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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:	Outline of submissions
File Number:	ACT 1 of 2023
File Title:	APPLICATIONS BY AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED AND SUNCORP GROUP LIMITED

COMMONWEALTH OF AUSTRALIA
AUSTRALIA
AUSTRALIAN COMPETITION TRIBUNAL

REGISTRAR

Dated: 10/11/2023 12:33 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

OUTLINE OF SUBMISSIONS FOR SUNCORP GROUP LIMITED

This document contains confidential information which is indicated as follows:

[Confidential to ANZ] […] for Australia and New Zealand Banking Group Limited.

[Confidential to Suncorp] […] for Suncorp Group Limited and its related bodies.

[Confidential to Bendigo] […] for Bendigo and Adelaide Bank Limited and its related bodies.

[Confidential to a third party] […] for a non-party.

A INTRODUCTION

1. This case involves the acquisition of the banking arm of Suncorp Group Limited (**SGL**), Suncorp Bank. Suncorp Bank is a small bank. In a conventional case, a change in ownership of an entity that has less than a 2% share of the market, in circumstances where there are numerous other large and small competitors, would not give rise to any competition concerns and the transaction would be authorised. So it should be here.

2. Measured by banking system assets as at May 2023, Suncorp Bank has a market share of only 1.75%.[1] It has eight competitors larger than it, most much larger. It also has numerous other competitors with a slightly smaller share, including HSBC Bank (1.13%), Rabobank, Bank of China, AMP Bank and many others. Quite a number of its competitors are relatively recent entrants who have grown their market share rapidly. By contrast, Suncorp Bank has legacy technology and system issues, a legacy branch network, and is the subject of restrictive legislation, being the *State Financial Institutions and Metway Merger Act 1996* (Qld) (the **Metway Merger Act**). Even if measured by reference to activities that are the focus of these proceedings, Suncorp Bank is small. For home loans, its share is only 2.3%, which puts it in 9th position.[2] For SME deposits and lending it is in [redacted] position.[3] Even for agribusiness lending, which is not a separate market, on the ACCC's figures it is only [redacted] (and where Rabobank, for example, is [redacted]).[4] The ACCC (and Bendigo and Adelaide Bank Limited (**BABL**)) seek to give Suncorp Bank an outsized significance based on certain theories about its future role which are not based on a proper and objective consideration of the facts and are unsound.

3. Many of the relevant issues are discussed in the submissions for ANZ. SGL adopts those submissions.

B COUNTERFACTUAL ISSUES

4. The ACCC contends that two alternative counterfactuals have a realistic prospect of occurring, which it describes as the No Sale Counterfactual (i.e. Suncorp Bank continues under the ownership of SGL) and the Bendigo Merger Counterfactual. The propounding of more than one counterfactual, together with reliance on three asserted markets, renders the necessary counterfactual analysis very complicated, because it is necessary to consider numerous future possibilities and compare them. A further difficulty is that the ACCC's analysis (and that apparently propounded by BABL) suffers from being too static, including by comparing a postulated future with the present, rather than alternative futures. In this regard:

    a. Whilst the ACCC relies on the Bendigo Merger Counterfactual, it does not adequately consider whether the factors it relies upon to assert that a merger between BABL and Suncorp Bank is likely would also render likely a merger between BABL and some other entity (e.g. Bank of Queensland (**BoQ**)) in the future *with* the Proposed Acquisition. That means that, even on its own case, it overstates the effect of the Proposed Acquisition because it is not undertaking a proper with and without analysis.

    b. In relation to both SME and agribusiness, an emphasis is placed on what competitive constraint Suncorp Bank offers now, i.e. how does Suncorp Bank compete. However, that is the wrong analysis. It is to focus on a competitor not on the future state of competition. Suncorp Bank is not simply disappearing from the market with everything else staying static.

[1] ACCC Reasons at [4.7] and the table there set out.
[2] ACCC Reasons at [6.45].
[3] ACCC Reasons at [6.495].
[4] ACCC Reasons at [6.670].

It is becoming part of ANZ. To the extent that this causes customer disruption, that is a competitive opportunity for the other participants. Whatever products and services are offered by Suncorp Bank will be replicated by ANZ (as the applicants contend) or by another competitor. If customers have a demand for products or services, then they will be supplied by participants in the market, unless they are uneconomic (in which case Suncorp Bank would not be offering them either). Any allegation of a reduction in competition in the relevant market would need to be supported by an identification of some mechanism by which the remaining competitors would give less and charge more. None has been identified.

The Tribunal will not make these analytical mistakes. But these two examples underscore the importance of a careful consideration of the various future possibilities, including the competitive dynamics.

C THE BABL COUNTERFACTUAL

(1) Overview of the issue in dispute

5. A key dispute on the counterfactual is whether it is likely that BABL would acquire Suncorp Bank in the future without the Proposed Acquisition (the **BABL counterfactual**). On a proper analysis, this is not a credible counterfactual. The only potential counterfactual is Suncorp Bank remaining a part of SGL (the **No Sale counterfactual**). Further, the BABL counterfactual could only affect the substantive competition analysis if the combined BABL / Suncorp Bank were likely to be a materially more effective competitor than BABL and Suncorp Bank on their own. This too is not credible. Nor is it credible that BABL would merge with Suncorp Bank in the counterfactual, but would not merge with any other entity in the factual. The BABL counterfactual therefore adds nothing to the competition analysis, and it will be unnecessary for the Tribunal to analyse the Proposed Acquisition by reference to it.

6. As to the first aspect of this dispute – namely the likelihood of BABL acquiring Suncorp Bank in the future without the Proposed Acquisition – the Tribunal should find that this is not a realistic possibility. The evidence from Mr Johnston (CEO of SGL), and Dr van Horen (CEO of Suncorp Bank), explains why a merger with or sale to BABL was unlikely to be acceptable to SGL.[5] The overall conclusions expressed in that evidence should be accepted. They are supported by the following three considerations. First, it is not credible that BABL would have the ability and incentive to make a reasonable offer for Suncorp Bank. Secondly, it is not credible that SGL would be prepared to accept an offer from BABL. Thirdly, several additional matters including the significant execution risks that the acquisition would face substantially diminish its prospects of it being a successful merger, thereby further reducing the likelihood of it being agreed in the first place. It is convenient to address each of these reasons in turn.

(2) BABL's ability and incentive to make a reasonable offer for Suncorp Bank is speculative

7. Any offer that BABL theoretically would make for Suncorp Bank either would be [redacted][6] A full cash bid is very unlikely, because neither BABL nor its advisors have contemplated a cash offer.[7] The fact that [redacted]

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5 71925.038.001.0001 (Johnston 2), [16] – [93]; SML.0032.0001.0032 (Johnston 3) [33] – [36]; SML.0030.0001.0001 (van Horen 2), [29] – [97]; 71925.043.001.0519 (van Horen 3), [53] – [63].

