ANZ proposed acquisition of SBGH Limited

Suncorp Group Limited submission in response to the expert reports of Mary Starks and the second submission of Bendigo and Adelaide Bank

14 July 2023

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1 Executive summary

1.1 No real chance of an alternative buyer counterfactual

1 As Ms Starks notes, whether there is a real chance of an alternative buyer counterfactual is a factual matter on which she cannot comment.[1] The additional evidence put forward by Bendigo and Adelaide Bank Limited (**BEN**)[2] about the prospect of such a counterfactual is, at best, weak and does not engage with the significant issues raised by the Chief Executive Officer of Suncorp Group Limited (**Suncorp Group**),[3] the Chief Information Officer of Suncorp Group and the Chief Executive Officer of Suncorp Bank[4] as to why such a counterfactual does not have a real chance of occurring.

1.2 Counterfactual is not more competitive than Bendigo alone

2 None of the matters which Ms Starks identifies as potentially making a combined BEN-SUN entity a more effective competitor than BEN alone withstand scrutiny:

(a) **credit rating assessment** – contrary to the position put in her first report, Ms Starks now accepts that "it remains likely that the merged entity will have a credit rating lower than Suncorp Bank's current credit rating",[5] and that the change in credit rating means that "Suncorp Bank will likely face higher funding costs".[6] Ms Starks' First Report suggested that "increased scale may also give BEN/Suncorp a credit rating uplift, which would give the merged entity broader access to funding at a potentially reduced cost".[7] This position now seems to be abandoned, with Ms Starks accepting a worse credit rating is likely with higher funding costs.[8]

(b) **AIRB accreditation** – Ms Starks' assessment of the prospects of the combined entity achieving advanced Internal Ratings Based (**AIRB**) accreditation fails to take into account the costs and uncertainty of doing so, including the impact of the revisions to Basel III which will be operative by the time any alternative buyer counterfactual is effected and which mean that work previously undertaken by Suncorp will need to be reviewed and likely recalibrated, which is a very substantial undertaking.[9] In addition, there are no material synergistic benefits from a capital perspective in pursing AIRB accreditation as a combined entity and there is no increased likelihood of gaining AIRB accreditation because of increased scale.[10]

(c) **scale benefits** – while BEN would have the ability (in theory) to spread fixed costs over a larger customer base following its acquisition of Suncorp Bank, this

[1] Supplementary report of Mary Starks dated 7 July 2023 (**Supplementary Starks Report**) at [4.8].

[2] Second submission filed by BEN dated 30 June 2023 (**BEN Second Submission**).

[3] See also Fourth statement of Steven Johnston dated 13 July 203 at [17] – [25].

[4] See also Third statement of Clive van Horen dated 14 July 2023.

[5] Supplementary Starks Report at [6.4].

[6] Supplementary Starks Report at [6.19].

[7] Independent expert report of Mary Starks dated 16 June 2023 (**First Starks Report**) at [7.56].

[8] See also Supplementary Starks Report at [6.12].

[9] Third statement of Clive van Horen dated 14 July 2023 at [19].

[10] Third statement of Clive van Horen dated 14 July 2023 at [11].

would not meaningfully increase its scale relative to the Major Banks. Using a cost-to-income (**CTI**) ratio as a proxy for the benefits of scale, the extent of the difference between the Major Banks as against BEN, Suncorp Bank and BOQ demonstrates that there would be no meaningful closing of the competitive gap following the acquisition. Expressed somewhat bluntly, it is not the case that one plus one equals two in this context; instead, one small bank plus one small bank ultimately results in one small merged bank. This is particularly so given the likely dis-synergies that will take place during the period of integration (which are likely to last in the order of [redacted] years).

(d) **funding challenges** – Ms Starks errs in placing a greater weighting on the asserted benefits of AIRB accreditation and increased scale than on funding costs. Suncorp has provided extensive evidence indicating that wholesale funding costs will be materially higher for a combined BEN-SUN entity than either the Proposed Acquisition or the No Sale Counterfactual with flow-on implications which she downplays.

