC does not consider that Bendigo and Adelaide Bank, Judo Bank and Bank of Queensland impose strong constraints.

[17] However, the ACCC considers that Rabobank is largely focused on **[Redacted - Confidential]**.

The constraint imposed by the threat of entry or expansion is limited. This is for two reasons. First, industry specialisation plays a key role in banks understanding the risk profiles of their agribusiness customers. It is not clear that rival firms will have the same industry focus as Suncorp Bank, and this may limit their ability and/or incentive to expand in a timely manner. Second, to the extent that key personnel such as agribusiness bankers are a barrier to expansion, acquiring them at scale is difficult as the competition for these resources is strong and it takes time for bankers to become specialised in agribusiness.

In the Bendigo Merger Counterfactual, as in the factual, Suncorp Bank would cease to be a separate competitor in Queensland. However, the ACCC considers that a combined Bendigo/Suncorp Bank is likely to impose a competitive constraint similar to, if not stronger than, these banks individually in the agribusiness banking markets in Queensland. A combined Bendigo/Suncorp Bank entity may be a more effective competitor than either bank. Unlike the Proposed Acquisition, a merger between Bendigo and Adelaide Bank and Suncorp Bank is likely to have a more limited prospect of unilateral effects.

The ACCC is not satisfied in all the circumstances that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition in a market or markets for the supply of agribusiness banking products to customers in Queensland.

Conclusion on competitive effects

One basis on which the ACCC is able to grant authorisation is if it is satisfied in all the circumstances that the Proposed Acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition. Given the ACCC's conclusions in relation to the markets for home loans, SME banking, and agribusiness banking, the ACCC is not satisfied in all the circumstances that the Proposed Acquisition is not likely to substantially lessen competition.

Public benefits and detriments

Another basis on which the ACCC may authorise the Proposed Acquisition is if it is satisfied that the conduct would result, or be likely to result, in a benefit to the public and the benefit would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Acquisition.

This can be described as a 'net public benefit test'. In applying it, the ACCC examines the benefits and detriments to the public that would result (or be likely to result) from the proposed conduct for which authorisation is sought, and then determines whether the public benefits would outweigh the public detriments.

The ACCC adopts the broad approach taken by the Australian Competition Tribunal (the Tribunal) to considering public benefits and detriments. That is, the ACCC assesses all benefits and detriments, not just those related to effects on competition. The ACCC has regard to any non-trivial and non-ephemeral competitive or other benefit or detriment to the public that would result, or be likely to result, from the Proposed Acquisition.

The ACCC compares the likely futures with and without the Proposed Acquisition, as an analytical tool to assess whether a benefit or detriment is likely to arise from the Proposed Acquisition and to evaluate the likely extent of the benefits and detriments.

Public benefits

The ACCC considers that a number of benefits to the public are likely to result from the Proposed Acquisition.

First, the ACCC accepts that the Proposed Acquisition allows Suncorp Group to more efficiently and effectively focus on and run its insurance business, which may result in Suncorp Group being able to better meet the needs of its insurance customers and respond to challenges in the insurance industry. The ACCC accepts that Suncorp Group has a strong incentive to focus on its insurance business, but notes that the incentive to achieve this also exists without the Proposed Acquisition (for example, Suncorp Group may achieve this by divesting to another bank or by making changes such as technological investments). In that instance, any benefit from the Proposed Acquisition is likely confined to any such improvement happening sooner than it would occur absent the Proposed Acquisition.

Second, ANZ has claimed that the Proposed Acquisition will allow it to become a stronger bank. The ACCC accepts that the Proposed Acquisition is likely to result in public benefits in the form of cost savings from the removal of duplicated costs. ANZ estimates these synergies as being ~$260 million (pre-tax) per annum and expects they will largely eventuate from four years post-completion of the Proposed Acquisition. The ACCC considers there is some uncertainty to this estimate, and that there is a likelihood that the estimates provided by ANZ may be overstated. This is because the complexity and difficulty of integration may give rise to unanticipated costs that offset the synergies. The ACCC therefore considers that there are likely to be benefits in terms of synergies, but that the benefit is not as extensive as that claimed by ANZ.

Third, the ACCC considers there will be some, likely minimal, prudential related benefits to ANZ from the Proposed Acquisition. The ACCC considers there is potentially some benefit in the form of lower funding costs than those to which Suncorp Bank as a standalone bank would have access. However, the ACCC considers that these lower costs may be offset at least to some degree by increases to other costs.

To the extent that any of the above cost savings are retained, or largely retained by ANZ and its shareholders, they still constitute a public benefit but will generally be given less weight than benefits shared more broadly.

The ACCC also accepts that an increase in contributions to the Major Bank Levy could represent a potential public benefit, to the extent that it enables the Government to fund other goals of society. However, the Major Bank Levy is, in part, designed as a requirement that large banks contribute to the systemic risk that they pose, in recognition of the implicit government guarantee of assistance in times of financial distress. As the Major Bank Levy is in part to mitigate the risk of harm from the increased significance of larger banks, any benefits achieved from increased government revenue are offset by the increased systemic risk a combined ANZ/Suncorp Bank represents for society. The ACCC also considers that, in the Bendigo Merger Counterfactual, benefits in the form of increased contributions are also likely to arise.

ANZ has also claimed that benefits will accrue to the Queensland economy and Queenslanders, flowing from implementation agreements entered by ANZ and Suncorp Group with the State of Queensland. ANZ's agreement provides for the establishment of a major tech hub in Brisbane, and was executed on 16 June 2023; Suncorp Group's agreement, also executed on 16 June 2023, included commitments to invest in a Disaster Response Centre of Excellence. ANZ also points to public commitments it made at the time of announcing the Proposed Acquisition including $25 billion in new lending to support renewable energy targets and new energy projects; and $10 billion to support Queensland businesses over the next three years.

The conduct for which ANZ has sought authorisation is the acquisition of shares and other assets relating to Suncorp Bank, not the commitments and agreements made in respect of the Queensland government. The ACCC notes – consistent with the recent observations of the Tribunal – that its task is to assess the public benefits likely to result from the Proposed Acquisition itself. This assessment does not involve weighing public benefits resulting from commitments and agreements for which no authorisation has been sought.[18] The ACCC considers that there is a strong argument that any benefits to Queensland arising from the implementation agreements are not relevant benefits to the public. However, it also notes there is an alternative argument that such benefits would still be causally connected to the Proposed Acquisition and therefore should be taken into account.[19]

For the purposes of assessing the Proposed Acquisition, the ACCC has assumed, in line with ANZ's application, that these benefits can be considered and has assessed the magnitude of the claimed benefits. Having done so, the ACCC does not consider it necessary to reach a final position on whether they should be taken into account, as the magnitude is not sufficient to change its conclusion on whether there would be a net public benefit. That is, even considering the resulting effects of the agreements, the ACCC is not satisfied that at least some of the commitments would not occur absent the Proposed Acquisition. The ACCC considers that absent the Proposed Acquisition, if there are profitable lending or investment opportunities in Queensland, then it is likely that ANZ or other banks would take advantage of them. To the extent that this lending may occur on more favourable terms from ANZ under its commitments, than those offered absent the Proposed Acquisition, this benefit would be confined to the difference between such offers. The ACCC therefore considers that any public benefits relating to additional investment in Queensland would be small in scope.

Public detriments

Competitive harm

The most significant public detriments from the Proposed Acquisition are the likely effects on competition in relation to home loans, retail deposits, SME banking and agribusiness banking discussed previously. The ACCC considers that harm to competition, whether or not it amounts to a substantial lessening of competition, constitutes detriment to the public which it should take into account in carrying out its assessment of whether the Proposed Acquisition would result in a net public benefit.

Harms to Australian retail banking industry

The ACCC considers that there may be detrimental impacts that would affect the Australian banking industry more generally beyond the specific markets considered in the competition analysis.

For this reason, the ACCC has also taken into account, in its assessment of the precondition in s 90(7)(b), detriments that are likely to occur to retail banking more generally. This is also consistent with the ACCC's task in relation to this limb of the merger authorisation test under s 90(7) of assessing detriments to the public, which has a wide ambit and can include any impairment to the community generally, any harm or damage to the aims pursued by society

[18] ACCC Letter to ANZ and Suncorp re market structure and public benefits, 6 July 2023: Telstra/TPG [144]-[145], [159].

[19] Suncorp Group submission regarding public benefits, 13 July 2023, [16].

including as one of its principal elements the achievement of the goal of economic efficiency.[20]

The ACCC has received a significant volume of evidence regarding the proposition that scale is important in Australian retail banking. ANZ submits that a core rationale for its acquisition of Suncorp Bank is the necessity to acquire scale so it can compete more effectively against its larger rivals: Commonwealth Bank, Westpac and NAB. The Proposed Acquisition allows ANZ to acquire 1.2 million customers that it would otherwise have had to compete for. As the ANZ CEO commented when announcing the Proposed Acquisition, this is 'the equivalent of many years of organic system growth.'[21]

The ANZ CEO has described the acquisition of Suncorp Bank as 'unique',[22] and 'a once-in-a-lifetime-opportunity'.[23] This view appears to be formed on the basis that no other bank of a similar size is 'a low risk, strong franchise with great customers'.[24] ANZ holds this view notwithstanding there are other second-tier banks of similar scale to Suncorp Bank (for example, Bank of Queensland; Bendigo and Adelaide Bank; ING) which highlights the significance of the Proposed Acquisition. It may be that banks other than ANZ have different risk tolerances or would consider other transactions to be 'substitutes out of necessity' once the possibility to acquire Suncorp Bank is extinguished. However, it is clear on the evidence available to the ACCC that acquiring Suncorp Bank is the best and most meaningful acquisition or merger opportunity available to industry participants in the near term.

It is broadly accepted by all interested parties that scale is an advantage, although there is little evidence or agreement on whether there is a minimum efficient scale necessary to be an effective competitor in Australian banking. The evidence from most parties is consistent with the view that additional scale allows banks to defray their fixed costs associated with IT investments, marketing and regulatory costs over a larger customer base. It also suggests that scale may deliver funding cost benefits. Understandably the magnitude and effect of these scale benefits are difficult to precisely quantify and interested parties bring their own understanding and experience in making submissions, some of which may be coloured by a desire to convince the ACCC of propositions to influence the ACCC's decision-making.

Given the ACCC's Statement of Preliminary Views considered two counterfactuals with a realistic prospect of occurring: Suncorp Bank continuing to operate as part of Suncorp Group and the Bendigo Merger Counterfactual, the effect of scale in these two scenarios was a focal point for submissions. Submissions are broadly consistent in suggesting that banks at or around the size of Suncorp Bank will face difficulties in effectively challenging the major banks unless they grow scale. The ACCC received conflicting evidence and submissions about whether the increased scale that a combined Bendigo/Suncorp Bank would obtain would increase its effectiveness as a competitor. The ACCC considers that it is impossible to determine the exact effect of additional scale, but that additional scale is likely to improve its competitive position. The ACCC considers the increase in scale could result in a meaningful "step change" in scale, by effectively almost doubling the number of customers that a combined Bendigo/Suncorp Bank can spread its fixed costs over.

As the ACCC has previously observed in relation to Australian banking, 'in situations of oligopoly, all else being equal, a market structure that enables a competitive fringe of

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[20] Re 7-Eleven Stores Pty Ltd [1994] ATPR 41-357, [42,683].

[21] bluenotes, 'Elliott: a transformational advance for ANZ', 18 July 2023, accessed 03 August 2023.

[22] bluenotes, 'Elliott: a transformational advance for ANZ', 18 July 2023, accessed 03 August 2023; Australian Financial Review, 'Why ANZ needs the Suncorp deal', 18 July 2023.

[23] **[Redacted - Confidential]**.

[24] ANZ, 'Transcript of bluenotes video interview with ANZ Chief Executive Officer Shayne Elliott', 27 October 2022.

second-tier firms to effectively challenge the price and service decisions of large incumbents is likely to produce significantly better outcomes for consumers than one that does not'.[25]

The ACCC considers that outside of the major banks, the second-tier banks are currently an important source of competitive pressure on the major banks. This is especially significant given it is unlikely that there will be the credible threat of sustained new entry at scale to meaningfully constrain the major banks. Evidence obtained by the ACCC strongly indicates that the major banks consider the second-tier banks to be a competitive threat.[26]

The Proposed Acquisition therefore has detrimental impacts by removing the best and most meaningful opportunity for another second-tier bank to bolster its ability to effectively challenge the major banks through a step change in scale. In turn, it has the effect of further entrenching the oligopoly market structure that is highly concentrated within the four major banks. The best illustration of this is that it removes the opportunity for Bendigo and Adelaide Bank to potentially achieve this type of meaningful step change in the near to medium term (i.e. the Bendigo Merger Counterfactual). Notwithstanding this illustration, the ACCC's concerns are not premised on a specific alternative transaction occurring in the counterfactual, rather the detriment arises more generally in relation to a cohort of second-tier banks and the implication of the Proposed Acquisition for future market structure.

Other detriments

Finally, the ACCC notes it received submissions concerning possible detriments arising from the Proposed Acquisition in relation to reduced physical access to banking services and employment impacts. For each of these issues, the ACCC considers it is difficult to confidently determine which scenarios in the future with or without the Proposed Acquisition are likely to result in greater or less employment, or greater or fewer branch closures, such that little weight could be accorded to these detriments. Further, the ACCC notes that even if it could determine this, it would be difficult to assess whether this would be an efficient use of resources for society. The ACCC therefore considers that it is unable to place much weight on these factors being public detriments resulting from the Proposed Acquisition.

Weighing of the public benefits and detriments

In deciding whether it is satisfied that the likely public benefits of the Proposed Acquisition would outweigh the likely public detriments, the ACCC forms an evaluative assessment and judgement.

Based on the information before it, the ACCC considers the likely public benefits are the cost savings likely to accrue to ANZ. There is also likely to be some minimal prudential benefits and some additional benefits from a singular focus on insurance to Suncorp Group. The ACCC notes, these are not unique to this particular transaction and may also arise to a large extent in the Bendigo Merger Counterfactual, although the benefits will be achieved more quickly via the sale to ANZ.

Against this, the ACCC has to balance the public detriments it considers likely to result from the Proposed Acquisition. These are primarily composed of the likely competitive detriments in the markets for home loans, SME banking products and agribusiness banking products. It also includes the lessening of competition that is likely to arise in the market for retail

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25 ACCC submission to the Productivity Commission Inquiry into Competition in the Australian Financial System, September 2017, p. 8.

26 See for example, **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

deposits. Given the size of these markets, and their fundamental importance to the Australian economy, the public detriment across these markets is likely to be significant.

The ACCC also has to balance the likely detriments arising from enduring changes that may further entrench an oligopoly market structure that arise from materially reducing the prospects of a stronger and more effective competitive fringe in the second-tier cohort. These detriments extend beyond the specific markets noted above, although the ACCC is conscious that there is a degree of overlap with the competition concerns outlined above and has taken this into account when weighing the public benefits and detriments so as to avoid any double counting.

The ACCC is not satisfied, in all the circumstances, that the Proposed Acquisition would result, or be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Acquisition.

1. The application for merger authorisation

1.1. On 2 December 2022, Australia and New Zealand Banking Group Limited (**ANZ**) lodged an application with the Australian Competition and Consumer Commission (**ACCC**) for merger authorisation (the **Application**).

1.2. ANZ is seeking authorisation to acquire 100% of the issued shares in SBGH Limited from Suncorp Group Limited (**Suncorp Group**), either directly or via a related body corporate of ANZ, in accordance with the Share Sale and Purchase Agreement between ANZ and Suncorp Group executed on 18 July 2022. SBGH Limited is the non-operating holding company that owns 100% of the shares of Suncorp Bank, which together with its subsidiaries owns and operates Suncorp Group's banking business in Australia.[27]

1.3. More specifically, ANZ is seeking authorisation for ANZ (or a related body corporate nominated by ANZ) to acquire:

- all of the issued share capital of SBGH Limited, being 397,677,111 issued ordinary shares, in accordance with the Share Sale and Purchase Agreement, and
- the Property Leases (as defined in section 1.1 of the Share Sale and Purchase Agreement) relating to Suncorp Bank which are not held by an entity that is to be acquired by ANZ. These Property Leases (and related Property Assets, as defined in clause 1.1 of the Share Sale and Purchase Agreement) will be transferred to ANZ (or a related body corporate of ANZ) on completion of the proposed acquisition. The transfer regime is set out in the Share Sale and Purchase Agreement (the **Proposed Acquisition**).[28]

1.4. Suncorp Group also owns and operates, via other entities, an insurance business in Australia and a separate business in New Zealand, which do not form part of the Proposed Acquisition.[29]

1.5. The Application is made pursuant to section 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). A merger authorisation provides protection from legal action under section 50 of the Act, which otherwise prohibits acquisitions of shares or assets that would be likely to have the effect of substantially lessening competition in any market.[30]

1.6. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to make submissions outlining whether they support the application or not, to help inform its decision.

The parties

ANZ

1.7. ANZ is an ASX-listed financial services group. It provides a range of banking products and services to retail business customers in Australia and New Zealand, and to

27 ANZ application for Merger Authorisation, 2 December 2022, [1.2]-[1.4].

28 ANZ application for Merger Authorisation, 2 December 2022, [3.1].

29 ANZ application for Merger Authorisation, 2 December 2022, [1.5].

30 Detailed information about the authorisation process is available in the ACCC's Merger Authorisation Guidelines.

international institutional customers.[31] ANZ is headquartered in Melbourne and operates in more than 25 countries.

Suncorp Group

1.8. Suncorp Group is an ASX-listed provider of insurance and banking products and services.[32] Suncorp Group has three core businesses:

- insurance in Australia
- insurance in New Zealand, and
- retail and business banking in Australia (this business is operated by Suncorp Bank).[33]

1.9. Suncorp Group is headquartered in Brisbane and operates in Australia and New Zealand.[34]

Stated rationale for the Proposed Acquisition

ANZ

1.10. ANZ submits that the Proposed Acquisition will deliver benefits to ANZ, and to ANZ and Suncorp Bank's customers.[35] ANZ submits that acquiring a strong customer franchise through Suncorp Bank will provide immediate growth in areas that are attractive to ANZ, particularly in home loans, as well as increase its presence in Australian retail and business banking.[36] ANZ submits the Proposed Acquisition will increase the size of its retail and commercial portfolios relative to other parts of ANZ's business.[37] ANZ also submits that the Proposed Acquisition will increase its exposure to Queensland, where it has a smaller presence, allowing it to grow and acquire scale to compete better.[38]

1.11. ANZ claims that a rationale for it pursuing the Proposed Acquisition is that it will provide ANZ with increased scale to enable continual and more efficient investment in digital transformation and innovation.[39] ANZ claims that this increased scale will enable ANZ to more efficiently make the investment required to meet customer expectations concerning digital capability and ongoing regulatory change. In turn it considers that this will make it a stronger and more effective competitor.[40]

1.12. ANZ submits that this will help it to build a superior bank for customers and to better compete in the digital age.[41] ANZ expects that the Proposed Acquisition will result in

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[31] ANZ application for Merger Authorisation, 2 December 2022, [2.1].

[32] ANZ application for Merger Authorisation, 2 December 2022, [2.7].

[33] ANZ application for Merger Authorisation, 2 December 2022, [2.7(j)-(l)], citing Annexure 4, Suncorp Group FY 22 Annual Report, p 4.

[34] ANZ application for Merger Authorisation, 2 December 2022, [2.8].

[35] ANZ application for Merger Authorisation, 2 December 2022, [3.8].

[36] ANZ application for Merger Authorisation, 2 December 2022, [3.8(a)], citing statement of Shayne Elliott (ANZ), [63].

[37] ANZ application for Merger Authorisation, 2 December 2022, [3.8(d)], citing statement of Shayne Elliott (ANZ), [63(c)].

[38] ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [2] and [51].

[39] ANZ application for Merger Authorisation, 2 December 2022, [3.8].

[40] ANZ application for Merger Authorisation, 2 December 2022, [3.8].

[41] ANZ application for Merger Authorisation, 2 December 2022, [3.8(b)].

an increase in ANZ's customer relationships by approximately 1.2 million, and its main financial institution (**MFI**)[42] customer base by approximately 0.4 million.[43]

1.13. **[Redacted - Confidential]**.[44] Mr Elliott states that ANZ's investment spend has increased significantly in recent years and include costs related to regulatory compliance, productivity improvement, asset lifecycle management and business growth.[45] The investment spend figures for ANZ's retail and business banking portfolios over the period between FY2015 and FY2022 increased from $430 million p.a. to $1,010 million p.a..[46] The investment spend in FY2020 – FY 2022 also included expenditure with respect to ANZx, ANZ's digital transformation program, which is aimed to improve its retail banking products.[47]

1.14. ANZ submits that this will enable ANZ to become a more effective competitor, particularly against the other major banks which are larger and will remain larger post-acquisition, and in an environment where there is increasing digital transformation.[48]

1.15. **[Redacted - Confidential]**.[49]

1.16. ANZ submits that the Proposed Acquisition will also result in synergies of approximately $260 million per annum.[50] ANZ notes that it is expected that material synergies will be phased in over years four to six post-completion with full synergies expected to be achieved by the end of the sixth year.[51]

Suncorp Group

1.17. ANZ submits that, for Suncorp Group, divesting Suncorp Bank to ANZ positions both Suncorp Group's insurance business and Suncorp Bank for ongoing growth and success as separate, monoline businesses.[52] ANZ submits that for Suncorp Group, the singular focus on its insurance businesses will better enable it to weather anticipated volatility in the insurance and reinsurance markets.[53] Suncorp Group submits that the Proposed Acquisition will provide Suncorp Group with an opportunity to be a stronger insurer and provide a return to its shareholders.[54]

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42 MFI is the financial institution that a customer regards as its main financial institution.

43 ANZ application for Merger Authorisation, 2 December 2022, [3.8(b)].

44 **[Redacted - Confidential]**.

45 Statement of Shayne Elliott (ANZ), 30 November 2022, [27]; **[Redacted - Confidential]**.

46 Statement of Shayne Elliott (ANZ), 30 November 2022, [28(c)].

47 ANZ application for Merger Authorisation, 2 December 2022, [5.52].

48 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [2.31].

49 **[Redacted - Confidential]**.

50 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)], citing Annexure 6, ANZ Acquisition of Suncorp Bank and Equity Raising: Investor Discussion Pack, 18 July 2022, p 18.

51 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)]. See also, Annexure 6, ANZ Acquisition of Suncorp Bank and Equity Raising: Investor Discussion Pack, 18 July 2022, p 21.

52 ANZ application for Merger Authorisation, 2 December 2022, [3.36].

53 ANZ application for Merger Authorisation, 2 December 2022, [3.36(d)] and Executive Summary [55], citing Statement of Steven Johnston (Suncorp Group), [35 - 40], [92].

54 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [9].

2. Statutory framework

The requirements for authorisation

2.1. One of the objects of the Act is to enhance the welfare of Australians through the promotion of competition.[55] The Act protects competition primarily through the prohibitions on anti-competitive conduct in Part IV, including the section 50 prohibition on acquisitions that would or would be likely to substantially lessen competition. However, it has been recognised that conduct that would breach the competition rules may have offsetting public benefits such that the achievement of economic efficiency and the other benefits of competitive market conduct may come at the cost of other valued objectives.[56] Because of this, Australia's competition law has included since 1974 a legislative scheme that provides, in the words of the Tribunal, 'an administrative process to remove the risk that proposed beneficial conduct may contravene competition laws.'[57]

2.2. Section 88(1) of the Act confers on the ACCC a discretionary power to authorise conduct:

> Subject to this Part [Part VII], the Commission may, on an application by a person, grant an authorisation to a person to engage in conduct, specified in the authorisation, to which one or more provisions of Part IV specified in the authorisation would or might apply.

2.3. That discretion is enlivened when either of the necessary conditions or 'statutory preconditions'[58] in section 90(7) are met. Section 90(7) relevantly provides:

2.4. The Commission must not make a determination granting an authorisation under section 88 in relation to conduct unless:

> (a) the Commission is satisfied in all the circumstances that the conduct would not have the effect, or would not be likely to have the effect, of substantially lessening competition; or
>
> (b) the Commission is satisfied in all the circumstances that:
>
> (i) the conduct would result, or be likely to result, in a benefit to the public; and
>
> (ii) the benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct; […]

2.5. For convenience, these Reasons for Determination refer to the preconditions in section 90(7)(a) as the Competition Test and section 90(7)(b) as the Net Public Benefit Test.[59]

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55 *Competition and Consumer Act 2010* (Cth), s 2.

56 Professor Frederick G Hilmer, Mark R Rayner and Geoffrey Q Taperell, *National Competition Policy Report by the Independent Committee of Inquiry* 1993, pp 29, 88.

57 *Application by Medicines Australia Inc* [2007] ACompT 4, [105].

58 *Application by Flexigroup Limited (No 2)* [2020] ACompT 2, [138].

59 It is important to note that section 90(7)(b) requires the ACCC to identify likely public benefits and likely public detriment, but that the ACCC must be satisfied that the former would outweigh the latter (i.e., it does not say 'would be likely to outweigh').

2.6. The satisfaction of those statutory preconditions does not require that the ACCC grant authorisation: the discretion to refuse authorisation exists even where the ACCC is satisfied of the elements in section 90(7)(a) or (b).[60] This follows from both the discretionary language of section 88(1) and the framing of section 90(7) in terms that the Commission must not make a determination granting an authorisation under section 88 unless it is satisfied either that no substantial lessening of competition is likely or there would be a net public benefit.[61]

2.7. The Tribunal has said that discretion is not in its terms limited other than by the subject matter, scope and purpose of the Act and the statutory context in which it appears; it is not narrowly confined.[62] It has canvassed circumstances in which the ACCC might exercise the discretion and not grant authorisation notwithstanding the Net Public Benefit Test is met.[63] However, the Tribunal has also said that if the ACCC or the Tribunal on review were to be satisfied that the conduct is likely to result in a net public benefit, ordinarily authorisation would be granted.[64]

2.8. Before the ACCC can grant a merger authorisation, the ACCC must be satisfied in all the circumstances that the proposed merger meets either the Competition Test or the Net Public Benefit Test.

2.9. The word ‘satisfied’ in the context of an administrative decision is not amenable to the application of an evidentiary burden of proof, such as the balance of probabilities. However, this does not mean there is an absence of a legal standard of satisfaction.[65] In respect of section 90(7), to be ‘satisfied’ requires ‘an affirmative belief’.[66] Both tests in section 90(7) require the ACCC to be ‘satisfied in all the circumstances’: the statutory precondition for the ACCC’s power under section 88(1) to arise is the ACCC’s state of mind. The reference to ‘all the circumstances’ underscores that the ACCC is to have regard to anything known to it that bears upon the making of its decision.

2.10. Both the Competition Test and the Net Public Benefit Test involve consideration of what is likely to occur. The meaning of ‘likely’ has been the subject of some debate but, in the section 50 test, ‘likely to have the effect’ can be accepted as meaning a ‘real chance’ that is a ‘real commercial likelihood’.[67] The Court has cautioned against atomising this test and said that, rather, there is a single evaluative judgment in determining whether a substantial lessening of competition is likely.[68]

2.11. In assessing the likely effect on competition or the likely benefits and detriments arising from a proposed acquisition, the ACCC considers an analytical tool that has

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60 *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, [127].

61 See, in respect of an earlier iteration of s 90(7): *Application by Medicines Australia Inc* [2007] ACompT 4, [106].

62 *Application by Medicines Australia Inc* [2007] ACompT 4, [126].

63 *Application by Medicines Australia Inc* [2007] ACompT 4, [127] – [128].

64 *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, [127]; *Application by Flexigroup Limited (No 2)* [2020] ACompT 2, [138]; *Application by Medicines Australia Inc* [2007] ACompT 4.

65 *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, [99].

66 *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, [99]; *BOY19 v Minister for Immigration and Border Protection* (2019) 165 ALD 39, [55] (O’Bryan J).

67 *ACCC v Pacific National (No 2)* [2019] FCA 669, [1274], [1275]; affirmed on appeal *ACCC v Pacific National* (2020) 277 FCR 49, [246]. See also *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, [117].

68 *ACCC v Pacific National (No 2)* [2019] FCA 669, [1276].

been described as 'the future with and without'.[69] This is not a comparison of a future in which the acquisition is authorised against a future in which it is not. Rather, it involves a forward-looking comparison of a future in which the proposed acquisition occurs with a future in which it does not.[70] The future in which the proposed acquisition takes place is referred to as the 'factual', and the future state in which it does not is referred to as the 'counterfactual'. In determining whether the ACCC is satisfied in all the circumstances that the Competition Test or the Net Public Benefit Test has been fulfilled, the ACCC will take into account all non-trivial counterfactuals.

2.12. In section 50 proceedings, the Court has said that a party who wishes to prove that a transaction will not have the likely effect of substantially lessening competition 'must negative the existence of any real chance … of a commercially relevant or meaningful lessening of competition flowing from the acquisition'.[71] In the merger authorisation context, for the purposes of the Competition Test the ACCC will need to form a view as to whether it is satisfied, in all the circumstances, that there is no likely substantial lessening of competition in any market.[72]

2.13. The Net Public Benefit Test refers to 'benefit to the public' and 'detriment to the public'. These are not defined in the Act but the former encompasses 'the widest possible conception of public benefit […] anything of value to the community generally, any contribution to the aims pursued by the society, including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress'.[73] 'Detriment to the public' extends to 'any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency'.[74]

2.14. Assessing the Net Public Benefit Test has been described as a balance sheet approach.[75] However, in light of the breadth of potentially relevant benefits and detriments, many of them may be incommensurable and possibly unmeasurable. Thus, the Court has said that 'the benefits and detriments may more usefully be assayed by means of a process of 'instinctive synthesis'.[76]

Timing

2.15. The ACCC has a period of 90 days in which to make a determination in respect of a merger authorisation application.[77] The Act allows for the time period to be extended

69 *Application by Medicines Australia Inc* [2007] ACompT 4, [117]-[119], citing *Re QIW Ltd* 132 ALR, 276 and *Qantas Airways Ltd* [2004] ACompT 9, [151]. See and compare *ACCC v Metcash Trading Limited* (2001) 198 FCR 297, [228] (Yates J); see and compare *Australian Building and Construction Commissioner v Pattinson* (2002) 399 ALR 599, [45].

70 *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, [149].

71 See *Australian Gas Light Company v Australian Competition & Consumer Commission [No 3]* (2003) 137 FCR 317, [305]. See also *Australian Competition and Consumer Commission v NSW Ports Operations Hold Co Pty Ltd* [2021] FCA 720, [1031] (Jagot J).

72 *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, [118].

73 *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, [121]; *Re Queensland Co-operative Milling Association Ltd; Re Defiance Holdings Ltd* (1976) 8 ALR 481, [510].

74 *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, [121]; *Re 7-Eleven Stores Pty Ltd* (1994) 16 ATPR 41-357, [42,683].

75 *Re Queensland Co-operative Milling Association Ltd; Re Defiance Holdings Ltd* (1976) 8 ALR 481, [512].

76 *Australian Competition and Consumer Commission v Australian Competition Tribunal* (2017) 254 FCR 341, [7] (Besanko, Perram and Robertson JJ). There the Full Court of the Federal Court was concerned with s 95AZH(1), which provided that the Tribunal must not grant a merger authorisation unless 'satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to occur.'

77 Section 90(10B) of the Act; Merger Authorisation Guidelines, October 2018, p 5, 15-16.

where there is written agreement from the applicant before the initial 90 day period ends.

2.16. In this matter, ANZ agreed to the time period being extended until 4 August 2023.

3. Consultation

3.1. The ACCC tests the claims made by an applicant in support of an application for merger authorisation through an open and transparent public consultation process.

3.2. Before the ACCC releases a determination in relation to an application for merger authorisation, it generally provides feedback to the applicant and interested parties about the issues raised in submissions. This feedback also identifies any issues of concern to the ACCC at that time and invites submissions on issues raised.

3.3. In this matter, the ACCC invited submissions at two stages – the initial consultation process shortly after the application was lodged; and after the ACCC provided initial feedback in its statement of preliminary views published on 4 April 2023.

3.4. Public submissions by ANZ, Suncorp Group and interested parties are published on the ACCC's public register. The ACCC also received some submissions that were wholly or partly confidential. In the Reasons for Determination, certain information and submissions from some interested parties has been de-identified.

3.5. Further, the ACCC received and had regard to information and documents obtained under the ACCC's compulsory information gathering powers,[78] including under oral examination. This material has not been placed on the public register.

3.6. The ACCC also received and had regard to 'protected information', subject to the secrecy provisions in the *Australian Prudential Regulatory Authority Act 1998*.[79]

3.7. The ACCC also commissioned a framework note on assessing coordinated effects from Professor de Roos.[80] The ACCC also commissioned and received two independent expert reports from Ms Starks.[81] Reports from Professor de Roos and Ms Starks have been placed on the public register.

3.8. The ACCC requested Ms Starks and Professor de Roos answer particular questions to assist the ACCC in formulating its own views on the Application. The reports record the independent views of Ms Starks and Professor de Roos. They should not be taken to represent the views of the ACCC.

3.9. The ACCC has considered these reports, together with the expert evidence filed by ANZ, Suncorp Group and Bendigo and Adelaide Bank (**BEN**), in the course of arriving at its own views on the Application. The extent to which the ACCC agrees or disagrees with the conclusions reached by each of the experts is apparent in these Reasons for Determination.

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78 *Competition and Consumer Act 2010* (Cth), s 155.

79 The ACCC received the following **[Redacted - Confidential]**. Time period varies across items and is noted for each analysis throughout the document.

[Redacted - Confidential].

80 Expert report of Nicolas de Roos, 5 April 2023.

81 Expert report of Mary Starks, 16 June 2023; Mary Starks, Supplementary expert report of Mary Starks, 7 July 2023.

3.10. ANZ submits that the ACCC should be satisfied that the Proposed Acquisition is not likely to substantially lessen competition in any market where Ms Starks has concluded there is 'no real chance' or that she 'cannot rule out' a substantial lessening of competition.[82] If Ms Starks has concluded there is a 'real chance' of a substantial lessening of competition, ANZ submitted the ACCC should 'approach Starks conclusions with caution', having regard to the basis on which her opinion was prepared.[83] Specifically, ANZ submitted that Ms Starks has misapplied the statutory test, was inappropriately instructed to assume the likelihood of an 'alternative buyer counterfactual' and has failed to perform a single evaluative judgement, as required by the authorities.

3.11. Ms Starks' reports form only one part of the material considered by the ACCC. The ACCC agrees with and accepts ANZ's submission that it would be inappropriate to accept Ms Starks' opinion as 'dispositive evidence'[84] that the Proposed Acquisition would be likely to substantially lessen competition without undertaking its own evaluation of the issues.

3.12. In relation to the other matters raised by ANZ, Ms Starks was not asked to address the ultimate question before the ACCC on this Application. Rather, Ms Starks was (amongst other things) asked to express an opinion on whether she considered there is a 'real chance' that the Proposed Acquisition would substantially lessen competition in any market or relevant area of competitive overlap, and if not, to comment on whether there remains a risk of it substantially lessening competition. This is a different enquiry to that required by section 90(7)(a) of the Act.

3.13. The ACCC is mindful that its task under section 90(7)(a) is to form a view in relation to whether it is satisfied, in all the circumstances, that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition. This is a different task to considering whether it can rule out any possibility of a substantial lessening of competition. Where the ACCC has concluded that it is not satisfied for the purposes of section 90(7)(a), it has done so on the basis that it is not positively satisfied in all the circumstances that the Proposed Acquisition will not have the likely effect of substantially lessening competition.

3.14. Ms Starks was asked to assume that, if the Proposed Acquisition does not proceed, Suncorp Bank would either continue to be owned by Suncorp Group or would merge with BEN. The provision of the assumption reflects the fact that the likelihood of one or more counterfactuals arising is a factual matter for the ACCC.

3.15. The ACCC has also taken into account submissions received from ANZ, Suncorp Group and interested parties, including:

- ANZ's application in support of the merger authorisation and related annexures including witness statements[85]
- Expert reports provided by the merger parties and interested parties[86]

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[82] ANZ response to the ACCC independent expert reports, 17 July 2023, [3.7]-[3.8].

[83] ANZ response to the ACCC independent expert reports, 17 July 2023, [3.11].

[84] ANZ response to the ACCC independent expert reports, 17 July 2023, [3.17].

[85] ANZ application for Merger Authorisation, 2 December 2022.

[86] Expert report of Dr Jeffrey Carmichael, 25 November 2022; Expert report of Dr Philip Williams, 1 December 2022; Expert report of Patrick Smith, 1 December 2022; Expert report of Professor Stephen King, 3 March 2023; Second expert report of Jeffrey Carmichael, 13 May 2023; Expert report of Dr David Howell, 15 May 2023; Second expert report of Patrick Smith, 17 May 2023; Expert report of Mozammel Ali, 17 May 2023; Second expert report of Dr Philip Williams, 19 May

- 27 submissions from interested parties in response to the ACCC's initial consultation process including six confidential submissions[87]
- over 20 submissions from interested parties following the ACCC's statement of preliminary views[88]
- ANZ's response to submissions from interested parties,[89] the ACCC's statement of preliminary views,[90] and Ms Starks' reports,[91] including witness statements and expert reports[92]
- Suncorp Group's response to submissions from interested parties,[93] the ACCC's statement of preliminary views,[94] and Ms Starks' reports,[95] including witness statements and expert reports[96]
- submissions from the merger parties[97]

3.16. An overview of interested parties' submissions that the ACCC has received at various stages of the consultation process is provided below. The views of interested parties

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2023; Third expert report of Patrick Smith, 17 July 2023, Second expert report of Professor Stephen King, 28 June 2023; Second expert report of Mozammel Ali, 24 July 2023.

[87] Christopher Gellie submission, 9 January 2023; John Curnow submission, 10 January 2023; Consumers' Federation of Australia submission, 11 January 2023; Sinclair Hill submission, 13 January 2023; Roy Featherstone submission, 16 January 2023; Nicholas Shae submission, 14 January 2023; BMAgBiz submission, 18 January 2023; Rabobank submission, 18 January 2023; Aon submission, 18 January 2023; Carolyn Thomson submission, 18 January 2023; Ronald Feierabend submission, 19 January 2023; Jim Davidson submission, 19 January 2023; Peter Wheeldon submission, 23 January 2023; Goran Latinovich submission, 23 January 2023; Jeff Forster submission, 29 January 2023; Henry Kummerfeld submission, 29 January 2023; Robert Jacobucci submission, 30 January 2023; Niall Coburn on behalf of farmers, 1 February 2023; Judo Bank submission, 7 February 2023; Bank of Queensland submission, 24 February 2023; Bendigo and Adelaide Bank submission, 3 March 2023.

[88] John Standingford submission, 6 April 2023; Anonymous submission, 12 April 2023; Clyde and Gail Andrews submission, 13 April 2023; John Curnow submission, 13 April 2023; BMAgBiz submission, 13 April 2023; Brian Durrand submission, 14 April 2023; Carolyn Thomson submission, 16 April 2023; Archer Field on behalf of others, 18 April 2023; Archer Field on behalf of others, 18 April 2023; CowBank submission, 18 April 2023; Consumers' Federation of Australia, 18 April 2023; Judo Bank submission, 18 April 2023; Property Rights Australia submission, 20 April 2023; Peter Berlyn submission, 21 April 2023; John Cowley submission, 16 May 2023; Anonymous submission, 23 May 2023; Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023; Carolyn Thomson submission, 24 June 2023; J. Graham Davis submission, 27 June 2023; Bendigo and Adelaide Bank submission, 30 June 2023; Craig Caulfield submission, 14 July 2023.

[89] ANZ response to interested party submissions, 9 March 2023; ANZ response to Bank of Queensland's submission, 22 March 2023.

[90] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023.

[91] ANZ response to the ACCC independent expert reports, 17 July 2023.

[92] Second expert report of Jeffrey Carmichael, 13 May 2023; Second expert report of Patrick Smith, 17 May 2023; Second statement of Shayne Elliott (ANZ), 17 May 2023; Second statement of Douglas Campbell (ANZ), 17 May 2023; Second statement of Mark Bennett (ANZ), 17 May 2023; Second statement of Yiken Yang (ANZ), 17 May 2023; Statement of Louise Higgins (ANZ), 17 May 2023; Second expert report of Dr Philip Williams, 19 May 2023; Third statement of Shayne Elliott (ANZ), 30 June 2023; Statement of James Lane (ANZ), 5 July 2023; Third expert report of Patrick Smith, 17 July 2023; Third statement of Mark Bennett (ANZ), 17 July 2023; Second statement of Louise Higgins (ANZ), 17 July 2023.

[93] Suncorp Group response to interested party submissions, 7 February 2023; Letter from Suncorp Group re submission from Bendigo and Adelaide Bank, 3 April 2023.

[94] Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023; Response to the ACCC statement of preliminary views on Queensland commitments, 22 June 2023.

[95] Suncorp Group response to Mary Starks' reports and the second submission of Bendigo and Adelaide Bank, 14 July 2023.

[96] Expert report of Dr David Howell, 15 May 2023; Statement of Adam Bennett (Suncorp Group), 16 May 2023; Expert report of Mozammel Ali, 17 May 2023; Second statement of Clive van Horen (Suncorp Bank), 17 May 2023; Second statement of Steven Johnston (Suncorp Group), 17 May 2023; Third statement of Steven Johnston (Suncorp Group), 22 June 2023; Fourth statement of Steven Johnston (Suncorp Group), 13 July 2023; Third statement of Clive van Horen (Suncorp Bank), 14 July 2023; Second expert report of Mozammel Ali, 24 July 2023.

[97] ANZ oral submission to the ACCC, 16 June 2023; ANZ submission – Roadmap to evidence, 16 June 2023; ANZ supplementary submission - ANZ response to the ACCC's Statement of Preliminary Views, 30 June 2023; Suncorp Group submission regarding public benefits, 13 July 2023; ANZ letter regarding market structure and public benefits, 13 July 2023; ANZ response to the ACCC independent expert reports, 17 July 2023.

and the merger parties are outlined in further detail where appropriate in these Reasons for Determination.

Initial consultation on the Application

3.17. The ACCC received public submissions from the following banks: Rabobank, Judo Bank, Bank of Queensland, and BEN. BEN also provided an economic expert report from Professor King.

3.18. The ACCC received public submissions from the following businesses: BMAgBiz and Aon.

3.19. The ACCC received public submissions from a number of consumers[98] and advocate bodies, including the Consumers' Federation of Australia.

3.20. Suncorp Group provided responses to these submissions on 7 February and 3 April 2023. ANZ also provided responses to the submissions on 9, 22 and 31 March 2023.

Following the ACCC's statement of preliminary views

3.21. The ACCC received public submissions from Judo Bank, BMAgBiz, BEN, CowBank and the Australian Prudential Regulation Authority (**APRA**).[99] BEN's submission responded to Ms Starks' 16 June 2023 report and included a second economic expert report from Professor King.

3.22. The ACCC also received public submissions from a number of consumers[100] and peak bodies, including the Consumers' Federation of Australia, Property Rights Australia and the Mortgage and Finance Association of Australia.

3.23. In May 2023, ANZ and Suncorp Group each provided responses to the ACCC's statement of preliminary views, which included witness statements and expert reports.[101]

3.24. On 30 June 2023, ANZ provided a subsequent submission and supplementary materials relating to their agreements with the Queensland government. The ACCC received further submissions and expert reports from ANZ and Suncorp Group, including submissions in relation to Ms Starks' reports, between 13-24 July 2023.

3.25. The ACCC has considered these additional materials and taken them into account in forming its views. It has referred to the key submissions and new evidence from these additional materials in these Reasons for Determination.

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[98] Christopher Gellie submission, 9 January 2023; John Curnow submission, 10 January 2023; Sinclair Hill submission, 13 January 2023; Nicholas Shae submission, 14 January 2023; Roy Featherstone submission, 16 January 2023; Carolyn Thomson submission, 18 January 2023; Jim Davidson submission, 19 January 2023; Ronald Feierabend submission, 19 January 2023; Peter Wheeldon submission, 23 January 2023; Goran Latinovich submission, 23 January 2023; Jeff Forster submission, 29 January 2023; Henry Kummerfeld submission, 29 January 2023; Robert Jacobucci submission, 30 January 2023; Niall Coburn on behalf of farmers, 1 February 2023.

[99] APRA submission, 13 July 2023.

[100] John Standingford submission, 6 April 2023; Anonymous submission, 12 April 2023; Clyde and Gail Andrews submission, 13 April 2023; John Curnow submission, 13 April 2023; Brian Durrand submission, 14 April 2023; Archer Field on behalf of others first submission, 18 April 2023; Archer Field on behalf of others second submission, 18 April 2023; Peter Berlyn submission, 21 April 2023; John Cowley submission, 16 May 2023 ; Anonymous submission, 23 May 2023; Carolyn Thomson submission, 24 June 2023; J. Graham Davis submission, 27 June 2023; Craig Caulfield submission, 14 July 2023.

[101] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023.

Overview of interested party submissions

3.26. Submissions to the ACCC from interested parties raise a variety of views on issues related to the Proposed Acquisition.

3.27. Several interested parties[102] raised competition concerns regarding the Proposed Acquisition, noting:

- it would result in the removal of a significant second-tier competitor[103]
- Suncorp Bank's position in the supply to agribusiness markets[104]
- there is inertia for customers switching between providers[105]
- the low prospect of successful new entry and expansion in the industry[106]
- increased consolidation of market share among major banks would make the relevant markets more susceptible to coordinated interactions.[107]

3.28. In particular, CowBank and BMAgBiz submit that agribusiness customers have specialist needs and expressed concern that the Proposed Acquisition would reduce competition and availability of finance, particularly for bespoke agribusinesses with more complex needs.[108] Judo Bank and Bank of Queensland submit that markets for supply to agribusiness and small to medium enterprise (**SME**) customers demonstrate state, regional and local characteristics.[109]

3.29. BEN and Judo Bank submit that there is a realistic likelihood that Suncorp Bank, at least in part, could be acquired by another purchaser.[110] BEN further submits that the counterfactual where Suncorp Bank is acquired by BEN is commercially realistic.[111]

3.30. In addition to competition concerns, interested parties opposing authorisation generally raised concerns that the Proposed Acquisition would lead to public detriments and some questioned the extent to which synergies and benefits claimed by the merger parties will materialise if the Proposed Acquisition proceeds.[112]

3.31. Particularly, several submissions expressed concerns that the Proposed Acquisition would reduce access to and quality of services due to branch closures and a focus away from Queensland and regional areas.[113]

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102 Consumers' Federation of Australia submission, 11 January 2023; BMAgBiz submission, 18 January 2023; Bank of Queensland submission, 24 February 2023; BMAgBiz submission, 13 April 2023; CowBank submission, 18 April 2023; Judo Bank submission, 18 April 2023.

103 Consumers' Federation of Australia submission, 11 January 2023, p 2; BMAgBiz submission, 18 January 2023, p 3; Bank of Queensland submission, 24 February 2023, pp 4, 9.

104 BMAgBiz submission, 18 January 2023, p 2; BMAgBiz submission, 13 April 2023 pp 1-2; CowBank submission, 18 April 2023, pp 1-2.

105 Consumers' Federation of Australia submission, 11 January 2023, p 5.

106 Bank of Queensland submission, 24 February 2023, pp 7-8, Judo Bank submission, 18 April 2023, p 2.

107 Consumers' Federation of Australia submission, 11 January 2023, p. 2.

108 BMAgBiz submission, 18 January 2023, p 1; CowBank submission, 18 April 2023, pp 1-2.

109 Bank of Queensland submission, 24 February 2023, p 9; Judo Bank submission, 18 April 2023, p 1.

110 Bendigo and Adelaide Bank submission, 3 March 2023, p 10; Judo Bank submission, 18 April 2023, p 2.

111 Bendigo and Adelaide Bank submission, 30 June 2023, pp 1-25.

112 Consumers' Federation of Australia submission, 11 January 2023, pp 6-7; Rabobank submission, 18 January 2023, p 4; Bank of Queensland submission, 24 February 2023, pp 10-11; Bendigo and Adelaide Bank submission, 3 March 2023, pp 43-50; Consumers' Federation of Australia submission, 16 April 2023, pp 3-4.

113 Consumers' Federation of Australia submission, 11 January 2023, p 7; Roy Featherstone submission, 16 January 2023, p 1; Property Rights Australia submission, 20 April 2023, p 2.

3.32. Similarly, the Consumers' Federation of Australia, Clyde and Gail Andrews, and Property Rights Australia raise concerns that the Proposed Acquisition would impact on access to services for vulnerable customers including those in regional areas which may have poor internet access, elderly customers and those experiencing vulnerability.[114]

3.33. Other interested parties, including an insurer,[115] supported or expressed neutral views regarding authorisation. Rabobank expressed neutral views.[116]

3.34. Interested parties supporting the Proposed Acquisition generally note that the major banks are subject to existing competitive pressure driving investment in technology,[117] and that the Proposed Acquisition would enable Suncorp Group to be more focused and fill unmet client needs in the insurance industry.[118]

3.35. The ACCC also received a large number of submissions from consumers.[119] These submissions raise a number of concerns regarding the conduct of ANZ and Suncorp Bank and the Proposed Acquisition, including general concerns about competition and regulation in the Australian banking industry, such as applicable dispute resolution obligations, potential branch closures, attrition of Suncorp Bank employees and potential price increases. Several of these submissions also raise concerns about how ANZ and Suncorp Bank have handled individual disputes with their customers.

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114 Clyde and Gail Andrews submission, 13 April 2023, p 1; Consumers' Federation of Australia submission, 16 April 2023, p 4; Property Rights Australia submission, 20 April 2023, p. 2.

115 Aon submission, 18 January 2023, p 1; John Standingford submission, 6 April 2023, p 1.

116 Rabobank submission, 18 January 2023, pp 1-5.

117 John Standingford Submission, 6 April 2023, p 1; Peter Berlyn submission, 21 April 2023, pp 1-2.

118 Aon submission, 18 January 2023, p 1.

119 John Curnow submission, 10 January 2023; Christopher Gellie submission, 9 January 2023; Sinclair Hill submission, 13 January 2023; Nicholas Shae submission, 14 January 2023; Roy Featherstone submission, 16 January 2023; Carolyn Thomson submission, 18 January 2023; Ronald Feierabend submission, 19 January 2023; Jim Davidson submission, 19 January 2023; Peter Wheeldon submission, 23 January 2023; Goran Latinovich submission, 23 January 2023; Jeff Forster submission, 29 January 2023; Henry Kummerfeld submission, 29 January 2023; Robert Jacobucci submission, 30 January 2023; Niall Coburn on behalf of farmers, 1 February 2023; John Standingford submission, 6 April 2023; Anonymous submission, 12 April 2023; Clyde and Gail Andrews submission, 13 April 2023; John Curnow submission, 13 April 2023; Brian Durrand submission, 14 April 2023; Archer Field on behalf of others, 18 April 2023; Archer Field on behalf of others, 18 April 2023; Peter Berlyn submission, 21 April 2023; John Cowley submission, 16 May 2023 ; Anonymous submission, 23 May 2023; Carolyn Thomson submission, 24 June 2023; J. Graham Davis submission, 27 June 2023; Craig Caulfield submission, 14 July 2023.

4. Industry background

4.1. This section sets out relevant background information on the Australian banking industry. This includes describing key characteristics and features that are relevant to competition and the ACCC's assessment of the Proposed Acquisition, introducing key concepts and terminology, and outlining structural barriers to competition in the banking industry.

4.2. This section provides an overview of:

- the various industry participants
- the regulatory framework
- previous consideration of banking competition
- submissions on the current state of competition
- profitability measures and profitability over time
- price and non-price competition in banking
- structural barriers to competition.

4.3. The extent of the competitive impact of many characteristics and features of the banking industry has been the subject of various submissions and material received from the merger parties and third parties. The ACCC's views on the impact of these characteristics and features is discussed in this section.

Australian banking industry participants

4.4. The four largest providers of banking services in Australia are authorised deposit taking institutions (**ADIs**) consisting of ANZ, Commonwealth Bank, National Australia Bank (**NAB**) and Westpac (referred to as the major banks throughout this determination). The major banks collectively account for 72% of reported banking system assets in Australia.[120]

4.5. There is a group of ADIs that are smaller than the major banks, but each have a share of banking system assets greater than 1% (referred to as the second-tier banks in this determination). They collectively account for close to 14% of reported banking system assets and have increased their share of assets over the past decade.[121] The second-tier banks include banks at or around the size of Suncorp Bank, Macquarie Bank, ING Bank Australia (ING Bank), BEN, Bank of Queensland and HSBC Bank Australia (HSBC Bank).

4.6. In addition to the major banks and second-tier banks, there is a large number of other smaller ADIs who individually have a share of banking system assets less than 0.7%.[122] This includes 49 foreign bank branches, who primarily target niche areas, such as specialised corporate lending, and 57 credit unions and building societies

[120] ACCC calculations based on Australian Prudential Regulation Authority (**APRA**), Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. The share of banking system assets is calculated by dividing each entity's 'total resident assets' by the total value of 'total resident assets' reported by all ADIs. APRA's monthly ADI statistics do not included Credit Unions and Building Societies with less than $200m in total assets.

[121] ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023.

[122] ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023.

who operate under a mutual structure where customers are members and profits are reinvested back into the business.[123]

4.7. The shares of major banks, second-tier banks and other ADIs are set out in Table 1. Taking shares as a proportion of Australian banking system assets[124] gives an indication of the Australian banking activity owned by each ADI, with the predominant asset class being lending.

Table 1: Share as a proportion of banking system assets as at May 2023

ADI	share (%)
Commonwealth Bank of Australia	21.34
Westpac Banking Corporation	19.24
National Australia Bank Limited	17.79
Australia and New Zealand Banking Group Limited	13.23
Macquarie Bank Limited	4.85
Bank of Queensland Limited	2.26
Bendigo and Adelaide Bank Limited	2.04
ING Bank (Australia) Limited	1.86
Suncorp-Metway Limited	1.75
HSBC Bank Australia Limited	1.13
Other	14.50

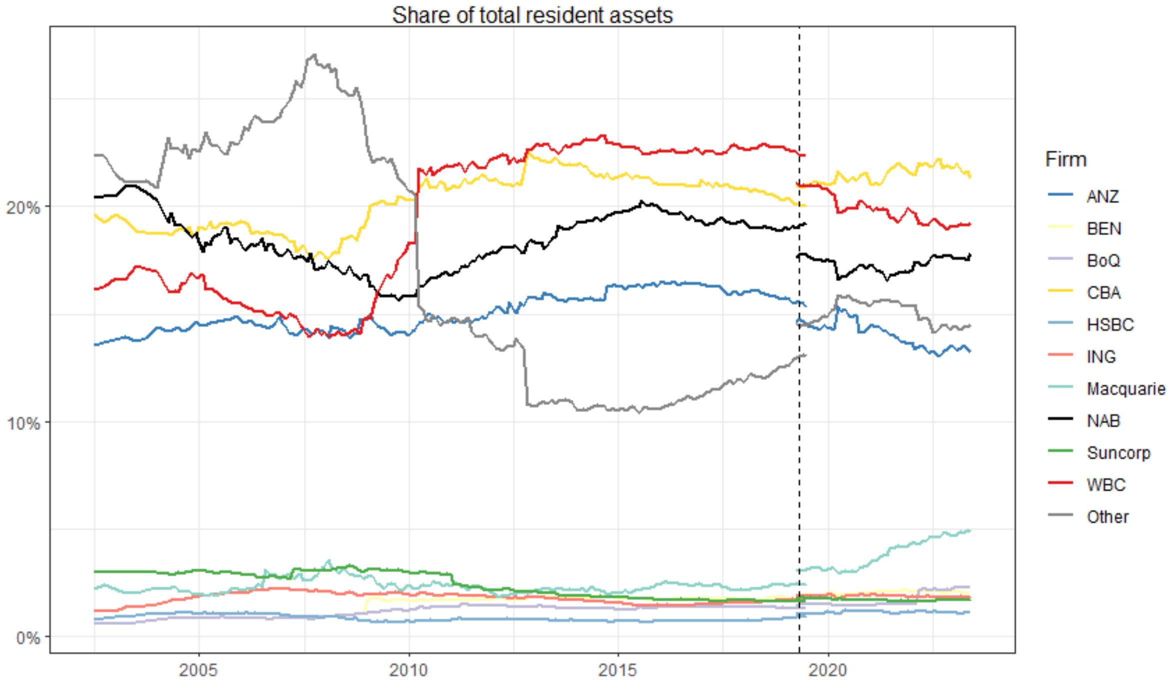
Source: ACCC calculations based on Australian Prudential Regulation Authority (**APRA),** Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. The share of banking system assets is calculated by dividing each entity's 'total resident assets' by the total value of 'total resident assets' reported by all ADIs.

4.8. As shown in Figure 1, there is a significant difference between the shares of the four major banks and second-tier banks. The combined shares of other small providers declined significantly between 2007 and 2013 as several providers were acquired or exited the industry. The sharp decrease in 'Other' banks is due to the acquisition of St. George by Westpac and Bankwest by CBA in 2008.

123 APRA, Quarterly authorised deposit-taking institution performance statistics, March 2023 issued 6 June 2023.

124 Bank assets are the items that a bank owns, which includes financial instruments the bank holds and the loans it has made.

Figure 1: Share as a proportion of banking system assets from June 2002 to May 2023



Source: ACCC analysis of calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. Calculated based on credit outstanding.

*Note: Westpac's large jump in share in 2010 is due to it completing the move to a single ADI after its acquisition of St George in 2008, and CBA's jump in 2012 is due to its acquisition of BankWest in 2008. The dashed line represents a series break in mid-2019 as a result of APRA's Economic and Financial Statistics (**EFS**) collection commencing. The old series (Monthly banking statistics) included banks only, while the new series (Monthly ADI statistics) includes non-bank ADIs.[125] Discontinuities are attributable to (1) the inclusion of non-bank ADIs, and (2) changes in definition to various data items.*

4.9. In addition to ADIs, non-ADI lenders account for a small share of total financial system assets in Australia. Non-ADI lending is undertaken by registered financial corporations and some types of managed investment funds, which in total account for around 5% of total Australian financial system assets.[126]

4.10. ADIs can supply deposit products including transactions and savings accounts and term deposit products to retail and business customers. These deposit products provide ADIs with a source of funding for their businesses.

4.11. ADIs are also lenders, providing loans to both retail and business customers, which may be unsecured or secured (for example, home loans are secured by residential property, and agribusiness loans can be secured by other assets such as real estate or livestock).

4.12. All major and second-tier banks are active in both retail and business banking and have larger retail loan books than business loan books.[127] However, banks may focus on different customer segments and the relative size of their retail portfolio compared to their business portfolio varies significantly by bank.

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125 APRA, Data find: APRA's newly expanded Monthly ADI Statistics, accessed 1 August 2023.

126 RBA, Non-bank Lending in Australia and the Implications for Financial Stability – Bulletin, March 2023, p 28.

127 Retail banking refers to the supply of banking products and services to resident households or individuals, including investment home loans.

4.13. For example, as at May 2023, CBA's lending portfolio is concentrated on retail lending, with 74% of its outstanding retail and business lending comprising retail customers.[128] NAB performs proportionally more business banking than the other major banks, with 42% of its outstanding retail and business lending activities comprising to businesses compared to 34% for ANZ, 28% for Westpac and 26% for CBA.[129]

4.14. In addition to retail and business banking, the major banks also provide banking services to large public and private sector organisations, locally and globally, which makes up a significant proportion of their total assets.[130] This institutional banking comprises a range of services to offer bespoke solutions to customers, including financial markets capabilities, capital raising solutions, corporate finance, transaction banking services, research, and risk management products and services. Because of range, complexity and geographic spread of the services offered in institutional banking, it is typically only provided by larger banks.

4.15. While returns from institutional banking are more subject to financial market volatility, in 2017 they accounted for anywhere from 12-28% of net profits for the major banks.[131] Compared to the major banks, full-service second-tier banks typically conduct a higher proportion of lending to households or individuals (retail lending) relative to their business lending. For BEN, Bank of Queensland, ING Bank, HSBC Bank, Macquarie Bank and Suncorp Bank, retail lending represents 78-89% of retail and business lending.[132] Suncorp Bank's retail lending is 80% of its total retail and business loan book.[133]

4.16. For the major banks, deposits from retail customers constitute between approximately 39-53% of total deposits.[134] Second-tier banks, except for HSBC Bank and Macquarie Bank, typically source a comparatively larger proportion of their deposit funding from retail customers compared to the major banks. For Suncorp Bank and BEN, retail deposits constitute approximately 60-66% of total deposits, while for ING Bank deposits from retail customers constitute 92% of total deposits.[135] HSBC Bank and Macquarie Bank are more similar in their reliance on business customers for deposits than the major banks and respectively receive 43 and 29% of their deposits from business banking, reflecting the activities of their parent groups.[136]

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[128] ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. Calculated based on credit outstanding.

[129] ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. Calculated based on credit outstanding.

[130] Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 622.

[131] Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 622. Recent reporting suggests institutional banking activities still constitute a sizable proportion of profits for the major banks. See NAB, 2023 Half Year Results – Investor Presentation, 4 May 2023, p 33; Westpac, 2023 Interim Financial Results Key Financial Information, 8 May 2023; ANZ, 2023 Half year results – 5th May 2023 – Key Financial Data, 5 May 2023; CBA, 1H23 - Profit Announcement, 31 December 2022.

[132] ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. Calculated based on credit outstanding.

[133] ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. Calculated based on credit outstanding.

[134] ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. Calculated based on credit outstanding.

[135] ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. Calculated based on credit outstanding; these figures exclude deposits by financial and non-financial businesses and community services organisations.

[136] ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, May 2023 issued 30 June 2023. Calculated based on credit outstanding.

4.17. Further, smaller banks may have portfolios focused on particular business customer segments. For example, **[Redacted - Confidential]**, lending to SME business customers accounts for between **[Redacted - Confidential]** of total business lending.[137]

4.18. The banks with the largest exposure to agribusiness lending as a proportion of their total business lending are **[Redacted - Confidential]**.[138]

4.19. The remaining approximate 14.5% of banking system assets is managed by other small providers with less than approximately 0.7% share individually. They include foreign banks, credit unions, building societies, fintechs and neobanks, and very small ADIs. Credit unions and building societies typically only conduct lending business to their members (retail lending) and source between **[Redacted - Confidential]** of deposits from retail customers.[139] Very small ADIs in this group typically focus on particular customer segments. For example, Judo Bank and Rabobank currently only lend to business customers. Lending to agribusiness customers accounts for over **[Redacted - Confidential]** of Rabobank's lending activities.[140] SME lending accounts for over **[Redacted - Confidential]** of Judo Bank's lending.[141]

4.20. There are also a range of non-ADI lenders who supply products in certain segments such as home loans and SME lending.[142] Non-ADI lenders are much smaller than ADIs and are not authorised to take deposits and rely on other funding sources.

4.21. These other providers include 'fintechs', a loosely defined group of smaller financial technology providers which may operate a range of business models that relate to banking in various ways, who tend to focus on limited, and often specialised areas.

4.22. Fintechs that are currently active in the industry typically provide digital financial services targeted at particular customer segments or specific digital offerings. Most fintechs do not currently have ADI status, which means they cannot accept deposits. Therefore, they predominantly offer lending products and services, including home loans, SME lending and retail lending.

4.23. Many fintechs provide limited specific financial services or products also offered by full-service banks to a range of customers including payments processing,[143] white labelling, stored value facilities or digital wallets[144] and buy-now-pay-later.[145]

4.24. Neobanks are fintechs that have received an ADI licence and offer banking services online without a physical branch network. A number of neobanks entered and exited the industry in recent years, including 86 400, which was acquired by NAB in May

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137 ACCC analysis **[Redacted - Confidential]**.

138 ACCC analysis **[Redacted - Confidential]**.

139 ACCC analysis **[Redacted - Confidential]**.

140 ACCC analysis **[Redacted - Confidential]**.

141 Judo and Rabobank have retail deposit product offerings. ACCC analysis **[Redacted - Confidential]**.

142 There are 102 finance companies that are non-ADI financial institutions as at December 2021, see RBA, Main types of financial institutions, December 2021.

143 Examples include Tyro Payments and Square.

144 Stored-value facilities are payment services that enable customers to store funds in a facility for the purpose of making future payments. See: CFR, Regulation of Stored-value Facilities in Australia, October 2019.

145 Examples include Afterpay and Zip; APRA, Discussion paper – APRA's approach to new entrant authorised deposit-taking institutions, p 7.

2021,[146] and Volt Bank and Xinja Bank, who exited the industry in mid-2022 and late 2020, respectively, after failing to raise sufficient funds.[147]

Regulatory framework

4.25. As the banking sector is an important part of the Australian economy, participants are subject to significant regulatory and prudential oversight. The various regulatory and prudential frameworks can affect banks' costs, through the banks' source of funding and different capital holding requirements.

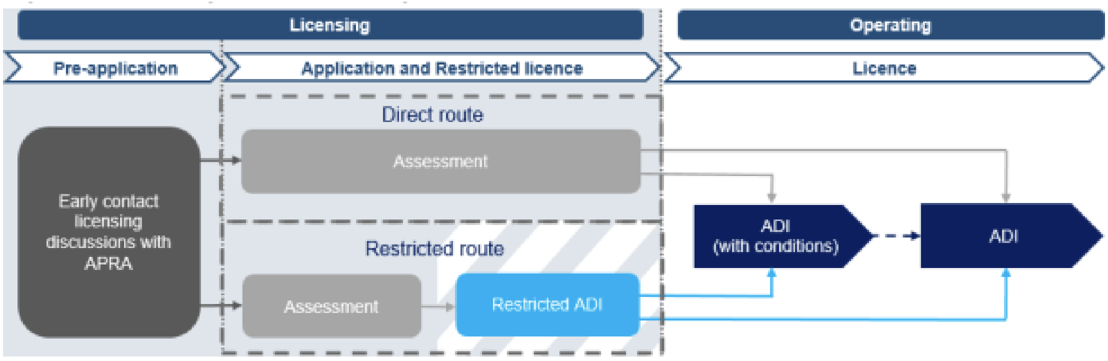
4.26. This section provides an overview of the regulatory and prudential framework required for market participation and introduces some of the relevant regulatory and policy concepts, including the direct and restricted pathways for ADI licencing, approaches to calculating capital requirements, and the Major Bank Levy.

ADI licensing

4.27. Only banks with an ADI licence can offer deposit products to customers. Deposits can be a comparatively cheap source of funding for lending activities compared to other funding sources.

4.28. There are strict regulatory requirements for obtaining and maintaining an ADI licence. APRA provides two routes through which an entity can obtain an ADI licence: the direct route and the restricted route. An overview of the direct and restricted pathways is provided in Figure 2.

Figure 2: Licensing process for the direct route vs the restricted route



Source: APRA, ADI licensing - Restricted ADI Framework – Information Paper, 4 May 2018, p 9.

4.29. An entity that obtains an ADI licence via the direct route can conduct the full range of banking activities (including deposit-taking) from the time it obtains the licence.[148] To obtain a licence via the direct route, the entity must meet certain requirements, including holding a specified amount of capital.[149] APRA's prudential requirements commence from the point of licence. This would typically require the applicant to have

146 Australian Financial Review, 'Money flows and work begins as NAB completes 86 400 buyout', 21 May 2021.

147 The Sydney Morning Herald, 'Digital bank Volt, which 'wanted to change the world of banking', shuts down', 29 June 2022.

148 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 11.

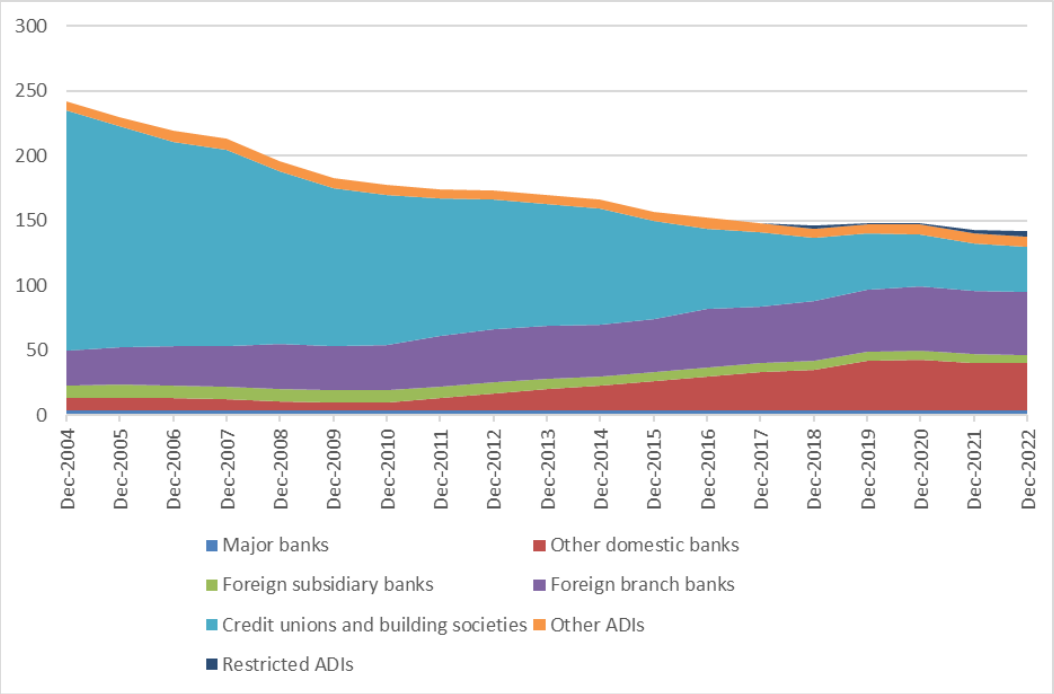
149 Before licensing, an entity applying for an ADI licence via the direct route will need to achieve a limited launch of at least one income-generating asset product and be operationally ready to launch deposit products shortly after being granted a licence: APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 26.

substantial capital resources at the point of application or a very clear avenue for access to such resources.[150]

4.30. Alternatively, an entity can apply for a restricted ADI licence via APRA's Restricted ADI Licensing Framework.[151] Under the Restricted ADI Licensing Framework, an entity can obtain a restricted ADI licence before they are ready to be a fully licensed ADI, with phased-in regulatory obligations reflecting the restricted range of permitted activities.[152]

4.31. From 2004 to 2022, the number of entities with an ADI licence dropped from 242 to 142 — a reduction of around 40% (see Figure 3). This trend reflects consolidation, particularly in credit unions and building societies, in search of economies of scale.[153]

Figure 3: Entities with ADI licences



Source: ACCC calculations based on APRA, Quarterly authorised deposit-taking institution performance statistics, December 2022, issued on 14 March 2023.

Approaches to calculating ongoing ADI capital requirements

4.32. Once fully licensed, an ADI must comply with all applicable prudential standards.[154] These include requirements for financial resilience (such as minimum bank capital and liquidity requirements), governance, risk management, recovery and resolution, and reporting. The prudential standards establish minimum expectations for regulated

150 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 11.

151 APRA, ADI licensing - Restricted ADI Framework – Information Paper, 4 May 2018, p 10.

152 During this phase, entities can conduct limited banking business while seeking the investment required to operationalise their business, test their operational model and progress their compliance with the prudential framework and application for an unrestricted ADI licence: APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 12.

153 APRA, Individual challenges and mutual opportunities – Speech by Wayne Byres, October 2017.

154 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 42.

entities as part of APRA's purpose of ensuring Australians' financial interests are protected and the financial system is stable, competitive and efficient.[155]

4.33. Bank capital requirements are particularly important in ensuring ADIs have a financial buffer to absorb unexpected losses, such as borrowers defaulting on their loans. By requiring ADIs to hold a prudent minimum level of capital relative to a risk-adjusted measure of their assets, APRA ensures banks are more likely to remain solvent during periods of financial adversity and helps protect depositors in the case that they become insolvent.

4.34. There are two approaches permitted by APRA for determining banks' credit risk capital requirements, the internal ratings-based (**IRB**) approach and the standardised approach.

4.35. While requirements can vary across banks, banks that have applied for and been approved for APRA's IRB approach can determine their capital requirements for credit risk using internal models that have been approved by APRA.[156] To use the IRB approach, banks must have very good historical data, a sophisticated risk measurement framework, develop advanced internal modelling capabilities, and undergo a rigorous accreditation process. Further, IRB banks are subject to more stringent regulatory requirements and more intensive ongoing supervision than standardised banks.[157]

4.36. In contrast, banks using the standardised approach apply APRA-prescribed risk weights for different types of lending.[158] Standardised risk weights are intentionally simple and conservative, meaning banks using this approach may need to hold more capital against a similar exposure compared to banks on the IRB approach.[159] While there are many differences between the two approaches, on average the capital framework is calibrated such that IRB capital requirements tend to be lower than standardised capital requirements.[160] Capital is more expensive than other forms of funding,[161] which may allow banks holding less capital to provide cheaper product offerings. For example, on average IRB accredited ADIs may be able to provide residential mortgage loans an estimated 5 basis points cheaper compared to ADIs on the standardised approach.[162]

4.37. This differential has narrowed since the Financial System Inquiry Final Report recommended action in 2014,[163] beginning with APRA announcing higher minimum capital requirements for IRB banks in 2017[164] (150 basis point increase, compared to a 50 basis point increase for standardised banks) and being finalised with the new capital framework implemented on 1 January 2023.[165] These changes have taken

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155 APRA, Prudential policy, accessed 04 August 2023.

156 APRA, APRA Explains: Risk-weighted assets, May 2020.

157 APRA, Is the capital benefit of being an advanced modelling bank justified?, 23 May 2023.

158 APRA, Unquestionably Strong Framework for Bank Capital – Information Paper, November 2021, p 12.

159 APRA, Unquestionably Strong Framework for Bank Capital – Information Paper, November 2021, p 15.

160 APRA, Is the capital benefit of being an advanced modelling bank justified?, 23 May 2023.

161 RBA, How Have Australian Banks Responded to Tighter Capital and Liquidity Requirements? – Bulletin, June 2017, p 43; APRA submission, 13 July 2023, p. 2.

162 APRA, Unquestionably Strong Framework for Bank Capital – Information Paper, November 2021, p 16.

163 Financial System Inquiry, Final Report, November 2014, Recommendations 1 and 2.

164 APRA, APRA announces 'unquestionably strong' capital benchmarks – Media Release, 19 July 2017.

165 APRA, Unquestionably Strong Framework for Bank Capital – Information Paper, November 2021, pp 5 and 15.

place against the backdrop of a more general capital reform agenda[166] and the ongoing implementation of these measures in response to the 2008-2009 global financial crisis.

4.38. Currently, each of the major banks, Macquarie Bank and ING Bank use the IRB approach. All other banks, including Suncorp Bank, use the standardised approach. If acquired by ANZ, Suncorp Bank's loan book would remain on the standardised approach subject to the combined ANZ/Suncorp Bank entity applying and obtaining APRA approval to apply the IRB approach.[167]

4.39. APRA also classifies ADIs as either a Liquidity Coverage Ratio (**LCR**) ADI or a Minimum Liquidity Holdings (**MLH**) ADI for the purposes of determining the appropriate approach for setting minimum liquidity requirements.[168]

Requirements on significant financial institutions

4.40. The major banks are identified by APRA as domestic systemically important banks (**D-SIBs**), where due to their size, interconnectedness, substitutability and complexity, their distress or failure would cause significant dislocation in the domestic financial system and economy.[169] Banks identified as D-SIBs must meet higher loss absorbency (**HLA**) requirements through holding more Common Equity Tier 1 capital (**CET1**). This increases the ADI's ability to absorb losses and reduces the probability of failure.[170] CET1 capital is the highest quality and more expensive than other sources of funding, which has a direct (negative) effect on banks' return on equity (**ROE**) and profitability.[171]

4.41. Credit ratings are issued by credit rating agencies and are an important driver of a bank's cost of and access to wholesale funding.[172] Rating agencies assess the creditworthiness of companies, including banks, and the debt instruments they issue, distinguishing the relative riskiness of different companies that seek to raise funds.[173]

4.42. While D-SIB designation may increase the major banks' costs to meet prudential requirements, it may also have a positive effect on their credit ratings to the extent it is viewed by credit rating agencies as recognition of their systemic importance.[174] The ratings agencies provide a government support uplift to the ratings of the major banks and Macquarie Bank. While Macquarie Bank is not classified by APRA as a D-SIB, the rating agencies provide a government support uplift to Macquarie Bank's ratings

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166 This includes the internationally agreed requirements for higher and better-quality capital for banks globally under the Basel III framework, as well as the recommendations from the 2014 Financial System Inquiry to strengthen the resilience of the Australian financial system, i.e. 'An Unquestionably Strong Framework for Bank Capital.' See RBA, Financial Stability Review, Box C: Recent Developments in Australian Banks' Capital Position and Return on Equity, October 2016.

167 APRA submission, 13 July 2023, p 5.

168 APRA, Prudential Standard APS 210 Liquidity, December 2022, [52-54].

169 APRA submission, 13 July 2023, p 6.

170 APRA, Domestic systemically important banks in Australia - Information Paper, December 2013, p 19.

171 RBA, How Have Australian Banks Responded to Tighter Capital and Liquidity Requirements? – Bulletin, June 2017, p 43; APRA submission, 13 July 2023, p 2.

172 RBA, Credit Ratings and Market Dynamics - Bulletin – April 2004, April 2004; **[Redacted - Confidential]**.

173 RBA, Credit Ratings and Market Dynamics - Bulletin – April 2004, April 2004; The two largest credit rating agencies in the Australian market are Moody's and Standard and Poor's (S&P). Globally, Moody's, S&P and Fitch Ratings are the largest credit rating agencies. See ESMA, Report on CRA Market Share Calculation, December 2022, p 6.

174 RBA, Competition in the Financial System - Submission to the Productivity Commission Inquiry, September 2017, p 13.

given its growing domestic systemic significance, interconnectedness with Australia's financial sector infrastructure and unique role in some financial markets.[175]

4.43. The government support uplift contributes to the higher ratings assigned to the major banks,[176] which means they have been assessed to be less risky. Therefore, they can source funds at lower cost than smaller banks and non-ADI lenders.[177]

4.44. APRA has also recently introduced the concept of significant financial institutions (**SFIs**), which includes ADIs with assets above $20 billion and those determined by APRA due to factors such as complexity of operations and group membership. This definition allows APRA to consistently differentiate prudential requirements between larger and smaller entities as part of proportionality within the prudential framework.[178] Over time, APRA is seeking to minimise the complexity of prudential requirements for smaller ADIs, relative to what is needed to ensure their financial safety, to reduce potential adverse impacts for costs and competition.[179]

4.45. In 2017, the Major Bank Levy of 0.015%, paid each quarter on the balance of the bank's liabilities (funding sources), was introduced for banks with over $100 billion in total liabilities (currently the major banks and Macquarie Bank). The levy recognises that large leveraged banks are a source of systemic risk in the financial system and the wider economy. It is also intended to contribute to a more level playing field for smaller ADIs and non-ADI competitors, relative to the major banks, 'whose size and market dominance affords them significant funding cost advantages and pricing power at the expense of their customers'.[180]

Other regulatory requirements on banks

4.46. ADIs have obligations to meet other regulatory requirements including anti-money laundering and counter-terrorism financing, and conduct regulations. The responsible government agencies for setting and enforcing these regulations include:

- Australian Transaction Reports and Analysis Centre (AUSTRAC) – AUSTRAC is responsible for preventing, detecting and responding to criminal abuse of the financial system to protect the community from serious and organised crime. ADIs must meet obligations under the Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) Act, including having risk-based processes and procedures to identify, mitigate and manage money laundering and terrorism financing risks.[181]
- Australian Securities and Investments Commission (**ASIC**) – ADIs and financial service providers are subject to conduct regulations governed by ASIC, which sets and enforces banking standards and investigates and acts against misconduct in the banking sector. Financial service providers, including ADIs,

175 S&P Global Ratings, Macquarie Bank Ltd., December 2022, p 10; Fitch Ratings, Macquarie Bank Limited, October 2022, p 1.

176 For example, under S&P the major banks all have Long-Term Issuer Credit Ratings of AA-, compared to BBB+ for Bendigo and Bank of Queensland.

177 Statement of Adrian Went (ANZ), 28 November 2022, [18].

178 APRA, Minor amendments to centralise the definition of a signification financial institution, July 2022, p 1.

179 APRA, Minor amendments to centralise the definition of a signification financial institution, July 2022, p 2.

180 The Parliament Of The Commonwealth Of Australia, House Of Representatives, Treasury Laws Amendment (Major Bank Levy) Bill 2017 - Explanatory Memorandum, June 2017, p 6.

181 AUSTRAC, AML/CTF Programs, accessed 04 August 2023.

must have an Australian financial services (**AFS**) licence from ASIC and meet their licence conditions to conduct a financial services business.[182]

4.47. These obligations may impact each ADI's regulatory compliance costs differently. In particular, larger banks may be more able to absorb fixed compliance costs, with a disproportionate impact being borne by smaller players.[183]

Regulatory requirements for non-bank lenders

4.48. Non-bank lenders are required (in most cases) to hold an Australian Credit Licence (or operate as an authorised representative of an Australian Credit Licensee) and are regulated by ASIC.[184] Non-bank lenders are also regulated by the AUSTRAC in relation to AML/CTF requirements.[185] Non-bank lenders that are registered financial corporations are also required to report periodic data to APRA.[186]

Previous consideration of banking competition

4.49. Competitive markets deliver better price and service choices to consumers and businesses. Promoting competition in banking is critical, as financial services are central to how Australian consumers live and do business. ADIs play a pivotal role in this system, particularly in facilitating retail and business deposit-taking and lending activities.