6 [redacted]

7 [redacted]

[redacted].[8] At a minimum, BABL would need to offer scrip (or scrip and cash) equal to the value of Suncorp Bank when calculated using BABL's current price-earnings multiple. This is clear from the fact that the corporate finance advisors for both [redacted] conducted their analyses on that basis.[9] The deal values contemplated by [redacted], and the deal value contemplated by [redacted].

8. There are several reasons why it is unlikely that BABL would have the ability and incentive to make a scrip offer (or part scrip / part cash offer) for Suncorp Bank at this level in the future without the Proposed Acquisition.

[redacted] means BABL unlikely to make an offer

9. *First*, BABL would not acquire Suncorp Bank unless it were confident [redacted] The most recent calculation of whether this would be so was prepared by SGL's advisor, Barrenjoey, [redacted] (We note BABL's P/E ratio is used to calculate a value for Suncorp Bank because there is no Suncorp Bank P/E ratio, given the Bank is part of a wider insurance group, being SGL). Barrenjoey's assumptions are reasonable for the reasons discussed below at paragraph 22ff.

10. The Tribunal should find that there is no realistic prospect that BABL would make an offer to acquire Suncorp Bank if paying what Suncorp Bank is worth [redacted] In this regard, Ms Baker agreed [redacted] It is uncorroborated and there is no contemporaneous documentary evidence that [redacted] It is rational to expect that had they done so, BABL would not have viewed acquiring Suncorp Bank favourably.

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8 [redacted]

9 [redacted]

10 [redacted]

11 [redacted]

12 [redacted]

13 [redacted]

14 For example, see [redacted]

The need for a [redacted] further reduces the prospect of a BABL offer

11. *Secondly*, Mr Johnston has given unchallenged evidence that to acquire Suncorp Bank, BABL would need to [redacted] His view is that [redacted] This view is corroborated by [redacted] There does not appear to be much dispute that integration costs would be around this level [redacted] In addition, [redacted]

12. However, in circumstances where acquiring Suncorp Bank would be [redacted] This further diminishes the prospect that [redacted]

The need for BABL shareholder approval

13. *Thirdly*, because [redacted], approval from existing BABL shareholders would be required under ASX Listing Rule 7.1. Mr Johnston gave unchallenged evidence that it would be consistent with market practice for an independent expert report to be commissioned to assist shareholders in assessing the merger and casting their vote.[24] In circumstances where [redacted]

Without due diligence, the prospect of any reasonable offer is speculative

14. *Fourthly*, without BABL having conducted due diligence on Suncorp Bank, the likelihood of BABL making SGL any reasonable offer is currently entirely speculative. While BABL identified Suncorp Bank as [redacted]

15 [redacted]
16 [redacted]
17 [redacted]
18 [redacted]
19 [redacted]
20 [redacted]
21 [redacted]
22 [redacted]
23 [redacted]
24 [redacted]

[redacted] So BABL cannot know whether it would be rational to pursue a merger with Suncorp Bank without having properly investigated and considered, among other things, those matters. This approach is consistent with how it has approached other potential acquisitions.[27] Since then, although BABL has [redacted]

BABL's letters to SGL confirm the speculative nature of any deal

15. *Fifthly*, the two letters which BABL sent SGL [redacted][30] The June 2022 letter [redacted] BABL's Mr Stewart said that [redacted] Regardless of whether the first and third reasons should be accepted, the second reason is an admission that absent [redacted] The proposal was embryonic at best.

16. The August 2022 letter [redacted][32] In her first examination, Ms Baker gave three reasons for this: [redacted] This undermines any notion that it was a concrete offer, as opposed to merely an invitation to treat which may or may not go anywhere. In those circumstances, no weight can be placed on it as evidence that BABL would be likely to make a reasonable offer for Suncorp Bank.

(3) SGL is unlikely to accept an offer from BABL to acquire Suncorp Bank

[redacted]

17. The statements of facts, issues and contentions (**SOFICs**) filed by BABL and the ACCC contend that SGL has a strong incentive to divest Suncorp Bank and that it would be likely to accept an

25 [redacted]
26 [redacted]
27 [redacted]
28 [redacted]
29 [redacted]
30 [redacted]
31 [redacted]
32 [redacted]
33 [redacted]
34 [redacted]

offer from BABL.[35] They appear to give four reasons for this: (1) SGL would obtain material benefit as a pureplay insurer from divesting the bank; (2) the conglomerate discount that applies to SGL's share price likely would be unwound; (3) [redacted] and (4) [redacted] However, upon proper analysis based on current information, those matters do not support the conclusion. Any SGL consideration ultimately turns on an objective assessment of value, having regard to relevant execution and transaction risks.

18. As to the benefit of being a pureplay insurer, SGL contends that this is a public benefit that would be likely to result from the Proposed Acquisition (see paragraphs 77 to 82 below). It is thus a matter that [redacted] However, as Mr Johnston explained [redacted] Mr Johnston's evidence is corroborated by [redacted]

19. As to the potential unwinding of a conglomerate discount – which refers to SGL's share price trading at a discount to its theoretical sum of the parts valuation – it is true that [redacted]

35 BABL SOFIC at [9]; ACCC SOFIC at [21].

36 [redacted]

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[redacted] This evidence should be accepte [redacted]

20. As to the reference in a 30 June 2022 Board paper and minutes to [redacted] This is a critical qualification. It reinforces that [redacted] That view is supported by the objective valuation analysis, discussed in paragraphs 22 to 37 below.

21. [redacted] Ms Baker accepted this.[53]

22. The most recent relevant value analysis [redacted]

44 [redacted]
45 [redacted]
46 [redacted]
47 [redacted]
48 [redacted]
49 [redacted]
50 [redacted]
51 [redacted]
52 [redacted]
53 [redacted]
54 [redacted]

[redacted] The [redacted] analysis should be preferred as an accurate assessment of value because the assumptions it uses on matters (1) to (5) are correct for the following reasons.