(e) **technology integration** – Mr Bennett's detailed analysis is not refuted by either Ms Starks or BEN other than by high level statements and deflections. It is particularly notable that BEN has chosen not to put on detailed evidence about its progress in technology roll outs. This deliberate decision should be noted and taken into account by the ACCC when evaluating BEN's high level assertions which are contrary to its publicly disclosed information and history.

(f) **cultural alignment** – Ms Starks agrees that brand and cultural alignment is a significant challenge for merging businesses. She also acknowledges the (extensive) evidence put forward by Suncorp about the significant differences in focus of the two banks, whilst also noting the absence of any evidence from BEN. Notwithstanding, she concludes that she is unable to comment on this issue.[11] This position is not one the ACCC would accept or adopt in light of the overwhelming evidence on this topic.

2 Likely competition effects of alternative buyer counterfactual

2.1 Overview

3 The following analysis is structured to address each of Ms Starks' contentions at Section 6 of her Supplementary Report. Where appropriate, it also responds to the additional submission filed by BEN on these topics. For the avoidance of doubt, where Suncorp does not comment on a particular issue, it should not be taken to concede to or as agreeing with that position. Suncorp continues to rely on the previous and detailed submissions and evidence it has filed with the ACCC.

2.2 Credit rating assessment

4 Contrary to the position expounded in her First Report, Ms Starks now accepts in her Supplementary Report that a combined SUN-BEN entity will have a credit rating lower than Suncorp Bank's current credit rating.[12]

5 Ms Starks' revised position is consistent with the assumptions made by Moz Ali at paragraph 38 of his expert report dated 17 May 2023, which assumes the long-term credit ratings for BEN following an acquisition of Suncorp Bank would be [redacted]

[11] Supplementary Starks Report at [6.28] – [6.29].

[12] Supplementary Starks Report at [6.4].

[redacted] As Mr Ali notes at paragraph 39, [redacted]

6 Ms Starks' description of the likelihood of a ratings uplift presents an unduly optimistic assessment of the totality of the evidence.[13] [redacted][14] [redacted][15] [redacted] should be accepted (in preference to Ms Starks' analysis) and any notion of BEN being able to rely on a credit rating uplift should not be taken into account. Similarly, even on the Moody's methodology, [redacted]

7 BEN's Second Submission notes (at paragraph 2.20) BEN's belief that a combined BEN-SUN entity would receive a credit rating uplift. This is because the combined entity would be larger than Macquarie Bank, which pays the Major Bank Levy, and Macquarie Bank receives the rating benefit of a two-notch uplift from government support (such that it is reasonable to expect the same for the combined entity). However, BEN's analysis fails to take into account the following considerations:

(a) First, Macquarie Bank's unique position in the market,[16] including Macquarie Bank benefiting from support from the broader Macquarie Group (addressed further at paragraph 28 below).

(b) Second, it is highly unlikely that the combined entity would be considered "too big to fail" (given it would only be ~40% of the size of ANZ, the smallest of the Major Banks in the core home lending business).

8 In any event, even if BEN were to receive a single notch uplift under the Moody's methodology, this rating is still lower than Suncorp Bank's current ratings given the uplift it receives due to potential support from the wider Suncorp Group. In addition, the cost of the Major Bank Levy would need to be factored in and this would impact the combined entity's profitability, and therefore its ability to compete.

2.3 AIRB accreditation

Contemporaneous evidence of real commercial decision making on cost benefit should be accepted

9 Suncorp made a decision, prior to any consideration of the Proposed Acquisition, that it should [redacted]:

(a) There was no guarantee that if the Bank pursued AIRB accreditation that it would be successful in obtaining it. Ms Starks' reports seem to assume that

[13] Supplementary Starks Report at [6.4].