4.50. Australia's retail banking sector is an established oligopoly in which the four major banks, collectively account for 72% of banking system assets.[187] In the 1960s and 1970s, the major banks accounted for around 80% of banking assets in Australia. While this share declined to around 65% following deregulation and the entry of foreign banks in the 1980s, the market share of the major banks has subsequently gradually increased to its current level.[188]

4.51. There is a long history of regulators and policy-makers identifying and seeking to address competition concerns in the banking sector.

4.52. Some examples of identified issues include:

- The ACCC Home Loan Price Inquiry report released on 5 December 2020 identified that there are impediments for borrowers when trying to switch lenders and lenders use a range of practices that detract from price competition in the home loan market and adversely affect consumers.[189]

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182 ASIC, Banking, accessed 28 July 2023.

183 Grant Thornton, A case for proportionate regulation - the cost of compliance, November 2018, p 16.

184 ASIC, Credit licensees, accessed 28 July 2023.

185 AUSTRAC, Australians non-bank lending and financing sector, 2021, p 8.

186 APRA, Registered financial corporations, accessed 28 July 2023.

187 The ACCC notes that ANZ has submitted that various features of the market are 'not consistent with an oligopoly market structure': the major banks have experienced major declines in ROE and NIM in recent times; they have suffered a decline in their share of the national home loans and deposits markets in the last decade; they are meaningfully constrained by the threat of new entry and expansion and customer switching; and competition in these markets is 'intense': see e.g. ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [3.6]-[3.7], [3.13]-[3.15]; ANZ Response to Bank of Queensland's Submission, 22 March 2023, [2.8] and [2.12]. The ACCC deals with the substantive matters raised by ANZ in more detail in the home loans and deposits sections.

188 Michelle Bullock, 'Big Banks and Financial Stability' (Speech, Economic and Social Outlook Conference, 21 July 2017).

189 ACCC, Home Loan Price Inquiry Final Report, November 2020, pp vii, xii, 5, 10 and 65-66

- The ACCC Residential Mortgage Price Inquiry report released on 11 December 2018 criticised the pricing approach of the banks as opaque, accommodative, and synchronised.[190]
- The Productivity Commission Inquiry into Competition in the Australian Financial System released on 3 August 2018 (**Productivity Commission Report**) found that many of the highly profitable financial institutions have achieved that state with persistently opaque pricing and a lack of easily accessible information has induced unaware customers to maintain loyalty to unsuitable products.[191] It also found that layers of public policy and regulatory requirements support larger incumbents, and that large providers have the ability to exercise market power over competitors and customers.[192]
- The Federal Government introduced price signalling legislation in 2011, focusing on the banking sector to prohibit disclosure of pricing or competitively sensitive information,[193] which was later replaced by the concerted practices prohibition. The Treasury stated that the new prohibition would 'close a gap' in the legislation that is 'used by businesses like banks to avoid the full impact of genuine competition.'[194]

4.53. Some examples of government interventions and policy reforms and regulatory oversight to promote competition include:

- Launch of the Consumer Data Right (CDR) in 2020[195] to improve competition by reducing barriers that prevent consumers from shifting between service providers across several sectors. In banking, CDR aims to facilitate consumers comparing and switching between different financial providers and products.[196]
- Establishment of the APRA restricted ADI licence pathway in 2018.[197] Under the restricted ADI Licensing Framework, an entity can obtain a restricted licence before they are ready to be a fully licensed ADI.[198] APRA notes that the framework was 'designed to balance the competing objectives of encouraging competition while maintaining safety and stability in the financial system.'[199]
- Amendments to the *Australian Securities and Investment Commission Act* 2001 in 2018, to require that ASIC consciously consider how its actions may impact on competition in the financial system.[200] The Explanatory Memorandum that accompanied the *Treasury Laws Amendment (Enhancing ASIC's Capabilities) Bill 2018* identified the importance of competition to improving the financial system,

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190 ACCC, Residential Mortgage Price Inquiry Final Report, November 2018, p 6.

191 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 2.

192 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, pp 2, 4-5.

193 *Competition and Consumer Amendment Act (No1) 2011* (Cth) See also Australian Government Treasury, Empower ACCC to investigate and prosecute anti-competitive price signalling, 12 December 2011.

194 Australian Government Treasury, Empower ACCC to investigate and prosecute anti-competitive price signalling, 12 December 2011.

195 Consumer Data Right, Rollout, accessed 28 July 2023.

196 The Parliament Of The Commonwealth Of Australia, House Of Representatives, Treasury Laws Amendment (Consumer Data Right) Bill 2019, Explanatory Memorandum, August 2019. [1.1]-[1.5].

197 APRA, ADI licensing: Restricted ADI Framework – Information Paper, 4 May 2018.

198 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 12.

199 APRA, APRA finalises new Restricted Authorised Deposit-taking Institution licensing framework, 4 May 2018, accessed 28 July 2023.

200 *Australian Securities and Investments Commission Act 2001* (Cth) s 1(2A), introduced by the *Treasury Laws Amendment (Enhancing ASIC's Capabilities) Act 2018* (Cth); Treasurer Josh Frydenberg, Passage of government's action to enhance ASIC's capabilities, 18 September 2018.

and that it will impact the efficiency and development of the economy.[201] The change implements Recommendation 30 in the 2014 Financial System Inquiry Final Report, which noted that high concentration and steadily increasing vertical integration in some sectors of the financial system has the potential to limit the benefits of competition in the future and that regulatory frameworks can impose significant barriers to entry and growth of new players.[202]

- Introduction of the Major Bank Levy in 2017. The then-Treasurer announced that 'by reducing Australia's largest banks' funding cost advantages', the levy would 'contribute to a more level playing field for smaller banks and non-bank competitors.'[203] The Explanatory Memorandum that accompanied the *Major Bank Levy Bill 2017* noted that large leveraged banks were a source of 'systemic risk in the financial system and the wider economy'[204] and 'the major banks' size and market dominance affords them significant funding cost advantages and pricing power at the expense of their customers'.[205]
- Establishment of the ACCC's financial services unit in 2017 to undertake regular inquiries into specific financial competition issues.[206] Since 2017, the ACCC has been directed to undertake a number of inquiries into banking or finance, including the residential mortgage product price inquiry 2017-18, the home loan price inquiry 2019-20, and the retail deposits inquiry 2023.[207]

4.54. The merger parties have made various submissions about the state of competition in the banking sector (for example, they submit that they do not agree with the Productivity Commission findings and that there were trends of dynamic competition in the years leading up to its publication).[208] However, the ACCC notes that ANZ submits that regulatory and policy changes, like those listed above, were designed to promote competition, including to reduce barriers to entry, increase consumer choice and make competition a regulatory focus.[209] The ongoing attention of regulators and policy-makers in this space highlights the importance of promoting competition in Australian retail banking.

Submissions on the current state of competition

4.55. In respect of the current competitive dynamics in Australian retail banking, the merger parties submit that the sector is intensely competitive, and that competition continues to increase.[210] For example, ANZ and Suncorp Group cite:

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201 The Parliament Of The Commonwealth of Australia, House Of Representatives, Treasury Laws Amendment (Enhancing ASIC's Capabilities) Bill 2018, Explanatory Memorandum, September 2018, p 6.

202 Financial System Inquiry, Final Report, November 2014, p 255.

203 Treasurer Scott Morrison, Turnbull Government delivers on Major Bank Levy, 20 June 2017.

204 The Parliament Of The Commonwealth Of Australia, House Of Representatives, Treasury Laws Amendment (Major Bank Levy) Bill 2017 - Explanatory Memorandum, May 2017, [1.6].

205 The Parliament Of The Commonwealth Of Australia, House Of Representatives, Treasury Laws Amendment (Major Bank Levy) Bill 2017 - Explanatory Memorandum, May 2017, [1.9].

206 ACCC, Opening statement at the Productivity Commission public hearing into the Competition in the Australian Financial System, 28 February 2018.

207 ACCC, Banking and finance, accessed 28 July 2023.

208 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [15]-[17] and [3.2]-[3.5]; Second statement of Shayne Elliott (ANZ), 17 May 2023, [8]-[59]; Second statement of Clive van Horen (Suncorp Bank), 17 May 2023, [17]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [13].

209 ANZ application for Merger Authorisation, 2 December 2022, [5.64]-[5.71]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [3.4].

210 ANZ application for Merger Authorisation, 2 December 2022, [13] and [42]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [13]-[25]; Second statement of Clive van Horen (Suncorp Bank), 17 May 2023, [17].

- Industry-wide declines in margins and profitability over the last 20 years.[211]
- **[Redacted - Confidential]**.[212]
- The major banks and other traditional banks (that is, banks that offer traditional banking services and maintain physical branch networks) losing retail market share in home loans and deposits.[213]
- The increasing importance of brokers in driving competition, because they make the process of comparing and acquiring loans easier for home lending and commercial lending.[214]
- Increasing digitisation, including changes in technology and consumer preferences, enhances the ability of second-tier banks and non-bank providers to compete, and means that physical points of presence are less important.[215]

4.56. In contrast, interested parties have mixed views on the current state of competition. For example, it has been submitted that:

- Generally, competition between the major banks is ineffective.[216]
- There are many competitors for home loans and deposits, and recently there have been high levels of customer switching.[217] However this could be limited to the major banks focusing on higher quality customers for which smaller banks struggle to compete (due to major banks' structural advantages).[218]
- Although there is an increase in loan origination through brokers, brokers have not completely offset all barriers to entry or fully constrained the major banks.[219]
- In SME banking and agribusiness banking, there are many bank and non-bank lenders, though second-tier banks and specialist providers (for example, Judo Bank, Rabobank) may provide stronger competition for certain customer niches or locations.[220]
- Investing in technology and innovation is important to compete effectively.[221]

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211 ANZ application for Merger Authorisation, 2 December 2022, [5.72]-[5.77] citing Statement of Steven Johnston (Suncorp Group), 25 November 2022, [29]-[33].

212 **[Redacted - Confidential]**.

213 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [3.13]-[3.14]; Second statement of Shayne Elliott (ANZ), 17 May 2023, [26].

214 ANZ application for Merger Authorisation, 2 December 2022, [13], [30]-[36] and [5.54]-[5.61]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [3.32]-[3.38]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [16].

215 See for example, Australian Banking Association, 'Banking customers continue shift to digital', 19 October 2021, accessed 1 August 2023.

216 Consumers' Federation of Australia submission, 11 January 2023, pp 2-4; Consumers' Federation of Australia submission, 16 April 2023, p 2.

217 ABS, Lending indicators, reference period June 2023, released 1 August 2023; APRA, Monthly Authorised Deposit-taking Institution Statistics, and Monthly banking statistics, issued 30 June 2023.

218 Bendigo and Adelaide Bank submission, 3 March 2023, p 20.

219 Bank of Queensland submission, 24 February 2023, p 9; Consumers' Federation of Australia submission, 11 January 2023, p 6.

220 Rabobank submission, 18 January 2023, p 4; Cowbank submission, 18 April 2023, p 2; Judo Bank submission, 7 February 2023, p 1; Bank of Queensland submission, 24 February 2023, p 10; Bendigo and Adelaide Bank submission, 3 March 2023, p 36; BMAgBiz submission, 18 January 2023, p 2.

221 See for example, Bendigo and Adelaide Bank submission, 3 March 2023, p 20 and Bank of Queensland submission, 23 February 2023, p 9.

- Smaller banks do not typically compete with the major banks on price, but do compete strongly on non-price factors such as service quality, technological innovation, and product delivery.[222]
- Physical presence remains important in some circumstances, with bank branches valued by some customers, particularly in regional areas and for customers who are driven by service-based banking.[223]

Profitability measures and profitability over time

4.57. A bank's profitability is influenced by a variety of factors including the domestic interest rate environment, broader macroeconomic conditions, structural factors and the level of competition in each jurisdiction. Particular bank-specific factors such as size, operating efficiency and lending profitability affect significantly on banks' return on equity (**ROE**).[224]

Profitability indicators

4.58. There are several main indicators relevant to bank profitability. Bank profitability is commonly measured by ROE which shows how efficiently the bank is using its equity capital to generate income.

4.59. Relatedly, net interest margin (**NIM**) is a measure of the bank's profitability from its lending activities, which is a core activity of most banks. Typically, banks make profits (the net interest income) from their lending activities by lending at interest rates that are higher than the interest rates of their funding. NIM is the ratio of net interest income of the bank as a proportion of its average interest earning assets (for example, various types of loans) and represents the profitability of lending.[225]

4.60. To improve return on equity, industry participants have an incentive to lower their cost-to-income (**CI**) ratio (discussed further in the 'Scale' section). CI ratio is the ratio of total operating costs (excluding bad and doubtful debt charges) to total income (the sum of net interest and non-interest income) and is a proxy for operational efficiency in banking.[226]

Australian banks' profitability

4.61. Figure 4, Figure 5 and Figure 6 compare the profitability of Australian banks with international counterparts. While there are multiple ways of measuring profitability, the ACCC understands that ROE and NIM are the most commonly reported industry indicators of profitability used for comparison across different banks and are used across different jurisdictions.[227]

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[222] Bendigo and Adelaide Bank submission, 3 March 2023, p 23; Bank of Queensland submission, 24 February 2023, Comments on the Proposed Acquisition, [1](a)-(b), [2](f), [4](a)-(d), [5](c)-(e).

[223] Bendigo and Adelaide Bank submission, 3 March 2023, pp 30-31; Bank of Queensland submission, 24 February 2023, Comments on the Proposed Acquisition, [5](a)-(b).

[224] Athanasoglou et al., Bank-specific, industry-specific and macroeconomic determinants of bank profitability, April 2008, pp 121-136; Jiang et al, The Profitability of the Banking Sector in Hong Kong, September 2003, pp 5-9; Kosmidou et al. Determinants of profitability of domestic UK commercial banks: panel evidence from the period 1995-2002, 2008, pp 14-18; Molyneux and Thornton, Determinants of European bank profitability: A note, December 1992, pp 1173-1178.

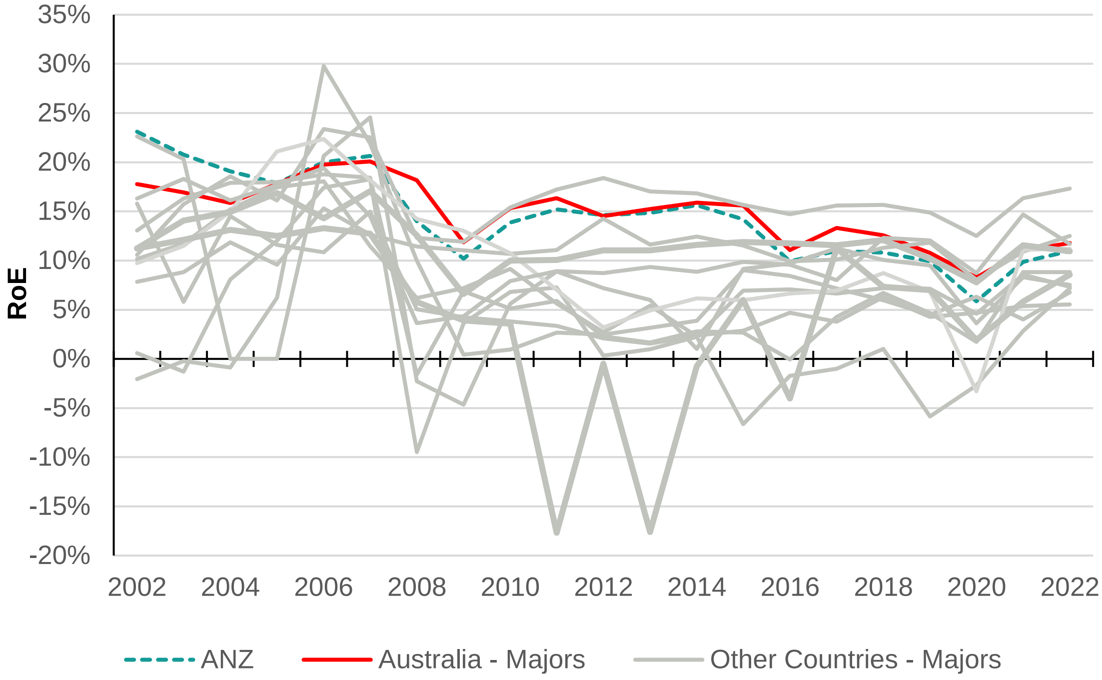
[225] RBA, Low Interest Rates and Bank Profitability – The International Experience So Far - Bulletin, June 2021, p 78.

[226] RBA, Australian Major Banks' Cost-to-income Ratios - Financial Stability Review, September 2014, p 35.

[227] RBA, Low Interest Rates and Bank Profitability – The International Experience So Far - Bulletin, June 2021, p 78; David Norman, RBA, Returns on Equity, Cost of Equity and the Implications for Banks – Bulletin, March 2017, p 52. International Monetary Fund, Financial Soundness Indicators Compilation Guide, 2019, p 91.

4.62. Figure 4 compares the ROE of the four major Australian banks against globally and domestically systemically important banks (**G-SIBs** and **D-SIBs**) from a selection of comparable OECD countries as measured by GDP and GDP per capita.[228] While the market structure and conditions will vary across the included jurisdictions, with some being more similar to Australia than others, this sample provides a broad comparison of Australian bank profitability against banks from other large OECD economies.

Figure 4: International comparison of major bank profitability (ROE)



Source: ACCC analysis of data submitted by ANZ in response to RFI dated 21 June 2023. ANZ, ANZ response to ACCC RFI dated 21 June 2023, 27 June 2023.

Note: The 'Other Countries – Majors' category consists of D-SIBs and G-SIBs in Canada, France, Germany, Italy, Japan, Korea, Netherlands, Scandinavia, Spain, Singapore, the United States and the United Kingdom.

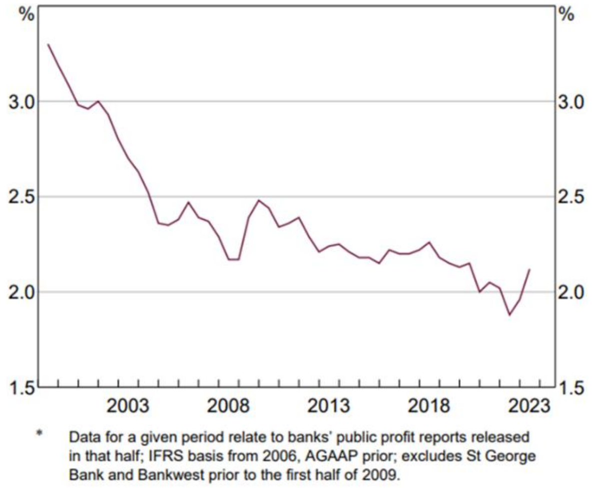
4.63. The profitability of the Australian major banks has been relatively high compared to these international peers for a sustained period. From 2007 to 2022, the ROE of the Australian major banks was among the five highest against the sample of international peers, including being in the top three countries (below US and Canada) between 2010 and 2018. Relative to the other large banks in the sample, the profitability of Australian major banks has been comparatively stable since the start of the data series in 2002. While relative profitability has declined since 2018, collectively, the Australian major banks remain among the top five most profitable compared to groups of large banks in other countries.

4.64. As lending is a primary driver of Australian banks' income, the NIM on a bank's loan book is an important indicator of profitability. Data previously published by the RBA

[228] ACCC analysis of data submitted by ANZ. ANZ, ANZ response to ACCC RFI dated 21 June 2023, 27 June 2023. Provided as supporting evidence for the Third statement of Shayne Elliott (ANZ), 30 June 2023. ANZ originally included data for Australia, Canada, Scandinavia, Singapore and the UK on the basis that these had large amount of gross loans and advances in their respective jurisdictions, with Japan and the Eurozone excluded due to prolonged periods of low interest rates and the US excluded due to greater securitisation and off-balance sheet lending activity. ANZ provided further data requested by the ACCC for additional overseas jurisdictions.

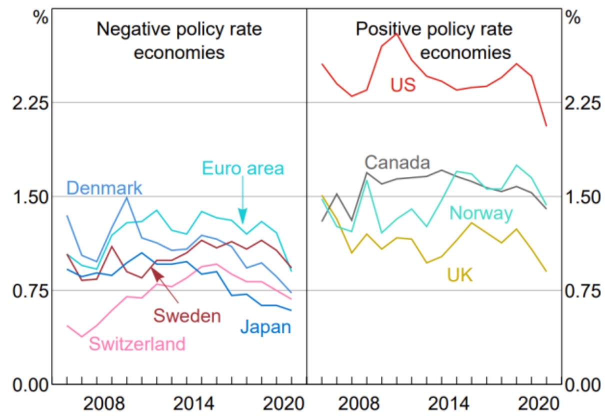
4.65. shows that the Australian major banks (Figure 5) have maintained a NIM that has been relatively high compared to banks in comparable jurisdictions (Figure 6) since at least 2005. While the Australian major banks' aggregated NIM has declined since 2000, it remains significantly higher than banks' NIM in comparable jurisdictions, with the exception of US banks, which had a similar NIM between 2020-2021. **[Redacted - Confidential].**[229]

Figure 5: Australian major banks' domestic NIM*



Source: RBA, [Chart Pack – Banking Indicators – Major Banks' Net Interest Margin](), August 2023. Date accessed: 3 August 2023.

Figure 6: NIM in selected jurisdictions



Source: RBA, [Low Interest Rates and Bank Profitability – The International Experience So Far - Bulletin](), June 2021, p 81.

4.66. The ACCC notes that there has been a downward trend in Australian banks' absolute profitability (both ROE and NIM). There are two key factors that explain most of this trend, higher capital standards and the low interest rate environment, which are discussed in turn below.

Higher capital standards set by APRA

4.67. The capital reform agenda in Australia since the 2014 Financial System Inquiry has resulted in a substantial increase in the banks' capital ratios. The quality of banks' capital has also improved, with Common Equity Tier 1 (**CET1**) capital – the highest quality form of capital – accounting for most of the rise in total capital since it was introduced as a minimum requirement in 2013.[230] These changes have increased ADIs' resilience against adverse shocks and ability to absorb losses.[231]

4.68. This equity raising by the banks, especially the increase in new issuance in 2015, has had a direct negative impact on banks' ROE.[232] The RBA notes that ROE fell notably in 2016 as the major banks raised additional equity to meet tighter capital standards

229 ACCC analysis **[Redacted - Confidential]**.

230 RBA, How Have Australian Banks Responded to Tighter Capital and Liquidity Requirements? - Bulletin, June 2017, p 42.

231 APRA submission, 13 July 2023, p. 3.

232 RBA, How Have Australian Banks Responded to Tighter Capital and Liquidity Requirements? - Bulletin, June 2017, pp 42-43.

set by APRA.[233] The RBA considered that this reduction in ROE was likely to be permanent given the permanent nature of the additional equity requirement unless banks take additional risks or achieve substantial productivity gains.[234]

4.69. There have also been changes in regulatory requirements for capital holding and liquidity, which have reduced bank profitability in recent years. These include increasing the amount and quality of capital that banks must hold (loss absorbing capacity requirements) which must be met wholly or substantially with Tier 2 capital,[235] as well as liquidity reforms in response to the 2008-09 global financial crisis.[236] Banks have responded to the higher capital requirements by adjusting their lending activities and reducing the average risk weight of their assets, which partially reduced the effect on ROE while supporting capital ratios.[237]

Impacts from the low interest rate environment

4.70. The RBA considers that Australian major banks' lending spread – the difference between their lending rates and their costs of funding (including debt and deposits) – remained relatively stable for over the decade to 2021 (including during COVID-19). This is despite the level of nominal interest rates falling several percentage points during this period.[238] (See the discussion on changes in the lending spread since 2020-21 and the implications for the competition level in the home loan market).

4.71. While the lending spread was stable up to 2021, the RBA notes that the low interest rate environment still affected profitability, that is, NIM still falls as the level of interest rates fall.[239] This is mechanically attributable to banks having more assets than liabilities.[240] The RBA's analysis confirms that 'the overwhelming majority of the movements in the major banks' NIMs since 2010 can be explained by movements in [bank's cost of debt multiplied by their equity ratio]'.[241]

4.72. On the above basis, the ACCC considers that the reduction in the major banks' NIMs from 2016 to 2020 can be explained, for the most part, by the increase in banks' equity ratios in response to APRA's tighter capital standards since 2015 discussed above, as well as the various reductions in the RBA cash rate target occurring up to

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233 These include introducing the liquidity coverage ratio requirement in 2015, establishing additional capital buffers (including a countercyclical capital buffer policy), and implementing a higher minimum average mortgage-risk weight for banks using the IRB approach, which came into effect from mid-2016. See RBA, How Have Australian Banks Responded to Tighter Capital and Liquidity Requirements? - Bulletin, June 2017, p 42.

234 RBA, Returns on Equity, Cost of Equity and the Implications for Banks - Bulletin, March 2017, p 53. The RBA also finds that banks have responded to the higher capital requirements by focusing on activities that generate higher returns for a given amount of capital to help support ROE, consistent with the reduction in the average risk weight of their assets. See RBA, How Have Australian Banks Responded to Tighter Capital and Liquidity Requirements? - Bulletin, June 2017, p 43.

235 APRA submission, 13 July 2023, pp 3-4.

236 APRA, Post-implementation review of the Basel III liquidity reforms – Information paper, June 2022, pp 14-17.

237 RBA, How Have Australian Banks Responded to Tighter Capital and Liquidity Requirements? - Bulletin, June 2017, p 43.

238 RBA, The Consequences of Low Interest Rates for the Australian Banking Sector – Research Discussion Paper – RDP 2022-08, December 2022, p 10.

239 The RBA discusses the reasons for Australian major banks' relatively stable lending spread, compared to what the economic literature would predict (outside of the competition consideration). See RBA, The Consequences of Low Interest Rates for the Australian Banking Sector – Research Discussion Paper – RDP 2022-08, December 2022, p 1.

240 RBA, The Consequences of Low Interest Rates for the Australian Banking Sector – Research Discussion Paper – RDP 2022-08, December 2022, p 13.

241 RBA, The Consequences of Low Interest Rates for the Australian Banking Sector – Research Discussion Paper – RDP 2022-08, December 2022, p 16.

May 2022.[242] (See the discussion on the impacts of the RBA's monetary policy response to the pandemic in the home loans).

4.73. The ACCC also notes that the major banks' ROEs have increased since 2020[243] (see the discussion on competition since 2020 in the 'Home loans' section).

Price and non-price competition in banking

4.74. Banks can compete on price and non-price dimensions. The extent to which they compete on both dimensions depends on the market they compete in, and the strategies they employ.

4.75. Price competition can occur across a range of pricing mechanisms and levers, depending on the specific product, the type of customer and what they value. Examples of this include:

- for loan products, which include home loans and business loans, pricing competition can take place across a range of pricing levers including headline interest rates, fees and charges, sign-on and cash-back bonuses, and advertised and discretionary discounts.
- for savings accounts, a variable base rate may be supplemented by a variable bonus rate, which is offered if the consumer meets certain conditions associated with the product. Customers can also negotiate the rates for term deposit products.

4.76. Non-price competition occurs when businesses seek to gain an advantage over competitors by differentiating the goods, services, and terms they offer to make them more attractive to buyers.

4.77. There are common dimensions of non-price competition shared across the relevant markets, including differing technology offerings, product innovation and features, and customer service.

4.78. There are also certain non-price dimensions that are particularly important to specific products and services, including speed of approval in home loans, customers' access to, and developing a close relationship with, specialist bankers with industry knowledge for agribusiness and to a lesser extent SME banking, and willingness to lend, particularly for bespoke SME business customer segments.

Structural barriers to competition in the banking industry

4.79. The concentrated nature of the banking industry, with the major banks maintaining significant market shares and profits over a considerable time, has largely remained unchallenged by new entrants and smaller players. Structural features of the banking industry have resulted in a limited number of challengers entering the Australian banking sector, sustainably growing, and competing effectively. These barriers also limit competition from smaller existing players.

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242 The RBA cash rate target reduced from 1.5% in March 2020 to 0.1% in November 2020, after a reduction from 4.75% in January 2011 to 1.5% in August 2016. See RBA, Cash Rate Target, accessed 2 August 2023.

243 ACCC analysis of data submitted by ANZ in response to RFI dated 21 June 2023. ANZ, ANZ response to ACCC RFI dated 21 June 2023, 27 June 2023.

Scale

4.80. Scale is important in banking because the provision of banking services involves significant fixed costs. These fixed costs include operating a branch network and maintaining head office functions, meeting regulatory compliance requirements, and investing in technology to process transactions and otherwise serve customers.

4.81. Banks can lower their average fixed costs by increasing their number of customers and the sizes of their deposit and loan portfolios over which they recover these costs. Lower average fixed costs allow banks to operate with lower operating profit margins on their borrowing and lending activities. Subject to the competitiveness of banking markets, this should then generally be reflected over time in higher interest rate margins received by depositors and lower interest rate margins paid by borrowers.

4.82. Further, if banks have more customers, they will generally be more inclined to incur fixed costs (such as investing in technology) to service their customers more efficiently or to provide better-quality services. These cost savings should then be, at least partly, reflected in lower charges to customers or better-quality services. In this way, customers could be expected to benefit from banks increasing scale.

4.83. The merger parties and interested parties recognise the importance of increasing scale to improve the potential for better price and non-price competition. For example:

- Part of ANZ's rationale for the Proposed Acquisition is to increase its scale.[244] In oral evidence, Mr Elliott (CEO of ANZ) stated that **[Redacted - Confidential]**,[245] **[Redacted - Confidential]**,[246]**[Redacted - Confidential]**.[247] This is also supported by ANZ's internal documents, which note that **[Redacted - Confidential]**.[248] ANZ submits that it needs increased scale to compete more effectively against the other major banks.[249]
- In his statement, Mr Johnston (CEO of Suncorp Group) notes that the 'economics of technology investment generally benefit from scale',[250] and increasing investment in digital and technology is necessary to meet customer expectations, including by transforming Suncorp Bank's **[Redacted - Confidential]** technology platforms.[251] **[Redacted - Confidential]**.[252]
- BEN submits that improved cost efficiencies arising from scale can be directed towards a range of initiatives, such as more competitive pricing, technology investment, or investment in marketing.[253] BEN's internal documents also note that **[Redacted - Confidential]**.[254]
- Bank of Queensland submits that the scale enjoyed by the major banks delivers a more productive cost base as well as cost relativity advantage for necessary

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244 ANZ, Acquisition of Suncorp Bank and Equity Raising – Investor Discussion Pack, 18 July 2022, pp 6-7.

245 **[Redacted - Confidential]**.

246 **[Redacted - Confidential]**.

247 **[Redacted - Confidential]**.

248 **[Redacted - Confidential]**.

249 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [2.31].

250 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [99].

251 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [32(d)].

252 **[Redacted - Confidential]**.

253 Bendigo and Adelaide Bank submission, 3 March 2023, [5.2].

254 **[Redacted - Confidential]**.

capital expenditure.[255] Bank of Queensland considers that **[Redacted - Confidential]**.[256]

4.84. Due to their larger scale, on average, **[Redacted – Confidential]**. Data analysis by the ACCC shows some scale benefits in the Australian banking industry. **[Redacted - Confidential]**.[257] There are some outliers to this trend, for example, **[Redacted - Confidential]**, which have different business models and cost-to-income structures from the major banks and regional banks.

Figure 7: [Redacted - Confidential]

[Redacted - Confidential]

Source: **[Redacted - Confidential]**

4.85. It is generally more challenging for second-tier banks to compete against the larger scale major banks.

- They generally have less ability to invest in technology to compete in the shift to digital banking. For example, Suncorp Group's internal documents note that **[Redacted - Confidential]**,[258] and BEN's internal documents note that **[Redacted - Confidential]**.[259] The importance of technology investment is reinforced by how Macquarie Bank successfully underpinned its growth in home loans.[260] Macquarie Bank's internal documents note that **[Redacted - Confidential]**,[261] **[Redacted - Confidential]**,[262] and **[Redacted - Confidential]**.[263]
- They tend to face proportionally higher regulatory compliance costs. For example, in his statement, Mr Johnston identifies that one of the reasons why regional banks have generated lower returns than the major banks is because 'regional banks do not benefit from APRA advanced accreditation on risk weights'.[264] [265]**[Redacted - Confidential]**.[266] Further, BEN's internal documents note **[Redacted - Confidential]**,[267] **[Redacted - Confidential]**,[268] and **[Redacted - Confidential]**.[269]

4.86. Macquarie Bank notes that **[Redacted - Confidential]**,[270] and in oral evidence, Ms Baker (CEO of BEN) notes **[Redacted - Confidential]**.[271]

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255 Bank of Queensland submission, 23 February 2023, [2(c)].

256 **[Redacted - Confidential]**.

257 **[Redacted - Confidential]**.

258 **[Redacted - Confidential]**.

259 **[Redacted - Confidential]**.

260 Australian Financial Review, 'The secret behind Macquarie's superfast mortgage growth' 13 February 2023, accessed 4 August 2023.

261 **[Redacted - Confidential]**.

262 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

263 **[Redacted - Confidential]**.

264 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [31].

265 **[Redacted - Confidential]**.

266 **[Redacted - Confidential]**.

267 **[Redacted - Confidential]**.

268 **[Redacted - Confidential]**.

269 **[Redacted - Confidential]**.

270 **[Redacted - Confidential]**.

271 **[Redacted - Confidential]**.

4.87. This material, taken together, demonstrates the importance of scale, and particularly the importance of obtaining additional scale to defray fixed costs (for example, investing in technology and meeting regulatory compliance costs) and improve competitiveness. While there can be some step changes which can significantly improve scale benefits, the evidence is that there is no minimum efficient scale to be competitive, and any opportunity to spread fixed costs over a larger customer base can create scale benefits. As such, customer growth is particularly important to achieve scale, but this can be a challenge for new entrants and existing providers seeking to expand.

Funding costs

4.88. ADIs fund their businesses through a range of sources, including deposits, equity, wholesale debt issuance (including short-term and long-term unsecured debt and securitisation).[272] ADIs of different sizes and portfolio mixes have different access to these sources of funding.

4.89. Deposits from households and businesses are the largest source of ADI funding and account for approximately two-thirds of major banks' non-equity funding.[273] Most ADIs' deposit funding is 'at-call', meaning the depositor may withdraw funds in the short term and a substantial portion is available to be withdrawn at any time. A rising interest rate environment is generally associated with increased deposit funding costs for ADIs.[274]

4.90. ADIs also raise funds through issuing debt and securitisation in the wholesale debt market.[275] Banks can issue short-term and long-term debt in the form of bonds and hybrid securities into the wholesale market.

4.91. Smaller industry participants such as non-ADI lenders and smaller ADIs, typically use the securitisation warehouses from larger banks. As non-ADI lenders cannot raise funding from deposits, they are typically more reliant on securitisation to raise funds. ADIs with a lower credit rating may have more limited access to unsecured wholesale funding markets compared to major banks, and similarly may rely more on securitisation alongside their deposit funding.

4.92. Costs to raise funds from wholesale debt markets have historically been lower for major banks compared to smaller ADIs. This is, at least partly, due to credit rating agencies taking into account the perception that major banks have lower risk due to portfolio diversification, scale and the perceived high likelihood of government support.[276] This results in higher credit ratings for the major banks and better access to wholesale funding markets, both in terms of volume and lower cost.

4.93. The Explanatory Memorandum that accompanied the *Major Bank Levy Bill 2017* noted 'the major banks' size and market dominance affords them significant funding

[272] Banks were also able to obtain low-cost funding from April 2020 to June 2021 from the Reserve Bank's Term Funding Facility (TFF). For banks which accessed the TFF, a significant amount of TFF funding remains on their books. See RBA, Developments in Bank's Funding Costs and Lending Rates, March 2023, pp 66-68.

[273] RBA, Developments in Bank's Funding Costs and Lending Rates, March 2023, p 66.

[274] RBA, Developments in Bank's Funding Costs and Lending Rates, March 2023, Graph 1, p 66.

[275] Securitisation is the process of converting a pool of illiquid assets such as residential mortgages into tradeable securities. RBA, Asset Securitisation in Australia – Financial Stability Review, September 2004, p 48.

[276] RBA, Competition in the Financial System - Submission to the Productivity Commission Inquiry, September 2017, p 13.

cost advantages',[277] which was a consideration in introducing the Major Bank Levy. For example, the major banks were able to access 3 year unsecured wholesale funding at a spread of 78 basis points above the 3 month bank bill swap benchmark rate in May 2023, compared to 125 basis points for BEN and 105 basis points for Suncorp Bank.[278] **[Redacted - Confidential]**.[279]

4.94. Additionally, regulatory approaches to calculating capital requirements have provided a cost of capital advantage to the IRB banks, including the major banks. Since 2008, major banks have benefited from using the IRB approach for calculating their APRA regulatory capital requirements.[280] The ACCC's analysis considers the impact of regulatory settings on funding costs in the counterfactual scenarios.

4.95. However, since 2017, the cost of funding and capital advantage of the major banks has reduced as prudential regulation became increasingly focused on requiring the holding of additional capital to mitigate the systemic risks major banks present.[281]

4.96. While the cost of funding at any point in time for an ADI fluctuates with changes in global and local market conditions, on balance the major banks experience lower funding costs than smaller ADIs.[282] This funding advantage for the major banks increases in times of instability, resulting in a gap between the average operating costs of Australia's major banks and smaller ADIs.[283]

4.97. For smaller banks, their cost of funding does not need to be as low as the majors to attract customers and have a profitable business. However, to effectively challenge the major banks, arguably they need to be able to compete on both price and non-price factors, which can be difficult when the major banks benefit from scale advantages.

4.98. The merger parties and interested parties also recognise the challenges resulting from smaller banks' higher funding costs. For example:

- In his statement, Mr Went (Group Treasurer of ANZ) states that 'debt securities issued by banks with higher credit ratings tend to have a lower interest rate than the same securities issued by smaller institutions and/or institutions with a lower credit rating'[284] and '[i]n periods of financial stress…there is a risk that wholesale investors will withdraw or reduce the funding they provide to financial institutions….the likelihood of this occurring is greater for non-major banks'.[285]
- In his statement, Mr Johnston states that regional banks have generated lower returns than the major banks including because '[r]egional banks experience higher

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277 The Parliament Of The Commonwealth Of Australia, House Of Representatives, Treasury Laws Amendment (Major Bank Levy) Bill 2017 - Explanatory Memorandum, May 2017, p 6.

278 Second statement of Adrian Went (ANZ), 17 May 2023, p 3.

279 **[Redacted - Confidential]**, **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**;**[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**, **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

280 For more information, see APRA, Prudential Practice Guide: APG 110 Capital Adequacy, July 2022; Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 103.

281 APRA, A more flexible and resilient capital framework for ADIs - Discussion Paper, 8 December 2020 pp 11-13; APRA submission, 13 July 2023, pp. 2-4.

282 RBA, Developments in Banks' Funding Costs and Lending Rates - Bulletin, March 2016, p 27.

283 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 6.

284 Statement of Adrian Went (ANZ), 28 November 2022, [18].

285 Statement of Adrian Went (ANZ), 28 November 2022, [33].

wholesale funding costs due to the relative differences in credit ratings from their major bank counterparts'.[286]

- Judo Bank submits that major banks have access to cheaper wholesale funding than smaller banks and lower funding costs enables them to entrench their competitive advantages.[287]
- BEN submits that higher funding costs impact the ability of non-major banks to compete on price in lending products.[288]
- **[Redacted - Confidential]**,[289]**[Redacted - Confidential]**.[290]
- Bank of Queensland submits that in terms of retail deposits, regional banks have a structural disadvantage to the majors, including the relative size of their low cost deposits base and higher wholesale costs due to lower credit ratings.[291]
- Professor King notes in respect of Macquarie Bank that '[i]n part, this success requires a second-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'[292] and if BEN merged with Suncorp Bank, it 'could leverage its enhanced scale to increase its access to lower cost funds such as deposit funding.'[293]

4.99. Overall, the evidence demonstrates that funding cost advantages exist for larger scale banks, providing a competitive advantage over smaller ADIs.

Consumer inertia and customer switching

4.100. The level of switching and the ability for consumers to switch away from their existing provider is an important consideration for effective competition. In addition, an engaged customer base can help new entrants and smaller players to compete with larger, more established players.

4.101. While some customers are willing to switch banking providers, certain industry features act as barriers to switching, resulting in customers having a reduced propensity to switch financial institutions.

4.102. Historically, the banking industry features that can lead to a relatively low propensity to switch have included:[294]

- costs and time associated with switching to a new provider. For example, the time associated with home loan discharges[295] and regular or scheduled payments linked to an existing account[296]

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286 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [31a].

287 Judo Bank submission, 7 February 2023, p 3.

288 Bendigo and Adelaide Bank submission, 3 March 2023, p 21.

289 **[Redacted - Confidential]**.

290 **[Redacted - Confidential]**.

291 Bank of Queensland submission, 23 February 2023, p 6.

292 Expert report of Professor Stephen King, 3 March 2023, [111].

293 Expert report of Professor Stephen King, 3 March 2023, [125.b].

294 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, pp 149 and 630 - 631.

295 ACCC, Home Loan Price Inquiry – Final Report, November 2020, p 51.

296 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 157.

- lack of knowledge about the features of financial products which can lead to a lack of confidence in comparing products,[297] and
- behavioural biases, which lead customers to undervalue the potential benefits of switching to an alternative provider.[298]

4.103. In home loans, switching lenders occurs when a borrower repays their home loan with one lender (the previous lender) using the proceeds of a new home loan obtained from a different lender (the new lender), known as external refinancing.[299]

4.104. In retail deposits, consumers can often have multiple transaction or savings accounts across different banks. This is referred to as multi-banking. A customer's main financial institution is often considered by banks to be the institution where the consumer holds their main transaction account and transacts with most frequently.

4.105. Consumers can vary in their tendency to switch to the best deal for their needs. Similarly, consumers can vary in their price sensitivity, that is, how responsive consumers are to changes in price. The more price sensitive consumers are, the more likely they are to look for better deals and be motivated to switch for a better deal.

4.106. Banks may target consumer segments with higher propensity to switch or high price sensitivity by offering incentives such as attractive introductory interest rates, or discounts that only new customers are eligible for. This practice is a form of price discrimination where firms offer different prices for different groups of consumers. The ACCC has previously found that customers with new home loans pay lower interest rates on average than customers with existing home loans.[300]

4.107. ANZ submits that the ease of customer switching is a dynamic that drives competition in banking.[301] ANZ contends that customers can easily, and increasingly do, switch between providers to secure products and services that suit their needs and requirements.[302]

4.108. The ACCC considers that customers generally still have a low propensity to switch. Internal documents reviewed by the ACCC indicate that the **[Redacted - Confidential]**,[303] **[Redacted - Confidential]**.[304]

4.109. This means that major banks benefit from having a larger number of customers with loans previously written by a bank and are still being paid by the borrower, while also competing effectively for customers with new loans written or being written by a bank.

4.110. Major banks also have a stronger cross-selling advantage as they are better able to translate their market position in one product market to another product market. **[Redacted - Confidential]** (see the discussion in Barriers to entry and expansion for retail deposits).[305] Customers are also more likely to consider their main financial

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297 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, pp 87 - 89.

298 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 163.

299 ACCC, Home Loan Price Inquiry – Final Report, November 2020, p 5.

300 ACCC, Home Loan Price Inquiry - Interim Report, March 2020, p 9.

301 ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [13b].

302 ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [27a].

303 **[Redacted - Confidential]**.

304 **[Redacted - Confidential]**.

305 **[Redacted - Confidential]**.

institution first before other providers, when taking out new products. Therefore, the major banks have an advantage when cross-selling, for example, from transaction account products to other savings account and term deposit products, as well as to other retail banking products such as payment and SME banking products. The ACCC considers an example of this cross-selling behaviour between home loans and SME banking in 'SME banking'.

4.111. There have been some initiatives introduced to encourage customer switching, including the Consumer Data Right. This gives customers the ability to consent to their bank sharing data held about them with accredited data recipients, allowing customers greater ability to compare and switch between financial products and providers.[306] Brokers can also contribute to customers switching banks more easily in some product markets by reducing search and switching costs.[307]

4.112. Overall, while there have been important developments in the industry that provide customers with a greater visibility of financial products and ability to switch, the ACCC considers that customers continue to have a low propensity to switch, providing a competitive advantage for the major banks which have an existing large customer base.

Lack of reputation and brand recognition

4.113. The scale and longevity of the major banks also contributes to brand recognition and the perception that they are safe, stable institutions compared to smaller providers.[308] Customers tend to be risk averse and reluctant to obtain important financial products from new entrants whose credibility is still untested,[309] which can make it difficult for new entrants and smaller banks to build customer awareness and attract customers.[310] As noted, customer growth is particularly important to enable new entrants and smaller banks to achieve scale, raise capital and compete with incumbents.

4.114. To attract and convert home loan customers, banks require sufficient brand awareness and reputation, **[Redacted - Confidential]**.[311]

4.115. Evidence from the merger parties and interested parties indicates that brand and trust are factors considered by customers when choosing who to deposit funds with.[312]

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306 The Parliament Of The Commonwealth Of Australia, House Of Representatives, Treasury Laws Amendment (Consumer Data Right) Bill 2019, Explanatory Memorandum, August 2019, [1.1]-[1.5].

307 Mortgage and Finance Association of Australia, response to ACCC RFI dated 10 May 2023, 26 May 2023, p 5; ANZ application for Merger Authorisation, 2 December 2022, [7.7](c); **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

308 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, pp 6 and 102.

309 This is despite the Government's Financial Claims Scheme, which protects retail deposits of up to $250,000 with all ADIs. See APRA, Financial Claims Scheme – Knowledge Centre, accessed 4 August 2023.

310 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, pp 101 - 102.

311 **[Redacted - Confidential]**.

312 Second Statement of Yiken Yang (ANZ), 17 May 2023, [8(c)]; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

4.116. **[Redacted - Confidential]**,[313] **[Redacted - Confidential]**.[314] **[Redacted - Confidential]**.[315] Main financial institution customers are considered valuable because they are likely to acquire more products.[316]

4.117. Major banks appear to benefit from brand recognition. ANZ notes that some commercial banking customers may prefer to engage with larger providers, because they are perceived as being more resilient in times of economic hardship and are more likely to support the customer.[317] [318]Certain internal documents indicate **[Redacted - Confidential]**.[319]

4.118. The quality and reputation of relationship managers in agribusiness can have a material impact on their banks' competitiveness in the market,[320] as can the banks' reputation and commitment to the local community (including physical branch networks).[321] For example, Rabobank submits that a physical branch shows visibility of local presence for the brand and creates a perception that there is a commitment from the bank to the area.[322]

4.119. Overall, the brand recognition and perception that they are safe, generally appears to provide a competitive advantage to the major banks in attracting customers. This makes market entry and growth more challenging for smaller and less established ADIs.

Distribution channels

4.120. The nature of distribution channels dictates how customers engage with banks, and how competition takes place across the banking industry in practice.

4.121. Banks provide products and services through a range of channels including:

- physical networks (such as branches, ATMs, and Bank@Post)
- digital channels (such as through websites and mobile apps), and
- intermediaries (such as brokers and relationship managers).

Physical networks

4.122. Access to branches, and therefore the extent of branch networks, have historically been an important facilitator of competition for the banking sector. However, with the advent of online banking in the last two decades, and the increased penetration of brokers in some segments, the relative importance of access to branches has been in decline. This has enabled ADIs with limited branch networks to compete more effectively. However, branch access is still required for certain banking transactions

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313 **[Redacted - Confidential]**.

314 See **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

315 **[Redacted - Confidential]**.

316 See **[Redacted - Confidential]**'; **[Redacted - Confidential]**.'

317 ANZ application for Merger Authorisation, 2 December 2022, [6.122(a)]; Statement of Isaac Rankin (ANZ), 30 November 2022, [90].

318 **[Redacted - Confidential]; [Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

319 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**

320 Statement of Mark Bennett (ANZ), 1 December 2022, [112].

321 Statement of Mark Bennett (ANZ), 1 December 2022, [191]; Rabobank submission, 18 January 2023, p 3.

322 Rabobank submission, 18 January 2023, p 3.

and activities, and face to face engagement is still highly valued by certain customer segments, for example, some individuals who may not be technologically literate, or unable to use technology due to personal circumstances.

4.123. Due to the longer-term trend towards online banking, financial institutions have adjusted the way they reach customers face-to-face, including reducing the number of bank branches[323] and delivering banking services in alternative ways across several different points of presence.[324]

4.124. Physical points of presence are still important in agribusiness and SME banking. Customers that are driven by service-based banking may be more likely to prefer a physical presence compared to online[325] and many SMEs still rely on branches for cash withdrawal and deposits, although this reliance may continue to decline.[326] Agribusiness customers may also place a high value on relationships with bankers who understand their local area conditions and industry, as well as accessibility for face-to-face meetings with relationship managers.[327] This is discussed further in the SME banking and the Agribusiness sections.

Digital channels

4.125. Greater access and reliance on technology has resulted in the increased prominence of digital channels as a distribution channel. Services traditionally offered by physical branches, such as opening or closing a bank account, submitting a home loan application, or customer service assistance are now increasingly offered by banks online through either web-based banking services, or through apps. A strong digital proposition is also considered increasingly important to business and SME customers.[328]

4.126. According to research conducted for the Australian Banking Association, more than 80% of Australians prefer to check their account balances, pay bills, or transfer money online, which in turn reduces the reliance on physical branch networks.[329] The use of digital payment methods is also increasing; the RBA's 2022 Consumer Payments Survey found mobile payments were used by nearly two-thirds of Australians aged between 18 and 29, an increase from less than 20% in 2019.[330]

4.127. The increased importance of online banking as a distribution channel brings benefits to consumers including:

- faster loan application processing times[331]
- reduced need to physically attend a branch for customer service assistance

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323 APRA, Authorised deposit-taking institutions' points of presence statistics June 2017 to June 2022, 19 October 2022, accessed 2 August 2023; ANZ application for Merger Authorisation, 2 December 2022, [7.194] ; Rabobank submission, 18 January 2023, p 3.

324 See APRA, Authorised deposit-taking institutions' points of presence statistics, 19 October 2022.

325 Bank of Queensland submission, 23 February 2023, [5(a)-(b)].

326 See Australian Banking Association, Submission to the Regional Banking Taskforce, 17 December 2021, pp 6-7.

327 Bendigo and Adelaide Bank submission, 3 March 2023, [6.3(b)].

328 Statement of Guy Mendelson (ANZ), 1 December 2022, [64].

329 Australia Banking Association, 'Banking customers continue shift to digital', 19 October 2021, accessed 4 August 2023.

330 See RBA, 'Consumer Payment Behaviour in Australia" 15 June 2023, accessed 4 August 2023.

331 Australian Financial Review, 'The secret behind Macquarie's superfast mortgage growth' 13 February 2023, accessed 4 August 2023.

- reduction in search costs[332]
- improved ability to compare products, facilitating switching[333]

4.128. For example, ANZ submits that Suncorp Bank decided to reduce its physical branches in response to consumer behaviour, with customers increasingly applying for products through digital channels or through brokers and aggregators.[334] This reflects a broader industry trend – according to APRA data, the number of bank branches in Australia has fallen from 5,694 to 4,014 in the five years to June 2022.[335]

4.129. Banks also benefit from the shift to digital modes of distribution. For example, the cost of providing in-branch and call centre services can be multiples higher than for digital self-service for some customers' banking needs.

4.130. Moving to a more digitally focussed bank can be complex, particularly for banks with multiple legacy systems, because undertaking a digital transformation involves considerable financial investment and time. For example, ANZ has been undertaking a digital transformation program to improve its retail banking product offering, and the underlying technology systems supporting these products.[336] As part of this program, ANZ launched its 'ANZ Plus' product in March 2022, which currently includes a transaction account product and a savings account product on a mobile banking app.[337] **[Redacted - Confidential]**.[338]

4.131. Due to these developments, online banking has become a key driver of competition and has increased the scope for innovative technological developments that certain customer segments value.

Brokers

4.132. Brokers act as an intermediary by matching borrowers to lenders (and their loan products), assisting and advising borrowers on the loan application process and negotiating interest rates on loans. ANZ and Suncorp Group submit that brokers are increasingly important in driving competition, because they make the process of comparing and acquiring loans easier for home lending and commercial lending.[339]

4.133. Brokers play a role across home loans, SME and agribusiness banking. The broker market in Australia is relatively fragmented, and as brokers often facilitate both retail and business loans, there is no clear distinction between retail and business brokering.[340]

- Home loans – in retail lending, mortgage brokers act as an intermediary between a borrower and lender and facilitate access to a range of home loan products from different lenders.[341] Brokers utilise aggregator software providers to access

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332 ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [29].

333 ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [29].

334 ANZ application for Merger Authorisation, 2 December 2022, [5.32].

335 APRA, Authorised deposit-taking institutions' points of presence statistics, 19 October 2022.

336 ANZ application for Merger Authorisation, 2 December 2022, [3.20].

337 Statement of Shayne Elliott (ANZ), 30 November 2022, [54].

338 **[Redacted - Confidential]**.

339 ANZ application for Merger Authorisation, 2 December 2022, [13], [30]-[36] and [5.54]-[5.61]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [3.32]-[3.37], **[Redacted - Confidential]**; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [16].

340 Productivity Commission, Small business access to finance: The evolving lending market, September 2021, p 44.

341 ACCC, ACCC Home Loan price inquiry final report, November 2020, p v.

lender panels and use this information to recommend products that suit a customer's personal circumstances.[342]

- SME banking – SME brokers service customers for a range of financing needs, including purchasing or selling assets, short-term loans, property-secured loans and refinancing existing credit.[343] Brokers originate a significant proportion of new SME loans.[344]
- Agribusiness banking – in comparison to general business lending, brokers tend to be more specialised as agribusiness customers tend to require products tailored to their business requirements and may have a more limited selection of lenders to choose from.[345]

4.134. The Mortgage and Finance Association of Australia submits that mortgage brokers may provide smaller banks and newer banks with a greater ability to compete against larger banks that have the benefit of established brand awareness and a physical branch network.[346] The role of brokers is discussed further in 'Competitive effects of the Proposed Acquisition'.

Aggregators

4.135. Aggregators act as intermediaries between brokers and loan providers and provide the 'panel' of lenders (and their associated products) that affiliated brokers choose from. Aggregators determine which banks feature on their lending panels and may provide a range of services to brokers including licensing, white-labelling services for loans, training and administrative support.[347] Some brokers operate under an aggregator's licence as representatives,[348] others can only write loans from the panel lenders of the aggregator they are associated with.

4.136. Digital-only and recent entrant lenders without physical points of presence rely heavily on broker distribution networks and aggregator panels to gain new customers and increase scale. Broker distribution networks provide lenders with access to a wider range of consumers than the direct lender channel; further, smaller lenders can utilise brokers to distribute their products outside their local area without incurring the cost of establishing physical branches.[349] Major banks are also typically strongly represented on mortgage aggregator panels.[350]

History of entry and expansion

4.137. Historically, the lack of entry and expansion at scale demonstrates the challenges new and growing banks face in trying to expand to a size that gives them access to the same scale advantages as the major banks.

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342 Mortgage & Finance Association of Australia, response to ACCC RFI dated 10 May 2023, 26 May 2023, pp 5 – 6.

343 Productivity Commission, Small business access to finance: The evolving lending market, September 2021, p 44.

344 ANZ application for Merger Authorisation, 2 December 2022, [32]; Statement of Isaac Rankin (ANZ), 30 November 2022, [94]; Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [83]-[84].

345 BMAgBiz submission, 13 April 2023, p 1.

346 Mortgage & Finance Association of Australia, response to ACCC RFI dated 10 May 2023, 26 May 2023, p 2; Deloitte Access Economics Report, The value of mortgage broking, July 2018, p vii.

347 Productivity Commission, Small business access to finance: The evolving lending market, September 2021, p 44.

348 Deloitte Access Economics Report, The value of mortgage broking, July 2018, [2.5.3].

349 Deloitte Access Economics Report, The value of mortgage broking, July 2018, [5.1.3].

350 ASIC, Review of mortgage broker remuneration, March 2017, pp 148-149, [796 - 798].

4.138. Generally, the impact of neobanks on competitive dynamics in retail banking markets has been limited. Although neobanks have been able to access new and cheaper technology, the time and market experience required to leverage this technology to develop attractive and sustainable consumer value propositions and increase their customer base means they often fail or are ultimately acquired by an incumbent bank. In addition, the failure of Xinja in 2020 and Volt in mid-2022 could potentially reinforce the aversion investors may have investing in Australian neobanks.

4.139. Commentary from internal Suncorp Bank documents indicate that **[Redacted - Confidential]**.[351] ANZ seems to consider **[Redacted - Confidential]**.[352]

4.140. While Macquarie Bank is a comparative success, it does not appear to be a repeatable example of entry or expansion. **[Redacted - Confidential]**,[353] **[Redacted - Confidential]**[354], **[Redacted - Confidential]**,[355] **[Redacted - Confidential]**.[356] Macquarie Bank has also invested heavily in technology that has enabled quick loan approvals for customers, making it an attractive proposition for brokers and their customers.[357] It has leveraged its technology to offer attractive retail deposit products to help fund its growth in mortgages.[358] **[Redacted - Confidential]**.[359] Macquarie Bank's strategy is discussed further in home loans. These factors show that Macquarie Bank was likely uniquely placed in a particular segment of the market, and on balance the ACCC does not consider its success is likely to be repeated in a timely or sufficient way.

Conclusion

4.141. Overall, having considered the various industry characteristics and trends set out above, the ACCC considers that the retail banking sector remains highly concentrated amongst the four major banks and that structural barriers across the sector remain high. Further, it is clear that the major banks benefit from significant scale advantages which make it difficult for new entrants and/or smaller existing banks to provide effective competition to meaningfully constrain the major banks. This continues to result in muted competition across the retail banking sector, which the ACCC does not consider is likely to be disrupted, at least not in the medium-term (say, the next 5-7 years), by timely and sufficient entry or expansion.

4.142. The impact of these various industry characteristics and trends, as they apply to each of the markets relevant to the Proposed Acquisition and within the context of the available evidence on each market, are considered and analysed by the ACCC in the sections that follow.

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351 **[Redacted - Confidential]**.

352 **[Redacted - Confidential]**.

353 **[Redacted - Confidential]**.

354 **[Redacted - Confidential]**.

355 **[Redacted - Confidential]**;.**[Redacted - Confidential]**

356 **[Redacted - Confidential]**.

357 The Australian Financial Review, [The secret behind Macquarie's superfast mortgage growth](), 13 February 2023.

358 The Australian Financial Review, ['Tiny' Macquarie is now the 5th 'big' bank](), 1 March 2023.

359 **[Redacted - Confidential]**.

5. Future with and without the Proposed Acquisition

5.1. In considering whether it is satisfied of either the Competition Test or the Net Public Benefit Test, the ACCC seeks to understand the likely effects of the Proposed Acquisition. This is an evaluative judgement. The ACCC informs this judgement by analysing what is likely to occur in the future if the Proposed Acquisition occurs (the **factual**) compared to the future if the Proposed Acquisition does not occur (the **counterfactual**). By using the factual-counterfactual analysis, the ACCC is able to identify the effects that are likely to flow from the Proposed Acquisition (i.e. those that are *caused* by it) and to evaluate the likely size of those effects.

5.2. This section sets out the ACCC's considerations and conclusions in relation to the evidence and material it has received in respect of both the factual and counterfactual/s. An important aspect in reaching its conclusions in respect of the factual and counterfactual/s has been the history of Suncorp Group's consideration of the sale of Suncorp Bank.

5.3. The evidence establishes that the genesis of the Proposed Acquisition is Suncorp Group's desire to become a pureplay insurer. Suncorp Group has given consideration and undertaken strategic reviews over the course of several years, including in 2022. **[Redacted - Confidential]**. The sale to ANZ was announced in July 2022. The evidence before the ACCC on these matters is discussed in detail below.

5.4. This section is therefore structured as follows:

- History of Suncorp Group's consideration of sale of Suncorp Bank
- ACCC's views on the factual
- ACCC's views on the relevant counterfactuals.

5.5. In summary, for the reasons explained below, in the factual the Proposed Acquisition will occur, while in the counterfactual the ACCC considers there are two realistic scenarios. These reflect options previously considered in Suncorp Group's internal documents:

- Suncorp Bank continues to operate under the ownership of Suncorp Group, or
- Suncorp Bank is acquired by or merged with another second-tier bank – given the nature and content of the evidence before the ACCC, this has been primarily considered in the context of Bendigo and Adelaide Bank.

History of Suncorp Group's consideration of sale of Suncorp Bank

5.6. The process Suncorp Group undertook in forming its decision to split its banking and insurance businesses and the options it considered provides important context for considering the commercially realistic counterfactuals if the Proposed Acquisition does not proceed. Set out below is a detailed chronology of Suncorp Group's consideration of the sale of Suncorp Bank, based on Suncorp's internal documents.

5.7. **[Redacted - Confidential]**.[360]

[360] **[Redacted - Confidential]**.

5.8. **[Redacted - Confidential]**.[361] **[Redacted - Confidential]**.[362]

5.9. **[Redacted - Confidential]**:

- **[Redacted - Confidential]**
- **[Redacted - Confidential]**
- **[Redacted - Confidential]**
- **[Redacted - Confidential]**.[363]

5.10. **[Redacted - Confidential]**.

5.11. **[Redacted - Confidential]**.[364] **[Redacted - Confidential]**.[365] **[Redacted - Confidential]**.[366] **[Redacted - Confidential]**.[367]

5.12. **[Redacted - Confidential]**.[368]

5.13. **[Redacted - Confidential]**:

- **[Redacted - Confidential]**
- **[Redacted - Confidential]**
- **[Redacted - Confidential]**
- **[Redacted - Confidential]**
- **[Redacted - Confidential]**.[369]

5.14. **[Redacted - Confidential]**.[370]

5.15. **[Redacted - Confidential]**.[371]**[Redacted - Confidential]**.[372]

5.16. **[Redacted - Confidential]**:

- **[Redacted - Confidential]**
- **[Redacted - Confidential]**.[373]

5.17. **[Redacted - Confidential]**:

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361 **[Redacted - Confidential]**.
362 **[Redacted - Confidential]**.
363 **[Redacted - Confidential]**.
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370 **[Redacted - Confidential]**.
371 **[Redacted - Confidential]**.
372 **[Redacted - Confidential]**.
373 **[Redacted - Confidential]**.

- **[Redacted - Confidential]**.[374]

5.18. **[Redacted - Confidential].**[375] **[Redacted - Confidential]**.[376]

5.19. **[Redacted - Confidential].**[377] **[Redacted - Confidential]**.[378]**[Redacted - Confidential]**.[379]**[Redacted - Confidential]**[380]**[Redacted - Confidential]**.[381]

5.20. **[Redacted - Confidential].**[382] **[Redacted - Confidential]**.[383]**[Redacted - Confidential]**.[384]**[Redacted - Confidential].**[385]

5.21. **[Redacted - Confidential].**[386]

5.22. **[Redacted - Confidential].**[387] **[Redacted - Confidential]**.[388] **[Redacted - Confidential]**.[389]

5.23. **[Redacted - Confidential].**[390]

5.24. **[Redacted - Confidential]**[391] **[Redacted - Confidential][Redacted - Confidential]**.[392]

5.25. **[Redacted - Confidential].**[393] **[Redacted - Confidential]**.[394]

5.26. **[Redacted - Confidential].**[395] **[Redacted - Confidential]**:

- **[Redacted - Confidential]**
- **[Redacted - Confidential]**
- **[Redacted - Confidential]**.[396]

374 **[Redacted - Confidential]**.
375 **[Redacted - Confidential]**.
376 **[Redacted - Confidential]**.
377 **[Redacted - Confidential]**;**[Redacted - Confidential]**.
378 **[Redacted - Confidential]**.
379 **[Redacted - Confidential]**.
380 **[Redacted - Confidential]**.
381 **[Redacted - Confidential]**.
382 **[Redacted - Confidential]**.
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394 **[Redacted - Confidential]**.
395 **[Redacted - Confidential]**.
396 **[Redacted - Confidential]**.

5.27. **[Redacted - Confidential]**.[397] **[Redacted - Confidential]**.[398] **[Redacted - Confidential]**.[399] **[Redacted - Confidential]**.[400] **[Redacted - Confidential]**.[401]

5.28. **[Redacted - Confidential]**.[402]

5.29. **[Redacted - Confidential]**.[403] **[Redacted - Confidential]**.[404]

5.30. **[Redacted - Confidential]**

- **[Redacted - Confidential]**.
- **[Redacted - Confidential]**.[405]

5.31. Taking all of the above into account, the ACCC considers that the evidence shows:

- Over the course of several years Suncorp Group undertook various strategic reviews and received extensive external advice on ways to improve shareholder value and overcome a 'conglomerate discount'.
- Suncorp Group's view that it was being valued below the combined sum of its insurance and banking businesses led it to form a view that a cash sale to a major bank would realise the largest financial benefits to its shareholders, which in turn led to it approaching ANZ.
- However, this was not the only option considered in detail and Suncorp Group also invested significant time and resources into considering the option of a regional merger, with specific reference to BEN. It also considered the option of retaining Suncorp Bank.
- Advice from Suncorp Group's external consultants considered the second-best option to the ANZ offer to be a merger with a regional bank, with BEN as the preferred partner. Over the course of the strategic reviews, strategic analysis repeatedly concluded that a regional bank merger with BEN would be value accretive.
- Consideration of a potential merger with BEN was still being considered in detail in 2022, and the Proposed Acquisition with ANZ was announced in July 2022.

5.32. The ACCC's consideration of the relevant factuals and counterfactuals has taken into account this history and context of Suncorp Group's own consideration of its sale options in respect of Suncorp Bank.

ACCC's view on the Factual (Future with the Proposed Acquisition)

5.33. The factual is one in which the Proposed Acquisition occurs, meaning that ANZ acquires the Suncorp banking business. In considering the factual, the ACCC has

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397 **[Redacted - Confidential]**.

398 **[Redacted - Confidential]**.

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403 **[Redacted - Confidential]**.

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405 **[Redacted - Confidential]**.

considered the extent to which the Proposed Acquisition is likely to have a pro-competitive effect.

5.34. ANZ submits that a rationale of the Proposed Acquisition is that it will provide ANZ increased scale to enable continual, and more efficient, investment in digital transformation and innovation.[406] ANZ submits that this will enable it to become a more effective competitor, particularly against the other three major banks.[407] Shayne Elliott(CEO of ANZ) has described the Proposed Acquisition as 'unique'[408] and a 'once-in-a-lifetime opportunity' for ANZ.

5.35. Mr Elliott elaborated on this rationale in a meeting with the ACCC, giving his opinion that 'ANZ must be cost effective because it must be competitive on price, and the only way it can do that is to be competitive in respect of its cost base'.[409] Mr Elliott stated that in turn 'this leads to the need to invest heavily, and the need to be able to be cost effective, and that requires scale'.[410] Mr Elliott observes that 'the more customers [a bank] has, the more [that bank] can defray those costs'.[411] Mr Elliott also put to the ACCC that ANZ sees the Proposed Acquisition 'as a step to being a more effective competitor, providing better value for customers over the longer term'.[412]

5.36. The ACCC accepts that it is likely that ANZ will gain some benefits from increasing its scale via the Proposed Acquisition, in the form of Suncorp Bank's 1.2 million customers.[413] However, it considers that the extent of the effect of this increase in scale (via the Proposed Acquisition) on ANZ's competitiveness is less clear.

5.37. The ACCC notes there are various metrics to measure the incremental scale that ANZ will achieve. It will represent an approximate **[Redacted - Confidential]** increase in its customer numbers,[414] and will increase its Australian mortgages and deposits funds under management by 17% and 22% respectively.[415]

5.38. The ACCC considers that the extent of any actual direct efficiencies arising from this increase in scale will depend on ANZ's ability to execute and achieve synergies and minimise transaction costs during integration. In addition, the benefits to consumers from any improvement in ANZ's cost position as a result of increasing its scale will depend on the extent to which ANZ will pass on any cost savings to customers, or improve its service quality.

5.39. Mr Elliott has explained that without the Proposed Acquisition 'ANZ will continue to invest but its ability to be an effective competitor will be marginally less than it would otherwise be if the Proposed Acquisition proceeds'.[416] The ACCC also notes that in oral evidence, Mr Elliott stated that **[Redacted - Confidential]**.[417]

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406 ANZ application for Merger Authorisation, 2 December 2022, [3.8].

407 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [2.31].

408 bluenotes, Elliott: a transformational advance for ANZ, 18 July 2022.

409 ANZ oral submission to the ACCC, 16 June 2023, [11].

410 ANZ oral submission to the ACCC, 16 June 2023, [11].

411 ANZ oral submission to the ACCC, 16 June 2023, [11].

412 ANZ oral submission to the ACCC, 16 June 2023, [15].

413 ANZ application for Merger Authorisation, 2 December 2022, [3.8].

414 1.2 million SUN customers (ANZ application for Merger Authorisation, 2 December 2022, [3.8]); **[Redacted - Confidential]**(ANZ oral submission to the ACCC, 16 June 2023, [11]).

415 ANZ application for Merger Authorisation, 2 December 2022, [3.8].

416 ANZ oral submission to the ACCC, 16 June 2023, [15].

417 **[Redacted - Confidential]**.

5.40. On the evidence before it, the ACCC accepts that ANZ is likely to continue to make technology investments following the Proposed Acquisition, and that it may ultimately be in a position to bring forward certain technology investments as a result of any additional scale benefits it is able to achieve following implementation. However, while it is possible that the increase in scale from the Proposed Acquisition could accelerate ANZ's investments to improve its competitiveness, it is uncertain whether the Proposed Acquisition will fundamentally change ANZ's future competitive position.

5.41. Overall, the ACCC accepts that the Proposed Acquisition will likely give ANZ an ability to spread its fixed costs over a larger customer base through increased scale, and this may allow it to achieve some scale benefits. However, the extent to which these benefits will increase ANZ's competitiveness is uncertain, particularly as ANZ has stated that it would continue to invest in its digital transformation without the Proposed Acquisition. The ACCC has had regard to this competitive advantage (and its likely degree) in undertaking its assessment.

ACCC's views on the counterfactual (Future without the Proposed Acquisition)

5.42. The ACCC has considered counterfactual scenarios with a non-trivial prospect of occurring. It has also considered which counterfactuals are realistic and given most weight to those.[418] Based on a range of evidence and submissions, including the material on Suncorp's consideration of selling Suncorp Bank outlined above, the ACCC's view is that there are two counterfactuals that have a realistic prospect of occurring. These are in line with two of the options considered by Suncorp Group since at least December 2020:

- Suncorp Bank continues to operate under the ownership of Suncorp Group (**No-Sale Counterfactual**), or
- Suncorp Bank is acquired by or merges with another second-tier bank – given the nature and content of the evidence before the ACCC, this has been primarily considered in the context of BEN (**Bendigo Merger Counterfactual**).

5.43. In respect of the Bendigo Merger Counterfactual, the ACCC has considered the fact that BEN is not the only possible purchaser, and that another second-tier bank may also be interested in entering into a transaction with Suncorp Group. On the basis of the evidence before it, the ACCC has focused on BEN for the purpose of its analysis.

5.44. The ACCC notes Suncorp's internal documents show that **[Redacted - Confidential]**. However, the ACCC notes that these **[Redacted - Confidential]** and were not included in the more recent internal Suncorp consideration. In light of Suncorp's submissions and other evidence before the ACCC, the ACCC considers the relative likelihood of these future scenarios occurring absent the Proposed Acquisition, and their impact on the outcome of the assessment, to be so minimal as to be trivial.

5.45. The ACCC recognises that there are a range of potential outcomes and that it is not possible to be precise about what will occur in the future. However, the ACCC

418 See the discussion in *Australian Competition and Consumer Commission v Pacific National Pty Ltd (No 2)* [2019] FCA 669, [1277]-[1279]; approved on appeal: *Australian Competition and Consumer Commission v Pacific National Pty Ltd* [2020] FCAFC 77; (2020) 277 FCR 49, [246] (Middleton and O'Bryan JJ). Note however that there, Beach J was considering section 50 of the Act, not section 90(7).

considers the two counterfactuals identified above each have a realistic prospect of occurring in the future without the Proposed Acquisition and that identifying them assists the overall assessment of the competition impacts and public benefits and detriments arising from the Proposed Acquisition.

5.46. The ACCC outlines its consideration of the two counterfactuals in detail below.

No-Sale Counterfactual

Merger parties' submissions

5.47. ANZ submits that absent the Proposed Acquisition, Suncorp Bank would continue to be held by Suncorp Group and operated in accordance with the approved business plan for Suncorp Bank. ANZ also submits that Suncorp Group would continue to support Suncorp Bank to pursue its strategic priorities.[419]

5.48. ANZ submits that Suncorp Bank is currently no more vigorous or effective than other competitors in the supply of any of the relevant products, noting that Suncorp Bank's market share is relatively modest and static.[420] **[Redacted - Confidential]**.[421]

5.49. Mr Johnston (CEO of Suncorp Group) states that he believes the only relevant counterfactual is Suncorp Bank remaining part of Suncorp Group.[422] In oral evidence, **[Redacted - Confidential]**.[423]**[Redacted - Confidential]**.[424]

5.50. Suncorp Group submits that there are risks or issues that may arise in the event Suncorp Bank was retained by Suncorp Group. Mr Johnston considers that Suncorp Bank has not achieved sustained growth across its banking portfolio for an extended period, despite recently achieving growth in home loans.[425] Mr Johnston states that to deliver sustained growth, significant investment in transformational technology is required.[426] **[Redacted - Confidential]**.[427] **[Redacted - Confidential]**.[428]**[Redacted - Confidential]**.[429]

5.51. **[Redacted - Confidential]**.[430]**[Redacted - Confidential]**.[431] **[Redacted - Confidential]**.[432]**[Redacted - Confidential]**.[433]

[419] ANZ application for Merger Authorisation, 2 December 2022, Executive summary [6]. Statement of Steven Johnston (Suncorp Group), 25 November 2022, [70].

[420] ANZ application for Merger Authorisation, 2 December 2022, Executive summary [43].

[421] **[Redacted - Confidential]**.

[422] Second statement of Steven Johnston (Suncorp Group), 17 May 2023 [14].

[423] **[Redacted - Confidential]**.

[424] **[Redacted - Confidential]**.

[425] Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [70].

[426] Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [75].

[427] **[Redacted - Confidential]**.

[428] **[Redacted - Confidential]**.

[429] **[Redacted - Confidential]**.

[430] **[Redacted - Confidential]**.

[431] **[Redacted - Confidential]**.

[432] **[Redacted - Confidential]**.

[433] **[Redacted - Confidential]**.

5.52. **[Redacted - Confidential]**.[434]**[Redacted - Confidential]**.[435]**[Redacted - Confidential]**.[436]

5.53. **[Redacted - Confidential]**.[437]**[Redacted - Confidential]**,[438] **[Redacted - Confidential]**.[439]

Interested party submissions

5.54. Judo Bank submits that a relevant counterfactual for the ACCC to consider involves Suncorp Group divesting one or more of Suncorp Bank's portfolios, such as agribusiness lending, to one or more second-tier banks. Judo Bank submits that this has a non-trivial prospect of occurring.[440]

5.55. BEN submits that the No-Sale Counterfactual is unlikely on the basis that it contradicts Suncorp Group's strategic rationale for entering into the Proposed Acquisition.[441]

ACCC views

5.56. The ACCC considers that there is a realistic prospect that Suncorp Bank would be retained by Suncorp Group in the future without the Proposed Acquisition. The ACCC also notes that Suncorp Group consistently submits that this is the only likely counterfactual.

Suncorp Bank's competitiveness

5.57. The ACCC considers that there are several possibilities as to how Suncorp Group may operate Suncorp Bank in the No-Sale Counterfactual, including that it Continue to execute **[Redacted - Confidential]**.[442]**[Redacted - Confidential]**.[443]

5.58. Another possibility is that Suncorp divests some of Suncorp Bank's portfolios.[444] **[Redacted - Confidential]**.[445]**[Redacted - Confidential]**.[446]**[Redacted - Confidential]**.[447]

5.59. While it is difficult to assess what competitive strategy Suncorp Group will adopt in this counterfactual, the ACCC considers that Suncorp Group would continue to improve the competitiveness of Suncorp Bank and seek to drive shareholder value. As a second-tier bank it will likely have incentives to continue to differentiate in non-price competition, better customer care and service levels.[448] The ACCC notes that,

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434 **[Redacted - Confidential]**.

435 **[Redacted - Confidential]**.

436 **[Redacted - Confidential]**.

437 **[Redacted - Confidential]**.

438 **[Redacted - Confidential]**.

439 **[Redacted - Confidential]**.

440 Judo Bank submission, 18 April 2023, [3].

441 Bendigo & Adelaide Bank submission, 3 March 2023, [4.2].

442 **[Redacted - Confidential]**.

443 **[Redacted - Confidential]**.

444 See Judo Bank submission, 18 April 2023, [3].

445 **[Redacted - Confidential]**.

446 **[Redacted - Confidential]**.

447 **[Redacted - Confidential]**.

448 Bank of Queensland submission, 24 February 2023, p 10; **[Redacted – Confidential]**.

as a Queensland regional bank, Suncorp Bank has a point of differentiation due to its physical presence and it having built up its customer portfolio and loyalty there over time.[449]

5.60. **[Redacted - Confidential]**.[450]

5.61. **[Redacted - Confidential]**[451] **[Redacted - Confidential]**.[452]

5.62. **[Redacted - Confidential]**, it considers it unlikely that Suncorp's competitive position would significantly diminish in the No-Sale Counterfactual, given that Suncorp Bank is a major part of Suncorp Group with significant shareholder value. **[Redacted - Confidential]**.[453]

5.63. The ACCC's view is that there is a degree of uncertainty with how Suncorp Group would take Suncorp Bank forward absent the Proposed Acquisition. However, the ACCC considers the most likely scenario in the No-Sale Counterfactual is that Suncorp Group would continue to improve the competitiveness of Suncorp Bank and seek to drive shareholder value.

Bendigo Merger Counterfactual

5.64. In this counterfactual the ACCC has considered the potential for Suncorp Bank to merge with or be acquired by a second-tier bank absent the Proposed Acquisition.

5.65. The ACCC considers that there was substantial analysis undertaken by Suncorp Group, which included various external analyses commissioned by Suncorp Group, considering a regional merger as an alternative option. In much of that analyses, BEN are positioned either as the relevant benchmark or preferred counterparty against which to assess a regional merger. On this basis, the ACCC has considered the likelihood of a regional merger counterfactual scenario specifically in relation to BEN.

Merger parties' submissions

5.66. ANZ submits that a transaction between BEN and Suncorp Bank is not commercially realistic.[454]

5.67. Suncorp Group submits that there is no reasonable likelihood of an acquisition by BEN of Suncorp Bank, and in any event such a combination would not lead to BEN being a more effective competitor. It submits that, since the date the Proposed Acquisition was announced in July 2022, the operating conditions for banks internationally and within Australia have changed.[455] **[Redacted - Confidential]**.[456]**[Redacted - Confidential]**.[457]

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[449] ANZ application for Merger Authorisation, 2 December 2022, [7.196c].

[450] **[Redacted - Confidential]**.

[451] **[Redacted - Confidential]**.

[452] **[Redacted - Confidential]**.

[453] **[Redacted - Confidential]**.

[454] ANZ's submission in response to the SOPV, [2.6].

[455] Suncorp Group's submission in response to the SOPV, 17 May 2023, [31].

[456] **[Redacted - Confidential]**.

[457] **[Redacted - Confidential]**.

Interested party submissions

5.68. BEN submits that one of Suncorp Group's rationales for the Proposed Acquisition, to become a pureplay insurer, contradicts Suncorp Group's position that it will retain Suncorp Bank in the counterfactual.[458] BEN submits that the ACCC should consider a counterfactual in which Suncorp Bank would be divested and merge with BEN. BEN submits that absent the Proposed Acquisition, there is a reasonable prospect that BEN would make a binding offer to acquire Suncorp Bank, and that offer would be accepted by Suncorp Group.[459]

5.69. Bank of Queensland also submits that transactions other than the Proposed Acquisition could be available and attractive to Suncorp Group.[460]

ACCC consideration

5.70. The ACCC has received conflicting submissions and evidence about the commercial likelihood of a merger between Suncorp Bank and BEN in the future without the Proposed Acquisition, as well as the competitiveness of a combined entity.

5.71. The ACCC has set out below its views in respect of:

- an updated financial analysis provided by Suncorp Group
- Suncorp and BEN's incentives and ability to merge
- the potential risks and challenges of such a merger, and
- the competitiveness of a combined BEN/Suncorp entity.

Updated external consultant analysis

5.72. As explained above, there is a history of Suncorp Group carrying out strategic reviews in respect of Suncorp Bank over a number of years. This included consideration of **[Redacted - Confidential]**.

5.73. Suncorp Group submits that a merger between Suncorp Bank and BEN would face multiple challenges. In **[Redacted - Confidential]**. [461] **[Redacted - Confidential]**.[462]

5.74. **[Redacted - Confidential]**.

5.75. **[Redacted - Confidential]**.[463] **[Redacted - Confidential]**.[464] **[Redacted - Confidential]**.[465]

5.76. **[Redacted - Confidential]**.[466] **[Redacted - Confidential]**.

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458 Bendigo & Adelaide Bank submission, 3 March 2023, at [4.2] p 10.

459 Bendigo & Adelaide Bank submission, 3 March 2023, [4.2] pp 10 – 11. **[Redacted - Confidential]**.

460 Bank of Queensland submission, 24 February 2023, [6(b)].

461 **[Redacted - Confidential]**.

462 **[Redacted - Confidential]**.

463 See SOPV at [3.11]-[3.15].

464 **[Redacted - Confidential]**.

465 **[Redacted - Confidential]**.

466 **[Redacted - Confidential]**.