[redacted] delayed cost synergies

23. There is little difference between the [redacted] and [redacted] analyses with respect to the synergies that could be achieved on an annual basis. [redacted] The difference instead concerns how [redacted] are assumed to be achieved. [redacted]

24. [redacted] In particular, Suncorp Bank is subject to s.64 of the Metway Merger Act, which requires it to be headquartered, and to locate key banking functions, in Queensland. This requirement applies to any holding company or subsidiary of Suncorp Bank. It was therefore necessary for ANZ and SGL to negotiate the repeal or amendment of this Act with the Queensland Government so that ANZ could acquire Suncorp Bank without becoming subject to those requirements. This process took [redacted] culminated in ANZ and SGL entering into commitment agreements with the State of Queensland ([redacted], which in SGL's case are addressed below at paragraphs 85 to 87, and are otherwise addressed in ANZ's submissions).[60] [redacted]

25. BABL too would need to negotiate the repeal or amendment of the Metway Merger Act with the Queensland Government if it were to acquire Suncorp Bank. [redacted] Critically, the fact that the Queensland Government regards the commitments given by ANZ and SGL as setting a "benchmark" for any other similar

55 [redacted]

56 [redacted]

57 [redacted]

58 [redacted]

59 [redacted]

60 SML.0032.0001.0032 (Johnston 3) at [15]; 71925.043.001.0582 (Johnston 4) at [10] – [11].

61 [redacted]

62 [redacted]

63 [redacted]

kind of transaction[64] means their recent experience has material implications for the speed at which BABL could achieve any expected synergies, [redacted][65]

26. In Mr Johnston's view, the need for [redacted]

27. Further, it is likely that BABL would need to offer even more significant commitments than ANZ, [redacted] If so, the synergies would be further delayed.[72]

28. In addition, BABL's view that it could integrate Suncorp Bank into BABL within [redacted] is speculative and ambitious, and likely to be wrong, which further supports the delayed phasing of the synergies. [redacted] The notion that BABL would integrate Suncorp Bank within [redacted] is also inconsistent with its experience of integrating past acquisitions. [redacted] Dr van Horen also gave unchallenged evidence [redacted] His view carries significant weight, given his extensive and long-

64 [redacted]
65 [redacted]
66 [redacted]
67 [redacted]
68 [redacted]
69 [redacted]
70 [redacted]
71 [redacted]
72 [redacted]
73 [redacted]
74 [redacted]
75 [redacted]
76 [redacted]
77 [redacted]
78 [redacted]

standing experience in major bank integrations.[79] [redacted] Either way, [redacted]

[redacted] funding dis-synergies

29. The other key difference between the [redacted]

30. The assumption as to Suncorp Bank's credit rating used in the [redacted] is correct (and the corresponding assumptions in [redacted] and [redacted] analyses are incorrect) for the following reasons. *First*, there is unchallenged evidence from S&P Global itself that [redacted] *Secondly*, there is unchallenged evidence from David Howell (a consultant with over 20 years' expertise in credit ratings) that [redacted] No weight should be placed on [redacted]

31. *Thirdly*, according to Mozammel Ali (a consultant with over 28 years' experience in debt, equity, hybrid and other structured capital raising), [redacted] By contrast, [redacted] should not be given any weight.[89] [redacted] and thus not qualified to express such a view.

32. *Fourthly*, [redacted] is consistent with and supported by Mr Ali's expert evidence that [redacted]

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79 [redacted]

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[redacted] By contrast, the assumed increased funding cost of [redacted] is below Mr Ali's range. The ACCC's economist – Ms Starks – suggests that the funding cost impact would be more muted than Mr Ali's range. She asserts that [redacted][91] Her view should be rejected, because she has no relevant expertise that would qualify her to opine on credit rating impacts or debt capital financing.[92] More importantly, Ms Starks' views are wrong. Mr Ali explains that it is highly unlikely that [redacted] He also explains that Ms Starks overlooks the difference between [redacted] and what it would cost. Mr Ali's point is that [redacted] Thus, particularly in circumstances where there is no relevant contradictory expert evidence, and Mr Ali was not challenged in an examination, his opinion should be accepted, and the Tribunal should find that the assumption used in the [redacted] was reasonable and appropriate, in contrast to those used in earlier analyses.

[redacted] major bank levy

33. The [redacted] The major bank levy of 0.015% is required to be paid quarterly on the balance on the bank's liabilities for banks with liabilities over $100bn.[96] There is little doubt that a combined BABL / Suncorp Bank would be required to pay this (even BABL's documents recognise this[97]), so [redacted] were correct to factor it into their analysis [redacted].[98]

[redacted] capital dis-synergy and no AIRB status

34. The analyses prepared for SGL [redacted] However, the assumption that [redacted] as a result of acquiring Suncorp Bank was unreasonable, and should be rejected, for following reasons.

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90 [redacted]

91 [redacted]

92 See Ms Stark's CV at 71925.040.001.0171 (Starks 1) at .0381.

93 [redacted]

94

95

96 ACCC Reasons at [4.45].

97 [redacted]

98 71925.040.001.0171 (Starks 1) at [7.49].

99 [redacted]

100

35. *First*, the possibility that BABL would achieve AIRB status is speculative, and if it happens at all it is unlikely to be quick. [redacted]03 In addition, Mr Ali opined, based on his experience advising APRA regulated clients, that a best-case timeframe for achieving AIRB status is [redacted]

36. *Secondly*, it is uncertain that achieving AIRB status would provide BABL with any material capital benefit, and certainly not quickly. [redacted] While Ms Starks appears to suggest that [redacted] no weight should be placed on this when Ms Starks has no relevant banking expertise. In any event, Mr Ali (who is a relevant expert) disagrees with Ms Starks, and observes that increased procyclicality in AIRB credit risk models increases volatility under stress conditions which banks the size of Suncorp Bank or BABL / Suncorp Bank have less ability to absorb.[109]

37. *Thirdly*, achieving AIRB status is not made more likely by acquiring Suncorp Bank, so it is inappropriate to include it as a benefit of the merger in the valuation analysis. In this respect, Mr Ali explains that there is no minimum size requirement for achieving AIRB accreditation. He also opines that BABL would not increase its probability of success in seeking AIRB status by acquiring Suncorp Bank, and may even make it more complex to obtain.[110] Dr van Horen expresses a similar view. He says that increased scale would not increase the likelihood of obtaining AIRB accreditation, and on the contrary, the increased complexity of the combined bank would reduce its likelihood.[111]

[redacted] <u>stranded costs</u>

38. The analyses prepared for SGL [redacted]

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101 [redacted]
102 [redacted]
103 [redacted]
104 [redacted]
105 [redacted]
106 [redacted]
107 [redacted]
108 [redacted]
109 [redacted]
110 [redacted]
111 [redacted]
112 [redacted]

[redacted]

(4) Further matters which diminish the prospect of the Bendigo counterfactual

39. While the valuation analysis is sufficient to conclude that SGL would be unlikely to accept any offer from BABL, there are five additional matters that would further diminish the prospect that SGL rationally would accept an offer from BABL. *First*, [redacted] *Secondly*, the fact that Mr Johnston, as CEO of a listed corporation, has given non-confidential evidence that he is not satisfied that a merger of the bank with BABL delivers value to SGL shareholders[115] also would make it difficult for SGL to reverse this position in the short to medium term: cf. *Vodafone Hutchison Australia Pty Ltd v ACCC* (2020) ATPR 42-672 at [19]. *Thirdly*, [redacted] *Fourthly*, there would be substantial execution and technology integration risks with a merger of Suncorp Bank and BABL that would be a further factor against agreeing to a sale.[117] *Fifthly*, [redacted] It can be inferred that these downsides, which essentially are *certain*, would weigh heavily against the merger's *uncertain* hypothesized synergies – the SGL Board rationally would require the value of the deal to far exceed the bank's organic value.

