

Carolyn Thomson

Email:

Mob:

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ACCC

[ANZ-Suncorp-Merger@acc.gov.au](mailto:ANZ-Suncorp-Merger@acc.gov.au)

Your Ref: MA 1000023

Contact Officers: Ellie Dwyer/Olivia King

Dear Ms Dwyer and Ms King ,

**Re: Interested Party Submission on ANZ's application for authorisation for proposed acquisition of Suncorp Bank**

In considering whether to approve this acquisition the ACCC must not grant the merger unless it is satisfied in all the circumstances that the proposed acquisition would not be likely to substantially lessen competition, or the likely public benefit from the Proposed Acquisition outweighs the likely public detriment.

Attachment A to the ACCC's interested party consultation invitation to make a submission refers to Australia and New Zealand Banking Group Limited ("**ANZ Banking Group**") as an ASX listed financial services group that provides a range of banking products and services. At the time this application and witness statements were made in support of this acquisition application, ANZ Banking Group was ASX listed but is not any longer. There is absolutely no information by ANZ Banking Group referencing this, and that a new non-operating holding company ("**NOHC**") has had all the shares transferred from ANZ Banking Group Limited to the NOHC. As at today ANZ Banking Group is no longer ASX listed. No financials to support the impact on ANZ Banking Group after it becomes delisted have been provided as part of the application. This needs to be addressed prior to any approval decision.

The authorisation test that the ACCC must conform to includes not only market competition issues but the likely result of benefit to the public and that benefit outweighing the detriment to the public if the acquisition is approved. The ACCC has asked for an explanation of public benefits for the class of persons likely to receive those benefits (for example the customers of ANZ and/or Suncorp Bank. The significant detriment that ANZ Banking Group has caused to its customers that needs to be considered as to the likelihood of that detriment being inflicted on Suncorp customers in regard to the public detriment is as follows:-

1. ANZ admitted in Federal Court proceedings to 327,895 occasions in conduct in trade or commerce and in connection with the supply of financial services that was statutory unconscionability. The Court stated in its decision for this contravention that the maximum penalty for each was \$1.7M. The recidivism of these contraventions over an extensive period of time, caused harm to some 69,000 customers. (*Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited (No 3)* [2020] FCA 1421) The sheer number of these admitted contraventions being in the hundreds of thousand is evidence enough that they do not have the systems in place to take Suncorp customers over and ensure they are not harmed like ANZ customers were and are.

2. Further ANZ admitted in those proceedings that it was statutory unconscionable to make a deliberate decision to not pay remediation to customers it has harmed. ANZ have continued to make deliberate decisions to not pay remediation. In Australian Financial Complaints Authority Decision [REDACTED]

3. ASIC instituted proceedings against ANZ for its Home Loan Introducer program, where fraudulent documents provided by third parties to ANZ, were used by ANZ employees to approve loans they could not afford. A remediation program was put in place for this. Commercial loans entered into under the introducer program were excluded from this remediation program. Guarantees supporting small business loans where these fraudulent documents were used to approve loans and then ANZ required these Guarantees and property as security need to be included in this remediation or other remediation program. Particularly where people's principal place of residence and where they only owned one property were sold under guarantees being enforced. Also where ANZ Banking Group reached agreement with small business creditors for these properties under the guarantees to be sold, and couldn't if ANZ had agreed to the sale.

4. In *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2022] FCA 1251 ANZ admitted to misleading and deceptive conduct to 689,000 customers between the mid 1990s to 30 September 2021. This decision sets out the attempts ANZ took to fix the issues, where remediation had to be continually recalculated because they couldn't fix the problem. This further goes on to highlight an issue where 964,000 customers accounts were affected between 30 March 2009 to 1 September 2019.

5. [REDACTED]

On 14 February 2022 ANZ announced in the media that in one month's time they would remove the Breakfree Package from the market.

6. ANZ also admitted in the attempted influencing of the Bank Bill Swap proceedings that they used the names of non-listed companies, without their consent and knowledge to conduct these trades. An application was made in those proceedings to suppress the names of those companies. Justice Jayne Jagot said in her final decision she did not believe that this information was confidential. Despite this ANZ has never taken any steps to have that suppression order set aside.
7. Further ANZ Banking Group guarantees in the period 2011 to 2017 inclusive included at Guaranteed Arrangement 7 the derivative facilities it used in the attempted influencing of the bank bill swap rate. ANZ need to identify all of the guarantees with this clause, audit if remediation is required, and explain why the need for this in personal guarantees for small

business loans where the derivative facility was never provided to the small business. If it was a future credit contract then ANZ never adhered to the Code of Banking Practice in regard to future credit contracts. An audit should be done to determine what guarantees are unenforceable and what have been enforced that were not capable of being enforced. Remediation program then needs to be put in place.

8. This is recidivism in more than one million transactions and more than one million customers hurt. The public needs protecting. ANZ Banking Group Limited customers require protection. Suncorp customers require protection particularly where Clive Van Horen has raised in his witness statement about Suncorp customers who are concerned about the acquisition by ANZ.
9. The submissions show that there is approximately 1.2M Suncorp home loan customers. They need to be protected, as ANZ have demonstrated that even when faced with continuing contraventions of the law, they did not stop until ASIC took them to Court. ANZ Banking Group are not good at self-regulation.
10. Whilst remediation is supposed to fix this they just kept on doing it. The public and bank customers need to be protected from this. To allow this acquisition to go ahead, the detriment to the public, Suncorp and ANZ customers would be greater than any technological efficiency ANZ Banking Group espouse they can bring, particularly where ANZ Banking Group have not even identified all remediation it has to pay to its own customers.
11. ASIC have in the past removed management of companies under equitable legal principles where there is no confidence in management after systemic law breaking has occurred. If the ACCC believes that this merger should go ahead, then it would I submit need to be made for the removal of Shayne Elliot and the Board, and subject to ACCC approval of new CEO and Board. This is the only way for the ACCC to fulfill its remit to protect consumers and the public and ensure that any public benefit outweighs any public detriment.



[REDACTED]

Given that they have to repay the RBA TFF in September 2023 and June 2024, and the economic headwinds they are facing, together with their reduced NIM in evidence in Shayne Elliott's witness statement to this application – ROE in 2015 was 19.6% and on Shayne Elliott's evidence in this application it had reduced to 10.4% in 2022.

Of course ANZ can fix all of the above so that the acquisition of Suncorp can go ahead. But the question is on their evidence are they only financially viable if they are able to proceed with the acquisition of Suncorp because their ROE, NIM and mortgage market had all declined under current management. That has not been addressed.

I ask that ACCC use its powers to protect consumers and the public by not approving this acquisition due to their recidivism in harming over a million customers, where even when they knew they were, they continued to do it until the regulator took them to court after the Royal Commission.

Your sincerely

[REDACTED]

 Carolyn Thomson