[14] Supplementary Starks Report at [4.10.1].

[15] [redacted]

[16] See: https://www.macquarie.com/assets/macq/investor/debt-investors/credit-ratings/sp-ratings-macquarie-bank-limited.PDF.

approval is automatic if applied for[17] and does not factor in the risk of not obtaining approval or the cost and time associated with the process;

(b) The modelling work Suncorp has undertaken indicates that additional capital of approximately [redacted] [18] [redacted] [19] [redacted] [20];

(c) [redacted] [21] [redacted]

(d) [redacted]

10 Accordingly, there is no basis to prefer Ms Starks' assessment of the benefits that would arise over an ordinary commercial decision taken by Suncorp in circumstances unrelated to the Proposed Acquisition.

Seeking AIRB accreditation is a complex and time-consuming exercise

11 Each of Suncorp and BEN is able to pursue AIRB accreditation if each organisation considers the cost-benefit trade off in respect of that decision. Neither has done so to conclusion at this point. Neither Ms Starks' First Report, nor her Supplementary Report, engage with the commercial realities of the cost of that process, nor the use of management time. This would be exacerbated where the organisations were simultaneously undertaking a complex integration program.

12 The process for building or recalibrating the relevant models is complicated, time intensive, costly and the individuals building the model need particular expertise. APRA has very detailed pre-requisites which must be satisfied and there needs to be an "in-use' period of back-testing of the model. APRA will scrutinise any model built, which is likely to add to the time and cost of building such models. As noted by Dr van Horen,[22] APRA plays a critical role in assessing these models for effectiveness, which goes to ensuring the strength of the banking system, and the time taken to build, assess, refine, iterate and implement AIRB models across both Suncorp Bank and APRA needs to appropriately reflect the complexity of the models themselves and the broader environment in which they operate.

[17] See, eg, First Starks Report at [7.15] – [7.16].

[18] Third statement of Clive van Horen dated 14 July 2023 at [22].

[19] [redacted]

[20] [redacted]

[21] [redacted].

[22] Third statement of Clive van Horen dated 14 July 2023 at [19].

13 Recalibrating existing models involves significant uncertainties, including:[23]

(a) how the model would need to be altered to include a higher level of procyclical variables;

(b) whether APRA would approve particular models;

(c) the nature of changes to APRA Prudential Standard APS 117 (Capital Adequacy: Interest Rate Risk in the Banking Book);

(d) working out how capital would move in stressed circumstances; and

(e) the extent of benefits likely to result from recent business lending probability of default changes.

14 A combined BEN-SUN entity will have competing capital requirements, including costs of integration and ongoing technology transformation costs (described below), which would limit the availability of capital for building new AIRB models over an extended period of time. The upfront capital imposts of seeking AIRB accreditation are significant. To make the economics of a combination viable, the combined entity is more likely to prioritise those other costs rather than building AIRB models in the short-term.

15 Ms Starks in her Supplementary Report does not take into consideration the potential costs of the Major Bank Levy, which are significant and would likely apply to a combined BEN-SUN entity when assessing the likely benefits of AIRB accreditation. The benefits of AIRB accreditation Ms Starks identifies should therefore be discounted.

16 AIRB accreditation would also open up the combined BEN-SUN entity to greater volatility in stress scenarios (whereas Ms Starks' analysis proceeds on the basis that the Australian economy is stable).[24]

Deployment of any capital benefit

17 Further, it is reasonable to assume [redacted][25] [redacted] the capital investments that would be required by a combined BEN-SUN entity, including in technology (for the reasons set out in Section 2.6 below), which Ms Starks is simply instructed to assume.[26] Moreover, [redacted][27]

Timing for AIRB accreditation

18 Ms Starks states that she understands that AIRB accreditation would be conferred within nine months of APRA receiving a substantially complete application, based on the APRA Service Charter.[28] There is no guarantee that AIRB accreditation will be conferred within

[23] Third statement of Clive van Horen dated 14 July 2023 at [19].