(5) The combined BABL / Suncorp Bank would not be a more effective competitor

40. Quite apart from the BABL counterfactual not being credible, it is likewise not credible that BABL would become a materially more effective competitor by acquiring Suncorp Bank. Ms Starks is wrong to conclude that there is a real chance that a merged BABL / Suncorp Bank could become a more effective competitor than BABL on its own[119] for the following reasons.

41. *First*, as described above at paragraphs 29 to 33, the merged BABL / Suncorp Bank would [redacted] This would reduce (rather than improve) BABL's ability to offer competitive interest rates on loans.[122] Ms Starks is therefore wrong to describe these dis-synergies as "relatively small"[123], and insofar as her view rests on an

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113 [redacted]
114 [redacted]
115 [redacted]
116 [redacted]
117 [redacted]
118 [redacted]
119 [redacted]
120 [redacted]
121 [redacted]
122 [redacted]
123 [redacted]

expectation that BABL's credit rating might improve,[124] it should be rejected, because it is contradicted by two experts with relevant expertise (Mr Ali and Mr Howell, not to mention Standard & Poors itself).

42. *Secondly*, Ms Starks is wrong to conclude that there is a real chance that AIRB accreditation would provide BABL with a capital benefit that would enable it to become a "disruptive competitor".[125] As described above at paragraphs 35 and 37, achieving AIRB status is presently speculative for BABL, and its prospects would not be improved by acquiring Suncorp Bank. [redacted] and Dr van Horen gave unchallenged evidence that increased scale would not improve BABL's prospects.[127] In other words, the prospect of BABL receiving any benefits from AIRB accreditation at best does not differ between the factual and counterfactual, and more likely reduces it (for the reasons at paragraph 37 above). It therefore cannot be taken into account.

43. More importantly, it is uncertain and speculative whether BABL's competitiveness would improve even if it achieved AIRB accreditation. Ms Starks' theory is that with AIRB accreditation, BABL would consume less capital on each marginal home loan (particularly on lower risk loans), which would increase its return on equity and enable it to price home loans more competitively in segments of the market.[128] However, little weight should be placed on Ms Starks' opinion, given her analysis never extends beyond the theoretical and she does not identify any supportive BABL internal analyses of the likely pricing impact prepared in the ordinary course of business. Given SGL's analysis that [redacted] it is not credible for BABL to suggest that its position would be materially different.[130] Further, in any event, even if AIRB status enabled BABL to offer lower rates on low risk loans, this is unlikely to meaningfully improve home loan competition, because Macquarie Bank is already a vigorous and effective competitor for low-risk home loans.[131]

44. *Thirdly*, the increased scale that BABL would obtain from acquiring Suncorp Bank would not materially increase its effectiveness as a competitor.[132] Ms Starks suggests that increased scale could assist BABL to attract more deposits (by increasing the perceived safety of the bank) and to receive a credit rating uplift.[133] However, neither prospect is plausible. [redacted] Mr Ali gives evidence that [redacted] Ms Starks' other claim is that increased scale would allow BABL to spread its fixed costs over a larger customer base, which could allow it to justify increased investment in technology.[135] However, any synergies that may result from acquiring Suncorp Bank would be [redacted] (see paragraph 23 to 28 above), including while the merged entity deals with various legacy issues. Further, while BABL's scale would increase, it still would be much smaller than the major banks, so it cannot just be inferred that its ability to fund

124 [redacted]
125 [redacted]
126 [redacted]
127 [redacted]
128 [redacted]
129 71925.043.001.0519 (van Horen 3) at [14] – [15]; 71925.044.001.0222 (Ali 2) at [112] – [122].
130 See Patrick Smith's analysis in 71925.043.001.0255 (Smith 3) at [33] – [35].
131 71925.043.001.0255 (Smith 3) at [38] – [42].
132 [redacted]
133 71925.040.001.0171 (Starks 1) at [7.55] – [7.56].
134 71925.034.001.2712 (Ali 1) at [70] – [72].
135 71925.040.001.0171 (Starks 1) at [7.54].

transformative technology investments would be meaningfully enhanced such that this permits a greater constraint on the major banks.[136]

45. It is also important to recognise that slightly greater scale alone is not sufficient to create a vigorous and effective competitor. Competition to the major banks in Australia has been the product of a competitive strategy. Macquarie Bank has competed strongly and successfully in home loans not merely because of its size, but because it has a compelling offering and disruptive strategy. It has focused on low-risk customers, quick turnaround times and a compelling technology platform.[137] [redacted] Likewise in SME banking, Judo Bank has seen substantial growth in the last three to four years by focusing on service and credit policy and recruiting bankers from ANZ.[139] By contrast, there no evidence that by acquiring Suncorp Bank, BABL would implement a changed, compelling strategy.

(6) Any impact on competition does not flow from the Proposed Acquisition

46. Importantly, the Proposed Acquisition does not have the effect of preventing any pro-competitive impact from BABL obtaining greater scale. We have set out above why any transaction between BABL and SGL for the acquisition of Suncorp Bank is speculative. But if, notwithstanding that, the Tribunal considers that the possibility of a merger between BABL and Suncorp should be taken into account in the competition analysis, then the Tribunal would also have to consider BABL's interest in acquiring another business in the event of the Proposed Acquisition. It would be wrong to consider the Proposed Acquisition as a barrier to an increase in the scale of BABL.

47. [redacted]

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136 SML.0030.0001.0001 (van Horen 2) at [55] – [56]; 71925.034.001.1622 (Elliott 2) at [90] – [91]; 71925.002.002.1502 (Dalton) at [107] – [108].

137 71925.034.001.1622 (Elliott 2) at [77], [90] – [91].

138 71925.002.001.9551 (Bennett, Mark 1), [116], [161] – [163].

139 71925.002.001.9102 (Rankin), [93(b)(ii)].

140 [redacted]

141 BEN.001.001.0592 at _0067.

142 [redacted]

143 BEN.001.001.0653 at _0046; BEN.001.003.0016 at _0008; BEN.001.001.0688 at _0137, _0140, _0156, _0158.

144 BEN.001.001.0698 at _0065 [redacted]; BEN.001.001.0704 at _0204, _0207; BEN.001.001.0714 at _0252; BEN.001.005.0009 at _0001; BEN.001.008.0014; BEN.001.007.0003; BEN.001.007.0004; BEN.001.007.0005; BEN.001.007.0006.

