

## NOTICE OF LODGMENT

### AUSTRALIAN COMPETITION TRIBUNAL

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#### 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



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

REGISTRAR

Dated: 4/03/2024 7:53 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.

**PUBLIC VERSION**

**COMMONWEALTH OF AUSTRALIA**

*Competition and Consumer Act 2010 (Cth)*



**IN THE AUSTRALIAN COMPETITION TRIBUNAL**

File No: ACT 1 of 2023

Re: Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited for review of the determination of the Australian Competition and Consumer Commission dated 4 August 2023 (File no. MA1000023).

Applicants: Australian and New Zealand Banking Group Limited and Suncorp Group Limited

## **SHORT OUTLINE OF SUPPLEMENTARY SUBMISSIONS IN SUPPORT OF CONFIDENTIALITY CLAIMS**

### **I SUMMARY**

1. On 1 March 2024, pursuant to direction 4(b) of the directions made on 20 February 2024, Suncorp filed submissions in support of its claims for confidentiality of parts of the Tribunal's Reasons for Determination (**Suncorp submission**).
2. The ACCC has identified in Confidential Annexure B of its submissions dated 1 March 2024 a number of specific issues over Suncorp's confidentiality claims.
3. Pursuant to the invitation from the Tribunal on 4 March 2024, Suncorp makes the following supplementary submissions responding to the matters raised in Confidential Annexure B of the ACCC's submission.

### **II RESPONSE TO ACCC SUBMISSIONS**

4. For the purposes of assessing whether information in the Tribunal's Reasons for Determination is confidential and commercially sensitive consideration needs to be given to the source of the information, not just the substance of the information. The ACCC takes issue with the confidentiality claims made in row 2 of Confidential Annexure B ([163]-[164] and [220]) and row 3 of Confidential Annexure B ([166], [167], [170]-[174] and [224]) as well as in rows 7 to 10 of Confidential Annexure B to its supplementary submission dated 4 March 2024 ([295], [296], [301] and [302]) on the basis that more generalised information is already in the public domain. Suncorp does not cavil with the information which is in the public domain, but the specific dates and specific content of Suncorp board considerations are not in the public domain, are the most confidential and strategically significant corporate documents and do not need to be in the public domain for the purposes of enabling the Tribunal's Reasons for Determination to be properly understood. Responses to the specific matters raised by the ACCC are set out in section III of this submission.
5. Further, Suncorp notes that the ACCC has raised confidentiality claims of third parties, which are in substance equivalent to those raised by Suncorp. In Suncorp's submission, it is important in processes of this kind that a consistent approach is taken.



Para	Extract	ACCC comment	Suncorp submission
			sensitive and not directly comparable to that set out at paragraph [5.31] of the ACCC Reasons for Determination.
[166]- [167], [170]- [174], [224]	<p>[REDACTED]</p> <p>116F</p> <p>[REDACTED]</p> <p>...</p> <p>[REDACTED] n a paper prepared for a SGL “Board Insights Session” in February 2022 (SGL February 2022 Analysis) it was stated that:</p>	<p>The ACCC is concerned that this highlighting is too expansive.</p> <p>In the ACCC’s view, the <u>underlined</u> information is already in the public domain, albeit at a slightly higher level of generality – see ACCC Reasons for Determination at [5.31]:</p> <ul style="list-style-type: none"> <li>- <i>“Advice from Suncorp Group’s external consultants considered the second-best option to the ANZ offer to be a merger with a regional bank, with BEN as the preferred partner. Over the course of the strategic reviews, strategic analysis repeatedly concluded that a regional bank merger with BEN would be value accretive.</i></li> <li>- <i>Consideration of a potential merger with BEN was still being considered in detail in 2022, and the Proposed Acquisition with ANZ was announced in July 2022.”</i></li> </ul>	As above (row 1), these paragraphs describe the content of Suncorp’s board papers and how the Suncorp board considered such matters, and are more granular than set out at paragraph [5.31] of the ACCC Reasons for Determination.

Para	Extract	ACCC comment	Suncorp submission
	<p>[REDACTED]</p> <p>[REDACTED] deposit base, and there is a larger synergy opportunity presented by BEN's cost base.<sup>124F</sup></p> <p>...</p> <p>In April 2022, an internal SGL board paper [REDACTED]</p> <p>[REDACTED]</p> <p>The SGL April 2022 Analysis concluded [REDACTED]</p> <p>[REDACTED] ...</p> <p>...</p> <p>Second, as recently as April 2022, it appeared that SGL [REDACTED], should a cash sale to ANZ not proceed</p>		
[178], [300]	<p>The Barrenjoey Valuation Assessment provided the following analysis on the “current offer versus the alternatives” from a “shareholder valuation perspective”:</p> <p><i>Regional merger</i></p>	<p>The ACCC is concerned that this highlighting is selective in that it obscures, from the published version of the reasons, the Tribunal’s view that Suncorp’s analysis included specific consideration of Bendigo, while revealing the rest of the content.</p>	<p>Suncorp has claimed confidentiality over the highlighted words in paragraphs [178] and [300] of the Tribunal’s Reasons for Determination as these words reveal the specific strategic matter the Suncorp board considered at a point in time. These</p>