5.77. **[Redacted - Confidential]**.[467]**[Redacted - Confidential]**. [468]

5.78. **[Redacted - Confidential]**,[469] **[Redacted - Confidential]**.[470]

5.79. **[Redacted - Confidential]**.[471] **[Redacted - Confidential]**.

5.80. **[Redacted - Confidential]**. **[Redacted - Confidential]**. **[Redacted - Confidential]**.[472]

5.81. The ACCC has had regard to the Updated Barrenjoey Analysis, but has placed less weight on it due to its timing, incomplete methodology, and inconsistencies with earlier documents.

5.82. The ACCC notes that Suncorp Group has submits that it would assess a potential merger with BEN against range of merger partner key metrics.[473] It submits the outcomes of the metrics do not support the Board recommending a transaction with BEN because they show that it would not be in the interests of Suncorp Bank or its shareholders.[474]

5.83. The ACCC accepts that these are considerations Suncorp Group would take into account in assessing an offer from BEN. However, it considers these factors would also be considered in the broader context discussed further below.

Suncorp Group's incentives to merge Suncorp Bank with BEN

5.84. The ACCC has considered Suncorp Group's incentives to merge Suncorp Bank with BEN.

5.85. The ACCC notes that submissions and evidence from ANZ and Suncorp Group show that there are strong benefits to Suncorp Group separating out its banking and insurance businesses.[475]

5.86. It would also create additional value to Suncorp Group's shareholders once the conglomerate structure has been removed.[476] This is consistent with Suncorp Group's internal documents which demonstrate that over the course of several years it has undertaken strategic reviews, which involved seeking extensive external advice, to consider ways to improve shareholder value, and overcome a 'conglomerate discount'.[477]

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467 **[Redacted - Confidential]**.

468 **[Redacted - Confidential]**.

469 **[Redacted - Confidential]**.

470 **[Redacted - Confidential]**.

471 **[Redacted - Confidential]**.

472 **[Redacted - Confidential]**.

473 Suncorp Group's submission in response to the SOPV, 17 May 2023, [126].

474 Suncorp Group's submission in response to the SOPV, 17 May 2023, [155].

475 ANZ application for Merger Authorisation, 2 December 2022, [3.36], citing Statement of Steven Johnston (Suncorp Group), 25 November 2022, [18] and [42]; Statement of Steven Johnston (Suncorp Group), 25 November 2022, [42] **[Redacted - Confidential]**.

476 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [106].

477 See the section on the History of Suncorp Group's consideration of sale of Suncorp Bank above.

5.87. **[Redacted - Confidential]**.[478]**[Redacted - Confidential]**.[479]**[Redacted - Confidential]**.[480]**[Redacted - Confidential]**.[481]

5.88. The ACCC's view is that there remain strong incentives for Suncorp Group to divest Suncorp Bank. Suncorp Group's internal documents indicate that the value of a merger with BEN was previously assessed as the second best alternative to the Proposed Acquisition. Furthermore, **[Redacted - Confidential]**. The ACCC considers that although Suncorp Group would need to carry out further assessment of any potential transaction, it still has incentivises to merge Suncorp Bank with BEN if an offer came before it.

BEN's incentives to merge with Suncorp Group

5.89. BEN has expressed interest in merging with Suncorp Bank.[482] BEN submits that prior to the announcement of the Proposed Acquisition, BEN was seeking to engage with Suncorp Group and preparing to make an offer to merge with Suncorp Bank,[483] **[Redacted - Confidential]**.[484]

5.90. **[Redacted - Confidential]**.[485] **[Redacted - Confidential]**.[486]**[Redacted - Confidential]**.[487]

5.91. The ACCC understands that BEN has strong commercial incentives to enter into a merger with Suncorp Bank.

5.92. BEN submits that a merger between BEN and Suncorp Bank would effectively double its current size.[488] BEN submits that the significant increase in scale resulting from a merger would enhance its competitiveness,[489] including as a result of the following:

- **[Redacted - Confidential]**,[490] enabling increased investment in technology, accelerating the delivery of BEN's digital capabilities.[491]
- Providing a potential upgrade to BEN's credit rating,[492] which will assist in reducing BEN's cost of funding.[493]
- **[Redacted - Confidential]**.[494]
- Attracting further deposit funding.[495]

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478 **[Redacted - Confidential]**.
479 **[Redacted - Confidential]**.
480 **[Redacted - Confidential]**.
481 **[Redacted - Confidential]**.
482 Bendigo & Adelaide Bank submission, 3 March 2023, [4.1] - [4.2].
483 Bendigo & Adelaide Bank submission, 3 March 2023, [4.1] - [4.2].
484 **[Redacted - Confidential]**.
485 **[Redacted - Confidential]**
486 **[Redacted - Confidential]**.
487 **[Redacted - Confidential]**.
488 Bendigo & Adelaide Bank submission, 3 March 2023, p 2.
489 Bendigo & Adelaide Bank submission, 3 March 2023, p 2 and 21 [5.3].
490 **[Redacted - Confidential]**.
491 Bendigo & Adelaide Bank submission, 3 March 2023, p 2; **[Redacted - Confidential]**.
492 Bendigo & Adelaide Bank submission, 3 March 2023, p 22; **[Redacted - Confidential]**.
493 Bendigo & Adelaide Bank submission, 3 March 2023, p 22.
494 **[Redacted - Confidential]**.
495 Bendigo & Adelaide Bank submission, 3 March 2023, p 2.

- Increasing the ability of BEN to reach customers, **[Redacted - Confidential]**.[496]
- Assisting in BEN's ability to invest in initiatives to improve the likelihood of gaining Internal Ratings-Based (**IRB**) accreditation from APRA, allowing it to maintain (on average) a lower level of regulatory capital.[497] **[Redacted - Confidential]**.[498]

5.93. **[Redacted - Confidential]**.[499]

5.94. Suncorp submits that there are significant costs involved in gaining IRB status, and noted that neither Suncorp Bank nor BEN have never completed this process.[500] Mr van Horen states that there is no increased likelihood of achieving IRB accreditation as a combined entity because each of Suncorp and BEN is able to pursue IRB accreditation independently.[501]

5.95. BEN also submits that a merger between Suncorp Bank and BEN would result in significant synergies, leading to a reduction in its proportion of operating costs.[502] This would create further opportunities for technology investment and innovation for the merged entity.[503] **[Redacted - Confidential]**.[504]

5.96. **[Redacted - Confidential]**.[505]**[Redacted - Confidential]**,[506]**[Redacted - Confidential]**.[507]**[Redacted - Confidential]**,[508] **[Redacted - Confidential]**.[509]

5.97. The ACCC considers that the evidence before it demonstrates that BEN has had and continues to have strong commercial incentives to seek to acquire Suncorp Bank.

Recent discussions between Suncorp Group and BEN

5.98. Suncorp Group and BEN both provided information regarding interactions between the two in 2022.[510]

5.99. In June 2022, BEN sent a letter to Suncorp Group indicating their interest in engaging in discussions with Suncorp Bank around a potential merger. Suncorp Group states that it was already subject to an exclusivity arrangement with ANZ at the time and was thus unable to engage with BEN on the substance of the letter.[511] BEN sent a further letter to Suncorp Bank on 9 August 2022, after the Proposed Acquisition was announced.[512]

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496 **[Redacted - Confidential]**.

497 Bendigo & Adelaide Bank submission, 3 March 2023, p 21-22.

498 **[Redacted - Confidential]**.

499 **[Redacted - Confidential]**.

500 Suncorp Group response to Mary Starks' reports and the second submission of Bendigo and Adelaide Bank, 14 July 2023, [11]-[12].

501 Third statement of Clive van Horen (Suncorp Bank), 14 July 2023, [11].

502 Bendigo & Adelaide Bank submission, 3 March 2023, p 2.

503 Bendigo & Adelaide Bank submission, 3 March 2023, p 30.

504 **[Redacted - Confidential]**.

505 **[Redacted - Confidential]**.

506 **[Redacted - Confidential]**.

507 **[Redacted - Confidential]**

508 **[Redacted - Confidential]**.

509 **[Redacted - Confidential]**.

510 Bendigo & Adelaide Bank submission, 3 March 2023, pp 11-15; Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [83] – [85].

511 Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [83].

512 Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [84].

5.100. Mr Johnston states that in his view these letters were preliminary and high level in nature.[513] BEN submits that this assessment is not accurate, and that it provided considerable detail of BEN's proposal given the stage of discussions and circumstances.[514]

5.101. **[Redacted - Confidential]**,[515] **[Redacted - Confidential]**.[516] **[Redacted - Confidential]**.[517]

5.102. **[Redacted - Confidential]**.[518]

ACCC's views on incentives and ability to merge

5.103. The ACCC's view is that BEN would have the ability to make an offer to Suncorp Group **[Redacted - Confidential]**.[519] If such an offer were made, the Suncorp Group Board would be likely to consider it. Based on the evidence, the ACCC further considers that Suncorp and BEN both have incentives to pursue a potential merger, subject to the risks and challenges discussed further below.

5.104. A merger with a second-tier bank would enable Suncorp Group to operate as a pureplay insurer and bringing value to shareholders, which is one of the key objectives it is seeking to achieve by executing the Proposed Acquisition.

5.105. The ACCC observes, in relation to the evidence it has received from both BEN and Suncorp, that any analysis of future business decisions is necessarily difficult because any evidence will depend upon the judgment of the business persons making these decisions, and there is always the possibility that statements made about business intentions may be made to try to establish a more favourable counterfactual.[520] In this regard, the ACCC notes that **[Redacted - Confidential]**.[521] This suggests that Suncorp or its advisers recognised it has incentives to downplay any regional bank merger scenario.

5.106. The ACCC considers that the material before it demonstrates that Suncorp Group has commercial incentives to divest Suncorp Bank and merge with a second-tier bank of a similar size, in a future without the Proposed Acquisition. The ACCC's view is that BEN has strong commercial incentives to merge with Suncorp Bank, and that it has shown interest in merging with Suncorp Bank in the past.

Execution and integration risk of a Bendigo/Suncorp Bank merger

5.107. Suncorp Group submits that a merger with BEN gives rise to execution and integration complexity.[522] Suncorp Group submits that these include it having a divergent risk appetite to BEN and risks around brand and reputation. It also submits the merged entity would:

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513 Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [83]-[85].

514 Bendigo & Adelaide Bank submission, 3 March 2023, pp 11, 18.

515 **[Redacted - Confidential]**.

516 **[Redacted - Confidential]**.

517 **[Redacted - Confidential]**.

518 **[Redacted - Confidential]**.

519 Bendigo and Adelaide Bank submission, 30 June 2023, [2.1]; **[Redacted - Confidential]**.

520 *Vodafone Hutchison Australia Pty Limited v Australian Competition and Consumer Commission* [2020] FCA 117, [16].

521 **[Redacted - Confidential]**.

522 See for example Suncorp Group's submission in response to the SOPV, 17 May 2023, [110]-[120]; Statement of Steven Johnston (Suncorp Group), 25 November 2022, [56]; Statement of Steven Johnston (Suncorp Group), 17 May 2023.

- face higher funding costs
- have lower cost synergies
- face integration risks, and
- not achieve significant scale benefits.[523]

5.108. Suncorp Group submits that these risks would make the merged entity less of an effective competitor than the Proposed Acquisition and the No-Sale Counterfactual.

5.109. These submissions are addressed in further detail below.

Wholesale funding costs

5.110. Suncorp submits that the merged entity would face wholesale funding cost challenges, because its credit rating would be lower than the Proposed Acquisition and the No-Sale Counterfactual.[524]

5.111. Suncorp Bank currently receives the following long term credit ratings from the three main credit rating agencies:[525]

- S&P Global: A+ = strong chance that a borrower will meet their financial obligation, (positive outlook).
- Moody's: A1 = low level of credit risk (positive outlook).
- Fitch: A = low risk of default, but slightly vulnerable to economic conditions (on review for upgrade).

5.112. These ratings are **[Redacted - Confidential]**.[526]

5.113. The S&P Global report provided to the ACCC by Suncorp,[527] **[Redacted - Confidential]**, concluded that**[Redacted - Confidential]**.[528]

5.114. **[Redacted - Confidential]**.[529]

5.115. BEN considers it likely that a merger with Suncorp Bank would result in a credit rating uplift through the increased scale and revenue base it would gain through acquiring Suncorp Bank.[530] **[Redacted - Confidential]**.[531] **[Redacted - Confidential]**.[532]

5.116. Mr Johnston considers that if Suncorp Bank's credit rating was downgraded to BEN's current rating of BBB+, Suncorp Bank's access to wholesale deposits and its ability to source funding from global markets would be significantly diminished, which would

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523 Scale benefits are discussed in 'a merged Suncorp and BEN's competitiveness' below.

524 Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [61].

525 https://www.suncorpgroup.com.au/investors/debt-investors/credit-rating-and-research.

526 **[Redacted - Confidential]**.

527 Statement of Steven Johnston (Suncorp Bank), 17 May 2023, [64].

528 **[Redacted - Confidential]**.

529 **[Redacted - Confidential]**.

530 Bendigo and Adelaide Bank submission, 3 March 2023, [5.5] at p. 22.

531 **[Redacted - Confidential]**.

532 **[Redacted - Confidential]**.

negatively impact its competitiveness.[533] If Suncorp Bank and BEN were to merge, Mr Johnston submits that:

- **[Redacted - Confidential]**. [534]
- **[Redacted - Confidential]**.[535] **[Redacted - Confidential]**.[536]

5.117. Ms Starks states that a merged BEN/ Suncorp Bank entity would likely experience funding dis-synergies from the Major Bank Levy and change in credit rating, but that the impact of these dis-synergies would be relatively small when compared to the potential benefits from increased scale.[537] Mr Ali stated that there would be a likely funding cost dis-synergy in the Bendigo Merger Counterfactual;[538] and considers that Ms Starks overemphasises the potential benefits of IRB accreditation and overlooks the significant costs and uncertainty of accreditation.[539]

5.118. Suncorp Group submits that **[Redacted - Confidential]**.[540] **[Redacted - Confidential]**.[541] **[Redacted - Confidential]**.[542]

5.119. Dr van Horen states that **[Redacted - Confidential]**, the merged entity would have increased wholesale funding costs, which would have a higher impact on profitability than capital costs.[543]

5.120. **[Redacted - Confidential]**.[544] However, BEN submits that it currently has a relatively lower exposure to wholesale funding markets because it sources its funding primarily through retail deposits.[545] **[Redacted - Confidential]**.[546] **[Redacted - Confidential]**.[547]

5.121. **[Redacted - Confidential]**.[548]

5.122. Suncorp's disputes BEN's submission that the merged SUN-BEN would receive a rating uplift from government support similar to Macquarie Bank. Suncorp submits that BEN failed to take into consideration that Macquarie Bank benefits from Macquarie Group support (similar to Suncorp Bank) and that it would not be large enough to be considered 'too big to fail'.[549] The ACCC notes Suncorp submission's

533 Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [61].
534 Statement of Steven Johnston (Suncorp Bank), 17 May 2023, **[Redacted - Confidential]**.
535 **[Redacted - Confidential]**.
536 **[Redacted - Confidential]**.
537 Expert report of Mary Starks, 16 June 2023, [7.57].
538 Second expert report of Mozammel Ali, 23 July 2023, [22]-[23].
539 Second expert report of Mozammel Ali, 23 July 2023, [35]-[37].
540 **[Redacted - Confidential]**.
541 **[Redacted - Confidential]**.
542 **[Redacted - Confidential]**.
543 Third statement of Clive van Horen, 14 July 2023, [45] – [47].
544 **[Redacted - Confidential]**.
545 Bendigo & Adelaide Bank submission, 3 March 2023, p 16, at [4.6].
546 **[Redacted - Confidential]**.
547 **[Redacted - Confidential]**.
548 **[Redacted - Confidential]**.
549 Suncorp Group response to Mary Starks reports and the second submission of Bendigo and Adelaide Bank, 14 July 2023, [7] and [28].

reference to the S&P Global rating report of Macquarie Bank, and that the report does not appear to provide any rating uplift from Macquarie Group support.[550]

5.123. The ACCC notes that there are competing considerations relating to credit rating changes. Evidence and submissions suggest the merged entity would have a lower credit rating than Suncorp Bank in the Proposed Acquisition and the No-Sale Counterfactual and therefore potentially higher wholesale funding costs; but also that the overall impact of potentially higher wholesale funding costs may be reduced due to the BEN's (and therefore the merged entity's) higher funding weight in retail deposits. The ACCC's view is that any impact on wholesale funding costs would also depend on market conditions.

5.124. The ACCC notes that the ratings themselves of the merged entity are indicative in nature because they are based on assumptions provided to rating agencies by Suncorp and BEN. Such assumptions may not be reflective of the potential business conditions of the merged entity when there has not been any due diligence or formal exchange of information between SUN and BEN. The ACCC also notes that **[Redacted - Confidential]**.[551]

Cost synergies

5.125. Suncorp Group submits, **[Redacted - Confidential]**,[552] that a regional merger only makes commercial sense if cost synergies can be extracted,[553] **[Redacted - Confidential]**.[554] Suncorp Group states that a merger between BEN and Suncorp Bank would involve job losses, bank branch closures **[Redacted - Confidential]**.[555]

5.126. [556]**[Redacted - Confidential]**.[557] **[Redacted - Confidential]**,[558] **[Redacted - Confidential]**. [559] **[Redacted - Confidential]**.[560] **[Redacted - Confidential]**.[561]

5.127. **[Redacted - Confidential]**,[562] **[Redacted - Confidential]**:

- **[Redacted - Confidential]**,[563] **[Redacted - Confidential]**.[564]
- [565]**[Redacted - Confidential]**.[566] **[Redacted - Confidential]**.[567]

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550 https://www.macquarie.com/assets/macq/investor/debt-investors/credit-ratings/sp-ratings-macquarie-bank-limited.PD, cited in Suncorp Group response to Mary Starks reports and the second submission of Bendigo and Adelaide Bank, 14 July 2023, footnote reference 16.

551 **[Redacted - Confidential]**.

552 **[Redacted - Confidential]**.

553 Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [62]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [105].

554 **[Redacted - Confidential]**.

555 Statement of Steven Johnston (Suncorp Bank), 25 November 2022, [85] **[Redacted - Confidential]**.

556 **[Redacted - Confidential]**.

557 **[Redacted - Confidential]**.

558 **[Redacted - Confidential]**.

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567 **[Redacted - Confidential]**.

- **[Redacted - Confidential]**.[568]
- **[Redacted - Confidential]**.[569]

5.128. The Updated Barrenjoey Analysis estimates that the net cost synergies to now be **[Redacted - Confidential]**[570] **[Redacted - Confidential]**.[571]

5.129. **[Redacted - Confidential]**.[572] **[Redacted - Confidential]**.[573]

5.130. The ACCC's general view is that in any merger there is inherent uncertainty around the quantum, timing and how any cost synergies would be realised, including in the context of the Proposed Acquisition. In relation to a merger between Suncorp Bank and BEN, the ACCC's view is that it is not clear whether some of the cost synergies could be realised earlier than the end of **[Redacted - Confidential]**. The ACCC notes that even if net cost synergies have reduced when assuming a **[Redacted - Confidential]** realisation of cost synergies, the net cost synergies may be significant.

Integration timing and costs

5.131. Suncorp Group argues that a regional merger would **[Redacted - Confidential]**.[574] **[Redacted - Confidential]**.[575]

5.132. Mr Johnston submits that significant time and investment would be required to target a single core technology platform across any merged bank given the complexity of the existing platforms.[576] **[Redacted - Confidential]**.[577] **[Redacted - Confidential]**.[578]

5.133. Suncorp Group submits that **[Redacted - Confidential]**.[579] **[Redacted - Confidential]**;[580] **[Redacted - Confidential]** any integration would most likely require first de-integration and re-hosting.[581] **[Redacted - Confidential]**.[582]**[Redacted - Confidential]**;[583] **[Redacted - Confidential]**.[584]

5.134. The ACCC has also obtained information in respect of the integration challenges of a Bendigo-Suncorp merger that diverges from Suncorp Group's view.[585] **[Redacted - Confidential]**.[586] **[Redacted - Confidential]**.[587]

568 **[Redacted - Confidential]**.
569 **[Redacted - Confidential]**.
570 **[Redacted - Confidential]**.
571 **[Redacted - Confidential]**.
572 **[Redacted - Confidential]**.
573 **[Redacted - Confidential]**.
574 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [87]; Statement of Steven Johnston (Suncorp Bank), 25 November 2022 at [66].
575 **[Redacted - Confidential]**.
576 Statement of Steven Johnston (Suncorp Bank), 25 November 2022 at [66].
577 **[Redacted - Confidential]**.
578 **[Redacted - Confidential]**.
579 **[Redacted - Confidential]**.
580 **[Redacted - Confidential]**.
581 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [95(c)], **[Redacted - Confidential]**.
582 **[Redacted - Confidential]**.
583 **[Redacted - Confidential]**.
584 **[Redacted - Confidential]**.
585 See for example: Bendigo & Adelaide Bank submission, 3 March 2023, p 16, at [4.6]; see also **[Redacted - Confidential]**.
586 **[Redacted - Confidential]**.
587 **[Redacted - Confidential]**.

5.135. **[Redacted - Confidential]**.[588] **[Redacted - Confidential]**.[589]**[Redacted - Confidential]**[590]**[Redacted - Confidential]**.[591]**[Redacted - Confidential]**.[592]

5.136. Taken together, the ACCC considers that the costs and timing risks of integration with BEN are not prohibitively greater than the general risks of any integration. The ACCC notes that Suncorp Group has concerns about the integration costs and timeline, however, such concerns are based on public information rather than engagement with BEN. **[Redacted - Confidential]**.[593]

5.137. The ACCC notes that there are costs involved in such a merger but there are also benefits to the merged entity.

ACCC views on integration and execution risks

5.138. The ACCC has considered the material Suncorp and BEN have provided regarding the risks associated with credit ratings, funding, cost synergies, integration and execution risks. The ACCC has also considered the extent to which differences in brand considerations, cultural alignment and divergent risk appetites regarding product portfolio and customer mix would present challenges to a potential BEN/Suncorp merger.[594]

5.139. The ACCC considers that the risks of integration between Suncorp Bank and BEN are not prohibitively greater than the general risks of any integration. The ACCC accepts that there are risks involved in divesting Suncorp Bank and merging with BEN, however the ACCC does not consider that the risks outlined by Suncorp Group are necessarily sufficient to outweigh the commercial incentives that exist for Suncorp Group to enter into a transaction of this type.

5.140. The ACCC notes that both BEN and Suncorp's submissions as well as the internal and external analysis they have undertaken about the above factors in relation to a potential regional merger transaction is based on a limited set of information that is available to each party in the public domain. While the ACCC acknowledges that some time has passed since these documents were prepared, the ACCC has placed considerable weight on the contemporaneous business documents of each of BEN and Suncorp prepared before Suncorp settled on the Proposed Acquisition. The ACCC considers these documents support a view that neither BEN nor Suncorp saw the risks involved in a transaction between BEN and Suncorp as being insurmountable.

5.141. The ACCC also notes that Mr Johnston's view, **[Redacted - Confidential]**.[595] These include that an acquisition or merger with BEN would also require amendments to the *Metway Merger Act 1996* (Qld) (Metway Merger Act) and would require a counterparty that could make a strong ongoing commitment to Queensland.[596]

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588 **[Redacted - Confidential]**.

589 **[Redacted - Confidential]**.

590 **[Redacted - Confidential]**.

591 **[Redacted - Confidential]**.

592 **[Redacted - Confidential]**.

593 **[Redacted - Confidential]**.

594 Suncorp Group submission in response to the SOPV, 17 May 2023, 4.10-4.11.

595 **[Redacted - Confidential]**.

596 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [55(c)].

5.142. The ACCC's view is that if BEN put a formal offer to Suncorp, as a public company its directors would consider whether it was in the best interests of its shareholders. Given the incentives of each party discussed above, the ACCC considers there is a reasonable commercial likelihood that they could reach a mutually beneficial agreement, with any effects arising from a BEN/Suncorp Bank transaction likely occurring in a number of years. The ACCC does not consider the execution risks in respect of any potential amendment to the Metway Merger Act to be insurmountable and, in the event a transaction is agreed, it will be in the interests of both BEN and Suncorp to seek to reach an agreement with the Queensland government.[597]

A merged Suncorp Bank and BEN's competitiveness

5.143. Overall the evidence on the likely competitiveness of a merged BEN/Suncorp is conflicting, with Suncorp and BEN holding opposing views. The ACCC notes that it is not disputed that the merged entity will increase in scale and become roughly twice the current size of BEN, though the effect of this increased scale on the competitiveness of the merged entity is not agreed.

5.144. Suncorp and BEN do not agree on the impacts of IRB, technical integration or cultural challenges (as discussed in detail above). There are also differing opinions expressed in the expert reports of Mr Smith, Professor King and Ms Starks.

5.145. ANZ and Suncorp Group consider that a merged BEN/Suncorp is unlikely to have any real scale advantages, as a combined entity would still be smaller than the major banks.[598]

5.146. **[Redacted - Confidential]**.[599] The ACCC also notes that Dr van Horen states that the scale of a combined BEN/Suncorp: would be insufficient to change its existing competitive position; would still result in a proportionately larger regulatory spend than that of the major banks which restricts investment in technology, growth and innovation; and would ultimately deliver a worse outcome from a competitive perspective.[600] Suncorp Group submits that a combined BEN/Suncorp **[Redacted - Confidential]** will remain sub-scale **[Redacted - Confidential]**.[601]

5.147. Mr Smith is not convinced that BEN would become a substantially more effective competitor to the major banks in the Bendigo Merger counterfactual,[602] noting that a BEN/Suncorp entity would still be smaller than the major banks and only roughly equivalent to Macquarie Bank in terms of scale.[603]

5.148. Dr van Horen also states that BEN and Suncorp Bank are quite high-cost (55-60% cost-to-income) compared to the majors (45-50%), and that BEN's sustained high cost over the last 16 years (since it acquired Adelaide Bank) is evidence that it has **[Redacted - Confidential]**.[604] The ACCC notes that this is not conclusive of any cost savings due to a merger. The ACCC considers that BEN could cut a proportionately higher share of the merged entity's costs than a merged ANZ/Suncorp, **[Redacted -**

597 **[Redacted - Confidential]**.

598 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [44]; Second statement of Clive van Horen (Suncorp Bank), 17 May 2023, [56]; Second statement of Shayne Elliott (ANZ), 17 May 2023, [91].

599 **[Redacted - Confidential]**.

600 Third statement of Clive van Horen (Suncorp Bank), 14 July 2023, [29].

601 Third statement of Clive van Horen (Suncorp Bank), 14 July 2023, [29]; **[Redacted - Confidential]**.

602 Third expert report of Patrick Smith, 17 July 2023, [21].

603 Third expert report of Patrick Smith, 17 July 2023, [52].

604 Third statement of Clive van Horen (Suncorp Bank), 14 July 2023 [35]; **[Redacted - Confidential]**.

Confidential].[605] Hence, the difference or costs reduction available to BEN from a merger would be greater than that available to ANZ, even if a combined BEN/Suncorp still has a higher cost-to-income ratio than ANZ presently does. Refer to section 4 for discussion on cost-to-income ratio and scale benefits in general.

5.149. ANZ submits that funding advantages would only arise in a second-tier merger counterfactual if the merger results in an improvement in prudential status and/or credit rating for the merged entity, which is unlikely to arise.[606] Suncorp submits**[Redacted - Confidential]**.[607] **[Redacted - Confidential]**.[608]

5.150. **[Redacted - Confidential]**.[609] As discussed above, BEN expects that the enhanced scale and effectiveness that would be gained from acquiring Suncorp would advance its ability to compete, including by attracting more deposit funding, allowing it to invest further in technology and accelerating delivery of BEN's digital capabilities for the benefit of customers; and deliver significantly greater improvements in scale compared with its previous acquisitions.[610] Professor King states that a merged BEN/Suncorp entity would have the scale to reduce and potentially overcome barriers to expansion in the market for retail home loans.[611]

5.151. Ms Starks concludes that having considered the risks, a combined BEN/Suncorp Bank would be more competitive than a standalone BEN,[612] though noting that 'any assessment of the manner in which a merged BEN/Suncorp entity would compete involves significant uncertainty' and that there is 'significant uncertainty around the likelihood, magnitude and timeframe' of such an impact.[613]

5.152. The ACCC does not consider that the scale benefits would be insufficient to change the merged entity's competitive position, including because as set out above, **[Redacted - Confidential]**. The ACCC considers a combined BEN/Suncorp entity, which is approximately double the current size of BEN and Suncorp, will benefit from lower average fixed costs and will have incentives to invest in efficiency-enhancing technologies.

5.153. The ACCC has also considered the evidence on the effect of scale on funding costs and the impact of IRB in the context of assessing the net effect on the merged BEN/Suncorp Bank entity. In relation to funding costs, the ACCC considers it is likely that the merged entity's credit rating would be equal or higher than BEN's current credit rating, assuming, in the latter case, that it would receive a ratings uplift due to government support. This may result in benefits to the merged entity's wholesale funding position. The merged BEN/Suncorp entity may also have improved capital funding from being formally IRB accredited, noting that these benefits may not arise in the near term.

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605 **[Redacted - Confidential]**; **[Redacted - Confidential]**; BEN submission, 30 June 2023, [2.14].

606 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [2.19(b)]

607 **[Redacted - Confidential]**.

608 **[Redacted - Confidential]**.

609 **[Redacted - Confidential]**.

610 Bendigo & Adelaide Bank submission, 3 March 2023, p 2 and 21 [5.3]..

611 Expert report of Professor King, 3 March 2023, [128].

612 Expert report of Mary Starks**,** 16 June 2023, [7.59]; Supplementary Report of Mary Starks, 7 July 2023, [6.19], [6.27]-[6.29], [6.48].

613 Expert report of Mary Starks**,** 16 June 2023, [7.18].

5.154. **[Redacted - Confidential]**.[614] **[Redacted - Confidential]**.[615] **[Redacted - Confidential]**.[616] **[Redacted - Confidential]**.[617] The ACCC notes that IRB accreditation is not cost-effective for some smaller banks given their lack of scale and diversification.[618] The ACCC considers that while BEN and SUN could potentially independently achieve IRB accreditation,[619] a merged BEN/Suncorp Bank entity would have the benefit of increased scale, and could potentially achieve greater benefits from having a larger, more diverse portfolio of loans, allowing better, more granular modelling of risk. The ACCC also considers there to be potential cost synergies in developing a single model for application to the lending portfolios of both (former) entities.

5.155. While the ACCC considers that IRB benefits may be more likely under the Proposed Acquisition than the in the Bendigo Merger Counterfactual, the ACCC considers any benefits would also be likely to be smaller as ANZ already has IRB accreditation, and therefore any benefits would be the incremental benefit to Suncorp Bank. Taking these factors into account, the ACCC considers that the net effect on the merged BEN/Suncorp Bank entity is that there will be an overall funding improvement, however it is not possible to precisely quantify what this will be.

5.156. As a result, the ACCC does not consider there is sufficient evidence to conclude that the step change in scale will result in the merged BEN/Suncorp Bank entity's funding position being so significant that it will materially increase its ability to compete with the major banks on price.

5.157. However, the ACCC notes that funding costs are only one dimension to the benefits that an increase in scale may deliver to the merged firm. The ACCC considers that an increase in scale will likely improve the merged entity's ability to compete on non-price aspects to gain market share. It will be in a position to make increased investments on non-price improvements as a result of its better overall funding position compared to BEN and Suncorp Bank separately; and because it will have an increased ability to spread fixed costs for non-price improvements across a larger customer base.

5.158. The ACCC notes that it would be very difficult for smaller banks to compete with the four major banks purely on price. As such, smaller banks must compete on non-price elements. Innovation and competition to improve customer service levels and differentiate on non-price offerings will drive the types of investments that a merged entity may make.[620] The ACCC does not consider it necessary to predict exactly what these will be for the purposes of its analysis, but examples of the types of non-price initiatives could include improvements to digital offerings, better turnaround times in home loans, and investing in relationships with brokers.

5.159. **[Redacted - Confidential]**.[621] Bendigo has also shown the effectiveness of targeted investments with its **[Redacted - Confidential]**[622] 'Up' offering.

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614 **[Redacted - Confidential]**.

615 **[Redacted - Confidential]**.

616 **[Redacted - Confidential]**.

617 **[Redacted - Confidential]**.

618 APRA, Is the capital benefit of being an advanced modelling bank justified?, 23 May 2023.

619 Third statement of Clive van Horen (Suncorp Bank), 14 July 2023, [11] and [48].

620 **[Redacted - Confidential]**.

621 **[Redacted - Confidential]**.

622 **[Redacted - Confidential]**.

5.160. Overall, the ACCC's view is that the Bendigo Merger Counterfactual would likely create a larger second-tier bank that would be better placed to grow its market share through increased non-price competition and trigger a stronger competitive response from the big four banks.

5.161. The ACCC has considered the likelihood that BEN could achieve similar competitive benefits in the factual through undertaking a merger with another second-tier bank, including Bank of Queensland. However, while there exists a possibility of an alternative regional merger scenario for BEN in circumstances where the Proposed Acquisition proceeds, the ACCC does not consider the available evidence establishes this scenario is particularly likely. This issue is discussed further at in section 7 of this determination in the context of public detriments.

6. Competitive effects of the Proposed Acquisition

6.1. This section analyses the competitive effects of the Proposed Acquisition. Competitive effects are relevant to both the substantial lessening of competition test and the net public benefit test in section 90(7), as discussed in section 2.

Relevant areas of competition

6.2. In undertaking this assessment, the ACCC has focused on the areas of overlap between ANZ and Suncorp Bank, noting the higher degree of geographic overlap between ANZ and Suncorp Bank in Queensland and northern New South Wales.

6.3. The ACCC's assessment is not dependent on defining the product or geographic dimensions of the relevant markets narrowly. In any event, the ultimate assessment would be the same even if the affected competition were regarded as limited to competitively significant sectors of broader product or geographic markets.

6.4. Based on the products and services where ANZ and Suncorp Bank compete most closely, the ACCC considers it appropriate to consider the Proposed Acquisition in the context of the product markets for home loans; retail deposits (including transactions and savings accounts, and term deposits); SME banking and agribusiness banking products.

6.5. Each of these markets is discussed below.

Framework for assessing competitive effects

6.6. The ACCC has considered whether the Proposed Acquisition could give rise to a lessening of competition by reference to the unilateral or coordinated effects that may result.

6.7. It has done so in light of the requirement in ss 90(7)(a) and (b) that it not grant authorisation unless it is satisfied in all the circumstances:

- that the conduct would not have the effect, or would not be likely to have the effect, of substantial lessening of competition; or

that:

  - the conduct would result, or be likely to result, in a benefit to the public; and
  - the benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct.

6.8. A lessening of competition, even if not substantial, will be relevant to the ACCC's task in identifying and weighing the public benefits and detriments likely to result from the Proposed Acquisition.

6.9. The ACCC has considered the potential for both unilateral effects and coordinated effects in considering the competitive impact of the Proposed Acquisition. The approach the ACCC takes to assessing these different competitive effects is set out below.

Unilateral effects

6.10. The ACCC's approach to assessing unilateral effects is well-known and set out in its Merger Guidelines.[623] In short:[624]

> Mergers have unilateral effects when they remove or weaken competitive constraints in such a way that the merged firm's unilateral market power is increased. That is, as a result of the merger the merged firm finds it profitable to raise prices, reduce output or otherwise exercise market power it has gained, and can do so, even given the expected response of other market participants to the resulting change in market conditions. (footnote omitted)

6.11. In making its assessment, the ACCC will have regard to factors such as market shares and concentration, barriers to entry and expansion, the extent of competitive constraint the merger parties exert on one another pre-merger and the availability of substitutes, the ability and incentive of rivals to respond to a price increase by the merged firm, dynamic characteristics of the market and the removal of a vigorous and effective competitor, along with other factors (e.g. efficiencies).

Coordinated effects

6.12. In broad terms, a lessening of competition could come about by reason of coordinated effects if the Proposed Acquisition had any or all of the following consequences:

- it made coordination more likely,
- it made coordination more effective, and/or
- it entrenched existing coordination

in a meaningful way compared to a future without the Proposed Acquisition.

6.13. While coordinated effects is discussed in the ACCC's Merger Guidelines (2008), detailed competition assessments for coordinated effects are less common. As such, the ACCC has set out in further detail below a description of the analytical framework it has used for in analysing coordination effects in assessing the Proposed Acquisition.

Analytical framework for coordinated effects

6.14. The impacts of coordinated effects in merger matters is a common consideration of the ACCC and other competition authorities globally. The Merger Guidelines (2008) set out the ACCC's usual approach to considering coordinated effects. However, given the history of muted competition in this sector the ACCC commissioned an independent report from an expert economist, Professor Nicolas de Roos, to assist in setting out a framework for the consideration of coordinated effects generally, and how it might apply practically within the banking industry.

6.15. In the report, Professor de Roos describes coordinated effects as "the impacts arising from a change in the likelihood and nature of coordinated behaviour between firms."[625] He observes that coordinated behaviour refers to 'conduct used by firms

623 ACCC, Merger Guidelines (2008), Chapter 5.

624 ACCC, Merger Guidelines (2008), [5.1].

625 Expert report of Nicolas de Roos, 5 April 2023, p.1.

that is beneficial only with the forbearance of other firms in the market.'[626] By way of comparison, firm conduct – or changes to firm conduct – following an acquisition that would be profitable without the need for any forbearance by other firms are assessed by the ACCC as unilateral effects.

6.16. Similarly, tacit coordination (as opposed to outright collusion) has been described as 'a situation in which firms' prices are higher than some competitive benchmark', where 'the benchmark is usually the equilibrium price of a game in which firms meet only once in the marketplace.'[627] Another way of conceptualising the competitive benchmark is that it reflects conduct by firms that is not influenced by the prospect of 'punishment' by each firm's strategic rivals.

6.17. All of these interpretations are consistent with the ACCC Merger Guidelines, which emphasise the role of repeated interaction between firms and the prospect of future retaliation (or punishment) as giving rise to or helping to sustain coordinated conduct.[628]

Relevant factors

6.18. Professor de Roos highlights the following key features of markets and firms that typically influence the 'likelihood, extent, severity or sustainability of coordinated conduct between firms' (which is paraphrased throughout the discussion below as factors which influence 'the ability and incentive to initiate and/or sustain coordination')[629]

- Market structure
- Symmetry and alignment
- Multi-market contact
- Communication devices
- Price transparency between firms
- Consumer choice frictions

6.19. The ACCC notes that other independent economic experts, who have been engaged by various interested parties in respect of the application, have focused on specific factors and/or supplemented Professor de Roos's framework in providing their opinions on coordinated effects. The ACCC does not consider there is any critical disagreement between the economists on the framework provide by Professor de Roos. The ACCC has focused its analysis on the set of factors outlined by Professor de Roos, supplemented by additional considerations of issues or factors raised by Ms Starks, Professor King, Dr Williams and Mr Smith.[630]

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626 Expert report of Nicolas de Roos, 5 April 2023, p.1.

627 See Daniel Gore, Stephen Lewis, Andrea Lofaro and Frances Dethmers, 'Horizontal mergers II: coordinated effects', Chapter 4 in The Economic Assessment of Mergers under European Competition Law, pp.318-377, published online by Cambridge University Press, 5 May 2013, at p.318.

628 ACCC Merger Guidelines (2008), paras 6.3 and 6.10-6.11.

629 Expert report of Nicolas de Roos, 5 April 2023, pp.3-6.

630 Expert report of Mary Starks, [4.46]-[4.54]; Expert report of Professor Stephen King, 3 March 2023, [82]; Expert report in Reply of Philip Williams, 19 May 2023, [89]; Third expert report of Patrick Smith, 17 July 2023.

Relevant markets

6.20. The ACCC considers that the activities of the merger parties with features that most strongly suggest an increased risk of coordination both with and without the Proposed Acquisition are:

- Home loans (encompassing lending to both owner-occupiers and for property investment, and both variable rate loans and fixed rate loans); and
- Retail deposits (including at-call savings accounts and term deposits).

6.21. The risk of coordinated effects arising in these activities from the Proposed Acquisition is discussed in the sections below.

6.22. The ACCC notes that the markets for SME products and agribusiness may also share features that suggest an increased risk of coordination, however relative to home loans and deposits the likely effects of the Proposed Acquisition are less concerning because of the more differentiated (relationship driven) nature of these products and services, so these have not been the primary focus of the ACCC's assessment.

Home loans

6.23. A key area of focus for the ACCC is home loans, which includes loans to finance purchasing residential property or refinancing, and includes investment property loans and new loans or refinancing to undertaking renovations.

Background

6.24. A brief overview of the submissions, witness statements and expert reports provided to the ACCC relevant to home loans is set out below. Some of this material, where relevant, is discussed in more detail elsewhere in this Determination.

Merger party submissions

6.25. ANZ made a number of submissions and provided various witness statements in support of its application in relation to home loans.[631]

6.26. ANZ submits that the Proposed Acquisition will not substantially lessen competition in home loans because it will only result in a minimal increase in concentration; the market is and will continue to be intensely competitive; Suncorp Bank is 'no more vigorous or effective than other competitors'; ANZ and Suncorp Bank do not compete particularly closely with one another; and the combined ANZ and Suncorp Bank will be constrained by the threat of new entry and expansion.[632]

6.27. Suncorp Group submits that the Proposed Acquisition will not lead to a substantial lessening of competition in this market because Suncorp Bank does not drive price, innovation or product development in the supply of home loans, and because there is 'strong competition' in the supply of home loans.[633]

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[631] See ANZ application for Merger Authorisation, 2 December 2022, [6.3]-[6.36], [7.1]-[7.52]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, section 7; Statement of Douglas Campbell (ANZ), 30 November 2022; Statement of Shayne Elliott (ANZ), 30 November 2022; Second statement of Shayne Elliott (ANZ), 17 May 2023; Second Statement of Douglas Campbell (ANZ), 17 May 2023.

[632] ANZ application for Merger Authorisation, 2 December 2022, [7.1]; Statement of Douglas Campbell (ANZ), 30 November 2022, [101]; Second Statement of Douglas Campbell (ANZ), 17 May 2023, [61], [64(a)].

[633] Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [5(c)].

Interested party submissions

6.28. The ACCC received a small number of submissions from interested parties relating to home loans.

6.29. BEN submits that there is a real chance that the Proposed Acquisition would result in a substantial lessening of competition in the national market for home loans on either counterfactual.[634] BEN submits that Suncorp Bank is a material competitor in prices for new home loans, particularly in Queensland and NSW, and the Proposed Acquisition therefore removes a challenger in the home loans market.[635] In the Bendigo Merger Counterfactual, BEN submits it would have more resources and scale and be better positioned to continue to innovate and be a challenging competitor for the major banks.[636]

6.30. The Mortgage and Finance Association of Australia provided a response, outlining key features in the broker industry relevant to competition for home loans, including observations on the role of brokers and consumer switching.[637]

Expert opinion

6.31. The ACCC received various experts report from independent economic experts engaged on behalf of the ACCC, ANZ, Suncorp and BEN.

6.32. Dr Williams, engaged on behalf of ANZ, considers that there is a national market for home lending but that the Proposed Acquisition would not push this market over the HHI thresholds set out by the ACCC in its Merger Guidelines.[638] Accordingly, the national market for home loans did not meet the criteria for adoption as an initial candidate market for competition analysis. Mr Smith, also engaged on behalf of ANZ, considers that ANZ faces effective competition in the supply of home loans,[639] and is likely to continue to do so with the Proposed Acquisition.[640]

6.33. Professor King, engaged on behalf of BEN, considers that the Proposed Acquisition is likely to substantially lessen competition in the market for home loans, in part, because it will stabilise existing coordinated conduct among the major banks.[641] Professor King also concluded that the Proposed Acquisition would prevent the creation of a second-tier 'challenger bank' with sufficient scale to reduce and potentially overcome the barriers to expansion that currently exist in the market for home loans and to vigorously compete.[642]

6.34. Ms Starks, engaged on behalf of the ACCC, considers that the Proposed Acquisition is unlikely to lead to a significant increase in market power for ANZ, given Suncorp Bank's small market share and the existence of competitive constraints from the other

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634 Bendigo and Adelaide Bank submission, 30 June 2023, [5.3].

635 Bendigo and Adelaide Bank submission, 3 March 2023, pp. 28-29 [6.1(c)].

636 Bendigo and Adelaide Bank submission, 3 March 2023, p. 29 [6.1(d)].

637 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, p. 3 [9].

638 Expert report of Dr Philip Williams, 25 November 2022, [40]-[42].

639 Second expert report of Patrick Smith, 17 May 2023, [29]-[31].

640 Second expert report of Patrick Smith, 17 May 2023, [42]-[46].

641 Expert report of Professor Stephen King, 3 March 2023, [7], [118]-[119].

642 Expert report of Professor Stephen King, 3 March 2023, [7], [123]-[128], [129]-[132].

major banks and Macquarie Bank (and to a lesser extent, the other second-tier banks).[643]

6.35. Ms Starks considers that the market for home loans is conducive to coordination.[644] Ms Starks concludes there is no real chance of a substantial lessening of competition as compared to the No-Sale Counterfactual but that there is a real chance as compared to the Bendigo Merger Counterfactual. This is because Ms Starks considers that the merged BEN/Suncorp Bank entity will likely pose a stronger competitive constraint on the major banks than BEN alone, and that having another disruptor in the market would reduce the chances of coordination.[645]

6.36. In response to Ms Starks' report, Mr Smith disagrees with Ms Starks' finding of a real chance of a substantial lessening of competition arising under a coordinated effects theory of harm, under either the Bendigo Merger Counterfactual or the No-Sale Counterfactual.[646] In particular, Mr Smith disagrees with Mr Starks that a combined BEN/Suncorp Bank would be a substantially stronger competitor that would make coordination among the major banks less likely, effective or stable compared to the factual.[647] Mr Smith goes on to submit that, contrary to Ms Starks' view, increased competition in the home loans market is not temporary.[648] Finally, after assessing how each factor relevant to coordinated effects in Professor de Roos's analytical framework would be affected by the Proposed Acquisition, Mr Smith states that the Proposed Acquisition would not increase the major banks' ability to initiate or sustain coordination.[649]

6.37. In response to Professor King's report, Dr Williams considers that Professor King's coordinated effects analysis relies on an unjustified assumption that the four largest banks are currently charging monopoly-like prices on home loans.[650] Professor King provided a further report, addressing Dr Williams' response to his report and commenting on the report by Ms Starks, which he considered was largely consistent with his first report.[651]

Assessment

Relevant market

Product dimension

6.38. The ACCC considers that the relevant product dimension of the market is home loans. Other lending products are generally not suitable for customers looking to purchase or refinance a property due to higher interest rates, fees and smaller credit limits and providers of other forms of credit may not have the capability or expertise to

643 Expert report of Mary Starks, 16 June 2023, [9.43], [9.44.2], [9.44.5].

644 Expert report of Mary Starks, 16 June 2023, [9.111]; Supplementary expert report of Mary Starks, 7 July 2023, [8.1]-[8.8].

645 Expert report of Mary Starks, 16 June 2023, [9.113.5].

646 Third expert report of Patrick Smith, 17 July 2023, [62].

647 Third expert report of Patrick Smith, 17 July 2023, [58].

648 Third expert report of Patrick Smith, 17 July 2023, [65]-[69].

649 Third expert report of Patrick Smith, 17 July 2023, [94].

650 Second expert report of Dr Philip Williams, 19 May 2023, [12].

651 Second expert report of Professor Stephen King, 28 June 2023.

produce and distribute home loans, meaning other products are generally not substitutable for home loans.[652]

6.39. Suppliers of home loans offer a suite of home loan products to accommodate the preferences and needs of different customer types.[653] Despite this variation, home loan products from different lenders appear readily substitutable.[654]

6.40. The ACCC notes that there are relevant links between the home loans and deposits markets in that the latter is a source of funding for activity in the former. However, the ACCC considers it is appropriate to assess the competitive impact of the Proposed Acquisition in these markets separately.

Geographic dimension

6.41. Submissions from the merger parties and other interested parties state that the market for home loans is national.[655] ANZ and Suncorp Bank both have a national presence and set their pricing, advertising, marketing and benchmarking nationally.[656] Similarly, other major competitors in the home loans market treat the market nationally.[657]

6.42. The ACCC notes that there are indications that there are some regional aspects to home loans, including historical associations and decisions on pricing.[658] However, that the significance of local or regional competition in home loans appears to be decreasing over time due to, amongst other things, the increased use of digital channels and brokers.[659]

6.43. Noting these regional aspects, the ACCC considers it most appropriate to undertake its competition analysis with respect to a national market for home loans.

Market shares

6.44. ANZ provided market share estimates indicating Suncorp Bank holds a 2.4% market share for home loan products, being the ninth largest nationally.[660]

6.45. Table 2 shows the market shares derived using financial data in the home loan market, on both a national and Queensland level.

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652 ANZ application for Merger Authorisation, 2 December 2022, [6.21]; Expert report of Mary Starks, 16 June 2023, [5.8]-[5.15]; Expert report of Professor Stephen King, 3 March 2023, [63(a)]-[63(c)].

653 ANZ application for Merger Authorisation, 2 December 2022, [6.22]-[6.23], [6.27].

654 ANZ application for Merger Authorisation, 2 December 2022, [6.22], [6.27]; Expert report of Professor Stephen King, 3 March 2023, [63(b)].

655 ANZ application for Merger Authorisation, 2 December 2022, [6.3], [6.35]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [191]-[192]; Bendigo and Adelaide Bank submission, 3 March 2023, p 24; Expert report of Professor Stephen King, 3 March 2023, [63(e)]; Expert report of Dr Philip Williams, 25 November 2022, [69]-[71(b)].

656 ANZ application for Merger Authorisation, 2 December 2022, [4.26],[6.0]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [191]-[192]; Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [31], [32].

657 **[Redacted - Confidential]**.

658 Bendigo and Adelaide Bank submission, 3 March 2023, [6.1(a)]; Expert report of Professor Stephen King, 3 March 2023, [63(e)(iii)]; ANZ application for Merger Authorisation, 2 December 2022, [6.33]; **[Redacted - Confidential]**.

659 See for example: Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, p. 3; ANZ application for Merger Authorisation, 2 December 2022, [6.31]-[6.34]; Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [33].

660 ANZ application for Merger Authorisation, 2 December 2022, [19.a]; **[Redacted - Confidential]**.

Table 2: Home loan market shares, average monthly data from November 2021 to October 2022

ADI	National	National Ranking	QLD	QLD Ranking
CBA	25.6%	1	**[Redacted - Confidential]**	**[Redacted - Confidential]**
WBC	21.4%	2	**[Redacted - Confidential]**	**[Redacted - Confidential]**
(ANZ + Suncorp)	**15.3%**	**3**	**[Redacted - Confidential]**	**[Redacted - Confidential]**
NAB	14.5%	3	**[Redacted - Confidential]**	**[Redacted - Confidential]**
ANZ	13.0%	4	**[Redacted - Confidential]**	**[Redacted - Confidential]**
Macquarie	4.4%	5	**[Redacted - Confidential]**	**[Redacted - Confidential]**
Bendigo-Adelaide	2.8%	6	**[Redacted - Confidential]**	**[Redacted - Confidential]**
ING	2.7%	7	**[Redacted - Confidential]**	**[Redacted - Confidential]**
BOQ	2.6%	8	**[Redacted - Confidential]**	**[Redacted - Confidential]**
Suncorp	2.3%	9	**[Redacted - Confidential]**	**[Redacted - Confidential]**
HSBC	1.3%	10	**[Redacted - Confidential]**	**[Redacted - Confidential]**
Other	9.2%		**[Redacted - Confidential]**	

Source: APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, extracted on 25 May 2023; **[Redacted - Confidential]**[661]

Note: This dataset does not cover non-ADI lenders. Average monthly estimates reported in the table are calculated as the value of total credit outstanding for a given bank averaged across the months in the period divided by the total credit outstanding in the home loan market averaged across the same period.

6.46. At a national level, major banks make up the vast majority of market share of home loans (according to APRA statistics, the major banks make up approximately 75% of home loans nationally and only 12 ADIs have more than a 1% share).[662]

6.47. The ACCC has used the above market shares to calculate HHIs for home loans at both the national and Queensland levels.

661 **[Redacted - Confidential]**

662 APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, extracted on 25 May 2023.

Table 3: HHI in home loans

	Pre-merger HHI	Post-merger HHI	Delta
National home loans	1550	1610	60
QLD home loans	1509	1647	138

Source: APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, extracted on 25 May 2023; **[Redacted - Confidential]**.

6.48. Suncorp Bank has the 9th largest share nationally, with a combined ANZ-Suncorp Bank an estimated 3rd, behind Commonwealth Bank and Westpac.[663] **[Redacted - Confidential]**.

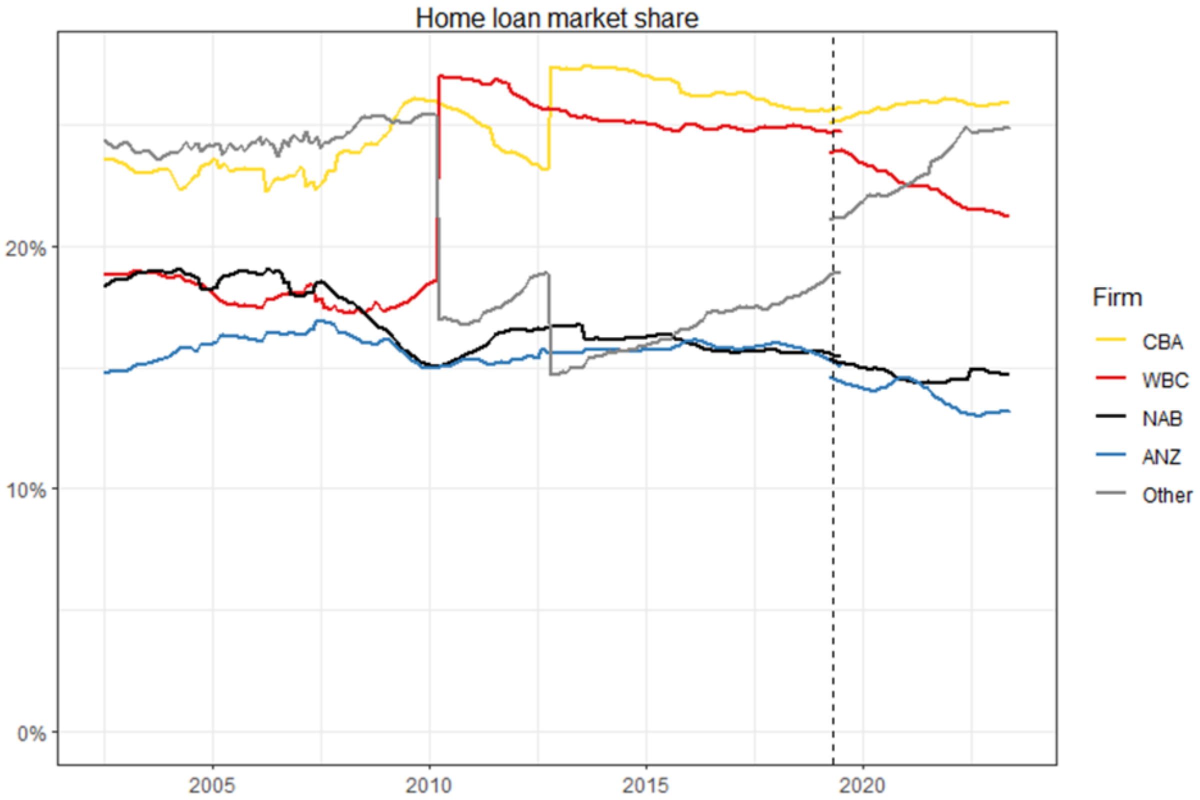
6.49. **[Redacted - Confidential]**.[664]

6.50. Figure 8 indicates the major banks' market share since 2000. It shows that market shares have remained relatively stable across the past two decades, noting that between mid-2019 and end-2022 Westpac has lost around 3% share and ANZ has lost around 2% share (all in percentage points, not percentage change).

663 APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, extracted on 25 May 2023.

664 **[Redacted - Confidential]**.

Figure 8: Market share of major banks in home loans



Source: [APRA Monthly Authorised Deposit-taking Institution Statistics,](#) Monthly authorised deposit-taking institution statistics and Monthly banking statistics, extracted on 25 May 2023.

Note: Westpac's large jump in share in 2010 is due to it completing the move to a single ADI after its acquisition of St George in 2008, and CBA's jump in 2012 is due to its acquisition of BankWest in 2008. The dashed line represents a series break in mid-2019 as a result of APRA's Economic and Financial Statistics (EFS) collection commencing. The old series (Monthly banking statistics) included banks only, while the new series (Monthly ADI statistics) includes non-bank ADIs. Discontinuities are attributable to (1) the inclusion of non-bank ADIs, and (2) changes in definition to various data items.

Competition dimensions

Price competition

6.51. ANZ submits that price including incentives (such as cashback offers and frequent flyer points) is one of the four most important factors borrowers (or mortgage brokers) consider in choosing (or recommending) a home loan.[665]

6.52. Home loan pricing consists of two primary components: interest rates and fees.[666]

6.53. The interest rate for home loans are composed of the headline or index rate (published interest rate, to which customer rates are 'indexed'), any advertised discount, and any discretionary discount (negotiated between the customer and the lender or with the assistance of an intermediary (e.g. broker)).[667]

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[665] ANZ application for Merger Authorisation, 2 December 2022, [6.7]; Statement of Douglas Campbell (ANZ), 30 November 2022, [16].

[666] ANZ application for Merger Authorisation, 2 December 2022, [6.7]; Statement of Douglas Campbell (ANZ), 30 November 2022, [22].

[667] Statement of Douglas Campbell (ANZ), 30 November 2022, [24].

6.54. When making pricing decisions in respect of home loans, banks take into account a range of factors.

6.55. The ultimate interest rates offered to home loan customers varies, including for the following reasons:[668]

- whether the loan is to purchase an owner-occupier or an investment property
- whether repayments are principal and interest, or interest-only
- the loan-to-value ratio (LVR),[669] calculated by expressing the loan value as a percentage of the value of the property (as valued by the lender) used as security for the loan
- the term of the loan (for fixed rate products), and
- the size of the loan.

6.56. A significant factor in banks' pricing decisions in home loans is their cost of funding. This includes the marginal cost of obtaining funding, including funding from the wholesale market and/or funding from deposits, for an additional loan.[670]

6.57. There is a direct relationship between the cost of the domestic wholesale funding (and, therefore, part of a bank's marginal cost of funding) and the cash rate (as well as the RBA's cash rate targets).[671] In contrast, the cost of existing funding and overhead / fixed costs are less relevant to banks' marginal cost of funding and thus to pricing decisions.

6.58. The degree of competition is critical in determining the interest rates and other prices banks can set, and therefore, the profits banks can earn. This is because, when competition is strong in a market, increasing interest rates risks the loss of customers to other banks. Therefore, in setting interest rates on lending products, banks need to balance the profit margin they seek to make on a loan against the negative impact of lost volume (ie market share) from higher prices.[672]

6.59. Banks also take into account how pricing to new customers affects the profitability of existing home loans (that is, the extent to which existing customers negotiate for a comparable price), lending targets, and the potential impact on regulatory requirements.

6.60. The ACCC notes there are both similarities and differences in bank pricing decisions for home loans and retail deposit products. Factors relevant to pricing for retail deposit products are discussed in the Retail deposits section below.

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668 ANZ application for Merger Authorisation, 2 December 2022, [6.12]; Statement of Douglas Campbell (ANZ), 30 November 2022, [23]; see also, for example, **[Redacted - Confidential]**.

669 Consideration of LVR by banks is discussed below.

670 As discussed in the Industry Background, such funding tends to predominantly come from each bank's retail deposits, and be supplemented by funding from wholesale lending markets. See, for example, **[Redacted - Confidential]**. See also **[Redacted - Confidential]**

671 See RBA's Explainers on 'Banks Funding Costs and Lending Rates', accessed on 4 August 2023. See also ACCC, Home Loan Price Inquiry Interim report, 30 March 2020, p 41: 'The big four banks' cost of funds are heavily influenced by the cash rate, but do not move in lockstep with it.'

672 See for example, **[Redacted - Confidential]**.

Non-price competition

6.61. Banks also compete across a range of non-price factors. The significance of these factors will vary depending on individual customers' preferences and circumstances.[673] Relevant non-price factors in home loans include:

- Product: product features, such as the availability of an offset account, redraw facility and option to make additional payments.[674]
- Process: time to approval or pre-approval (ie application 'turn-around times') and the ease of providing required documents.[675]
- Policy: a bank's credit policy, such as its approach to assessing borrower serviceability and willingness to lend, is also relevant to its ability to compete for customers.[676]
- Branches: while access to in-person banking continues to be valued to some degree by home loan customers in regional areas,[677] pre-existing banking relationships have become less important over time given the increased use of brokers. Recent consumer survey evidence suggests **[Redacted - Confidential]**.[678]
- Technology: Investing in technology can also drive home loan growth, and is a relevant aspect of competition, including because technology can drive initiatives that improve the user experience, approval speed and impact how the bank prices its products.[679]

6.62. ANZ submits that these non-price factors, along with price factors, are key parameters of competition in the supply of home loans.[680] BEN submits that, as smaller banks cannot compete against the major banks on price alone, they must instead compete through strong non-price offerings.[681]

6.63. The ACCC considers that the evidence supports the proposition that non-price factors are important to competition in the home loans market, particularly in relation to competition from smaller banks, who may have difficulty matching the pricing of the majors.

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673 **[Redacted - Confidential]**. See also ACCC, Home Loan Price Inquiry Final Report, November 2020, p 13; Statement of Douglas Campbell (ANZ), 30 November 2022, [16]-[17]; ANZ application for Merger Authorisation, 2 December 2022, [6.8], [6.23].

674 ANZ application for Merger Authorisation, 2 December 2022, [6.7] ; Statement of Douglas Campbell (ANZ), 30 November 2022, [16]-[17].

675 The merger parties submit that there is intense competition on policy and process in the home loans market, especially in relation to decision timeframes – for example, ANZ's failure to manage turnaround times in 2020 led to a reduction in referrals from mortgage brokers and mobile lenders, and in ANZ's growth: ANZ application for Merger Authorisation, 2 December 2022, [7.7(g)], [7.40]; Statement of Douglas Campbell (ANZ), 30 November 2022, [60](c)], [91]-[97].

676 ANZ application for Merger Authorisation, 2 December 2022, [6.7]; Statement of Douglas Campbell (ANZ), 30 November 2022, [16]; **[Redacted - Confidential]**.

677 Bendigo and Adelaide Bank submission, 3 March 2023, pp 29-30; Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [34]; **[Redacted - Confidential]**.

678 **[Redacted - Confidential]**.

679 See for example, ANZ application for Merger Authorisation, 2 December 2022, [7.7(g)], [7.40]; **[Redacted - Confidential]**; Transcript of BOQ FY22 Full Year Results Announcement, 12 October 2022, p 21.

680 ANZ application for Merger Authorisation, 2 December 2022, [6.7] and [6.34], citing Statement of Douglas Campbell (ANZ), 30 November 2022, [16].

681 Bendigo and Adelaide Bank submission, 3 March 2023, pp 7, 23,**[Redacted - Confidential]**.

Market participants and intermediaries

The merger parties

6.64. As noted in the Industry Background, all major and most second-tier banks are active in both retail and business banking and have larger retail loan books than business loan books. However, costs to raise funds from wholesale debt markets have historically been lower for major banks compared to smaller ADIs. For this reason, as noted above, second-tier banks such as Suncorp tend to compete with major banks such as ANZ through a combined price and non-price offering rather than on a price basis alone. This means that for those customers who especially prioritise low prices and interest rates, major and second-tier banks are unlikely to be regarded as the closest of competitors.

6.65. The ACCC's competition analysis below examines in more detail the closeness of competition specifically between ANZ and Suncorp in the context of home loans.

Competitors in the home loans market

6.66. Home loans are supplied by a range of bank and non-bank lenders including: major banks, regional banks (including Bank of Queensland, BEN and Suncorp Bank), online banks (Judo Bank, Macquarie Bank) and non-bank lenders (such as Athena Home Loans, Firstmac Limited, and Liberty Financial).

6.67. ANZ submits that based on the number of ADIs and non-ADI lenders, ANZ believes there are over 100 suppliers of home loans in Australia.[682]

6.68. Certain lenders compete across all types of lending, whereas some lenders focus on specific types of loans.

The big four banks have broadly similar 'mass market' distribution strategies in home loans, though each may target or have greater representation among specific customer segments or types of lending from time to time (e.g. **[Redacted - Confidential]**, **[Redacted - Confidential]**).[683] Macquarie Bank's strategy involves **[Redacted - Confidential]**[684] **[Redacted - Confidential]**.[685]**[Redacted - Confidential]**[686] **[Redacted - Confidential]**.[687]

6.69. Figure 9 sets out the **[Redacted - Confidential]**.

Figure 9: **[Redacted - Confidential]**

[Redacted - Confidential]

Source: **[Redacted - Confidential]**[688]

6.70. ACCC analysis suggests **[Redacted - Confidential]**.

6.71. The analysis shows that both **[Redacted - Confidential]**.

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682 ANZ application for Merger Authorisation, 2 December 2022, [7.7(a)].

683 See Statement of Douglas Campbell (ANZ), 30 November 2022, [40]; Second statement of Douglas Campbell (ANZ), 17 May 2023, [61]-[64]; **[Redacted - Confidential]** **[Redacted - Confidential]**.

684 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

685 **[Redacted - Confidential]**.

686 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

687 **[Redacted - Confidential]**.

688 **[Redacted - Confidential]**.

Role of brokers

6.72. ANZ submits that brokers account for a significant proportion of home loans, with over half of ANZ's new home loans by value are generate via mortgage brokers.[689]

6.73. Similarly, Suncorp submits that the share of all new loans in the market from the mortgage broker channel increases from 44.2% in the March quarter of 2013 to 69.5% in the March quarter of 2022. For Suncorp Bank, **[Redacted - Confidential]**.[690]

6.74. As discussed in the 'Industry background' section, brokers are accounting for an increasing share of customer acquisition in the home loans market. The ACCC notes the submission from the Mortgage and Finance Association of Australia which states that the mortgage broker home loan market share has increased from 59.4% in the quarter ending 31 December 2020 to 69.3% in the quarter ending 31 December 2022.[691] **[Redacted - Confidential]**. [692]

6.75. Table 4 below sets out the percentage of loans by value originated through the broker channel for (quarterly data averaged for 2022). This data shows that, as a general proposition, brokers tend to account for a larger share of the home loans written by second-tier (noting that this is not the case necessarily for every second-tier bank), whereas the major banks are relatively less dependent on broker-originated loans.[693]

Table 4: Percentage of loans by value originated through the broker channel by bank (quarterly data averaged for 2022)

[Redacted – Confidential]

Source: **[Redacted - Confidential]**[694]

Note: **[Redacted - Confidential]**

6.76. **[Redacted - Confidential].**[695] Brokers also enable smaller lenders and new-to-market lenders without extensive branch networks or branches at all, provide a critical distribution channel for consumers.[696] **[Redacted - Confidential]** (see Table 4 above). With increased trend in branch closures, banks rely more heavily on brokers to acquire customers.

6.77. While the majors appear to have historically been favoured by brokers referrals, ANZ submits, and Ms Starks also notes, that brokers are increasingly referring applications to non-major bank lenders.[697] However, the ACCC notes that **[Redacted - Confidential]**.[698]

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689 Statement of Douglas Campbell (ANZ), 30 November 2022, [64].

690 **[Redacted - Confidential]**.

691 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, p. 2.

692 **[Redacted - Confidential]**.

693 Expert report of Professor Stephen King, 3 March 2023, [63(a)(ii)]; **[Redacted - Confidential]**.

694 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**;**[Redacted - Confidential]**;**[Redacted - Confidential]**;**[Redacted - Confidential]**;**[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

695 **[Redacted - Confidential]**.

696 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, p. 14 [7].

697 ANZ application for Merger Authorisation, 2 December 2022, [7.7(c)]. See also Expert report of Mary Starks, 16 June 2023, [3.32] and [9.38].

698 **[Redacted - Confidential]**.

6.78. The ACCC's Home Loan Price Inquiry final report noted concerns about how commercial arrangements can influence brokers' incentives and the home loan recommendations they make to consumers.[699] The ACCC notes that the mortgage brokers' best interest duty came into effect 1 January 2021, requiring mortgage brokers to prioritise the interests of consumers, which ANZ submits has contributed to the positive impact brokers have had on competition more recently.[700]

6.79. The ACCC considers that the evidence establishes that brokers have contributed to reducing certain barriers to switching, by reducing search and switching costs, and that they do, to a degree at least, facilitate price competition when negotiating by putting competitive pressure on lenders.[701] The ACCC considers the overall impact of brokers in its assessment of competition in this market below.

Barriers to entry and expansion

6.80. There are a number of barriers to entry and expansion in the home loans market that are relevant to the ACCC's analysis. The ACCC considers that while there are some barriers specific to entry, the majority of the barriers discussed below apply to both entry and expansion, but are likely most relevant to expansion.

6.81. A significant (but not insurmountable)[702] barrier to entry into the home loan market relates to regulatory requirements. As set out in the section 4 ('Industry background'), for home loans this includes a number of licensing and compliance obligations for banks and non-bank lenders, and banks must also meet ongoing prudential requirements in relation to capital, liquidity, governance, operations and reporting.

6.82. One key barrier to entry and expansion is a bank's ability to access initial funds for lending, and then be in a position to continuously fund its lending, whether by way of deposits or wholesale funding, and the costs it faces in doing so. Those costs can be particularly high for smaller competitors seeking to win customers from larger and more established banks. This may be due, for example, to smaller and newer banks having a weaker brand recognition and trust (which can require higher interest rates to be offered to depositors), lower credit ratings (which increases wholesale funding costs), and the lack of an existing capital base to fund their expanding regulatory capital requirements.[703]

6.83. In this respect, the ACCC notes consumer survey data **[Redacted - Confidential]**: [704]

- **[Redacted - Confidential]**
- **[Redacted - Confidential]**

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[699] ACCC, Home Loan Price Inquiry Final Report, November 2020, pp. 42-43.

[700] *National Consumer Credit Protection Act 2009* (Cth), pt 3-5A. See also Australian Securities and Investments Commission, Regulatory Guide 273 Mortgage brokers: Best interests duty, June 2020; ANZ response to the ACCC independent expert reports, 17 July 2023 [7.15(c)].

[701] Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, pp. 9 and 12; ANZ application for Merger Authorisation, 2 December 2022, [7.7(c)]; Statement of Douglas Campbell (ANZ), 30 November 2022, [67]-[69], [75]; Expert report of Mary Starks, 16 June 2023, [3.31]-[3.32]; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

[702] See Expert report of Mary Starks, 16 June 2023, [9.35]; Expert report of Professor Stephen King, 3 March 2023, [105].

[703] Bendigo and Adelaide Bank submission, 3 March 2023, p 19 and 21, citing The Australian, 'Pepper Money steps back from prime lending, waits for rates to plateau', 23 February 2023 and Productivity Commission, 'Competition in the Australian Financial System – Inquiry Report', 29 June 2018, p 235; Bank of Queensland submission, 24 February 2023, pp 5, 7-8; **[Redacted - Confidential]**.

[704] **[Redacted - Confidential]**.

- **[Redacted - Confidential]**.

6.84. Relatedly, as discussed in the industry background section, the advantages of scale, such as the ability to defray technological and other capital expenditure over a larger revenue and customer base, also pose significant barriers to expansion for new and smaller lenders. Other things equal, a bank with a smaller number of customers will be less inclined to make high fixed cost investments in technologies that could enable them to serve customers at lower cost or with better service than a bank with a larger number of customers..

6.85. The various advantages enjoyed by the larger banks help explain the paradox that new entry and expansion into home lending remains difficult for new ADIs (which typically lack a substantial customer base and strong credit rating) despite the ongoing profitability of the major banks, as highlighted in Industry background. For a prospective new entrant to replicate these advantages and match the larger incumbent banks' funding costs, scale and reputational advantages would require it to incur very substantial sunk costs over a long period of time with no guarantee of ultimate success.

6.86. Other barriers, which may have been more prominent in the past but are less so now, include information asymmetries and geographic footprints.[705] While branches have historically been a key distribution channel for banks in home loans, the ACCC considers new entrants, such as Macquarie, have entered and achieved some expansion in the market, with no or extremely few branches **[Redacted - Confidential]**.

History of entry and expansion

6.87. ANZ submits that a range of relatively small non-bank, neobank and FinTech competitors have entered and expanded in the market for home loan products in recent times and will continue to do so in coming years.[706]

6.88. The ACCC notes that, while these entrants appear to have gained some success and demonstrated a degree of innovation, they face significant barriers,[707] and these barriers affect their ability to compete and expand.[708]

6.89. These challenges are not limited to new entrants. Existing smaller players, with established reputations, face significant difficulties building additional market share. A relative exception to this is Macquarie, who has experienced meaningful growth in its home loan share (particularly in recent years),[709] noting that BEN has also had some success. These trends are set out below in Figure 10, which sets out the market shares of the second-tier banks across the last two decades.

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705 See Expert report of Mary Starks, 16 June 2023, [9.37]-[9.38].

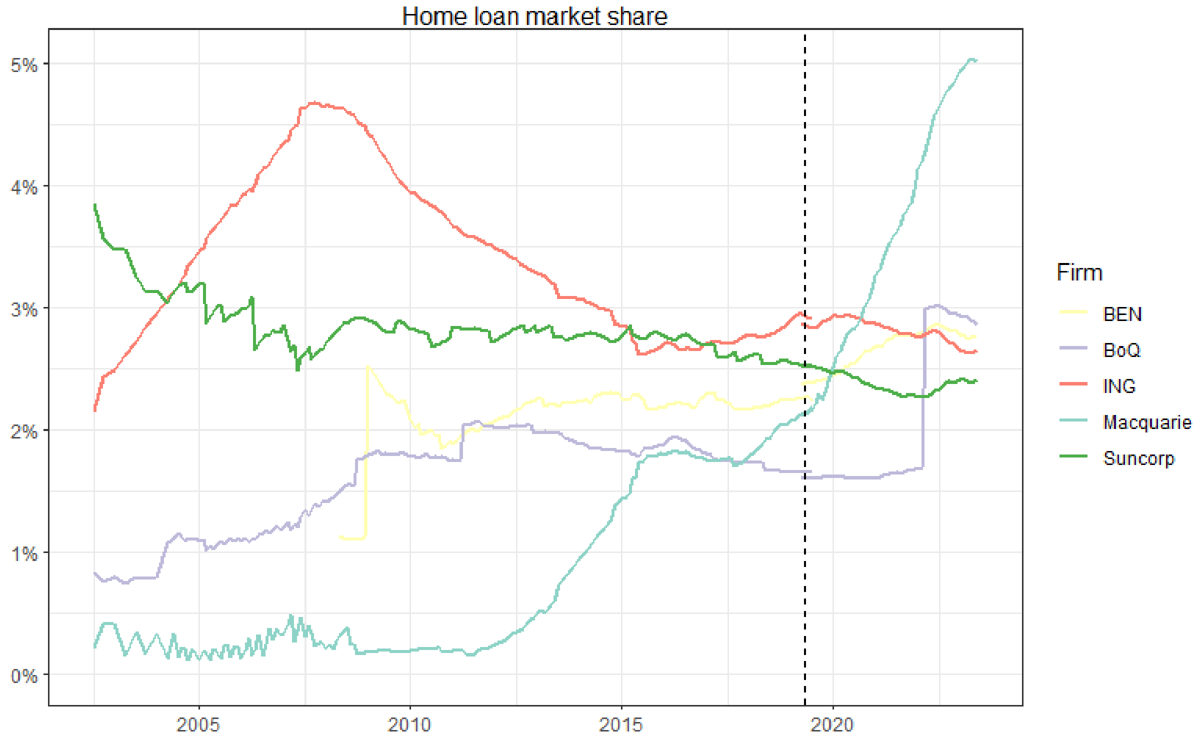
706 For example: Athena, Nano Digital Home Loans, Tic:Toc (which is owned by Bendigo and Adelaide Bank), Reduce Home Loans and Pepper Money: ANZ application for Merger Authorisation, 2 December 2022, [7.46]-[7.47]; Statement of Douglas Campbell (ANZ), 30 November 2022, [60(a)].

707 For example, non-banks do not collect customer deposits and therefore do not have access to a significant source of funding that banks can leverage. Accordingly, even while non-banks have achieved some success in growing and continuing to innovate, they have less stable access to funding and are reliant on higher cost and more volatile funding sources: (see Bendigo and Adelaide Bank submission, 3 March 2023, p 19).

708 See for example: **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

709 See ANZ application for Merger Authorisation, 2 December 2022, [7.45]; Statement of Douglas Campbell (ANZ), 30 November 2022, [52(d)], [60(c)].

Figure 10: Market share of selected second-tier banks in home loans



Source: APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, extracted on 25 May 2023.

Note: BoQ's large jump in share in 2022 is due to it completing the move to a single ADI after its acquisition of ME Bank in 2021. The dashed line represents a series break in mid-2019 as a result of APRA's Economic and Financial Statistics (EFS) collection commencing. The old series (Monthly banking statistics) included banks only, while the new series (Monthly ADI statistics) includes non-bank ADIs. Discontinuities are attributable to (1) the inclusion of non-bank ADIs, and (2) changes in definition to various data items.

6.90. From the above data, between at least August 2002 and August 2021, the net growth in Macquarie's lending book has been **[Redacted - Confidential]**.[710] However, the ACCC notes that **[Redacted - Confidential]**.[711]

6.91. By comparison, Table 5 below sets out **[Redacted - Confidential]**.

Table 5: [Redacted - Confidential]

[Redacted - Confidential]

Source: **[Redacted - Confidential]**.

*Note: **[Redacted - Confidential]***

6.92. Taken together, the ACCC considers that Macquarie's 'net growth' position is likely to be overstating its competitive impact.

6.93. The ACCC also notes that Macquarie appears to have been affected by at least some of the barriers discussed above. While Macquarie began its investments in technology approximately 10 years ago, it struggled to gain share in home loans

710 **[Redacted - Confidential]**.

711 **[Redacted - Confidential]**.

initially in spite of already benefitting from a credit rating similar to the established second-tier home lenders.[712] **[Redacted - Confidential]**.[713] Internal Macquarie Bank documents refer to the **[Redacted - Confidential]**.[714]

6.94. In addition to investing in the technology, Macquarie Bank's strategy has also involved **[Redacted - Confidential]**, rather than seeking to compete across all customer types.[715]

6.95. The ACCC considers, notwithstanding Macquarie's comparative success, the evidence demonstrates that barriers to entry and expansion in this market will, on balance, continue to remain high. In fact, Macquarie's experience demonstrates that entry and expansion can take significant time and investment, even for a well-funded entrant with a recognised brand.

6.96. While the various market developments identified by the merger parties may have reduced barriers to entry and expansion in an incremental way, overall barriers to new entry and expansion (including from economies of scale, capital costs and the need to attract deposit funding) remain high. This conclusion is largely consistent with that reached by Ms Starks, namely that 'while barriers to expansion have fallen in recent years, they are likely to be higher for banks other than the majors and Macquarie.'[716]

6.97. As a result, the ACCC considers that even where entry has occurred and some related investments have been made, entrants need to continue to make significant ongoing investments (including to meet regulatory requirements) simply to remain active in the market. Further, to become capable of constraining large incumbents in respect of pricing, entrants need to expand their scale sufficiently to obtain access to a cost-competitive source of funding needed to supply lending to customers at a level comparable to the major banks. This also requires entrants seeking to expand to make additional investments in branding and technology platforms to attract sufficient new customers.

6.98. As is made clear from the continued niche status of smaller banks, despite some of them having been in the market for many years, on the evidence available to it, the ACCC does not consider the entry or expansion of small and niche entrants is likely to be sufficient or timely enough to discipline a substantial lessening of competition in this market.

Switching

6.99. Consumers who wish to obtain a better deal for their existing home loans can either seek a change by switching to another home loan provider (external refinancing) or negotiating with their current provider to move to a product with better rate or to receive a reduction on their current rate (internal refinancing or repricing).

6.100. The ACCC's 2020 Home Loan Price Inquiry highlights several barriers to switching in this market:[717]

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712 See, for example, RBA, *Parliamentary Briefing, 24 February 2012 – Implicit Guarantee for Banks*, p.1, which noted that Macquarie then had a credit rating equal to or better than Bendigo and Adelaide Bank and bank of Queensland.

713 **[Redacted - Confidential]**.

714 **[Redacted - Confidential]**.

715 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**

716 Expert report of Mary Starks, 16 June 2023, [9.41].

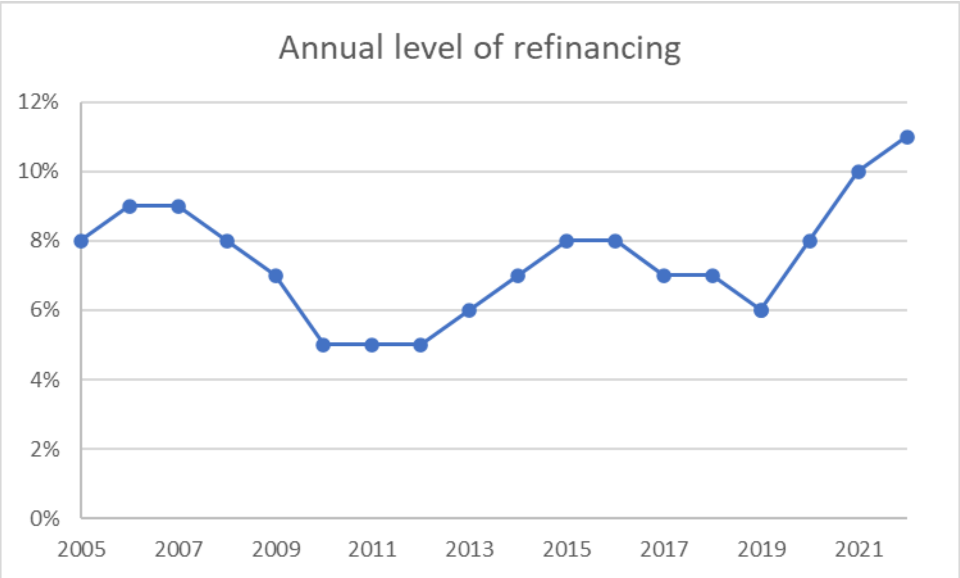
717 ACCC, Home Loan Price Inquiry Final Report, November 2020, pp. x-xii.