145 BEN.001.005.0027 at _0004.

[redacted] Likewise, since the announcement of the Proposed Acquisition, BABL has [redacted]

48. If the Tribunal were to find [redacted] If so, the BABL counterfactual would add nothing to the competition analysis.

D RELEVANT MARKETS

49. SGL adopts ANZ's submission that the relevant markets are the national market for home loans, the national market for retail deposits, and a national market for business banking (which includes SME and agribusiness banking). However, for convenience, we address the competitive effects of the Proposed Acquisition with respect to home loans, SME banking and agribusiness banking separately.

E NO SLC IN THE NATIONAL HOME LOANS MARKET

50. None of the expert economists consider that the Proposed Acquisition would have unilateral effects that would substantially lessen competition in the home loans market on either counterfactual. [149] The issue in dispute is whether it would increase the likelihood of coordinated effects being initiated or sustained. SGL adopts the submissions of ANZ as to why there would not be any increase in the likelihood of coordinated effects. SGL also makes the following further points. *First*, it is unnecessary to consider the BABL counterfactual, for the reasons articulated above.

51. *Secondly*, with respect to the likelihood of increased coordinated effects in the No Sale counterfactual, even the ACCC's expert economist, Ms Starks, considers there would be none.[150] It is only BABL's expert economist, Prof. King, who expresses a contrary view.[151] However, his conclusions are purely speculative. They rely on assumed propositions: (1) that there is coordinated conduct presently, (2) that in a future without the proposed acquisition ANZ will continue to lose market share, and (3) that this continuing loss of share will cause extant coordination to "become more unstable over time as ANZ's market share in home loans falls further behind those of other major banks".[152] None of these assumptions has been established, and Prof. King's opinion should be rejected.

52. *Thirdly*, this is fortified by examining Suncorp Bank's likely competitive position in the No Sale counterfactual. To summarise, Suncorp Bank's position will continue to be modest

146 [redacted]

147 [redacted]

148 [redacted]

149 71925.040.001.0171 (Starks 1), [9.55]; 71925.020.001.6300 (King 1); 71925.002.001.8851 (Williams 1).

150 71925.040.001.0171 (Starks 1), [9.113.4].

151 71925.020.001.6300 (King 1), [133] – [136].

152 71925.020.001.6300 (King 1), [120]-[122].

(commensurate with its small market share) and will pose no disruptive constraint to ANZ or the major banks. There is no relevant difference between the future with and without the Proposed Acquisition. Suncorp Bank's performance [redacted] recent management strategies have stabilised its financial performance [redacted] the Tribunal should find, based on the following two matters, that an independent Suncorp Bank would not be a particularly effective competitor.

(1) Suncorp Bank's organic strategy [redacted]

53. The *first* matter is that in recent history, Suncorp Bank's strategy [redacted]

54. Likewise, [redacted][165]

153 [redacted]

154 [redacted]

155 SML.0003.0001.1249 at .1263 (Suncorp Financial Results for FY22 Presentation).

156 [redacted]

157 SML.0024.0001.2109 (Credit Suisse report titled 'APRA banking stats February 2023 – Below system growth, negative MoM housing growth (-0.2%)' dated 31 March 2023); SML.0024.0001.2114 (Credit Suisse report titled 'APRA banking stats March 2023 – Second consecutive below-system mortgage growth (0.14x system)' dated 28 April 2023); [redacted]

158 [redacted]

159 [redacted]

160 [redacted]

161 [redacted]

162 SML.0030.0001.0001 (van Horen 2) at [27] – [28].

163 SML.0022.0001.0001 at .0014.

164 SML.0009.0011.8507 at .8511.

165 SML.0004.0001.0061 (Johnston 1) at [40].

(2) Suncorp Bank's organic strategy [redacted]

55. The *second* matter is that Suncorp Bank's [redacted]

56. SGL recognises that [redacted]

57. However, while Suncorp Bank's [redacted]

58. Further, Dr van Horen [redacted]

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166 [redacted]

167 SML.0004.0001.0033 (van Horen 1) at [23].

168 [redacted] SML.0004.0001.0061 (Johnston 1) at [75].

169 [redacted]

170 [redacted]

171 E.g. SML.0004.0001.0061 (Johnston 1) at [75], [redacted] SML.0004.0001.0033 (van Horen 1) at [16]; cf. SML.0003.0001.0160 at .0169.

172 [redacted] SML.0004.0001.0061 (Johnston 1) at [76].

173 SML.0004.0001.0033 (van Horen 1) at [16], [20]-[22], [45]; SML.0004.0001.0061 (Johnston 1) at [32(d)].

174 SML.0003.0001.0160 at .0167; SML.0009.0011.8507 at .8511.

175 SML.0004.0001.0033 (van Horen 1) at [23]; [redacted]

176 SML.0004.0001.0033 (van Horen 1) at [23].

177 SML.0004.0001.0033 (van Horen 1) at [17(a)]; [redacted]

178 [redacted]

179 [redacted]

180 SML.0004.0001.0061 (Johnston 1) at [76].

181 [redacted]

182 [redacted]

[redacted] For these reasons, Suncorp Bank remaining under SGL ownership would make no difference to the conditions which might be thought to be conducive to coordinated effects in the market for home loans.

F NO SLC IN ANY MARKET IN WHICH SME BANKING IS SUPPLIED

59. SGL adopts ANZ's submissions with respect to why the Proposed Acquisition would not substantially lessen competition in any market in which SME banking services are supplied. SGL also emphasises the following three further matters which reinforce why there is unlikely to be an anti-competitive effect in SME banking: (1) [redacted] (2) ANZ and Suncorp Bank are not close competitors; and (3) Suncorp Bank's relationship managed model is neither unique, nor likely to be lost through the Proposed Acquisition.

(1) Suncorp Bank's business banking [redacted]

60. The capital constraints [redacted] are more onerous in business banking where competitive conditions are tougher. [redacted] underinvestment in technology platforms makes it particularly difficult to compete effectively in SME banking. [redacted]

61. Importantly, [redacted] Ms Starks' view that Suncorp Bank [redacted] therefore should be rejected.[190]

183 SML.0004.0001.0061 (Johnston 1) at [40], [44]. [redacted]

184 [redacted]

185 [redacted]

186 SML.0004.0001.0033 (van Horen 1), [85]; SML.0003.0001.0405 at .0409.

187 SML.0004.0001.0033 (van Horen 1), [87]; [redacted]

188 SML.0004.0001.0033 (van Horen 1), [87] – [88].

189 [redacted]

190 71925.040.001.0171 (Starks 1) at [7.12].