Para	Extract	ACCC comment	Suncorp submission
	<p>A merger with a regional bank [REDACTED] will deliver synergies over time and also unlock the conglomerate discount unwind. However, any merger would involve dealing with the same threshold issues as we are facing under the cash sale (e.g. warranties and indemnities/brand licensing/non-compete).</p> <p><i>Organic plan / retain bank</i></p> <p>Within a range, the market is unlikely to give credit to Suncorp Bank materially divergent to regional bank peers (BEN/BOQ). This option forgoes the value of the conglomerate discount unwind.</p> <p>...</p> <p>These contemporaneous documents presented to the SGL board illustrate the extent of the incentives and explain the perceived rationale [REDACTED].</p>	<p>Further, in the ACCC’s view, this redaction is too expansive as consideration of BEN in SUN’s internal documents is already in the public domain – see eg ACCC Reasons for Determination at [5.31]:</p> <ul style="list-style-type: none"> <li>- <i>“Consideration of a potential merger with BEN was still being considered in detail in 2022, and the Proposed Acquisition with ANZ was announced in July 2022.”</i></li> </ul>	<p>words do not obscure from the published version of the reasons the Tribunal’s analysis of Suncorp’s consideration of alternative transactions when section D.3 (Bendigo Merger counterfactual) of the Tribunal’s Reasons for Determination is read as a whole.</p>
<p>[203], [205], [225]</p>	<p><i>First</i>, any material benefit that might be obtained from being a “pureplay” insurer from divesting Suncorp Bank and unwinding any conglomerate discount would need to be taken into account by the SGL board but ultimately any sale of Suncorp Bank would have to be value accretive.180F. The applicants submit that similarly, any views expressed [REDACTED] must give way to whether any offer was value accretive for SGL shareholders.</p> <p>...</p> <p><i>Second</i>, any references to potential divestments of Suncorp Bank in internal SGL documents [REDACTED]</p>	<p>The ACCC is concerned that this highlighting is inconsistent and selective in that it reveals only some parts of the internal consideration / documents.</p>	<p>As above (row 1), these paragraphs describe the content of Suncorp’s board papers and how the Suncorp board considered such matters and are more granular than the information set out at paragraph [5.31] of the ACCC Reasons for Determination.</p>

Para	Extract	ACCC comment	Suncorp submission
	<p>[REDACTED], should be read in the context of the critical qualification that [REDACTED] 185F</p> <p>...</p> <p><i>Third</i>, it can be accepted that SGL “are not sellers at any price” 213F but, at the same time, SGL’s internal documents [REDACTED]. The ACCC submits that there is, [REDACTED], a real prospect that SGL would do so, even if the price is less than what could be realised from the Proposed Acquisition</p>		
[295]	<p>[...] The update also noted that the uplift in market valuation [REDACTED] was estimated to be \$ [REDACTED] million.</p>	<p>The ACCC is concerned that this highlighting is too expansive, as the underlined information is in the public domain already. See e.g. the ACCC’s Reasons for Determination [HB 3/16] at p 5:</p> <p>“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</p>	<p>As above (row 1), Suncorp has claimed confidentiality over the highlighted words in paragraph [295] of the Tribunal’s Reasons for Determination as these words reveal matters considered by the Suncorp board at a point in time. These words do not obscure from the published version of the reasons the Tribunal’s analysis of Suncorp’s consideration of alternative transactions when section D.3 (Bendigo Merger counterfactual) of the Tribunal’s Reasons for Determination is read as a whole.</p> <p>Page 5 of the ACCC Reasons for Determination does not directly describe Suncorp board documents.</p>



Para	Extract	ACCC comment	Suncorp submission
		<p>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.”</p>	
[296]	<p>A strategy paper provided to the SGL board in April 2022 for scenario planning purposes for Suncorp Bank included the following observation about the [REDACTED] [REDACTED] [...]</p>	<p>The ACCC is concerned that this highlighting is too expansive, as the underlined information is in the public domain already. See e.g. the ACCC’s Reasons for Determination [HB 3/16] at p 5: “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</p>	<p>As above (row 1), Suncorp has claimed confidentiality over the highlighted words in paragraph [296] of the Tribunal’s Reasons for Determination as these words reveal the matters being considered by the Suncorp board at a point in time. Suncorp has sought to narrow its claims of confidentiality as much as possible. Suncorp has only claimed confidentiality over references to Suncorp trading at a conglomerate discount where such references reveal the Suncorp board’s consideration of this matter (see paragraphs [178], [203], [220], [223], [294], [884] and [845] which contain references to a conglomerate discount. Suncorp has not claimed confidentiality over these references).</p>

Para	Extract	ACCC comment	Suncorp submission
		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.”	
[301]	<i>Second</i> , the possibility of a merger between Bendigo and Suncorp Bank ██████████ ██████████ in the period leading up to the announcement of the Proposed Acquisition.	The ACCC is concerned that the <u>underlined</u> information is too general in nature to be commercially confidential.	As above (row 1), Suncorp has claimed confidentiality over the highlighted words in paragraph [301] which describe matters being considered by the Suncorp board over time and the nature of such consideration.
[302]	<i>Third</i> , prior to the Revised Barrenjoey Analysis, ██████████ ██████████	The ACCC is concerned that all of the highlighting in this example is too expansive, as the fact that strategic analyses have concluded that a merger between BEN and SUN may be value accretive is in the public domain already (see e.g. the ACCC’s Reasons for Determination [HB 3/16] at p 5).	As above (row 1), Suncorp has claimed confidentiality over the highlighted words in [302] which describe matters being considered by the Suncorp board over time and advice provided to the Suncorp board.

4 March 2023