- A lack of engagement in the home loan market – many borrowers either presume they will not save much by switching or are not compelled to consider switching unless they experience a major change in circumstance.
- Unnecessarily high search costs created by some lenders' opaque discretionary discounting – borrowers often lack access to transparent and easily understood pricing information about home loans.
- 'Pain points' in the process of switching from an existing home loan – the discharge process of many lenders being unnecessarily difficult and lengthy.

6.101. The ACCC notes that opaque pricing for customers due to large discretionary discounting is still one of the key features of the market (see the discussion below on the nature of the recent increase in price competition below). For example, an ANZ internal document that discusses **[Redacted - Confidential]**[718] indicates that consumer choice frictions remain high enough to meaningfully inhibit consumer rate comparisons and competition.

6.102. The ACCC's analysis of refinancing and repricing rates considers the current level and trends in switching in the home loans market. The ACCC's analysis suggests that the annual level of refinancing, as a proportion of total value of credit outstanding, has increased since 2020. **[Redacted - Confidential]**.[719] The trend has been observed to continue into early 2023 based on monthly data – see Figure 11 below.

Figure 11: Annual level of home loan external refinancing as a proportion of total value of credit outstanding



Source: Australian Bureau of Statistics (ABS), Lending indicators, released 3 July 2023, extracted on 25 July 2023, and APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics.

Note: The annual level of external refinancing is calculated as total (seasonally adjusted by ABS) external refinancing in a year divided by average value of credit outstanding in home loans in that year.

718 **[Redacted - Confidential]**.

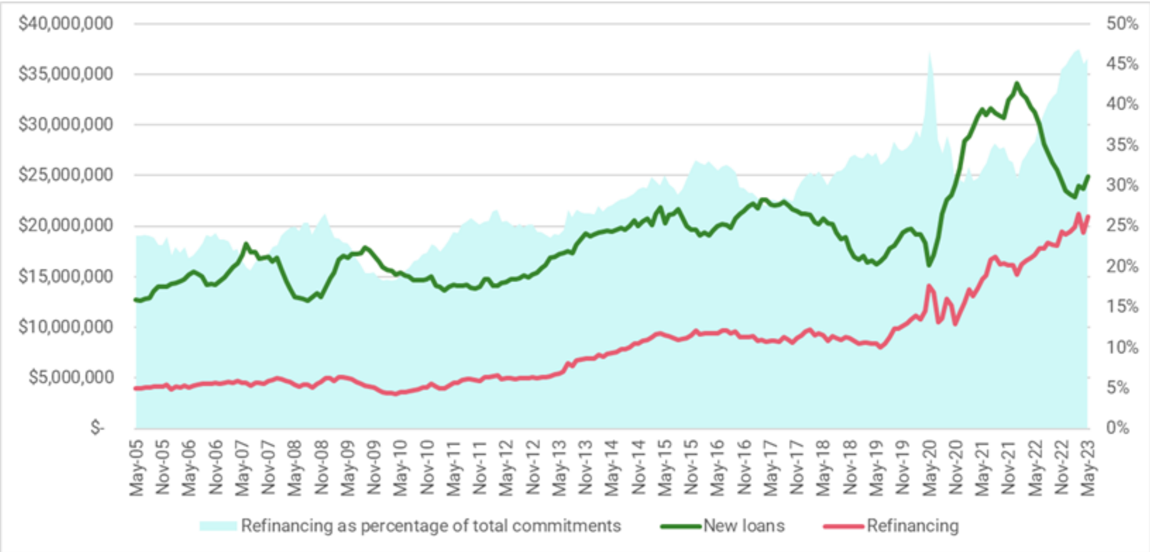
719 **[Redacted - Confidential]**.

6.103. ANZ submits that there has been a recent increase in refinancing which evidences an increase in customer switching, and the level of competitiveness in home loans. It submits that the value of external refinancing (i.e. switching from one lender to another) as a proportion of the total value of new loan commitments and external refinancing activity (i.e. 'total commitments') has trended upwards over time, more than doubling between October 2002 to April 2023, approximately 18% to almost 40%.[720]

6.104. The ACCC notes that an increase in this metric (external refinancing as a proportion of the total value of new loan commitments and external refinancing activity) can be due to an increase in external refinancing and/or a decrease in new loan commitments (in absolute terms or relative to each other).

6.105. As illustrated in Figure 12 below, fluctuations in this metric are highly negatively correlated with changes in new loan commitments, especially since 2017. For example, the period from mid-2017 to early 2020 and the period from mid-2022 to now experience a reduction in new loan commitments and an increase in this refinancing metric. On the other hand, the period from early 2020 to mid-2022 has seen the opposite trends. For this reason, the ACCC does not consider that the refinancing metric used in ANZ analysis clearly evidences an increase in customer switching in home loans.

Figure 12: External refinancing and new loan commitments



Source: Australian Bureau of Statistics (ABS), Lending indicators, released 3 July 2023, extracted on 25 July 2023

Note: Both data on external refinancing and on new loan commitments are seasonally adjusted by ABS.

6.106. The ACCC notes that the refinancing metric used in ANZ analysis also does not take into account the growth in the overall size of the market. On this basis, the ACCC considers that the ANZ refinancing analysis likely overstates the degree of improvement in refinancing that has been occurring in this market across the last two decades. The ACCC considers that its refinancing analysis, as set out in the section

[720] Statement of Douglas Campbell (ANZ), 30 November 2022, [78] and Figure 3; see also Expert report of Mary Starks, 16 June 2023, [3.29] and Figure 5; ANZ response to the ACCC Independent Expert Reports, 17 July 2023, [7.13], Figure 2.

discussing switching above, which calculates the level of refinancing as a proportion of total value of credit outstanding, is a more appropriate approach.

6.107. The ACCC notes that its analysis also suggests that there is no material difference in the refinancing rates between Queensland and nationally.[721]

6.108. ANZ has also stated that its attrition rate in home loans is **[Redacted - Confidential]**. However, the ACCC understands **[Redacted - Confidential]**.[722]

6.109. The ACCC has also considered repricing rates and the extent to which they evidence customer switching. **[Redacted - Confidential]**.[723]**[Redacted - Confidential]**. However, given the ACCC only has a short time period of repricing data (covering from the quarter ending 31 December 2019 to the quarter ending 31 December 2022), it is not able to ascertain whether and to what extent the level of consumer engagement has increased compared to 2017.

6.110. The ACCC notes that there is some evidence that barriers to switching have been reducing over time, including since the PC Report. Ms Starks also referred to this.[724] For example, customers have increasing visibility over home loans products (including due to the increased use of brokers – see discussion above in relation to role of brokers) and banks have been using cashback offers and other incentives to encourage switching for some time (home loan discounts are discussed in more detail in the below).

6.111. However, the key barriers to switching, as set out in the ACCC's 2020 Home Loan Price Inquiry remain.[725] The prevalent use of large discounts continues to make pricing in this market opaque to consumers (see below for the discussion on home loan discounts).

6.112. Further, according to the ACCC's refinancing analysis (discussed above), customers are currently switching at a rate of around 10% which has only increased by a small amount in the last two years (and which the ACCC considers may be driven by the recent rapid changes in home loan interest rates, rather than any structural 'pro-competitive' changes in the market).

6.113. Overall, the ACCC considers the switching rate in the market for home loans remains relatively low, which is consistent with submissions to the ACCC on consumer stickiness with respect to financial products, including home loans.[726]

Current state of competition

6.114. Overall, the ACCC considers there is evidence of relatively strong price competition for new home loans taking place across 2021 and 2022, including widespread use of promotional and cashback offers to attract customers, particularly (although not exclusively) new customers.

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721 **[Redacted - Confidential]**.

722 Second statement of Douglas Campbell (ANZ), 17 May 2023, [63].

723 APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics; **[Redacted - Confidential]**.

724 Expert report of Mary Starks, 16 June 2023, [3.31]-[3.34].

725 See also Expert report of Professor Stephen King, 3 March 2023, [30]-[35]; ACCC, Home Loan Price Inquiry Final Report, November 2020, pp. x-xii.

726 Bendigo and Adelaide Bank submission, 3 March 2023, p 31; see also Bank of Queensland submission, 24 February 2023, pp 7-8.

Increase in price competition in the home loans market

6.115. ANZ submits that the recent more intense competition in the home loans market is part of a longer-term trend of increasing competition that started before 2018, and which continues to intensify. It states that the longer-term trend of increased competition is demonstrated by:[727]

- the return on equity and net interest margins of the major banks continuing to decline through the interest rate cycle, which has been sustained over a long period and represents a very significant transfer of value from the major banks to consumers
- the major banks (with the exception of CBA) having lost market share to competitors with a focussed proposition, including Macquarie Bank recently and ING longer-term in home loans, and
- customers becoming more aware and more willing to switch, supported by the growth in the broker channel and brokers' best interests duty.

6.116. Shayne Elliott (CEO of ANZ) states that competition in home loans and deposits has increased since 2018, and is more intense than it has ever been.[728] Douglas Campbell (ANZ General Manager, Home Loans) holds a similar view, referring to increased churn and the number of home loans being refinanced.[729] **[Redacted - Confidential]**.[730]

6.117. **[Redacted - Confidential]**.[731] **[Redacted - Confidential]**.[732]

6.118. The strength of recent competition in the home loans market has also been referred to in the internal documents of a wide variety of banks[733] and their public-facing commentary,[734] by the RBA,[735] and by market analysts.[736]

6.119. Historically, competition in the home loans market appears to have been more muted. That is supported by the conclusions of the Productivity Commission and the ACCC on previous occasions and also appears to be acknowledged by the banks themselves.[737]

6.120. Consistent with previous findings of muted competition, **[Redacted - Confidential]**.[738]

6.121. To inform its view of the competitiveness of the home loans market, the ACCC has conducted data analysis in respect of (i) home loan discounts, (ii) banks' profitability

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727 ANZ response to the ACCC independent expert reports, 17 July 2023, [7.15], [7.17]-[7.19].

728 Second statement of Shayne Elliott (ANZ), 17 May 2023, [18]-[19], [23].

729 Second statement of Douglas Campbell (ANZ), 17 May 2023, [8]-[45]; Second expert report of Patrick Smith, 17 May 2023, [41]-[47].

730 **[Redacted - Confidential]**.

731 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

732 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

733 See, for example **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

734 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [3.12], [7.19] and the Annexures cited; **[Redacted - Confidential]**; CBA 1H23 Results Briefing Transcript, 15 February 2023, p 5.

735 See for example, RBA, *Developments in Banks' Funding Costs and Lending Rates*, 16 March 2023, pp 65-66.

736 **[Redacted - Confidential]**.

737 For example: ANZ oral submission to the ACCC, 16 June 2023, [9]-[10]; CBA 1H23 Results Briefing Transcript, 15 February 2023, p 17. See also the statement of Mr Ross McEwan, the CEO of NAB, extracted at Second statement of Shayne Elliott (ANZ), 17 May 2023, Exhibit SCE-5, p 211.

738 **[Redacted - Confidential]**.

(measured by ROE and NIM), as well as lending spread in home loans and (iii) refinancing (also discussed above).

6.122. The ACCC's home loan discount analysis suggests that discounts off the headline interest rates for variable rate home loans are prevalent and have increased substantially over time (see Table 6 below).

Table 6: Percentage of variable rate home loans with discounts of a given size (by number of home loan facilities in each quarter ending on the specified date)

[Redacted – Confidential]

Source: **[Redacted - Confidential]**[739]

6.123. Note: **[Redacted - Confidential]**The ACCC's analysis also suggests that the majority of banks have offered large discounts to most of their new home loan customers. The ACCC considers that discounts, including both advertised and discretionary discounts, have increased substantially over time and that discounting practices are becoming more standardised across the market.

6.124. While the ACCC's analysis only covers data in the 2019 – 2022 period, the ACCC has observed widespread discounting in previous ACCC inquiries into this market.[740] Therefore, it seems that to some extent, the trend has continued from before 2019.

Figure 13: Percentage of loans with a give size of discounts, by quarterly number of variable rate home loan facilities from December 2019 to December 2022

[Redacted – Confidential]

Source: ACCC analysis[741]

*Note: **[Redacted - Confidential]**.*

6.125. Given Ms Starks' findings, and the ACCC's analysis, most price competition appears to occur through discounting practices (e.g. either through lower introductory rates or through cash back offers).[742] As such, headline interest rates do not typically represent the final price in the home loan market in Australia. This is consistent with the findings from the ACCC's 2020 Home Loan Price inquiry.[743] However, as noted above, given the trend towards standardisation of discounting practices in the home loan markets, large discounts may not be an indication of strong and effective competition; instead, it may operate to create more opaqueness in pricing for customers.

6.126. The linkages between the RBA cash rate targets and banks' marginal cost of funding, as set out above, go some way to explaining Ms Starks's finding that the headline rates of most banks largely move in line with the RBA cash rate. However, the ACCC considers it more appropriate to assess changes in discounted rates than headline rates in assessing the extent of price competition.

739 **[Redacted - Confidential].**

740 ACCC, Residential Mortgage Price Inquiry Final Report, November 2018, p 7.

741 **[Redacted - Confidential]**

742 See Expert report of Mary Starks, 16 June 2023, [9.14], [9.75], [Table 11].

743 ACCC, Home Loan Price Inquiry - Final Report, November 2020, pp 38-39.

6.127. The ACCC also notes that while there has been evidence of stronger price competition in home loans recently and banks are reported to have written loans below their cost of capital,[744] most banks have maintained or improved their profitability since 2020/21.[745]

6.128. Another metric that the ACCC has considered in assessing the competition level in this market is banks' implied lending spread. The lending spread is the difference between the average rate on the bank's outstanding loans and the average cost of its debt and deposit funding.[746] Since competitive pressure could lead to lower lending rates (for a given level of funding cost), a reduction in lending spread can indicate an increase in price competition in the market.[747] The RBA notes that there are several differences between lending spread and other profitability measure.[748] For example, lending spread excludes the effects of non-loan interest-earning assets, such as cash and other high quality liquid assets, as well as only partially accounting for hedging practices, both of which are captured in banks' NIMs.

6.129. The ACCC considers changes to the major banks' lending spreads over time (based on the RBA analysis done at the aggregate level across the major banks) and the implications to competition in the home loans market in the section below.

Nature of the increased price competition in the home loans market

6.130. The ACCC considers that assessing the nature and drivers of the recent increase in price competition is necessary to determining whether, and the extent to which, it is reasonable to expect this trend to continue in the future.

6.131. As set out above, ANZ submits there has been a long-term trend, dating back many years, of increased competition and declining major bank ROEs and NIMs.[749] Mr Smith, an independent expert for ANZ (in addressing the findings of Ms Starks) considers that there has been strong price competition in the home loans market since at least 2018, and does not agree that recent levels of refinancing demand represent a 'transient' period of 'higher than average market demand', as stated by Ms Starks.[750]

6.132. The ACCC has considered the available evidence on when the period of increased competition commenced, and the reasons for it. This includes various RBA analyses and commentary covering the period of 2020 – 2022. The RBA finds that the decline in outstanding funding costs during 2021 (of around 85 basis points) has flowed through to outstanding housing interest rates (which are lower by around 100 basis

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744 See NAB, Transcript of 2023 Half-Year Results media conference, 5 May 2023; CBA 1H23 Results Briefing Transcript, 15 February 2023, p 1.

745 RBA, Developments in Banks' Funding Costs and Lending Rates, March 2023, p 71.

746 RBA, Developments in Banks' Funding Costs and Lending Rates, March 2023, p 71.

747 There are other factors that can cause a reduction in lending spread, for example a low interest rate environment. See RBA, The Consequences of Low Interest Rates for the Australian Banking Sector – Research Discussion Paper – RDP 2022-08, Dec 2022.

748 RBA, Developments in Banks' Funding Costs and Lending Rates, March 2023, p. 71.

749 See e.g. ANZ application for Merger Authorisation, 2 December 2022, [15], [5.72]-[5.77] citing Statement of Steven Johnston (Suncorp Group), 25 November 2022, [29]-[33], Reserve Bank of Australia, Banking indicators: Major banks' net interest margin (September 2022) and Reserve Bank of Australia, Bank Fees in Australia (16 June 2022); ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023,[3.6]-[3.12] and the material cited there, ANZ response to the ACCC independent expert reports, 17 July 2023, [7.15], [7.17]-[7.19].

750 Third Expert Report of Patrick Smith, 17 July 2023, [65]-[69]. Ms Starks considers that there was 'a sudden and significant shock to demand and to costs as a result of the COVID-19 pandemic and the Russian invasion of Ukraine, which had large and sudden effects on interest rates, driving refinancing demand: Supplementary expert report of Mary Starks, 7 July 2023, [8.4].

points).[751] In addition, the RBA finds that the aggregate lending rate increased by around 30 basis points less than funding costs in 2022.[752]

6.133. Overall, the RBA analysis indicates that across 2021 and 2022, the major banks' lending spread narrowed.[753] In contrast, the spread remained roughly the same or increased from at least 2016 up to 2020.[754] The ACCC notes that RBA analysis is based on aggregated lending activities and not only on home loans. This finding from the RBA indicates that there was likely an increase in price competition in home loans since 2020 and not before then.[755]

6.134. Data on refinancing can also be useful in identifying the starting point of the recent increase in price competition. Compared to the annual rate of refinancing of 7% in 2018 (at the time of the PC report), refinancing was at a similar level in 2019 (6%) and 2020 (8%), and only increased to a 10-11% annual rate of refinancing in 2021 and 2022 (see 'Switching' for a more detailed discussion of this analysis). This is consistent with the RBA's findings indicating that the stronger competition in home loans is relatively recent, from at the earliest 2020 instead of the 2017/18 period as ANZ submits.

6.135. More specifically, the value of fixed rate home loans increased significantly during the COVID-19 period, 'peaking at almost 40% of outstanding housing credit in early 2022, or roughly twice their usual share from prior to 2020'.[756] The RBA notes that during COVID-19 many borrowers also fixed their interest rates for longer periods than is typically the case. As a result of their ability to obtain low-cost term funding via the RBA's monetary policy response to the pandemic (including TFF, the three-year yield target and forward guidance), the banks were able to lower their advertised fixed rates below variable rates to compete for borrowers. The benefit of competing on fixed rate loans is that banks could avoid lowering their interest rates for variable rate loans which would have lowered rates for their existing variable rate customers.[757]

6.136. Most borrowers in Australia who fix their mortgage interest rate do so for three years or less.[758] This means that most fixed rate loans taken out during the pandemic have recently expired or will do so over the coming two years. One-quarter of fixed rate loans outstanding in early 2022 have now expired, most have rolled on to a variable interest rate, rather than re-fixing at a higher rate.[759] While the increase in refinancing started in 2020 as consumers with existing mortgages responded to lower interest rate offers in the market, it has continued into early 2023 given the refinancing needs from fixed rate loans to variable rate loans. In contrast, new loan commitments have reduced sharply since January/February 2022.[760]

751 RBA, Developments in Banks' Funding Costs and Lending Rates, 17 March 2022, p. 70.

752 RBA, Developments in Banks' Funding Costs and Lending Rates, March 2023, p. 71.

753 RBA, Developments in Banks' Funding Costs and Lending Rates, March 2023

754 See, for example, RBA, Developments in Banks' Funding Costs and Lending Rates, 16 March 2017, p. 49.

755 The ACCC notes that Third Expert Report of Patrick Smith, 17 July 2023, refers to the RBA's Developments in Banks' Funding Costs and Lending Rates publications discussing home lending rates in 2018 to 2022. The ACCC does not consider the observations for 2018 to 2020 evidence of increased competition in the market since changes in lending rates need to be assessed relative to changes in banks' funding costs, as set out in the ACCC's analysis in this section.

756 RBA, Fixed-rate Housing Loans: Monetary Policy Transmission and Financial Stability Risks, 16 March 2023, p 10.

757 RBA, Fixed-rate Housing Loans: Monetary Policy Transmission and Financial Stability Risks, 16 March 2023, p. 11

758 RBA, Fixed-rate Housing Loans: Monetary Policy Transmission and Financial Stability Risks, 16 March 2023, p 11.

759 RBA, Fixed-rate Housing Loans: Monetary Policy Transmission and Financial Stability Risks, 16 March 2023, p 11.

760 ABS, New loan commitments (Reference period: May 2023), 3 July 2023.

6.137. On the available information, it has been difficult for the ACCC to pinpoint the precise cause(s) of the recent increase in price competition. However, it considers that banks reducing their rates for new fixed rate loans in 2020, following the RBA's policy package in response to COVID-19 was likely a significant contributing factor.[761] In addition to the banks' incentive to focus their rate reduction on fixed rate loans, the decline in the interest rate swap rates (which are often used as a benchmark for pricing fixed rate loans) contributed to the interest rates on fixed rate loans reducing to below the interest rates available on variable rate loans in 2020.[762] This was likely a positive shock to the supply of (fixed rate) home loans (i.e. more low-cost funding in the system due to the RBA's policy package), followed by an increase in both the credit outstanding and number of home loans in the market.

6.138. The ACCC notes that:

- The annual growth rate of total credit outstanding in home loans increased from 3% in 2020 to 7% in 2022,
- New loan commitments increased by 81% from May 2020 to February 2022.[763]
- Refinancing increased from 8% in 2020 to 11% in 2022.

6.139. The ACCC considers this is consistent with Ms Starks's finding which describes the situation as being 'driven by a sudden sharp increase in refinancing demand in response to the rapid increase in interest rates after a long period where rates were low'.[764]

6.140. Overall, the ACCC considers that there has been an increase in competition in the home loans market since 2021, based on the reduction in the major banks' lending spread in 2021 and 2022. However, the ACCC is not persuaded that this represents a 'long term trend' in competition in this market, as submitted by ANZ.

6.141. The ACCC notes, as submitted by ANZ, that the ROEs and NIMs of banks generally, including the major banks, have declined progressively up to 2020.[765] However, the ACCC considers that other factors are likely to have played a greater part in these declines, including falling interest rates and APRA changes to rules regarding regulatory capital, than any increase in competition (see industry background).

6.142. **[Redacted - Confidential].**[766] **[Redacted - Confidential].**[767]

6.143. The ACCC considers that looking at banks' ROEs and NIMs for home loans and retail deposits separately is unlikely to provide a meaningful picture of the strength of competition in the home loans market, as these measures are sensitive to individual

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761 See, for example, RBA, Developments in Banks' Funding Costs and Lending Rates, March 2021, p. 56; RBA, Fixed-rate Housing Loans: Monetary Policy Transmission and Financial Stability Risks, 16 March 2023, pp 10 – 11.

762 See RBA, Developments in Banks' Funding Costs and Lending Rates, March 2021, p 56.

763 ABS, New loan commitments (Reference period: May 2023), 3 July 2023.

764 Expert report of Mary Starks, 16 June 2023, [9.80]; Supplementary expert report of Mary Starks, 7 July 2023, [9.11].

765 See e.g. ANZ application for Merger Authorisation, 2 December 2022, [15], [5.72]-[5.77] citing Statement of Steven Johnston (Suncorp Group), 25 November 2022, [29]-[33], Reserve Bank of Australia, Banking indicators: Major banks' net interest margin (September 2022) and Reserve Bank of Australia, Bank Fees in Australia (16 June 2022); ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [3.6]-[3.12] and the material cited there, ANZ response to the ACCC independent expert reports, 17 July 2023, [7.15], [7.17]-[7.19]; Second statement of Clive van Horen (Suncorp Bank), 17 May 2023, [17(a)].

766 **[Redacted - Confidential]**.

767 **[Redacted - Confidential]**.

banks' internal transfer prices (and hence profit allocations) between their lending and deposit businesses.[768] For example, an ANZ internal document notes that **[Redacted - Confidential]**.[769]

6.144. Banks' overall ROEs and NIMs, while providing information on banks' general profitability levels rather than home loan products specifically, can still be useful as an indication of the level of price competition in the home loans (and deposits) market, given the large share of home loans across Australian banks' loan books. They also have the benefit of accounting for profitability in both lending and deposit businesses of a bank, so they are not subject to banks' FTP process.

6.145. Most banks' ROEs have increased since 2020; three of the four major banks' 2022 ROEs (except Westpac) are at similar levels to where they were in 2017/18 and thus the increase in ROEs is larger than just their recovery from the drop in 2020. In addition, the RBA notes that reported NIMs for the major banks generally started to increase during 2022.[770]

6.146. **[Redacted - Confidential]**.[771] **[Redacted - Confidential]**.

6.147. In addition, the ACCC considers there are several factors pointing to the temporary nature of this recent elevated price competition in the home loans market.

6.148. First, the CEOs of a number of large and second-tier banks have referred publicly in recent months to irrational pricing taking place in the home loans market and stated that they will not destroy shareholder capital in pursuit of market growth.[772] Recent media articles suggest that banks have, consistent with the referenced statements, begun reducing the volume of capital allocated to the home loan market and removing cashbacks and similar incentives.[773]

6.149. Second, as discussed above, the increase in price competition has been triggered mainly by changes to macroeconomic conditions following the COVID-19 period and the RBA's monetary policy responses. While refinancing needs may still increase in the short term, especially given the current interest rate uncertainty, it is reasonable to expect that this level of competition will not continue into the medium and long terms.

6.150. Third, as discussed above, the key barriers to switching have remained, including highly opaque discounted pricing and considerable consumer inertia.

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768 This is done through the setting of banks' internal funds transfer price (FTP) which is an internal process typically carried out by the bank's treasury function. It determines how much the lending business would have to pay for the funding coming from deposits. At the same time, the deposit business earns its profits from paying a lower interest rate to depositors than the FTP that it receives from the lending business. FTP is also set at a level that can incentivise certain types of lending or deposit-taking, reflecting banks' strategic priorities.

769 **[Redacted - Confidential]**.

770 RBA, Developments in Banks' Funding Costs and Lending Rates, March 2023, p 71.

771 **[Redacted - Confidential]**.

772 For example: See ANZ response to the ACCC's Statement of Preliminary Views, 17 May 2023, [7.17] and Annexures 20 to 26 (Ross McEwan, CEO of NAB, reported on 6 May 2023; Peter King, CEO of Westpac, reported on 7 May 2023; Marnie Baker, CEO of BEN, reported on 20 February 2023; Patrick Allaway, CEO of BOQ, reported on 20 April 2023); **[Redacted - Confidential]**.

773 See e.g. Australian Financial Review, 'Borrowers to pay more for home loans as mortgage war recedes' (26 May 2023); Australian Financial Review, 'Suncorp's bank steps away from home loan war' (10 May 2023); Australian Financial Review, 'NAB lifts mortgage rates for new customers after dumping cashback' (23 May 2023); Sydney Morning Herald, 'Westpac steps back from mortgage war to shield returns' (8 May 2023).

6.151. The ACCC accepts that there have been developments in recent years that may have had a more enduring positive impact on competition, such as the growth of Macquarie (which has provided targeted competitive pressure in the market) and some reduction to the impact of opaque pricing through the increased use of brokers. However, these factors have not driven the recent increased price competition in this market. Rather, they have been part of a longer trend with more limited impact and mainly in non-price dimensions.

6.152. On balance, given the history of muted competition and the likely temporary nature of the intense recent price competition, the ACCC considers that the price competition observed in home loans more recently does not represent the level of enduring competition that is likely to persist in this market.

Competition analysis – unilateral effects

Suncorp Bank's competitiveness

6.153. ANZ submits that Suncorp Bank is no more vigorous or effective than other competitors in the supply of home loans.[774] ANZ points to Suncorp Bank's relatively small market share, **[Redacted - Confidential]**,[775] and its long-term history of market share stagnation and decline (notwithstanding some recent small growth; see Figure 10 above).[776]

6.154. Suncorp submits that despite growth and market share gain since February 2021, Suncorp has a 'very small share' of the home loans market.[777] Internal material **[Redacted - Confidential]**,[778] **[Redacted - Confidential]**,[779] **[Redacted - Confidential]**.[780]

6.155. Ms Starks and Professor King both note that Suncorp does not appear to be a particularly effective competitor,[781] though Professor King notes it is currently working to 'sustainably grow its home lending portfolio'. Ms Starks commented that Suncorp Bank does not drive or lead in home loan pricing,[782] and that Suncorp Bank is not monitored any more closely by ANZ than other banks.[783]

6.156. In the ACCC's view, while forming part of an important second-tier group of banks, Suncorp Bank is no more vigorous or effective a competitor than other competitors in the market for the supply of home loans in Australia, and has not been a key driver of pricing, innovation or product development.[784]

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774 ANZ application for Merger Authorisation, 2 December 2022, [7.28]-[7.30].

775 ANZ application for Merger Authorisation, 2 December 2022, [7]. See also **[Redacted - Confidential]**.

776 ANZ application for Merger Authorisation, 2 December 2022, [7.4], [7.28]-[7.30]; Expert report of Mary Starks, 16 June 2023, [9.16], [9.22.3] and [9.44.3]-[9.44.4].

777 Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [53], [46], [48].

778 A point supported by **[Redacted - Confidential]**.

779 **[Redacted - Confidential]**.

780 **[Redacted - Confidential]**.

781 Expert report of Mary Starks, 16 June 2023, [9.44.1]; Expert report of Professor Stephen King, 3 March 2023, [116]

782 Expert report of Mary Starks, 16 June 2023, [9.31], [Table 8], [9.32], [Figure 19].

783 Expert report of Mary Starks, 16 June 2023, [9.27] and [9.30].

784 ANZ application for Merger Authorisation, 2 December 2022, [7.1(c)], [7.28]. In contrast, BEN submits that the Proposed Acquisition would remove a 'material competitor' from the home loan market and entrench the major banks' shares: Bendigo and Adelaide Bank submission, 3 March 2023, pp 28-29.

Closeness of competition between ANZ and Suncorp Bank

6.157. ANZ submits that Suncorp is not a particularly close competitor to ANZ in home loans.[785]

6.158. The ACCC notes that Suncorp Bank does not account for a disproportionate level of refinancing to or from ANZ and vice versa. In the 12 months up to June 2022, Suncorp Bank represents **[Redacted - Confidential]** of refinancing from ANZ, and **[Redacted - Confidential]** of refinancing to ANZ.[786]

6.159. Suncorp submits that, of Suncorp Bank customers who refinanced their home loans away from Suncorp Bank in FY22, **[Redacted - Confidential]**.[787] **[Redacted - Confidential]**.[788]

6.160. **[Redacted - Confidential]**,[789]**[Redacted - Confidential]**.

Table 7: [Redacted - Confidential]

[Redacted – Confidential]

Source: ACCC analysis**[Redacted - Confidential]**[790]

6.161. Based on its analysis of PEXA data, the ACCC considers that **[Redacted - Confidential]**.[791] **[Redacted - Confidential]**.[792]

6.162. This is consistent with Ms Starks' finding that Suncorp Bank and ANZ are not particularly close competitors for switching customers.[793]

ACCC views

6.163. As set out above in discussing the factual in section 5, while it is possible the increase in scale from the Proposed Acquisition could accelerate ANZ's investments in technology to improve its competitiveness in home loans,[794] the ACCC notes that ANZ has also stated that it would continue to invest in its digital transformation without the Proposed Acquisition. The ACCC does not consider that bringing forward these investments is likely to fundamentally alter ANZ's competitive position in home loans, noting that since 2019 ANZ has lost approximately 2 per cent market share

6.164. In comparing the No-Sale Counterfactual against the factual, while the ACCC considers that the Proposed Acquisition could manifest in a loss of quality or choice for consumers, it does not consider there is likely to be a substantial impact on competition.

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785 ANZ application for Merger Authorisation, 2 December 2022, [7.31]-[7.33].

786 **[Redacted - Confidential]**.

787 **[Redacted - Confidential]**.

788 **[Redacted - Confidential]**.

789 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

790 **[Redacted - Confidential]**;**[Redacted - Confidential]**. **[Redacted - Confidential];[Redacted - Confidential]**;**[Redacted - Confidential]**.

791 **[Redacted - Confidential]**.

792 **[Redacted - Confidential]**.

793 Expert report of Mary Starks, 16 June 2023, [9.24] and Figures 13 and 14.

794 See **[Redacted - Confidential]**.

6.165. ACCC notes that while the market is already concentrated, the market share increment which will result from the Proposed Acquisition is relatively small, and Suncorp Bank does not appear to be a particularly vigorous competitor in terms of the pricing of home loans. Further, ANZ and Suncorp Bank do not appear to be especially close competitors in the supply of home loans, and the evidence does not suggest that Suncorp Bank and ANZ are winning a disproportionate amount of business from one another.

6.166. The ACCC also notes Ms Starks' view that, against the No-Sale Counterfactual, notwithstanding the sizeable barriers to entry and expansion that exist in the market, there will continue to be some competitive constraint placed on the major banks, particularly from Macquarie Bank (at least for its target customer segment), as well as the other second-tier banks, BEN, and Bank of Queensland, albeit to a lesser extent.[795] Ms Starks also considers that ANZ's incentives to compete are unlikely to be dampened as a result of the Proposed Acquisition.[796]

6.167. In respect of the Bendigo Merger Counterfactual, the ACCC notes the views of Professor King who considers that the Proposed Acquisition is likely to substantially lessen competition in the market for home loans by preventing the creation of a second-tier 'challenger bank' with sufficient scale to reduce and potentially overcome the barriers to expansion that currently exist in the market and the ability to vigorously compete.[797] Professor King considers that such a challenger bank could, together with Macquarie, create significant competitive tension in the market.[798]

6.168. Dr Williams disagrees with Professor King's argument that if Suncorp were acquired by another second-tier banks such as BEN, that this would create a second-tier 'challenger bank', and considered Professor King's arguments to be inconsistent with the rates of return of banks in the market, and the growth of Macquarie Bank's home loan business over the last decade.[799]

6.169. As set out above in the counterfactual section, having considered the available evidence, the ACCC considers that there is the potential for a combined BEN / Suncorp Bank to be a more vigorous and effective competitor than either party alone, particularly through non-price attributes. The ACCC notes that in the home loans market, this entity would have approximately 5.1% market share, up from BEN's 2.8% share.[800] Accordingly, the market in this counterfactual would contain six, rather than five, competitors with 5+% market share, and two (rather than just one) of these competitors would be independent of the major banks (with Macquarie's market share reaching 5% in February 2023).

6.170. The ACCC notes that Ms Starks considers there was likely to be some competitive detriment under a Bendigo Merger Counterfactual, however, '[p]urely in terms of horizontal effects' did not consider there was a real chance of a substantial lessening of competition as a result of the Proposed Acquisition. Ms Starks' view however is

[795] Expert report of Mary Starks, 16 June 2023, [9.43.3].

[796] Expert report of Mary Starks, 16 June 2023, [9.43.2].

[797] Expert report of Professor Stephen King, 3 March 2023, [7], [123]-[132].

[798] Expert report of Professor Stephen King, 3 March 2023, [123]-[128].

[799] Second expert report of Dr Philip Williams, 19 May 2023, [1.06]-[1.07].

[800] See above ACCC analysis of APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, extracted on 25 May 2023. This is based on analysis of November 2021 to October 2022 data, and February 2023 data shows similar result.

that the impact of a BEN/Suncorp merger is likely to have a greater impact in terms of coordination than horizontal effects.[801]

6.171. For the reasons set out above, while there is likely to be some lessening of competition arising from the unilateral effects of the Proposed Acquisition, the ACCC considers it is unlikely to be substantial.

Competition analysis – coordinated effects

6.172. As explained in the analytical framework discussion above, the ACCC engaged expert economist, Professor de Roos, to assist in setting out a framework for the consideration of coordinated effects generally, and how it might apply practically within the banking industry. The framework discussion also stated that the ACCC considers that home lending (encompassing lending to both owner-occupiers and for property investment, and both variable rate loans and fixed rate loans) is one of the activities of the merger parties that is most susceptible to coordination. Accordingly, the ACCC considers it appropriate to undertake its competition analysis of the potential for coordinated effects with respect to a national market for home loans.

6.173. As discussed above, the ACCC has focused its analysis on the set of factors outlined by Professor de Roos, supplemented by any additional considerations of issues or factors raised by Ms Starks, Professor King, Dr Williams and Mr Smith.

6.174. This section is structured as follows:

- Assessing the current ability of firms to initiate and/or sustain cooperative behaviour
    - Types of coordination and history of coordination
    - Complexities arising from recent increased competition
    - Features of the market that may raise or lower the ability of firms to initiate or sustain cooperative behaviour
- Assessing the impact of the Proposed Acquisition

Assessing the current ability of firms to initiate and/or sustain cooperative behaviour

Types of coordination and history of coordination

6.175. In his report, Professor de Roos explains that coordinated behaviour refers to conduct engaged in by firms that is beneficial, only with the forbearance of other firms in the market.[802] Further, he notes that a key feature of coordinated (or 'collusive') conduct is that it 'involves expectations of future payoffs that are contingent on current conduct'. He went on to state:

> Coordination could occur with respect to any strategies of mutual interest to the firms in the market, including but not limited to: coordination on interest rates; the allocation of customers or market shares; investment, research and development; product design; entry and exit into product lines; and marketing and advertising strategies.[803]

[801] Expert report of Mary Starks, 16 June 2023, [9.45.6].

[802] Expert report of Nicolas de Roos, 5 April 2023, p. 1.

[803] Expert report of Nicolas de Roos, 5 April 2023, p. 1.

6.176. As a matter of illustration, Professor de Roos often refers to coordination over interest rates charged on loan products or offered on deposit products, and in that respect, notes that:[804]

> Absent opportunities for explicit communication, coordination is most likely to take place through indirect communication channels. These could include public announcements or media releases, interest rate signalling, marketing and advertising, information sharing through product comparison or broking services, and accumulated experience with rival conduct.

6.177. Ms Starks notes that coordinated conduct can take a variety of forms.[805] In banking, coordination may occur over both price (specifically, interest rates) and non-price conduct, including the manner and pace of innovation and new product development and introduction. Coordination may involve market share division or customer allocation. Coordination may be complete or – more commonly – incomplete. But even incomplete coordination can be harmful to consumers or counterparties.

6.178. In his report, Professor King concludes that the structure of the Australian banking industry is conducive to coordinated conduct – and in reaching that conclusion, referred to the PC Report and the ACCC's Residential Mortgage Price Inquiry Report (the final reports of which were published in 2018).[806]

6.179. The PC Report observed that the major banks enjoy substantial market power due to a combination of factors, including economies of scale and scope, strong brands that carry a reputation of trust and stability, an ability to manage changing regulatory burdens, and a lower cost of funds in part due to perceptions of being 'too big to fail'.[807] In addition, the Productivity Commission found that the major banks tended to behave as oligopolists, having regard to the decisions of each other rather than smaller banks, and aimed to 'maintain a mostly uniform position' rather than competing vigorously. The PC Report noted that:

> Even if a firm is not considered individually dominant in a market, non-competitive outcomes can emerge in a range of circumstances, from tacit collusion to individual rivalry in highly concentrated markets (Ivaldi et al. 2003).

6.180. The Residential Mortgage Price Inquiry Report observed that there was evidence of an 'accommodative and synchronised approach to pricing' between the major banks, which was 'not unexpected and is enabled by the oligopoly market structure in which the big four banks collectively have about 80% share.'[808] Further, the introduction by APRA of an interest-only benchmark in 2017 to limit the flow of new interest-only lending to 30% of new residential mortgage lending 'created a focal point for the Inquiry Banks, particularly the big four banks, to engage in accommodative and synchronised pricing behaviour, consistent with their history of such behaviour.'

6.181. Professor King and Ms Starks concluded that the conduct of the major banks described in these reports could be described as coordination between the major banks.[809]. In Ms Starks' view:

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[804] Expert report of Nicolas de Roos, 5 April 2023, p.6.

[805] Expert report of Mary Starks, 16 June 2023, [4.48]-[4.53].

[806] Expert report of Professor Stephen King, 3 March 2023, [40]-[45].

[807] Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 104.

[808] ACCC, Residential Mortgage Price Inquiry Final report, 11 December 2018, p. 6.

[809] Expert report of Professor Stephen King, 3 March 2023, [81]; Expert report of Mary Starks, 16 June 2023, [9.66].

this coordination likely took the form of 'live and let live' strategic behaviour, where the major banks generated margins above those achievable by oligopolistic competition by avoiding vigorous competition on prices.[810]

6.182. In responding to Professor King's report, Dr Williams notes that Professor King's analysis relies on the PC Report,[811] which did not explicitly state that the four largest home lenders were engaged in coordinated conduct, and whose findings do not support that proposition.[812]

6.183. Suncorp submits that the Productivity Commission's analysis contained in the PC Report is not consistent with Suncorp's experience in 2018 or since, and that the underlying data in the PC Report is now significantly out of date and forms a flawed basis for the analysis.[813] ANZ submits that it does not agree with the findings in the PC Report, and that the PC Report does not provide a complete picture of the important trends of dynamic competition in the years leading up to its publication, and which have continued and accelerated since.[814]

6.184. The ACCC has considered the findings in both the PC Report and the Residential Mortgage Price Inquiry Report and is mindful of the limits on the weight that can be attributed to their findings in relation to assessing the competitive effects of the Proposed Acquisition. The ACCC notes:

- Both reports reflected a point-in-time analysis and were now released approximately five years ago. Accordingly, they are not evidence of the current state of competition.
- The material before the Productivity Commission, and on which it based its conclusion, is not before the ACCC. Likewise the material before the ACCC now, was not before the Productivity Commission.

6.185. The ACCC notes that neither the PC Report (nor the Residential Mortgage Price Inquiry Report) concluded in express terms that the major banks were engaging in coordinated conduct. The ACCC considers, however, that it need not form a view on the existence of historical coordination in order to conclude that there may be a lessening of competition from the Proposed Acquisition as a result of coordinated effects.[815]

6.186. For the purposes of its assessment of the Proposed Acquisition, the ACCC does not express a view on whether or to what extent coordination may have occurred in this market in the past. However, having considered the evidence, the ACCC considers that, for the reasons discussed in the section below, the various features of the market which have persisted over time (including some of those raised and discussed in reports such as those by the Productivity Commission and the ACCC), indicate that this market is one that has historically been, and currently remains, conducive to coordination.

6.187. In that context, and in line with the approach taken in the PC Report and its own Residential Mortgage Price Inquiry, the ACCC considers that coordination is

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810 Expert report of Mary Starks, 16 June 2023, [9.66].

811 Second expert report of Dr Philip Williams, 19 May 2023, [96]-[100].

812 Second expert report of Dr Philip Williams, 19 May 2023, [77]-[84].

813 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [13].

814 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [15]-[16].

815 Expert report of Mary Starks, 16 June 2023, [9.68].

principally likely to involve the four major banks, as these are the entities whose conduct is most likely to be conditioned by 'expectations of future payoffs that are contingent on current conduct'.[816] Smaller banks may act as 'followers' of coordinated conduct by the major banks, but their lesser strategic significance means that their own conduct is less likely to influence their future payoffs. **[Redacted - Confidential]**.[817]

Complexities arising from recent increased competition

6.188. Factual complexities arise in the analysis given the recent price competition that has taken place in respect of home lending. The ACCC's consideration of recent price competition in home loans has been discussed in detail above.

6.189. In her report, Ms Starks addressed the evidence of recent price competition. She said that while there have been changes in the market since 2018 that tend to suggest coordination might be harder to maintain in the future (including the growth of Macquarie, increased broker penetration and switching, and reduction in market share of Westpac, NAB and ANZ)[818] recent competition is not inconsistent with her findings of historical coordination.[819] Further, she said that some of the factors noted by the Productivity Commission remain – in particular, there is still an established oligopoly with substantial market share, and price following by the smaller banks and non-bank lenders.[820]

6.190. In her report, Ms Starks analysed recent RBA cash rate increases and the pricing responses of various banks and considers the extent to which this might evidence coordination. She notes that **[Redacted - Confidential]**,[821]**[Redacted - Confidential]**.[822] As such, she considered this evidence did not indicate one way or the other as to whether the banks were making rational independent business decisions (to pass on increases in funding costs) or coordinating (e.g. coordinating to pass on the rate increase instead of absorbing all or part of it).[823] **[Redacted - Confidential]**.[824]

6.191. As set in the discussion on the current state of competition, the ACCC is not persuaded on the available evidence that the recent behaviour of banks will continue or that it evidences an enduring change to market structure or conduct such that the market is no longer conducive to coordination.

6.192. The ACCC addresses the various features of the market, and the extent to which they currently assist firms to initiate and/or sustain cooperative behaviour in the sections that follow.

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816 Expert report of Nicolas de Roos, 5 April 2023, p. 1.

817 **[Redacted - Confidential]**.

818 Expert report of Mary Starks, 16 June 2023, [9.81].

819 Expert report of Mary Starks, 16 June 2023, [9.71].

820 Expert report of Mary Starks, 16 June 2023, [9.69].

821 **[Redacted - Confidential]**.

822 **[Redacted - Confidential]**.

823 Expert report of Mary Starks, 16 June 2023, [9.74].

824 **[Redacted - Confidential]**.

Features of the market that may raise or lower the ability of firms to initiate and/or sustain cooperative behaviour

6.193. The section below addresses the six key features or attributes of markets and firms, as identified by Professor de Roos, that raise or lower the likelihood, extent, severity or sustainability of coordination between firms. These are:

- Market structure
- Symmetry and alignment
- Multi-market contact
- Communication devices
- Price transparency between firms
- Consumer choice frictions

6.194. The subsequent section addresses the additional factors identified by Ms Starks as affecting how conducive a market is to coordination. These are:

- Innovation
- Market stability
- Frequency of interaction
- Existing competition
- Entry barriers

Market structure

6.195. Professor de Roos notes that, generally, in more concentrated markets, it is easier for firms to initiate and sustain cooperative behaviour.[825]

6.196. In her report, Ms Starks considers that the market for home loans is sufficiently concentrated for the major firms to 'recognise their interdependence' as highlighted by the Productivity Commission and ACCC, in their previous reports.[826]

6.197. Professor King refers to the PC Report findings that for the four major banks 'the individual power in the market may change, but as a group they remained the dominant force that controls the market'.[827] He notes that while the HHI calculations for the market would only be characterised as 'moderately concentrated' under the US Department of *Justice Horizontal Merger Guidelines*, the presence of existing coordination between the major banks means that they should not be treated as if they were independent businesses for a concentration analysis, and as a consequence, that HHI calculations treating them as standalone businesses is likely understate their market power.[828]

825 Expert report of Nicolas de Roos, 5 April 2023,, p. 3.
826 Expert report of Mary Starks, 16 June 2023, [9.85].
827 Expert report of Professor Stephen King, 3 March 2023, pp. 42-43.
828 Expert report of Professor Stephen King, 3 March 2023, [87]-[93].

6.198. Dr Williams notes that the home loans HHI does not exceed the ACCC's Merger Guidelines thresholds.[829] Dr Williams also rejects Professor King's view that the presence of coordination makes the HHI misleading and irrelevant.[830]

6.199. The ACCC does not rely on existing coordination in assessing the extent to which the market is currently concentrated. On the evidence before it, the ACCC considers that the home loans market is moderately concentrated, both across Australia and in Queensland (where the geographic overlap between the merger parties is greatest), notwithstanding recent declines in the major banks' aggregate market share. This moderately concentrated structure has also not changed significantly over time.

6.200. Like Ms Starks and Professor King, the ACCC has focused its attention on the risk of coordination between the four major banks. The ACCC considers that the relatively small number of coordinating parties is likely to lower the complexity and make it easier for the coordinating group to both initiate and/or sustain a form of coordination.[831]

Symmetry and alignment

6.201. Professor de Roos notes that symmetry between firms 'tends to make coordination between firms easier. A firm with smaller market share has more to gain from deviating from cooperation, and less to lose in the event that such a deviation is punished'.[832] Professor de Roos goes on to state:[833]

6.202. [I]f the Acquisition leads to a more symmetric distribution of market shares, then this could make coordination easier to achieve and more sustainable. The smallest firms in the market have the most to gain from deviating from cooperative strategies. Thus, a more symmetric distribution of market shares could also make coordination easier to sustain.

6.203. The ACCC notes that Professor de Roos' framework considers symmetry and alignment on a broader basis than just market shares, and states that '[i]f firms are similar in other dimensions, then they are more likely to have incentives that are aligned'.[834] In addition to market shares, Professor de Roos refers specifically to symmetry in costs and product design, but there could also be other attributes in which symmetry may be important.[835] The ACCC has considered the available evidence across this range of attributes.

6.204. The ACCC considers that the major banks pursue broadly similar business models. They can all be characterised as commercial banks with loans constituting a large proportion of their assets (over 60% of total resident assets, with the majority of this being lending against housing) and deposits taking up a large proportion of liabilities (65 – 80% of liabilities captured in the data).[836] The major banks generally have a predominantly domestic focus with significant operations in New Zealand.[837] They

829 Expert report of Dr Philip Williams, 1 December 2022, [42].

830 Second expert report of Dr Philip Williams, 19 May 2023, [100].

831 Expert report of Mary Starks, 16 June 2023, [9.85].

832 Expert report of Nicolas de Roos, 5 April 2023, p. 4.

833 Expert report of Nicolas de Roos, 5 April 2023, p. 8.

834 Expert report of Nicolas de Roos, 5 April 2023, p. 4.

835 Expert report of Nicolas de Roos, 5 April 2023, p. 4.

836 APRA Monthly Authorised Deposit-taking Institution Statistics, April 2023.

837 RBA, Financial Stability Review, October 2018, Graph 3.4; NAB, 2023 Half Year Results Presentation, p. 77; Westpac, 2023 Interim Financial Results Presentation & Investor Discussion Pack, p. 39.

have little investment banking activity. This is quite different to some other jurisdictions, in which the large banks have a broader range of business models.[838]

6.205. The major banks also offer similar types of products with similar interest rates that tend to move together over time, both in direction and magnitude.[839] While smaller banks also tend to offer similar products, there tends to be a greater degree of differentiation on non-price competition. For example, competing at the margins such as on approval turnaround times[840] (e.g. Macquarie Bank) and service quality[841] (e.g. Bendigo bank), with at least some regional banks marketing themselves as having a more community-based model and offering a more personalised service.[842]

6.206. Ms Starks finds that across all parameters of competition, the major banks compete more closely with each other than with other banks, and that often, smaller banks will seek to distinguish themselves from the majors in some way, to compensate for the majors' greater branch network and brand value.[843]

6.207. In respect to price competition, the ACCC also considers that certain internal documents **[Redacted - Confidential]**.[844] This includes **[Redacted - Confidential]**. **[Redacted - Confidential]**.[845] Westpac documents **[Redacted - Confidential]. [Redacted - Confidential]**.

6.208. **[Redacted - Confidential]**[846]**[Redacted - Confidential]**ANZ's submission that banks will seek to change their competitive position in deposit and lending markets in order to proactively manage their portfolios, and therefore will have differing objectives and incentives from their competitors at different points in time.*[847]* There is also some evidence of **[Redacted - Confidential]**. For example, the ANZ internal note on **[Redacted - Confidential]** strategy sought to infer the strategic rationale for the move partly by reference to **[Redacted - Confidential]**.[848]

6.209. Ms Starks considers that the market shares of the four major banks are somewhat asymmetrical (thus tending to suggest this feature does not make the market prone to coordination). Ms Starks pointed to the reasonably diverse market shares (and market share growth) in home loans of the major banks: noting that CBA and Westpac are substantially larger than ANZ and NAB.[849] **[Redacted - Confidential]**.

6.210. The ACCC considers there is some asymmetry in the following areas:

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838 For example, the RBA's analysis in an October 2013 speech shows the differences across three US bank business models: an investment bank, universal bank, and commercial bank. More recent analysis in the EU, for example Farne, Matteo and Angelos Vouldis, 'Business models of the banks in the euro area', European Central Bank Working Paper Series, May 2017, identifies the range of different business models of the banks in the euro area.

839 Expert report of Mary Starks, 16 June 2023, [9.72]-[9.74].

840 See e.g. **[Redacted - Confidential] [Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**

841 See e.g. Bendigo and Adelaide Bank submission, 3 March 2023, p 23. BEN submits that this is demonstrated by the NPS data showing that ANZ consistently scores below 0, whereas Suncorp and BEN consistently score above 0: see also **[Redacted - Confidential]**. **[Redacted - Confidential] [Redacted - Confidential]**.

842 Bendigo and Adelaide Bank submission*,* 3 March 2023, p 30; **[Redacted - Confidential]**.

843 Expert report of Mary Starks, 16 June 2023, [9.34].

844 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

845 **[Redacted - Confidential]**.

846 See e.g. **[Redacted - Confidential] [Redacted - Confidential]; [Redacted - Confidential]**; **[Redacted - Confidential]**.

847 ANZ submitted that banks have different funding and margin requirements, which means each will have different objectives and incentives: ANZ application for Merger Authorisation, 2 December 2022, [7.223©].

848 **[Redacted - Confidential]**.

849 Expert report of Mary Starks, 16 June 2023, [9.99], [Table 6].

- The market shares of the major banks: ANZ and NAB have comparably lower market shares than CBA or Westpac, which will impact their incentives and approach to competition.
- **[Redacted - Confidential]**.[850]
- Shayne Elliott (CEO of ANZ), also speaks of ANZ having the most diverse portfolio of any bank, big or small, local or international operating in the region.[851] **[Redacted - Confidential]**.[852]
- In addition to being one with lower market share within the major banks, NAB also has a stronger focus on business lending than the other major banks (its business lending is 42% of its total lending, compared to around 25 – 35% for the other major banks; see industry background for a more detailed discussion).

6.211. The ACCC sets out its views regarding these asymmetries and the impact of the Proposed Acquisition in the conclusion below.

6.212. In response to Ms Stark's expert report, ANZ submits that there is no meaningful symmetry in costs. This includes operating costs (due to differences in each major bank's technology investment and physical branch network), capital cost (due to differences in each major bank's A-IRB risk weights for home lending), and funding costs which may be more similar but would be applied across the lending portfolio, leading to significant differences.[853]

6.213. In respect of cost symmetry, the ACCC considers the following:

- **[Redacted - Confidential]**.
- The major banks also have very similar credit ratings,[854] and reputations for safety, and accordingly, are likely to have comparable funding costs from wholesale markets. The ACCC analysis shows that **[Redacted - Confidential]**.[855]
- The capital costs for the major banks are likely to be more comparable to each other, than to the second-tier banks, given the major banks are all on A-IRB.

6.214. In general, the ACCC considers that the assessment of symmetry within the major banks should be relative to the other banks. As set out above, relative to the second-tier banks, the major banks have relatively similar cost structures, including operating costs, funding, and capital costs.

6.215. Even though there are aspects of the four major banks that exhibit a degree of asymmetry, taking into account the balance of the evidence, the ACCC considers that there is a level of symmetry and alignment between them that is likely to make coordination between the four major banks feasible to initiate and/or sustain. The ACCC also considers that coordination is not likely to involve banks other than the four majors, in light of the much smaller market shares and other points of differentiation exhibited by those other banks.

Multi-market contact

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850 See, for example, **[Redacted - Confidential]**. Also, **[Redacted - Confidential]**.

851 Second statement of Shayne Elliott (ANZ), 17 May 2023, Exhibit SCE-4.

852 See **[Redacted - Confidential]**.

853 ANZ response to the ACCC independent expert reports, 17 July 2023 [7.25]–[7.31].

854 See the major banks' websites: ANZ, CBA, NAB, and Westpac.

855 **[Redacted - Confidential];[Redacted - Confidential]; [Redacted - Confidential]**.

6.216. As explained by Professor de Roos, if firms interact in more than on market, then this also influences the likelihood of coordination.[856] Ms Starks also states that greater-multi market contact tends to make coordination more likely and stable, and notes that the major banks compete in all geographic regions and most product markets.[857]

6.217. On the available evidence, the ACCC agrees that the four major banks, and indeed most Australian banks, are active across different types of home lending, deposits, and at least SME banking, with the major banks also prominent in large business lending. In principle, this would allow numerous opportunities for both deviation and retaliation multi-market strategies to play out, including between the four major banks, and is a feature that would make initiating and sustaining coordination easier.

Communication devices

6.218. If firms have opportunities to communicate pricing intentions, and there exist commonly understood focal point on which to coordinate, then this makes it easier to coordinate.[858]

6.219. In her report, Ms Starks considers that not only do the major banks communicate changes in headline rates and cashback offers publicly, but the interest-only benchmark can provide a focal point on which banks could coordinate.[859] The ACCC notes that while the 'interest-only benchmark' no longer operates, it is possible that the current general status quo market share position of the banks could operate as a focal point for the major banks.

6.220. While the ACCC has not seen any evidence of private communications on product price or non-price settings between the major banks, banks representatives, including the major banks, regularly make public announcements on product prices and features (and changes to those prices and features), and bank executives frequently speak to the media and analysts about bank product and pricing strategies, and on market conditions, particularly in respect of movements in the RBA cash rate in relation to home lending.

6.221. On the whole, the ACCC considers the industry practice and broad communication method utilised by the major banks would assist to instigate or sustain coordination between these banks, particularly in respect of pricing coordination.

Price transparency

6.222. The more easily pricing is observable by rivals, the greater the ability of firms to coordinate and agree on interest rate setting strategies; and monitor adherence to those strategies.[860]

6.223. Information about the banks' index or 'headline' interest rates on home loan products (and any changes to these) are widely publicised by banks and reported by the media.

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856 Expert report of Nicolas de Roos, 5 April 2023, p 4.

857 Expert report of Mary Starks, 16 June 2023, p 9.88.

858 Expert report of Nicolas de Roos, 5 April 2023, p 5; Expert report of Mary Starks, 16 June 2023, p.9.86

859 Expert report of Mary Starks, 16 June 2023, [9.86]-[9.87].

860 Expert report of Nicolas de Roos, 5 April 2023, p 5.

6.224. What is less well-known is the size and structure of discounts[861] that banks apply to different types of loans (e.g. variable rate loans of different loan sizes and with different LVRs and deposit levels) and different types of customers (e.g. differentiated by income, profession, credit history, and so on).[862] In addition, the degree of opaqueness in respect of discounts may be growing as the average size of such discounts has been increasing in recent years.

6.225. However, banks in general appear to have a reasonable, if imperfect and somewhat delayed,[863] understanding of interest rate discounts their competitors apply to customers and loan sizes in broad categories. This is partly based on the size of any advertised discounts, partly through feedback from broker channels and/or directly from customers,[864] and partly through inference based on a bank's rate of growth in home lending (slower growth suggests that the bank's pricing has been less competitive).[865]

6.226. Further:

- **[Redacted - Confidential]**.[866]
- **[Redacted - Confidential]**.[867]
- The precise discount that a competing bank might offer to an individual customer seeking a specific loan is less clear and can often only be guessed at if and when the customer goes elsewhere.

6.227. Ms Starks, in her independent report, agrees that actual interest rates are somewhat opaque given the prevalence of discounts and cashbacks. However, overall she considers that pricing transparency is likely to have increased over time, including because of the increased importance of the broker channel.[868]

6.228. On the available evidence, the ACCC considers that there is a relatively high degree of price transparency between the major banks prevailing in the home loans market, and that it is likely to make coordination easier to initiate and/or sustain, particularly in respect of pricing coordination.

6.229. The ACCC notes that while price transparency between firms is high in this market, this is different from the consumer experience. Firms tend to have more resources, knowledge and incentives to monitor their competitors' pricing, compared to an average consumer whose property purchases and refinancing needs are relatively infrequent.

Consumer choice frictions

6.230. In his report, Professor de Roos states:

> The stability of cooperative behaviour between firms depends on the ability of firms to restrict the profitability of deviation (for example by undercutting the

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861 **[Redacted - Confidential]**.

862 **[Redacted - Confidential]**; see also Expert report of Mary Starks, 16 June 2023, [9.83].

863 **[Redacted - Confidential]**.

864 See, e.g. **[Redacted - Confidential]**; **[Redacted - Confidential]**.

865 **[Redacted - Confidential]**.

866 **[Redacted - Confidential]**.

867 See, e.g., **[Redacted - Confidential]**.

868 Expert report of Mary Starks, 16 June 2023, [9.82]-[9.84].

interest rates of competitors). If consumers face choice frictions, then this makes it more challenging or costly for them to switch suppliers. This reduces the effectiveness of deviations and therefore reduces the incentive to deviate and strengthens cooperation between firms.

6.231. As discussed above, the ACCC considers, though there is some evidence that barriers to switching have been reducing over time, the key barriers as identified in the ACCC's 2020 Home Loan Price Inquiry remain. In particular, the use of large discounts, which as noted above, have become even larger in recent years, make pricing in this market opaque for consumers. This opaqueness in pricing for consumers, in turn, raises borrowers' search costs and may contribute to a perception that they will not save much by switching.

6.232. To illustrate the impact of opaque discounted pricing on consumers' search and switching decisions, the ACCC notes an **[Redacted - Confidential]**.[869]

6.233. The ACCC considers this indicates that prospective and existing customer choice frictions for borrowers are sufficiently high to affect prospective and existing customer identification of cheaper home loans.

Innovation

6.234. Innovation makes coordination on prices less easy to sustain, as innovation, particularly drastic ones, may allow one firm to gain a significant advantage over its rivals. This prospect reduces both the value of future collusion and the amount of harm that rivals will be able to inflict if the need arises.[870]

6.235. Having considered available evidence on innovation, in her report, Ms Starks considers there is a degree of innovation in the market, although finds that this has commonly come from the non-major banks some of whom have entered and exited.[871]

6.236. Further, Ms Starks finds that to the extent the non-major banks have invested in technology, this appears to have been 'defensive investment' – that is, investment 'driven by the need to remain competitive…, rather than an attempt to introduce new features and technologies to win market share'. For example, **[Redacted - Confidential]**.[872]

6.237. By contrast, Mr Campbell states that the major banks 'lead innovation in home loans'.[873] Similarly, Mr Elliott states that investments in technology are an important driver of competition and a means for banks to differentiate themselves.[874]

6.238. On balance, the ACCC agrees with Ms Starks that there is evidence to suggest that certain technology investments by the banks, in particular the major banks, appears to be driven for defensive reasons, rather than being truly innovative. Further, the ACCC agrees that while there has otherwise been a degree of innovation in this market, including generated by the neobanks and fintechs to date, it has done little to disrupt the position of the major banks. To that end, the ACCC notes the observation

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869 **[Redacted - Confidential]**.

870 Expert report of Mary Starks, 16 June 2023, p 135-135

871 Expert report of Mary Starks, 16 June 2023, [9.92]-[9.93].

872 Expert report of Mary Starks, 16 June 2023, [9.94]-[9.97].

873 Second statement of Douglas Campbell (ANZ), 17 May 2023, [22].

874 Second statement of Shayne Elliott (ANZ), 17 May 2023, [41(a)] and [47].

of Professor King that ‘innovation has not changed the bifurcated structure of supply in the market’.[875]

6.239. While the ACCC considers that the trend towards digitisation and away from branches in banking suggests that innovation could ultimately be a feature that operates to undermine coordination, it is not clear that this will be the case. The ACCC does not consider that the short-medium term effect of innovation in the home loans market will be sufficient to undermine any coordination between the major banks.

Market stability / demand volatility / demand uncertainty

6.240. Unstable market conditions make coordination more difficult to sustain.[876]

6.241. In her report, Ms Starks considers that the sharp increase in whole funding costs and refinancing demand experienced by the banks in recent months may have caused coordination to break down, resulting in a period of increased price competition. However, she finds that as market conditions stabilise, the market may return to conditions that are more conducive to coordination.[877]

6.242. The ACCC agrees that periods of market stability and instability are relevant to assessing the ability and sustainability of coordination. As discussed in detail above, while there remains uncertainty as to the precise reasons for the extent of the increased levels of competition, the ACCC considers that the recent variable macroeconomic market conditions – namely, an extended period of cheap wholesale funding and low interest rates, including throughout the Covid pandemic which led to increased liquidity in the banking system, followed by a period of rapid rate rises are likely to have significantly contributed to the recent intensity of competition in home loans.[878] However, events that may cause significant instability are difficult to predict. Accordingly, the ACCC considers that such episodes cannot be relied upon to prevent, deter or destabilise coordination that would otherwise occur on a sustained long term basis.

6.243. As stated by Commonwealth Bank CEO, Mr Comyn – current conditions in the market are ‘atypical’[879] including by reference to what has been observed ‘over just about every period I can think of in the last 20 years’.[880]

6.244. On the above basis, the ACCC does not consider that periods of market instability in the banking industry are sufficiently frequent or volatile as to make this feature one that is likely to significantly reduce the ability of banks to initiate or sustain coordination over the medium term.

Frequency of interaction

6.245. Firms will find it easier to sustain collusion when they interact more frequently as firms can react more quickly to a deviation by one of them. Deviating firms will then

875 Expert report of Professor Stephen King, 3 March 2023, [104].

876 Expert report of Mary Starks, 16 June 2023, [9.104]

877 Expert report of Mary Starks, 16 June 2023, [9.104].

878 Expert report of Mary Starks, 16 June 2023, [9.104].

879 CBA 1H23 Results Briefing Transcript, 15 February 2023, pp 5, 12 and 17.

880 CBA 1H23 Results Briefing Transcript, 15 February 2023, p 17.

have less time to enjoy the benefit from higher deviation profits before facing retaliation from rivals. [881]

6.246. Ms Starks notes that the major banks interact frequently, as home loans are priced individually based on pricing guidelines set centrally, which can be revised easily.[882] The ACCC agrees with this assessment and considers that this is another feature of the market that makes it easier to initiate or sustain coordination between the major banks.

Existing competition / Capacity / Entry and expansion barriers

6.247. The ACCC considers it appropriate to consider these factors together.

6.248. Ms Starks sets out that: [883]

- Coordination will be less sustainable where existing competitors outside the coordinating group (the competitive 'fringe') make up a significant proportion of the market or are able to impose a strong competitive constraint;
- For existing competition to constrain coordination by majors, these smaller lenders need capacity to serve additional customers – which means growing deposits in tandem with lending or having access to wholesale funding;
- Greater ease of entry serves to make coordination less sustainable. This is because the prospect of entry reduces the expectation of future collusive profits, which makes deviation relatively more attractive. Similarly, the threat of entry may constrain current profits available from coordination.

6.249. Ms Starks considers that there are effective competitive constraints imposed by Macquarie Bank, and to a lesser extent, BEN, BOQ, and other smaller banks. However, she notes that Macquarie tends to serve mostly simple applications which it can turn around quickly.[884] Overall, Ms Starks find that these non-major lenders are increasingly capturing market share from the major banks, and in this respect, has characterised this feature of the market as not being conducive to coordination.[885]

6.250. Ms Starks also notes:[886]

> In the national market for home loans, entry barriers are low but barriers to expansion are high, and it is difficult to gain scale once entry has occurred. Entrants do not appear to be posing a significant competitive constraint on majors, with the exception of Macquarie Bank.

6.251. However, she ultimately found that barriers to entry and expansion are, on the whole, becoming lower due to the increased importance in brokers and an increased consumer willingness to switch.[887]

6.252. The ACCC has considered at length the extent of existing competition and barriers to entry and expansion in the sections above. Considering the entirety of the available

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881 Expert report of Mary Starks, 16 June 2023, p 135-136.

882 Expert report of Mary Starks, 16 June 2023, [9.89].

883 Expert report of Mary Starks, 16 June 2023, [9.103] and p 136.

884 Expert report of Mary Starks, 16 June 2023, [9.102] and Table 11.

885 Expert report of Mary Starks, 16 June 2023, [9.102] and Table 11.

886 Expert report of Mary Starks, 16 June 2023, [9.90]

887 Expert report of Mary Starks, 16 June 2023, Table 11.

evidence, the ACCC considers that while there is some competitive constraint imposed by the second-tier lenders, and there have been some regulatory measures that have resulted in improved conditions for competition, barriers to expansion remain high and the capacity of existing competitors to grow organically, including through growing deposits or accessing low-cost wholesale lending, remains constrained.

6.253. While Macquarie has had significant success in recent years in substantially growing its market share (largely as a result of non-price competition), it remains the case that its market share is significantly lower than the major banks. The ACCC notes that it has taken 10 years for Macquarie to reach the point it has, focussing on a targeted segment of the market, and it is not a path that is easily replicable.

6.254. In conclusion, the ACCC accepts that since 2020, there has been an improvement in competitive conditions in home loans. However, the ACCC does not consider that these improved conditions are likely to operate to prevent coordination between the major banks over the medium term.

Conclusion

6.255. In light of the evidence discussed above, the ACCC is of the view that the home loans market is currently likely to be conducive to coordination.[888] The ACCC has conducted its competition assessment of the coordination impacts of the Proposed Acquisition on that basis.

Assessing the impact of the Proposed Acquisition

6.256. As outlined in the discussion above, there are a range of forms that coordination could take in this market. However, based on the evidence before it, the ACCC considers that coordination is most likely to involve the major banks engaging, either expressly or tacitly, in a 'live and let live' style of conduct or pattern of behaviour to achieve 'soft' or 'muted' price and non-price competition sufficient to either maintain and/or protect their existing market shares and/or to not challenge the status quo. The ACCC has focused on the prospect of this style of conduct emerging in undertaking its competition assessment.

6.257. There are a variety of features of the home loan market which will continue to exist both with and without the Proposed Acquisition:

- First, the number of coordinating firms will not change, meaning that features such as market structure and frequency of interaction remain unaltered. While the Proposed Acquisition reduces the number of suppliers of home loans by one, it is primarily coordination between the four major banks that is the most likely cause for concern, and the Proposed Acquisition will not alter this.
- Second, the four major banks will still have different market shares, with CBA and Westpac continuing to be materially larger than ANZ and NAB.
- Third, the Proposed Acquisition is unlikely to have any impact on current trends in respect of barriers to entry or consumer frictions, which the ACCC considers have already been declining, albeit very incrementally, over time.
- Fourth, factors that currently make it easier for the major banks to initiate and/or sustain coordination, such as market stability, communication devices, and price

[888] Expert report of Mary Starks, 16 June 2023, [9.106]-[9.112].

transparency, are unlikely to be impacted by the Proposed Acquisition significantly.

6.258. However, there are some consequences of the Proposed Acquisition which mean that coordination is more likely with the Proposed Acquisition compared to without it.

6.259. The Proposed Acquisition would result in increased symmetry between ANZ, Commonwealth Bank, NAB and Westpac. This is because:

- The Proposed Acquisition increases the size of ANZ, and therefore reduces the level of asymmetry in market shares between the ANZ and the other major banks. This occurs because the Proposed Acquisition closes the gap in market share of the home loans market between ANZ (currently 13%; post-acquisition 15%) and the other three majors (15%; 22% and 26%). While the increase in ANZ's market share appears small (2.3%), it has a significant impact, moving ANZ into the position of the third largest home lender in Australia, and increasing its incentive to initiate and/or sustain coordination as it would have less to gain from deviating from cooperation.
- **[Redacted - Confidential]**.[889] **[Redacted - Confidential]**.[890] **[Redacted - Confidential]**.[891] Consequently, the ACCC considers the Proposed Acquisition may have an impact on the way that ANZ competes to retain and build market share in the home loans market. **[Redacted - Confidential]**.[892] By comparison, the Proposed Acquisition means ANZ's funding base for home loans will look more comparable to the other major banks, as ANZ's alternate source of funding is likely to be reduced and ANZ will move to having a higher proportion of funding from retail deposits compared to its previous position.[893] While it is uncertain precisely what impact this would have on the strategies that ANZ engages in to compete for deposits and home loans, it may operate to further align ANZ's incentives with the other major banks, and increase ANZ's incentives to coordinate in home loans.
- The Proposed Acquisition will also further increase ANZ's domestic focus towards retail banking. While, by ANZ's own estimation, it is the most international bank of its peer group by a long way with a strong foreign institutional banking focus,[894] in recent years it has sought to reduce its prior 'super regional Asian banking strategy'.[895] Under Mr Elliott's leadership as CEO, which commenced in 2016, ANZ made the decision to 'slim down' across the region, which included selling its Asian retail and wealth operations.[896] As part of its continued drive to increase its domestic-focus, the Proposed Acquisition means that ANZ would acquire an additional 1.2 million Australian customers for its domestic retail banking business, rather than needing to grow its business

889 **[Redacted - Confidential]**.

890 **[Redacted - Confidential]**.

891 **[Redacted - Confidential]**.

892 **[Redacted - Confidential]**; see also ANZ Investor Presentation 'Acquisition of Suncorp Bank and Equity Raising', 18 July 2022, p. 33 and**[Redacted - Confidential]**.

893 See, for example, ANZ Investor Presentation 'Acquisition of Suncorp Bank and Equity Raising', 18 July 2022, p. 7 and 16-19.

894 **[Redacted - Confidential]**; bluenotes, Shayne Elliott: Banking on Asian diversity, 23 February 2023, accessed 4 August 2023; Yeates, C, ANZ boss eyes institutional bank investment, Australian Financial Review, 12 June 2023.

895 Eyers, J, 'We lost our way but now we're back': ANZ boss Elliott', Australian Financial Review, 10 February 2023; see also Eyers, J, 'ANZ's Shayne Elliott talks about shrinking the empire', Australian Financial Review, 11 February 2016 and Eyers, J, 'ANZ sells Asian retail and wealth operations to DBS', Australian Financial Review, 31 October 2016.

896 Australian Financial Review, 'ANZ sells Asian retail and wealth operations to DBS', 31 October 2016; also Statement of Shayne Elliott (ANZ), 30 November 2022, [51]-[51]; and **[Redacted - Confidential]**.

organically in pursuit of this unwinding strategy. The ACCC notes that Mr Elliott has commented publicly that the Proposed Acquisition is 'the equivalent of many years of organic system growth'.[897] Given ANZ's continued increased focus on its domestic businesses, the ACCC considers that in the absence of the Proposed Acquisition, ANZ would likely seek to continue to grow organically, and in doing so, would likely continue to be incentivised to compete harder than the other major banks to grow its domestic market share. Conversely, the ACCC considers the Proposed Acquisition would likely make ANZ's income and profits more dependent on market conditions in Australia, and its incentive to coordinate on home loans correspondingly greater.[898]

6.260. In his report, Professor King also considers that the Proposed Acquisition would result in greater symmetry among the major banks by increasing ANZ's market share to make it closer to that of its peers.[899] This reduction in asymmetry, and the associated dulling of ANZ's incentive to engage in 'independent active competition to arrest its declining market share' was the basis for Professor King's conclusion that the Proposed Acquisition would stabilise existing coordinated conduct.[900]

6.261. Both Ms Starks[901] and Dr Williams[902] diverged from the approach taken by Dr King. Ms Starks' reservations about Professor King's analysis largely arose because she considers the starting point for market shares is already somewhat asymmetrical (ANZ and NAB are significantly smaller than Westpac and CBA), and it was not clear to her that the increase in symmetry resulting from the Proposed Acquisition would be material.[903]

6.262. Dr Williams also disagreed with Professor King's approach, stating it placed undue weight on the decrease in asymmetry of market shares among the four largest lenders, and that the approach lacked a detailed analysis, including because a decrease in asymmetry among the four largest lenders would be merely one factor among many to consider when assessing the likely impact of the Proposed Acquisition on the state of competition in the market as a whole. [904]

6.263. The ACCC considers that both Ms Starks and Dr Williams make relevant points in respect of Professor King's report. In taking these views into consideration, however, the ACCC has undertaken what it considers to be a more appropriate assessment of symmetry, on a broader basis than just market shares, and in accordance with the framework identified by Professor de Roos. As set out in that framework, and above, symmetry and alignment are not intended to be limited to considerations of market share alone. Rather, they should take into account other attributes, and do so within the context of broader market conditions.

6.264. While the ACCC has considered Professor King's approach, and agrees with his ultimate view (that the transaction results in a material increase in symmetry in respect of the four major banks), it makes that finding not just on a market share

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897 bluenotes, 'Elliott: a transformational advance for ANZ', 18 July 2023, accessed 4 August 2023.

898 See, for example, ANZ Investor Presentation 'Acquisition of Suncorp Bank and Equity Raising', 18 July 2022, p. 16 which states that the Proposed Acquisition would increase ANZ's Australian-sourced income by ~2-3%.

899 Expert report of Professor Stephen King, 3 March 2023, [84]-[86] and [118(b)].

900 Expert report of Professor Stephen King, 3 March 2023, [84]-[86] and [118(b)].

901 Expert report of Mary Starks, 16 June 2023, [8.54].

902 Second expert report of Dr Philip Williams, 19 May 2023, [89]-[101], especially [101(c)].

903 Expert report of Mary Starks, 16 June 2023, [8.54].

904 Second expert report of Dr Philip Williams, 19 May 2023, [89]-[101], especially [101(c)].

basis, but having considered other relevant attributes, such as the reduction in a more diversified funding base and an increase in domestic focus as a result of the Proposed Acquisition. Consequently, the ACCC considers that the increase in symmetry as a result of the Proposed Acquisition is likely to increase the incentive of the major banks to coordinate against either counterfactual.

6.265. In the No-sale Counterfactual, in which Suncorp remains as an independent competitor as part of the Suncorp Group, the ACCC considers that ANZ (as the smallest of the major banks) is likely to have a stronger incentive to compete rather than coordinate with the other major banks compared to if the Proposed Acquisition proceeds. The ACCC notes the similar finding by Professor King that '[t]he merger will change the incentives facing ANZ and reduce ANZ's incentives to arrest its declining market share in home loans through competition'.[905]

6.266. The ACCC notes that while recent media articles suggest that banks have begun reducing the volume of capital allocated to the home loan market and are removing cashbacks and similar incentives, ANZ has maintained its cash back offers.[906] While there could be various reasons why ANZ has adopted this strategy, the ACCC observes it is also consistent with the fact that ANZ, as the smallest of the major banks, has the strongest incentives to win new home loan customers and hence to 'deviate' from or 'cheat' on any coordinated strategy. As Mr Elliott said in his second statement: **[Redacted - Confidential]**.[907]

6.267. The ACCC considers that ANZ would also have stronger incentives to compete with the other major banks in the Bendigo Merger Counterfactual.

6.268. In addition, the ACCC considers there is evidence to support the view that a combined Bendigo/Suncorp Bank would likely pose a stronger competitive constraint to the major banks engaging in coordination than Suncorp and Bendigo alone. Ms Starks notes this too, stating that in her view, a merged Bendigo/Suncorp Bank is particularly likely to pose a stronger competitive threat in circumstances where the Bendigo/Suncorp Bank business attains IRB accreditation.[908] For the reasons set out above, the ACCC agrees with this position.

6.269. In her report, Ms Starks sets out her view that having another 'disruptor' in the market (in addition to Macquarie) would 'reduce the chances of coordination re-establishing itself in a sustainable fashion'.[909] While, as set out above, the ACCC does not express a view on whether or not there has historically been coordination, it agrees with Ms Starks, in that having another disruptor in the market would reduce the ability and incentive of the major banks to engage in coordinated conduct in the future. This is because, as Ms Starks' states, even though Macquarie already exists in the market as an effective competitor, having challenger firms with different business models or targeting different niches in the competitive fringe would lower the ability of the major banks to initiate and/or sustain coordination. [910]

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905 Expert report of Professor Stephen King, 3 March 2023, [86]; Second expert report of Professor Stephen King, 28 June 2023, [39]. See also the discussion from Professor King on why ANZ as the smallest of the four major banks can grow market share: Second expert report of Professor Stephen King, 28 June 2023, [72].

906 Second statement of Douglas Campbell (ANZ), 17 May 2023.

907 **[Redacted - Confidential]**.

908 Expert report of Mary Starks, 16 June 2023, [9.113.5].

909 Expert report of Mary Starks, 16 June 2023, [9.113.5].

910 Expert report of Mary Starks, 16 June 2023, [9.113.5].

6.270. The ACCC considers that a combined Bendigo/Suncorp Bank would both strengthen and diversify the competitive fringe of challenger banks in a way that has the potential to decrease the incentives of all four major banks to engage in coordination relative to either a future with the Proposed Acquisition or the No-Sale Counterfactual. A competitive strategy that exerts significant pressure on any one or more major banks, resulting in material loss of market share, would operate to significantly reduce the incentives of that or those banks (which lose the benefit of the 'live and let live coordination' once it or they start losing market share) to coordinate, thereby making it appreciably harder to initiate and/or sustain coordination among *all four* major banks. While it is possible that one or more of the major banks may continue losing market share in the factual (eg as a result of continued growth by Macquarie) the ACCC consider the pressure on the major banks' market shares is likely to be greater in a counterfactual that involves a combined BEN/Suncorp Bank.

6.271. For the reasons set out above, the ACCC considers that the likelihood of coordinated effects emerging as a result of the Proposed Acquisition is likely to be even greater when assessed against the Bendigo Merger Counterfactual.

6.272. Having regard to the importance of competition between the major banks in the home loan market, the significant cost and scale advantages they enjoy over other banks and the high barriers to entry and expansion, the competitive impact of any coordination between the major banks emerging would be substantial.