(2) Unilateral effect unlikely given limited switching between ANZ and Suncorp

62. Dr Williams observes that whether a merger is likely to cause unilateral effects of lessening of competition depends in material part on the degree of switching between the merging parties.[191] However, in SME banking, ANZ and Suncorp Bank are not particularly close competitors. They do not compete for the same customers, with Suncorp Bank's business banking portfolio being more strongly weighted to [redacted] than ANZ's portfolio.[192] [redacted] indicates little risk of unilateral effects.

(3) No SLC through abandonment of personalized and flexible approach

63. To the extent that relationship management has a viable commercial future, whether or not Suncorp Bank remains under independent ownership will make no difference to its availability. Relationship management is not unique to Suncorp. While it has historically prided itself on the quality of its relationship management,[195] [redacted]

64. This highlights a general issue with the ACCC's position. The question is not whether Suncorp Bank is providing any mildly differentiated product. The applicants say that it is not, and that other banks emphasise personal contact and relationship management. But even if it was, there is no reason why, if that was attractive to customers, another entity would not provide that. The Suncorp relationship managers will either be providing the same relationship management at ANZ in competition with other participants in the market, or if that does not occur for some reason, they will almost certainly be providing those same services for another competitor. To merely identify some point of current differentiation is nothing more than a static analysis. To contend that competition will be reduced in some material way requires identification either of some feature in the acquired entity that cannot be replicated, or some other reason why

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191 71925.035.001.0155 (Williams 2) at [49].

192 [redacted]

193 [redacted]

194 [redacted]

195 71925.043.001.0464 (Starks 2) at [7.8]: "Suncorp remains an important competitor when it comes to customers who value a more bespoke service, e.g. SME customers who have somewhat unusual banking needs."; [redacted]

196 [redacted]

197 [redacted]

competition will be suppressed (e.g. because the remaining entities are likely to be less competitive on pricing or service levels for an identified reason).

G NO SLC IN ANY MARKET IN WHICH AGRIBUSINESS BANKING IS SUPPLIED

65. The ACCC's SOFIC (as reflected in its Reasons) essentially propounds three key reasons why the Proposed Acquisition would be likely to substantially lessen competition with respect to agribusiness banking: (1) Suncorp Bank is said to be an important competitor in Queensland whose differentiated service offering is highly valued by customers; (2) ANZ is unlikely to maintain Suncorp Bank's relationship managed model; and (3) other banks provide only limited constraint given differences in their service offering.[198] The submissions of ANZ explain why the Proposed Acquisition would not have that effect in any market in which agribusiness banking services are supplied, and SGL adopts those submissions.

66. These submissions highlight the ACCC's inappropriately static view of competition. The correct approach requires a forward-looking assessment. At least three matters expose why there is no real chance of any substantial lessening of competition with respect to agribusiness banking when such an approach is applied. *First*, Suncorp Bank's model is not unique or market-leading, it is readily replicated by rivals, [redacted]. *Secondly*, industry trends of increasing financial complexity limit the viability of the relationship-managed model without investment in digital platforms to generate efficiencies, [redacted]. *Thirdly*, competition from brokers is replacing any constraint Suncorp Bank's model has applied and will continue to in the No Sale counterfactual.

(1) Suncorp's model is neither unique nor market-leading [redacted]

67. The ACCC found that Suncorp Bank distinguishes itself from the major banks on its relationship services.[199] [redacted] However, this overstates and ignores the commercial reality of the position for the following reasons. *First*, [redacted]

68. *Secondly*, [redacted][204] and that Suncorp Bank is no more competitive than other banks. Most of Suncorp Bank's agribusiness customers have a relationship with at least one other bank and, with a small number of exceptions, Suncorp Bank tends to provide mainly lending products to its agribusiness customer as its customers'

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198 ACCC SOFIC at [36(c)], [36(d)], [36(f)]; ACCC Reasons at [6.743], [6.745], [6.748], [6.752].

199 ACCC Reasons at [6.701].

200 ACCC Reasons at [6.701]; [redacted]

201 See, for example, [redacted]

202 [redacted]

203 ACCC Reasons at [6.702] cited only Bendigo submissions as evidence for that proposition.

204 71925.002.001.9551 (Bennett, Mark 1) at [91]-[92].

secondary bank.[205] Contrary to Ms. Stark's view,[206] Suncorp Bank is not a particularly vigorous competitor to ANZ in agribusiness in Queensland. Suncorp Bank is one of several rivals in agribusiness in Queensland and its removal as a competitor to ANZ will lead neither to significant increase in concentration in Queensland agribusiness (locally or statewide) nor to [redacted]

69. *Thirdly*, while the provision of relationship bankers may be liked by agribusiness customers, their effectiveness has more to do with the individual banker than their employer bank. Competitiveness in this respect is a function of the personal reputation of the banker, which in part depends on word-of-mouth recommendations.[209] This is confirmed by [redacted]

70. Thus, contrary to ACCC Reasons [6.745], Suncorp Bank's relationship-managed model is not unique to it, and it can be, currently is, and likely would be in the future, readily replicated. For example, the relationship-managed model [redacted] ANZ also currently compete with a model focused on relationship managers.[216] So it is not true that placing Suncorp Bank under ANZ ownership would deprive the marketplace of a unique relationship focused service offering.

71. Further and more importantly, it is unlikely that the particular service offering presently provided by Suncorp Bank's agribusiness bankers would disappear under ANZ. ANZ presently offers a responsive relationship-based model to customers with lending of [redacted] or complex needs.[217] It also views the acquisition as an opportunity to acquire Suncorp Bank's relationship bankers and expects to work hard to retain them post-acquisition.[218] It has every incentive to do so.[219] Put another way, if Suncorp Bank's relationship bankers are a competitive strength, ANZ will have good reason to keep them functioning in the same way. If they are not, then they do not matter to the competition analysis. Even if ANZ were to cease using Suncorp Bank's relationship bankers in the factual, their expertise and goodwill will quickly be

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205 SML.0004.0001.0033 (van Horen 1) at [99].
206 71925.040.001.0171 (Starks 1) at [9.220].
207 [redacted]
208 [redacted]
209 71925.002.001.9551 (Bennett, Mark 1) at [111] – [112].
210 [redacted]
211 [redacted]
212 [redacted]
213 [redacted]
214 [redacted]
215 [redacted]
216 SML.0004.0001.0033 (van Horen 1) at [95].
217 71925.002.001.9102 (Rankin) at [24], [34], [36]-[37], [42(b)]; 71925.002.001.9551 (Bennett, Mark 1) at [27]-[29]; [47]-[66].
218 71925.002.001.9551 (Bennett, Mark 1) at [209] – [210] [redacted]
219 71925.002.001.9551 (Bennett, Mark 1) at [133]; 71925.043.001.0464 (Starks 2) at [7.32]

absorbed and redeployed for customers' benefit by rivals.[220] Rival second-tier banks in particular maintain broadly similar rates of relationship management and coverage ratios for relationship bankers.[221] This also explains why there is no meaningful difference in this respect between the No Sale and BABL Counterfactuals, because it is the individual bankers who matter most to service quality, not their employer.