[24] First statement of Steven Johnston dated 25 November 2022 at [34], [88]-[92]; Second statement of Steven Johnston dated 17 May 2023 at [119]-[124]; Further statement of Clive van Horen dated 17 May 2023 at [18(b)].

[25] Third statement of Clive van Horen dated 14 July 2023 at [28]; First Starks Report at [7.58]; Supplementary Starks at [6.43].

[26] First Starks Report – Annex 2: Letter of Instructions, Annexure A at 4.3 ("A combined Bendigo / Suncorp would need to continue investing in the technological transformation currently being undertaken by Bendigo, which includes moving from 7 core banking systems to 1, 10 brands to 3, and from 19.9% of its applications being in the cloud to 50% by FY24").

[27] [redacted]

[28] First Starks Report at [7.15].

nine months, especially in circumstances where APRA will scrutinise any AIRB models submitted and there is no certainty that models submitted will be accepted.

19 Further, there is a substantial multi-year time period involved in being ready to submit an AIRB application as detailed in the Third Statement of Dr van Horen (see, for example, paragraphs 19 to 20).

20 As such, the benefits that Ms Starks considers will flow from AIRB accreditation if they are to occur, will not occur much further in the future that Ms Starks assumes.

2.4 Scale

21 In both her First and Supplementary Reports, Ms Starks expresses the view that the increased market share of a combined BEN-SUN entity will allow it to spread its fixed costs over a larger customer base. This, in her view, would then allow the combined entity to justify making greater investments (for example, technology) as the investment case would be more favourable.[29] A similar view is also expressed by BEN at paragraph 4.4 in its Second Submission.

22 [redacted] This is consistent with the views of Dr van Horen and Mr Johnston,[30] both of whom have observed that the size of the combined entity will remain at a mid-tier level.[31] BEN and Suncorp Bank are both small banks with ~2.83% and ~2.39% market share respectively of the home lending market. Combining them does increase the size of the combined entity to ~5.22%. However, this is still significantly smaller than the size of the Major Banks—the combined entity would be approximately 40% of the size of ANZ, the smallest of the Major Banks in the core home lending business, and only approximately 20% of the size of CBA, the largest of the Major Banks. In other words, one plus one is ultimately less than two: two small banks are still small even if they are combined.

23 [redacted]

24 [redacted]

[redacted]

[redacted]

25 [redacted]

[29] See, eg, Supplementary Starks Report at [3.5], [6.26.2].

[30] Which is also consistent with the view of Ms Starks, who notes at paragraph 7.14 of her First Report that a combined BEN-SUN entity would only be the first, second or third biggest player *outside* the Major Banks in various product markets.

[31] Further statement of Clive van Horen dated 17 May 2023 at [56]; Further statement of Steven Johnston dated 17 May 2023 at [70] – [71].

[redacted]

26 [redacted]

27 In sum, whilst it is true that BEN will grow in size following an acquisition of Suncorp Bank, it does not mean that a meaningful scale advantage will follow given the extent of the increase in scale and the size of the combined entity. To the contrary, it is far more likely that a combined BEN-SUN entity would remain sub-scale, being of a scale insufficient to change the existing competitive positions. This is particularly so given that both Ms Starks and BEN ignores the significant integration and technology transformation challenges the combined entity will face (particularly in the first 1 – 2 years after the merger), as addressed further in Section 2.6 below.

28 For completeness, Suncorp notes that Ms Starks' and BEN's reliance on Macquarie Bank as an analogous comparator in this context is misplaced. For example, Ms Starks opines that the combined entity would be of a similar scale to Macquarie Bank, who has been able to grow and remain competitive in the market.[32] However, as Dr van Horen has previously observed, this analysis ignores the critical context regarding Macquarie Bank's position within the broader Macquarie Group and the fundamental difference in size between Macquarie Group and BEN.[33] Specifically, Macquarie Bank benefits from support from the broader Macquarie Group (with a market capitalisation as at 14 July 2023 of ~$70 billion compared with BEN of ~$5 billion), analogous to how Suncorp Bank benefits from its position in the broader Suncorp Group. Macquarie Bank is also unique given its role in derivatives.[34] These various considerations align with Prof. King's observations, as noted at paragraphs 8.46 and 8.48 of the First Starks Report, that "Macquarie is the exception among the mid-tier banks".