6.273. The ACCC has considered the views of Ms Starks who similarly considered the issue of substantiality in assessing coordinated effects and found that given the large, combined share of the major banks, any coordination is likely to have a particularly significant negative impact on consumers (say, compared to ANZ/Suncorp exerting market power unilaterally), which makes a substantial lessening of competition more likely.[911]

6.274. The ACCC has considered the submission of ANZ,[912] which claims that Ms Starks' assessment of a combined BEN/Suncorp Bank's competitive impact reflects inconsistencies, as between her analysis of unilateral effects and coordinated effects. ANZ's submission describes Ms Starks' position as appearing incoherent and having reasons that are unclear. In response, the ACCC notes that Ms Starks explicitly addresses the point:

> 'In any merger between rivals, horizontal unilateral effects always exist, but the question is one of magnitude – in this case, given the small market share increment and the existence of other players, my view is that a substantial lessening of competition is unlikely, since it is unlikely that the acquisition gives ANZ/Suncorp significantly more market power in the factual compared to either counterfactual. By contrast, the relevant test for coordinated effects in this case is whether the acquisition makes coordination between the major banks more likely, effective, or stable relative to either counterfactual. A change in the market structure (from a merged BEN/Suncorp entity) can result in coordination becoming less likely to re-establish itself in the alternative buyer counterfactual compared to the factual.'

6.275. The ACCC agrees with Ms Starks' reasoning, in that while unilateral effects from a horizontal merger tend to follow as a matter of course and are generally a matter of

911 Expert report of Mary Starks, 16 June 2023, [9.114]-[9.115].

912 ANZ response to the ACCC independent expert reports, 17 July 2023, [5.31].

degree, coordinated effects can exhibit significant discontinuities. For example, the Proposed Transaction may enable the major banks to initiate (or reinitiate) and/or sustain coordination as compared to a counterfactual in which coordination would be unlikely to emerge at all or be sustained for any significant period. The differences between those two future states of the world may have more substantial implications for competition than the unilateral effects of a relatively incremental concentrating of market structure, such as the Proposed Transaction.

6.276. The ACCC considers that the market for home loans is currently conducive to coordination and is at risk of the major banks engaging in coordinated behaviour in the future. That risk continues to exist both with and without the Proposed Acquisition. However, taking all of the above evidence into account, the ACCC considers the Proposed Acquisition is likely to increase the incentives of the major banks to engage in coordination, materially increasing the likelihood of coordination being initiated and/or sustained by the major banks. On this basis, the ACCC is not persuaded that the Proposed Acquisition is not likely to result in a substantial lessening of competition in the market for home loans on the basis of coordinated effects.

Conclusion on competitive effects in home loans

6.277. Having considered the available evidence, and taking into account the considerations set out above in relation to unilateral and coordinated effects, the ACCC is not satisfied in all the circumstances that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition in the market for home loans.

Retail deposits

Background

6.278. A brief overview of the information and submissions provided to the ACCC relevant to retail deposits is set out below. Some of this material, where relevant, is discussed in more detail elsewhere in this Determination.

6.279. The ACCC notes that independent of its consideration of the Proposed Acquisition, on 14 February 2023 the Treasurer directed the ACCC to hold an inquiry under Part VIIA of the Act to examine competition and consumer issues affecting retail deposit products.[913] The ACCC is inquiring into issues including the interest rates paid on deposits and the nature and extent of competition in the retail deposits market, and is due to submit a report to the Treasurer by 1 December 2023.

6.280. While relevant to the discussion in this section, the ACCC notes that the Retail Deposits Inquiry is more broad ranging than the competition assessment for the purposes of assessing the Proposed Acquisition as outlined in this Determination.

Merger party submissions

6.281. ANZ submits that the Proposed Acquisition will not have the effect or likely effect of substantially lessening competition in the supply of retail deposit products in Australia.[914]

[913] ACCC, Retail Deposits Inquiry 2023, accessed 17 July 2023.

[914] ANZ application for Merger Authorisation, 2 December 2022, [7.81]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.51].

6.282. ANZ submits that the Proposed Acquisition will not materially increase concentration, that Suncorp Bank does not drive price, innovation or product development in the supply of retail deposit products and that ANZ and Suncorp will continue to face intense competition in the supply of retail deposit products.[915]

6.283. Suncorp Bank also submits that the Proposed Acquisition will not substantially lessen competition in this market as Suncorp Bank is no more vigorous or effective than other competitors and is not ANZ's closest competitor in the supply of retail deposits.[916]

Interested party submissions

6.284. BEN submits that there is a real chance of a substantial lessening of competition in the market for deposits/term products on either counterfactual.[917] BEN submits that the Proposed Acquisition would materially increase ANZ's share in deposits compared to the Bendigo Merger Counterfactual.[918]

6.285. **[Redacted - Confidential]**.[919]

6.286. The Consumers' Federation of Australia submits that the Proposed Acquisition will remove a key competitor and reduce competitive pressure in a number of markets.[920] The Consumers' Federation of Australia submits that recent higher rates of returns on savings and deposits accounts are not a reliable indicator of effective competition and is more likely due to recent regulatory pressure for banks to pass on increases in cash rates to savers.[921]

Expert evidence

6.287. Ms Starks considers there are separate markets for transaction accounts, and for savings accounts and term deposits (together deposit/term products), which should therefore be assessed separately.[922] Both markets are national.[923]

6.288. In relation to transaction accounts, Ms Starks does not consider there is a real chance of a substantial lessening of competition.[924] However Ms Starks did note that compared to the Bendigo Merger Counterfactual, the Proposed Acquisition may lead to a lessening of competition by preventing the creation of a stronger regional player. Ms Starks further notes that a BEN/Suncorp could impose a greater competitive constraint on the major banks than it currently does, particularly in terms of non-price factors.[925]

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915 ANZ application for Merger Authorisation, 2 December 2022, [7.81]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.5]-[8.6], [8.23], [8.53].

916 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [199]-[200].

917 Bendigo and Adelaide Bank submission, 30 June 2023, [5.3].

918 Bendigo and Adelaide Bank submission, 3 March 2023, p 32.

919 **[Redacted - Confidential]**.

920 Consumers' Federation of Australia submission, 11 January 2023, p 2.

921 Consumers' Federation of Australia submission, 17 April 2023, p 3.

922 Expert report of Mary Starks, 16 June 2023, [5.24]-[5.40]. At [5.35], Mary Starks notes that this differed from the merger parties' submission that there should be a single market for deposit products (including transaction accounts, savings accounts and term deposits) for retail customers, but is in line with the ACCC's assessments in Westpac/St George and CBA/BankWest.

923 Expert report of Mary Starks, 16 June 2023, [6.10]-[6.19].

924 Expert report of Mary Starks, 16 June 2023, [9.134]-[9.136].

925 Expert report of Mary Starks, 16 June 2023, [9.136.3]-[9.136.4].

6.289. Ms Starks then considers the savings accounts and term deposit market. She considers a substantial lessening of competition in this market to be less likely than in the market for home loans.[926] When considering the Bendigo Merger Counterfactual, Ms Starks considers that due to the presence of Macquarie and ING, and considering competition for deposit/term products occurs mostly on price, the addition of another competitive constraint in the form of a stronger BEN / Suncorp Bank may be less significant compared to the home loans market.[927]

6.290. Ms Starks considers that the markets for transaction accounts and savings accounts and term deposits products are both susceptible to coordination. However due to the low rate of switching and limited gains from deviations, the impact from the Proposed Acquisition is likely not to be material in either market. Ms Starks concluded that a substantial lessening of competition due to coordinated effects in transaction or savings accounts and term deposits products is not likely in the Bendigo Merger counterfactual.[928]

6.291. Professor Stephen King did not specifically analyse the market(s) for these retail deposits in either of his reports in support of BEN's submissions.[929] Professor King did however note that the close link between home loan and deposit products indicates that competitive impacts on home loans and some deposit markets might be similar (e.g. Macquarie Bank is an increasingly strong competitor in the market for home loans, and has simultaneously achieved significant growth in deposits).[930]

Assessment

Relevant market

Products

6.292. The merger parties submit that the market for retail deposits includes transaction accounts, savings accounts, and term deposits:

- transaction accounts: provide customers with the ability to receive funds and make payments using their own funds. Interest is sometimes payable on amounts deposited in transaction accounts, but generally at a lower rate than for savings or term deposits.
- savings accounts: customers have the ability to earn interest on deposited funds, which are generally not used on an everyday basis.
- term deposits: money deposited for a fixed period during which it cannot be accessed without incurring a fee, in exchange for a guaranteed rate of return.[931]

6.293. The ACCC notes that deposit products are not strong substitutes for one another. For instance, the main purpose of a transaction account is to carry out transactions using deposited funds, whereas the main purpose of savings accounts and term deposits is

926 Expert report of Mary Starks, 16 June 2023, [9.174]-[9.176].

927 Expert report of Mary Starks, 16 June 2023, [9.176.5].

928 Expert report of Mary Starks, 16 June 2023, [9.199].

929 Expert report of Professor Stephen King, 3 March 2023, [62]; Second expert report of Professor Stephen King, 28 June 2023.

930 Expert report of Professor Stephen King, 3 March 2023, [72].

931 ANZ application for Merger Authorisation, 2 December 2022, [6.42], [6.44]; Statement of Yiken Yang (ANZ), 30 November 2022, [14]-[15].

to save and earn interest on money deposited.[932] ANZ submits that savings and term deposits typically offer less access to funds and fewer features than transaction accounts.[933]

6.294. As set out above, Ms Starks considers that there are separate markets for the supply of transaction accounts and 'deposit/term products' (i.e. savings accounts and term deposits) because of their distinct features,[934] and customers use them differently.[935] Ms Starks also notes that it is fairly common for customers to hold a deposit/term product at a different institution from where they hold their transaction account, so they are not always treated as a bundle.[936]

6.295. The ACCC accepts that it may be possible to define narrower markets for transaction accounts, savings accounts and term deposits. However, the ACCC has assessed the Proposed Acquisition against a single market for 'retail deposits' including transaction accounts, savings accounts, and term deposits.

6.296. The ACCC distinguishes between the different product types below where it is relevant to the analysis. In the ACCC's view, nothing turns on whether the relevant market(s) are defined more broadly (as submitted by the merger parties) or more narrowly (as suggested by Ms Starks).

Geography

6.297. In the ACCC's view, the retail deposits market in Australia is a national market, although it has some regional aspects. Generally, ADIs make deposit product and pricing decisions at a national level, distribute to customers nationally, and monitor their competitors at a national level.[937]

6.298. Generally, the importance of physical presence to competition in the retail deposits market has been decreasing, at least in part due to increasing digitisation.

6.299. Consumers increasingly tend to prefer electronic payments and the use of internet and mobile banking to manage their deposit products.[938] Banks offer digital origination for most of their retail deposit products and an increasing number of accounts are originated through digital channels.[939] Several banks with very limited or no physical network provide deposit products, such as ING Bank, Macquarie Bank, Judo Bank and Alex Bank.

6.300. Branch usage has been declining, and banks have been consolidating physical networks.[940] The subset of customers who continue to choose a bank based on branch access is likely to continue to decline as the reasons for visiting a branch are further replaced by technology.[941]

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932 Statement of Yiken Yang (ANZ), 30 November 2022, [15]; ANZ application for Merger Authorisation, 2 December 2022, [6.44], [6.51].

933 ANZ application for Merger Authorisation, 2 December 2022, [6.51], [6.59].

934 Expert report of Mary Starks, 16 June 2023, [5.26], [5.27], [5.36].

935 Customers access transaction accounts differently to deposit/term Products. **[Redacted - Confidential]**.

936 Expert report of Mary Starks, 16 June 2023, [5.30].

937 See: **[Redacted - Confidential]**;**[Redacted - Confidential]**.

938 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 467.

939 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

940 The Australian Government the Treasury, Regional Banking Taskforce Report, September 2022, p 5, which states that nationally, the total number of branches declined from around 5,800 to 4,500 over the four years to June 2021.

941 Expert report of Mary Starks, 16 June 2023, [6.16].

6.301. Notwithstanding this, some consumers still place some importance on a bank's physical presence.[942] In particular, the presence of bank branches tends to be a point of difference for some demographics such as regional customers,[943] and older customers.[944]

Market shares

6.302. Table 8 summarises national market shares in the retail deposits market.

Table 8: Retail deposits market shares, average monthly data from November 2021 to October 2022

Firm	National	National Ranking
CBA	27.2%	1
WBC	20.2%	2
(ANZ + Suncorp)	**14.7%**	**3**
NAB	13.4%	3
ANZ	12.2%	4
ING	3.4%	5
Bendigo-Adelaide	3.1%	6
Macquarie	2.8%	7
Suncorp	2.5%	8
BOQ	2.2%	9
HSBC	1.1%	10
Other	11.8%	

Source: APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, issued 30 June 2023.

6.303. The ACCC has used the above market share data to calculate HHIs at a national level.

Table 9: HHI in retail deposits

	Pre-merger HHI	Post-merger HHI	Delta
Retail deposits	1526	1586	60

Source: APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, issued 30 June 2023.

6.304. ANZ submits market shares for retail deposit products, indicating Suncorp had a 2.47% market share (8th in the market) and ANZ a 12.07% share (4th).[945]

942 In some instances, physical presence has increased slightly in importance (but not to the same level as 5 or more years ago).

943 See for example, **[Redacted - Confidential]**.

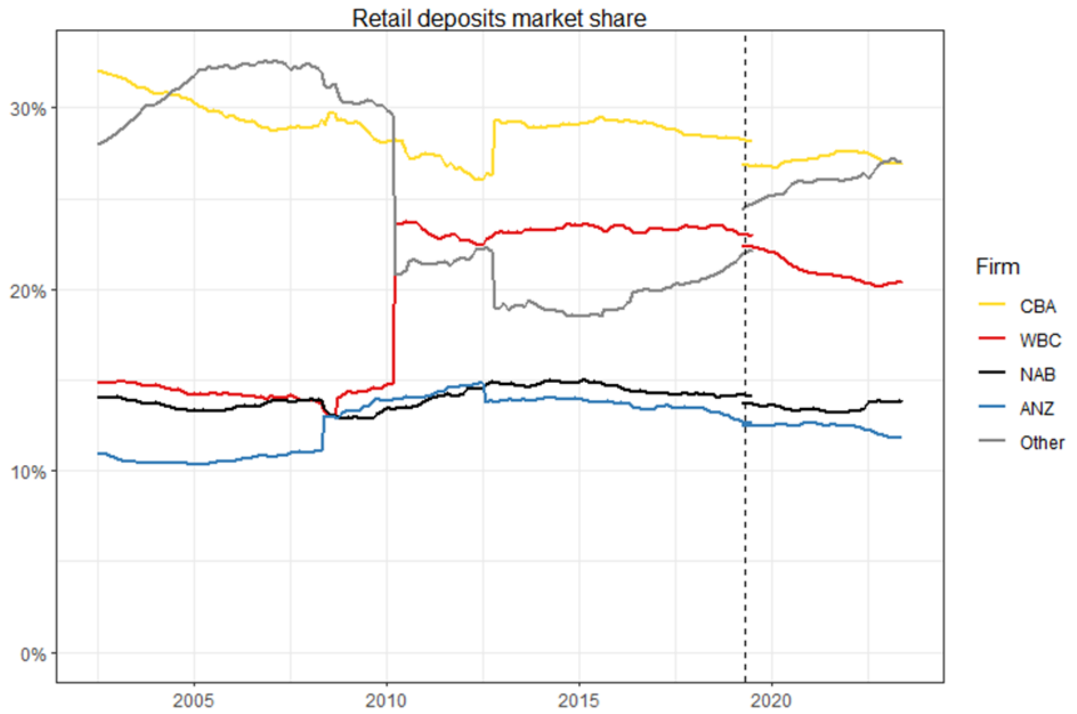
944 Bendigo and Adelaide Bank submission, 3 March 2023, p 35; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

945 ANZ application for Merger Authorisation, 2 December 2022, [7.56], [7.104].

6.305. The major banks hold the majority of the market share for retail deposit products (as at October 2022, a combined 73%).[946] As shown in Figure 14, while there have been some changes in the major banks' market shares in retail deposits, they have been relatively stable since around 2012, with the exception of Westpac losing around 3 – 4% share since mid-2019. ANZ has lost around 0.5% market share since the start of 2022 (all in percentage points, not percentage change).[947] **[Redacted - Confidential]**.[948]

6.306. Other competitors in the market include regional banks (e.g. BEN, Suncorp Bank and Bank of Queensland), credit unions and building societies, international banks (e.g. ING, HSBC and Bank of China), and to a limited extent, neobanks.[949]

Figure 14: Retail deposits market share of Major banks



Source: [APRA Monthly Authorised Deposit-taking Institution Statistics,](#) Monthly authorised deposit-taking institution statistics and Monthly banking statistics, issued on 30 June 2023.

Note: Westpac's large jump in share in 2010 is due to it completing the move to a single ADI after its acquisition of St George in 2008, and CBA's jump in 2012 is due to its acquisition of BankWest in 2008. The dashed line represents a series break in mid-2019 as a result of APRA's Economic and Financial Statistics (EFS) collection commencing. The old series (Monthly banking statistics) included banks only, while the new series (Monthly ADI statistics) includes non-bank ADIs. Discontinuities are attributable to (1) the inclusion of non-bank ADIs, and (2) changes in definition to various data items.

6.307. Of the second-tier banks, Macquarie Bank has recently increased its market share in the retail deposits market, while ING's market share has declined over time (see Figure 15 below).

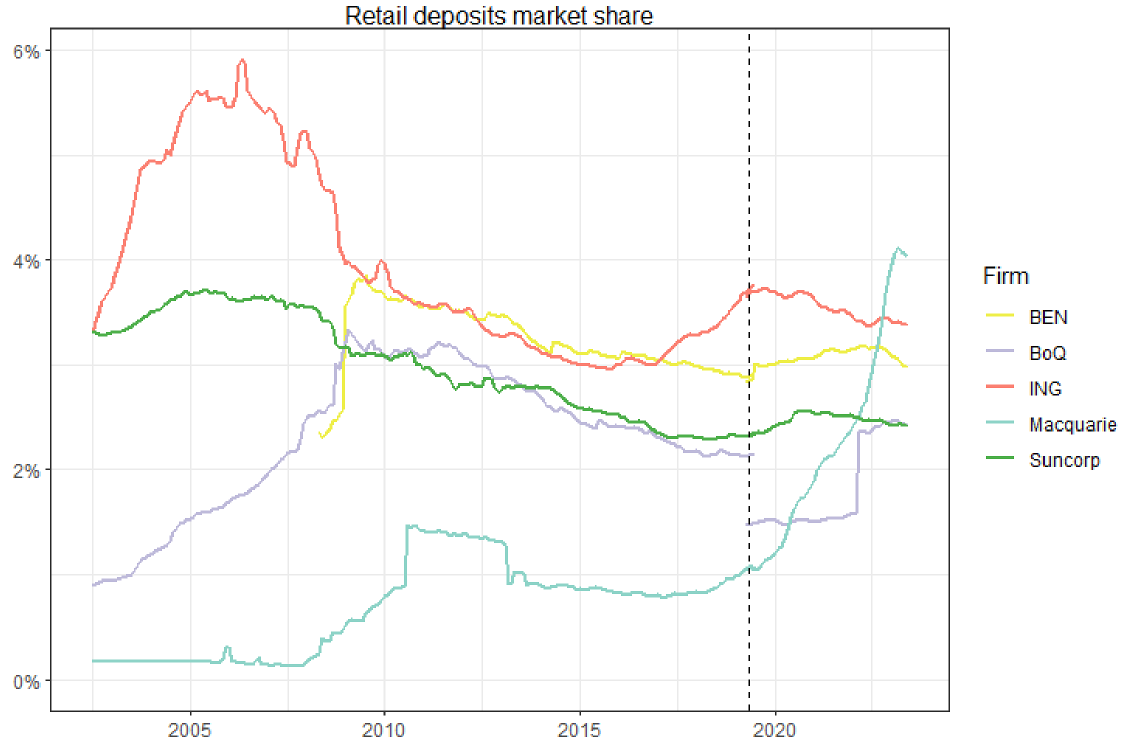
946 APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, issued 30 June 2023.

947 This is in the context of the Application claiming ANZ's share has been in decline. ANZ application for Merger Authorisation, 2 December 2022, [7.5(d)], [7.104].

948 **[Redacted - Confidential]**.

949 Despite several exits, there are still some neobanks offering deposit products, e.g. Alex Bank and Judo Bank. PayPal and Wise operate in payments.

Figure 15: Retail deposits market share for second-tier banks



Source: [APRA Monthly Authorised Deposit-taking Institution Statistics,](#) Monthly authorised deposit-taking institution statistics and Monthly banking statistics, issued on 30 June 2023.

Note: BoQ's large jump in share in 2022 is due to it completing the move to a single ADI after its acquisition of ME Bank in 2021. The dashed line represents a series break in mid-2019 as a result of APRA's Economic and Financial Statistics (EFS) collection commencing. The old series (Monthly banking statistics) included banks only, while the new series (Monthly ADI statistics) includes non-bank ADIs. Discontinuities are attributable to (1) the inclusion of non-bank ADIs, and (2) changes in definition to various data items.

Competition dimensions

6.308. Competition for retail deposits can vary according to a range of factors including the overall level of savings in the system and individual banks' funding and margin requirements (which vary over time depending on circumstances including lending volume and the price of wholesale funding).[950]

Price competition

6.309. Price for retail deposit products comprises the interest rate and fees/charges. ANZ submits that retail deposit products can be divided into higher and lower 'utility' products as follows:

- products such as transaction accounts, which have higher operating costs for the bank; typically no or low interest, and often with minimal or no fees (or waived fees if a minimum monthly deposit is made) are considered 'higher utility' products. Competition for these products is not focused on interest rates.

[950] ANZ application for Merger Authorisation, 2 December 2022, Executive summary [48(c)], [6.41], [7.223(c)]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.4], [8.14]; Statement of Yiken Yang (ANZ), 30 November 2022, [30], [36]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

- products such as savings accounts and term deposits, which have minimal operating costs, and typically with higher interest rates are considered 'lower utility' products. Competitive interest rates are more important to customers choosing a savings account or term deposit.[951]

6.310. Deposits is one of the main sources of funding for Australian banks.[952] The interest rates paid on deposits form part of the cost of funding for banks. Therefore, while banks' pricing decisions for home loans are based on their marginal cost of funding, among other factors, their pricing decisions for deposit products (and how competitive they consider they need to be to attract customers) are determined largely by their funding needs and the cost of funding from other sources, such as the wholesale debt market.[953]

6.311. The ACCC also notes that bank pricing decisions for deposit products are subject to several similar factors to their pricing decision for home loan products, for example, competition in the market[954] and regulatory considerations.[955]

6.312. For transaction accounts, price is, for the most part, not a significant differentiating factor or driver of competition and there is a high level of customer inertia (see discussion below).[956] For savings accounts and term deposits, there is some (albeit limited) evidence of price competition, with some second-tier banks often pricing more attractively than the major banks (i.e. setting higher interests rate for deposited funds) and tending to adjust their rates faster following RBA cash-rate announcements.[957] However, consumer research findings suggest **[Redacted - Confidential]**.[958] This is discussed further below.

Non-price competition

6.313. The value that customers place on non-price factors depends on the type of product (i.e. transaction accounts, savings account or term deposit).[959] Significant non-price factors for customers include:

- **Brand, trust, and security**: Brand and trust is an important consideration for customers in choosing which bank to deposit their funds, particularly for savings and term deposits.[960] Fraud and security measures are also considered by

[951] Statement of Yiken Yang (ANZ), 30 November 2022, [27]; **[Redacted - Confidential]**.

[952] See, RBA, Banks' Funding Costs and Lending Rates, accessed 4 August 2023: Deposits from Australian households and businesses account for around two-thirds of Australian banks' total funding; V Carse, A Fakerko and R Fitzpatrick, Development in Banks' Funding Costs and Lending Rates, RBA Bulletin, 16 March 2023, p 66: 'in aggregate, deposits account for around two-thirds of major banks' non-equity funding.'

[953] See RBA, Banks' Funding Costs and Lending Rates, accessed 4 August 2023. ANZ application for Merger Authorisation, 2 December 2022, Executive Summary, [48], [6.41], [7.223(c)]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.4], [8.14]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

[954] See Statement of Yiken Yang (ANZ), 30 November 2022, [36]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

[955] See **[Redacted – Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

[956] See, for example, Statement of Yiken Yang (ANZ), 30 November 2022, [27].

[957] Expert report of Mary Starks, 16 June 2023, [9.169], [9.170]. See also V Carese, A Faferko and R Fitzpatrick, Developments in Banks' Funding Costs and Lending Rates, RBA Bulletin, 16 March 2023, p 69: 'some of the largest increases in advertised deposit rates have been offered by non-major banks'. This strategy from some second-tier banks of offering higher rates than the major banks is their point of differentiation, given the lack of brand recognition and trust (this is discussed in the 'Non-price competition' section below).

[958] **[Redacted - Confidential]**.

[959] See Statement of Yiken Yang (ANZ), 30 November 2022, [32]; **[Redacted - Confidential]**; Deloitte, Choice in Banking Report (Australian Banking Association), 2019.

[960] Statement of Yiken Yang (ANZ), 30 November 2022, [32(c)]; **[Redacted - Confidential]**.

customers choosing where to deposit funds.[961] For many customers, a sense of loyalty towards their current provider leads them to keep their primary transaction account with them. A sense of loyalty is a key driver for consumers to keep their primary transaction account for more than 3 years.[962]

Product specific features: Product features aimed at functionality including payment capabilities and digital access through apps are important for customers in relation to high-use transaction accounts.[963] Product features are less important for savings accounts (where customers are largely concerned with accessing their funds), and even less so again for term deposits (where customers tend to value the ease of opening accounts and transferring funds).[964]

Customer Service: Customer service is one of the main drivers of choice for customers choosing their primary transaction account.[965] Customer service is also highly correlated with overall personal transaction account provider satisfaction.[966]

6.314. ANZ also submits that innovation is an important dimension of non-price competition in retail deposits.[967] Examples of innovation in deposit product features include the use of mobile payment platforms, new payment technologies such as smartphones, wearables and digital wallets;[968] and the introduction of personal financial management tools (such as spending insights and setting savings goals.[969]

6.315. ANZ submits that **[Redacted - Confidential]**.[970]

6.316. In addition to the above factors, BEN also submits that bank branches play an important role in raising retail deposits **[Redacted - Confidential]**.[971]

6.317. Bank of Queensland submits that non-major banks (particularly regional banks and neobanks) play an important role in driving competition in non-price factors, particularly in innovation of product features, digital offerings, and customer service.[972] BEN submits that the Proposed Acquisition would remove the opportunity for more innovative and effective competition in the savings and term deposits markets, and would reduce service levels through branch closures.[973]

6.318. Consumers' Federation Australia highlighted importance of second-tier regional banks for competition, including that each retains extensive branch networks and 'full-service alternative to the major banks.[974]

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961 ANZ application for Merger Authorisation, 2 December 2022, [6.50(c)]; Statement of Yiken Yang (ANZ), 30 November 2022, [33]; Second Statement of Yiken Yang (ANZ), 17 May 2023, [8]; APRA, About the Financial Claims Scheme, accessed 04 August 2023.

962 **[Redacted - Confidential]**.

963 See for example, **[Redacted - Confidential]**; **[Redacted - Confidential]**.

964 Second Statement of Yiken Yang (ANZ), 17 May 2023, [9(b)]-[9(c)].

965 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

966 **[Redacted - Confidential]**.

967 Statement of Yiken Yang (ANZ), 30 November 2022, [12].

968 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.46]; Statement of Yiken Yang (ANZ), 30 November 2022, [12].

969 Statement of Yiken Yang (ANZ), 30 November 2022, [12]; Second Statement of Yiken Yang (ANZ), 17 May 2023, [9]; Bendigo and Adelaide Bank submission, 3 March 2023, pp 34-35, discussing Up's deposit features such as payment requests and splitting features and saver pool accounts.

970 **[Redacted - Confidential]**.

971 Bendigo and Adelaide Bank submission, 3 March 2023, p 35, **[Redacted - Confidential]**.

972 Bank of Queensland submission, 24 February 2023, p 4.

973 Bendigo and Adelaide Bank submission, 3 March 2023, pp 34-35.

974 Consumers' Federation of Australia submission, 11 January 2023, p 4.

6.319. Consistent with the range of available evidence, the ACCC considers that the non-price attributes of banks' deposit offerings are more important in retail deposits than in home loans, particularly for transaction accounts.

Competition analysis

Barriers to entry and expansion

6.320. There are a number of barriers to entry and expansion in the retail deposits market that are relevant to the ACCC's analysis. In particular, the ACCC considers barriers to expansion to be significant in this market.

6.321. The ACCC considers the primary regulatory barrier to entry for the supply of retail deposit products is the requirement to be authorised by APRA as an ADI.[975] ADIs must also meet ongoing prudential requirements in relation to capital, liquidity, governance, operations and reporting. As Ms Starks notes, this does not appear to be an insurmountable barrier to entry, given a recent example of Alex Bank being granted full ADI license in December 2022.

6.322. The evidence supports that brand recognition and loyalty operates as a barrier to entry and expansion.[976] Transaction accounts are commonly the first product a customer will acquire when they are new to a bank. Banks commonly refer to the bank where a consumer holds their main transaction account as that customer's 'main financial institution' (**MFI**).[977] Banks compete to growth their customer MFI base through their retail deposit products, in particular transaction accounts.[978]

6.323. Consumer survey data is used by banks to understand which institution customers consider to be their MFI. **[Redacted - Confidential]**.[979] That means for a new bank with low brand recognition, it is likely difficult to attract customers and gain market share.

6.324. Despite various initiatives to encourage switching there appears to still be a high level of customer inertia, particularly for transaction accounts where the rate of switching is particularly low.[980] **[Redacted - Confidential]**.[981]

6.325. Key advantages of scale, such as the ability to spread technological and other capital expenditure over a larger revenue and customer base, presents a significant barrier for new and smaller banks.

6.326. Similar to the home loans market, for a prospective new entrant to replicate the larger banks' scale and reputational advantages would require it to incur very substantial sunk costs over a long period of time with no guarantee of ultimate success, despite the ongoing profitability of the major banks.

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975 APRA, Licensing guidelines for authorised deposit-taking institutions, date accessed 04 August 2023; Expert report of Mary Starks, 16 June 2023, [9.130]; ANZ application for Merger Authorisation, 2 December 2022, [7.77].

976 Expert report of Mary Starks, 16 June 2023, [9.132].

977 See **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

978 See, for example, Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [17(b)].

979 **[Redacted - Confidential]**.

980 For example 'tick and flick' and 'PayID': Productivity Commission, 'Competition in the Australian Financial System – Inquiry Report', 29 June 2018, pp 159-161, citing Australian Payments Clearing Association, 'Financial institutions ready to make switching easier', Media release, 28 June 2012.

981 **[Redacted - Confidential]**.

6.327. Other barriers, for example, the costs of establishing a branch network may have been more prominent in the past but are less so now. Physical presence is decreasingly important to customers as key banking services are available through a range of delivery models, including internet banking, telephone banking and alternative points of presence, such as Bank@Post and ATMs.[982]

History of entry and expansion

6.328. ANZ submits that there has been substantial new entry by banks in recent years,[983] and that banks are subject to competitive pressure from new entrants offering alternative payment systems.[984]

6.329. The ACCC considers that, while there has been some entry,[985] new entrants face barriers in terms of scale, brand, customer trust and access to capital.[986] A number of recent new entrants have already exited the market.[987]

6.330. ANZ submits that notwithstanding that neobanks have exited from the market 'it is important to recognise that their impact on competition is ongoing', noting, for instance, NAB's acquisition and combination of 86 400 and Ubank has continued to improve competition in the market by implementing streamlined back-end technology, customer-facing technology and innovative product ideas.[988]

6.331. ANZ pointed to both ING and Macquarie as demonstrations that banks can be successful in growing market shares in deposits.[989]

6.332. The ACCC notes, as shown by Figure 15 above, that despite growing very rapidly for a period, ING has been losing market share in retail deposits since April 2006, and that Macquarie now has a larger share of deposits than ING since September 2022.

6.333. The ACCC considers that Macquarie Bank has achieved meaningful growth in retail deposits compared to other players since about 2019, offering a fast digital account opening experience and competitive interest rates,[990] **[Redacted - Confidential]**.[991] Macquarie's market share is the biggest of the second-tier banks, but remains significantly smaller than those of the major banks. The ACCC considers that while Macquarie Bank is a comparative success, it does not appear to be a readily repeatable example of entry or expansion (see 'Industry background' and 'Home loans' sections for a more detailed discussion).

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982 ANZ application for Merger Authorisation, 2 December 2022, [5.36], [6.57].

983 ANZ application for Merger Authorisation, 2 December 2022, [7.77]-[7.78].

984 Statement of Yiken Yang (ANZ), 30 November 2022, [39]; Second Statement of Shayne Elliott (ANZ), 17 May 2023, [46(d)]; Emily Mason, 'Apple's new savings account draws nearly $1 billion in deposits in first four days', Forbes, 1 May 2023.

985 Some neobanks have priced aggressively which along with capital challenges has led to their recent collapse, e.g. Xinja and Volt (see **[Redacted - Confidential]**). Neobanks (e.g. Up, Volt and Judo) also drive some innovation in product features (see **[Redacted - Confidential]**; **[Redacted - Confidential]**).

986 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

987 J Eyers and J Shapiro, 'Volt Bank to close, return $100m to customers', Australian Financial Review, 29 June 2022, accessed 4 August 2023.; C Grieve, 'Neobank Xinja blames COVID for pulling plug on Australia', Sydney Morning Herald, 16 December 2020, accessed 4 August 2023; NAB completes transfer of 86 400 banking assets and liabilities to NAB, NAB, 8 December 2021, accessed 4 August 2023.

988 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [3.51]; citing ACCC, National Australia Bank Limited – 86 400 Holdings Ltd – Public Informal Merger Reviews, accessed 4 August 2023.

989 ANZ application for Merger Authorisation, 2 December 2022, [7.80].

990 ANZ application for Merger Authorisation, 2 December 2022, [7.60(d)]; Second Statement of Shayne Elliott (ANZ), 17 May 2023, [45(a)].

991 Expert report of Mary Starks, 16 June 2023, [9.128], **[Redacted - Confidential]**.

6.334. Overall, despite entries into the market, the major banks have managed to maintain fairly stable market shares for the most part.

Switching

6.335. ANZ submits that switching and multi-banking has become more common, contributing to increased competition in the retail deposits market.[992]

6.336. ANZ also submits customers can and often do hold multiple retail deposit products at the same time and with different providers.[993] As many ADIs offer retail deposit products with no or minimal fees, the low cost of maintaining multiple products reduces the need for consumers to fully 'switch' providers as when consumers do intend to move between providers, they do not always close their accounts.[994]

6.337. The ACCC has only seen limited material to support an increasing trend in multi-banking in retail deposits. **[Redacted - Confidential]**.[995] **[Redacted - Confidential]**.[996] In respect of transaction and savings account products, switching can include entirely switching from one product or bank to another, or a partial switch, where a new product or bank is added to a customer's product suite.[997]

6.338. ANZ submits that the increasing level of switching in retail deposits is demonstrated by the trends in the number of retail deposit customers considering another bank as their MFI;[998] and the number of accounts where consumers have either reduced or ceased use of accounts.[999]

6.339. ANZ also submits that based on Roy Morgan's research, in the 12 months to December 2022, the percentage of customers who had switched transaction account was increasing. The ACCC notes that this Roy Morgan's research shows the percentage of customers who have switched transaction accounts in the last 12 months increase from 3.1% in July 2017 to 4.8% in mid-2022, after a drop in early 2020 due to COVID-19.[1000]

6.340. While noting the complexity in estimating switching in this market, the ACCC considers the level of switching for transaction accounts using the MFI switcher metric submitted by ANZ.[1001] The ACCC finds that while switching was increasing **[Redacted - Confidential]**,[1002] switching in 2022 as measured by the proportion of customers who switch their MFI out of the total Australian population 15 years and older, is still very low at roughly **[Redacted - Confidential]**.[1003] This is consistent with Roy Morgan's research which shows a higher, albeit still low, level of switching in

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992 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.5]

993 ANZ application for Merger Authorisation, 2 December 2022, [6.55], [7.64], [7.66]; Statement of Yiken Yang (ANZ), 30 November 2022, [17]; Second Statement of Shayne Elliott (ANZ), 17 May 2023, [49]-[50].

994 Statement of Yiken Yang (ANZ), 30 November 2022, [17]-[18]; Productivity Commission, 'Competition in the Australian Financial System – Inquiry Report', 29 June 2018, pp. 151-152.

995 **[Redacted - Confidential]**.

996 **[Redacted - Confidential]**.

997 Term deposit switching is when a customer reaches term maturity and switches to a new term deposit at a different bank.

998 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.28]–[8.30].

999 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.32]–[8.33]; Second Statement of Shayne Elliott (ANZ), 17 May 2023, [49(a)].

1000 ANZ application for Merger Authorisation, 2 December 2022, [7.65], [Figure 24].

1001 Note that the bank where a consumer holds their main transaction account is likely to be the basis to determine their MFI. see, for example, **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1002 **[Redacted - Confidential]**.

1003 **[Redacted - Confidential]**.

transaction accounts (at 4.8% in mid-2022), since it is reasonable to expect more transaction account switching than MFI switching.[1004]

6.341. The ACCC has considered the views of Ms Starks, who despite the complexities of trying to measure switching for these accounts notes that the rate of switching in transaction accounts is low. However, she also notes that similar to home loans, past switching rates in savings accounts and term deposits may not be a good indication of customers willingness to switch today, given that interest rates on savings are materially higher today than over the past decade, which could incentivise higher switching.[1005] The ACCC notes that higher home loan rates could encourage more home loan switching, and consumers who switch to a bank for their home loan could also switch their transaction accounts with it.

6.342. Taking all of the evidence into account, the ACCC considers that transaction accounts exhibit a higher degree of consumer inertia than home loans. The evidence is less clear on the relative degree of consumer inertia for savings and term deposit products, compared to home loans, both of which also vary depending on the prevailing interest rate environment and the amount of balance or credit outstanding a customer may have. Overall, the ACCC considers that many consumers tend to be less price sensitive in retail deposits than they are to home loans. This is also consistent with Ms Starks's view on the relative level of consumer inertia in these markets/market segments.[1006]

6.343. In general, while switching and multi-banking have increased over time, retail deposits customers are 'sticky', and the major banks still retain a large cohort of retail deposits customers who consider their bank to be their MFI, and do not have a high propensity to switch.[1007]

Current state of competition

6.344. ANZ submits that the retail deposits market is intensely competitive,[1008] demonstrated by a number of banks competing aggressively to win customers, increasing switching and multi-banking, and lowering barriers to entry.[1009] Shayne Elliott (CEO of ANZ) states that (as of May 2023), the level of competition in deposits had intensified as interest rates rose, driving competition between banks to attract deposits to help fund balance sheet growth. Further, Mr Elliott stated that the level of competition in deposits had recently begun to 'outstrip the level of competition in home loans'.[1010]

6.345. The ACCC considers that there has been a modest increase in price competition for retail deposits since the end of 2022. However, it has been much less salient and slower to emerge than the recent increase in competition in home loans, which is likely to have commenced in 2020/21 (as discussed above in the context of home loans).

1004 ANZ application for Merger Authorisation, 2 December 2022, [7.65], [Figure 24].

1005 Expert report of Mary Starks, 16 June 2023, [3.38].

1006 Expert report of Mary Starks, 16 June 2023, [3.42].

1007 ANZ application for Merger Authorisation, 2 December 2022, [7.75], [Figure 26]; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1008 ANZ application for Merger Authorisation, 2 December 2022, [7.53(b)]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.5]-[8.8].

1009 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.5].

1010 Second statement of Shayne Elliott (ANZ), 17 May 2023, [21], **[Redacted - Confidential].**

6.346. The ACCC considers that strong competition in the retail deposits market would involve banks offering higher rates or delivering meaningful innovations to attract and successfully gain significant market share, thereby putting pressure on other banks to offer more competitive rates. This dynamic would also tend to be reflected in a relatively high level of switching in the market.

6.347. The ACCC has not observed evidence of these types of market behaviours or outcomes. Internal documents from various banks, especially before the end of 2022,1011 mainly point to uncertainty about future RBA monetary policy measures (e.g. further cash rate target increases), customers' responses to these macroeconomic changes, and the impacts on banks' future funding costs.**[Redacted - Confidential]**.[1012]

6.348. The ACCC notes that even if lower retail deposit rates attributable to a lack of competition for retail deposits were reflected in lower home loan rates than would otherwise be the case, this would not negate or nullify the lack of competition in the retail deposit market. In addition, the ACCC considers whether an apparent lack of competition prior to late 2022 was merely a temporary phenomenon, driven by excess funding in the financial system from policy responses to the Covid-19 pandemic (viz. the combination of government transfer payments, lockdowns and reduced consumer spending). If so, such excess funding may have manifested in banks not needing to raise deposit rates as quickly or by as much as they otherwise would to secure the funding they needed. Nevertheless, the ACCC has not seen evidence of strong competition in this market in the years leading up to COVID-19, either in changes in market shares for banks with competitive offers or in high level of consumer engagement.

6.349. On the available evidence before it, the ACCC considers that, overall, the retail deposits market is not highly competitive. Barriers to entry and expansion remain high, with very few examples of successful or sustained entry and expansion, and the fact the market continues to be characterised by a high degree of consumer inertia, which (together with other structural factors) has enabled the major banks to maintain a significant share of retail deposits. **[Redacted - Confidential]**.[1013]

6.350. The ACCC notes that while Macquarie and ING provide some competitive pressure in this market, their impacts appear to be more limited than Macquarie's impacts in the home loan market.[1014]

6.351. The ACCC has not seen evidence, including the context around the recent increased pricing competition, that suggests this market is 'intensely competitive' as submitted by the merger parties.[1015]

Banks' responses following the RBA's cash rate announcements

6.352. **[Redacted - Confidential]**:

- **[Redacted - Confidential]**

1011 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1012 **[Redacted - Confidential]**; **[Redacted - Confidential]**; Second statement of Clive van Horen (Suncorp Bank), 17 May 2023, [21], [23]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [24]-[25]; **[Redacted - Confidential]**.

1013 Expert report of Mary Starks, 16 June 2023, [9.169].

1014 **[Redacted - Confidential]**.

1015 ANZ application for Merger Authorisation, 2 December 2022, [7.58] and [7.81.b].

- **[Redacted - Confidential]**
- **[Redacted - Confidential]**
- **[Redacted - Confidential]**.[1016]

6.353. **[Redacted - Confidential]**.[1017]

6.354. The ACCC notes that **[Redacted - Confidential]**.[1018]

6.355. The differences in the pricing mechanisms for home loans and retail deposits can explain in part the differences in how banks respond to the RBA cash rate target announcements for these two product markets. Nevertheless, the differences in banks' response timings may also indicate differences in the level of competition in these markets. **[Redacted - Confidential]**.[1019] (see 'Current state of competition' in home loans for the discussion on the interaction between profitability in lending and deposit businesses within a bank).

Competition analysis – Unilateral effects

Suncorp Bank's competitiveness

6.356. ANZ submits that Suncorp Bank is not particularly vigorous or effective competitor. It notes that Suncorp Bank has been in gradual decline over the last 20 years;[1020] that it does not appear to be a price leader; [1021] and that is does not routinely drive innovation or product development.[1022] ANZ also submits that Suncorp Bank is not recognised as a leader in net promoter scores.[1023]

6.357. Ms Starks does not consider that there was evidence to suggest Suncorp Bank is a particularly effective and vigorous competitor in either transaction account deposits or non-transaction account deposits.[1024]

6.358. The ACCC notes that while**[Redacted - Confidential]**.[1025]**[Redacted - Confidential]**.[1026]

6.359. The ACCC considers that other second-tier banks will continue to exert competitive constraint on ANZ in a future with the Proposed Acquisition (and in the No-Sale and Second-Tier Merger counterfactuals). For example: Macquarie has a strong transaction account offering and comparatively higher interest rates.[1027] **[Redacted -**

1016 **[Redacted - Confidential]**.

1017 **[Redacted - Confidential]**.

1018 **[Redacted - Confidential]**; Second Statement of Yiken Yang (ANZ), 17 May 2023, [12]. Mr Yang notes that a change to the overnight cash rate does not necessarily mean that ANZ will change the price of its deposit products as a matter of course.

1019 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1020 ANZ application for Merger Authorisation, 2 December 2022, [7.70].

1021 Expert report of Mary Starks, 16 June 2023, [9.174.1]; **[Redacted - Confidential]**.

1022 ANZ application for Merger Authorisation, 2 December 2022, [7.69]-[7.74]. **[Redacted - Confidential]**.

1023 ANZ application for Merger Authorisation, 2 December 2022, [7.72]-[7.74], **[Redacted - Confidential]**.

1024 Expert report of Mary Starks, 16 June 2023, [9.135.1] and [9.174.1].

1025 **[Redacted - Confidential]**.

1026 **[Redacted - Confidential]**.

1027 Expert report of Mary Starks, 16 June 2023, [9.134.5]; Statement of Yiken Yang (ANZ), 30 November 2022, [36].

Confidential].[1028] As explained above, **[Redacted - Confidential]**.[1029] **[Redacted - Confidential]**.[1030] **[Redacted - Confidential]**.[1031]

6.360. In the ACCC's view, though Suncorp Bank provides some competitive constraint, it is no more vigorous or effective a competitor than other competitors in the market for the supply of retail deposit products in Australia, and has not been a key driver of pricing, innovation or product development.

Closeness of competition between ANZ and Suncorp

6.361. ANZ submits that Suncorp is not a particularly close competitor to ANZ in retail deposits, stating that Suncorp's products have not been particularly compelling or influential in ANZ's strategy.[1032] The ACCC notes **[Redacted - Confidential]**.[1033]

6.362. The ACCC considers that ANZ and Suncorp are not particularly close competitors in retail deposit products.

The ACCC's view

6.363. As set out above in discussing the factual in section 5, while it is possible the increase in scale from the Proposed Acquisition could accelerate ANZ's investments in technology to improve its competitiveness in retail deposits, ANZ has also stated that it would continue to invest in its digital transformation without the Proposed Acquisition. The ACCC does not consider that bringing forward these investments is likely to fundamentally alter ANZ's competitive position in the supply of retail deposits, noting ANZ has been incrementally losing market share in retail deposits in recent years.

6.364. In the factual, the ACCC considers there is likely to be some reduction in competition from removing the Suncorp Bank offering from the market. While barriers to entry and expansion remain high and there is little competitive constraint imposed by new entrants or the threat of new entry, the ACCC does not consider the Proposed Transaction is likely to lead to a meaningful degradation in competition in this market when compared to the No-Sale Counterfactual. This is largely because, as set out above, Suncorp is already not a particularly vigorous and effective competitor, and ANZ and Suncorp are not particularly close competitors.

6.365. As explained above in counterfactual, the ACCC considers that a combined BEN / Suncorp Bank is likely to be a more vigorous and effective competitor than either party alone, particularly on non-price competition. In the retail deposit market, this entity would have an approximately 5.6% market share, up from BEN's 3.1% share.[1034] Accordingly, the market in this counterfactual would contain six, rather than five, competitors with 4+% market share, and two (rather than just one) of these competitors would be independent of the major banks.[1035] The ACCC also notes that

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[1028] Expert report of Mary Starks, 16 June 2023, [9.174.2], citing **[Redacted - Confidential]**.

[1029] **[Redacted - Confidential]**.

[1030] **[Redacted - Confidential]**.

[1031] **[Redacted - Confidential]**.

[1032] ANZ application for Merger Authorisation, 2 December 2022, [7.76].

[1033] **[Redacted - Confidential]**.

[1034] See above ACCC analysis of APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, extracted on 25 May 2023. This is based on analysis of November 2021 to October 2022 data.

[1035] See above ACCC analysis of APRA Monthly Authorised Deposit-taking Institution Statistics, Monthly authorised deposit-taking institution statistics and Monthly banking statistics, extracted on 25 May 2023.

one of BEN's differentiating factors in this market is its community bank model and high customer satisfaction (illustrated by its high NPS).

6.366. Further, to the extent that a combined BEN/ Suncorp Bank is perceived by depositors as being more secure than either BEN or Suncorp Bank is presently, a combined entity could become a closer and stronger competitor to the major banks for retail deposits than either is now. That suggests that the Proposed Acquisition is likely to reduce competition by a greater extent when compared to the Bendigo Merger Counterfactual than when compared to the No-Sale Counterfactual.

6.367. For the reasons set out above, while the ACCC considers there is likely to be some lessening of competition arising from unilateral effects, the ACCC does not consider the Proposed Acquisition is likely to substantially lessen competition in the market for retail deposits.

Competition analysis – Coordinated effects

6.368. The analytical framework adopted by the ACCC in assessing any lessening of competition from potential coordinated effects arising from the Proposed Acquisition is set out above. As stated in that discussion, the ACCC considers that retail deposits (including transaction accounts, savings and term deposits) is one of the activities of the merger parties with features that suggest an increased risk of coordination. Accordingly, the ACCC considers it appropriate to undertake its competition analysis of the potential for coordinated effects with respect to a national market for retail deposits.

6.369. This section is structured as follows:

- Assessing the current ability of firms to initiate and/or sustain cooperative behaviour
    - Types of coordination and history of coordination
    - Complexities arising from recent increased competition
    - Features of the market that may raise or lower the ability of firms to initiate and/or or sustain cooperative behaviour
- Assessing the impact of the Proposed Acquisition

6.370. The ACCC considers that the market for retail deposits is conducive to coordination when viewed in isolation. However, as discussed below, due to banks' demand for deposits being largely derived from their need to fund home loans, the ACCC considers that coordination is less likely to emerge in retail deposits than in home loans. Accordingly, the Proposed Acquisition is less likely to materially increase the ability or incentive of the four major banks to initiate or and sustain coordination, and/or render any coordination more effective in deposits than in home loans, when compared to either the No-Sale Counterfactual or the Bendigo Merger Counterfactual.

6.371. As noted above in the discussion regarding the home loans market, the ACCC likewise considers that the most likely form of coordination in the retail deposits market is coordination between the major banks.[1036] While other forms of coordination might also be possible, the ACCC considers such coordination is less likely than coordination between the major banks.

[1036] Expert report of Mary Starks, 16 June 2023, [7.6]-[7.8], [9.138]-[9.141], [9.177]-[9.182].

Assessing the current ability of firms to initiate and/or sustain cooperative behaviour

Types of coordination and history of coordination

6.372. A discussion on what coordinated behaviour refers to, and the difference types of coordination, are set out above in the coordinated effects analysis in respect of home loans. That discussion largely applies equally to retail deposits but is supplemented by the market-specific features outlined below.

6.373. In her report, Ms Starks notes, with respect to transaction accounts, that there are various forms of potential coordination. These included:[1037]

- Fee pricing coordination: The major banks could coordinate by raising or maintaining fees associated with transaction accounts, such as account service fees, dishonour fees, overseas transaction fees, and international ATM fees.
- Interest rate coordination: The major banks could also coordinate on the interest rates that they offer on transaction accounts. Although noting that currently, most ADIs (including the major banks) either offer no or very low interest on their transaction accounts, unlike Macquarie Bank's transaction account, which offers 4.00% p.a. on balances up to $250k.
- Marketing and advertising coordination: The major banks could coordinate their marketing and advertising efforts, such as agreeing to limit promotional offers or refraining from targeting each other's customers. For example, banks do not appear to offer bonus offers to new customers or customers that switch from other banks.
- Product feature/investment coordination: The major banks could coordinate by limiting or standardising the features offered with their transaction accounts, reducing product differentiation and choice for consumers. This could include coordinating on the availability of certain account types, rewards programs, or other value-added services. The major banks could also refrain from investing in their respective transaction account offerings; this form of 'live and let live' type of coordination may result in consumer harm through reduced product and service quality, development, or innovation.

6.374. In respect of savings and term products, Ms Starks stated that banks can coordinate to set interest rates on savings in two ways:[1038]

6.375. First, they can adopt a 'follow-the-leader' form of price leadership/price signalling. Second, they can simply be slow to pass on any rate increases to savers and/or reducing the level of bonus rates offered, leading to reduced competition and potentially lower interest rates for consumers. This could be done by closely monitoring each other's interest rates and adjusting their own rates accordingly.

6.376. The PC Report undertaken in 2018 commented on the extent of competition in retail deposits. It noted that although smaller banks have consistently offered better rates on deposits to reduce their reliance on expensive short-term debt and meet regulatory obligations, their ability to attract deposits is dampened by the major banks' market dominance, the 'flight to safety' during the GFC, and generally low levels of customer switching.[1039] The PC Report found that incumbency advantage

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[1037] Expert report of Mary Starks, 16 June 2023, [9.138]-[9.141].

[1038] Expert report of Mary Starks, 16 June 2023, [9.178].

[1039] Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 231.

and scale of the major banks have enabled them to reduce their deposit expense relative to smaller institutions, increasing their cost advantage.[1040] However, at that time, smaller banks' deposit interest costs had also recently reduced relative to their deposit balances as they too reduced the rates on offer for consumers, 'effectively following the majors' lead'.[1041]

6.377. The ACCC has considered the findings of the PC Report and is mindful of the limits on the weight that can be attributed to those findings in respect of assessing the Proposed Acquisition, for the same reasons as set out above in respect of the home loans discussion.

6.378. Unlike in respect of the home loans market, Ms Starks notes that with respect to transaction accounts, while the low switching rate and lack of bonus offers to attract new customers suggests an absence of energetic competition, there was no evidence before her to suggest pre-existing coordination.[1042]

6.379. Ms Starks considers that with respect to deposit/term products there may be some evidence consistent with coordination, in the form of banks being slow to pass on rate increases to savers and/or reducing the level or bonus rates offered, leading to reduced competition and potentially lower interest rates for consumers, e.g. by monitoring each others' rates and adjusting their own rates accordingly).[1043] Ms Starks notes:

- the major banks **[Redacted - Confidential]**,[1044] and have generally been slow to pass on interest rate increases to savers compared to non-major banks.[1045] Ms Starks stated that, while the major banks have started to do so, this may be due to pressure applied by the ACCC which had recently started its Retail Deposits Inquiry.[1046]
- **[Redacted - Confidential]**.[1047]
- **[Redacted - Confidential]**.[1048]

6.380. In this respect, the ACCC notes in the Issues Paper for the Retail Deposits Inquiry,[1049] that while increases in the cash rate have generally been passed through to interest rates on variable rate home loans,[1050] the interest rate increases for retail deposit products have often been smaller or conditional.[1051]

1040 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 231.

1041 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 231.

1042 Expert report of Mary Starks, 16 June 2023, [9.142].

1043 Expert report of Mary Starks, 16 June 2023, [9.179].

1044 **[Redacted - Confidential]**.

1045 Expert report of Mary Starks, 16 June 2023, [9.176.4].

1046 Expert report of Mary Starks, 16 June 2023, [9.179].

1047 Expert report of Mary Starks, 16 June 2023, [9.179], citing **[Redacted - Confidential]**.

1048 **[Redacted - Confidential]**.

1049 ACCC, Retail Deposits Inquiry Issues Paper, ACCC, 21 April 2023.

1050 See also RBA, Statement on Monetary Policy, February 2023: 'The RBA notes in its February 2023 Statement on Monetary Policy that 'Housing lenders have passed on cash rate increases up to December in full to their reference rates for variable rate home loans' and 'most of the largest housing lenders had announced they would also pass through the February increase in the cash rate in full.'

1051 For example, see Dean L,' Banks hit savers to pay for discount mortgages', Australian Financial Review, 3 March 2023, accessed 29 June 2023.

6.381. Both Ms Starks and Professor King note the link between home loans and deposit products. Professor King notes that the close link between home loan and deposit products indicates that competitive impacts on home loans and some deposit markets might be similar, however analysis of the consequences of the Proposed Acquisition on the market for retail deposits was not within the scope of Professor King's report.[1052]

6.382. Ms Starks notes there may also be a link between competition in the home loans market and the deposits market: noting that the recent increase in competition in home loans has driven the major banks to also compete in attracting retail deposits to fund home loans, particularly given the sharp increase in wholesale funding costs. The recent increase in competition in deposits may therefore be partially driven by the recent breakdown in coordination in home loans (along with pressure from the ACCC's new inquiry).[1053]

6.383. On balance, in considering the historical evidence, the ACCC does not express a view, one way or another, as to whether some form of coordinated conduct has previously occurred with respect to this market. However, the ACCC does consider that, for the reasons discussed in the section below, this is a market that is conducive to coordination between the major banks, and has likely been this way for some time.

6.384. As set out above, the ACCC does not consider this market has exhibited the same degree of increased price competition in recent times, when compared to the home loans market. On the available evidence before it, the ACCC does not consider that the recent increase in competition will continue or that it evidences an enduring change to market features, structure or conduct to indicate that the market is no longer conducive to coordination.

6.385. The ACCC addresses the various features of the market, and the extent to which they currently assist firms to initiate and/or sustain cooperative behaviour in the sections that follow.

Features of the market that may raise or lower the ability of firms to initiate and/or sustain cooperative behaviour

6.386. Having regard to the framework developed by Professor de Roos for identifying the features or attributes of markets and firms that raise or lower the likelihood, extent, severity and/or sustainability of coordination between firms, the ACCC considers that the market for retail deposits shares a number of similarities to the market for home loans. Specifically:

- **Market structure:** The market for retail deposits is moderately concentrated, with the four major banks together accounting for a 73% share.[1054] **[Redacted - Confidential]**.
- **Symmetry and alignment:** As with home loans, the ACCC considers that despite differences between the market shares of the four major banks, they hold relatively symmetrical shares as between themselves by comparison to the

[1052] Expert report of Professor Stephen King, 3 March 2023, [62], [72].

[1053] Expert report of Mary Starks, 16 June 2023, [9.181].

[1054] Similar to home loans, the ACCC has focused its attention on the risk of coordination between the four major banks in this market. In these circumstances, given coordination would be occurring between a grouping of four banks, the ACCC considers that this relatively low number of participants is likely to lower the complexity and make it easier for the coordinating group to both initiate and/or sustain a form of coordination. See Table 8.

shares of other banks.[1055] The ACCC also considers that most banks appear to offer similar types of savings products with relatively similar interest rates that tend to move together over time, both in direction and magnitude.[1056] One material departure from symmetry is that **[Redacted - Confidential]**.[1057]

- **Multi-market contact:** Again, as with home loans, given that most Australian banks are active across different types of home lending, deposits, and business lending, there are numerous opportunities for both deviation and retaliation multi-market strategies to play out.[1058]
- **Communication devices:** Leaving aside direct communication, the ACCC considers that deposit products can offer banks 'focal points' to arrive at coordinated strategies. While the scope and nature of potential focal points differs somewhat as between transaction accounts and savings/term deposits, the ACCC considers that overall, there is a wide range of communication options available in this market.[1059]
- **Price transparency between firms:** The ACCC considers that, on the whole, there is a high degree of price transparency in the retail deposits market.[1060]
- **Consumer choice frictions:** While there are differences across deposit account types (transaction accounts, savings accounts and term deposits) in relation to the degree of customer inertia, customer willingness to hold accounts with multiple financial institutions, and role of brand reputation,[1061] the ACCC considers that overall, retail deposit products exhibit a considerable degree of consumer choice friction.

6.387. On their face, these factors and attributes of the retail deposit market suggest that it should be one that is similarly conducive to coordination as the market for home loans. However, there is a key differentiating factor applicable to retail deposits: Home lending is the key use to which retail deposits are traditionally put and, accordingly, the ACCC understands that banks tend to set their deposit interest rates with the aim of meeting funding targets or objectives.[1062] For example, the ACCC notes that Macquarie Bank has significantly increased its market share in retail deposits from 2.3% to 3.7% between October 2021 and October 2022, at the same time as it increased its share of home loans from 3.9% to 4.8%.[1063]

1055 Expert report of Mary Starks, 16 June 2023, [7.5.2].

1056 Expert report of Mary Starks, 16 June 2023, [9.180].

1057 **[Redacted - Confidential]**.

1058 **[Redacted - Confidential]**.

1059 In respect of savings/term deposits, Ms Starks points to the RBA cash rate as providing a potential focal point for banks' pricing decisions in this segment – see Expert report of Mary Starks, 16 June 2023, [Table 17]. While Ms Starks considered (at [9.145]) there was no clear focal point in transaction accounts around which to coordinate, we note that banks could still coordinate to 'maintain the status quo', with the current levels of fees and interest rates providing a natural focus point.

1060 Information about the levels and changes to banks' savings and term deposit interest rates, fees and terms are widely publicised by banks and known by competitors. See for example, **[Redacted - Confidential]**; **[Redacted - Confidential]**. Fees for transaction accounts are also public and observable.

1061 For example, Ms Starks notes that in her view, the rate of switching in transaction accounts is low due to customer inertia, brand reputation, and a lack of product differentiation in the market. See Expert report of Mary Starks, 16 June 2023, [9.152]. Further, Ms Starks considered that switching costs were lower in savings/term deposits, and that consumers are likely to hold more than one product and to have deposits products from more than one ADI – see [9.189].

1062 ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [48], [6.41], [7.223(c)]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [8.4], [8.14]; **[Redacted - Confidential]**.

1063 See above ACCC analysis.

6.388. This means that to the extent that coordination in deposits leads to a reduction in deposits supplied to banks, banks will need to obtain the shortfall in their funding from other sources at an attractive price. As noted above, ANZ may presently be something of an outlier among the major banks in this regard due to its more diverse funding base. The ACCC notes that deposits have generally tended to be a lower-cost source of funds to banks than other sources.[1064] While coordination over retail deposits may still be profitable under these circumstances, banks would need to weigh up any resulting reduction in the interest they pay to depositors against the increase in wholesale funding costs they would need to incur due to a funding shortfall. Therefore, factoring in these impacts, the ACCC considers that while the retail deposit market is conducive to coordination when viewed in isolation, in light of its interrelationship with home lending, coordination is less likely than in home loans.

6.389. The additional factors identified by Ms Starks as affecting how conducive a market is to coordination, are briefly addressed below (noting that historical coordination has been considered above):

- Innovation: While there has been a degree of investment by banks to improve user experiences on banking apps and digital platforms,[1065] as Ms Starks observes, this innovation does not appear to have been sufficient to shift market share (that is, to displace the stronghold of the major banks).[1066] On the whole, the ACCC does not think there is a degree of innovation in the retail deposits market that would undermine cooperative behaviour between the major banks.
- Market stability: Despite fluctuations in demand for and supply of retail deposits throughout business cycles, the ACCC does not consider this to represent a high degree of market instability over time, that might be expected to prevent, deter or destabilise coordination on a sustained long term basis.
- Existing competition / Entry and expansion barriers: As discussed above, barriers to entry and expansion remain high, with very few examples of successful or sustained entry and expansion, and the fact the market continues to be characterised by a high degree of consumer inertia.

Conclusion

6.390. On balance, for the reasons set out above, the ACCC considers that the market for retail deposits exhibits features which likely make it conducive to coordination between the major banks.

6.391. However, as noted above, the evidence before the ACCC suggests that the demand from most major banks for retail deposits is largely derived from their home lending objectives. This has implications for the incentives of the majors to initiate and/or sustain coordination in deposits – particularly when compared to home loans where ‘live and let live’ coordination is likely to have more unambiguous benefits for the major banks.

[1064] See V Carse, A Fakerko and R Fitzpatrick, Development in Banks’ Funding Costs and Lending Rates, RBA Bulletin, 16 March 2023, Graph 1, pp 66, 68-69.

[1065] ANZ response to ACCC’s Statement of Preliminary Views, 17 May 2023, [8.46]; see also Statement of Yiken Yang (ANZ), 30 November 2022, [12]; Macquarie Bank, Macquarie Bank launches Australia’s fastest account opening experience, 13 December 2021.

[1066] Expert report of Mary Starks, 16 June 2023, [9.146]-[9.148].

6.392. As a result, the ACCC considers that in practice, the major banks are likely to be less motivated to coordinate in relation to retail deposits (such as by offering lower rates) than in relation to home lending.

Assessing the impact of the Proposed Acquisition

6.393. The ACCC considers that the Proposed Acquisition is likely to make the market for retail deposits somewhat more conducive to coordination than it would be under either counterfactual. The key means by which this would occur is through increased symmetry between the major banks. However, as with home loans, while the increase in ANZ's market share appears small, it has a relatively significant impact. Moreover, as noted above, major banks' demands for retail deposits tend to be largely dependent on the strength of their growth in home lending. This suggests that the Proposed Acquisition is less likely to result in a substantial lessening of competition in deposits due to coordinated effects than it is in home lending.

6.394. That said, the likelihood of a substantial lessening of competition due to coordinated effects from the Proposed Acquisition is greater when it is compared to the Bendigo Merger Counterfactual. Under that counterfactual, as noted above in relation to unilateral effects, the ACCC considers that a merged BEN/Suncorp bank may be perceived by depositors as being more secure than either BEN or Suncorp Bank is presently.

6.395. To the extent this occurs, the combined BEN / Suncorp Bank entity could become a closer and stronger competitor to the major banks for retail deposits than either is now, and engage more effectively in non-price competition to encourage customer switching away from the major banks. This could operate to reduce the incentives of the four majors to engage in coordination, as they take steps to respond to avoid market share loss. However, even if BEN/Suncorp Bank were able to compete more effectively, the impact is less clear than in home lending given the above-noted funding-related demands for deposits that most major banks have.

6.396. For the reasons set out above, while there is likely to be some increase in the ability and incentive of the major banks to initiate and/or sustain coordination in retail deposits as a result of the Proposed Acquisition, the ACCC does not consider it is likely to result in a substantial lessening of competition.

Conclusion on competitive effects in retail deposits

6.397. Having considered the available evidence, and taking into account the conclusions in relation to unilateral and coordinated effects, the ACCC is satisfied in all the circumstances that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition in the market for retail deposits.

SME banking

6.398. ANZ's and Suncorp Bank's activities overlap in the supply of business banking products and services to small to medium enterprise (SME) customers **[Redacted - Confidential]**.[1067]

6.399. The ACCC is particularly concerned about the competition impact of the Proposed Acquisition on the supply of business banking products and services to SME

[1067] ANZ application for Merger Authorisation, 2 December 2022, [6.96]; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

customers (SME banking) and agribusiness customers (Agribusiness banking) in Queensland because these are the main overlaps between the merger parties in terms of business banking.[1068] In this section, the ACCC examines the competitive impact arising from the Proposed Acquisition in SME banking specifically.

Background

6.400. Set out below is a brief overview of the information and submissions provided to the ACCC relevant to SME banking. Some of this material, where relevant, is discussed in more detail in later sections.

ANZ and Suncorp Bank submissions

6.401. ANZ submits that the overlap in the supply of banking products to business customers should be assessed on the basis of a national market for the supply of business banking products and services to business customers, including SME and agribusiness customers.[1069]

6.402. ANZ submits that the Proposed Acquisition will not substantially lessen competition in the supply of business banking products to business customers in Australia. This is because:

- the business banking products market is not concentrated and the proposed acquisition will not materially increase concentration;
- the business banking products market is intensely competitive and will remain so after the acquisition;
- ANZ and Suncorp Bank are not particularly close competitors in the supply of business banking products;
- **[Redacted - Confidential]**; and
- the combined business will be competitively constrained by new entry and expansion.[1070]

Interested parties' submissions

6.403. BEN, Judo Bank and Bank of Queensland made submissions to the ACCC that there are a number of separate markets within business banking and that there are regional or state markets for agribusiness and SME products.[1071] **[Redacted - Confidential]**.[1072]

6.404. Bank of Queensland submits that the Proposed Acquisition may reduce competition with respect to SMEs in local/state markets and that smaller regional banks, such as Suncorp Bank, are important drivers of competition and often perform better overall in customer care and service levels than the major banks.[1073]

1068 **[Redacted - Confidential]**.

1069 ANZ application for Merger Authorisation, 2 December 2022, [6.87]; ANZ response to interested party submissions, 9 March 2023, [2.1]–[2.7].

1070 ANZ application for Merger Authorisation, 2 December 2022, [7.97]; ANZ response to interested party submissions, 9 March 2023, [2.20]-[2.28]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [6.14]-[6.15].

1071 Bendigo and Adelaide Bank submission, 3 March 2023, [6.3(a)]; Bank of Queensland submission, 23 February 2023, p 10; Judo Bank submission, 7 February 2023, p 2.

1072 **[Redacted - Confidential]**.

1073 Bank of Queensland submission, 23 February 2023, pp 9–10.

6.405. Judo Bank submits that it considers Suncorp Bank to be a vigorous and effective rival, particularly for Queensland SMEs and other customers.[1074]

Expert reports

6.406. Dr Williams considers that based on his HHI estimates of commercial lending in putative Queensland market, commercial lending in Queensland would not qualify as an initial candidate market to inform market definition.[1075] He states that there is no readily accepted definition of the dividing line between a medium and a large business, he therefore rejects SME lending as an initial candidate market given the difficulty of defining and analysing a market for lending to SMEs.[1076]

6.407. Professor King does not expressly consider SME banking. Instead, he focuses on the markets for home loans, deposits and agribusiness banking.[1077]

6.408. Ms Starks considers that SME banking (excluding asset/equipment finance and agribusiness banking) is likely to be a separate product market from agribusiness banking and the wider corporate banking on the basis of demand and supply-side substitutability.[1078] In her supplementary report, noting there is mixed evidence on supply-side substitution, she also considers a broader SME banking market that includes agribusiness.[1079]

6.409. Ms Starks describes Suncorp Bank as a vigorous and effective competitor in SME banking in Queensland – a strong independent regional competitor that has a strong brand and price proposition.[1080] She concludes that she cannot say there is a real chance of a substantial lessening of competition, either in the Queensland SME sector or in the Queensland including agribusiness. However, she cannot rule out a substantial lessening of competition either.[1081]

Relevant market

6.410. There are two key issues that emerge from the submissions and evidence before the ACCC in relation to this issue:

- first, whether it is appropriate to define separate (or combined) markets for the supply of banking services to SME and agribusiness customers, or whether the competitive effects of the Proposed Acquisition should be considered by reference to a single market for the supply of 'business banking products and services';
- second, whether the geographic scope of the relevant market(s) is local/regional, Queensland-wide or national.

6.411. In approaching this issue, the ACCC is mindful that:

1074 Judo Bank submission, 7 February 2023, p 3.

1075 Expert report of Dr Philip Williams, 25 November 2022, [50].

1076 Expert report of Dr Philip Williams, 25 November 2022, [52].

1077 Expert report of Professor Stephen King, 3 March 2023, [77(b)]; ANZ application for Merger Authorisation, 2 December 2022, [7(a)]-[7(b)].

1078 Expert report of Mary Starks**,** 16 June 2023, [5.45]-[5.47].

1079 Supplementary expert report of Mary Starks, 7 July 2023, [7.36].

1080 Expert report of Mary Starks**,** 16 June 2023, [2.9].

1081 Supplementary expert report of Mary Starks, 7 July 2023, [7.9], [7.35], [7.43]-[7.45].

- the concept of a ‘market’ as used in the Act is not ‘precise or formally exact’ and ‘there can be overlapping markets with blurred limits and disagreements between bona fide and reasonable experts about their definition’[1082]
- ‘[t]here may be more than one relevant market for a particular case in the sense of markets that would attract liability’[1083]
- the ACCC should approach the question of market definition by seeking to identify the market(s) that ‘best assists the assessment of the conduct and its asserted anti-competitive attributes’. That market must ‘accurate [and] realistically describe and reflect the interactions between, and perceptions and actions of, the relevant actors or participants in the alleged market, that is, the commercial community involved’[1084]
- depending on the circumstances, a substantial lessening of otherwise active competition in a significant section of a market may be a substantial lessening of competition in a market.[1085]

6.412. The ACCC also notes, and agrees with, Dr Williams’ view that the starting point for the market definition exercise (what Dr Williams refers to as the selection of an ‘initial candidate market’) is to identify ‘the products that are purchased by the buyers who are likely to be harmed by the conduct under review’.[1086]

Competitive overlap between Suncorp Bank and ANZ

6.413. As noted above, the key areas of competitive overlap between Suncorp Bank and ANZ are in relation to agribusiness and SME banking customers in Queensland.[1087]

6.414. Suncorp Bank primarily focuses on **[Redacted - Confidential]** business banking customers.[1088] The strongest area of geographic overlap is in Queensland, given Suncorp Bank’s position in its home state.

6.415. For the reasons below, the ACCC considers the supply of agribusiness banking products should be assessed separately from markets for the supply of banking services to SME customers or the broader market for the supply of business banking products contended for by ANZ.

6.416. Notwithstanding that many agribusiness customers can also be characterised as SME customers when considered by their exposure sizes/lending limits, the ACCC is examining agribusiness banking market separately, as discussed in the agribusiness below.

1082 *NT Power Generation Pty Ltd v Power and Water Authority* (2004) 219 CLR 90 per McHugh ACJ, Gummow, Callinan and Heydon JJ at 117.

1083 Brunt, M, *Market Definition Issues in Australian and New Zealand Trade Practices Litigation* (1990) 18 Australian Business Law Review 86 at 126. Cited with approval by Lockhart, Wilcox and Gummow JJ in *Re Arnotts Limited; Arnotts Biscuits Limited; Fledspac Limited and the Dickens Corporation Pty Limited v Trade Practices Commission (1990)* 24 FCR 313 at 328.

1084 *Australian Competition and Consumer Commission v Air New Zealand* (2017) 262 CLR 207, [60].

1085 *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 44 ALR 173 at 192. This was referred to with approval by the Full Court in *Rural Press Ltd v ACCC* [2002] FCAFC 213 at [131] and *Singapore Airlines Ltd v Taprobane Tours WA Pty Ltd* (1991) 104 ALR 633 at 658 (French J, with whom Spender and O’Loughlin JJ agreed).

1086 Expert report of Dr Philip Williams, 2 December 2022, [22].

1087 ANZ application for Merger Authorisation, 2 December 2022, [6.96].

1088 **[Redacted - Confidential]**.

Product dimension

6.417. ANZ submits that the relevant market is a single product market for the supply of business banking products and services, including to SME and agribusiness customers.[1089] ANZ submits that while product features may differ, the underlying propositions for core business banking products offered by banks (including transaction accounts, business loans, credit cards and merchant services) are similar.[1090] However, BEN submits that there are a number of separate markets within the business banking market.[1091]

6.418. ANZ submits that there is demand-side substitution because the core business banking products are essentially commoditised, and customers can and do switch between suppliers.[1092] ANZ also submits that there is supply-side substitution because banks make decisions on pricing and policy on a centralised, national basis.[1093]

6.419. Professor King states that while from a financial perspective, different business products can be ‘manufactured’ from the same sources of funds, this does not mean that there is supply-side substitutability.[1094]

6.420. Ms Starks considers the expert reports of Dr Williams and Professor King as regards the appropriate market definition. Her view is that the correct approach to market definition is to focus on identifying the goods and services that are substitutable for, or otherwise competitive with the goods and services provided by the merger parties.[1095]

6.421. Ms Starks considers that SME banking (excluding asset/equipment finance) is likely to be a separate product market from agribusiness banking and the wider corporate banking on the basis of demand and supply-side substitutability.[1096]

6.422. Using the hypothetical monopolist test, Ms Starks considers that on the demand-side, SMEs are unlikely to switch to agribusiness-specific or large corporate-specific banking products in response to a small but substantial increase in price or decrease in quality (a ‘SSNIP’), given their different borrowing needs. On the supply-side, Ms Starks states that agribusiness banking specialists may be able to serve SMEs in response to a SSNIP but will need to build relationships with SMEs and learn about local (non-agribusiness) business conditions, and the banking needs of non-agribusiness SMEs. She also states that SME credit decisions are based less on corporate information and more on local knowledge and relationships, relative to larger business lending. She notes that this is reflected in the fact that some banking

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1089 ANZ application for Merger Authorisation, 2 December 2022, [6.87]; ANZ response to interested party submissions, 9 March 2023, [2.2]–[2.3]; ANZ response to the ACCC independent expert reports, 17 July 2023, [4.5]-[4.6].

1090 ANZ application for Merger Authorisation, 2 December 2022, [6.119], [6.133]; Statement of Guy Mendelson (ANZ), 1 December 2022, [60]–[63]; **[Redacted - Confidential]**; ANZ response to the ACCC independent expert reports, 17 July 2023, [4.6(b)].

1091 Bendigo and Adelaide Bank submission, 3 March 2023, [6.3(a)].

1092 ANZ application for Merger Authorisation, 2 December 2022, [6.133].

1093 ANZ application for Merger Authorisation, 2 December 2022, [6.135].

1094 Expert report of Professor Stephen King, 3 March 2023, [77(b)]; ANZ application for Merger Authorisation, 2 December 2022, [6.122(a)].

1095 Supplementary expert report of Mary Starks, 7 July 2023, [5.3]-[5.4].

1096 Expert report of Mary Starks**,** 16 June 2023, [5.45]-[5.47]; Supplementary expert report of Mary Starks, 7 July 2023, [7.36].

groups offer a specific product suite for SME customers, while others organise their SME and large corporate lending operations differently.[1097]

6.423. Notwithstanding this view, Ms Starks also states that as the evidence on supply-side substitution is mixed, she has also considered an alternative market definition that also includes agribusiness customers. [1098]

6.424. Ms Starks notes that SME banking does not need to be viewed as a series of narrower product markets because SMEs are still offered deposits, lending and banking advice together, recognising that sometimes SMEs will choose to buy products or services outside their main bank.[1099]

6.425. Notwithstanding the types of business banking products that SME customers and large business customers require are similar in general,[1100] in the sense that nearly all businesses require lending and deposit facilities, the product features and pricing considerations can vary materially between different business banking customer segments. The ACCC has seen examples of banks' offerings that are tailored for SME customers:

- **[Redacted - Confidential]**.[1101] **[Redacted - Confidential]**.[1102]

ANZ provides a Rapid Refinance process available for SMEs with lending of up to $1 million, which requires less documentation for refinance[1103]

Commonwealth Bank, NAB and Westpac offer payment solutions that are suited to SME customers[1104]

NAB offers Flex-Flow Loan, a cashflow loan product exclusively for its existing small business merchant customers.[1105]

6.426. The evidence indicates that banks are conscious of the differences in types of business customers and would tailor their propositions, strategies, distribution channels and engagement model for SME customers specifically.[1106] For example, Suncorp Bank has traditionally operated three business portfolios, separating SME, agribusiness and commercial property customers.[1107] **[Redacted - Confidential]**.[1108] **[Redacted - Confidential]**.[1109] ANZ also segments its business customers based on customer types and needs, total business limits and complexity.[1110]

1097 Expert report of Mary Starks**,** 16 June 2023, [5.45]-[5.47].

1098 Supplementary expert report of Mary Starks, 7 July 2023, [2.1], [5.10], [7.36].

1099 Expert report of Mary Starks**,** 16 June 2023, [5.49].

1100 ANZ application for Merger Authorisation, 2 December 2022, [6.128]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**;**[Redacted - Confidential]**; ANZ response to the ACCC independent expert reports, 17 July 2023, [4.6(b)].

1101 **[Redacted - Confidential]**.

1102 **[Redacted - Confidential]**.

1103 See ANZ media release, Rapid changes to small business refinance, 10 February 2022, accessed on 4 August 2023.

1104 See Commonwealth Bank, Smart Mini, accessed on 4 August 2023; NAB, NAB Easy Tap, accessed on 4 August 2023; Westpac, EFTPOS Air mobile app, accessed on 4 August 2023.

1105 See NAB media release, NAB's new Flex-Flow loan for merchants – fast, simple cashflow finance, 27 April 2023, accessed on 4 August 2023.

1106 See for example, **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1107 ANZ application for Merger Authorisation, 2 December 2022, [6.94].

1108 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1109 **[Redacted - Confidential]**.

1110 ANZ application for Merger Authorisation, 2 December 2022, [6.92].

6.427. The ACCC notes Dr Williams' observation that there is no 'readily accepted' dividing line between 'medium' and 'large' customers.[1111] The ACCC accepts there is also no common, universally accepted dividing line between 'small' and 'medium' customers. While that is relevant to the question of market definition, it is by no means determinative; such 'blurriness' at the margins is a common feature of many markets.

6.428. In this matter, notwithstanding the potential for definitional issues at the margins, the ACCC considers there is a distinct cohort of SME customers who may be affected by the Proposed Acquisition, and that these customers have separate and distinct needs to either large commercial customers or agribusiness customers.

6.429. SMEs are the most common type of businesses in every industry in the economy and most are on the small, rather than medium, end of the spectrum of business size.[1112] As of June 2022, there were about 2.57 million actively trading businesses in Australia and 92.6% of them had turnover of less than $2 million.[1113]

6.430. Figure 16 below compares some characteristics of SMEs to larger businesses estimated by the Productivity Commission.[1114] In general, SMEs have lower turnover, fewer assets and a shorter credit history compared to larger firms.

Figure 16 Median values for selected characteristics of SMEs and larger firms, 2018–19

	Age	Workforce	Turnover	Assets	Debt
SMEs	9 years	0 employees (non-employing)	~$85 000	~$199 000	~$120 000
Larger firms	21 years	132 employees	~$110.9 million	~$84.2 million	~$35.8 million

a. SMEs are businesses with turnover of less than $50 million; larger firms are businesses with turnover of $50 million or more.

Source: Productivity Commission's estimates using the ABS Business Register, pay as you go summaries and business income tax datasets in the Business Longitudinal Analysis Data Environment; Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, p 8.

6.431. SME customers banking needs are generally different from large business or corporate customers. SMEs typically have relatively simple lending needs and many are also personal banking customers (for example, some customers will already have an existing relationship with a bank).[1115] Isaac Rankin (Managing Director of the Commercial and Private Banking business unit of ANZ) states, for example, the majority (about **[Redacted - Confidential]**) of ANZ's small business banking customers have working capital and transactional banking facilities, and a small

1111 Expert report of Dr Philip Williams, 25 November 2022, [52].

1112 Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, p 5; Australian Banking Association, Business by size, accessed on 4 August 2023.