(2) Consolidation and complexity are limiting viability of relationship managed model

72. Another relevant forward-looking fact is [redacted][222] and the increasing complexity have created needs among agribusiness customers which Suncorp Bank [redacted] in the No Sale Counterfactual. [redacted] This is reducing regional banks' ability to compete with the majors to serve agribusiness customers.[224] Suncorp Bank is [redacted]

73. These trends may leave a long tail of smallholders intact.[227] But relationship management is less relevant to small than to medium businesses.[228] [redacted]

74. [redacted]

[220] 79125.026.001.0049 (ANZ Response to Interested parties, 9.3.23) at [2.10] / 71925.040.001.0171 (Starks 1) at [6.27]; [redacted]
[221] ACCC Reasons at [6.646], [6.649].
[222] 71925.002.001.9551 (Bennett, Mark 1) at [52], [81]
[223] 71925.040.001.0171 (Starks 1) at [9.206]; SML.0004.0001.0061 (Johnston 1) at [82], [96]; [redacted]
[224] 71925.040.001.0171 (Starks 1) at [9.218].
[225] [redacted]
[226] [redacted]
[227] Australian Banking Association, Agribusiness Report 2022 dated 3 June 2022 (71925.002.001.9302) at p 11.
[228] ACCC Reasons at [6.470].
[229] [redacted]
[230] [redacted]
[231] 71925.043.001.0450 (Bennett, Mark 3) at [14].

[redacted] By contrast, [redacted]

75. [redacted] Thus the acquisition is unlikely to remove meaningful competition for agribusiness banking in Queensland.

(3) Competition from brokers is replacing any constraint Suncorp's model applied

76. [redacted] Other lenders report [redacted] the same opportunities to exit and establish as brokers exist for their relationship bankers, alongside opportunities to join other banks. This constraint will remain with the Proposed Acquisition.

H THE PROPOSED ACQUISITION HAS SIGNIFICANT PUBLIC BENEFITS

77. The public benefits of the Proposed Acquisition would include substantial costs synergies that will result from combining Suncorp Bank with ANZ, increased prudential safety, ANZ's

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232 [redacted]

233 [redacted]; SML.0004.0001.0033 (van Horen 1) at [23]; SML.0022.0001.0001 at .0003.

234 SML.0004.0001.0033 (van Horen 1) at [97]; [redacted]

235 [redacted]

236 SML.0004.0001.0033 (van Horen 1) at [68(b)].

237 [redacted]

238 SML.0003.0001.0160 at .0168.

239 SML.0003.0001.0160 at .0168.

240 [redacted]

241 [redacted]

242 [redacted]

243 [redacted]

commitments to the State of Queensland and increased contributions to the Major Bank Levy. SGL adopts ANZ's submissions in this respect, and instead focuses on three further public benefits. *First*, with the acquisition, SGL will become a pureplay insurer, enabling more efficient operation of its insurance business, lower premiums, improved resilience and greater innovation to meet emerging challenges in insurance markets. *Secondly*, Suncorp Bank will benefit from significantly reduced funding costs under ANZ ownership that would constitute a productive efficiency. *Thirdly*, significant benefits for Queensland are likely to result from SGL's commitments under SGL's Implementation Agreement with the State of Queensland.

(1) Suncorp Group's singular insurance focus

78. If the Proposed Acquisition proceeds, SGL will become a "pureplay" insurer. This will have several positive impacts that will result in public benefit. *First*, this simplification of SGL's business will alleviate trade-offs the Group is currently required to make in deployment of capital as between the investment needs of its bank and insurance businesses.[244] A streamlined management focus on insurance,[245] and simplification of demands on the Group's capital will diminish the need for SGL to compromise investment spend in insurance to free up capital for Suncorp Bank. For example, if the Proposed Acquisition proceeds, SGL will be able to implement a multi-year technology transformation strategy that will improve outcomes for current and prospective insurance customers. This could not be done to the same extent if SGL had to trade-off these investments against capital investments required by the bank.[246]

79. *Secondly*, a singular focus on insurance will materially improve the quality of SGL's products and alleviate price pressures which current trends in insurance markets (rising reinsurance costs, diminished appetite among reinsurers for exposure to antipodean climate risks, and increasing claims frequency and severity in consequence of climate trends)[247] are likely to generate. Recent years have seen significant disruption to reinsurance markets.[248] [redacted] Policyholders will also be required to share some of this risk through higher consumer pricing for insurance products.[254] By contrast, removing competing demands from elsewhere in the

244 SML.0004.0001.0061 (Johnston 1) at [18(c)], [89]; 71925.007.001.0036 (Aon submission).

245 SML.0004.0001.0061 (Johnston 1) at [18(a)], [40], [88]; 71925.038.001.0001 (Johnston 2) at [115]-[116].

246 71925.038.001.0001 (Johnston 2) at [120] – [124].

247 SML.0004.0001.0061 (Johnston 1) at [35].

248 SML.0004.0001.0061 (Johnston 1) at [36]-[38]; [redacted]

249 71925.038.001.0001 (Johnston 2) at [108]-[109], [110], [113]; SML.0024.0001.2120 (IAG reinsurance announcement dated 9 January 2023); SML.0004.0001.0061 (Johnston 1) at [34]-[35].

250 71925.038.001.0001 (Johnston 2) at [99(a)], [102], [104], [109], [111]; SML.0024.0001.0574 (Aon report dated 1 January 2023) at .0589.

251 [redacted] 71925.038.001.0001 (Johnston 2) at [111].

252 71925.038.001.0001 (Johnston 2) at [111] (referring to SML.0024.0001.0574 (Aon report dated 1 January 2023) at .0589).

253 71925.038.001.0001 (Johnston 2) at [106].

254 71925.038.001.0001 (Johnston 2) at [101], [104]-[105].

business (such as from Suncorp Bank) would ameliorate the effects these developments would otherwise have on the Group's insurance business in the No Sale Counterfactual. By rendering the Group less reliant on policy revenue to meet future capital needs, it can be inferred these trends will depress upward price pressure.