2.5 Funding challenges

Funding costs versus capital

29 As noted in Section 2.2, Ms Starks now accepts that a combined SUN-BEN entity will have a credit rating lower than Suncorp Bank's current credit rating and that this change in credit rating means that Suncorp Bank will likely face higher funding costs. Suncorp agrees with Ms Starks' revised position.

[32] First Starks Report at [7.14], [8.46].

[33] Further statement of Clive van Horen dated 17 May 2023 at [76].

[34] [redacted]

30 Suncorp disagrees, however, with Ms Starks' assessment that the effect of these funding cost increases are insignificant, including when compared to the purported benefits of the combined entity's increased scale or AIRB accreditation.[35]

31 As a matter of logic, a ratings downgrade for Suncorp Ban[redacted] ould increase its borrowing costs, such that any scale advantage from the increased size of the combined entity (which Suncorp refutes at Section 2.4 above) would become immaterial. This is because funding costs are a larger driver of profitability (and ability to compete) than capital costs or amount of capital – it takes a significantly more material shift in the amount of capital to outweigh a difference in funding costs.[36]

32 At bottom, [redacted] wholesale funding costs will be higher for a combined BEN-SUN entity than either the Proposed Acquisition or the No Sale Counterfactual. There is no reason to believe, or evidence to suggest, that customer deposits for the combined entity would be any cheaper than either of those counterfactuals. These higher funding costs will cause Suncorp's net interest margin (**NIM**), CTI and net profit to deteriorate. Thus, unlike the purported benefits of AIRB accreditation and/or increased scale (both of which are without foundation), this deterioration is a certain and material incremental cost which the ACCC should attribute a higher weighting and afford greater consideration.

Long-term declines in margin and returns

33 Ms Starks opines that the Major Banks are "highly profitable". Her opinion is drawn from the 2018 Productivity Commission report, which stated that the market power of the Major Banks allows them to achieve their profit margins by adjusting the interest rates they charge borrowers.[37]

34 This statement is flawed and not supported by the evidence before the ACCC.

35 It is trite to note that the Major Banks generate large profits in absolute dollar terms. However, this ignores the fact that they have extremely large balance sheets (approaching $1 trillion each) and hold significant amounts of capital from which they generate their returns.

36 In this regard, it is notable that Ms Starks' two reports focus on *theoretical* measures of competition[38] without addressing the *factual* evidence of sustained competition in the banking industry over a long period of time. Most significantly, Ms Starks fails to reconcile the theoretical assertions as to a (supposed) lack of competition and the (purported) presence of coordinated conduct with the evidence pointing to a long-term decline in margins and return on equity (**ROE**). Both ANZ and Suncorp have provided the ACCC extensive data on this trend.

37 For example,[39] the decline in NIMs over more than a decade from ~3.3% to ~2.0% represents a very significant shift in economic value from banks to consumers. Indeed, the shift is so material that it is implausible to believe that this has not been driven by competition (and, therefore, entirely inconsistent with the theoretical belief in the existence of coordinated conduct).

38 Similarly, ROE for banks has declined substantially, to the point where they are only marginally above the cost of equity. This decline has been driven by both a decrease in

[35] Supplementary Starks Report at [6.19].

[36] Third statement of Clive van Horen dated 14 July 2023 at [41] – [46].

[37] First Starks Report at [9.64.2].