1113 Australian Bureau of Statistics (July 2018 – June 2022), Counts of Australian Businesses, including Entries and Exits, accessed on 2 June 2023.

1114 Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, p 8.

1115 **[Redacted - Confidential]**.

proportion of the customers have business lending and/or home loan facilities as well.[1116]

6.432. The ACCC's review of banks' internal documents indicates that SME customers have growing demands for digital capability in transaction banking and cash management, self-service functionality and personalised insights, but may require bankers' guidance and expertise on more complex needs.[1117]

6.433. **[Redacted - Confidential]**.[1118]

6.434. While there is no common definition of 'SME customers' between banks,[1119] the Australian Prudential Regulation Authority generally classifies a business as small or medium if it has an annual turnover of less than $50 million. Within this, a business is considered small if it has an exposure to the reporting lending entity of less than $1 million.[1120]

6.435. It may be possible to set a higher or lower threshold for what constitutes an SME customer, but the precise boundaries of the product dimension market are unlikely to change the conclusions the ACCC has reached.

6.436. Even if the merger parties are correct in their submission that SME banking forms part of a broader business banking market, that would not alter the ACCC's concerns about the competitive effects of the Proposed Acquisition. SME banking would form a significant section of a broader 'business banking' market, with SME customers making up most of all business banking customers (as noted above, 92.6% of businesses had turnover of less than $2 million).

6.437. In addition, the competitive constraint faced by the merged entity would be the same regardless of which market definition was adopted. There is no suggestion in the merger parties' submissions that there are any competitors currently supplying large commercial customers who are not currently supplying SME customers.

6.438. Finally, for the reasons given in agribusiness banking, the ACCC considers that agribusiness banking is a separate product with distinct supply and demand characteristics.

6.439. The ACCC notes that in considering previous banking mergers it has defined markets for SME banking products.[1121] In this matter, the ACCC has closely considered the arguments made by ANZ about the potential for a broader market for business products, as well as the markets considered in the alternative by Ms Starks but remains of the view that for the purpose of its competitive assessment, SME banking should be considered as a separate product market from the broader business banking market.

1116 Statement of Isaac Rankin (ANZ), 30 November 2022, [21].

1117 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1118 **[Redacted - Confidential]**.

1119 See for example, **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**. Suncorp Bank has traditionally defined its SME portfolio with reference to SME customers with less than **[Redacted - Confidential]** in lending (ANZ application for Merger Authorisation, 2 December 2022 [6.94]; **[Redacted - Confidential]**) and now it has segmented them into**[Redacted - Confidential]**.

1120 Reporting Standard ARS 701.0, ABS/RBA Definitions for the EFS Collection, August 2017.

1121 See for example, ACCC, Westpac Banking Corporation – proposed acquisition of St George Limited – Public Competition assessment, 13 August 2008, [30]; ACCC, ACCC not to oppose Commonwealth Bank/Colonial Merger, 30 May 2000.

Geographic dimension

6.440. ANZ contends that the relevant geographic scope of the market is national. ANZ submits that local elements of competition are far less important now, such that the geographic dimension of other elements of competition is now national.[1122] In support of this, ANZ submits that:

- ANZ makes product and pricing decisions for business lending and deposit products, and monitors competitor product and pricing changes, at a nationally divisional level

brokers are an increasingly important distribution channel, reducing search costs for business customers and promoting choice across competing providers across broader geographic boundaries

the shift towards electronic funds transfers as preferred payment methods instead of cash for day-to-day purchases means that business customers generally do not need to use a local ADI for banking

there are alternative physical networks other than bank branches that provide cash-handling facilities for business customers

business customers can be served effectively remotely through call centres, online and supported by a relationship manager, who is able to periodically visit their property.[1123]

6.441. ANZ submits that the interested party submissions are consistent with the proposition that there is a national market for the supply of business banking products and services, even though different financial institutions have different geographic areas of strength.[1124] ANZ submits that the fact that financial institutions make customer-specific decisions and that pricing decisions may be influenced by localised considerations is not inconsistent with the relevant market having a national scope.[1125]

6.442. Mr Rankin states that regional bank, such as Suncorp Bank, tend to win a higher volume of business in their 'home' regions due to their historical footprint rather than any material geographic differences in any of the drivers of competition.[1126]

6.443. By contrast, Bank of Queensland submits that it is arguable that there are regional or state markets for SME products and that competition occurs at a local level for customers who have traditionally been driven by service-based banking.[1127] Similarly, Judo Bank submits that SME business lending involves local, rather than national, elements of competition, pricing and knowledge/expertise; and customers place great value on relationships with bankers who understand their particular circumstances, needs and local conditions.[1128]

6.444. There is evidence that both supports and contradicts elements of ANZ's submission. The ACCC accepts that banks often consider product and pricing decisions for business lending and deposit products at a nationally divisional level and do not

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1122 ANZ application for Merger Authorisation, 2 December 2022, [6.137].

1123 ANZ application for Merger Authorisation, 2 December 2022, [6.137]; Statement of Mark Bennett (ANZ), 1 December 2022, [108] and [109].

1124 ANZ response to interested party submissions, 9 March 2023, [2.4]-[2.7].

1125 ANZ response to interested party submissions, 9 March 2023, [2.6].

1126 Statement of Isaac Rankin (ANZ), 30 November 2022, [93(c)].

1127 Bank of Queensland submission, 24 February 2023, p 10.

1128 Judo Bank submission, 18 April 2023, p 1.

differentiate pricing based on geography at a product level.[1129] However, the ACCC has also seen evidence that banks typically have a pricing discretion framework that enables their bankers to adjust pricing at a transaction level, which facilitates competition in targeted customer segments or geographic markets.[1130]

6.445. Although many banks monitor competitor product and pricing changes on a national basis, some banks,**[Redacted - Confidential]** also monitor their competitors' activities in specific regions or customer segments.[1131] **[Redacted - Confidential]**.[1132]

6.446. The shift towards electronic payments may have also materially diminished the importance of bank branches in some geographic areas (particularly metropolitan areas where cashless payments are becoming more prevalent). However, many cash-handling businesses still need access to branches in their local areas. **[Redacted - Confidential]**.[1133]

6.447. The increasing digital adoption in small businesses means that many SME customers can be served effectively remotely through digital channels. **[Redacted - Confidential]**.[1134] On the other hand, Bank of Queensland submits that whilst digitisation is increasing across all banking segments, it is not clear that SME and agribusiness customers can or will switch to online services with the same ease.[1135]

6.448. Ms Starks states that in her view, SME banking markets might be local rather than national because of the importance of cash handling to SME customers, and the importance of personal relationships and local knowledge for lending decisions, noting that larger SMEs are more likely to be relationship-managed than smaller businesses.[1136] Ms Starks considers that it is difficult to reach a firm conclusion on geographic market definition for SME banking but considers there to be significant evidence pointing to the importance of local factors. She concludes that the relevant market is unlikely to be national.[1137]

6.449. ANZ submits that Ms Starks does not engage with the following evidence that indicates there are wider markets for SME customers than regional markets:

- SME customers have alternative cash-handling options like Bank@Post and this reduce the importance of local presence of a bank for SME customers choosing a provider; and
- the increasing role of brokers who can be local to the customer but direct business to banks that do not have a local presence near the customer.[1138]

1129 ANZ application for Merger Authorisation, 2 December 2022, [6.134], [6.136]; Statement of Isaac Rankin (ANZ), 30 November 2022, [64]; Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [30]–[34], [49], [80]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1130 Judo Bank submission, 7 February 2023, p 2; **[Redacted - Confidential]**.

1131 Statement of Isaac Rankin (ANZ), 30 November 2022, [64], [104]; Statement of Clive van Horen (Suncorp Bank), 25 November 2022,[109]–[113]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**, **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1132 **[Redacted - Confidential]**.

1133 **[Redacted - Confidential]**.

1134 **[Redacted - Confidential]**.

1135 Bank of Queensland submission, 24 February 2023, p 10.

1136 Expert report of Mary Starks, 16 June 2023, [6.23]–[6.29].

1137 Expert report of Mary Starks**,** 16 June 2023, [6.30]; Supplementary expert report of Mary Starks, 7 July 2023, [2.2].

1138 ANZ response to the ACCC independent expert reports, 17 July 2023, [4.13(c)]-[4.13(d)].

6.450. The ACCC agrees that Bank@Post can reduce the importance of local presence of a bank for SME customers to some extent and potentially widen the geographic boundary of the relevant market. However, as discussed above, there is evidence that **[Redacted - Confidential]**.[1139] ANZ has not provided any evidence to demonstrate that SME customers' reliance on Bank@Post has grown or is growing to such an extent that renders bank branches irrelevant in SME customers' banking decision. In its final report, the Regional Banking Taskforce found that Bank@Post may not be well known and may be underutilised in regional communities.[1140] A meaningful proportion of SMEs in regional areas are, in the ACCC's view, still likely be influenced by the accessibility of branch services in their regional areas when deciding who to bank with.

6.451. Lenders can leverage broker channels to enter new geographic markets – at least to some extent.[1141] With brokers' assistance, business customers may more easily compare, or become aware of, business banking products offered by a lender online or in another state. The ACCC acknowledges that brokers may make it easier for SME customers to access banking products from a bank in another state but notes that this is most relevant to customers that do not need any physical access to bank branches or bankers. For example, a broker is unlikely to recommend a bank from another state if a SME customer requires in-person relationship management services.

6.452. Taking into account all the evidence and submissions, the ACCC agrees with Ms Starks' conclusion that the appropriate geographic scope to consider is narrower than a national market.

6.453. The ACCC considers that the relevant markets are likely to be local/regional in scope, rather than state-wide or national. However, it does not have sufficiently granular data available to conduct a detailed market assessment on this basis.

6.454. The ACCC has therefore assessed competition at a Queensland-wide level as a proxy for the regional/local markets within the state when considering the possible competition effects on SME customers.

Competition dimensions

Price competition

6.455. Price is a relevant parameter of competition in SME banking. Banks generally have regard to their competitors' pricing when setting the prices of their deposit products and lending products with carded rates, because the pricing information for these products is quite transparent.[1142]

6.456. For lending products priced on a risk adjusted basis, banks generally determine individual pricing based on a range of factors, including the risk assessment of the customer, product features, amount of collateral and cost of funds.[1143] Given that

1139 **[Redacted - Confidential]**.

1140 The Australian Government the Treasury, Regional Banking Taskforce Final Report, September 2022, p 12.

1141 See for example, **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1142 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1143 Statement of Isaac Rankin (ANZ), 30 November 2022, [68],[69],[74]; Judo Bank submission, 7 February 2023, p 2; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

prices on lending products are typically individually negotiated and these prices are not published, banks do not benchmark their pricing against competitors as much as they do for business deposit products.[1144] Banks tend to compete on price for lending products when presented with competitors' offers during negotiations with customers or brokers.[1145]

6.457. **[Redacted - Confidential]**.[1146]**[Redacted - Confidential]**.[1147]

6.458. **[Redacted - Confidential]**.[1148] The ACCC also notes that Ms Starks' report contains data analysis showing that **[Redacted - Confidential]**.[1149]

Non-price competition

6.459. Price is not always the determinative factor in customers' banking decisions.[1150] Business customers also consider non-price factors including service, credit policy, speed of service, relationship strength and trust, ease of doing business, ongoing servicing platforms (including digital banking), product features and origination options.[1151] SME customers have varying needs and they value non-price factors differently depending on their circumstances.

6.460. ANZ submits that providers compete to improve product features and services for business banking products, including in the way customers interact and engage for origination and ongoing relationship management. This is evidenced by continued innovation in the development of product features including budgeting features, multi-currency options, reduction in overseas transaction fees, the ability to create sub-accounts, and investment in digital features.[1152]

6.461. Based on its review of the evidence before it, the ACCC discusses some of the key drivers of non-price competition in SME banking below.

Customer service and care

6.462. Customer service encompasses many non-price factors that customers may value, such as speed of service, responsiveness of bankers, industry expertise, and customer care. As ANZ submits, service refers to how customers are serviced in the initial application process and on an ongoing basis, including the speed of loan approvals, ease of application process and the availability and quality of bankers an initial and ongoing basis.[1153]

1144 Statement of Isaac Rankin (ANZ), 30 November 2022, [74].

1145 Second Statement of Mark Bennett (ANZ), 17 May 2023, [12]-[14].

1146 **[Redacted - Confidential]**.

1147 **[Redacted - Confidential]**.

1148 **[Redacted - Confidential]**.

1149 **[Redacted - Confidential]**. **[Redacted - Confidential]**.

1150 ANZ application for Merger Authorisation, 2 December 2022, [6.122].

1151 ANZ application for Merger Authorisation, 2 December 2022, [6.120]-[6.121]; Statement of Isaac Rankin (ANZ), 30 November 2022, [88]-[89]; ANZ response to interested party submissions, 9 March 2023, [2.11]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1152 Statement of Guy Mendelson (ANZ), 1 December 2022, [61], [64], [65].

1153 ANZ application for Merger Authorisation, 2 December 2022, [6.120(a)], [6.121(a)].

6.463. Business banking net promoter score[1154] is an indicator that banks commonly use to gauge the quality of their customer service, which can be influenced by their 'time to decision', conversations with their customers and complaint resolution outcomes.[1155]

6.464. Smaller and challenger banks are typically more agile and focused in providing personalised customer service. **[Redacted - Confidential]**.[1156] Bank of Queensland submits that regional banks often perform better overall in customer care and service levels than the major banks, as evident in the commercial positioning of regional banks and the way in which customer care is centred.[1157] **[Redacted - Confidential]**.[1158]

6.465. As demonstrated in Suncorp Bank's value propositions for its business customers, **[Redacted - Confidential]** are important.[1159] Other value proposition themes for Suncorp Bank's SME portfolio include **[Redacted - Confidential]**.[1160] **[Redacted - Confidential]**.[1161] **[Redacted - Confidential]**.[1162] These value propositions reflect what matters to SME customers and how Suncorp Bank competes on non-price aspects. Relatedly, SME customers appear to place some weight on short turnaround time to loan approval or credit assessment by banks.[1163]

Relationship management services

6.466. Relationship managers play a key role in providing personalised, face-to-face service to business banking customers, and it is part of the service propositions for business customers that banks generally compete on.

6.467. ANZ submits that a relationship with a relationship manager is an important element of business banking, both in terms of customer origination and ongoing service quality, and it may be more important than price.[1164] Mr Rankin states that business customers typically value and seek to have a relationship with a main financial institution and a relationship manager who understand their businesses.[1165] **[Redacted - Confidential]**.[1166]

6.468. **[Redacted - Confidential]**.[1167]

1154 Net promoter score (NPS) is a widely used measure in the banking industry of a customer's or a broker's willingness to recommend a particular bank to others. Respondents who give a rating of 0-6 are classified as 'detractors', those who give a rating of 7-8 are described as 'passives', while a 9-10 rating classifies the respondent as a 'promoter'. The overall NPS is then calculated as the percentage of detractors subtracted from the percentage of promoters. This means a positive NPS indicates that a brand has more promoters than detractors, while a negative NPS means a brand has more detractors than promoters.

1155 See for example, **[Redacted - Confidential]**.

1156 **[Redacted - Confidential]**.

1157 Bank of Queensland submission, 24 February 2023, p 10.

1158 **[Redacted - Confidential]**.

1159 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1160 **[Redacted - Confidential]**.

1161 **[Redacted - Confidential]**.

1162 **[Redacted - Confidential]**.

1163 See for example, **[Redacted - Confidential]**.

1164 ANZ application for Merger Authorisation, 2 December 2022, [6.122(a)], [7.133]; Statement of Isaac Rankin (ANZ), 30 November 2022, [90]; ANZ response to interested party submissions, 9 March 2023, [2.8]-[2.10]; Statement of James Lane (ANZ), 5 July 2023, [19]-[21]; **[Redacted - Confidential]**.

1165 Statement of Isaac Rankin (ANZ), 30 November 2022, [86], [90].

1166 **[Redacted - Confidential]**.

1167 **[Redacted - Confidential]**.

6.469. The importance of relationship management services is more relevant to medium businesses, as opposed to small businesses. **[Redacted - Confidential]**.[1168] Many banks including major and non-major banks offer relationship management services to at least some portion of their SME customers, typically those with higher value loans or more complex banking needs.[1169] For example, **[Redacted - Confidential]**.[1170] ANZ's 'business banking' segment, which typically have total business limits of between **[Redacted - Confidential]**, are allocated to a customer lending group and each group is assigned to a relationship manager. Each relationship manager is typically allocated **[Redacted - Confidential]** customer lending group, and James Lane (ANZ) considers this to be a comparatively 'higher touch' approach.[1171]

6.470. Banks typically employ mass managed channels to service small business customers, meaning that most SME customers are served and managed by a group of bankers via phone, digital channels and in some cases, in branches.[1172] The bankers that serve small business customers tend to be 'generalists'.[1173] By contrast, relationship managers that service medium or large business or agribusiness customers tend to be more specialised or have more local knowledge specific to the industries that their customers operate in.

6.471. The ACCC considers that customers with relationship managers are likely to be 'stickier' than those without. This is because there are more friction points and reluctance on the part of customers to switch, given the personal relationship, trust and familiarity that have been developed between the customers and their relationship managers.

Technology and digital offerings

6.472. Digital propositions are a key non-price competition dimension for SME banking, as SME customers are becoming more digitally oriented and are increasingly demanding data and insights from their banks.[1174] The trend towards digital interactions amongst SME customers correlates with the decrease in acceptance of cash by businesses.[1175] **[Redacted - Confidential]**.[1176]

6.473. Banks (and similarly, fintechs) are increasingly offering more sophisticated digital banking solutions and personalised insights to SME customers.[1177] Banks are investing in data analytics and digital product offerings, enabling digital self-service and partnering with third party software providers and fintechs to enable SME customers to access a range of services and data insights.[1178] There is evidence that banks are mostly prioritising small business customers (that have relatively simple,

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1168 **[Redacted - Confidential]**.

1169 **[Redacted - Confidential]**; Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [95]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1170 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1171 Statement of Isaac Rankin (ANZ), 30 November 2022, [15]; Statement of James Lane (ANZ), 5 July 2023, [12]-[14].

1172 Statement of Isaac Rankin (ANZ), 30 November 2022, [15], [24]; **[Redacted - Confidential]**.

1173 Statement of Isaac Rankin (ANZ), 30 November 2022, [25].

1174 Statement of Guy Mendelson (ANZ), 1 December 2022, [64]; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1175 **[Redacted - Confidential]**.

1176 **[Redacted - Confidential]**.

1177 **[Redacted - Confidential]**.

1178 Statement of Guy Mendelson (ANZ), 1 December 2022, [64]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; See for example, Australian Financial Review, Apple lets iPhones accept payments for Westpac and Tyro, 17 May 2023.

homogenous banking needs) and higher volume products when developing and executing their technology and digital strategies.[1179]

6.474. Banks invest in technology to not only provide new or better digital services to their customers, but also to increase their operational efficiency.[1180] Banks invest to automate their manual credit assessment processes and to digitise customer on-boarding procedures, thus improving their speed and quality of service, which is important to many SME customers.[1181] Technology sophistication improves the overall competitiveness of the bank as it can free up staff's capacity to perform higher-value work, conducive to better customer experiences and cost reduction.

6.475. However, not all SME customers have the same access to digital channels or same level of digital literacy to take advantage of or be receptive to digital banking offerings or services. For example, Bank of Queensland submits that in its opinion, it is not clear that SME customers can or will switch to online services with ease.[1182] In a submission to the Regional Banking Taskforce, the Australian Small Business and Family Enterprise Ombudsman stated that 'some business operators are aware of their limited digital literacy, leading them to distrust services or be unable to protect themselves online, hampering their use of [online banking services]'.[1183]

6.476. Uplifting digital capability and automating manual processes such as credit decisioning, origination process and broker engagement require substantial investments.[1184] Smaller banks generally face more challenges than major banks in this regard as they have smaller customer bases across which they can defray technology investment costs. As such, smaller banks tend to compete more aggressively on other aspects of their offerings, such as price or the quality of services provided by their front-line bankers.

Branch access

6.477. As noted above, branches remain important for some regional SME customers, as well as cash-oriented businesses.[1185] Bank of Queensland submits that there are customers for whom branches and local service providers are an important component of financial services and that online banking, call-centres, smart ATMs and Bank@Post are not necessarily substitutable for these customers.[1186] The lack of bank branches can also affect business customers' perception of accessibility to relationship managers from their banks.[1187]

6.478. **[Redacted - Confidential]**.[1188] **[Redacted - Confidential]**.[1189]

[1179] **[Redacted - Confidential]**.

[1180] See for example, **[Redacted - Confidential]**.

[1181] **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

[1182] Bank of Queensland submission, 23 February 2023, p 9.

[1183] Australian Small Business and Family Enterprise Ombudsman, Submission to Regional Banking Taskforce issues paper, 17 December 2021, p 1.

[1184] **[Redacted - Confidential]**.

[1185] **[Redacted - Confidential]**; **[Redacted - Confidential]**; Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [40]; ABC, Mass exodus of regional bank branches across Australia leaves residents seeking solutions, 19 May 2023.

[1186] Bank of Queensland submission, 23 February 2023, p 9.

[1187] **[Redacted - Confidential]**.

[1188] **[Redacted - Confidential]**.

[1189] **[Redacted - Confidential]**.

6.479. Many SMEs still rely on branches for cash withdrawal and deposits, even though this reliance may continue to decline over time.[1190] The overall increase in banking sector customers applying for products through digital channels or through brokers or aggregators, has contributed to the trend of gradual branch closures by banks. For example, Suncorp Bank has reduced its branches in the last five years to 64, down from 119.[1191]

6.480. In 2021, the Australian Small Business and Family Enterprise Ombudsman states in a media release that bank branch closures are disruptive to small and family businesses and that can have a ripple effect on the wider community. He states that 'small businesses rely on banking services to operate in the modern economy, and it is essential to those in rural and regional areas have access to the full range of banking facilities'.[1192]

Brand/reputation

6.481. The brand or reputation of a banker or a bank can influence a business customer's choice in their lender. Unlike other types of consumer or business goods, banking products and relationships generally involve a high degree of trust.[1193] Therefore, the brand and reputation of a bank are important in gaining new customers' businesses and increasing customer loyalty, which can form a competitive advantage for the bank.

6.482. The ACCC notes that ANZ has also submitted that some customers may also prefer to engage with large banks, because they are perceived as being more resilient in times of economic hardship and are more likely to support the customer.[1194]

Interrelationships between retail and business banking markets

6.483. Banks tend to focus on 'customer segments' rather than 'product' segments per se.[1195] Business customers with home loan needs, or as ANZ calls it, 'BOHOs', represent a significant proportion of SME customers given many of them are also individual retail banking customers. **[Redacted - Confidential]**,[1196] **[Redacted - Confidential]**.[1197]

6.484. **[Redacted - Confidential]**.[1198]

6.485. **[Redacted - Confidential]**.[1199] **[Redacted - Confidential]**.[1200]

6.486. **[Redacted - Confidential]**:

[1190] See Australian Banking Association, Submission to the Regional Banking Taskforce, 17 December 2021, pp 6-7; **[Redacted - Confidential]**.

[1191] Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [33]–[34]; **[Redacted - Confidential]**.

[1192] Australian Small Business and Family Enterprise Ombudsman, media release, Banking services essential to rural and regional small businesses, 22 December 2021, accessed on 13 July 2023.

[1193] See for example, ANZ application for Merger Authorisation, 2 December 2022, [6.50(c)].

[1194] ANZ application for Merger Authorisation, 2 December 2022, [6.122(a)]; Statement of Isaac Rankin (ANZ), 30 November 2022, [90].

[1195] **[Redacted - Confidential]**.

[1196] **[Redacted - Confidential]**.

[1197] **[Redacted - Confidential]**.

[1198] **[Redacted - Confidential]**.

[1199] **[Redacted - Confidential]**.

[1200] **[Redacted - Confidential]**.

- **[Redacted - Confidential]**.[1201]
- **[Redacted - Confidential]**.[1202]
- **[Redacted - Confidential]**.[1203]

6.487. As such, it is clear that competition in the retail and business banking markets are interrelated. Banks compete to broaden their relationships with their customers and gain more share of their customers' wallets. Banks with a large retail customer base have an advantage in winning SME customers because it is easier for them to cross-sell business and retail banking products to their customers.

Competition analysis

Market concentration

6.488. The combined total lending for SMEs in April 2022 was about $450 billion (about $138.4 billion for small business lending and $312.6 billion for medium business lending).[1204]

6.489. Table 10 shows the shares of the top 11 banks in SME lending and SME deposits,[1205] both nationally and in Queensland, derived from loan and deposits data collected by the ACCC.[1206] While the ACCC considers that competition may occur in a narrower geographic region than at the state level, it does not have access to all the banks' data at that level of granularity.

6.490. The ACCC has collected lending and deposits data from the top 11 banks in SME banking and used these as the basis for calculating the figures in Table 10. The ACCC considers that the figures in Table 10 provide a useful insight into the relative competitive positions of the top 11 banks and market concentration in SME lending, as they are the closest competitors to the merger parties in terms of the products and services they provide to SME customers and collectively they issue about **[Redacted - Confidential]** of SME debt in the national market.[1207]

6.491. The ACCC acknowledges that this method of calculating shares in respect of SME lending would likely overstate the actual market shares of the 11 banks in question, as other small banks or non-bank lenders in the market (such as vehicle finance providers) are not accounted for. However, the ACCC considers that Table 10 still provides a reasonable indication of the banks' market shares on a national and Queensland basis, noting the data limitation.

6.492. The ACCC also notes there are other limitations in the data, due to the difficulties of excluding loans or deposits data related to agribusiness customers from the SME

1201 **[Redacted - Confidential]**.

1202 **[Redacted - Confidential]**.

1203 **[Redacted - Confidential]**.

1204 Australian banking Association, Lending to Australian SMEs.

1205 These entities are identified based on **[Redacted - Confidential]**. See footnote 79 for more information.

1206 Based on ACCC analysis of data provided by **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]** **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**. Data was collected using APRA's definition of small and medium businesses, which refer to businesses with a turnover of less than $50 million. APRA does not have SME definition for deposit products. The data on SME deposits is based on banks' estimate, excluding large-sized business customers.

1207 Based on ACCC analysis of data provided by the 11 banks and sourced from Reserve Bank of Australia, Lending to Business – Business Finance Outstanding by Business Size and Interest Rate Type – D14.

lending and deposit dataset. For example, the ACCC notes that Table 10 includes Rabobank, who focuses primarily on agribusiness banking rather than SME banking in general.[1208] SME deposit data is also subject to potential differences between banks' in how they internally classify their customers, as there is no consistent definition of SME for the purpose of collecting deposit data.

6.493. **[Redacted - Confidential].**[1209]**[Redacted - Confidential]**.

6.494. The ACCC has taken these limitations into account when assessing the data in Table 10.[1210]

Table 10 Share of SME lending and SME deposits nationally and in Queensland, estimated using top 11 banks' quarterly data, average from January 2022 – December 2022

[Redacted – Confidential]

Source: ACCC analysis of data collected from banks.

Notes: SME lending data includes loans to small and medium agribusinesses. Unlike SME lending data, which follows APRA's definition of SMEs, there is no consistent definition of SME in deposits. The deposit data is based on banks' estimates.

6.495. Suncorp Bank and ANZ are the **[Redacted - Confidential]** and **[Redacted - Confidential]** largest SME bank lenders in Queensland respectively.[1211] Their positions are reversed in respect of Queensland SME deposits. This demonstrates that ANZ and Suncorp Bank each have material market share in SME lending and deposits markets in Queensland. The Proposed Acquisition would result in ANZ almost doubling its market share in SME lending in Queensland.

6.496. Given a lack of data from entities outside the top 11 banks, the ACCC considers that it is difficult to calculate the HHIs for SME banking in Queensland with a reasonable degree of precision.

6.497. The ACCC considers the SME lending and SME deposits markets are concentrated. The major banks hold more than **[Redacted - Confidential]** of the shares in both national and Queensland markets. From a national perspective, no second-tier bank has comparable market share to any of the major banks. In Queensland SME lending, only **[Redacted - Confidential]** and **[Redacted - Confidential]** have market shares close to the smallest of the major banks (**[Redacted - Confidential]**).

Competitors in SME banking market

6.498. There are many types of lending products available to SMEs and there is a variety of banks and other lenders competing to supply lending products to SME customers, including:

- major and second-tier banks, such as NAB, Westpac, Commonwealth Bank, BEN and Bank of Queensland;
- banks with limited or no physical points of presence, including ING, Macquarie Bank, and Judo Bank; and

[1208] **[Redacted - Confidential]**.

[1209] **[Redacted - Confidential]**.

[1210] Based on ACCC analysis of data provided by the 11 banks and sourced from Reserve Bank of Australia, Lending to Business – Business Finance Outstanding by Business Size and Interest Rate Type – D14.

[1211] Expert report of Mary Starks**,** 16 June 2023, [9.253].

- non-bank lenders and fintechs that focus on particular products or services such as asset finance and commercial property finance. [1212]

6.499. On the other hand, SME deposit products can only be provided by ADIs.[1213]

6.500. Banks typically offer a broad suite of business and retail products and services that span across lending, deposit, credit, transaction and advisory services. Some SME customers may opt to access finance from banks both for ease of managing their money across their personal and business accounts together, as well as both deposits and loan products. Some SME customers may also use personal lending for business purposes.

6.501. Banks are the main source of finance for SMEs; they issued up to 91% of the total outstanding lending to SMEs as at April 2021.[1214] Most SME lending (by value) issued by banks is fully or partially secured.[1215] Banks generally serve the less risky end of the SME market and require property as collateral. [1216] About half of all outstanding lending to small businesses (by value) is secured by residential property.[1217]

6.502. Internal bank documents reviewed by the ACCC suggest that banks perceive competition in SME lending as being quite strong, and there is a view commonly held by market participants that **[Redacted - Confidential]** compete particularly aggressively in this space.[1218] Judo Bank is considered to be a challenger bank in SME banking but remains very small.[1219] Macquarie Bank also appears to have performed well in terms of **[Redacted - Confidential]**.[1220] Based on its review of internal bank documents, the ACCC considers that second-tier banks, while not market leading, compete strongly for SME customers with smaller transaction sizes.[1221]

6.503. Mr James Lane, State manager of business banking – Queensland in the Commercial division at ANZ, states that in Queensland, the competitors that he (ANZ) sees most often in the business banking segment (i.e. **[Redacted - Confidential]**) are, in order, NAB, CBA, Westpac and, more recently, Judo Bank. He states that he also sees Suncorp Bank and Bank of Queensland from time to time, but rarely sees BEN/Rural Bank.[1222]

1212 ANZ application for Merger Authorisation, 2 December 2022, [7.123]; Statement of Isaac Rankin (ANZ), 30 November 2022, [92] and [93]; Statement of Guy Mendelson (ANZ), 1 December 2022, [71(c)(i)]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, p 31.

1213 ANZ application for Merger Authorisation, 2 December 2022, [6.130(a)].

1214 Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, p 15; **[Redacted - Confidential]**.

1215 Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, p 17; **[Redacted - Confidential]**.

1216 Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, pp 18–19.

1217 Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, p 18.

1218 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**, **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; Australian Financial Review, CBA looks to secure more business lending with cash flows, May 2022.

1219 **[Redacted - Confidential]**; Second statement of Shayne Elliott (ANZ), 17 May 2023, [45(b)].

1220 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1221 See for example, **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1222 Statement of James Lane (ANZ), 5 July 2023, [25].

Non-bank lenders and fintechs

6.504. Although their presence in the market is small, there appears to be growing competition from non-bank lenders and fintechs. About a quarter of 727 SMEs surveyed by Scottish Pacific in 2021 planned to use a non-bank lender to fund new business investment.[1223] ANZ also refers to RFi's survey of SMEs in June 2021, which similarly show about 25% of survey respondents intend to borrow from alternative lenders or fintechs.[1224]

6.505. In 2021, the Productivity Commission finds that a surge of new lenders including non-bank lenders entered into the SME lending market and some lenders can rely on emerging technologies to quickly assess the creditworthiness of SMEs. For example, fintech lenders can quickly approve modest, short-term loans for SMEs.[1225]

6.506. Non-bank lenders and fintechs can introduce innovation and compete effectively in niches of the market.[1226] The Productivity Commission notes that the 'riskier end of the SME market' is predominantly served by non-bank lenders and that fintech lenders have emerged to service SMEs with relatively small and short-term loans.[1227] **[Redacted - Confidential]**.[1228]

6.507. However, non-bank lenders and fintechs do not appear to impose material competitive constraint on banks. Non-bank lenders do not have significant market share in business lending and their growth is limited.[1229] They account for less than 9% of the total outstanding lending to SMEs as at April 2021.[1230] BEN submits that non-bank lenders do not collect customer deposits and therefore do not have access to a significant source of funding that banks can leverage and they have limited ability to competitively constrain the major banks.[1231]

6.508. The ACCC notes that banks monitor non-bank lenders and fintechs' activities to some extent, but it appears they do not consider them as close competitors or take them into account when making pricing decisions.[1232]

6.509. Also, non-bank lenders and fintechs generally do not provide a comparable range of business products as banks do, which may make them less attractive to customers that prefer to borrow from their main financial institutions or to obtain a suite of products from the same provider. Non-bank lenders also tend to lend to riskier borrowers that may not otherwise be financed by banks and therefore charge higher prices.[1233] So, they do not compete effectively against banks for low-risk borrowers.

1223 Mortgage Professional Australia, SMEs seek finance to overcome challenges, 28 October 2022, accessed on 10 May 2023; Scottish Pacific, SME Growth Index 2021, September 202, pp 5, 17.

1224 ANZ application for Merger Authorisation, 2 December 2022, [7.153 (a)]; **[Redacted - Confidential]**.

1225 Productivity Commission, Small business access to finance: The evolving lending market, 2021, p 2.

1226 **[Redacted - Confidential]**; **[Redacted - Confidential]**; see for example, Australian Financial Review, Neobank targets a big gripe of small business – locked-up cash, 24 January 2023.

1227 Productivity Commission, Small business access to finance: The evolving lending market, 2021, p 31.

1228 **[Redacted - Confidential]**.

1229 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1230 Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, p 15. **[Redacted - Confidential]**.

1231 Bendigo and Adelaide Bank submission, 3 March 2023, [5.1].

1232 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1233 Productivity Commission, Small Business Access to Finance: The evolving lending market, 2021, p 31.

Role of business brokers

6.510. Business brokers play an increasing role in driving competition in SME lending market.[1234] Brokers facilitate price competition when negotiating with multiple lenders for a deal and increase customers' bargaining power by assisting them to compare business products more easily.[1235] Brokers also enable banks to gain some insights into the competitiveness of their offerings during negotiations, and can therefore encourage more competition between banks.[1236] Brokers have, among other things, contributed to customers being less sticky than they used to be, by helping them switch banks more easily.[1237]

6.511. Brokers are also a critical channel for online, new and non-bank lenders to enter and expand in the business lending market with no physical presence.[1238] The Mortgage and Finance Association of Australia submits that brokers create an awareness of the availability of both traditional and non-traditional products in the marketplace, including those offered through fintechs such as online small business lenders and private funding.[1239] Brokers can assist SMEs to broaden their awareness of available lending options, as well as build trust by conveying whether lenders are reputable.[1240]

6.512. Brokers originate a significant proportion of new SME loans (**[Redacted - Confidential]**[1241] **[Redacted - Confidential]**[1242]).[1243] Scottish Pacific's survey of SMEs reports that 40% of SMEs use their brokers to source new finance.[1244] **[Redacted - Confidential]**.[1245] However, not all banks rely heavily on brokers to acquire customers, **[Redacted - Confidential]**.[1246] The Mortgage and Finance Association of Australia submits that the proportion of new business lending originating from commercial broker varies significantly across different lenders, and that it is very likely that non-bank and online lenders source a higher proportion of their customers through brokers compared to larger lenders with a physical presence.[1247]

6.513. The use of brokers in business lending is increasing.[1248] The Mortgage and Finance Association of Australia submits that mortgage brokers are increasingly writing

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1234 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1235 **[Redacted - Confidential]**.

1236 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1237 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1238 For example, Mortgage Professional Australia, SMEs seek finance to overcome challenges, 28 October 2022.

1239 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, p 19.

1240 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, p 19, referring to Productivity Commission, Small business access to finance: The evolving lending market, 2021, p 11.

1241 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1242 **[Redacted - Confidential]**.

1243 ANZ application for Merger Authorisation, 2 December 2022, [32]; Statement of Isaac Rankin (ANZ), 30 November 2022, [94]; Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [84].

1244 Scottish Pacific, SME Growth Index, April 2020, p 14.

1245 **[Redacted - Confidential]**.

1246 ACCC's analysis of banks' data: **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1247 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023**,** 26 May 2023, p 20; For example, based on ACCC analysis of banks' data, **[Redacted - Confidential]**have most of their SME loans originated by brokers; **[Redacted - Confidential]**.

1248 **[Redacted - Confidential]**. The role of brokers in SME deposit market is not significant as customers with only deposit needs do not use brokers: **[Redacted - Confidential]**.

commercial loans. As of September 2022, 31.8% of the total mortgage broker population was operating in the commercial lending space, compared to 21.1% in 2018.[1249] **[Redacted - Confidential]**.[1250]

6.514. Many banks recognise the importance of engaging with brokers to win or retain customers as part of their business banking strategies.[1251] Banks compete against each other to win brokers' businesses, but they also compete against brokers on services to acquire customers directly.

6.515. Bank of Queensland submits that while brokers allow smaller banks to access consumers and save them distribution costs, it does not eliminate the economies of scale still enjoyed by the major banks. [1252]

Suncorp Bank's competitiveness

6.516. As shown in Table 10, Suncorp Bank has small market share nationally but has relatively larger market share in Queensland. **[Redacted - Confidential]**.[1253] **[Redacted - Confidential]**.[1254]

6.517. The ACCC notes that **[Redacted - Confidential]**.[1255] **[Redacted - Confidential]**.

6.518. ANZ submits that Suncorp Bank is not a particularly strong competitor to ANZ **[Redacted - Confidential]** in SME banking.[1256] ANZ and Suncorp Group submit that Suncorp Bank is not a significant driver of pricing, innovation, or product development in relation to business banking products.[1257] **[Redacted - Confidential]**.[1258] Only **[Redacted - Confidential]** of Suncorp Bank's business customers identify Suncorp Bank as their main financial institution.[1259]

6.519. **[Redacted - Confidential]**.[1260] **[Redacted - Confidential]**.[1261] **[Redacted - Confidential]**.[1262] However, this issue seems to primarily affect SME customers with **[Redacted - Confidential]** in lending, and not necessarily small business customers**[Redacted - Confidential]**.[1263]

1249 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023**,** 26 May 2023, p 19.

1250 **[Redacted - Confidential]**.

1251 **[Redacted - Confidential]**; See for example, AustralianBroker, Brokers on Suncorp Bank's new digital offerings, accessed on 6 July 2023.

1252 Bank of Queensland submission, 24 February 2023, p 9.

1253 **[Redacted - Confidential]**.

1254 Based on ACCC analysis of 11 banks' data: **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1255 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1256 ANZ application for Merger Authorisation, 2 December 2022, **[Redacted - Confidential]**, [7.141]-[7.148]; Statement of Isaac Rankin (ANZ), 30 November 2022, [102]–[104].

1257 ANZ application for Merger Authorisation, 2 December 2022, [7.141]; Suncorp Group response to interested party submissions, 7 February 2023, p.3; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [6.7].

1258 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1259 ANZ application for Merger Authorisation, 2 December 2022, [6.132].

1260 **[Redacted - Confidential]**.

1261 **[Redacted - Confidential]**.

1262 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1263 **[Redacted - Confidential]**.

6.520. **[Redacted - Confidential]**.[1264] **[Redacted - Confidential]**.[1265] **[Redacted - Confidential]**.[1266]

6.521. However, Suncorp Bank is by no means a failing or uncompetitive bank, as demonstrated by third parties' submissions, and Suncorp Group's stated intention to retain Suncorp Bank if the Proposed Acquisition is unsuccessful.[1267] **[Redacted - Confidential]**. [1268]

6.522. As Ms Starks' report notes, the areas where Suncorp Bank says it is struggling are quite specific, mostly about **[Redacted - Confidential]**. Suncorp Bank appears to capitalise on its comparative strengths in providing a more tailored, personalised service.[1269] This is consistent with the evidence provided by Suncorp Bank, where it states that **[Redacted - Confidential]**.[1270] There are signs that Suncorp Bank's business banking performance is improving,**[Redacted - Confidential]**.[1271] It is evident that Suncorp Bank is incrementally improving its services to address customer pain points.[1272]

6.523. Judo Bank submits that Suncorp Bank is a vigorous and effective competitor, particularly for Queensland SMEs and other customers.[1273] Mr Hill submits that based on its past financing activities, Suncorp Bank had provided lending on more competitive terms than ANZ and that the proposed acquisition will increase the cost of borrowing for all Suncorp Bank's customers.[1274]

Suncorp Bank's price competitiveness

6.524. **[Redacted - Confidential]**.[1275]

6.525. Ms Starks' report contains data analysis that shows **[Redacted - Confidential]**.[1276] **[Redacted - Confidential]**.[1277] The ACCC considers this to be an indicator of Suncorp Bank's price competitiveness.

6.526. **[Redacted - Confidential]**.[1278] **[Redacted - Confidential]**.[1279]

1264 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1265 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1266 **[Redacted - Confidential]**.

1267 See for example, Judo Bank submission, 7 February 2023, p. 3; Bank of Queensland submission, 23 February 2023, p 10; ANZ application for Merger Authorisation, 2 December 2022, Executive Summary, [2].

1268 **[Redacted - Confidential]**.

1269 Supplementary expert report of Mary Starks, 7 July 2023, [7.3]-[7.4].

1270 **[Redacted - Confidential]**.

1271 See for example. **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1272 See for example, **[Redacted - Confidential]**.

1273 Judo Bank submission, 7 February 2023, p. 3.

1274 Sinclair Hill submission,, 13 January 2023, p 1.

1275 **[Redacted - Confidential]**.

1276 **[Redacted - Confidential]**.

1277 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1278 **[Redacted - Confidential]**.

1279 **[Redacted - Confidential]**.

6.527. **[Redacted - Confidential]**.[1280]

6.528. Also, **[Redacted - Confidential]**.[1281] This indicates that Suncorp Bank forms part of the pool of competitors in the SME banking market that can exert competitive pressure on price to some extent.

Suncorp Bank's differentiation

6.529. Despite **[Redacted - Confidential]**, Suncorp Bank has considerable customer advocacy, as demonstrated in its **[Redacted - Confidential]**.[1282] DBM Consultants, engaged by Suncorp Bank in May 2022, analysed that the key drivers of Suncorp Bank's customer advocacy have been **[Redacted - Confidential]**.[1283] There is also evidence that Suncorp Bank has improved its digital offerings and services for brokers and have received very positive feedback from brokers.[1284]

6.530. Suncorp Bank is very competitive in terms of customer service and care. **[Redacted - Confidential]**.[1285] Although many other banks also use a relationship-model, **[Redacted - Confidential]**, the quality of Suncorp Bank's customer service is apparently better than the major banks'. For instance, Suncorp Bank allocates a much smaller number of SME customers (**[Redacted - Confidential]**) to each of its relationship managers, compared to ANZ (**[Redacted - Confidential]**).[1286] While this is not a perfect proxy for measuring relationship management service quality, it supports an inference that Suncorp Bank's customers get more personalised service and/or access to their bankers.

6.531. Bank of Queensland submits that regional banks like Suncorp Bank are important drivers of competition with the major banks and between themselves, and they generally seek to distinguish themselves on product dimensions other than price, such as customer care and service levels.[1287] Ms Starks states that Suncorp Bank's relationship model is similar to other regional banks and can be differentiated from the major banks.[1288] ANZ submits that the evidence provided by ANZ executives is strongly contrary to the proposition that Ms Starks made.[1289]

6.532. Suncorp Bank has strong brand recognition in Queensland.[1290] **[Redacted - Confidential]**.[1291] **[Redacted - Confidential]**.[1292] **[Redacted - Confidential]**.[1293]

1280 **[Redacted - Confidential]**.

1281 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1282 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1283 **[Redacted - Confidential]**.

1284 See for example AustralianBroker, Brokers on Suncorp Banks new digital offerings, 7 October 2022, accessed on 6 July 2023.

1285 **[Redacted - Confidential]**.

1286 **[Redacted - Confidential]**; **[Redacted - Confidential]**; Statement of James Lane (ANZ), 5 July 2023, [12]-[14]. A customer lending group is an amalgamation of accounts and borrowers based on a common linkage that results in a related risk (generally arising through ownership, management, cash flow or security).

1287 Bank of Queensland submission, 24 February 2023, p 10;**[Redacted - Confidential]**.

1288 Expert report of Mary Starks, 16 June 2023, [9.257].

1289 ANZ response to the ACCC independent expert reports, 17 July 2023, [6.12].

1290 ANZ application for Merger Authorisation, 2 December 2022, [3.8]; Supplementary expert report of Mary Starks, 7 July 2023, [7.6]; **[Redacted - Confidential]**.

1291 **[Redacted - Confidential]**.

1292 **[Redacted - Confidential]**.

1293 **[Redacted - Confidential]**.

6.533. Given the brand recognition, branch network and customer relationships that Suncorp Bank has built over time, it can exert strong competitive constraints in Queensland. Mr Rankin acknowledges that regional banks, such as Suncorp Bank, tend to win a higher volume of business in their 'home' regions due to their historical footprint and this largely reflects the value of their brand and greater physical presence in those regions.[1294] **[Redacted - Confidential]**, reflecting the relevance of Suncorp Bank's Queensland branch network and customer relationships in customers' choice.[1295]

6.534. While much smaller than major banks, Suncorp Bank has sufficient scale as a traditional bank to offer a comparable range of (both retail and business banking) services and products at competitive prices, posing as a realistic alternative to the major banks for SME customers in Queensland. **[Redacted - Confidential]**.[1296]

6.535. Also, Suncorp Bank's competitiveness is stronger in some industry segments relative to others. This reflects the need for regional and challenger banks to make strategic choices for their business banking segments to pursue growth while balancing investment choices.[1297] **[Redacted - Confidential]**.[1298]

6.536. **[Redacted - Confidential]**.[1299]

Closeness of competition between ANZ and Suncorp Bank

6.537. ANZ submits that ANZ and Suncorp Bank are not each other's closest competitor.[1300] ANZ submits that ANZ and Suncorp Bank have businesses that are generally complementary in relation to customer proposition and geographic coverage.[1301]

6.538. ANZ submits that Suncorp Bank is not a key input for ANZ when making decisions in respect of pricing commercial banking products and services, and ANZ has not identified Suncorp Bank as being a key competitor in any segment of the commercial banking services market.[1302]

6.539. ANZ's refinancing data indicates that **[Redacted - Confidential]**.[1303] **[Redacted - Confidential]**.[1304]

6.540. ANZ submits that ANZ and Suncorp Bank's business customer portfolio compositions are different.[1305] Suncorp Bank's SME customer portfolio is more weighted towards **[Redacted - Confidential]**, whereas ANZ's business lending is more weighted towards **[Redacted - Confidential]** businesses and its deposits is weighted towards

1294 Statement of Isaac Rankin (ANZ), 30 November 2022, [93(c)].

1295 **[Redacted - Confidential]**.

1296 **[Redacted - Confidential]**.

1297 **[Redacted - Confidential]**.

1298 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1299 **[Redacted - Confidential]**.

1300 ANZ application for Merger Authorisation, 2 December 2022, [7.198]-[7.199]; ANZ response to interested party submissions, 9 March 2023, [1.5(a)], [2.15]-[2.19].

1301 ANZ response to interested party submissions, 9 March 2023, [1.5(a)], [2.15]-[2.17].

1302 ANZ application for Merger Authorisation, 2 December 2022, [7.143].

1303 **[Redacted - Confidential]** based on averaged quarterly data for 2022 at the national level.

1304 Expert report of Mary Starks, 16 June 2023, [9.260], [Figure 37].

1305 ANZ application for Merger Authorisation, 2 December 2022, [7.143].

[Redacted - Confidential] businesses.[1306] ANZ also submits that Suncorp Bank does not have the same presence as ANZ in servicing larger business customers.[1307]

6.541. ANZ submits that ANZ and Suncorp Bank have pursued different strategic decisions, which has resulted in differences in their customer cohorts.[1308] **[Redacted - Confidential]**.[1309]

6.542. However, ANZ has indicated that it seeks to be the leading bank for SMEs looking to start, run or grow, meaning that it may compete more closely with Suncorp Bank for **[Redacted - Confidential]** customers in the future.[1310] **[Redacted - Confidential]**.[1311]

Customer bargaining position and switching behaviour

6.543. ANZ submits that many business customers seek to negotiate pricing and terms with their banks.[1312] ANZ submits that customers' ability to bargain is reflected in the significant number of deals that are escalated to higher tiers of approval in accordance with ANZ's pricing discretion framework.[1313] **[Redacted - Confidential]** it appears that the higher lending a business customer has, the more bargaining power it can exercise,**[Redacted - Confidential]**.[1314]

6.544. ANZ submits that business customers can and do multi-bank, and will obtain products from multiple providers according to their particular requirements.[1315] For example, **[Redacted - Confidential]** of ANZ's business customers (excluding specialist distribution customers) have secured banking products with other financial institutions.[1316] Cameron Research finds that 14% of the surveyed small businesses that have not changed bank in the past two years have commenced dealing with another bank. Cameron Research observes that multi-banking has steadily increased over time.[1317]

6.545. ANZ also submits that **[Redacted - Confidential]**.[1318]

6.546. Despite ANZ's submission, other sources indicate customer switching rates are very low, notwithstanding the increasing role of brokers. Cameron Research finds that about **[Redacted - Confidential]** of the surveyed small businesses changed bank in the past two years, and a further **[Redacted - Confidential]** had considered changing bank but did not change.[1319] Cameron Research notes that **[Redacted - Confidential]**. [1320]

1306 ANZ application for Merger Authorisation, 2 December 2022, [6.95], [7.144].

1307 ANZ application for Merger Authorisation, 2 December 2022, [7.145].

1308 ANZ response to interested party submissions, 9 March 2023, [1.5(a)].

1309 **[Redacted - Confidential]**.

1310 ANZ application for Merger Authorisation, 2 December 2022, [7.144].

1311 **[Redacted - Confidential]**.

1312 ANZ application for Merger Authorisation, 2 December 2022, [7.130].

1313 ANZ application for Merger Authorisation, 2 December 2022, [7.130]; Statement of Isaac Rankin (ANZ), 30 November 2022, [71].

1314 ANZ application for Merger Authorisation, 2 December 2022, [7.130]; **[Redacted - Confidential]**.

1315 Statement of Isaac Rankin (ANZ), 30 November 2022, [86], [96] - [97]; **[Redacted - Confidential]**ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [6.11].

1316 ANZ application for Merger Authorisation, 2 December 2022, [6.123].

1317 ANZ application for Merger Authorisation, 2 December 2022, [7.128]-[7.129]; **[Redacted - Confidential]**.

1318 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [6.8].

1319 **[Redacted - Confidential]**.

1320 **[Redacted - Confidential]**.

6.547. Ms Starks considers that the evidence provided by the merger parties suggests switching rates may have increased and some SMEs multi-bank, but the overall rate of switching remains low.[1321]

6.548. Mark Bennett, Head of Agribusiness within the Commercial division of ANZ, states that one of the main challenges to a customer switching banks is the administration associated with changing their bank account details with trading partners and any other they have a direct credit and debit arrangement with.[1322]

6.549. The ACCC notes that SME customers can be very 'sticky' when they hold multiple (personal and business) banking products with the same bank, particularly in respect of lending products.[1323] **[Redacted - Confidential]**.[1324] **[Redacted - Confidential]**.[1325] **[Redacted - Confidential]**.[1326]

6.550. The ACCC also notes that many SME customers obtain business products from the bank which they already have a retail banking relationship with. This is likely because some SME customers use their home loans, together with other personal banking products, to finance their businesses.[1327] For example, **[Redacted - Confidential]**.[1328] **[Redacted - Confidential]**.[1329]

6.551. Because of the friction of switching banks, the ACCC considers that the switching rate for SME customers is likely to be much lower compared to home loan customers. **[Redacted - Confidential]**.[1330] **[Redacted - Confidential]**.[1331]

Barriers to entry and expansion

6.552. ANZ submits that the merged entity will be competitively constrained by new entry and expansion, providing the examples of Judo Bank, Prospa, Liberty Financial Group, Tyro Payments, Zeller.[1332] Judo Bank submits that the merged entity is unlikely to be constrained by the prospect of new entry and expansion in business banking.[1333] Judo Bank considers that there are 'very real and continued barriers to entry for new entrants', including regulatory capital requirements, operational costs, funding disadvantages, and risk weight settings.[1334]

6.553. Barriers to entry and expansion in the banking industry in general are high because of the regulatory barriers to become an ADI. There have not been many new ADIs in the business banking market owing to regulatory barriers. Judo Bank submits that it is the only challenger bank to enter the business baking market and thrive, indicating the height of barriers to entry.[1335]

1321 Expert report of Mary Starks, 16 June 2023, [3.43]-[3.46].

1322 Statement of Mark Bennett (ANZ), 1 December 2022, [104].

1323 Statement of Isaac Rankin (ANZ), 30 November 2022, [96]; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1324 **[Redacted - Confidential]**.

1325 **[Redacted - Confidential]**.

1326 **[Redacted - Confidential]**.

1327 **[Redacted - Confidential]**.

1328 **[Redacted - Confidential]**.

1329 **[Redacted - Confidential]**.

1330 **[Redacted - Confidential]**.

1331 **[Redacted - Confidential]**.

1332 ANZ application for Merger Authorisation, 2 December 2022, [7.149]-[7.156].

1333 Judo Bank submission, 18 April 2023, p 2.

1334 Judo Bank submission, 7 February 2023, p 3.

1335 Judo Bank submission, 18 April 2023, p 2.

6.554. However, the regulatory barriers to entry for SME lenders are lower if they do not offer SME deposit products (i.e. become an ADI). Non-bank lenders face less regulatory barriers than ADIs as they do not need to comply with prudential regulation.[1336] The Productivity Commission finds that the existing regulatory environment is conducive to competition and supports new entrants and products in the SME lending market and that non-bank business lending is lightly regulated in Australia.[1337] In her report, Ms Starks also referred to the Productivity Commission's findings and states that this suggests barriers to entry and expansion have fallen over time.[1338]

6.555. The ACCC considers that the role of dedicated relationship managers for a meaningful proportion of SME customers is likely to mean heightened barriers to entry and expansion. This is because it takes time and investment for lenders to attract and train bankers and place bankers close to the customers they serve. Further, the competition to attract and retain good SME bankers is strong.[1339] **[Redacted - Confidential]**.[1340] Non-bank lenders tend to service their customers via digital channels instead of the one-to-one relationship based model employed by banks.[1341] This indicates barriers to entry or expansion in relation to the supply of banking products and services to SME customers, given the preferences amongst some customers for one-to-one relationship management services.

6.556. The significant investment required for technology and digital offerings can also be a barrier to entry and expansion if there is little prospect to recoup investment costs due to lack of scale. **[Redacted - Confidential]**.[1342] However, this barrier can be lower for new entrants that have no legacy technology systems and are able to utilise lower-cost platforms.[1343]

6.557. In her report, Ms Starks notes that Judo Bank has made a submission about the cost of setting up branches as a barrier to expansion, but notes that the importance of branches for customers and competition is reducing over time.[1344] Therefore, she considers the barriers to expansion for banks to set up new branches are likely to be low. [1345]

6.558. The ACCC considers that the barriers to entry in SME banking are high, given the regulatory capital requirements, operational costs and funding disadvantages against market incumbents. Given that many SMEs rely on transactional banking products and their preference to hold multiple business banking products together with the same institution, an effective competitor in SME banking is likely required to offer deposit products as well as loan products. As such, new entrants in SME banking will face high regulatory barriers.

1336 ANZ application for Merger Authorisation, 2 December 2022, [7.152(a)]; C. Hudson, S. Kurian, M. Lewis, Non-bank Lending in Australia and the Implications for Financial Stability, RBA Bulletin, 16 March 2023, p.27; **[Redacted - Confidential]**. Non-bank lenders are commonly Registered Financial Corporations who must hold an Australian financial services licence and are subject to licensee obligations. Banks are subject to the same requirements. See https://asic.gov.au/for-finance-professionals/afs-licensees/afs-licensee-obligations/ for more information.

1337 Productivity Commission, Small business access to finance: The evolving lending market, 2021, p 30.

1338 Expert report of Mary Starks, 16 June 2023, [9.270].

1339 **[Redacted - Confidential]**.

1340 **[Redacted - Confidential]**.

1341 **[Redacted - Confidential]**.

1342 **[Redacted - Confidential]**.

1343 **[Redacted - Confidential]**.

1344 Expert report of Mary Starks, 16 June 2023, [9.269].

1345 Expert report of Mary Starks, 16 June 2023, [9.272.1].

6.559. Also, customers' stickiness is very high, making it very difficult for a new entrant to win customers. Customers' tendency to use their personal bank for business banking mean that non-major banks with significantly smaller retail customer base are at a disadvantage in gaining business customers. For example, **[Redacted - Confidential]**.[1346] **[Redacted - Confidential]**.[1347] This creates a significant risk of sunk costs for new entrants as substantial investments are required to enter the market and to provide a compelling banking proposition to SME customers. These factors make the constraint imposed by the threat of meaningful entry in a timely manner low.

6.560. The ACCC notes the example raised by ANZ of the entry of Judo Bank. The ACCC observes that over the period of 4 years, since it gained its full banking licence, Judo Bank has managed to achieve a market share of **[Redacted - Confidential]** nationally, and that Judo Bank's market share **[Redacted - Confidential]**.[1348] Judo Bank's submissions to the ACCC are that barriers to entry are high which reflects its experience and challenges in entering these markets. The ACCC considers the example of Judo Bank's entry is consistent with its assessment that barriers to entry in a timely and sufficient manner are high, but not insurmountable.

6.561. The ACCC considers that barriers to expansion are lower for existing full-service banks compared to fintechs or non-bank lenders. This is because by offering a suite of personal and business banking products rather than individual specific loan products, banks are more likely than fintechs or non-bank lenders to acquire SME customers. Also, banks can offer more competitive pricing for lower risk secured lending given their lower cost of funding, making them more attractive lenders to customers who have collaterals and limiting the ability of non-bank lenders to expand.

6.562. Notwithstanding barriers to expansion for banks are lower, it is still not insignificant, and would include acquiring the right personnel to service SME customers on a one-to-one basis where necessary, or to provide the facilities required by specific SME customers, such as those who rely on branches for cash withdrawal and deposit services or those who require complex transactional banking services. In this regard, the barriers to expansion are lower for major banks compared to small banks.

ACCC's views

6.563. In comparison to the No-Sale Counterfactual, the Proposed Acquisition will reduce the number of competitors offering SME banking services in Queensland. Having acquired Suncorp Bank, ANZ will have incentives to bring Suncorp Bank's products and services in line with its own products and services. **[Redacted - Confidential]**.[1349] The ACCC expects that over time ANZ will rationalise the branch network of either Suncorp Bank or ANZ within Queensland **[Redacted - Confidential]**.[1350]

6.564. The Proposed Acquisition will result in a loss of consumer choice and competitive constraint resulting from the removal of Suncorp Bank's offerings from markets for the supply of SME banking products in Queensland. The ACCC acknowledges that SME customers have varied banking needs depending on the context of their businesses, their circumstances and their preferences, and Suncorp Bank's overall product and

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1346 **[Redacted - Confidential]**.

1347 **[Redacted - Confidential]**.

1348 **[Redacted - Confidential]**.

1349 **[Redacted - Confidential]**.

1350 **[Redacted - Confidential]**.

service offering will be more attractive to some SMEs than others. There is evidence showing that Suncorp Bank is a competitive bank. This is particularly evident in the following four aspects.

6.565. First, **[Redacted - Confidential]**. This is supported by Ms Starks' data analysis of the weighted average interest rates for fully secured SME loans in Queensland and the evidence obtained from the merger parties. [1351]

6.566. Second, Suncorp Bank's strong customer service propositions. Evidence obtained from Suncorp Group shows how significant this is to their customers and its business.[1352] The ACCC considers that this in part reflects that regional banks like Suncorp Bank are important drivers of competition both with the major banks and between themselves, because they generally seek to distinguish themselves on non-price product dimensions such as personalised service and customer care other than price.[1353] This is also reflected in Suncorp Bank's **[Redacted - Confidential]** which its internal documents indicate **[Redacted - Confidential]**.[1354]

6.567. Third, Suncorp Bank's strategic focus to compete harder in particular industry segments. **[Redacted - Confidential]**.[1355] The ACCC considers that this reflects the competitive dynamics that second-tier banks necessarily make strategic choices about the SME banking segments they target in order to pursue growth while balancing investment choices.

6.568. Fourth, Suncorp Bank's ability to leverage its reputation, branch network and customer relationships to compete strongly in Queensland. As Mr Rankin acknowledges, Suncorp Bank tends to win a higher volume of business in its 'home' region due to its historical footprint and this also reflects the value of Suncorp's brand and greater physical presence in Queensland.

6.569. The ACCC understands from Suncorp Group's submissions that **[Redacted - Confidential]**. While it may not be the strongest contender as a main financial institution, the ACCC considers Suncorp Bank can still compete, including on specific products or services. This is consistent with the evidence of Suncorp Bank's existing strategy **[Redacted - Confidential]**.[1356] As ANZ points out, competition for each 'unbundled' product, and providers who focus on those products, can be a competitive constraint.[1357]

6.570. **[Redacted - Confidential]**.[1358] **[Redacted - Confidential]**.[1359]

6.571. The ACCC notes that the removal of Suncorp Bank as an independent competitor occurs in a context where the supply of SME banking products in Queensland is concentrated, and the Proposed Acquisition would result in a material aggregation of market share. ANZ and Suncorp Bank each have significant market share of SME banking services in Queensland and the Proposed Acquisition will result in ANZ

1351 **[Redacted - Confidential]**.

1352 See for example, **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1353 See Bank of Queensland submission, 23 February 2023, p 10.

1354 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1355 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1356 **[Redacted - Confidential]**.

1357 ANZ application for Merger Authorisation, 2 December 2022, [6.132].

1358 **[Redacted - Confidential]**.

1359 **[Redacted - Confidential]**.

almost doubling its market share to **[Redacted - Confidential]** in SME lending in Queensland (see Table 10).

6.572. However, if there are likely effective competitive constraints post-merger, the above factors may be less significant. In this regard, the ACCC notes that Suncorp Bank and ANZ do not appear to be each other's closest competitors given the differences in their strategic focus, geographic presence and capabilities to serve medium to large business customers. Moreover, other competitors appear to impose a competitive constraint. Bank of Queensland will impose competitive constraints most like Suncorp Bank, given the similarities in their scale, physical presence and product range.

6.573. NAB, Westpac and Commonwealth Bank **[Redacted - Confidential]** will also impose constraint. However, given the existing focus of the major banks (which place less emphasis on personalised customer service and customer care) it is uncertain whether this ameliorates concerns around losing the constraint Suncorp Bank currently imposes. BEN and Judo Bank also impose constraints, although each has limitations. Judo Bank does not offer branch services and offers a more limited set of banking products and BEN has a limited presence in Queensland.

6.574. Barriers to expansion, particularly for small banks, are not insignificant. They include acquiring the right personnel to manage customer relationships where necessary, and providing the facilities or services required by specific groups of SME customers, such as those who rely on branches for cash or those who require complex transactional banking services. A lack of scale and resources can hamper small banks' ability to expand, and to compete on price due to funding disadvantages, further diminishing the competitive constraints they pose.[1360] Additionally, customer stickiness and the tendency of many SMEs to use their personal banks for business banking may mean that small banks, with a significantly smaller retail customer base, are at a major disadvantage vis-à-vis major banks in gaining business customers. This may act as a further barrier to expansion.

6.575. It is unlikely that the threat of new entry will impose any meaningful constraint. For new entrants there are high barriers to entry to becoming an Australian deposit-taking institution. Also, they face significant disadvantages in winning customers from market incumbents due to customer stickiness. Further, it is unlikely that new entrants would elect to build a branch network, meaning even if entry did occur it would not necessarily impose the same types of constraint as those imposed by legacy institutions. These factors combined mean that the prospect of new entry at a sufficient scale to impose a credible constraint is low.

6.576. In the Bendigo Merger Counterfactual, as in the factual, Suncorp Bank would be removed as a competitor, and this may also raise some level of concern. However, these concerns will not be as extensive, given the more limited geographic overlaps between BEN and Suncorp Bank and the lower levels of market concentration.

6.577. Additionally, the ACCC considers that a merged BEN/Suncorp Bank entity may also be a more effective competitor than either bank is separately for the reasons discussed in section 5 (Future with and without the Proposed Acquisition).

6.578. The ACCC considers that removing Suncorp Bank's differentiated offering is likely to reduce customer choice and competition in Queensland and that the constraint

[1360] See for example, **[Redacted - Confidential]**.

imposed by remaining competitors is insufficient to ameliorate those concerns. While the evidence is finely balanced, for the reasons set out above, the ACCC is not satisfied in all the circumstances that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition in a market or markets for the supply of SME banking services to customers in Queensland.

Agribusiness banking

6.579. ANZ and Suncorp Bank overlap in the supply of business banking products and services to agricultural businesses (agribusiness).[1361]

6.580. The ACCC has specifically examined the competitive impact arising from the Proposed Acquisition on the supply of business banking products to agribusiness customers in Queensland.

Background

6.581. Set out below is a brief overview of the information and submissions provided to the ACCC relevant to agribusiness banking. Some of this material, where relevant, is discussed in more detail in later sections.

ANZ and Suncorp Bank submissions

6.582. ANZ submits the Proposed Acquisition will not substantially lessen competition in the supply of business banking products to agribusiness customers in Australia. This is because:

- the proposed acquisition will not result in a material increase in market concentration;
- competition to supply business banking products and services to agribusinesses is intense and will remain intense following the proposed acquisition;
- ANZ and Suncorp Bank have propositions that complement each other;
- Suncorp Bank has not driven pricing, innovation or product development in the supply of business banking products and services to agribusinesses;
- the threat of effective new entry and expansion, as evidenced by Judo Bank's entry, will competitively constrain the combined business; and
- brokers are a material and growing constraint on incumbent financial institutions.[1362]

6.583. Suncorp Bank submits its competitive proposition in agribusiness banking is based on its relationship service offering, which is not unique to Suncorp Bank and is readily replicable.[1363]

Interested party submissions

6.584. Some interested parties raise concerns about the competitive impact of the Proposed Acquisition on the supply of agribusiness banking. For example:

1361 ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [10(b)], [Table 3].

1362 ANZ application for Merger Authorisation, 2 December 2022, [7.161]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.30]-[5.32].

1363 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [5(a)].

- Bendigo and Adelaide Bank (**BEN**) submits the Proposed Acquisition will lead to increased market concentration nationally and in regional Queensland, result in lower service levels for agribusiness customers, increase barriers to entry and expansion and remove a vigorous and effective competitor in agribusiness banking markets[1364]
- Bank of Queensland submits the Proposed Acquisition may lead to a loss of competition on non-price elements such as customer service and consumer care (through access to specialist bankers with local knowledge and industry expertise).[1365]
- BMAgBiz (agribusiness consultant) submits the Proposed Acquisition will lead to reduced choice in an already concentrated market in Queensland, dominated by the major banks, Rabobank and Suncorp Bank.[1366]
- CowBank (stock leasing company) submits that if Suncorp Bank was acquired by ANZ, there is reasonable prospect of other second-tier banks filling market gaps that may not be well serviced by the merged entity. However, it notes this would create disruption, inefficiency and uncertain outcomes for affected Suncorp Bank customers.[1367]
- Mr Hill (Suncorp Bank customer) submits that it does not support the Proposed Acquisition. It has provided an example of Suncorp Bank offering a loan on terms that are more favourable than ANZ.[1368]

6.585. A number of individual customers, including several farmers, also made submissions that express concerns about the Proposed Acquisition, partly relating to concerns about the conduct of their banks and handling of complaints.[1369] The ACCC notes that it received submissions of this kind from both ANZ and Suncorp customers.

Expert reports

6.586. Dr Williams states that the only relevant market for assessing the likely effect of the Proposed Acquisition is the market for the supply of loans to Queensland agribusiness.[1370] He states that the Proposed Acquisition is likely to cause a slight lessening in competition in the supply of loans to Queensland agribusiness, but this is unlikely to cause any increases in prices or decreases in the quality of service to agribusiness borrowers, noting ANZ and Suncorp Bank are not particularly close competitors and the market is reasonably dynamic due to the activity of Rabobank.[1371]

1364 Bendigo and Adelaide Bank submission, 3 March 2023, [6.3].

1365 Bank of Queensland submission, 23 February 2023, [5(c)].

1366 BMAgBiz submission, 18 January 2023, pp 2-3.

1367 CowBank submission, 18 April 2023, p 2.

1368 Sinclair Hill submission, 13 January 2023, p 1.

1369 Several of these submissions raise concerns about how ANZ or Suncorp Bank handled disputes with the individual customers and the conduct of banks in respect of dispute resolution more broadly. Submission by Ronald Feierabend, 19 January 2023; Submission by Jim Davidson, 19 January 2023; Submission by Peter Wheeldon, 19 January 2023; Submission by Goran Latinovich, 19 January 2023; Submission by Ronald Feierabend, 23 January 2023; Submission by Goran Latinovich, 23 January 2023; Submission by Henry Kummerfeld, 19 January 2023; Submission by Archer Field o/b/o others #1, 18 April 2023; Submission by Archer Field o/b/o others #2, 18 April 2023; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1370 Expert report of Dr Philip Williams, 1 December 2022, [12], [72].

1371 Expert report of Dr Philip Williams, 1 December 2022, [16]-[17]; Second expert report of Dr Philip Williams, 19 May 2023, [30] –[39], [55]–[60].

6.587. Professor King states the Proposed Acquisition will likely substantially lessen competition in the local/regional markets located substantially within Queensland because:

- ANZ and Suncorp Bank are two very significant competitors in agribusiness across a range of regional locations in Queensland;
- ANZ and Suncorp Bank's agribusiness operations in Queensland overlap;
- Suncorp Bank will be removed 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.[1372]

6.588. Ms Starks considers that the relevant geographic market for agribusiness banking is local/regional but may well be substantially larger than individual towns and their surrounding local areas.[1373] Ms Starks states there is evidence that Suncorp Bank is a vigorous and effective competitor in Queensland, particularly with respect to small and medium agribusinesses and in terms of non-price competition.[1374] In her initial report, she concludes that consumer harm arises from a reduction in consumer choice and competition stemming from the elimination of a strong competitor that competes differently from the major banks and Rabobank.[1375] In her supplementary report, she states that given the lack of data on local markets and the uncertainties around ANZ's plans with Suncorp Bank and the intentions of competing banks, she cannot say that there is a real chance of a substantial lessening of competition, but she cannot rule it out either.[1376]

Relevant market

6.589. For the reasons below, the ACCC considers the supply of agribusiness banking products should be assessed separately from markets for the supply of banking services to SME customers, or the broader market for the supply of business banking products contended for by ANZ.

Competitive overlap between Suncorp Bank and ANZ

6.590. As noted above, the key areas of competitive overlap between Suncorp Bank and ANZ are in relation to agribusiness and SME banking customers in Queensland.

6.591. While Suncorp Bank supplies agribusiness customers outside Queensland, the strongest area of geographic overlap is in Queensland.

Product dimension

6.592. ANZ and Suncorp Bank submit that agribusiness banking should be considered as part of a broader market for the supply of business banking products and services because all business customers generally require the same suite of products and

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1372 Bendigo and Adelaide Bank submission, 3 March 2023, p 9 citing Expert report of Professor Stephen King, 3 March 2023, [7(f)(i)].

1373 Expert report of Mary Starks, 16 June 2023, [6.31]; Supplementary expert report of Mary Starks, 7 July 2023, [5.15], [7.22].

1374 Expert report of Mary Starks, 16 June 2023, [9.220]; Supplementary expert report of Mary Starks, 7 July 2023, [7.23].

1375 Expert report of Mary Starks, 16 June 2023, [2.8].

1376 Supplementary expert report of Mary Starks, 7 July 2023, [7.35].

services.[1377] Suncorp Bank submits there is supply-side substitution because it administers a centralised supply of the same business banking products and services through the same IT infrastructure and organisation team.[1378]

6.593. BEN submits that agribusiness banking is a specialist segment which requires a tailored set of banking products that provide long-term funding with flexibility to deal with cycles of farming and these are not readily substitutable with banking products supplied to business customers in other sectors of the economy.[1379]

6.594. Professor King refers to the existence of Farm Management Deposit accounts[1380] and states that there is limited substitution in demand, as agribusiness customers demand specific products rather than broader business banking products.[1381] Professor King states that there is also limited substitution in supply because:

- agribusiness banking involves specialised knowledge and understanding of farm assets, and agribusiness bankers require special knowledge and skills

the supply of agribusiness products is 'relationship-focussed' and involves meeting with customers at the customer's premises. [1382]

6.595. Similarly, Ms Starks states that agribusiness-specific products such as Farm Management Deposit accounts suggest there is limited demand-side substitutability. That is, agribusinesses are unlikely to switch to other business banking products given the unique requirements of agribusiness lending or deposit products.[1383]

6.596. Ms Starks also states that there is limited supply-side substitutability between agribusiness banking products and other business banking products. This is because a supplier of agribusiness banking products needs to train or hire agribusiness bankers with specialist expertise that are located within suitable distances of agribusiness clients, and to invest in developing relationships with agribusiness and a good reputation/brand. This will likely require significant costs and time.[1384]

6.597. In her supplementary report, Ms Starks states it is likely that agribusiness customers would be hesitant to switch to a bank that does not have agribusiness expertise.[1385] Ms Starks notes that without direct evidence from agribusiness customers, it is difficult to predict whether they would be willing to consider a bank that had expertise in business banking and not agribusiness banking.[1386]

6.598. Suncorp Bank submits that while some specialised knowledge sits at the banker level, that knowledge can be built over time, and it is not sufficient to delineate a

[1377] ANZ application for Merger Authorisation, 2 December 2022, Executive summary [10], [7.160]; Suncorp Group response to interested party submissions, 7 February 2023, p 1; ANZ response to interested party submissions, 9 March 2023, [2.3]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.1], [5.8]-[5.11].

[1378] Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [176]; ANZ response to the ACCC independent expert reports, 17 July 2023, [4.6(b)].

[1379] Bendigo and Adelaide Bank submission, 3 March 2023, [6.3(a)].

[1380] A Farm Management Deposit account is unique to agribusinesses and is designed to assist primary producers to deal more effectively with fluctuations in cash flows. It enables a tax incentive for Australian primary producers to manage their financial risk and meet their business costs in low-income years by building up cash reserves.

[1381] Expert report of Professor Stephen King, 3 March 2023, [65(a)].

[1382] Expert report of Professor Stephen King, 3 March 2023, [65(b)].

[1383] Expert report of Mary Starks, 16 June 2023, [5.56].

[1384] Expert report of Mary Starks, 16 June 2023, [5.61], citing Statement of Mark Bennett (ANZ), 1 December 2022, [191].

[1385] Supplementary expert report of Mary Starks, 7 July 2023, [5.8].

[1386] Supplementary expert report of Mary Starks, 7 July 2023, [5.9].

separate market.[1387] The ACCC identifies some evidence against this proposition. **[Redacted - Confidential]**.[1388] **[Redacted - Confidential]**.[1389]

6.599. In response to Ms Starks' reports, ANZ submits that agribusiness and SME customers are serviced in fundamentally the same way.[1390] While this may be true in ANZ's case, this is not how all banks service their agribusiness customers. Also, as discussed above, relationship managers for agribusiness customers have specialised knowledge compared to those for other business customers. This is supported by the fact that some of ANZ's agribusiness customers are managed by bankers in a specialised agribusiness team, rather than generalist business bankers.[1391] Therefore, the ACCC considers that the service propositions offered to agribusiness customers can be differentiated from other business customers, notwithstanding that many other types of business customers also value a 'higher touch' relationship model.[1392]

6.600. ANZ also submits that generalist bankers can develop in a speciality over a reasonable timeframe.[1393] However, the basis for this proposition is that 'an agribusiness banker with at least 5 years' experience is usually proficient in managing customers across a range of agribusiness industries'.[1394] The ACCC considers that this is not equivalent to demonstrating that a generalist business banker could easily become an agribusiness banker. Moreover, the ACCC's view on supply-side substitutability is that it would require banks to be able to switch between the provision of different services quickly and without significant investment.[1395] ANZ's submission is not consistent with that requirement. The ACCC's views in respect of agribusiness banker specialisation are discussed further below.

6.601. The ACCC understands that business and agribusiness customers generally require a similar suite of business banking products, such as business loans, transaction accounts, savings accounts, business deposit, credit cards, equipment finance etc.[1396] However, there are some key differences between agribusiness banking products and other business banking products. For lending products, the seasonal and cyclical nature of agribusinesses means that customers may require a degree of flexibility in their repayment schedule.[1397] **[Redacted - Confidential]**.[1398]

6.602. For deposits products, agribusiness customers can have a Farm Management Deposit account, which allows them to self-manage income requirements across

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1387 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [177].

1388 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1389 **[Redacted - Confidential]**.

1390 ANZ response to the ACCC independent expert reports, 17 July 2023, [4.6(c)], [4.8].

1391 See for example, Third statement of Mark Bennett (ANZ), 7 July 2023, [10(b)].

1392 ANZ response to the ACCC independent expert reports, 17 July 2023, [4.8].

1393 ANZ response to the ACCC independent expert reports, 17 July 2023, [4.6(d)].

1394 Statement of Mark Bennett (ANZ), 1 December 2022, [64].

1395 ACCC, Merger Guidelines, November 2008, [4.24]-[4.26].

1396 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**, **[Redacted - Confidential]**.

1397 ANZ application for Merger Authorisation, 2 December 2022, [6.128] citing Statement of Mark Bennett (ANZ), 1 December 2022, [32]-[43].

1398 **[Redacted - Confidential]**.

different seasonal conditions.[1399] ANZ states other types of business customers are not eligible for Farm Management Deposit accounts.[1400]

6.603. Farm Management Deposit account is typically the key banking product that is specific to agribusiness customers.[1401] However, some banks also offer other agribusiness-specific banking products, for example:

- Suncorp Bank offers an At Call Farm Management Deposit Account with an Offset feature (where the deposit account balance can be used to offset eligible loan balance before the interest payable is calculated based)[1402]
- **[Redacted - Confidential]**[1403]
- Commonwealth Bank offers AgriGreen Loan, which is a business loan solely used for financing sustainable agricultural practices[1404]
- **[Redacted - Confidential]**.[1405]

6.604. Given the product differentiation for agribusiness customers, and the different service propositions and serviceability considerations that underpin agribusiness banking products, the ACCC has considered agribusiness products as a starting point for its consideration of the product dimension.

6.605. Because of the diversity and special banking requirements of agribusinesses, their banking products are typically tailored. Banks are likely to be more dependent on their relationship managers or bankers to understand the risks of their agribusiness customers to price or customise their products, compared to other types of business customers. Given the importance that agribusiness customers seem to place on relationship managers, the ACCC considers that it is highly likely that agribusiness customers would be less willing to deal with a banker that does not have experience or expertise in agribusiness lending or to obtain a business loan that does not cater for requirements specific to agribusinesses, such as flexibility in repayment schedules.

6.606. Applying the ‘hypothetical monopolist test’,[1406] the ACCC considers that many agribusiness customers would be unlikely to switch to general business banking products in response to a small but significant increase in price or reduction in quality (a ‘SSNIP’) due to the differences in product features and services. Similarly, on the supply side, the ACCC considers that banks supplying broader business banking services are unlikely to be able to promptly redeploy the assets and staff used in supplying those services to the supply of specialised agribusiness products and services in response to a SSNIP. Therefore, agribusiness banking should be treated as a separate market to business banking.

1399 Farm Management Deposit accounts are provided under a government scheme that is available to individuals who are carrying on a primary production business in Australia. For more information, see DAWE 2021, *Farm Management Deposits Scheme: 2021 evaluation*, Department of Agriculture, Water and the Environment, Canberra. CC BY 4.0.

1400 ANZ application for Merger Authorisation, 2 December 2022, [6.128].

1401 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1402 Suncorp Bank, Business Accounts – Farm Management Deposits Accounts, accessed on 4 July 2023.

1403 **[Redacted - Confidential]**.

1404 Commonwealth Bank of Australia, Agri Green Loan, accessed on 4 July 2023.

1405 **[Redacted - Confidential]**.

1406 ACCC, Merger Guidelines, November 2008, [4.19]-[4.22]: ‘…the ACCC will generally take a qualitative approach to market definition, using the Hypothetical Monopoly Test as an “intellectual aid to focus the exercise”’: *Seven Network Limited v News Limited* [2007] FCA 0162, [1786].

6.607. Even if (consistent with Suncorp Bank and ANZ submissions) agribusiness banking and business banking were treated as part of a single market, this would be unlikely to make a significant difference to the assessment of the competitive effects of the Proposed Acquisition as the number of substantial competitors serving agribusiness customers would not change on either definition and agribusiness banking would remain a significant section of that broader market.

