

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged:	Submissions
File Number:	ACT 1 of 2023
File Title:	APPLICATIONS BY AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED AND SUNCORP GROUP LIMITED



REGISTRAR

Dated: 1/03/2024 7:20 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2023

Re: Application by Australia and New Zealand Banking Group Limited and Suncorp Group Limited for review of Australian Competition and Consumer ACCC Merger Authorisation Determination MA1000023-1

Applicant: Australia and New Zealand Banking Group Limited and Suncorp Group Limited

SUBMISSIONS ON BEHALF OF BENDIGO AND ADELAIDE BANK LIMITED

1. These short submissions are filed on behalf of Bendigo and Adelaide Bank Limited (**BABL**) in accordance with direction 4(b) of the determination and directions made by the Australian Competition Tribunal (**Tribunal**) on 20 February 2024. The submissions address the bases for BABL's claim of confidentiality in respect of certain parts of the Tribunal's reasons dated 20 February 2024 (**Reasons**).
2. BABL claims confidentiality over the passages of the Reasons (including some footnotes where the content of the footnote itself is confidential) highlighted yellow (**BABL Confidential Material**) in the proposed redacted reasons filed jointly by the parties on 1 March 2024 (**Proposed Redacted Reasons**). These passages are extracted in the table at **Annexure A** to these submissions. In some cases, additional context has been included in the extract in Annexure A; however, BABL only claims confidentiality over those parts highlighted yellow.
3. BABL submits that the BABL Confidential Material should be redacted in the published version of the Reasons on the basis they contain information which is confidential and commercially and competitively sensitive to BABL, and in some cases, in respect of which BABL owes confidentiality obligations to another party. BABL also submits that the Tribunal should make a direction that these passages are not to be made available to or published to any person save for the ACCC, its staff and any other person assisting the ACCC in relation to the proceeding including the ACCC's legal advisers, and the parties' legal advisers who, by reason of previous directions of the Tribunal, are permitted to have access to the BABL Confidential Material.
4. The Tribunal has power to give directions, where it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other person, prohibiting or restricting the publication of evidence given before the Tribunal, or of matters contained in documents filed or

lodged with the Registrar, received in evidence by the Tribunal or placed in the records of the Tribunal: s 106(2)(b) of the *Competition and Consumer Act 2010* (Cth).

5. BABL has sought to narrow its confidentiality claims to the extent possible. However, BABL's external legal advisers are not permitted to provide the Reasons to anyone within BABL until further order of the Tribunal. Accordingly, BABL's inhouse counsel have not been able to review any part of the Reasons, or Annexure A to these submissions, and therefore have not been able to provide specific instructions in relation to specific claims.
6. While the ACCC has indicated in correspondence that the ACCC has some concerns about the breadth of the redactions propose by the applicants and BABL, the specific proposed redactions these concerns relate to have not been identified. No other party has notified any concerns in respect of BABL's proposed redactions.

Categories of BABL Confidential Material

7. The BABL Confidential Material falls within one or more of the following categories:
 - a. **Category 1 – [REDACTED] material:** Documents, analyses, advice or information provided by (and information derived from such documents, analyses, or advice), and the identity of, BABL's external advisers, [REDACTED]. These external advisers [REDACTED]. This material was circulated to BABL's board on a confidential basis (and therefore also falls within Category 2 below) and influenced its strategic commercial decision-making. This material is kept strictly confidential by BABL and continues to be highly commercially and competitive sensitive and valuable. BABL also owes express confidentiality obligations to these advisers in respect of this material.
 - b. **Category 2 – BABL board material:** BABL's board papers, board minutes and other information and documents provided to or discussed by the board of directors of BABL, including board sub-committees (and information derived from such documents). All documents provided to the BABL board and board sub-committees, and all deliberations of the board and board sub-committees, are treated as strictly confidential within BABL. Access to such material is restricted within BABL on a "need to know" basis and processes and systems are in place to prevent unauthorised access or dissemination. The board material also contains information that is not in the public domain and is commercially and competitively sensitive, and in some cases potentially market sensitive. Examples of material in this category include [REDACTED].

[REDACTED]

- c. **Category 3 – Confidential BABL/Suncorp dealings:** The content of certain confidential dealings between BABL and Suncorp Group Limited (**Suncorp**) regarding a potential merger between BABL and Suncorp Bank. The content of oral and written communications exchanged between BABL and Suncorp in the period [REDACTED]

[REDACTED]

[REDACTED] which are subject to confidentiality claims, contain commercially and competitively sensitive information and potentially market sensitive information that is not in the public domain. These communications have been treated as confidential by both BEN and Suncorp, including throughout the proceedings before the Tribunal. These communications include, for example, information regarding [REDACTED]

[REDACTED]

[REDACTED] The content of the letters, including in respect of BABL's approach to mergers and acquisitions, could be used to BABL's detriment in future negotiations, including in respect of other potential mergers.

- d. **Category 4 – Confidential and competitively sensitive customer and market data:** This includes, for example, information about BABL's [REDACTED]

[REDACTED] This data is based on confidential material (including information provided by a third party on a confidential basis) and is not in the public domain. This information has significant ongoing commercial significance and value to BABL's business and its competitive position in the market and could be used by BABL's competitors to its detriment.

- e. **Category 5 – BABL's commercial strategies and other commercially and competitively sensitive information and dealings:** This category includes information about BABL's confidential commercial strategies, commercially sensitive internal analyses and information (including views expressed by senior BABL executives based on sensitive internal analyses and information), and sensitive dealings with regulators. Information captured by this category includes, for example, confidential information about [REDACTED]

[REDACTED]

[REDACTED]

Disclosure of information in this category would reveal competitively and commercially sensitive information in respect of BABL’s approach to potential mergers, dealings with regulators, and other sensitive matters relevant to BABL’s strategy, which could be used by competitors and other market participants to BABL’s detriment. Competitors could also potentially use such information to distort competitive market dynamics.

8. The relevant category or categories within which each claim for confidentiality falls is identified in column 4 of the table at Annexure A.
9. The BABL Confidential Material is commercially and competitively sensitive, including information relevant to how BABL competes in the market, and disclosure of this information may cause BABL significant detriment.

1 March 2024

ANNEXURE A





