[38] Which includes, as Ms Starks herself acknowledges, various judgemental conclusions: see, eg, Supplementary Starks Report at [7.45] ("I note that this is a matter of professional judgement rather than a clear-cut distinction").

[39] See Further Statement of Clive van Horen dated 17 May 2023 at [17(a)].

top-line profitability (the numerator) and an increase in capital (the denominator). Just like the decline in NIM, this data refutes the simplistic assertion that banks are "highly profitable" or that there is a lack of competition between them.

39 In sum, while a theoretical analysis of market competition should always be considered, the ACCC must also consider – and, invariably, give greater weight to – actual evidence of market competition. Here, the ACCC would not ignore or fail to give due regard to the data evincing long-term declines in margins and returns as the more relevant indicator of competition in the banking industry.

2.6 Technology integration

40 Neither BEN's Second Submission, nor the Supplementary Starks Report, engage with the detailed statement of Adam Bennett dated 16 May 2023. Mr Bennett set out at paragraph 33 of his statement the matters that would be relevant from a technology perspective to a potential acquisition by BEN of Suncorp Bank:

(a) a description of BEN's core banking platforms;

(b) the likely approach that would be required to facilitate an integration between BEN and Suncorp Bank; and

(c) the likely timeframes and scale of costs that would be involved in an integration between BEN and Suncorp Bank.

41 Each of these issues remain unaddressed by Ms Starks and BEN other than by high level generalised statements such as "BEN has a long track record of successful integrations of acquired businesses".[40]

42 Ms Starks does acknowledge the existence of Mr Bennett's statement; however, she does not reference any of the detail therein, and chooses instead to comment that it is "difficult to judge the reliability and accuracy of [Mr Bennett's] claims, which are based on public information rather than internal knowledge of BEN's current progress in its technological transformation journey".[41]

43 BEN's Second Submission makes no reference to Mr Bennett's statement.

44 In Suncorp's view, BEN's failure to engage with the deficiencies highlighted by Mr Bennett means that the ACCC should give greater weight to Mr Bennett's statement when considering the issues of integration and technology transformation. Similarly, the ACCC should place little weight on Ms Starks' views on BEN's technology transformation and ability to integrate Suncorp Bank in light of her assumptions. Specifically, Ms Starks was asked to assume that a combined BEN-SUN entity would continue investing in BEN's transformation process following any merger.[42] This has the effect of assuming away the challenges BEN currently faces in modernising its technology stack and the other challenges identified in paragraph 50 of Mr Bennett's statement, let alone the how these challenges will grow exponentially upon BEN's acquisition of Suncorp Bank.

45 In contrast to both Ms Starks and BEN, Mr Bennett deals in detail with best practice requirements for a modern core banking platform (at paragraphs 17 – 20) and provided evidence of his experience in acquisition integration. None of these matters are contested

[40] BEN Second submission at [2.4].

[41] Supplementary Starks Report at [6.23]. Ms Starks' comment is perplexing for no less than three reasons. First, Mr Bennett relied on *BEN's* public information—it is difficult to see how this information would be inconsistent or contrary to BEN's internal information (given BEN's position as a publicly listed company). Second, Mr Bennett and Suncorp were forced to rely on BEN's public information given BEN's reluctance to share its confidential information with Suncorp. Third, Ms Stark herself relies on BEN's most recent information regarding its technology transformation in her Supplementary Report; notwithstanding, she makes no comparison or attempt to analyse this information as against the analysis contained in Mr Bennett's statement.