Geographic dimension

6.608. ANZ submits that this market should be assessed at a national level because ANZ, Suncorp Bank and their competitors set products, policies and pricing at the national level.[1407] Suncorp Bank submits it has one credit policy and one pricing assessment framework which applies to all its business banking customers nationally, regardless of any regional differences in the profile of agribusiness customers.[1408]

6.609. ANZ submits that local factors may affect a particular pricing decision in agribusiness but it is not inconsistent with the relevant market having a national scope. ANZ states it is the customer's risk profile, not their geographic location in its own right, that is influential for pricing. ANZ states that agribusiness customers' risk profile is in part impacted by the customer's subsector or location because climate and other factors will impact a specific region.[1409]

6.610. ANZ submits that geographic and subsector diversity allows banks to reduce the overall risk across their portfolio and have the stability to support customers when required.[1410] ANZ submits that for this reason, it is not appropriate to examine competition at a local or regional level.[1411]

6.611. ANZ also submits that customers can and do acquire products from more than one bank and that banks do not need to have a local presence.[1412]

6.612. Bank of Queensland submits that it is arguable that there is regional or state market for agribusiness as it is not clear that agribusiness customers can or will switch to online services. Bank of Queensland submits that customers who have traditionally been driven by service based-banking, are more likely to opt for a physical presence compared to online.[1413] It also submits that to a significant extent, agribusiness customers seek bankers with local knowledge and industry expertise, particularly when they have business lending requirements and because of the cyclical nature of funding for agricultural enterprise.[1414]

6.613. Similarly, BEN submits that competition for the supply of agribusiness products occurs in local markets because agribusiness customers place a very high value on their relationships with bankers who understand their local area conditions and industry, as well as the ability to meet with them face-to-face. BEN submits that its agribusiness points of presence in 2022 correlates with particular local areas where

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1407 ANZ application for Merger Authorisation, 2 December 2022, [5.2] and [6.137]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.5]-[5.6].

1408 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [175].

1409 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.6].

1410 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.3]–[5.7].

1411 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.5].

1412 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.3(b)].

1413 Bank of Queensland submission, 23 February 2023, [5(a)-(b)].

1414 Bank of Queensland submission, 23 February 2023, [5(c)].

there are high levels of agribusiness debt, and the unbalanced distribution of these points of presence demonstrates the localised nature of such markets.[1415]

6.614. The interested parties' submissions are supported by Mr Bennet's (ANZ) statement, where he notes that 'agribusiness customers do not like it if their banker moves out of their region'.[1416]

6.615. **[Redacted - Confidential]**.[1417] **[Redacted - Confidential]**.[1418]

6.616. Professor King states that the geographic dimension of substitution in the agribusiness market is at a local or regional level, pointing to the 'relationship-focused method of engaging with agribusiness customers' and the localised scope of distance that can be reasonably covered in person by a relevant manager.[1419]

6.617. Professor King states that the purposive nature of market definition indicates that competitive analysis of the Proposed Acquisition 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 Proposed Acquisition is most likely to substantially lessen competition. He states that 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.[1420]

6.618. Dr Williams disagrees with Professor King's opinion that there are local/regional agribusiness markets because:

- local/regional markets can only be defined if there is evidence that the acquisition of assets in particular regional/local agribusiness markets might satisfy the substantive criteria for a contravention, and no such evidence is presented
- competition in agribusiness does not occur only at a local level, notwithstanding the importance of local relationship managers. ANZ makes decisions concerning agribusiness at the national, state and regional level
- banks seek to mitigate risk by developing a loan book that is geographically diverse. [1421]

6.619. In his second report, Professor King states that the information on internal ANZ decision making provides little if any useful information about either market definition for competition analysis or local competition.[1422] Further, Professor King states that the desire of banks to geographically diversify their agribusiness activities does not imply that local markets cease to exist, or that local competition is irrelevant.[1423] Professor King states that there is considerable qualitative evidence to show that there are local/regional agribusiness markets in Queensland, even if the quantitative data needed to perfectly identify a local/regional market does not exist.[1424]

1415 Bendigo and Adelaide Bank submission, 3 March 2023, [6.3(b)].

1416 Statement of Mark Bennett (ANZ), 1 December 2022, [107].

1417 **[Redacted - Confidential]**.

1418 **[Redacted - Confidential]**.

1419 Expert report of Professor Stephen King, 3 March 2023, [65(c)].

1420 Expert report of Professor Stephen King, 3 March 2023, [153].

1421 Second expert report of Dr Philip Williams, 19 May 2023, [30]–[39].

1422 Second expert report of Professor Stephen King, 28 June 2023, [18]-[21].

1423 Second expert report of Professor Stephen King, 28 June 2023, [22].

1424 Second expert report of Professor Stephen King, 28 June 2023, [77].

6.620. Ms Starks states (with similar reasoning as Professor King) that the geographic market for agribusiness banking is likely to be local or regional in scope, but limitations in the available data prevent a full assessment of competition at this granular level.[1425] Ms Starks outlines how a catchment area analysis may work in theory to assist the competition analysis.[1426] Ms Starks notes that brokers are used to a lesser extent in agribusiness banking, reflecting the importance of relationships and a face-to-face service model in agribusiness banking.[1427] She also notes that **[Redacted - Confidential]** suggests regional factors are important.[1428]

6.621. Ms Starks evaluates competition at the state-wide (Queensland) level while acknowledging that, in practice, the geographic markets are likely to be smaller than state-wide. She explains that calculating market shares at the state level may understate or overstate the level of competition in the sub-state markets.[1429]

6.622. In her supplementary report, Ms Starks further notes that banks think about their competitive strategies on the basis of individual regions where they choose to compete or not, and where they choose to compete more or less aggressively. This implies demand and supply conditions that vary from one local area or region to another.[1430] She disagrees that ANZ has shown that having a nationally diversified portfolio has a significant effect on agribusiness customers' decisions on who they bank with.[1431]

6.623. Ms Starks notes, in defining the geographic dimension of the relevant market, the objective is to identify the geographic space in which rivalry and competition take place.[1432] Ms Starks maintains her view that the relevant geographic market for agribusiness banking is local/regional but notes it may be substantially larger than individual towns and their surrounding local areas after taking into account the drive times of agribusiness relationship managers.[1433]

6.624. ANZ submits that Ms Starks has not considered the evidence that indicates there are wider markets for agribusiness customers than regional markets. First, a high proportion of ANZ's Queensland agribusiness customers (**[Redacted - Confidential]**) are portfolio managed and primarily use self-service options to manage their banking needs. Many agribusiness customers' day-to-day banking is typically done online or over the phone.[1434] Second, Rabobank successfully built its agribusiness portfolio starting with a presence only in State capitals.[1435]

6.625. While the ACCC accepts that Rabobank may have built its portfolio with a limited geographic presence, the ACCC considers that a more relevant question in determining the geographic boundary in which competition and rivalry occurs, is whether agribusiness customers would substitute a bank outside their local/regional areas when choosing a provider and how they would obtain new banking products

1425 Expert report of Mary Starks, 16 June 2023, [6.31], [6.41].

1426 Expert report of Mary Starks, 16 June 2023, [6.38].

1427 Expert report of Mary Starks, 16 June 2023, [6.32].

1428 Expert report of Mary Starks, 16 June 2023, [6.36].

1429 Expert report of Mary Starks, 16 June 2023, [6.39]-[6.40].

1430 Supplementary expert report of Mary Starks, 7 July 2023, [5.12].

1431 Supplementary expert report of Mary Starks, 7 July 2023, [5.14].

1432 Supplementary expert report of Mary Starks, 7 July 2023, [5.12], citing ACCC, Merger Guidelines, November 2008, [4.6].

1433 Supplementary expert report of Mary Starks, 7 July 2023, [5.15].

1434 ANZ response to the ACCC independent expert reports, 17 July 2023, [4.13(a)].

1435 ANZ response to the ACCC independent expert reports, 17 July 2023, [4.13(b)].

(i.e. remotely or in-person). The ACCC understands that agribusiness customers typically expect to negotiate new material business in-person, at their premises.[1436] The ACCC considers that there are factors – such as the need to meet with a relationship manager in person (even if rarely) or a preference for banks with local knowledge, a commitment to the local community or a local presence – that may limit agribusiness customers' considerations to the banks with agribusiness bankers based within their local/regional areas. This is so even if most agribusiness customers can conduct day-to-day banking online or remotely.

6.626. The ACCC has considered the geographic dimension in agribusiness banking with reference to demand and supply side substitution, noting the hypothetical monopolist or SSNIP test. The way banks set pricing may be relevant but is by no means determinative in defining the geographic boundaries of a relevant market. It is equally important to consider how agribusiness customers typically access or compare banking products and services.

6.627. Agribusiness customers' commodity production, and in turn their profitability and loan serviceability, can be materially affected by their local or regional climate, weather patterns and regulations. The competition to win agribusiness customers in an area therefore depends on the competing banks' risk appetites and familiarity with the customers' businesses, which can vary by location.[1437]

6.628. In summary, the ACCC considers that examining competition in the agribusiness banking market or markets should be done at a regional or state level, instead of nationally, because:

- agribusiness customers value specialised bankers with local knowledge and industry expertise (which can be specific to local areas and conditions).[1438]
- agribusiness bankers or relationship managers need to be located within reasonable distance to the customers they serve as they typically travel to the customer's premises or to a mutually agreeable location to meet with them.[1439]
- the geographical coverage of agribusiness bankers is likely to be wider than a local area, based on the distance that the bankers travel.[1440] Therefore, agribusiness customers are likely to be able to access relationship managers from banks outside their local government areas, but less likely from another state.

6.629. The ACCC considers that the relevant markets are likely to be regional in scope, rather than state-wide or national. However, it does not have sufficiently granular data available to conduct a detailed market on this basis. The ACCC has therefore assessed competition at a Queensland-wide level as a proxy for the regional markets within the state when considering the possible competition effects on agribusiness customers.

[1436] See for example, Statement of Mark Bennett (ANZ), 1 December 2022, [109].

[1437] See for example, Statement of James Lane (ANZ), 5 July 2023, [28].

[1438] Bank of Queensland submission, 23 February 2023, [5(c)]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

[1439] ANZ application for Merger Authorisation, 2 December 2022, [7.194]; Statement of Mark Bennett (ANZ), 1 December 2022, [191]; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

[1440] **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

Competition dimensions

Price competition

6.630. Price is one of the factors that is important to an agribusiness customer's decision as to whom they bank with.[1441]

6.631. Consistent with how banks price business lending products generally, agribusiness lending is priced on a risk-adjusted, bespoke basis and is influenced by a range of factors at any given time, including the customer's characteristics and circumstances, the lender's risk appetite and pricing framework, and the competitive environment.[1442] ANZ submits that the pricing of business banking products and services can vary significantly between providers and even between customers of the same provider.[1443] Pricing can also vary depending on how aggressively a banker pursues particular pricing for their customer.

6.632. Due to the highly bespoke nature of agribusiness banking products and pricing, it is difficult to observe and assess the relative price-competitiveness of each bank.[1444] Mr Mark Bennett, Head of Agribusiness within the Commercial division of ANZ, states that based on the information other banks publish about the average margins and performance of their agribusiness portfolios, banks' pricing to agribusiness customers tends to be quite similar as there is not a material difference in the average margins.[1445]

6.633. Mr Bennett states that ANZ (and similarly for other banks) experiences price competition in the following ways:

- when agribusiness customers 'test' with their bankers for a better deal if they think better offers are available elsewhere
- when other banks provide ANZ's customers with competing offers to try to win their business
- when customers use brokers to finance transactions
- when larger agribusiness run competitive tender processes. [1446]

6.634. In relation to pricing of deposit products, Mr Bennett states agribusiness customers can negotiate higher deposit rates for Farm Management Deposit accounts. He states that ANZ monitors the interest rates offered by its competitors throughout the year and makes changes to its own Farm Management Deposit interest rate from time to time.[1447] **[Redacted - Confidential]**.[1448]

6.635. Mr Bennett states in his experience other banks also review and make changes from time to time. This activity usually becomes heightened during the month of June as

[1441] Statement of Mark Bennett (ANZ), 1 December 2022, [95], [123]; **[Redacted - Confidential]**.

[1442] Statement of Mark Bennett (ANZ), 1 December 2022, [125]; **[Redacted - Confidential]**.

[1443] ANZ application for Merger Authorisation, 2 December 2022, [7.180], citing Statement of Mark Bennett (ANZ), 1 December 2022, [125].

[1444] Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [96].

[1445] Statement of Mark Bennett (ANZ), 1 December 2022, [124].

[1446] Statement of Mark Bennett (ANZ), 1 December 2022, [99], [126], [147].

[1447] Second statement of Mark Bennett (ANZ), 17 May 2023, [18].

[1448] **[Redacted - Confidential]**.

this timing coincides with the time farmers review their tax arrangements for the end of the financial year.[1449]

Non-price competition

6.636. The ACCC considers there are several non-price factors that are relevant to competition in agribusiness banking, notably relationship management or customer service. Mr Bennett (ANZ) states that non-price factors include how much the bank is willing to lend, the terms and conditions offered by the bank, the quality of service received from the bank, and the bank's internal processes – for example, whether the bank can lend quickly, and whether it is predictable to deal with. Mr Bennett adds that agribusiness customers care about the bank's track record and intention in seeing the customer through economic, commodity and weather cycles.[1450]

6.637. Agribusiness customers are not homogenous; they have a variety of banking needs and the weight they place on specific non-price factors can differ. Customers are unlikely to base their banking decision on a sole factor. The ACCC discusses some of the key non-price factors below.

Relationship managers/agribusiness bankers

6.638. The ACCC considers that the evidence from the merger parties and submissions made by interested parties clearly show that a customer's relationship with their relationship manager/banker is a particularly important factor for agribusiness customers in choosing a financial institution.[1451] Banks compete on their ability to develop and maintain relationships with potential and existing customers.[1452]

6.639. Mr. Bennett (ANZ) states that agribusiness customers appreciate forming a relationship with a good banker that 'they like and trust, who gets the job done really well' and 'has a strong support team'.[1453] He also states that 'agribusiness customers consider that having that relationship with their banker earns them flexibility and understanding when they most need it, including in response to issues arising at a local level'.[1454] **[Redacted - Confidential]**.[1455] This is likely to be borne out in the bank's agribusiness bankers' expertise, their understanding of their customers and the local conditions they face.

6.640. The importance of relationship managers in agribusiness banking competition is highlighted in Suncorp Bank's evidence. **[Redacted - Confidential]**.[1456]

6.641. Mr Bennett states that ANZ and several other banks maintain a high contact service model across specific segments of agribusiness (above certain lending threshold).[1457] Suncorp Bank also submits that its relationship-focused method is not unique to Suncorp Bank and is replicated by other banks.[1458]

1449 Second statement of Mark Bennett (ANZ), 17 May 2023, [19].

1450 Statement of Mark Bennett (ANZ), 1 December 2022, [96].

1451 ANZ application for Merger Authorisation, 2 December 2022, [7.184] – [7.188]; ANZ response to Bank of Queensland's submission, 22 March 2023, [2.33].

1452 Statement of Mark Bennett (ANZ), 1 December 2022, [119].

1453 Statement of Mark Bennett (ANZ), 1 December 2022, [91].

1454 Statement of Mark Bennett (ANZ), 1 December 2022, [91].

1455 **[Redacted - Confidential]**.

1456 **[Redacted - Confidential]**; **[Redacted - Confidential] [Redacted - Confidential]**. **[Redacted - Confidential]**

1457 Statement of Mark Bennett (ANZ), 1 December 2022, [120].

1458 Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [95].

In-person services provided by relationship managers

6.642. A significant role or feature of relationship managers is their ability to meet with customers in person, which agribusiness customers seem to value. For example:

- BEN submits relationship managers generally need to be located within a reasonable traveling distance of their agribusiness customers.[1459]
- ANZ manages some of its agribusiness customers by allocating them to dedicated Business Banking Managers who are generally based in a location close to the customer, who will not be a specialist agribusiness banker but will often be experienced in servicing agribusiness customers as part of their portfolio if they are based in area with many agribusiness customers.[1460]
- **[Redacted - Confidential]**.[1461] **[Redacted - Confidential]**.[1462]

6.643. Mr Bennett (ANZ) states that the need for an agribusiness banker to understand their customer's assets and business makes it important for the banker to visit the customer's business to see the assets and operations in person.[1463]

6.644. The Mortgage and Finance Association of Australia submits relationships built on in-person communication, local knowledge and a physical presence are generally a preference for customers in rural and regional areas.[1464]

Accessibility of agribusiness bankers

6.645. The ACCC notes second-tier banks have a higher proportion (**[Redacted - Confidential]**) of their agribusiness customers that are relationship managed compared to the major banks. For example, as of May 2023, **[Redacted - Confidential]**. **[Redacted - Confidential]**. In comparison, major banks have a much lower percentage of agribusiness customers that are relationship managed: **[Redacted - Confidential]**, **[Redacted - Confidential]**, **[Redacted - Confidential]**, and **[Redacted - Confidential]**.[1465]

6.646. The ACCC observes a large variation in the data on average number of customers per business banker across banks, which may be an indication of how banks position themselves in their service offerings and their relative focus on the relationship-based model. For example, in 2022, **[Redacted - Confidential]** had the highest average number of Queensland agribusiness customers per business banker **[Redacted - Confidential]**, while others such as **[Redacted - Confidential]**, **[Redacted - Confidential]**, and **[Redacted - Confidential]** have around **[Redacted - Confidential]** customers per business banker. **[Redacted - Confidential]** is on the

1459 Bendigo and Adelaide Bank submission, 3 March 2023, p 38, citing Suncorp Group, 'Investor Pack – Financial Results for the Full Year Ended 30 June 2021', 9 August 2021, pp 41-42.

1460 Third statement of Mark Bennett (ANZ), 7 July 2023, [10(a)].

1461 **[Redacted - Confidential]**.

1462 **[Redacted - Confidential]**.

1463 Statement of Mark Bennett (ANZ), 1 December 2022, [108].

1464 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, p 20.

1465 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**. This is based on the number of customers.

slightly lower end of the spectrum **[Redacted - Confidential]**, together with **[Redacted - Confidential]**.[1466]

6.647. Dr Clive van Horen (CEO of Suncorp Bank), states that each Suncorp Bank relationship manager will typically have around **[Redacted - Confidential]** customers in their portfolio.[1467] ANZ submits that each relationship manager is typically allocated to service around **[Redacted - Confidential]** (where the manager may visit the customers in person or be available at a business centre).[1468] Mr James Lane, State manager of business banking – Queensland in the Commercial division at ANZ, states that each relationship manager, supported by an assistant manager, would manage about **[Redacted - Confidential]** customer lending groups, consisting of multiple accounts and borrowers based on a common linkage that results in a related risk.[1469]

6.648. The ACCC observes that the proportion of agribusiness customers that are relationship managed are higher for second-tier banks **[Redacted - Confidential]**, and that the average number of customers served by each relationship manager is also lower for second-tier banks. As such, the ACCC infers that second-tier banks likely provide a more personalised or attentive relationship management service to agribusiness customers than major banks. This inference is supported by documentary evidence that **[Redacted - Confidential]**.[1470]

Quality and reputation of relationship managers

6.649. The quality and reputation of relationship managers can have a material impact on their banks' competitiveness in the market. Mr Bennett (ANZ) states that in regional areas, ANZ's reputation depends on the personal reputation of its bankers in that region.[1471] In selecting a banker and a financial institution, customers are heavily influenced by the banker's reputations in the customer's local community.[1472] Relatedly, **[Redacted - Confidential]**.[1473]

6.650. BEN submits that the supply of agribusiness banking products and services requires dedicated and specialist agribusiness managers who understand the unique nature of farming businesses as well as the local issues they face.[1474] Mr Bennett (ANZ) states that a good agribusiness banker needs a detailed understanding of their customer's business and industry, to accurately assess the risk and opportunity from dealing with a customer.[1475]

6.651. Mr Bennett states that in ANZ's Specialist Distribution division, bankers often come from agribusiness or regional backgrounds, with degrees in agriculture, business, or both.[1476] This expertise 'enhances their ability to service their customers, as it means

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1466 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**. **[Redacted - Confidential]**;**[Redacted - Confidential]**.

1467 Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [90].

1468 ANZ application for Merger Authorisation, 2 December 2022, [6.93].

1469 Statement of James Lane (ANZ), 5 July 2023, [12]-[14].

1470 **[Redacted - Confidential]**.

1471 Statement of Mark Bennett (ANZ), 1 December 2022, [112].

1472 Statement of Mark Bennett (ANZ), 1 December 2022, [111]-[113].

1473 **[Redacted - Confidential]**.

1474 Bendigo and Adelaide Bank submission, 3 March 2023, [6.3(a)]; **[Redacted - Confidential]**.

1475 Statement of Mark Bennett (ANZ), 1 December 2022, [85].

1476 Statement of Mark Bennett (ANZ), 1 December 2022, [63].

their technical skills are typically complemented by an understanding of industry, and familiarity with family farming and strategic decision making'.[1477]

Competition for relationship managers

6.652. Since having good agribusiness bankers are important in attracting, servicing and retaining customers, the competition for attracting and retaining agribusiness managers is fierce.[1478] **[Redacted - Confidential]**.[1479] **[Redacted - Confidential]**.[1480]

6.653. A demonstrated commitment to the agribusiness sector by the bank is not only important to agribusiness customers but also in attracting and retaining agribusiness bankers.[1481] **[Redacted - Confidential]**.[1482] **[Redacted - Confidential]**.[1483]

Brand resonance and commitment to community

6.654. A bank's brand or reputation and commitment to local communities can be an important non-price factor for agribusiness customers. Mr Bennett (ANZ) states that for banks to establish agribusiness operations, the bank would need to develop its brand as an agribusiness provider, including to gain trust that it is committed to agribusiness, and a 'stayer' in the geographic areas it entered.[1484]

6.655. Mr Bennett states that ANZ and other banks actively seek to demonstrate their commitment to the agribusiness sector and its associated communities, and to provide knowledge and insights relevant to agribusiness, in order to develop a positive reputation among customers and potential customers. This includes attending industry events, conducting and reporting on research relevant to their agribusiness customers, offering financial and other support for activities in regional communities.[1485]

6.656. A bank's local presence and community awareness can affect its brand. Rabobank submits that a physical branch shows visibility of local presence for the brand and creates a perception that there is a commitment from the bank to the area.[1486]

6.657. Regional banks' brand, and therefore their competitiveness, tends to be stronger where they have a greater physical presence and where they have built up customer loyalty over time.[1487] Examples of this includes Bank of Queensland in Queensland and Rural Bank in Victoria and Queensland. BEN submits that regional banks attract a high proportion of their agribusiness customers from their 'home' state. For example, Suncorp Bank had around 68% of its total agribusiness portfolio with customers located in Queensland.[1488]

1477 Statement of Mark Bennett (ANZ), 1 December 2022, [63].

1478 Statement of Mark Bennett (ANZ), 1 December 2022, [129]-[133].

1479 **[Redacted - Confidential]**.

1480 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1481 See for example, **[Redacted - Confidential]**.

1482 **[Redacted - Confidential]**.

1483 **[Redacted - Confidential]**.

1484 Statement of Mark Bennett (ANZ), 1 December 2022, [191].

1485 Statement of Mark Bennett (ANZ), 1 December 2022, [134]-[146], [175].

1486 Rabobank submission, 18 January 2923, p 3.

1487 ANZ application for Merger Authorisation, 2 December 2022, [7.196(c)].

1488 Bendigo and Adelaide Bank submission, 3 March 2023, p 38 referring to Suncorp Group, 'Investor Pack – Financial Results for the Full Year Ended 30 June 2021', 9 August 2021, p 42.

Access to branches or business centres

6.658. Access to branches or business centres of the bank does not appear to be a material non-price consideration for agribusiness customers, particularly because relationship managers generally meet with customers at their premises rather than at branches.[1489]

6.659. Mr Bennett (ANZ) states that agribusiness customers do not rely on branches for day-to-day banking (such as deposit or withdrawal services) as they generally do not receive or deal in large amounts of cash. He states that agribusiness customers typically expect to negotiate any material new business at their premises, rather than at an ANZ branch of business centre.[1490]

6.660. With the increased uptake of online and digital banking services, the number of bank branches have reduced.[1491] This indicates the diminishing importance of branches in banking competition overall (not just specific to agribusiness banking).

6.661. However, branches may still be relevant in retaining agribusiness bankers and maintaining a bank's presence in local communities. Branches remain one of the options agribusiness customers can use to contact a bank in-person, as evidenced by Suncorp Bank's customers.[1492] As noted above, Rabobank submits that the presence of a physical branch demonstrates commitment from the bank to the area and creates employment. In Rabobank's experience, customers visit a physical branch to discuss their business with their relationship managers when they are in town. With digitisation, there is less need for physical transactions but physical meetings in the branch are still important.[1493]

6.662. The Mortgage and Finance Association of Australia states because of bank branches closures, particularly in rural and regional areas, lenders have experienced a loss of experienced agribusiness specialists, some of whom have moved into broking businesses.[1494]

6.663. **[Redacted - Confidential]**.[1495]

Digital/ technology offerings

6.664. Although digital banking services are important to many small business customers which may include some agribusiness customers, the reliance on digital banking services or data insights by agribusiness customers is less apparent.

6.665. Bank of Queensland submits while digitisation is increasing across all banking segments, it is not clear that agribusiness customers can or will switch to online services with the same ease.[1496] Similarly, **[Redacted - Confidential]**.[1497]

1489 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1490 Statement of Mark Bennett (ANZ), 1 December 2022, [109].

1491 APRA (2022), Authorised deposit-taking institutions' points of presence statistics June 2017 to June 2022; ANZ application for Merger Authorisation, 2 December 2022, [7.194]; Rabobank submission, 18 January 2023, p 3.

1492 ANZ application for Merger Authorisation, 2 December 2022, [7.206]; Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [92].

1493 Rabobank submission, 18 January 2023, p 3.

1494 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, p 19.

1495 **[Redacted - Confidential]**.

1496 Bank of Queensland submission, 23 February 2023, p 9.

1497 **[Redacted - Confidential]**.

6.666. On the other hand, Rabobank submits that as a farming business expands and matures, it often requires faster, safer, and more comprehensive banking services using reliable internet services and that digital offerings are a key requirement for agribusiness customers.[1498] As another example, **[Redacted - Confidential]**.[1499] **[Redacted - Confidential]**.[1500]

6.667. Mr Bennett (ANZ) states that the recent emergence of new technology finance companies offering credit to agribusiness customers highlights an opportunity for banks to consider whether they can improve their offering using new forms of technology.[1501]

Competition analysis

Market concentration

6.668. In the Application, ANZ has provided shares for agribusiness deposits on a national basis in October 2012, 2017, 2020, 2021 and 2022, estimated by DBM Atlas, a market research firm. ANZ submits that the data shows its market share in a national market is **[Redacted - Confidential]**, Suncorp Bank's share is **[Redacted - Confidential]** and the combination is **[Redacted - Confidential]** which would continue to trail **[Redacted - Confidential]**, **[Redacted - Confidential]** and **[Redacted - Confidential]** but pass **[Redacted - Confidential]**.[1502] ANZ submits neither of the merger parties is significant in agribusiness deposits nationally.[1503] ANZ has also provided estimated shares for agribusiness lending, based on figures using DBM data. The ACCC acknowledges these figures but also notes that the Application does not provide data specific to Queensland.

Table 11 provides the market shares for the top ten firms that lend to agribusiness customers in the national and Queensland markets respectively. Source: Based on ACCC analysis **[Redacted - Confidential]**.

6.669. Table 12 sets out the HHI calculated using the market shares of the lenders **[Redacted - Confidential]**.[1504] The ACCC notes that equivalent data is not available in respect of agribusiness deposits.

Table 11: [Redacted - Confidential][1505]

[Redacted - Confidential]

Source: Based on ACCC analysis **[Redacted - Confidential]**.

1498 Rabobank submission, 18 January 2923, p 3.

1499 **[Redacted - Confidential]**.

1500 **[Redacted - Confidential]**.

1501 Statement of Mark Bennett (ANZ), 1 December 2022, [188].

1502 ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [20].

1503 ANZ application for Merger Authorisation, 2 December 2022, [7.169(a)].

1504 **[Redacted - Confidential]**.

1505 Based on ACCC analysis **[Redacted - Confidential]**. The entities in the table are identified based on **[Redacted - Confidential]**. See footnote79 for more information.

Table 12: HHIs in the national and Queensland agribusiness lending market

	Pre-acquisition HHI	Post-acquisition HHI	Delta
National agribusiness lending	1938	2037	99
QLD agribusiness lending	2000	2238	238

Source: Based on ACCC analysis **[Redacted - Confidential]**.

6.670. As the ACCC notes in its Merger Guidelines, the ACCC is generally less likely to identify horizontal competition concerns when the post-merger HHI is less than 2000; or if its greater than 2000 but with a delta of less than 100. In this instance, the ACCC is examining the agribusiness lending market in Queensland specifically and the Proposed Acquisition exceeds this threshold.

6.671. HHI levels alone should not be taken to imply a presumption as to whether or not this merger will be likely to result in a lessening of competition or how substantial it will be. However, they do indicate that the competitive implications for this market require close examination.

6.672. Based on market shares in Queensland, the five biggest agribusiness lenders are **[Redacted - Confidential]**.

6.673. In Queensland, Suncorp Bank and ANZ are the **[Redacted - Confidential]** and **[Redacted - Confidential]** largest agribusiness lenders respectively. The Proposed Acquisition will result in ANZ becoming the **[Redacted - Confidential]** largest agribusiness lender, **[Redacted - Confidential]**.

6.674. The ACCC considers that market concentration in the Queensland agribusiness lending market is moderately high and notes that **[Redacted - Confidential]**. Based on the material before it, the ACCC considers that Suncorp Bank is a significant competitor in the Queensland market.

Competitors in agribusiness banking market

6.675. ANZ submits that a range of banks compete with ANZ and Suncorp Bank in agribusiness banking, including the major banks, Rabobank, Bank of Queensland, Rural Bank and Judo Bank.[1506] **[Redacted - Confidential]** are two clear leaders in agribusiness lending.[1507]

6.676. ANZ also submits that a number of non-bank lenders have begun to supply business banking products to agribusiness customers, including StockCo (a specialist livestock financier), Agrifunder and Merricks Capital; and Legacy Livestock.[1508] However, as Dr Williams states, the alternative suppliers for agribusiness appear to be fringe players in the provision of rural finance and that the principal competition faced by the merger parties is from other banks.[1509]

[1506] ANZ application for Merger Authorisation, 2 December 2022, [7.196]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.16].

[1507] **[Redacted - Confidential]**; **[Redacted - Confidential]**; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [182].

[1508] ANZ application for Merger Authorisation, 2 December 2022, [7.196(d)-(e)], [7.216].

[1509] Expert report of Dr Philip Williams, 25 November 2022, [57]-[58].

6.677. ANZ and Suncorp submit that competition in agribusiness banking is strong.[1510] To support this, **[Redacted - Confidential]**.[1511] **[Redacted - Confidential]**.[1512] ANZ submits that agribusiness is an attractive sector for banks to offer services to, which has resulted in significant competition.[1513] Rabobank also submits that it considers competition in agribusiness to be vigorous in Queensland.[1514]

Competitive constraints from other banks

6.678. Ms Starks notes, in each of the 11 towns where the merger parties' agribusiness operations overlap, there are at least three other banks, comprising of either Commonwealth Bank, NAB, Westpac, or Rabobank, who provide agribusiness banking services in those areas.[1515]

6.679. Ms Starks states that **[Redacted - Confidential]**.[1516] Ms Starks considers that ANZ faces a greater competitive constraint from Rabobank compared to Suncorp Bank **[Redacted - Confidential]**.[1517] Ms Starks states that the evidence provided by Mr Bennett (ANZ) suggests that Rabobank and Suncorp Bank are less likely to compete directly with one another, and Suncorp Bank occupies a unique position as a non-major bank when it comes to serving smaller agribusinesses.[1518]

6.680. Ms Starks states other regional banks, BEN and Bank of Queensland, will impose a stronger competitive constraint on Suncorp Bank but not likely on ANZ, as they are less able to compete when it comes to serving larger agribusinesses.[1519]

Role of brokers in agribusiness banking

6.681. Brokers play a role in facilitating competition in business lending. However, brokers appear less influential in agribusiness lending, compared to general business lending.

6.682. ANZ submits that brokers are an increasingly important part of agribusiness.[1520] BMAgBiz submits brokers address the substantial information gap between agribusiness borrowers and banks by ensuring agribusiness borrowers are informed to the most competitive offerings in the agribusiness market.[1521]

6.683. The Mortgage and Finance Association of Australia submits there is insufficient data on the role of brokers in agribusiness lending and because agribusiness loans are often very individualised, agribusiness brokers are highly specialised and generally work closely with the business customer and an agribusiness manager within a lender.[1522] The Mortgage and Finance Association of Australia also submits that agribusiness brokers tend to be heavily reliant on relationships with specialised areas

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1510 ANZ application for Merger Authorisation, 2 December 2022, [7.171], [7.188]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.17].

1511 **[Redacted - Confidential]**.

1512 **[Redacted - Confidential]**.

1513 ANZ application for Merger Authorisation, 2 December 2022, [7.176].

1514 See, for example, Rabobank submission, 18 January 2923, p 2; **[Redacted - Confidential]**.

1515 Expert report of Mary Starks, 16 June 2023, [9.228]-[9.229], [Table 19].

1516 **[Redacted - Confidential]**.

1517 Expert report of Mary Starks, 16 June 2023, [9.222].

1518 Expert report of Mary Starks, 16 June 2023, [9.222], referring to **[Redacted - Confidential]**.

1519 Expert report of Mary Starks, 16 June 2023, [9.223].

1520 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.24], [5.25], **[Redacted - Confidential]**.

1521 BMAgBiz submission, 13 April 2023, p 4.

1522 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, pp 15-16.

within the lender, and in particular the knowledge and support of lenders' business relationship teams.[1523]

6.684. Mr Bennett (ANZ) states that brokers are not used as widely in agribusiness as compared to general business banking and home loans. This may be due to limited use of brokers in agribusiness in the past as well as the complexity and specialisation with the agribusiness profile.[1524] Agribusiness customers may also be able to 'test' their banks for a better deal without using a broker.[1525]

6.685. Mr Bennett states that the use of brokers by agribusiness customers has grown.[1526] Mr Bennett states brokers (particularly those who are former agribusiness bankers with strong reputations and customer networks) have increasingly driven material amounts of lending to agribusinesses over the last five to ten years.[1527]

6.686. **[Redacted - Confidential]**.[1528] Rabobank submits Suncorp Bank relies predominantly on brokers to provide agribusiness lending outside of Queensland.[1529]

6.687. **[Redacted - Confidential]**.[1530] **[Redacted - Confidential]**.[1531]

6.688. The ACCC has seen evidence of other banks investing in their broker channels for agribusiness.[1532] However, the ACCC notes the proportion of broker originated agribusiness loans in Queensland is quite low for most banks. In 2022,**[Redacted - Confidential]**had less than **[Redacted - Confidential]** of agribusiness loans originated by brokers while **[Redacted - Confidential]** had no broker originated agribusiness lending. The only banks with over **[Redacted - Confidential]** broker-originated lending were **[Redacted - Confidential]**, **[Redacted - Confidential]**and**[Redacted - Confidential]**. **[Redacted - Confidential]** had the highest proportion of broker originated agribusiness loans at around **[Redacted - Confidential]**.[1533]

6.689. Overall, the ACCC considers while the use of brokers can potentially facilitate competition in agribusiness lending, the information outlined above indicates that brokers are not widely used in agribusiness banking. Therefore, the effect of brokers on stimulating competition or customer switching in agribusiness banking is likely to be limited.

Suncorp Bank's competitiveness

6.690. ANZ submits that Suncorp Bank is no more vigorous or effective than any other competitor and it does not drive price, innovation or product development.[1534] The

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1523 Mortgage and Finance Association of Australia response to ACCC RFI dated 10 May 2023, 26 May 2023, p 16.

1524 Statement of Mark Bennett (ANZ), 1 December 2022, [151].

1525 Statement of Mark Bennett (ANZ), 1 December 2022, [99].

1526 Statement of Mark Bennett (ANZ), 1 December 2022, [148], [155].

1527 Statement of Mark Bennett (ANZ), 1 December 2022, [148].

1528 **[Redacted - Confidential]**.

1529 Rabobank submission, 18 January 2023, p 2.

1530 **[Redacted - Confidential]**.

1531 **[Redacted - Confidential]**.

1532 See for example, **[Redacted - Confidential]**, **[Redacted - Confidential]**.

1533 **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1534 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.21]-[5.22]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [183].

merger parties state that Suncorp Bank is weaker relative to its competitors in some respects. For instance:

- ANZ argues that without a significant platform to achieve scale, Suncorp Bank is less equipped to serve more sophisticated agribusinesses with complex banking needs and unlikely to be able to price more competitively on larger transactions, compared to the major banks.[1535] **[Redacted - Confidential]**.[1536]
- Suncorp Group states that there are agribusiness customers that have outgrown the bank and require products and services Suncorp Bank is unable to offer. For example, **[Redacted - Confidential]**.[1537]
- **[Redacted - Confidential]**[1538] **[Redacted - Confidential]**.[1539]

6.691. The ACCC considers that some of Suncorp Bank's weaknesses are not necessarily critical to most agribusiness customers' considerations. This is because:

- most agribusinesses (60%) are small businesses, with an annual turnover of less than $200,000 in Australia.[1540]
- Suncorp Bank focuses on, or is typically, serving the smaller end of agribusiness segment.[1541] **[Redacted - Confidential]**.[1542]
- **[Redacted - Confidential]**.[1543]

6.692. Therefore, the ACCC is of the view that Suncorp Bank's **[Redacted - Confidential]** is likely to be sufficient to meet most of its customers' needs and is not a major impediment to its competitiveness. The ACCC considers that the example of **[Redacted - Confidential]** is unlikely to be applicable to Suncorp Bank's typical agribusiness customers.

6.693. Some interested parties identify Suncorp Bank as a vigorous competitor, particularly in relation to smaller agribusiness customers in Queensland. BMAgBiz submits that Suncorp Bank is particularly strong in agribusiness lending in Queensland. It is highly competitive with small to mid-sized borrowers (i.e. less than $50 million). In the sub $50 million space, BMAgBiz states Suncorp Bank competes very effectively with all the main lenders.[1544] BEN submits the Proposed Acquisition will remove a vigorous and effective competitor in agribusiness banking, particularly in Queensland.[1545]

6.694. The expert opinions differ in relation to the effectiveness of Suncorp as a competitor. Dr Williams, citing internal Suncorp Bank documents, states that Suncorp Bank is unlikely to be an effective and independent competitor in a range of local or regional agribusiness markets across Queensland.[1546]

1535 ANZ application for Merger Authorisation, 2 December 2022, [7.198] citing Statement of Mark Bennett (ANZ), 1 December 2022, [167] and [168].

1536 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1537 **[Redacted - Confidential]**.

1538 **[Redacted - Confidential]**.

1539 **[Redacted - Confidential]**.

1540 Australian Banking Association, Agribusiness Report 2022, 3 June 2022, p 11.

1541 ANZ application for Merger Authorisation, 2 December 2022, [7.217].

1542 **[Redacted - Confidential]**.

1543 **[Redacted - Confidential]**.

1544 BMAgBiz submission, 18 January 2023, pp 1-2; BMAgBiz submission, 13 April 2023, pp 2-3.

1545 Bendigo and Adelaide Bank submission, 3 March 2023, p 42.

1546 Second expert report of Dr Philip Williams, 19 May 2023, [55].

6.695. In contrast, Ms Starks considers that Suncorp Bank is a vigorous and effective competitor in Queensland, particularly for smaller agribusinesses, and there is evidence to suggest that Suncorp Bank competes differently from the major banks and Rabobank, particularly in non-price factors.[1547] Professor King states that Suncorp Bank, along with ANZ, are very significant competitors in agribusiness across a range of regional locations in Queensland.[1548]

Suncorp Bank's price competitiveness

6.696. While Suncorp Bank does not position itself as a price leader, there is some evidence that it is competitive in pricing. Rabobank submits Suncorp Bank has been competitive in pricing to attract new lending business.[1549] **[Redacted - Confidential]**.[1550]

6.697. Information provided by **[Redacted - Confidential]**.[1551]

6.698. **[Redacted - Confidential]**.[1552]

Suncorp Bank's differentiation

6.699. Suncorp Bank differentiates itself from major banks based on its customer service, as reflected in its relationship management service proposition.

6.700. **[Redacted - Confidential]**.[1553] **[Redacted - Confidential]**.[1554] This is consistent with Bank of Queensland's submission that regional banks often perform better overall in customer care and service levels than the major banks.[1555] **[Redacted - Confidential]**.[1556]

6.701. There is evidence showing that Suncorp Bank's relationship management services are more personalised and attentive than the major banks'. BEN submits that Suncorp Bank's relationship managers focus on tailored relationships with smaller agribusiness customers (rather than just pricing).[1557]

6.702. Ms Starks considers there is a risk that post-acquisition, ANZ will replace Suncorp Bank's service model with one that is more similar to ANZ – less relationship managed and less flexible to individual circumstances, and thus reduce non-price competition.[1558] ANZ submits that Ms Starks' inference that ANZ's digitisation and automation 'suggests a move away from personalised banking for customers who do not qualify for relationship-managed banking' is based on a misconception.[1559] Mr Lane (ANZ) states ANZ's work in automation and digitisation is not to supplant the

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1547 Expert report of Mary Starks, 16 June 2023, [2.8].

1548 Expert report of Professor Stephen King, 3 March 2023, [7(f)(i)].

1549 Rabobank submission, 18 January 2023, p 2.

1550 **[Redacted - Confidential]**.

1551 **[Redacted - Confidential]**.

1552 **[Redacted - Confidential]**.

1553 Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [89]-[90], **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1554 **[Redacted - Confidential]**.

1555 Bank of Queensland submission, 24 February 2023, p 10 referencing The Bank Doctor, 'Regional banks – Why SMEs prefer them to the Big Four', 27 May 2015.

1556 **[Redacted - Confidential]**.

1557 Bendigo and Adelaide Bank submission, 3 March 2023, [6.3(d)].

1558 Supplementary expert report of Mary Starks, 7 July 2023, [7.30].

1559 ANZ response to the ACCC independent expert reports, 17 July 2023, [6.12].

relationship model, but to reduce manual work and intervention so that ANZ relationship managers are better supported to consider the particular needs of their customer and have meaningful engagements.[1560]

6.703. Mr Bennett (ANZ) states that he perceives Suncorp Bank's approach to managing agribusiness customers is similar to ANZ's approach and has not seen evidence to suggest that regional banks have greater service or pricing flexibility than ANZ.[1561] However, the ACCC has also received information from submissions made by third parties that express a different view.[1562]

6.704. **[Redacted - Confidential]**.[1563] **[Redacted - Confidential]**.[1564]**[Redacted - Confidential]**.[1565] **[Redacted - Confidential]**.

6.705. Suncorp Bank also differentiates itself from the major banks on product features. For example, BMAgBiz submits that Farm Management Deposit Account with Offset features (which is distinct from Farm Management Deposit Account) is mostly supplied by second-tier banks only, such as Suncorp Bank and Rural Bank.[1566]

6.706. Suncorp Bank competes by servicing niche markets or bespoke businesses. BMAgBiz submits that Suncorp Bank competes very well based on its investment in understanding and supporting growing, innovative, small and new business groups. BMAgBiz states that these business groups are often neglected by the larger providers and that having a bank that needs to compete in other ways than targeting large established businesses with a lowball price is very important in the market.[1567]

6.707. Similarly, CowBank submits that in its view, 'larger agribusiness banks are more focussed on high volume traditional agribusiness lending, primarily backed by traditional asset mortgages with less willingness to fund non-traditional/ bespoke business'.[1568] Therefore, second-tier banks such as Suncorp Bank can play an important role where the major banks are less willing or capable of meeting non-standard customer needs.

Suncorp Bank's brand and reputation

6.708. In Queensland, Suncorp Bank has a 'home' state advantage with established presence and a strong reputation as an agribusiness lender. Dr van Horen (Suncorp Bank) states that Suncorp Bank has traditionally held a strong agribusiness lending base in Queensland, where it services customers in beef, cotton, fruit, grain and mixed farming, sheep and livestock and sugar.[1569]

6.709. As Mr Bennett (ANZ) states, regional banks tend to attract significant customer loyalty in their home state, and therefore tend to compete more strongly with the major

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1560 Statement of James Lane (ANZ), 5 July 2023, [16].

1561 Third statement of Mark Bennett (ANZ), 7 July 2023, [24].

1562 See for example, Bank of Queensland submission, 24 February 2023, [5(c)]; Cowbank submission, 18 April 2023; Sinclair Hill submission, 13 January 2023.

1563 **[Redacted - Confidential]**.

1564 **[Redacted - Confidential]**.

1565 **[Redacted - Confidential]**

1566 BMAgBiz submission, 13 April 2023, p 2-3.

1567 BMAgBiz submission, 18 January 2023, p 2.

1568 CowBank submission, 18 April 2023, pp 1-2

1569 Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [98].

banks in their home state than in other areas.[1570] Suncorp Group submits that its presence in Queensland and northern New South Wales is due to historical factors rather than because of a particular focus in those regions.[1571] This does not negate the fact that Suncorp Bank's brand and reputation are evidently stronger in those regions given its historic ties.

6.710. **[Redacted - Confidential]**.[1572]

6.711. **[Redacted - Confidential]**.[1573] **[Redacted - Confidential]**.[1574] **[Redacted - Confidential]**.[1575] This somewhat contradicts with Dr van Horen's statement that Suncorp Bank tends to provide lending products to its agribusiness customers as their secondary bank.[1576]

6.712. Ms Starks notes that there are differences in the strength of Suncorp Bank's brand between different parts of Queensland, **[Redacted - Confidential]**.[1577] **[Redacted - Confidential]**.[1578]

Closeness of competition between ANZ and Suncorp Bank

6.713. ANZ submits that ANZ and Suncorp Bank are not each other's closest competitor, given their agribusiness portfolios are complementary, both in terms of customer segment and geography.[1579] However, Mr Bennett (ANZ) states that ANZ and Suncorp Bank can be effective in winning business from each other.[1580] He considers that ANZ and Suncorp Bank seek similar customers in some agribusiness segments and service these customers with a similar business model.[1581] He also states that Suncorp Bank can also be effective in winning business from ANZ, and Suncorp Bank is very active in regional Queensland, 'in that we see Suncorp Bank representatives all the time'.[1582]

6.714. BMAgBiz submits that it considers ANZ and Suncorp Bank to be direct competitors and states it would be rare to find a client that Suncorp Bank would bank that ANZ would not or vice versa.[1583] Rabobank submits both ANZ and Suncorp Bank have been competitive from a pricing perspective in attracting new lending business.[1584]

6.715. **[Redacted - Confidential]**.[1585]

1570 Statement of Mark Bennett (ANZ), 1 December 2022, [167].

1571 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [181].

1572 **[Redacted - Confidential]**.

1573 **[Redacted - Confidential]**.

1574 **[Redacted - Confidential]**.

1575 **[Redacted - Confidential]**.

1576 Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [99].

1577 Expert report of Mary Starks, 16 June 2023, [9.231]; **[Redacted - Confidential]**.

1578 **[Redacted - Confidential]**.

1579 ANZ application for Merger Authorisation, 2 December 2022, [7.197]-[7.206]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.14].

1580 Statement of Mark Bennett (ANZ), 1 December 2022, [170]-[171].

1581 Statement of Mark Bennett (ANZ), 1 December 2022, [170]-[171].

1582 Statement of Mark Bennett (ANZ), 1 December 2022, [170].

1583 BMAgBiz submission, 13 April 2023, p 3.

1584 Rabobank submission, 18 January 2023, p 2.

1585 **[Redacted - Confidential]**.

6.716. The expert opinions differ in relation to the closeness of competition between the merger parties. Dr Williams states the merger parties are not particularly close competitors, noting that Suncorp Bank **[Redacted - Confidential]** whereas ANZ serves the complete range of sizes noting the trend of consolidation of agribusinesses.[1586] Dr Williams states customers **[Redacted - Confidential]** are attracted to ANZ because regional banks do not have equivalent capacity, products, experience, developed policy and established ways to satisfy the banking needs of larger customers.[1587]

6.717. Professor King's view is that there is significant overlap in the agribusiness banking operations of ANZ and Suncorp Bank, and both ANZ and Suncorp Bank are significant and vigorous competitors in these markets.[1588]

6.718. Ms Starks states Suncorp Bank and ANZ compete directly to serve small to medium agribusinesses in Queensland but notes the lack of switching or main financial instutution data for agribusiness lending to assess the closeness of competition between the merger parties. She states witness evidence suggests that Suncorp Bank has effectively won customers from ANZ and vice versa.[1589]

Overlap in geographic areas

6.719. Ms Starks notes, based on merger parties' submissions, there are at least 11 towns in Queensland where the merger parties' agribusiness bankers' operations overlap. These locations include Ayr, Bundaberg, Cairns, Dalby, Emerald, Mackay, Rockhampton, Roma, Goondiwindi, Townsville, and Toowoomba.[1590] Ms Starks also notes that in two of the overlapping towns (Cairns and Chinchilla/Miles), there is no 'sizeable independent or regional banks' present other than Suncorp Bank.[1591]

Overlap in targeted agricultural industries

6.720. Evidence provided by Suncorp Group indicates that **[Redacted - Confidential]**.[1592] **[Redacted - Confidential]**.[1593] This shows that ANZ and Suncorp Bank could be close competitors in the **[Redacted - Confidential]** industries, where they both have the requisite industry expertise and experience to serve agribusiness customers operating in those agricultural industries.

Overlap in targeted customer segments

6.721. ANZ submits ANZ and Suncorp Bank have complementary propositions for supplying banking products to agribusiness customers. ANZ submits that **[Redacted - Confidential]**.[1594] In contrast, **[Redacted - Confidential]**.[1595]

1586 Expert report of Dr Philip Williams, 2 December 2022, [16]; Second expert report of Dr Philip Williams, 19 May 2023, [59b].

1587 Expert report of Dr Philip Williams, 2 December 2022, [110]-[111].

1588 Bendigo and Adelaide Bank submission, Expert report of Professor Stephen King, 3 March 2023, p 27.

1589 Expert report of Mary Starks, 16 June 2023, [9.220].

1590 Expert report of Mary Starks, 16 June 2023, [9.226]; ANZ application for Merger Authorisation, 2 December 2022, [7.205]-[7.206].

1591 Expert report of Mary Starks, 16 June 2023, [9.230].

1592 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1593 **[Redacted - Confidential]**.

1594 **[Redacted - Confidential]** citing **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1595 **[Redacted - Confidential]**.

6.722. However, contrary to ANZ's submission, Suncorp Bank's internal document suggests that as at 30 June 2022, its agribusiness portfolio includes a material proportion of agribusiness debt **[Redacted - Confidential]** and some more than **[Redacted - Confidential]**.[1596] **[Redacted - Confidential]**.[1597] Suncorp Bank submits that **[Redacted - Confidential]**.[1598]

6.723. Therefore, it is likely that Suncorp Bank compete closely with ANZ in relation to medium-sized agribusiness customers. This is consistent with BMAgBiz's submission that Suncorp Bank is highly competitive with small to mid-sized borrowers with less than $50 million in lending. ANZ, however, submits that not all businesses with lending requirements of less than $50 million are 'small to mid-size borrowers', as they could include large-sized borrowers with complex banking requirements.[1599] Judo Bank, who primarily targets SMEs including agribusinesses, also submits that it competes with both ANZ and Suncorp Bank, not simply Suncorp Bank, in agribusiness banking.[1600] Further, **[Redacted - Confidential]**.[1601]

6.724. **[Redacted - Confidential]**.[1602] **[Redacted - Confidential]**.

Table 13: [Redacted - Confidential]

[Redacted - Confidential]

Source: **[Redacted - Confidential]**
Notes:**[Redacted - Confidential]**

6.725. Having regard to all available information, the ACCC considers that ANZ and Suncorp Bank are likely to be competitors across a broad range of agribusiness customers, and they are likely to be close competitors for certain customers (particularly small to medium agribusiness customers in certain areas of regional Queensland).

Customer bargaining power and switching behaviour

6.726. ANZ submits that agribusiness customers have the ability to switch providers and many do.[1603] According to Mr Bennett (ANZ), agribusiness customers generally keep themselves informed of other banks' offerings, and are willing to test their bankers for a better deal and switch.[1604] Mr Bennett also states that agribusiness customers with large cash surpluses can be sensitive to interest rates and willing to switch banks to get a better return.[1605]

6.727. Based on the observation that larger agribusiness customers can hold debt products with multiple banks, Mr Bennett states that smaller agribusiness customers are less likely than larger agribusiness customers to have 'dual banking relationship' because it is time consuming to establish and manage such relationship.[1606]

1596 **[Redacted - Confidential]**.
1597 **[Redacted - Confidential]**.
1598 **[Redacted - Confidential]**.
1599 ANZ response to interested party submissions, 9 March 2023, [2.16].
1600 Judo Bank submission, 7 February 2023, p 1.
1601 **[Redacted - Confidential]**.
1602 **[Redacted - Confidential]**.
1603 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.19].
1604 Statement of Mark Bennett (ANZ), 1 December 2022, [98]-[107].
1605 Second statement of Mark Bennett (ANZ), 17 May 2023, [23].
1606 Statement of Mark Bennett (ANZ), 1 December 2022, [105]-[106].

6.728. Professor King states that the relationship-focused nature of agribusiness banking creates significant switching costs for customers. However, he notes that these costs are not insurmountable as some agribusiness customers would develop 'dual relationships' with alternative banks, bankers or brokers. [1607]

6.729. Dr Williams states that the evidence presented by Mr Bennett on the extent to which the total lending in ANZ's agribusiness portfolio attrite each year (**[Redacted - Confidential]**) due to paydowns, natural amortisation or customers refinancing, 'is a better indication of the fluidity of agribusiness markets than statements such as switching costs in agribusiness are 'high''.[1608]

6.730. The ACCC considers that the available information does not conclusively show the level of customer switching in agribusiness banking. It is unclear how many ANZ's customers have switched their agribusiness loans to another bank, as opposed to paydowns or natural amortisation, and whether ANZ's experience is representative of the market. The ACCC considers that there are likely high switching costs for customers, particularly if the customer holds multiple products with the same bank. The ACCC also considers that agribusiness customers are likely to be sticky if they have established a good relationship with their bankers.

Barriers to entry and expansion

6.731. The ACCC considers the barriers to entry are high, while barriers to expansion are more moderate, in agribusiness banking. In addition to the regulatory barriers of becoming an ADI (if the new entrant offers deposit products), a new entrant would need to invest heavily to establish itself as an agribusiness finance provider and it takes a significant amount of time. As outlined by ANZ, a new entrant would need to recruit suitable bankers, invest in other key resources such as premises and vehicles, establish a reputation and trust among agribusiness customers, and demonstrate that it is committed to agribusiness and the communities it intends to bank.[1609] Mr Bennett states that an agribusiness banker is usually proficient in managing customers across a range of agribusiness industries with at least five years of experience.[1610] This provides an indication of the time required to for a banker to specialise in agribusiness.

6.732. Rabobank also submits that key factors in establishing or expanding an agribusiness lending business include recruiting appropriate personnel, obtaining funding to enable competitive pricing for loan products, investment in compliant products and systems to onboard and manage clients in accordance with the wide range of relevant obligations and regulations and achieving the scale of business to justify the investment and training required.[1611]

6.733. ANZ submits that it is constrained by a threat of new entry and expansion. ANZ submits that existing agribusiness lenders can expand in scale or to new types of customers and/or geographies by leveraging their existing resources and that it is

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1607 Expert report of Professor Stephen King, 3 March 2023, [171]-[175].

1608 Second expert report of Dr Philip Williams, 19 May 2023, [51], referring to Second statement of Mark Bennett (ANZ), 17 May 2023, [25].

1609 ANZ application for Merger Authorisation, 2 December 2022, [7.213]; Statement of Mark Bennett (ANZ), 1 December 2022, [191].

1610 Statement of Mark Bennett (ANZ), 1 December 2022, [64]; ANZ response to the ACCC independent expert reports, 17 July 2023, [4.6(d)].

1611 Rabobank submission, 18 January 2023, p 3.

possible for a bank to enter agribusiness for the first time despite all the pre-requisites outlined above.[1612] ANZ refers to Judo Bank as a key example of a new entry.[1613]

6.734. On the other hand, BEN and BMAgBiz submit there are significant barriers to become a full-service operator.[1614] BMAgBiz submits that new entrants tend to focus on areas of agribusiness finance with less competition from the bigger players, such as livestock and commodity finance,[1615] and there has not been a significant new competitor in agribusiness lending since Rabobank expanded Australia wide from its limited base in Western Australia in the 1990's.[1616]

6.735. Dr Williams states that the advantages of the larger banks in dealing with larger agribusiness customers coupled with the trend to consolidation of farms might suggest that new entry is very unlikely – except at the margin for internet-based lenders. While barriers to entry may be quite high in agribusiness, barriers to expansion/mobility are not, pointing to Rabobank's success to expand across Australia.[1617]

6.736. Professor King argues that 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.[1618] Professor King states that successfully entering and competing 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. There is considerable competition for agribusiness bankers, making it difficult for a new entrant to gain appropriate staff.[1619]

6.737. Ms Starks states that entry at scale is possible given Judo Bank is a recent entrant and was able to acquire bankers from ANZ including in Queensland.[1620] However, in general, Ms Starks states that barriers to entry are high for a completely new entrant. She states that barriers to entry are moderate for existing competitors who do not currently serve agribusinesses or who service agribusinesses outside of Queensland. She states that barriers to expansion are low for existing agribusiness competitors operating in Queensland.[1621]

6.738. The ACCC considers that the barriers to entry are high for agribusiness banking, while the barriers to expansion are somewhat lower. This is because the ACCC considers that it is difficult to attract and retain the appropriate bankers and to establish a reputation of expertise in relevant areas to become an effective competitor at scale in agribusiness banking. The investment and time required for an entrant to

1612 ANZ application for Merger Authorisation, 2 December 2022, [7.211]-[7.213].

1613 ANZ application for Merger Authorisation, 2 December 2022, [7.215]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [5.29].

1614 Bendigo and Adelaide Bank submission, 3 March 2023, p 9 citing Expert report of Professor Stephen King, 3 March 2023, [7(f)(i)]; BMAgBiz submission, 13 April 2023, pp 3-4.

1615 BMAgBiz submission, 13 April 2023, pp 3-4.

1616 BMAgBiz submission, 13 April 2023, p 3.

1617 Expert report of Dr Philip Williams, 1 December 2022, [112]; Second expert report of Dr Philip Williams, 19 May 2023, [47].

1618 Bendigo and Adelaide Bank submission, Expert report of Professor Stephen King, 3 March 2023, [168].

1619 Bendigo and Adelaide Bank submission, Expert report of Professor Stephen King, 3 March 2023, [166].

1620 Expert report of Mary Starks, 16 June 2023, [9.234] citing Statement of Mark Bennett (ANZ), 1 December 2022, [179]-[180].

1621 Expert report of Mary Starks, 16 June 2023, [Table 20], [9.236].

demonstrate its commitment and capability as an agribusiness lender is also likely to be substantial, but not insurmountable if given sufficient time.[1622]

6.739. The ACCC notes there have been no new banks in agribusiness banking other than Rabobank in 1990 and Judo Bank in 2022, which indicates the height of the barriers to entry. The ACCC further notes that Rabobank entered the Australian market by acquiring Primary Industry Bank of Australia in 1994, therefore it did not have to establish itself as a completely new bank entrant.[1623]

ACCC views

6.740. The ACCC has had regard to the expert reports of Dr Williams, Professor King and Ms Starks in forming its conclusions, and notes that although all experts agree that the Proposed Acquisition is likely to lessen competition in relation to the Queensland agribusiness market, there is disagreement as to the magnitude of this effect.[1624]

6.741. The ACCC considers that the Proposed Acquisition will reduce the number of agribusiness banking competitors operating in Queensland compared to the No-Sale Counterfactual, increasing concentration in a market that is already quite concentrated. The HHI exceeds the threshold identified by the ACCC as indicating that close consideration of the competitive effects of a merger is required.

6.742. The ACCC considers that Suncorp Bank imposes an important competitive constraint on ANZ and other banks supplying agribusiness banking products in Queensland, principally through its pricing, customer service, and its ability and willingness to serve non-standard agribusiness banking needs. Suncorp Bank provides a strong service proposition relative to major banks including ANZ. It prices competitively; it has a local presence and has a good reputation as an agribusiness lender with expertise, all of which are highly valued by agribusiness customers in Queensland.

6.743. Moreover, in some geographic locations in Queensland, Suncorp Bank and ANZ may compete particularly more closely. Based on the locations where Suncorp Bank and ANZ have an agribusiness presence, there are at least 11 towns in Queensland where the two banks directly compete. These locations include Ayr, Bundaberg, Cairns, Dalby, Emerald, Mackay, Rockhampton, Roma, Goondiwindi, Townsville, and Toowoomba.

6.744. The ACCC considers that if ANZ acquires Suncorp Bank, there is little incentive for ANZ to maintain Suncorp Bank's specific relationship management model and focus on service quality. Rather, ANZ has strong incentives to align Suncorp Bank's relationship model for agribusiness customers with its own, particularly after the integration period. This view is supported by ANZ's own evidence that **[Redacted - Confidential]**.[1625]

6.745. Given the diversity in agribusiness customers' characteristics and banking needs, having a range of competitors with differentiated offerings will yield better competition

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[1622] For example, as Shayne Elliott observed, Rabobank has grown market share without a branch network, and has competed and gained market share following entry as a new entrant, 'on the basis of securing and maintain the right talent and industry expertise': Second statement of Shayne Elliott (ANZ), 17 May 2023, [45(c)].

[1623] Financial Review, 'Australia proves fertile for Rabobank' , 5 March 2003, accessed on 12 July 2023.

[1624] Expert report of Dr Philip Williams, 1 December 2022, [100]-[120];Second expert report of Dr Philip Williams, 19 May 2023, [40]-[64]; Expert report of Professor Stephen King, 3 March 2023, [7(f)(i)], [143]-[188]; Second expert report of Professor Stephen King, 28 June 2023, [15]-[34]; Expert report of Mary Starks, 16 June 2023, [9.203]-[9.242]; Supplementary expert report of Mary Starks, 7 July 2023, [7.21]-[7.35], [7.44]-[7.45].

[1625] **[Redacted - Confidential]**.

outcomes across different product dimensions, geographic areas and customer segments.

6.746. The ACCC has considered the number and the type of competitors that would continue to impose constraints in areas where ANZ and Suncorp Bank's agribusiness operations overlap.[1626] The ACCC considers the major banks would continue to act as a constraint particularly in relation to competitive facets such as price. However, these banks provide a lesser level of constraint in relation to other facets such as customer service and care; and ability and willingness to serve non-standard agribusiness banking customers.

6.747. Outside of the major banks and Suncorp Bank, the main competitor in Queensland is Rabobank.[1627] While the ACCC considers that Rabobank will continue to act as a constraint in this market, Rabobank is largely focused on **[Redacted - Confidential]**.[1628] **[Redacted - Confidential]**.[1629] On the evidence available, the ACCC does not consider that BEN, Judo Bank and Bank of Queensland impose strong constraints.

6.748. The ACCC considers that the constraint imposed by the threat of entry or expansion is limited. This is for two reasons. First, industry specialisation plays a key role in banks understanding the risk profiles of their agribusiness customers. It is not clear that rival firms will have the same industry focus as Suncorp Bank, and this may limit their ability and/or incentive to expand in a timely manner. Second, to the extent that key personnel such as agribusiness bankers are a barrier to expansion, acquiring them at scale is difficult as the competition for these resources is strong and it takes time for bankers to become specialised in agribusiness.

6.749. In the Bendigo Merger Counterfactual, as in the factual, there would be one less competitor in Queensland. However, the ACCC considers that a combined BEN / Suncorp Bank is likely to impose a competitive constraint similar to, if not stronger than, these banks individually in the agribusiness banking markets in Queensland. A combined BEN/Suncorp Bank entity may be a more effective competitor than either bank for the reasons discussed in section 5 (Future with and without the Proposed Acquisition).

6.750. Unlike the Proposed Acquisition, a merger between BEN and Suncorp Bank **[Redacted - Confidential]**.[1630]**[Redacted - Confidential]**. Nationally, a combined BEN/Suncorp Bank would still rank **[Redacted - Confidential]**, indicating limited risk of unilateral effects arising in this counterfactual.

6.751. The ACCC considers that the Proposed Acquisition will result in the loss of a strong regional bank with a differentiated service-focused offering, reducing competition in what is an already concentrated market. For the reasons set out above, the ACCC is not satisfied in all the circumstances that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition in a market or markets for the supply of agribusiness banking products to customers in Queensland.

1626 See Expert report of Mary Starks, 16 June 2023, [Table 19].

1627 ANZ application for Merger Authorisation, 2 December 2022, [7.196(a)], [7.198]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [182]. **[Redacted - Confidential]**; **[Redacted - Confidential]**. **[Redacted - Confidential]**.

1628 **[Redacted - Confidential]**.

1629 **[Redacted - Confidential]**. See further **[Redacted - Confidential]**.

1630 ACCC analysis **[Redacted - Confidential]**.

Overall conclusion on competitive effects

6.752. Pursuant to the Competition Test, the ACCC is able to grant authorisation if it is satisfied in all the circumstances that the Proposed Acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition.

6.753. As outlined in its analysis above, the ACCC is not satisfied in all the circumstances that the Proposed Acquisition would not be likely to have the effect of substantially lessen competition in markets for home loans, SME banking, and agribusiness banking products.

7. Likely public benefits and detriments

7.1. This section provides the ACCC's views on the public benefits and detriments that ANZ submits are likely to result from the Proposed Acquisition, and the ACCC's view on the net public benefit test in section 90(7)(b) of the Act (the Net Public Benefit Test). The section provides:

- an overview of how the ACCC applies the Net Public Benefit Test

describes the public benefits that ANZ submits are likely to result from the Proposed Acquisition and the ACCC's view on whether those public benefits are likely to result

describes the public detriments that the ACCC considers are likely to result from the Proposed Acquisition, and

provides the ACCC's view on whether it is satisfied that the likely public benefits of the Proposed Acquisition outweigh the likely public detriments.

The Net Public Benefit Test

7.2. The Net Public Benefit Test requires the ACCC to be satisfied in all the circumstances that the Proposed Acquisition would be likely to result in a benefit to the public that would outweigh the detriment to the public that would be likely to result from the Proposed Acquisition.

7.3. In applying the Net Public Benefit Test, the ACCC considers the public benefits and detriments that would result, or be likely to result, from the proposed conduct and then determines whether the likely benefits outweigh the likely detriments.

7.4. The Tribunal described the task, in the context of an earlier iteration of the public benefit test for merger authorisation, as follows: [1631]

> The Tribunal must consider the claimed benefits and detriments that will be caused or probably caused by the proposed merger. Benefits and detriments that will or may arise in both the future with and without the merger are not relevant to the analysis. The claimed benefits and detriments must be of substance and have durability. Any estimate as to their quantification should be robust and commercially realistic. Together with the requirement of commercial likelihood, the necessity of substance and durability effectively means benefits and detriments must be material to the assessment of 'such a benefit to the public that the acquisition should be allowed to occur'.

7.5. The ACCC's task is similar, although the requirement in section 90(7)(b) of the Act is that the ACCC be satisfied in all the circumstances that the conduct would be likely to result in a net public benefit, not that it would result in such a public benefit that it should be allowed to occur.

7.6. To assist it in identifying the public benefits and detriments that are likely to result from the Proposed Acquisition (in the sense that they have a causal connection to the Proposed Acquisition), and to make an evaluative judgement of the likely extent of those benefits and detriments, the ACCC compares the future in which the Proposed Acquisition occurs with the future in which the Proposed Acquisition does not occur. The future with the Proposed Acquisition is referred to as the **factual**, the future

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[1631] *Applications by Tabcorp Holdings Limited* [2017] ACompT 5 at [31].

without the Proposed Acquisition is referred to as the **counterfactual**. For this purpose, the ACCC has considered all factual and counterfactual scenarios with a non-trivial prospect of occurring, and given most weight in its assessment of the public benefits and detriments to those it considers have a realistic prospect of occurring.

7.7. The Tribunal has also stated that, in considering public benefits:

> …we do not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress.[1632]

7.8. As to the assessment of public detriment, the ACCC also uses the Tribunal's broad approach. The Tribunal has described a public detriment as:

> …any impairment to the community generally, any harm or damage to the aims pursued by the society including as 1 of its principal elements the achievement of the goal of economic efficiency.[1633]

7.9. The scope of relevant competitive benefits or detriments is not confined to the 'substantial lessening of competition' analysis required by section 50 of the Act and which applies in the Competition Test in section 90(7)(a). In applying the Net Public Benefit Test, the ACCC assess all benefits and detriments, not just those related to effects on competition. The ACCC will have regard to all non-trivial and non-ephemeral competitive or other benefits or detriments to the public that would result, or be likely to result, from the proposed conduct.

Public benefits

7.10. ANZ submits that the Proposed Acquisition will deliver substantial public benefits and that that these benefits would be unlikely to arise (at all or to the same degree) in the No-Sale Counterfactual or the Bendigo Merger Counterfactual.[1634] ANZ's assessment of these public benefits is predominantly based on its claimed counterfactual, the No-Sale Counterfactual; however, it has sought to make some assessment with respect to the Bendigo Merger Counterfactual in its response to the ACCC's SOPV.

7.11. ANZ's claimed public benefits are:

- Suncorp Group will become a stronger insurer
- ANZ will become a stronger bank
- there would be prudential related benefits
- there would be benefits for the Queensland economy and Queenslanders, and
- there would be an increase in the Major Bank Levy paid.

7.12. Set out below is a summary of the submissions received from ANZ, Suncorp Group and interested parties on public benefits, followed by the ACCC's assessment.

1632 Re Queensland Co-operative Milling Association Ltd (1976) 8 ALR 481, at [507] – [508].

1633 Re 7-Eleven Stores Pty Ltd [1994] ATPR 41-357 at [42], [683] (Lockhart J, Prof M Brunt and Dr B Aldrich).

1634 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9.3].

Suncorp Group will become a stronger insurer

ANZ and Suncorp Group's submissions

7.13. ANZ submits that a public benefit resulting from the Proposed Acquisition is Suncorp Group being able to more efficiently and effectively focus on and run its insurance business.[1635]

7.14. Suncorp Group submits that its insurance business will benefit from a 'singular focus' on its growth strategies and investment requirements.[1636] In his statement, Mr Johnston (CEO of Suncorp Group) states that this singular focus will generate operational efficiencies in the insurance business that will enable it to continue to develop competitive and compelling insurance product offerings to its customers.[1637] Suncorp Group submits that, as a result of the Proposed Acquisition, its insurance business will be leaner, more efficient and effective.[1638]

7.15. Suncorp Group submits that it has achieved limited operational and customer synergies through the current conglomerate structure.[1639] **[Redacted - Confidential]**.[1640] Mr Johnston states that the conglomerate structure is not optimal to seeking growth and success given the medium to long-term macro trends facing both industries.[1641] Mr Johnston states that, with finite capital resources, Suncorp Group is currently required to make allocations and investment decisions for two capital intensive businesses.[1642] Mr Johnston states that this requires Suncorp Group to make trade-offs in order to meet differing regulatory requirements and to position the group overall for future growth.[1643] Suncorp Group submits that divesting its banking business will drive improvements and streamline the group's operating model and support functions to reflect the reduced complexity of a pureplay insurance business.[1644]

7.16. In his statement, Mr Johnston states that divesting Suncorp Bank will also allow Suncorp Group to simplify, digitise and automate its processes, resulting in improvements to its product suite, sales and distribution, customer service and claims processes.[1645] Mr Johnston supports this, stating that as customers increasingly use digital forms of engagement, it is important that Suncorp Group can provide product offerings that meet those requirements and can also improve its claim processing through increased digitisation.[1646] Mr Johnston states that the Proposed Acquisition will allow Suncorp Group to better meet the needs of its insurance customers by

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1635 ANZ application for Merger Authorisation, 2 December 2022, [8.1].

1636 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [4]; Annexure 52, p 2.

1637 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [18(a)].

1638 ANZ application for Merger Authorisation, 2 December 2022, [8.3]; Annexure 48, slide 10.

1639 ANZ application for Merger Authorisation, 2 December 2022, [3.36(e)]; Statement of Steven Johnston (Suncorp Group), 25 November 2022, [47].

1640 **[Redacted - Confidential]**

1641 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [17].

1642 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [89]; Second statement of Steven Johnston (Suncorp Group), 17 May 2023, [94] – [95].

1643 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [89]; Second statement of Steven Johnston (Suncorp Group), 17 May 2023, [94].

1644 ANZ application for Merger Authorisation, 2 December 2022, [8.4(b)]; Statement of Steven Johnston (Suncorp Group), 25 November 2022, [92].

1645 Statement of Steven Johnson (Suncorp Bank), 25 November 2022, [46].

1646 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [88].

developing more competitive product offerings, delivering more responsive customer engagement and improving claim processing times.[1647]

7.17. Suncorp Group submits that insurance businesses in Australia are facing significant challenges.[1648] Mr Johnston states that, in particular, general insurance businesses are facing challenges in relation to climate change and increased frequency of natural disasters, with volatility in global reinsurance markets putting pressure on reinsurance costs.[1649] Suncorp Group submits that increased volatility in global reinsurance markets has resulted in a reduction of reinsurance markets and sources of capital for reinsurers.[1650] In the Application, **[Redacted - Confidential]**.[1651] Mr Johnston states that in Australia, the risk perceived by reinsurers is particularly acute given recent bushfire and flood events.[1652] Mr Johnston states that a monoline insurance focus will enable the board and management team to have greater focus on the key dynamics and challenges impacting the insurance industry.[1653]

7.18. Suncorp Group submits that the increasing cost of natural hazard events puts pressure on the cost of reinsurance, which may lead to higher consumer pricing.[1654] In his statement, Mr Johnston states that Suncorp Group's general insurance business is subject to significant natural hazards risk due to its geographical profile and the nature of products it provides.[1655] Mr Johnston states that part of this risk is retained by Suncorp Group and the remaining part is reinsured to external entities.[1656] Mr Johnston states that capital requirements for insurers are likely to increase as global reinsurance markets reassess risk, including increased frequency and severity of natural hazards.[1657] Mr Johnston states that primary insurers are therefore potentially required to retain more risk.[1658] Mr Johnston states that to the extent that reinsurers are transferring risk to primary insurers like Suncorp Group, some of that risk will need to be passed on to consumers.[1659] Mr Johnston states that affordability will become an increasingly important issue for Suncorp Group customers and society more broadly, and that affordability issues increase the need for investment in innovation and product re-design to achieve sustainable customer outcomes.[1660] Relative to the No-Sale Counterfactual, Mr Johnston states that a board and management team that has a singular focus is better placed to invest in and manage reinsurance challenges, while operational efficiencies can address increasing costs.[1661]

1647 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [46].

1648 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [34]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [9(a)].

1649 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [34] – [35].

1650 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [202(b)].

1651 **[Redacted - Confidential]**

1652 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [35].

1653 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [88]; Second statement of Steven Johnston (Suncorp Group), 17 May 2023, [116].

1654 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [202(a)].

1655 Second statement of Steven Johnston (Suncorp Group), 17 May 2023, [101].

1656 Second statement of Steven Johnston (Suncorp Group), 17 May 2023, [101].

1657 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [39].

1658 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [39].

1659 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [203]; Second statement of Steven Johnston (Suncorp Group), 17 May 2023, [113].

1660 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [40].

1661 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [40].

7.19. Suncorp Group submits that the Proposed Acquisition, a cash sale, will provide a return of over $4 billion.[1662] Suncorp Group submits that, by divesting Suncorp Bank, it will be able to re-focus capital investment and also benefit from better access to sources of funding.[1663] Mr Johnston states that Suncorp Group's current market value is a blended average of its business.[1664] Mr Johnston states that sale of Suncorp Bank could achieve a rebalancing and rerating with consequential enhancement of value for shareholders, as well as capacity to attract capital.[1665] Mr Johnston states that, by divesting Suncorp Bank, Suncorp Group will be in a position to solely focus on and invest in growth opportunities to develop its insurance businesses.[1666] Suncorp Group submits that it will embark on a comprehensive, multi-year strategy to sustain the performance of its insurance entity and improve outcomes for current and prospective customers.[1667] In particular, Suncorp Group submits that it will be in a position to more quickly invest in core systems that deliver digital solutions to customers.[1668]

Submissions from interested parties

7.20. Aon[1669] supports the claim that the Proposed Acquisition will result in Suncorp Group being more focused on the insurance industry, driving innovation to address unmet customer needs.[1670] Aon submits climate risk is particularly concerning and that it is circumscribing procurement of insurance in Australia.[1671] Aon submits that innovation is necessary to create new solutions to address these risks and also meet the needs of clients seeking to mitigate such risks.[1672] Aon also submits if Suncorp Group is able to divest its banking assets, it will be able to focus exclusively and more effectively on the critical work to develop more innovative solutions for the insurance industry.[1673]

7.21. BEN submits that this is not a relevant public benefit as it could be achieved absent the Proposed Acquisition in the Bendigo Merger Counterfactual.[1674]

ACCC's view

7.22. The Proposed Acquisition would result in Suncorp Bank being separately owned and operated from Suncorp Group's insurance business. To analyse whether Suncorp Group would be likely to become a stronger insurer and give rise to a public benefit, the ACCC has assessed the extent to which the Proposed Acquisition improves Suncorp Group's ability to more efficiently and effectively focus on and run its insurance business. The ACCC considers that this could give rise to a public benefit if

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1662 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [9].

1663 ANZ application for Merger Authorisation, 2 December 2022, [8.4(c) and (d)]; Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [9(b)].

1664 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [101].

1665 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [106].

1666 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [41].

1667 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [206].

1668 Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [207].

1669 Aon operates as Suncorp Group's reinsurance broker: Second statement of Steven Johnston (Suncorp Group), 17 May 2023, [110].

1670 Aon submission, 18 January 2023, p 1.

1671 Aon submission, 18 January 2023, p 1.

1672 Aon submission, 18 January 2023, p 1.

1673 Aon submission, 18 January 2023, p 1.

1674 Bendigo and Adelaide Bank submission, 3 March 2023, [7.1].

Suncorp Group would be able to better meet the needs of its insurance customers and respond to challenges in the insurance industry.

7.23. In considering whether the Proposed Acquisition will improve Suncorp Group as an insurer, the ACCC has considered the context of the Australian insurance industry, which is relatively large and well-developed. There are currently more than 75 licensed general insurers in Australia.[1675] However, the number of licensed insurers has fallen in recent years, with a decline of approximately 30% since 2016,[1676] with the level of concentration in northern Australian insurance markets, in particular, raising concerns for effectiveness of competition.[1677]

7.24. Recent reports on the state of the industry,[1678] as well as Suncorp Group's own submissions,[1679] consistently assert that the industry is facing costly challenges in relation to natural hazard events, with an expectation that such events will increase in frequency.[1680] Such challenges and the associated impact on reinsurance are contributing to increases in the price of premiums for consumers. APRA's most recent annual report states that natural hazard events are affecting affordability and accessibility of cover for parts of the Australian community.[1681] APRA considers there is no easy solution to these issues but highlights the importance of achieving appropriate balance between the financial health of insurers and access to affordable and well-designed insurance for Australians.[1682]

7.25. The ACCC considers that Suncorp Group has provided information regarding the challenges faced by the insurance industry that is consistent with other sources and supported by the submission from Aon. The ACCC considers that Suncorp Group divesting its banking business may result in greater focus from the board and management team to respond to the challenges facing the insurance industry. However, the ACCC considers that Suncorp Group has not provided substantial evidence relating to how it intends to address affordability of insurance beyond advocating for government assistance.

7.26. For the reasons set out below, the ACCC considers that the Proposed Acquisition would deliver some public benefit through Suncorp Group becoming a stronger insurer. **[Redacted - Confidential]**.[1683]

7.27. While Suncorp Group has not provided detailed information regarding the operational efficiencies it hopes to achieve through divestment of Suncorp Bank, the ACCC accepts that there are limited synergies attained through the current conglomerate structure. This is consistent with trends observed in demergers of other conglomerate insurance and banking businesses.[1684] As such, the ACCC considers it is likely some operational efficiencies could be achieved through simplifying the insurance business via the Proposed Acquisition; however, it is not possible to quantify such efficiencies

[1675] APRA, Register of general insurance, 28 June 2023; APRA, Annual Report 2021-22, p 12.

[1676] APRA, Annual Report 2021-22, p 12; APRA, Annual Report 2015-2016, p 26.

[1677] ACCC, Northern Australia Insurance Inquiry – Final report, 30 November 2020, p 11.

[1678] KPMG, General insurance industry review 2023, p 5; APRA, Annual Report 2021-22, p 33.

[1679] Second statement of Steven Johnston (Suncorp Group), 17 May 2023, [101].

[1680] KPMG, General insurance industry review 2023, p 5; APRA, Annual Report 2021-22, p 33.

[1681] APRA, Annual Report 2021-22, p 33.

[1682] APRA, Annual Report 2021-22, p 33.

[1683] **[Redacted - Confidential]**.

[1684] In 2021 CBA sold CommInsure General Insurance to Hollard Holdings Australia and in 2021 Westpac sold its general insurance business to Allianz Australia.

based on the information provided. The ACCC considers that to the extent that operational efficiencies would be realised through divestment of the banking business, such efficiencies could also likely be realised absent the Proposed Acquisition, for example in the Bendigo Merger Counterfactual.

7.28. The ACCC considers that divesting its banking business will likely provide opportunity for Suncorp Group to re-focus its capital investment on the insurance business and access better sources of funding. **[Redacted - Confidential]**.[1685] **[Redacted - Confidential]**.[1686] **[Redacted - Confidential]**.[1687]

7.29. The ACCC notes that incentive for Suncorp Group to improve its insurance business exists with or without the Proposed Acquisition and therefore considers it could be achieved via divesting the banking business to another bank or by making improvements in the No-Sale Counterfactual.

