

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: Interlocutory application

File Number: ACT 1 of 2023

File Title: APPLICATIONS BY AUSTRALIA AND NEW ZEALAND
BANKING GROUP LIMITED AND SUNCORP GROUP LIMITED



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

REGISTRAR

Dated: 2/12/2023 3:19 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

APPLICATION FOR LEAVE TO RELY ON INFORMATION NOT IN EXISTENCE AT THE TIME THE COMMISSION MADE ITS DETERMINATION

ANZ

ANZ seeks leave, under section 102(9) of the *Competition and Consumer Act 2010 (Cth)*, to provide the following new information, documents and evidence on the grounds that it was not in existence at the time the Commission made its determination MA1000023-1 on 4 August 2023.

1. Monthly authorised deposit-taking institution statistics back-series March 2019 - October 2023 (published 30 November 2023);
2. ANZ FY23 results published 13 November 23;
3. ANZ FY23 dividend announcement published 10 November 23;
4. BEN FY23 results published 14 August 23;
5. BOQ FY23 investor materials published 11 August 23;
6. CBA FY23 results published 9 August 23;
7. CBA FY23 profit announcement published 9 August 23;
8. Macquarie FY23 results published 3 November 23;
9. NAB FY23 results published 9 November 23;
10. Westpac FY23 results published 30 August 23; and
11. Westpac FY23 financial results published 30 August 23.



SUBMISSION IN SUPPORT OF APPLICATION FOR LEAVE TO RELY ON INFORMATION NOT IN EXISTENCE AT THE TIME THE COMMISSION MADE ITS DETERMINATION

ANZ

1. On 4 August 2023, the Commission made merger authorisation determination MA10000023-1 in relation to Australia and New Zealand Banking Group Limited's (**ANZ's**) application to acquire 100% of the issued shares of SBGH Limited (which owns 100% of the shares in Suncorp Bank) and related assets from Suncorp Group Limited (the **Determination**).
2. For the reasons set out below, ANZ submits that it is reasonable and appropriate for ANZ to be given leave under section 102 (9) of the *Competition and Consumer Act 2010* (Cth) (**CCA**), to provide the following new information, documents and evidence that was not in existence at the time the ACCC made its Determination:
 - (a) Monthly authorised deposit-taking institution statistics back-series March 2019 - October 2023, published 30 November 2023 (**APRA Information**) [HB 31/1369b];
 - (b) ANZ FY23 results, published 13 November 23 (ABG.5001.0415.0120) [HB 38/1560];
 - (c) ANZ FY23 dividend announcement, published 10 November 23 (ABG.5001.0415.0277) [HB 38/1561];
 - (d) BEN FY23 results, published 14 August 23 (ABG.5001.0415.0377) [HB 38/1562];
 - (e) BOQ FY23 investor materials, published 11 August 23 (ABG.5001.0415.0438) [HB 38/1563];
 - (f) CBA FY23 results, published 9 August 23 (ABG.5001.0415.0510) [HB 38/1564];
 - (g) CBA FY23 profit announcement, published 9 August 23 (ABG.5001.0415.0656) [HB 38/1565];
 - (h) Macquarie FY23 results, published 3 November 23 (ABG.5001.0415.0657) [HB 38/1566];
 - (i) NAB FY23 results, published 9 November 23 (ABG.5001.0415.0730) [HB 38/1567];
 - (j) Westpac FY23 results, published 30 August 23 (ABG.5001.0415.0869) [HB 38/1568]; and
 - (k) Westpac FY23 financial results published 30 August 23 (ABG.5001.0415.1003) [HB 38/1569],(together, the **New Documents**).
3. The New Documents have been included in the updated Hearing Book so that the Tribunal may conveniently access them if leave to provide them to the Tribunal is granted. This is noted in the index to the updated Hearing Book.



Statutory test

4. Pursuant to section 102(9) of the CCA, the Tribunal may allow a person to provide new information, documents or evidence that the Tribunal is satisfied was not in existence at the time the Commission made the determination. ANZ accepts that the Tribunal has discretion as to whether to allow a party to provide information that was not in existence at the time the Commission made its Determination: see discussion in *Applications by Telstra Corporation Limited and TPG Telecom Limited* [2023] ACompT 1 at [80]-[83].

The New Documents are relevant to issues raised by the review before the Tribunal and will assist it in its consideration of those issues

5. The Tribunal should be satisfied, on the face of the New Documents, that they were not in existence at the time the Commission made the Determination. This follows from the fact that each of the New Documents was published after the Determination was made.
6. For the reasons set out below, ANZ submits that it is reasonable and appropriate for the Tribunal to have regard to the New Documents.
7. In the case of the APRA Information, the Commission, ANZ, Bendigo and Suncorp Bank have each referred to APRA data for the purposes of calculating the relative size and market shares of ANZ, Suncorp Bank and their competitors.
8. By way of illustration, in the Commission's reasons for the Determination, it refers to the monthly authorised deposit-taking institution statistics for May 2023 issued on 30 June 2023, and applies other analysis in relation to the data to determine the shares of major banks, second-tier banks and other ADIs (for example, at [4.7]), the proportion of retail lending relative to business lending (for example, at [4.12] to [4.16]) and home loan market shares (for example, paragraph 6.45). Those points are repeated in the Commission's submissions before the Tribunal (**CS**) (for example, at [1], [48] and [50]).
9. ANZ submits that, in considering the APRA data, including in particular the inferences to be drawn from that data, it is reasonable and appropriate for the Tribunal to have regard to the latest available data from APRA, namely, the monthly authorised deposit-taking institution statistics for the period June 2023 to October 2023.
10. The financial information published by the major banks, Bendigo, Macquarie and Bank of Queensland is relevant for the purposes of the review for two reasons:
 - (a) First, the Commission submits that the acknowledged asymmetries between ANZ and the other major banks will be reduced by its acquisition of Suncorp Bank, because the increase in ANZ's retail and commercial earnings will make its mix of earnings more like the other banks (**CS** [83]). The current financial information for the relevant banks will enable the Tribunal to assess more accurately the current asymmetries and the impact on them of the acquisition of Suncorp Bank.
 - (b) Secondly, the Commission asks the Tribunal to consider whether the recent intense price competition in the home loans market is likely to continue (**CS** [72]) and suggests that such price competition may be the result of an unusual macroeconomic context



(CS [73]). ANZ submits that it is relevant for the Tribunal to consider the most up to date financial results of the major banks, Bendigo, Macquarie and Bank of Queensland in assessing whether the intense price competition has continued since the Determination and is likely to continue for the foreseeable future.

11. For the above reasons, ANZ submits that the Tribunal should find that the New Documents were not in existence at the time of the Determination, and grant leave to ANZ to provide the New Documents to the Tribunal.