[42] First Starks Report – Annex 2: Letter of Instructions, Annexure A at 4.3.

in the material that has been put forward by BEN or in the Supplementary Starks Report. Based on those principles and expertise, Mr Bennett then assessed the public material of BEN. The evidence before the ACCC[43] is consistent with the conclusions that:

(a) [redacted][44];

(b) [redacted]

(c) [redacted]

46 Accordingly, if BEN were to acquire Suncorp Bank, the core banking system replacement and consolidation will take in the order of [redacted] years, de-integration and re-hosting of Suncorp Bank will likely take [redacted] years and a migration of Suncorp Bank onto a shared core banking system will take a further [redacted] years: in total, [redacted] years. Even assuming a best case scenario, there will be significant diseconomies of scale in the first [redacted] years for the combined entity as it transitions from multiple, separate core banking platforms and integrates its customers, accounts and various products. This will result in spend that is proportionately much larger than the major banks, which would restrict investment in technology, cyber risk management, growth and innovation[45], and which will ultimately deliver a worse outcome from a competitive and/or public benefit perspective than either the Proposed Acquisition or the status quo.

2.7 Cultural alignment

47 In her Supplementary Report, Ms Starks notes that that there is no evidence on how BEN would approach brand and cultural alignment in respect of a combined BEN-SUN entity, nor evidence of BEN's plans for the offerings and product lines that it currently offers but Suncorp does not, and so she does not comment on the likelihood and extent of brand and cultural challenges. As noted in the Third Statement of Dr van Horen dated 14 July 2023 at paragraph 65, Suncorp has identified significant evidence and various examples of the misalignment between the brand and cultures of Suncorp Bank and BEN.

48 Suncorp relies on its previous statements and submissions which clearly indicate that BEN and Suncorp Bank have divergent brands and cultures: the former intends to become "one of Australia's biggest banks" and "the better big bank"; the latter is on a journey of simplification. The banks' contrasting product portfolio and customer mix is emblematic of this stark difference.

[43] See, eg, First statement of Steven Johnston dated 25 November 2022 at [66] – [69]; Further statement of Steven Johnston dated 17 May 2023 at [73] – [79]; Statement of Adam Bennett dated 16 May 2023 at [35] – [52].

[44] Statement of Adam Bennett dated 16 May 2023 at [38].

[45] See Statement of Adam Bennett dated 16 May 2023 at [50]; Further Statement of Clive van Horen dated 17 May 2023 at [103], [104].

3 Public benefits

49 There are significant and measurable public benefits that flow from the Proposed Acquisition. These have been the subject of various submissions and witness statements filed by Suncorp with the ACCC.[46]

50 On 6 July 2023 the ACCC invited to Suncorp to make a submission regarding the Australian Competition Tribunal's recent consideration of the assessment of public benefits. Specifically, in *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2 (**Telstra/TPG**), the Tribunal held that the effects, benefits and detriments of "coincident" conduct that is not the subject of an authorisation application cannot be taken into account for the purposes of the assessment under s 90(7) of the CCA.

51 Suncorp has provided a submission in response to the ACCC's request. Suncorp's submission, after explaining the legal reasoning in *Telstra/TPG* concerning the assessment under s 90(7), details why *Telstra/TPG* does not apply to exclude from consideration any of the public benefits claimed by Suncorp and ANZ.

52 Suncorp has also filed with the ACCC a fourth witness statement of Steven Johnston dated 13 July 2023. Mr Johnston's statement describes the Queensland Government's decision to sign off on the Proposed Acquisition after Queensland Treasury accepted commitments given by Suncorp and ANZ to the State of Queensland.

53 Together, Suncorp's submission and Mr Johnston's statement explain why the benefits to Queensland flow from commitments that ANZ and Suncorp have given the State of Queensland pursuant to Implementation Agreements executed on 15 June 2023. Suncorp does not propose to repeat those materials here. Suncorp instead notes two additional matters.

54 First, the relevant sequence of events illustrates and confirms that these benefits are causally related to the Proposed Acquisition. At the time the SSPA was executed on 18 July 2022, the Implementation Agreement did not exist. Rather, it was only contemplated by Suncorp, having been provided for in clause 2.6 and Schedule 17 of the SSPA. In other words, the Implementation Agreement was progressed and ultimately finalised well after the execution of the SSPA.

