Australia and New Zealand Banking Group Limited authorisation application (MA1000023) for proposed acquisition of SBGH Limited

This document contains the summary of the ACCC's reasons for its determination of 4 August 2023. The ACCC's reasons pursuant to section 90(4) of the Act are contained in a separate document. This summary accompanying the determination is not intended as a substitute for the ACCC's reasons provided pursuant to section 90(4).

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

b) 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

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].

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.

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

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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.

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 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

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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.

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].

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, 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]

[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*

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.

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.

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.

Airlines Ltd v Taprobane Tours WA Pty Ltd (1991) 104 ALR 633 at 658 (French J, with whom Spender and O'Loughlin JJ agreed).

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, 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

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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 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]

[14] ACCC, Retail Deposits Inquiry 2023, accessed 27 July 2023.

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 are 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. 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 and 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 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.

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15 **[Redacted – Confidential].**

16 **[Redacted – Confidential].**

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.

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

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

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]

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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].

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 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

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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 28 July 2023.

[22] bluenotes, 'Elliott: a transformational advance for ANZ', 18 July 2023, accessed 28 July 2023; Australian Financial Review, 'Why ANZ needs the Suncorp deal', 18 July 2023.

[23] **[Redacted – Confidential].**

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 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

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

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

26 **[Redacted – Confidential].**

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 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.