7.30. The ACCC considers that, compared to the No-Sale Counterfactual, it is likely that Suncorp Group would continue to pursue the strategy described at [7.19], although the timing of these initiatives would need to be traded-off against the need to make similar investments in Suncorp Bank.[1688] Compared to the Bendigo Merger Counterfactual, the ACCC considers it would likely take longer for Suncorp Group to improve its insurance business than with the Proposed Acquisition. Against the Bendigo Merger Counterfactual, therefore, the benefit of any improvement to Suncorp Group's insurance business, through divesting Suncorp Bank, would be confined to the benefit of it happening sooner than it would absent the Proposed Acquisition.

7.31. The ACCC considers that to the extent that the Proposed Acquisition would be likely to improve the overall performance of Suncorp Group's insurance business, the public benefit derived from such improvement would be small, as to a large extent it could also be realised in the future without the Proposed Acquisition.

ANZ will become a stronger bank

7.32. ANZ submits that a public benefit that would result from the Proposed Acquisition is that, with Suncorp Bank under its ownership, it would become a stronger bank.[1689] ANZ submits that the Proposed Acquisition would result in benefits accruing to customers, shareholders, the broader public and the banking system, through:

- integration and productive efficiencies, and
- prudential related benefits, including reduced wholesale funding costs and greater access to wholesale funding for Suncorp Bank, increased prudential safety and increased contribution to the Major Bank Levy.[1690]

[1685] **[Redacted - Confidential]**

[1686] **[Redacted - Confidential]**

[1687] **[Redacted - Confidential]**

[1688] Suncorp Group response to ACCC's Statement of Preliminary Views, 17 May 2023, [208].

[1689] ANZ application for Merger Authorisation, 2 December 2022, [8.1(b)].

[1690] ANZ application for Merger Authorisation, 2 December 2022, [8.1(b)(i)-(iv)].

Integration and productive efficiencies

ANZ and Suncorp Group's submissions and expert reports

7.33. ANZ submits that according to its estimates the Proposed Acquisition would deliver cost synergies[1691] of ~$260 million per annum (pre-tax) from economies of scale and improved processes.[1692] This represents approximately 35% of Suncorp Bank's reported FY22 cost base.[1693] ANZ submits that any efficiencies would substantially arise four to six years post-completion.[1694] ANZ submits that these estimates are based on an integration model where it operates Suncorp Bank on a standalone basis for three years post-completion of the Proposed Transaction.[1695] ANZ then plans to integrate Suncorp Bank into its own operations.[1696]

7.34. ANZ submits that the detailed plans for integration of Suncorp Bank's operations are yet to be finalised, but it expects to realise annual cost savings from a combination of:

- technology, project and product rationalisation
- labour rationalisation (due to anticipated increased automation and rationalisation of duplicative managerial roles, consolidation of enabling functions and retail functions)
- branch and contact centre reduction enabled by the rationalisation of duplicative branches, the change of customer preferences and the enhanced digital self-serve capabilities of ANZ Plus, and
- a reduction in procurement costs enabled by ANZ's greater buying power.[1697]

7.35. ANZ submits, relying on the expert reports of Mr Smith, that the synergies arising from the Proposed Acquisition are likely to enhance productive efficiencies.[1698] This would enable the merged entity to serve ANZ and Suncorp Bank customers at a lower cost, compared to the costs that would be incurred separately absent the Proposed Acquisition.[1699] In his report, Mr Smith concludes that this is likely to be achieved through the following productive efficiency gains:

- economies of scale through the elimination of duplicated fixed (at least in the short run) costs across ANZ and Suncorp Bank, and
- improved processes resulting in cost savings because ANZ is able to perform particular processes at a lower cost than Suncorp Bank.[1700]

1691 In her statement, Ms Higgins (Managing Director, Suncorp Integration, ANZ) states that synergies refers to costs savings achieved from integrating Suncorp Bank into ANZ and specifies that this does not include revenue, capital or funding synergies: Statement of Louise Higgins (ANZ), 17 May 2023, [18].

1692 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)], [3.31]; Annexure 6, p 21.

1693 ANZ application for Merger Authorisation, 2 December 2022, [3.31].

1694 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)], [3.32].

1695 ANZ application for Merger Authorisation, 2 December 2022, Annexure 6, p 21; Expert report of Patrick Smith, 1 December 2022, [37].

1696 ANZ application for Merger Authorisation, 2 December 2022, Annexure 6, p 21; Expert report of Patrick Smith, 1 December 2022, [37].

1697 ANZ application for Merger Authorisation, 2 December 2022, [3.33]; Expert report of Patrick Smith, 1 December 2022, [10]-[12].

1698 ANZ application for Merger Authorisation, 2 December 2022, [8.7]; Expert report of Patrick Smith, 1 December 2022, [11]-[12]; Second expert report of Patrick Smith, 17 May 2023, [11].

1699 ANZ application for Merger Authorisation, 2 December 2022, [8.7].

1700 Expert report of Patrick Smith, 1 December 2022, [11] and [12].

7.36. In particular, ANZ submits that it expects substantial efficiencies relating to the migration of Suncorp Bank customers to ANZ platforms (including ANZ Plus).[1701] **[Redacted - Confidential]**.[1702] **[Redacted - Confidential]**.[1703] **[Redacted - Confidential]**.[1704]

7.37. In relation to economies of scale, ANZ submits that acquiring 1.2 million customer relationships from Suncorp Bank will provide a scale advantage for ANZ's continued investment in ANZ Plus, as well as ongoing innovation.[1705] Mr Elliott stated in ANZ's oral submission that, from ANZ's perspective, what it is really acquiring in the Proposed Acquisition is 1.2 million customers.[1706] Mr Elliott also stated that the Proposed Acquisition will put ANZ in a position to defray some of the cost of its investment across a larger customer base, as well as reduce the average cost of production such that it can become even more competitive.[1707] **[Redacted - Confidential]**,[1708] **[Redacted - Confidential]**.[1709] In his statement, Mr Johnston states that the economics of technology investment generally benefit from scale.[1710] Mr Johnston also states that Suncorp Bank customers should benefit from ANZ's digital capabilities as well as its capacity to invest in technology.[1711]

7.38. In his report, Mr Smith states that it would be very unlikely that Suncorp Bank, in the No-Sale Counterfactual, would be able to realise cost savings close to what ANZ expects to realise post-completion of the Proposed Acquisition.[1712]

7.39. In relation to purported synergies that may arise in the Bendigo Merger Counterfactual, in his statement, Mr Johnston states that a merger between Suncorp Bank and another second-tier bank presents execution and integration complexity risks.[1713] In relation to a merged BEN/ Suncorp Bank entity, Suncorp Group submits that challenges would include technology integration as BEN currently operates seven core banking platforms.[1714] **[Redacted - Confidential]**.[1715] Dr van Horen also states that he considers that the technology integration and migration would be highly complex and costly.[1716] Ms Higgins states that BEN would likely need to make very substantial investments in transforming its technology estate to effectively accommodate almost twice as many customers as it has today.[1717] **[Redacted - Confidential]**.[1718]

[1701] ANZ application for Merger Authorisation, 2 December 2022, [8.11].

[1702] **[Redacted - Confidential]**

[1703] **[Redacted - Confidential]**.

[1704] **[Redacted - Confidential]**.

[1705] ANZ application for Merger Authorisation, 2 December 2022, [8.11]; Statement of Shayne Elliott (ANZ), 30 November 2023, [63(b)(iii)].

[1706] ANZ oral submission to the ACCC, 16 June 2023, [12].

[1707] ANZ oral submission to the ACCC, 16 June 2023, [12].

[1708] **[Redacted - Confidential]**.

[1709] **[Redacted - Confidential]**.

[1710] Statement of Steven Johnston (Suncorp Group), 25 November 2022, [99].

[1711] Statement of Steven Johnston (Suncorp Group), 25 November 2022, [97].

[1712] Expert report of Patrick Smith, 1 December 2022, [13].

[1713] Statement of Steven Johnston (Suncorp Group), 25 November 2022, [55-56].

[1714] Statement of Steven Johnston (Suncorp Group), 25 November 2022, [66] citing Steven Johnston Annexure SJ-2, p 78.

[1715] **[Redacted - Confidential]**.

[1716] Second statement of Clive van Horen (Suncorp Bank), 17 May 2023, [29].

[1717] Statement of Louise Higgins (ANZ), 17 May 2023, [97].

[1718] **[Redacted - Confidential]**.

7.40. **[Redacted - Confidential]**.[1719] In his second statement, Dr van Horen also states that it is unclear whether cost synergies from branch consolidation could be achieved across BEN's community-owned branches as BEN is unable to make a unilateral decision to close a community owned branch.[1720] Dr van Horen states that this means there is significantly less flexibility in the Bendigo Merger Counterfactual.[1721] In his second statement, Mr Elliott states that he does not expect BEN would obtain sufficient increased scale from a merger with Suncorp Bank to make it a materially stronger competitor.[1722] Mr Elliott states that while a merger with Suncorp Bank would increase BEN's size and revenue base, it is not clear whether it would achieve any efficiency gains.[1723]

7.41. **[Redacted - Confidential]**.[1724] In his second statement, Mr Elliott states ANZ expects that full run rate synergies will accrue from 6 years post-completion of the Proposed Acquisition.[1725] Mr Elliott states that it is not currently possible to say how cost savings will be deployed by ANZ.[1726] In his expert reports, Mr Smith states as a matter of economic theory some pass through would be likely even in the absence of competition from other banks.[1727] More specifically, Mr Smith states that a degree of competition amongst the remaining banks would give the merged entity an incentive to pass on a portion of its productive efficiency cost savings to consumers in for form of better quality of lower priced services.[1728] In his second expert report, Mr Smith states that ANZ faces effective competition in the supply of home loans, and is likely to continue to do so following the Proposed Acquisition.[1729] Mr Smith states that this strong competition would provide ANZ with strong incentive to pass on cost savings to consumers in the form of lower prices or better-quality services, such as via investment in improving turnaround times.[1730]

Expert reports of Mary Starks

7.42. In her initial independent report, Ms Starks considers the first expert report of Mr Smith and his consideration of productive efficiencies.[1731] With respect to whether the benefit is merger specific, Ms Starks states that, as set out in Mr Smith's report, technology rationalisation and elimination of duplicate roles and branches appear to be cost savings realised through the Proposed Acquisition.[1732] However, Ms Stark also states that at least some of these cost savings could be achieved in the future without the Proposed Acquisition, **[Redacted - Confidential]**.[1733] Ms Stark also considers improvements to processes are examples of synergies that could arise in the future without the Proposed Acquisition[1734] and that Suncorp Bank customers

1719 **[Redacted - Confidential]**.

1720 Second statement of Clive van Horen (Suncorp Bank), 17 May 2023, [45].

1721 Second statement of Clive van Horen (Suncorp Bank), 17 May 2023, [48].

1722 Second statement of Shayne Elliott (ANZ), 23 May 2023, [90].

1723 Second statement of Shayne Elliott (ANZ), 23 May 2023, [92].

1724 **[Redacted - Confidential]**.

1725 Second statement of Shayne Elliott (ANZ), 23 May 2023, [109].

1726 Second statement of Shayne Elliott (ANZ), 23 May 2023, [109].

1727 Expert report of Patrick Smith, 1 December 2022, [79]; Second expert report of Patrick Smith, 17 May 2023 [22].

1728 Expert report of Patrick Smith, 1 December 2022, [79].

1729 Second expert report of Patrick Smith, 17 May 2023, [26], [28].

1730 Second expert report of Patrick Smith, 17 May 2023, [26], [48].

1731 Expert report of Mary Starks, 16 June 2023, [10.3].

1732 Expert report of Mary Starks, 16 June 2023, [10.11.1].

1733 Expert report of Mary Starks, 16 June 2023, [10.11.1]; **[Redacted - Confidential]**

1734 Expert report of Mary Starks, 16 June 2023, [10.11.3].

could benefit from ANZ's systems absent the Proposed Acquisition by switching to ANZ.[1735] Based on her review of switching patterns, Ms Stark states that customers are less likely to switch in the market for transaction accounts and as such, access to ANZ systems from the Proposed Acquisition is most likely to benefit Suncorp Bank transaction account customers.[1736] In her supplementary report, Ms Starks states that she saw no further evidence provided by ANZ following her initial report that the cost savings claimed by ANZ were all specific to the Proposed Acquisition.[1737]

7.43. In relation to who the claimed benefit accrues to, Ms Stark considers Mr Smith's argument that customers may benefit from cost savings through higher quality offerings or lower prices.[1738] Ms Starks states that variable cost savings are more likely to be passed through than fixed cost savings but acknowledges that fixed cost savings may enable innovation which can also benefit customers.[1739] Ms Starks states that the cost savings set out by Mr Smith are likely a mix of variable and fixed costs, and that customers could benefit from lower prices, high quality offerings, and greater innovation if cost savings are to some extent passed on.[1740] Ms Starks agrees with Mr Smith's statement that the degree of pass-through will depend on the strength of competition following the Proposed Acquisition.[1741] Ms Starks considers competition to be weak in the market for transaction accounts and as such customers in that market are unlikely to benefit from synergies as the merged entity would be under less pressure to pass on benefits.[1742] In her supplementary report, Ms Starks considers Mr Smith's second expert report, in which he states that there is evidence of recent increased competition in the market for home loans.[1743] Ms Starks states that she does not consider this market will remain competitive in the years following the Proposed Acquisition[1744] and as such she is hesitant to draw the conclusion that ANZ will face strong incentive to pass on cost savings to consumers.[1745]

7.44. In relation to the likelihood and timing of the claimed benefit, Ms Starks states that there is external evidence that the average acquirer is often optimistic about how long it will take to achieve synergies and how sustainable they will be.[1746] Considering examples of recent banking acquisitions in Australia (CBA/ Bankwest and Westpac/ St George), Ms Starks states that there is evidence that long run efficiency gains can take some time to materialise, with both of these examples taking more than a decade to integrate.[1747]

7.45. Ms Starks also states that there are offsetting effects to this claimed benefit, including complexities with the Proposed Acquisition which could undermine the estimated cost savings.[1748] In her supplementary report, Ms Starks states that Mr Smith's second expert report raises new evidence of this in the form of separation costs and stranded

[1735] Expert report of Mary Starks, 16 June 2023, [10.12]; [10.14].
[1736] Expert report of Mary Starks, 16 June 2023, [10.14].
[1737] Supplementary expert report of Mary Starks, 7 July 2023, [9.3].
[1738] Expert report of Mary Starks, 16 June 2023, [10.15].
[1739] Expert report of Mary Starks, 16 June 2023, [10.16].
[1740] Expert report of Mary Starks, 16 June 2023, [10.16].
[1741] Expert report of Mary Starks, 16 June 2023, [10.17].
[1742] Expert report of Mary Starks, 16 June 2023, [10.17].
[1743] Supplementary expert report of Mary Starks, 7 July 2023, [9.11].
[1744] Supplementary expert report of Mary Starks, 7 July 2023, [9.10].
[1745] Supplementary expert report of Mary Starks, 7 July 2023, [9.11].
[1746] Expert report of Mary Starks, 16 June 2023, [10.21]; Supplementary expert report of Mary Starks, 7 July 2023, [9.6].
[1747] Expert report of Mary Starks, 16 June 2023, [10.21].
[1748] Expert report of Mary Starks, 16 June 2023, [10.26].

costs for Suncorp Group.[1749] Ms Starks states that these costs would offset existing benefits from the Proposed Acquisition.[1750]

Submissions from interested parties

7.46. The CFA submits that ANZ's claimed public benefits relating to efficiencies and increased scale resulting in digital transformation and innovation are highly unlikely to eventuate.[1751] The CFA submits that this is because ANZ will face less incentive due to lack of competitive pressure and that without competitive pressure, firms are less likely to innovate, and efficiency gains will not be shared with customers.[1752] The CFA submits that an increase in ANZ's size will not produce positive outcomes due to the oligopolistic nature of the banking market.[1753] The CFA considers that in such a market, any efficiency gains obtained by size will be minimal and will not be shared with customers.[1754]

7.47. Rabobank submits that, in theory, a stronger merged bank should be in a better position to provide the continuation of banking products and services to the food and agribusiness market in Queensland.[1755] However, Rabobank also submits that historically this is not always apparent, especially when the expected synergies of the merger adversely impact the level of service being delivered to customers.[1756]

7.48. With respect to the Bendigo Merger Counterfactual, BEN submits that a merged BEN/ Suncorp Bank entity would also have significant synergies.[1757] With respect to the submissions made by Suncorp Bank[1758] relating to BEN's banking systems, the ACCC also understands that BEN is undertaking technological change, with the aim to move from seven core banking systems to one, and from ten brands to three brands by FY2024.[1759]

7.49. BEN also submits that the public benefits from cost synergies in the Proposed Acquisition are limited due to the low likelihood of material cost savings from integration efficiencies, if any, flowing to consumers.[1760] BEN submits, minimal (if any) weight should be placed on cost savings retained by the merged entity and its shareholders.[1761] BEN submits that any efficiency gains from the elimination of duplicative fixed costs would also be realised in the Bendigo Merger Counterfactual.[1762] BEN also submits that productive efficiencies are unlikely to arise for a significant period of time and therefore the ACCC should place limited weight on

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1749 Second expert report of Patrick Smith, 17 May 2023, [14], [15].
1750 Supplementary expert report of Mary Starks, 7 July 2023, [9.8].
1751 Consumers' Federation of Australia submission, 11 January 2023, p 6.
1752 Consumers' Federation of Australia submission, 11 January 2023, p 6.
1753 Consumers' Federation of Australia submission, 18 April 2023, p 3.
1754 Consumers' Federation of Australia submission, 18 April 2023, p 3-4.
1755 Rabobank submission, 18 January 2023, p 4.
1756 Rabobank submission, 18 January 2023, p 4.
1757 Bendigo and Adelaide Bank submission, 3 March 2023, [4.6].
1758 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [66] citing Steven Johnston Annexure SJ-2, p 78.
1759 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [64].
1760 Bendigo and Adelaide Bank submission, 3 March 2023, [7.2(a)].
1761 Bendigo and Adelaide Bank submission, 3 March 2023, [7.2(b)].
1762 Bendigo and Adelaide Bank submission, 3 March 2023, [7.2(c)].

this claimed benefit.[1763] With respect to ANZ's submitted integration period of 3 years, BEN submits that this delay affects the claimed public benefit.[1764]

ACCC's view

7.50. To analyse whether the Proposed Acquisition is likely to result in the claimed public benefit, the ACCC has assessed the claimed synergies against the likely integration costs and risks. The ACCC has also considered the claimed benefit with respect to the factual and the counterfactual scenarios, as well as the likelihood of pass through in each of these scenarios.

7.51. As discussed above, ANZ estimates cost savings of ~$260 million (pre-tax) per annum and expects they will largely eventuate from four years post-completion of the Proposed Acquisition. **[Redacted - Confidential]**.[1765] **[Redacted - Confidential]**.[1766] **[Redacted - Confidential]**.[1767]

7.52. In the ACCC's view, both the likelihood of these cost savings arising and the quantum of those savings if they do arise is uncertain. The ACCC considers there is a likelihood that the estimates provided by ANZ are overstated. **[Redacted - Confidential]**.[1768] The complexity and difficulty of integration may give rise to unanticipated costs that offset the synergies.

7.53. For example: Westpac estimated the likely synergies in its acquisition of St George Bank in 2008 to be 20-25% of St George Bank's cost base realised from common infrastructure and economies of scale.[1769] Westpac allowed $700 million for integration and transaction costs, but in 2018 publicly acknowledged that the merger added to an already complex systems environment, with the integration of these systems proving more difficult and protracted than expected. At the time, Westpac still had a legacy of system complexity, replication and high cost of maintenance and chance.[1770]

7.54. **[Redacted - Confidential]**.[1771] **[Redacted - Confidential]**,[1772] and the ACCC understands that migration of ANZ's own customers to the ANZ Plus platform is already delayed.[1773] This may delay the migration of Suncorp Bank customers, which may in turn delay the realisation of ANZ's claimed efficiency benefits. **[Redacted - Confidential]**.[1774] In ANZ's oral submission and in his second statement, Mr Elliott states that ANZ has recent experience with complex divestments and is well placed to quantify the challenges and resources required for such transactions.[1775] However, Ms Starks states that ANZ's cost saving estimates can suffer from asymmetric

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1763 Bendigo and Adelaide Bank submission, 3 March 2023, [7.2(d)].

1764 Bendigo and Adelaide Bank submission, 3 March 2023, [7.2(e)].

1765 **[Redacted - Confidential]**.

1766 **[Redacted - Confidential]**.

1767 **[Redacted - Confidential]**.

1768 **[Redacted - Confidential]**.

1769 Westpac, ASX announcement - St. George & Westpac proposed merger, 26 May 2008, p 3.

1770 Westpac, Governance, Accountability and Culture Self-Assessment, 28 November 2018, [3.1.5], [3.1.6].

1771 **[Redacted - Confidential]**.

1772 **[Redacted - Confidential]**

1773 Australian Financial Review, Slow ANZ-Suncorp deal synergies add risk: analysts, 19 July 2022; The Australian, ANZ digital platform a slow burner, 14 September 2022.

1774 **[Redacted - Confidential]**.

1775 ANZ oral submission to the ACCC, 16 June 2023, [17]; Second statement of Shayne Elliott (ANZ), 23 May 2023, [85].

information, **[Redacted - Confidential]**,[1776] which Ms Starks considers may lead to integration costs being higher than anticipated.[1777]

7.55. The ACCC also notes that any measure of cost savings needs to take into account, or net off, any one-off costs associated with implementing the transaction. In addition to the forecasted synergies, there are substantial costs for ANZ in the integration period, totalling ~$680 million over five years (pre-tax).[1778] Suncorp Group forecasts separation costs of ~$500 million and 'stranded'[1779] costs of approximately $40 million per annum for three years following completion of the Proposed Acquisition[1780] (giving total transaction and integration costs of up to $1.3 billion). The estimated synergies claimed by ANZ exclude these one-off costs to Suncorp Group.[1781] **[Redacted - Confidential]**.[1782] However, In his second expert report, Mr Smith states that these costs affect the quantum of the public benefit associated with cost savings.[1783] Mr Smith also states that the estimated net present value of the Proposed Acquisition after deducting Suncorp Group's separation and stranded costs is approximately **[Redacted - Confidential]**[1784] and that he considers the total cost savings of the Proposed Acquisition would still be substantial.[1785]

7.56. By comparison, in a No-Sale Counterfactual, there would be no synergy, integration, costs or risks. In the Bendigo Merger Counterfactual there is likely to be a separate set of synergy and integration costs and risks to consider, and the ACCC notes that the same cautions relating to synergy estimates referred to above apply. **[Redacted - Confidential]**.[1786] **[Redacted - Confidential]**.[1787] In considering the weight to place on this benefit, the ACCC notes that these benefits may also be achieved to some extent in the future without the Proposed Acquisition, although likely not to the full extent.

7.57. The weight that should be accorded to this benefit is also affected by the extent to which such benefits are likely to be shared with consumers in the form of lower prices or improvements in quality, rather than retained by ANZ and its shareholders.[1788] In its initial submissions, ANZ did not seek to quantify the exact nature of the synergies and what proportion, if any, of the cost savings would be passed on to consumers, compared to what it would retain.[1789] Mr Smith's report states that any improvement on quality by moving Suncorp Bank customers to ANZ has been accounted for in the synergy and integration estimates.[1790] ANZ states that this will depend on investment

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1776 **[Redacted - Confidential]**.

1777 Supplementary expert report of Mary Starks, 7 July 2023, [9.4].

1778 ANZ application for Merger Authorisation, 2 December 2022, Annexure 6, pp 15, 21.

1779 Mr Smith defines 'stranded' costs as expenses that are linked to the operations of the divested business but that cannot easily be eliminated after the divestment: Second expert report of Patrick Smith, 17 May 2023, [15].

1780 ANZ application for Merger Authorisation, 2 December 2022, Annexure 48, pp 6-7.

1781 Second expert report of Patrick Smith, 17 May 2023, [13].

1782 **[Redacted - Confidential]**.

1783 Second expert report of Patrick Smith, 17 May 2023, [18].

1784 Second expert report of Patrick Smith, 17 May 2023, [16].

1785 Second expert report of Patrick Smith, 17 May 2023, [17].

1786 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1787 **[Redacted - Confidential]**.

1788 Cost savings to one or more businesses that result from productive efficiencies can constitute a public benefit, and it is not necessary that the savings be passed on to consumers in the form of lower prices. However, the ACCC generally affords more weight to benefits which are passed on to consumers or the broader community than if they are retained by the businesses.

1789 ANZ application for Merger Authorisation, 2 December 2022, [3.18], [3.31]-]3.35], [8.16].

1790 Expert report of Patrick Smith, 1 December 2022, [77], [78].

and pricing decisions following the Proposed Acquisition.[1791] In his second statement, Mr Elliott states that it is not possible to say how the savings anticipated by ANZ would be deployed by the business but it is likely that a portion of the synergies would be passed on to consumers.[1792] Mr Elliott states that it is likely the cost synergies would be passed on in the form of better quality or lower price products and services, including things like ongoing and greater investment in ANZ Plus.[1793]

7.58. ANZ also submits, relying on the expert reports prepared on its behalf by Mr Smith, that in a competitive market, that ANZ would be incentivised to pass on a proportion of cost savings to consumers.[1794] However, based on the competitiveness of the banking markets described in the competition assessment above, the ACCC considers the extent to which any benefit in the form of reduced costs would be passed on to consumers is not clear.

7.59. Taking all this into account, the ACCC considers that while there is a likely public benefit in the form of some synergies resulting from the Proposed Acquisition the benefit is not as extensive as that claimed by ANZ.

Prudential related benefits

ANZ's submissions

7.60. ANZ submits that a number of prudential related public benefits are likely to result from the Proposed Acquisition. ANZ submits that these benefits will take the form of reduced wholesale funding costs and greater access to wholesale funding for Suncorp Bank, increased prudential safety and increased contribution to the Major Bank Levy.[1795]

Reduced wholesale funding costs and greater access to wholesale funding

7.61. ANZ submits that Suncorp Bank is likely to obtain wholesale funding at a lower cost following the Proposed Acquisition.[1796] ANZ submits that post-integration it would source funding for the merged entity and that a reduction in the cost of wholesale funding would result in lower prices to Suncorp Bank customers.[1797] ANZ submits that this may also benefit its shareholders through increased profitability, or the broader public through economic resource savings.[1798]

7.62. In his expert report, Mr Smith states that reduced wholesale funding costs for Suncorp Bank reflects a reduction in risk, **[Redacted - Confidential]**,[1799] such that it also constitutes a productive efficiency benefit.[1800]

7.63. ANZ also submits that following the Proposed Acquisition, Suncorp Bank is likely to have greater assurance of access to wholesale funding in periods of financial stress

1791 ANZ application for Merger Authorisation, 2 December 2022, [8.33].

1792 Second statement of Shayne Elliott (ANZ), 17 May 2023, [109].

1793 Second statement of Shayne Elliott (ANZ), 17 May 2023, [109].

1794 Expert report of Patrick Smith, 1 December 2022, [17(b)], [79]; Second expert report of Patrick Smith, 17 May 2023 [23].

1795 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [57(c)-(e)].

1796 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [57(c)], [8.19]; Statement of Adrian Went (ANZ), 28 November 2022, [29], [47(a)-(b)]; Expert report of Patrick Smith, 1 December 2022, [87].

1797 ANZ application for Merger Authorisation, 2 December 2022, [8.17].

1798 ANZ application for Merger Authorisation, 2 December 2022, [8.17].

1799 **[Redacted - Confidential]**

1800 Expert report of Patrick Smith, 1 December 2022, [90].

as debt investors would assume ANZ's support.[1801] In his statement, Mr Johnston states that through the Proposed Acquisition, Suncorp Bank customers will benefit from ANZ's superior access to capital funding markets, at rates that Suncorp Bank cannot achieve either on its own or in combination with the group.[1802] **[Redacted - Confidential]**.[1803] **[Redacted - Confidential]**[1804] **[Redacted - Confidential]**.[1805] **[Redacted - Confidential]**.[1806] **[Redacted - Confidential]**.[1807] **[Redacted - Confidential]**.[1808] **[Redacted - Confidential]**.[1809]

Increased prudential safety

7.64. As discussed above, D-SIBs (including ANZ) are subject to greater capital requirements than banks not designated as such.[1810] ANZ submits that a benefit from the Proposed Acquisition results from Suncorp Bank's assets being subject to these higher regulatory requirements.[1811] In particular, ANZ submits, relying on the report prepared on its behalf by Dr Carmichael, that Suncorp Bank's assets being subject to greater capital adequacy requirements would result in lower risk of default for Suncorp Bank's assets as part of the merged entity.[1812] In his second report, Dr Carmichael states that an increase in required capital of almost 60% compared with the No-Sale Counterfactual would reduce Suncorp Bank's probability of failure by a substantial amount.[1813] Dr Carmichael also states that the Proposed Acquisition would result in other changes that would strength Suncorp Bank's prudential safety and soundness, including access to ANZ's risk management system.[1814]

7.65. ANZ also submits that the increase in capital adequacy would result in the benefit of a reduction in net systemic risk to the financial system more broadly.[1815]

Increased contribution to Major Bank Levy

7.66. ANZ submits that the merged entity will make a greater contribution to government funds through increased contributions to the Major Bank Levy.[1816] The Major Bank Levy was introduced in 2017 and applied to ADIs with total liabilities greater than $100 billion. The Major Bank Levy currently applies to ANZ, Commonwealth Bank, Westpac, NAB and Macquarie. The levy is set at 0.015%, paid each quarter on the

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1801 ANZ application for Merger Authorisation, 2 December 2022, [8.34]; Statement of Adrian Went (ANZ), 28 November 2022, [44], [49(a)-(b)].

1802 Statement of Steven Johnston (Suncorp Group), 25 November 2022, [98].

1803 **[Redacted - Confidential]**

1804 **[Redacted - Confidential]**.

1805 **[Redacted - Confidential]**

1806 **[Redacted - Confidential]**

1807 **[Redacted - Confidential]**

1808 **[Redacted - Confidential]**

1809 **[Redacted - Confidential]**

1810 ANZ application for Merger Authorisation, 2 December 2022, [8.48]; Expert report of Dr Jeffrey Carmichael, 25 November 2022, [2.2].

1811 ANZ application for Merger Authorisation, 2 December 2022, [8.41(a)].

1812 Expert report of Dr Jeffrey Carmichael, 25 November 2022, [2.6], [3].

1813 Second expert report of Dr Jeffrey Carmichael, 13 May 2023, [2.16].

1814 Second expert report of Dr Jeffrey Carmichael, 13 May 2023, [2.17].

1815 ANZ application for Merger Authorisation, 2 December 2022, [8.41(b)]; Expert report of Dr Jeffrey Carmichael, 25 November 2022, [3].

1816 ANZ application for Merger Authorisation, 2 December 2022, [8.71].

balance of certain liabilities of the ADI.[1817] ANZ estimates that the Proposed Acquisition will increase its levy payments by approximately $24 million each year.[1818]

Expert reports

7.67. In her independent expert report, in relation to the Proposed Acquisition Ms Starks states that there is an immediate (or at least short-term) benefit from reduced funding costs for Suncorp Bank.[1819] However, when commenting on the expert report by Mr Smith, Ms Starks states that the Proposed Acquisition may give rise to lower funding costs in a way that does not necessarily constitute a productive efficiency gain.[1820] Lower funding costs may not represent productive efficiency gains for a number of reasons including change in capital composition – if ANZ has better capital buffers (perhaps due to regulatory requirements), then it may achieve lower cost of debt;[1821] diversification – if ANZ's assets are already more diversified, this may mean less risk to providers wholesale debt funding, but not lower overall expected losses,[1822] and the implicit subsidy ANZ may receive on cost of debt as a D-SIB.[1823] Ms Starks also states that there are reasons why lower funding costs for Suncorp Bank could represent productive efficiency gains.[1824] These include reduced likelihood of bank failure[1825] and improvement to underlying risk for Suncorp Bank.[1826] Overall, Ms Starks considers that it cannot be concluded, as Mr Smith does, that Suncorp Bank's ability to benefit from lower cost of wholesale funding represents a productive efficiency.[1827] In her supplementary report, Ms Starks states that she saw no further evidence provided by ANZ following her initial report] that lead her to change her conclusions.[1828]

7.68. In relation to the Bendigo Merger Counterfactual, Ms Starks states that a merged BEN/ Suncorp Bank entity would likely experience funding dis-synergies from the Major Bank Levy and change in credit rating, but that the impact of these dis-synergies would be relatively small when compared to the potential benefits from increased scale.[1829] Ms Starks considers that any impact on funding costs would likely be outweighed by increased scale and potential IRB accreditation, which would have greater bearing on a merged BEN/ Suncorp Bank entity's ability to compete.[1830] Ms Starks states that the increased scale, in particular, would allow a merged BEN/ Suncorp Bank entity to spread its fixed costs over a larger base and may also provide access to cheaper wholesale funding.[1831] Ms Starks states that even if a merged BEN/ Suncorp Bank does not achieve IRB accreditation, she considers that the

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1817 Major Bank Levy Act 2017 (Cth), s 5.

1818 ANZ application for Merger Authorisation, 2 December 2022, [8.71].

1819 Expert report of Mary Starks, 16 June 2023, [4.35.1].

1820 Expert report of Mary Starks, 16 June 2023, [10.32].

1821 Expert report of Mary Starks, 16 June 2023, [10.32.1]; Supplementary expert report of Mary Starks, 7 July 2023, [3.11].

1822 Expert report of Mary Starks, 16 June 2023, [10.32.2]; Supplementary expert report of Mary Starks, 7 July 2023, [3.11].

1823 Ms Starks does acknowledge that the existence and scale of such a subsidy is difficult to assess but points to a number of pieces of evidence she considers instructive: Expert report of Mary Starks, 16 June 2023, [10.32.3]; Supplementary expert report of Mary Starks, 7 July 2023, [3.11].

1824 Expert report of Mary Starks, 16 June 2023, [10.41.1].

1825 Expert report of Mary Starks, 16 June 2023, [10.41.2]; Supplementary expert report of Mary Starks, 7 July 2023, [3.13].

1826 Expert report of Mary Starks, 16 June 2023, [10.41.3]; Supplementary expert report of Mary Starks, 7 July 2023, [3.11].

1827 Expert report of Mary Starks, 16 June 2023, [10.42].

1828 Supplementary expert report of Mary Starks, 7 July 2023, [9.12].

1829 Expert report of Mary Starks, 16 June 2023, [7.57].

1830 Supplementary expert report of Mary Starks, 7 July 2023, [6.19].

1831 Expert report of Mary Starks, 16 June 2023, [7.59].

positive impact of scale would likely outweigh the negative impact from the (modest) funding dis-synergies.[1832]

7.69. In relation to the expert report of Dr Carmichael, Ms Starks states that while she considers Dr Carmichael's conclusions on the claimed prudential safety benefits as plausible, there is significant uncertainty around these benefits.[1833] In relation to the claim that ANZ's greater capital adequacy requirements could reduce the risk of default for Suncorp Bank's assets, Ms Starks states that it is reasonable to conclude that greater capital buffer could generate such benefits but that this also means more capital is tied up, which has associated costs.[1834] In relation to the claim about reduced systemic risk, Ms Starks considers Dr Carmichael's report relies too much on a literal interpretation of APRA's policy regarding D-SIBs.[1835] Ms Starks considers that while there is little evidence of the claimed financial stability benefits associated with superior risk management and diversification in the context of the Proposed Acquisition, it is reasonable to treat any material reduction in the risk of bank failure as a significant public benefit.[1836] In her supplementary report, Ms Starks states that Dr Carmichael's second report does not materially change her view on the potential prudential safety and stability benefits of the Proposed Acquisition.[1837]

7.70. In his report responding to Ms Starks' report, Mr Ali stated that there would be a likely funding cost dis-synergy in the Bendigo Merger Counterfactual;[1838] and considers that Ms Starks overemphasises the potential benefits of IRB accreditation and overlooks the significant costs and uncertainty of accreditation.[1839] Mr Ali also states that the implicit subsidy of government support would be mitigated by D-SIB capital requirements and the Major Bank Levy.[1840]

Submissions from interested parties

7.71. A number of interested parties made submissions regarding ANZ's claimed prudential benefits.

7.72. BEN submits it is unlikely that there would be cost savings arising from cheaper wholesale funding and to the extent savings did arise, they are unlikely to be passed on to consumers.[1841] Professor King's report (prepared on behalf of BEN) states that low wholesale funding costs just reflect that the entity benefits from an implicit 'too big to fail' guarantee.[1842] With respect to ANZ's submission regarding greater assurance to wholesale funding, BEN submits that ANZ does not acknowledge that the risk of global debt investors withdrawing funding is greater for smaller banks that have a proportionately higher reliance on wholesale funding.[1843]

1832 Expert report of Mary Starks, 16 June 2023, [7.59].

1833 Expert report of Mary Starks, 16 June 2023, [10.51].

1834 Expert report of Mary Starks, 16 June 2023, [10.52].

1835 Expert report of Mary Starks, 16 June 2023, [10.53].

1836 Expert report of Mary Starks, 16 June 2023, [10.54].

1837 Supplementary expert report of Mary Starks, 7 July 2023, [9.15].

1838 Second expert report of Mozammel Ali, 23 July 2023, [22]-[23].

1839 Second expert report of Mozammel Ali, 23 July 2023, [41]-[64].

1840 Second expert report of Mozammel Ali, 23 July 2023, [88]-[89].

1841 Bendigo and Adelaide Bank submission, 3 March 2023, [7.3].

1842 Expert report of Professor Stephen King, 3 March 2023, [190]-[194].

1843 Bendigo and Adelaide Bank submission, 3 March 2023, [7.3].

7.73. With respect to the Bendigo Merger Counterfactual, BEN submits **[Redacted - Confidential]**[1844] and that it would likely receive a credit rating uplift through the increased scale and revenue base.[1845] **[Redacted - Confidential]**.[1846] **[Redacted - Confidential]**. **[Redacted - Confidential]**. BEN submits that potential credit rating benefits of a merged BEN/ Suncorp Bank entity would enhance BEN's capacity to scale efficiencies and pass on savings to customers.[1847] BEN also submits that this would reduce its wholesale funding costs and improve access to wholesale funding markets, enhancing its ability to challenge the major banks on pricing.[1848]

7.74. Bank of Queensland submits that the implicit government backing of the major banks provides the major banks with an uplift in their credit rating and as a result, access to lower costs of funds.[1849] Bank of Queensland submits that given the role that size and scale play in delivering such advantages, continued concentration in the major banks could further support an environment that impacts the ability of remaining providers and new entrants to compete.[1850] Bank of Queensland also submits that it is unclear how accessing lower cost wholesale funding on a standalone basis, including when not passing the savings on to the consumer, represents a true public benefit.[1851]

7.75. The CFA submits that prudential regulation in Australia is already 'unquestionably strong' and that any safety beyond what is required by regulation is unlikely to be significant.[1852] BEN submits that increased prudential safety as a result of the Proposed Acquisition is unlikely.[1853] BEN submits that any increase in ANZ's size proportionally increases the amount of risk posed to Australia's financial system.[1854] Bank of Queensland submits that the Proposed Acquisition could contribute to increased financial security of the Australian system, but the degree to which this would occur remains unclear.[1855] Bank of Queensland also submits that it is not clear whether this increase in stability would offset the potential competitive impact of further consolidation.[1856]

7.76. APRA, the independent statutory authority that authorises, regulates and supervises institutions across the banking sectors, provided a submission in response to questions put by the ACCC. APRA states that while the calibration of capital requirements involves a high degree of judgement, APRA's intent and best judgement is that its new capital framework that commenced in 2023, including requirements for D-SIBs, are appropriately captured for the risks related to the probability of ADI failure and the direct and indirect impacts of such failure.[1857]

1844 **[Redacted - Confidential]**.

1845 Bendigo and Adelaide Bank submission, 3 March 2023, [5.5].

1846 **[Redacted - Confidential]**

1847 Bendigo and Adelaide Bank submission, 3 March 2023, [5.5].

1848 **[Redacted - Confidential]**

1849 Bank of Queensland submission, 24 February 2023, [1(c)(iv)], citing Productivity Commission, Competition in the Australian Financial System -Inquiry report, 29 June 2018, pp 182, 189.

1850 Bank of Queensland submission, 24 February 2023, [1(e)].

1851 Bank of Queensland submission, 24 February 2023, [7(c)(i)].

1852 Consumers' Federation of Australia submission, 11 January 2023, p 7.

1853 Bendigo and Adelaide Bank submission, 3 March 2023, [7.4].

1854 Bendigo and Adelaide Bank submission, 3 March 2023, [7.4].

1855 Bank of Queensland submission, 24 February 2023, [7(b)].

1856 Bank of Queensland submission, 24 February 2023, [7(b)].

1857 APRA submission, 13 July 2023, p 7.

7.77. With respect to ANZ's claim about an increase to the Major Bank Levy, BEN submits that this claimed benefit is speculative and vague.[1858] BEN submits there is no way for ANZ to quantify what potential 'public' application this increased levy will be put towards and as such any public benefits claimed as a result of an increase to the Government's consolidated revenue should be given little weight by the ACCC.[1859]

ACCC's view

7.78. Overall, the ACCC's view is that there is unlikely to be material prudential benefits as a result of the Proposed Acquisition.

Reduced wholesale funding costs and greater access to wholesale funding

7.79. Credit ratings are an important driver of a bank's cost of and access to wholesale funding. The major banks and Macquarie Bank have higher credit ratings, and having been assessed as less risky, have access to cheaper wholesale funding compared to the second-tier banks, including Suncorp Bank.[1860] **[Redacted - Confidential]**,[1861]**[Redacted - Confidential]**,[1862] **[Redacted - Confidential]**.

Table 14: [Redacted - Confidential]

[Redacted – Confidential]

7.80. The ACCC considers there is potentially some benefit in the form of lower funding costs than those to which Suncorp Bank as a standalone bank would have access. However, the ACCC considers that any benefit arising in the form of lower funding costs would be at least partially offset to some degree by increases to other costs (including contributions to the Major Bank Levy and higher capital requirements) and greater systemic risk posed by the larger entity.

7.81. The ACCC also considers a proportion of the lower cost of wholesale funding reflects ANZ's existing implicit support as a result of its D-SIB status or its greater capital buffer, neither of which constitutes a productive efficiency. The ACCC notes Mr Ali's submission that this implicit subsidy is substantially mitigated by the D-SIB capital requirements and the Major Bank Levy.[1863] The ACCC considers there would be some small benefit, to the extent that lower cost of funding does not entirely go towards redressing the implicit subsidy.

7.82. The ACCC also notes that the weight it places on any such benefit depends on who ultimately receives the benefit (for example, whether the savings are likely to be retained, or largely retained, by ANZ and its shareholders, or if it would likely be shared with the community more broadly). In his report, Mr Smith states that economic theory would suggest that pass-through to customers would be likely,[1864] but states it is difficult to draw any general conclusions from the theory regarding the likely extent of firm-specific pass-through.[1865] The ACCC considers that, based on the

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[1858] Bendigo and Adelaide Bank submission, 3 March 2023, [7.6].

[1859] Bendigo and Adelaide Bank submission, 3 March 2023, [7.6].

[1860] Under S&P the major banks all have Long-Term Issuer Credit Ratings of AA-, compared to BBB+ for BEN and BOQ.

[1861] **[Redacted - Confidential]**.

[1862] **[Redacted - Confidential]**

[1863] Second expert report of Mozammel Ali, 23 July 2023, [88], [92].

[1864] Expert report of Patrick Smith, 1 December 2022, [96].

[1865] Expert report of Patrick Smith, 1 December 2022, [97].

competitiveness of the current banking markets described above, it is not persuaded as to the extent to which any benefit in the form of reduced costs would be passed on.

7.83. With respect to ANZ's claimed public benefit of greater access to wholesale funding, the ACCC notes that, while there are occurrences of instability in the banking industry, it has not seen evidence that indicates that Suncorp Bank has been, or is likely to be, unable to access the funding that it requires in the No-Sale Counterfactual, including to replace its maturing wholesale funding. There is no evidence to suggest Suncorp Bank is likely to be in need of greater access to wholesale funding markets in the future to support its strategy. In relation to a Bendigo Merger Counterfactual, **[Redacted - Confidential]**.[1866] Even in the event that a merged BEN/ Suncorp Bank entity received a lower credit rating than Suncorp Bank currently has, **[Redacted - Confidential]** that rating would still likely be investment grade.[1867]

7.84. The ACCC considers that a merged BEN/ Suncorp Bank entity is still likely to be able to access necessary funding at commercially acceptable rates under the likely rating outcomes. Overall, assuming ANZ support results in greater access to wholesale funding than the existing assumed support from Suncorp Group, or than could be achieved by a merged BEN/ Suncorp Bank entity, this would likely represent only a small benefit resulting from the Proposed Acquisition.

Increased prudential safety

7.85. With respect to ANZ's claimed benefit of increased prudential stability, the ACCC notes that greater regulatory requirements on banks designated D-SIBs are intended to hold these banks to a higher standard in recognition that failure of these banks would be more significant compared to non-systemically important institutions. The ACCC notes APRA's submission that APRA's best judgement that the capital framework and loss absorbing capacity requirements are appropriately calibrated for the risks associated with D-SIBs.[1868]

7.86. The ACCC considers that these requirements are intended to offset the increased prudential risk of D-SIBs by reducing the likelihood of their failure and the impact of any failure. The ACCC also notes that there does not appear to be significant issues with the likely future prudential stability of Suncorp Bank that would be addressed by the Proposed Acquisition, and it is unclear that there would be any improvement in addressing systemic risk when taking into account changes in both the probability and impact of failure, which APRA's framework is calibrated to capture.[1869]

7.87. The ACCC considers it has very limited material from which to draw a concluded view of the likelihood of benefits relating to prudential stability as compared to either the No-Sale Counterfactual or the Bendigo Merger Counterfactual.

Increased contribution to Major Bank Levy

7.88. The ACCC considers that increased contributions to the Major Bank Levy may occur in the absence of the Proposed Acquisition, in the context of the Bendigo Merger

[1866] **[Redacted - Confidential]**.

[1867] **[Redacted - Confidential]**.

[1868] APRA submission, 13 July 2023, p 7.

[1869] APRA submission, 13 July 2023, p 7.

Counterfactual. **[Redacted - Confidential]**.[1870] As noted above, an increase in overall contributions to the levy would likely arise in the context of the Bendigo Merger Counterfactual. In such a counterfactual, the increase in contributions may actually be greater as it would be the combined company's liabilities which are assessed, compared to just the additional liabilities of Suncorp Bank if the Proposed Acquisition proceeds and Suncorp Bank's liabilities are added to those of ANZ. In relation to the No-Sale Counterfactual, based on current total liabilities,[1871] the ACCC considers it unlikely that Suncorp Bank would be subject to the Major Bank Levy in the near future.

7.89. As discussed above, the Major Bank Levy is partly designed as a requirement that large banks contribute to the systemic risk that they pose. Therefore, the ACCC considers that the Major Bank Levy is addressing potential harm that arises from the size of a bank and as such the levy is not a gain to the public, but a mechanism to address a detriment associated with the increasing size of a bank.

7.90. To the extent that benefits from increased contributions are not addressing a potential detriment from the larger banks, the ACCC considers that an increase in contributions to the Major Bank Levy could represent a potential public benefit insofar as it enables the Government to allocate those additional funds more broadly.

Benefits for the Queensland economy and Queenslanders

ANZ and Suncorp Group's submissions

7.91. ANZ submits that the Proposed Acquisition will lead to direct benefits to the Queensland economy and Queenslanders through lending and employment commitments.[1872] These commitments were foreshadowed in the Share Sale and Purchase Agreement, with ANZ subsequently entering into an Implementation Agreement with the State of Queensland (the **ANZ Implementation Agreement**), announced on 16 June 2023.[1873]

7.92. ANZ submits that it has made a number of public commitments to demonstrate its intention to continue investing in Queensland, including $25 billion in new lending (to support renewable energy targets and new energy projects) and $10 billion to support Queensland businesses over the next three years.[1874] ANZ also submits that it has also made a commitment to establish a tech hub in Brisbane.[1875]

7.93. In his statement, Mr Elliott states that these commitments from ANZ are linked to the Proposed Acquisition and would not occur in its absence.[1876] In relation to the lending commitments, **[Redacted - Confidential]**.[1877]

7.94. ANZ also submits that the Proposed Acquisition will result in the creation of jobs in Queensland, as well as enhanced career opportunities for Suncorp Bank

1870 **[Redacted - Confidential]**.

1871 Suncorp Group, Investor Pack: Financial results for the year ended 30 June 2022, 8 August 2022, p 72.

1872 ANZ application for Merger Authorisation, 2 December 2022, [8.62], [8.65].

1873 Fourth statement of Steven Johnston (Suncorp Group), 13 July 2023, [10].

1874 ANZ application for Merger Authorisation, 2 December 2022, [8.62].

1875 ANZ supplementary submission - ANZ response to the ACCC's Statement of Preliminary Views, 30 June 2023, [1.5].

1876 Statement of Shayne Elliott (ANZ), 30 November 2022, [82].

1877 **[Redacted - Confidential]**.

employees.[1878] Suncorp Group announced **[Redacted - Confidential]** an agreement with the State of Queensland **[Redacted - Confidential]** on 16 June 2023.[1879] In his statement, Mr Johnston states that **[Redacted - Confidential]** Suncorp Group will make a range of investment and employment commitments to Queensland.[1880] Mr Johnston states that the commitments are made to support proposed amendments to the *State Financial Institutions and Metway Merger Act 1996* (QLD) to allow the Proposed Acquisition to proceed.[1881] The commitments include:

- Suncorp Group to remain headquartered in Brisbane
- investment of at least $19 million to develop a Disaster Recovery Centre of Excellence
- employment commitments, including increasing the number of Suncorp Group employees in Townsville by 120 (100 FTE)[1882] and commitments relating to the aggregate number of people employed by Suncorp Group in Queensland exceeding the aggregate employed in any other state or territory **[Redacted - Confidential]**.[1883]

7.95. In his statement, Mr Johnston states that funding of these commitments is only possible because of the value for Suncorp Group arising out of the Proposed Acquisition.[1884] Mr Johnston states that a transaction with BEN would not justify Suncorp Group committing to this package of commitments.[1885]

7.96. Following the Tribunal's determination in *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2),*[1886] the ACCC wrote to ANZ and Suncorp Group seeking submissions with respect to the statutory framework for merger authorisations, and whether the claimed benefits can properly be considered to be benefits to the public that be likely to result from the Proposed Acquisition.[1887] Suncorp Group provided a submission in response stating that the claimed public benefits, including the benefits for the Queensland economy and Queenslanders, are causally connected to the Proposed Acquisition and should be taken into account.[1888]

Submissions from interested parties

7.97. Bank of Queensland submits that the claimed public benefits are not sufficiently linked to the Proposed Acquisition. In particular, Bank of Queensland does not consider it is clear that:

1878 ANZ application for Merger Authorisation, 2 December 2022, [8.65].

1879 Suncorp Group media release, 'Suncorp Group announces commitments to Queensland', 16 June 2023.

1880 Third statement of Steven Johnston (Suncorp Group), 22 June 2023, [8].

1881 The proposed amendments will not become operative unless and until the other conditions precedent to the Proposed Acquisition are satisfied. Third statement of Steven Johnston (Suncorp Group), 22 June 2023, [8].

1882 This is not an increase to Suncorp Group's national FTE workforce numbers, but a redistribution to Townsville: Third statement of Steven Johnston (Suncorp Group), 22 June 2023, [26].

1883 Third statement of Steven Johnston (Suncorp Group), 22 June 2023, [17]-[32].

1884 Third statement of Steven Johnston (Suncorp Group), 22 June 2023, [36].

1885 Third statement of Steven Johnston (Suncorp Group), 22 June 2023, [36].

1886 *Applications by Telstra Corporation Limited and TPG Telecom Limited* (No 2) [2023] ACompT 2.

1887 ACCC, Letter to ANZ and Suncorp Group re market structure and public benefits, 6 July 2023.

1888 Suncorp Group submission regarding public benefits, 13 July 2023.

- Queensland businesses would not receive similar (or better) loans in the absence of the Proposed Acquisition, either from Suncorp Bank, ANZ or another lender[1889]
- Queensland's disaster preparedness requires the establishment of a Disaster Preparedness Centre to a degree that this represents a public benefit,[1890] and
- ANZ exploring the establishment of one or more 'Centres of Excellence' in Queensland represents a public benefit arising from the Proposed Acquisition.[1891]

7.98. BEN submits that the direct benefits to Queensland are limited and that ANZ itself has conceded it may have made new lending available to support renewable energy targets and new energy projects in the absence of the Proposed Acquisition.[1892]

ACCC's view

7.99. ANZ and Suncorp Group claim benefits to the Queensland economy and Queenslanders from commitments made to the State of Queensland pursuant to the Implementation Agreements.[1893] The ACCC notes, however, that the conduct for which ANZ has sought authorisation is the acquisition of shares and other assets that relate to Suncorp Bank.[1894] As recently observed by the Tribunal, the statutory preconditions for authorisation in s 90(7) are directed to the conduct that is the subject of the application for authorisation, and in this case require the ACCC to assess the likely competitive effects of, and the public benefits and detriments likely to result from, the Proposed Acquisition.[1895] While the Application establishes that a condition precedent to the Proposed Acquisition is the amendment of the *State Financial Institutions and Metway Merger Act 1996* (QLD) through agreement with the Queensland government,[1896] the Implementation Agreements themselves do not directly form part of the conduct for which authorisation is sought. The ACCC also notes that Suncorp Group is not an applicant to the merger authorisation and has not sought authorisation for the Suncorp Group Implementation Agreement or any other conduct.

7.100. The ACCC has considered whether any public benefits in Queensland resulting from the Implementation Agreements would be benefits that can be taken into account, on the basis that they are relevantly causally connected to the Proposed Acquisition. The ACCC considers there are strong arguments that any such benefits are not relevant benefits to the public resulting from the Proposed Acquisition. However, it also notes there is an alternative argument that the commitments in the Implementation Agreements flow chronologically from the proposed conduct in the Application, and as such the effects of that conduct include the effects of the Queensland commitments.[1897]

7.101. For the purposes of assessing the Proposed Acquisition, therefore, the ACCC has assumed, in line with the Application, that these benefits can be considered. It has

1889 Bank of Queensland submission, 24 February 2023, [7(c)(ii)].

1890 Bank of Queensland submission, 24 February 2023, [7(c)(iii)].

1891 Bank of Queensland submission, 24 February 2023, [7(c)(iv)].

1892 Bendigo and Adelaide Bank submission, 3 March 2023, [7.5(a)].

1893 ANZ supplementary submission - ANZ response to the ACCC's Statement of Preliminary Views, 30 June 2023, [1.2]; Suncorp Group submission regarding public benefits, 13 July 2023, [16].

1894 ANZ application for Merger Authorisation, 2 December 2022, [3.1].

1895 *Applications by Telstra Corporation Limited and TPG Telecom Limited* (No 2) [2023] ACompT 2, [144]-[145].

1896 ANZ application for Merger Authorisation, 2 December 2022, [3.3]-[3.4].

1897 Suncorp Group submission regarding public benefits, 13 July 2023, [16], [19].

conducted an analysis of the benefits claimed and assessed their magnitude. Having done so, the ACCC does not consider it is necessary to reach a final position on whether these claimed benefits can be taken into account, as for the reasons set out below their magnitude is not sufficient to change the ACCC's conclusion on whether there would be a net public benefit.

7.102. This is because the ACCC does not consider that all of the potential benefits resulting from the Implementation Agreements would only occur in the future with the Proposed Acquisition, including both in regard to the No-Sale counterfactual and the Bendigo Merger Counterfactual. The ACCC considers that if there is benefit to be obtained from the investment commitments made under the Implementation Agreements, then that economic opportunity would likely be taken up absent the Proposed Acquisition. More specifically, the ACCC considers that absent the Proposed Acquisition, if there are profitable lending or other investment opportunities in Queensland, then it is likely that ANZ or other banks would take advantage of them. **[Redacted - Confidential]**.[1898]

7.103. To the extent that the Proposed Acquisition means this lending may occur on more favourable terms from ANZ under its commitments than those offered by other banks, the extent of this benefit would be confined to the difference between such offers. To the extent that any benefits represent a transfer from the merged entity's shareholders and customers to taxpayers, the ACCC is not able to determine whether this represents a transfer to something of greater public benefit than what the loan facilities funds would be used for absent the Proposed Acquisition and therefore whether this constitutes a public benefit of the Proposed Acquisition.

7.104. Finally, the ACCC notes that the Implementation Agreements, **[Redacted - Confidential]**.[1899]

7.105. As such, the ACCC considers that any public benefits relating to additional is investment in Queensland would be small in scope.

ACCC conclusion on public benefit

7.106. The ACCC considers that the Proposed Acquisition is likely to result in public benefits from cost savings and synergies likely to accrue to ANZ.

7.107. The ACCC also notes there are some small benefits arising from a singular focus on insurance to Suncorp Group and some, likely minimal, prudential benefits.

Public detriments

7.108. The ACCC considers that the most significant public detriments from the Proposed Acquisition are the likely effects on competition. These detriments include the likely competitive detriments in the markets for home loans, agribusiness banking and SME banking discussed in section 6 (Competitive effects of the Proposed Acquisition) above. It also includes the lessening of competition that the ACCC considers is likely to arise in the market for retail deposits.

7.109. The ACCC notes the scope of relevant competitive benefits or detriments is not confined to the 'substantial lessening of competition' analysis which applies in the

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[1898] **[Redacted - Confidential]**.

[1899] **[Redacted - Confidential]**; **[Redacted - Confidential]**.

'Competition Test' in section 90(7)(a) of the Act. A lessening of competition does not have to be 'substantial' to be a detriment to the public that is relevant to the ACCC's assessment of whether it is satisfied that the Proposed Acquisition is likely to result in a net public benefit.

7.110. The ACCC considers that there may be detrimental impacts that would accrue to the Australian banking industry more generally, in addition to that identified in particular product markets. The ACCC discusses these below under the heading 'Harms to the Australian retail banking industry'.

7.111. In addition, the following potential detriments have been raised and taken into account in the ACCC's assessment of the Proposed Acquisition:

- reduced physical access to banking services, and
- employment impacts.

Harm to the Australian retail banking industry

7.112. The ACCC considers that the Proposed Acquisition may have detrimental impacts on the Australian retail banking industry more generally with effects that extend beyond the specific markets considered in the competition analysis discussed in 'Competitive effects of the Proposed Acquisition'.

7.113. For this reason, in assessing the Net Public Benefit Test, the ACCC has also taken into account detriments that are likely to occur to retail banking more generally. This is also consistent with the ACCC's task in relation to this limb of the merger authorisation test under s 90(7) of assessing detriments to the public, which has a wide ambit and can include any impairment to the community generally, any harm or damage to the aims pursued by society including, as one of its principal elements, the achievement of the goal of economic efficiency.[1900]

Importance of second-tier banks

7.114. As discussed in 'Industry background', the ACCC considers that the Australian banking sector is an established oligopoly, where competition in general is still muted to some degree, and barriers to entry and expansion at scale are high.

7.115. When previously considering retail banking markets, the ACCC has stated: 'in situations of oligopoly, all else being equal, a market structure that enables a competitive fringe of second-tier firms to effectively challenge the price and service decisions of large incumbents is likely to produce significantly better outcomes for consumers than one that does not'.[1901]

7.116. In the ACCC's Statement of Preliminary Views, it stated that it was considering the impact of removing Suncorp Bank from the second-tier realm on competition, particularly non-price elements of competition, and the extent to which new entry and expansion would be sufficient to replace the loss of competitive constraint from Suncorp Bank.[1902]

[1900] *Re 7-Eleven Stores Pty Ltd* [1994] ATPR 41-357, [42,683].

[1901] ACCC, Submission to the Productivity Commission Inquiry into Competition in the Australian Financial System, September 2017, [3.1].

[1902] ACCC, Statement of Preliminary Views, 4 April 2023, [4.3], [4.4].

7.117. ANZ strongly contests this, arguing that competition between the major banks is vigorous,[1903] the closest and strongest competitors of ANZ are the other major banks,[1904] and regional banks are one of many sources of competition and are not the primary driver of competition.[1905] ANZ also considers that a key source of competition comes from entry and expansion of smaller competitors which do not adopt the scale and product range of a regional bank,[1906] and that Suncorp Bank, or the second-tier banks, are not particularly important to price or non-price competition.[1907]

7.118. Several interested parties put contrary submissions to the ACCC. For example, it was submitted that the major banks operate largely as one with respect to pricing and product differentiation, there is no effective competition between the major banks, and competitive pressure in Australian banking comes from the second-tier banks including Suncorp Bank.[1908] It was also submitted that smaller banks cannot compete against the major banks on price alone and must instead compete through strong non-price offerings.[1909] Further, it was submitted that regional banks play an important role in promoting competition in non-price areas, such as customer service and innovation and in 'promoting engagement by financial service providers with their wider community, environmental issues and corporate social responsibility'.[1910]

7.119. The ACCC considers that there is evidence that the major banks perceive the second-tier banks to be a significant competitive threat. Evidence obtained by the ACCC strongly indicates that the major banks consider the second-tier banks to be a competitive threat.[1911]

7.120. The ACCC also considers that the second-tier banks play an important role in non-price competition. This can manifest in several ways, including developing new digital offerings,[1912] better customer care and service levels,[1913] and competing on aspects of service quality such as loan approval turnaround times.[1914] Further, regional banks tend to be stronger where they have a greater physical presence and where they have built up customer loyalty over time.[1915]

7.121. The ACCC considers that outside the major banks, the second-tier banks are currently an important source of competitive pressure on the major banks. This is especially significant given it is unlikely that there will be the credible threat of

[1903] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [2.31], [4.3]; ANZ response to BOQ submission, 22 March 2023, [2.16]; ANZ submission – Roadmap to evidence, 16 June 2023, p 2.

[1904] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [4.15(b)].

[1905] ANZ response to BOQ submission, 22 March 2023, [1.5(c)]; [2.19].

[1906] ANZ response to BOQ submission, 22 March 2023, [2.23].

[1907] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [2.25]; ANZ response to BOQ submission, 22 March 2023, [2.31]; ANZ submission – Roadmap to evidence, 16 June 2023, p 4.

[1908] Consumers' Federation of Australia submission, 11 January 2023, p 2; Consumers' Federation of Australia submission, 16 April 2023, pp 2-3.

[1909] Bendigo and Adelaide Bank submission, 3 March 2023, [5.6].

[1910] Bank of Queensland submission, 24 February 2023, p 4.

[1911] See for example: **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

[1912] Bendigo and Adelaide Bank submission, 3 March 2023, [6.2(c)].

[1913] Bank of Queensland submission, 24 February 2023, p 10; Bendigo and Adelaide Bank submission, 3 March 2023, [2.2], [7.2(f)], **[Redacted - Confidential]**.

[1914] Bendigo and Adelaide Bank submission, 3 March 2023, p 23. BEN submits that this is demonstrated by the NPS data showing that ANZ consistently scores below zero, whereas Suncorp Bank and BEN consistently score above zero: **[Redacted - Confidential]**. See also: **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**. See for example: **[Redacted - Confidential**; **[Redacted - Confidential]**; **[Redacted - Confidential]**; **[Redacted - Confidential]**.

[1915] ANZ application for Merger Authorisation, 2 December 2022, [7.196c].

sustained new entry and expansion at scale to disrupt the industry and meaningfully constrain the major banks (as discussed at 'Industry background').

Importance of scale

7.122. As discussed at 'Industry background', the ACCC received a significant volume of evidence regarding the proposition that scale is important in Australian retail banking. ANZ submits that a core rationale for its acquisition of Suncorp Bank is the necessity to acquire scale so it can compete better against its larger rivals: Commonwealth Bank, Westpac and NAB.[1916] It allows ANZ to acquire 1.2 million customers that ANZ would otherwise have had to compete for.[1917] As Mr Elliott stated when announcing the Proposed Acquisition, this is '[t]he equivalent of many years of organic system growth.'[1918]

7.123. ANZ submit that second-tier banks do not have the scale to support investment in necessary technology improvements, and that this will hamper their ability to be effective competitors in the longer term.[1919]

7.124. Notwithstanding this, ANZ contests the notion that 'meaningful scale' is needed to be an effective competitor.[1920] It submits that there are numerous examples of effective competition from smaller players who have achieved growth from a small base without relying on inorganic acquisition of scale, such as Macquarie Bank in home loans, ING Bank in deposits, and Judo Bank in commercial banking.[1921] ANZ also contends that Suncorp Bank is not the only second-tier bank, and if the acquisition of scale was seen to be desirable there could be opportunities for one or more other combinations, such as Bank of Queensland, BEN, AMP Bank, ING and RACQ Bank.[1922]

7.125. There is an inherent tension between ANZ's position that 'meaningful scale' is not needed to be an effective competitor and a key rationale for it pursuing the Proposed Acquisition, which is to increase its scale to better allow it to undertake IT investments to make it more competitive in retail domestic markets.[1923]

7.126. There has been no evidence put to the ACCC that attempts to quantify the minimum efficient scale necessary to support technology investments needed for a retail bank in Australia. However, the ACCC notes that various banks have provided high level of indications of what they consider to be a minimum scale necessary to compete. ANZ states it 'doesn't know what the minimum scale is to be viable but contends that it is going up and up over time and that it is more than 5%;'[1924] **[Redacted - Confidential]**;[1925] and **[Redacted - Confidential]**.[1926]

1916 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [2].

1917 ANZ application for Merger Authorisation, 2 December 2022, [3.8(b)]; **[Redacted - Confidential]**.

1918 bluenotes, Elliott: a transformational advance for ANZ, 18 July 2022.

1919 **[Redacted - Confidential]**; ANZ oral submission to the ACCC, 16 June 2023, [23].

1920 ANZ letter regarding market structure and public benefits, 13 July 2023, p 3.

1921 ANZ letter regarding market structure and public benefits, 13 July 2023, pp 3-4.

1922 ANZ letter regarding market structure and public benefits, 13 July 2023, p 4.

1923 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [57(b)], [3.8(b)].

1924 ANZ oral submission to the ACCC, 16 June 2023, [24].

1925 **[Redacted - Confidential]**.

1926 **[Redacted - Confidential]**.

Removal of a meaningful opportunity for second-tier banks to gain scale

7.127. Mr Elliott has described the acquisition of Suncorp Bank as 'unique',[1927] and 'a once-in-a-lifetime opportunity' for ANZ.[1928] This view appears to be formed on the basis that no other bank of a similar size is 'a low risk, strong franchise with great customers'.[1929] In oral evidence, Mr Elliott stated that **[Redacted - Confidential]**,[1930] and **[Redacted - Confidential]**.'[1931]

7.128. ANZ holds this view notwithstanding there are other second-tier banks of similar scale to Suncorp Bank (for example Bank of Queensland, BEN, ING) which highlights the significance of the Proposed Acquisition.

7.129. It may be that banks other than ANZ have different risk tolerances or would consider other transactions to be 'substitutes out of necessity' once the possibility to acquire Suncorp Bank is extinguished. An example of this is **[Redacted - Confidential]**.[1932] **[Redacted - Confidential]**[1933] **[Redacted - Confidential]**.[1934]

7.130. **[Redacted - Confidential]**.[1935] **[Redacted - Confidential]**. As noted, ANZ considers Suncorp Bank to be **[Redacted - Confidential]** and 'unique',[1936] and Mr Elliott has described Suncorp Bank as 'literally…a once-in-a-lifetime opportunity' for ANZ.[1937]

7.131. The ACCC considers that it is likely that any firm that acquires Suncorp Bank will gain some advantage through an increase in scale, by being able to spread its fixed costs (which may include IT costs) across a larger customer base.

7.132. The ACCC considers that one of the counterfactuals with a realistic prospect of occurring is the Bendigo Merger Counterfactual, and the ACCC received conflicting evidence and submissions about whether the increased scale that a combined BEN/Suncorp Bank would obtain would increase its effectiveness as a competitor. As noted, it is not clear how significant the scale advantage from acquiring Suncorp Bank will be, however, the ACCC considers that it could result in a meaningful 'step change' in scale, by effectively doubling the number of customers that BEN can spread its fixed costs over.

7.133. The Proposed Acquisition therefore has detrimental impacts by removing the best and most meaningful opportunity for another second-tier bank to bolster its ability to effectively challenge the major banks through a step change in scale. In turn, this has the effect of further entrenching the oligopoly market structure, that is highly concentrated within the four major banks, and will have impacts across the banking industry beyond the individual markets discussed in 'Competitive effects of the Proposed Acquisition'. The best illustration of this is that it removes the opportunity for BEN to potentially achieve this type of meaningful step change in the near to

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1927 bluenotes, Elliott: a transformational advance for ANZ, 18 July 2022.

1928 Australian Financial Review, Why ANZ needs the Suncorp deal, 18 July 2022; **[Redacted - Confidential]**.

1929 ANZ, Transcript of bluenotes video interview with ANZ Chief Executive Officer Shayne Elliott, p 3.

1930 **[Redacted - Confidential]**.

1931 **[Redacted - Confidential]**.

1932 **[Redacted - Confidential]**.

1933 **[Redacted - Confidential]**; **[Redacted - Confidential]**.

1934 **[Redacted - Confidential]**.

1935 **[Redacted - Confidential]**.

1936 **[Redacted - Confidential]**; bluenotes, Elliott: a transformational advance for ANZ, 18 July 2022.

1937 Australian Financial Review, ANZ's 'one-in-a-lifetime' deal comes with complexity, 18 July 2022; **[Redacted - Confidential]**.

medium term. Notwithstanding this illustration, the ACCC's concerns are not premised on a specific alternative transaction occurring in the counterfactual, rather the detriment arises more generally in relation to the cohort of second-tier banks and the implication of the Proposed Acquisition for future market structure.

Reduced physical access to banking services

ANZ's submissions

7.134. ANZ submits that the use of branches has diminished significantly and that this trend will continue because customers increasingly prefer the convenience and efficiency of acquiring and using banking services remotely.[1938] However, ANZ submits that during the three-year period post-completion, it has committed to no further reductions in Suncorp Bank branch numbers in Queensland as a result of the Proposed Acquisition.[1939] ANZ submits that its plans for after that period are yet to be determined.[1940]

7.135. In terms of access to banking services beyond branches, ANZ submits that it intends to continue Suncorp Bank's contract with Australia Post (provided the commercial terms are equivalent to those currently offered) such that Suncorp Bank could continue offering Bank@Post services following the Proposed Acquisition.[1941] In its response to the SOPV, ANZ also submits that it has committed to **[Redacted - Confidential]**.'[1942] **[Redacted - Confidential]**.[1943] Under oral evidence, Mr Elliott stated that ANZ is committed to good faith negotiations with Australia Post to retain the services it provides Suncorp Bank customers and to work to consider extending those services to ANZ more broadly.[1944]

7.136. However, ANZ also submits that it anticipates realising cost synergies following integration through reductions in branches and contact centres.[1945]

7.137. With respect to its claimed counterfactual (the No-Sale Counterfactual), ANZ submits that there is no guarantee Suncorp Bank would retain its current branch network. Mr Elliott also stated in oral evidence that he expects branches to continue to close in the claimed No-Sale Counterfactual as Suncorp Bank has been more aggressive in closing branches.[1946] ANZ also submits that the number of branch closures in the No-Sale Counterfactual and in the Bendigo Merger Counterfactual could be even higher, as compared to the Proposed Acquisition.[1947] ANZ also submits that even if the Proposed Acquisition results in some branch closures as compared to the counterfactual, this would not constitute a public detriment due to:

[1938] ANZ application for Merger Authorisation, 2 December 2022, [8.78].

[1939] The ACCC notes that ANZ has not made this same commitment regarding ANZ branches in Queensland. ANZ application for Merger Authorisation, 2 December 2022, [3.4] and [8.79]; ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9.185].

[1940] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9.185].

[1941] ANZ application for Merger Authorisation, 2 December 2022, [8.67].

[1942] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9.186(c)].

[1943] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9.186(c)]; Second statement of Shayne Elliott (ANZ), 17 May 2023, [131].

[1944] **[Redacted - Confidential]**.

[1945] ANZ application for Merger Authorisation, 2 December 2022, [3.33].

[1946] **[Redacted - Confidential]**.

[1947] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9.185].

- customers still being able to access alternative branch services and other means to access banking products and services, and
- the closure of underutilised or duplicative branches enhancing efficiency, which is a public benefit. [1948]

Submissions from interested parties

7.138. A number of interested parties are concerned that the Proposed Acquisition will result in the closure of branches, particularly in regional areas.[1949] The CFA submits that a reduction in physical places for accessing banking services is a significant public detriment.[1950] The CFA submits ANZ's commitment with respect to maintaining total number of Suncorp Bank branches in Queensland does not obviate the public detriments likely to arise as it does not include ANZ branches in Queensland and does not include closures of branches in other states and territories.[1951]

7.139. A number of interested parties also raised the issue of access to banking services, noting that ANZ is currently the only major bank without an agreement for Bank@Post services and that the Proposed Acquisition may remove Suncorp Bank customers' access to these services.[1952]

7.140. Rabobank submits that, with digitisation, there is less need for physical transactions but physical meetings in the branch are still important.[1953]

7.141. In response to the ACCC's SOPV, the CFA submits that the ACCC should not only consider efficiency of resources when considering bank branch closures, but also accessibility and inclusion.[1954] The CFA submits that branch closures are detrimental to the accessibility of banking, particularly for vulnerable consumers, including older consumers or those living in remote areas. The CFA also submits that reports from its member, Indigenous Consumers Assistance Network, state that Suncorp Bank was the only bank that had a dedicated response to prisoner banking needs for consumers in custody.[1955]

ACCC's view

7.142. The ACCC acknowledges that access to banking services is an important public issue. Notwithstanding that, the ACCC also notes the longstanding trend towards branch closures, as well as the ongoing parliamentary inquiry on this issue.[1956]

7.143. **[Redacted - Confidential]**.[1957] **[Redacted - Confidential]**:

- **[Redacted - Confidential]**

1948 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9.186].

1949 John Curnow submission, 10 January 2023; Consumers' Federation of Australia submission, 11 January 2023; Nicholas Shea submission, 14 January 2023; Bendigo and Adelaide submission, 3 March 2023.

1950 Consumers' Federation of Australia submission, 11 January 2023, p 7.

1951 Consumers' Federation of Australia submission, 11 January 2023, p 7.

1952 Roy Featherstone submission, 16 January 2023.

1953 Rabobank submission, 18 January 2023.

1954 Consumers' Federation of Australia submission, 18 April 2023, p 1.

1955 Consumers' Federation of Australia submission, 18 April 2023, p 4.

1956 The Rural and Regional Affairs and Transport References Committee inquiry into bank closures in regional Australia was initiated on 8 February 2023, with a report due by 1 December 2023.

1957 **[Redacted - Confidential]**.

- **[Redacted - Confidential]**[1958] **[Redacted - Confidential]**.[1959]

7.144. **[Redacted - Confidential].**[1960] ANZ submits that it intends to operate Suncorp Bank as a separate brand for a period of up to three to four years post-completion of the Proposed Acquisition,[1961] after which the ACCC considers it is likely that ANZ will rationalise the branch network of either Suncorp Bank or ANZ.[1962]

7.145. However, the ACCC considers it is difficult to conclude whether existing physical points of presence for Suncorp Bank customers to access banking services would remain in either the No-Sale Counterfactual or the Bendigo Merger Counterfactual. The ACCC considers it is likely that branch closures will occur with or without the Proposed Acquisition, but it is unclear the extent to which the Proposed Acquisition may contribute towards additional branch closures.

7.146. The ACCC accepts that community access to banking services is an important issue. However, the ACCC considers that little weight should be accorded to this claimed access to physical banking services detriment in this matter due to the uncertainty around which scenarios in the future with or without the Proposed Authorisation are likely to result in more or fewer branch closures, and whether this is an efficient use of resources for society.

Employment impacts

ANZ's submissions

7.147. ANZ submits that, during the three-year period post-completion, it has publicly committed to no net job losses in Queensland for Suncorp Bank as a result of the Proposed Acquisition.[1963] **[Redacted - Confidential]**.[1964] **[Redacted - Confidential]**.[1965] ANZ submits that it has not made any decisions about the numbers or roles of employees that the merged entity would require following the separation period.[1966]

7.148. However, ANZ also submits that it will realise annual cost savings through labour rationalisation.[1967] ANZ submits that this rationalisation would be due to increased automation and reduction of duplicative roles, and consolidation of enabling and retail functions.[1968] ANZ submits that the removal of duplicative roles may reflect an efficient use of resources for society and thus result in public benefits in the form of an increase in productive efficiency.[1969] ANZ also submits that the employment-related

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1958 **[Redacted - Confidential]**.

1959 **[Redacted - Confidential]**.

1960 **[Redacted - Confidential]**.

1961 ANZ application for Merger Authorisation, 2 December 2022, [3.9].

1962 **[Redacted - Confidential]**.

1963 ANZ application for Merger Authorisation, 2 December 2022, [3.4], [8.79].

1964 **[Redacted - Confidential]**.

1965 **[Redacted - Confidential]**.

1966 ANZ application for Merger Authorisation, 2 December 2022, [3.35].

1967 ANZ application for Merger Authorisation, 2 December 2022, [3.33].

1968 ANZ application for Merger Authorisation, 2 December 2022, [3.33].

1969 ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9.193(c)].

benefits outlined in the Application[1970] must be weighed against any loss of employment that may result from the Proposed Acquisition.[1971]

ACCC's view

7.149. The ACCC considers there is a tension between the submissions made by ANZ with respect to employment impacts and the synergies it claims will result from the Proposed Acquisition.

7.150. However, as with reduced access to physical banking services, the ACCC considers it is difficult to predict with any certainty which scenarios in the future with or without the Proposed Acquisition are likely to result in greater or less employment, such that little weight can be attributed to employment detriments. The ACCC also considers, even if it could make this prediction, it would be difficult to determine whether this would be an efficient use of labour resources for society.

Balance of public benefit and detriment

7.151. In deciding whether it is satisfied that the likely public benefits of the Proposed Acquisition would outweigh the likely public detriments, the ACCC forms an evaluative assessment and judgement.

7.152. Based on the information before it, the ACCC considers the likely public benefits are the cost savings likely to accrue to ANZ. There is also likely to be some minimal prudential benefits and some additional benefits from a singular focus on insurance to Suncorp Group. The ACCC notes these are not unique to this particular transaction and may also arise to a large extent in the Bendigo Merger Counterfactual, although the benefits will be achieved more quickly via the sale to ANZ.

7.153. Against this, the ACCC has to balance the public detriments it considers likely to result from the Proposed Acquisition. These are primarily composed of the likely competitive detriments in the markets for home loans, SME banking products and agribusiness banking products. It also includes the lessening of competition that is likely to arise in the market for retail deposits. Given the size of these markets, and their fundamental importance to the Australian economy, the public detriment across these markets is likely to be significant.

7.154. The ACCC also has to balance the likely detriments arising from enduring changes that may further entrench an oligopoly market structure that arise from materially reducing the prospects of a stronger and more effective competitive fringe in the second-tier cohort. These detriments extend beyond the specific markets noted above, although the ACCC is conscious that there is a degree of overlap with the competition concerns outlined above and has taken this into account when weighing the public benefits and detriments, so as to avoid any double counting.

7.155. The ACCC is not satisfied, in all the circumstances, that the Proposed Acquisition would result, or be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Acquisition.

[1970] This includes Suncorp Group's commitment to establishing a Disaster Response Centre of Excellence and ANZ's commitment to exploring the establishment of one or more 'Centres of Excellence' in Queensland: ANZ application for Merger Authorisation, 2 December 2022, [8.66].

[1971] ANZ response to ACCC's Statement of Preliminary Views, 17 May 2023, [9.193(c)].

8. Determination

The application

8.1. On 2 December 2022, Australia and New Zealand Banking Group Limited (**ANZ**) lodged application MA1000023 with the ACCC, seeking authorisation under subsection 88(1) of the Act.

8.2. ANZ seeks authorisation for its proposed acquisition of Suncorp Bank. Specifically, it seeks authorisation for ANZ (or a related body corporate nominated by ANZ) to acquire:

- all of the issued share capital of SBGH Limited, being 397,677,111 issued ordinary shares, in accordance with the Share Sale and Purchase Agreement, and
- the Property Leases (as defined in section 1.1 of the Share Sale and Purchase Agreement) relating to Suncorp Bank which are not held by an entity that is to be acquired by ANZ. These Property Leases (and related Property Assets, as defined in clause 1.1 of the Share Sale and Purchase Agreement) will be transferred to ANZ (or a related body corporate of ANZ) on completion of the proposed acquisition. The transfer regime is set out in the Share Sale and Purchase Agreement (the **Proposed Acquisition**).[1972]

The authorisation test

8.3. Under subsection 90(7) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Acquisition:

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

b) would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Acquisition.

8.4. The ACCC is not satisfied, in all the circumstances, that the Proposed Acquisition would not be likely to substantially lessen competition, or that it would be likely to result in a benefit to the public that would outweigh the public detriment from the Proposed Acquisition. Therefore, the ACCC must not make a determination granting authorisation to the Proposed Acquisition under section 88(1) of the Act.

8.5. Accordingly, in accordance with section 90(1)(b) of the Act, the ACCC dismisses the application for merger authorisation MA1000023.

8.6. This determination is made on 4 August 2023. Any application to the Australian Competition Tribunal for review of the determination must be made on or before 25 August 2023.[1973]

1972 ANZ application for Merger Authorisation, 2 December 2022, [3.1].

1973 *Competition and Consumer Act 2010* (Cth) s 101(1); *Competition and Consumer Regulations* 2010 (Cth), reg 20.