55 Second (and relatedly), the following table sets out a comparison between the commitments Suncorp had initially agreed to make (as recorded in the SSPA) as against the commitments ultimately agreed in the executed Implementation Agreement:

	SSPA, Schedule 17	Implementation Agreement
Head office commitment	• Registered head office of the Suncorp Group remains in Queensland	• Registered head office of the Suncorp Group remains in Queensland. • Further details of SGL's headquartering commitment will be enshrined in the amendments to the Metway Merger Act.
Investment Commitments	• Suncorp Group to develop a claims	[redacted]

[46] See, eg, First statement of Steven Johnston dated 25 November 2022 at [86] – [107]; Further statement of Steven Johnston dated 17 May 2023 at [94] – [124]; Third statement of Steven Johnston dated 17 May 2023; Fourth statement of Steven Johnston dated 13 July 2023; Suncorp Response to ACCC statement of preliminary views on Queensland commitments.

	SSPA, Schedule 17	Implementation Agreement
	centre of excellence in Queensland	[redacted] • SGL to spend no less than $2.5 million during FY23-24 to develop and construct a Disaster Response Centre of Excellence (**DRC**), which is a physical control centre housing Suncorp's Disaster Response Team and employing more than [redacted] • SGL to spend $12 million to further develop the Event Control Centre Platform (**ECC Platform**) to monitor and address all peril types, including Suncorp's response and communication with Suncorp Group customers and impacted communities. • SGL will maintain and continue to grow its Disaster Response Team in Queensland, which includes the creation and fulfilment of 20 new full-time employment roles to work on SGL's ECC Platform and a requirement that [redacted] • SGL will spend $1.5 million in Queensland during FY24-25 on the design and fit-out of a fully functional Mobile Hub that will be deployed in areas affected by natural disasters to assist with community recovery. When not in use, SGL must store the Mobile Hub in South East Queensland. • SGL will increase the number of its employees in regional Queensland by 120 people (100 of which are to be employed on a full-time basis) within two years from the Legislative Commencement Date. To support this commitment, SGL will invest in leased premises, fit-out and infrastructure in regional Queensland, being the 'Suncorp Regional Hub' to be located in Townsville. • SGL will contribute at least $3 million within a 3-year period from the Legislative Commencement Date to community or educational initiative(s) specified by the State and directed at: – vocational training for trades to support disaster resilience and trades for the construction of housing in Queensland; – supporting First Nations employment pathways; and – research, courses, internships and scholarships relevant to disaster resilience and emergency management.
Employment Commitments	N/A	SGL has agreed to provide the following employment commitments: **(1) Suncorp Insurance Business** [redacted] SGL must ensure that the aggregate number of persons: • servicing the insurance business of the Suncorp Group carried on in Australia from time to time (the **Suncorp Insurance Business**); and

	SSPA, Schedule 17	Implementation Agreement
		• employed by the Suncorp Group on a full-time equivalent basis in Queensland (and subject to Queensland payroll tax), s greater than the aggregate number of persons: • servicing the Suncorp Insurance Business; and • employed by the Suncorp Group on a full-time equivalent basis in any other individual State or Territory of Australia. **(2) Suncorp Group Corporate Services Australia** SGL must ensure that the aggregate number of persons: • servicing the Suncorp Insurance Business; and • employed by the Suncorp Group on a full-time equivalent basis in Queensland (and subject to Queensland payroll tax) to perform the Group Corporate Services Activities[47], s greater than the aggregate number of persons: • servicing the Suncorp Insurance Business; and • employed by the Suncorp Group on a full-time equivalent basis to perform the Group Corporate Services Activities in any other individual State or Territory of Australia. [redacted]
[redacted]	[redacted]	[redacted]

56 Both of these matters give further weight to the conclusion that in order to bring about the amendments to the Metway Merger Act, it was necessary for Suncorp to give the commitments recorded in the Implementation Agreement such that they are therefore an effect of, or a result of, the Proposed Acquisition.

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47 [redacted]