80. *Thirdly*, strengthening SGL's insurance business will reduce the risk of recourse to the taxpayer as "insurer of last resort" (exemplified by the federal government's recent intervention to underwrite cyclone risks, creating a liability for the Commonwealth taxpayer).[255]

81. *Fourthly*, Suncorp's strategic emphasis on improving resilience and prevention,[256] geared towards alleviating the effects of historical underinvestment in resilience and mitigation and decades of poor planning decisions permitting dwelling and community infrastructure to be built in areas unable to cope with current climate trends,[257] will lead to diminished exposure to claim events – a benefit to consumers over and above the price benefits secured for them as policyholders and taxpayers.[258] This will be assisted by its singular insurance focus.

82. *Fifthly*, SGL reconstituted as a pureplay insurer would be better-placed than the insurance segment of the current conglomerate to achieve innovation in insurance. AON's submission exposed the significance of this. In AON's 2021 Global Risk Management Survey, nine of the top ten risks identified by respondents (including cyber attacks/data breach; pandemic risk/health crises; supply chain or distribution failure; political risk, intellectual property, corporate social responsibility/ESG and climate risk)[259] were either only partially insurable or completely uninsurable.[260] AON observed that significant innovation is necessary to accelerate development of risk-transfer solutions to enable businesses and consumers to mitigate these risks.[261] Thus increased competitive strength and innovation by a major Australian insurer will contribute to solving emerging problems of under-insurance, particularly in relation to climate risks, and is a public benefit.

83. Importantly, there is no real chance of these benefits accruing to the same degree in the No Sale counterfactual. As described above, the value accretive option for SGL absent the Proposed Acquisition is to maintain Suncorp Bank under SGL ownership. While some rationalisation of the Bank is contemplated, the Bank still will require capital investment to meet the same needs and trends which the insurance business faces, particularly increasing consumer expectation of digital engagement. That is, the tradeoffs between different deployments of capital would continue, as will management's split focus.

(2) Reduced cost of funding for Suncorp Bank

84. Under ANZ ownership, Suncorp Bank would have significantly lower wholesale funding costs because it would benefit from ANZ's higher AA- credit rating – a one notch upgrade from its current rating of A+.[262] [redacted] This

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[255] 71925.038.001.0001 (Johnston 2) at [115].
[256] [redacted]
[257] 71925.038.001.0001 (Johnston 2) at [114].
[258] 71925.002.001.2750 (Suncorp Group FY22 Annual Report) at .2789.
[259] 71925.007.001.0036 (Aon submission).
[260] 71925.007.001.0036 (Aon submission).
[261] 71925.007.001.0036 (Aon submission).
[262] 71925.034.001.2712 (Ali 1) at .2718; 71925.002.001.8982 (Went 1) at [18], [29].
[263] [redacted]

cost saving is material, and it is a public benefit because it is both a productive efficiency and likely to be passed on to consumers to some extent.[264]

85. As to the "productive efficiency" aspect, Mr Smith considers that Suncorp Bank's reduced funding costs would be such an efficiency because it would not merely be a transfer from wholesale debt providers to ANZ. Investors who prefer higher risk debt investments could simply switch to providing debt funding to lower rated banks or a myriad of other financial markets with higher risk opportunities, rather than accept lower interest rates from ANZ.[265] Ms Starks speculates in response that Suncorp Bank's reduced funding costs may not be a productive efficiency, because it might not result in a lower cost of capital, it might lower funding costs through diversification but not reduce the risk on individual loans, and it may be an implicit subsidy that transfers prudential risk from the private sector to taxpayers.[266] However, no weight should be placed on her evidence when she has no specific banking expertise and her evidence is contradicted by Mr Ali who does. Mr Ali observes that ANZ's AIRB approach would yield capital benefits for Suncorp Bank and reduced capital cost,[267] and that any "implicit subsidy" is mitigated by the payment of the major bank levy and the additional D-SIB capital requirements to which Suncorp Bank would become subject.[268]

(3) The Queensland commitments

86. Substantial public benefits also would result from the Proposed Acquisition due to the benefits that would flow from SGL's capital commitments under the Implementation Agreement with the State of Queensland that only comes into effect upon completion.[269] These benefits would accrue to a substantial cross-section of the Australian public – namely the State of Queensland – and in some respects would be national in reach (e.g. through augmenting the nation's natural disaster resilience).[270]

87. The benefits of the Implementation Agreement include: $2-3m for the establishment of a regional hub in Townsville,[271] creating 120 jobs, combined with $3m for community and education initiatives focused on First Nations employment pathways,[272] both building skills in disaster resilience and emergency management in Queensland – the Commonwealth's most disaster-impacted state;[273] and $19m for the establishment of a Disaster Response Centre for excellence (DRC) based at SGL headquarters in Brisbane,[274] encompassing investment in a new technology platform "utilising the latest technology to monitor, prepare for and respond to extreme weather and natural disasters",[275] improved communications with customers and communities affected by weather events,[276] and a new 20-person strong disaster response team and mobile hub based out of the DRC.[277]

264 71925.002.001.8725 (Smith 1) at [96] – [97].
265 71925.002.001.8725 (Smith 1) at [87] – [89].
266 71925.040.001.0171 (Starks 1) at [10.32].
267 71925.044.001.0222 (Ali 2) at [72] – [85].
268 71925.044.001.0222 (Ali 2) at [86] – [92].
269 [redacted]
270 71925.046.001.1186 (ACCC Northern Australia Insurance Inquiry Final Report dated November 2020) at .1195.
271 [redacted] SML.0032.0001.0032 (Johnston 3) at [27].
272 [redacted] SML.0032.0001.0032 (Johnston 3) at [29].
273 SML.0032.0001.0032 (Johnston 3) at [19].
274 [redacted]
275 SML.0004.0001.0061 (Johnston 1) at [91].
276 [redacted]
277 [redacted]

88. SGL's commitments under the Implementation Agreement are certain to occur within the short to medium term. The spending commitments on the DRC are clear and time-bound.[278] They are also merger specific, because contrary to BABL's submissions to the ACCC,[279] there is no meaningful prospect of realising them to any significant extent in any relevant counterfactual. SGL would not offer these commitments to Queensland without divesting Suncorp Bank. Further, it would not be possible for SGL to offer all of these commitments in the BABL counterfactual, [redacted] something that is not available under any hypothesised sale to BABL).[280]

89. For completeness, and in light of *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2 at [144] – [159], SGL notes that for the reasons discussed in SGL's submission to the ACCC dated 13 July 2023, the Queensland commitments are causally related to the Proposed Acquisition, unlike the situation in *Telstra / TPG*.[281] In particular, the Queensland commitments are expressly conditional upon completion of the Proposed Acquisition,[282] and are a direct result of it.

(4) No detriment to outweigh these benefits

90. To the clear and tangible benefits which the Proposed Acquisition will realise, there is no relevant countervailing detriment capable of outweighing the benefits enumerated for the purposes of the analysis required by s 90(7)(b). For the reasons described above, the Proposed Acquisition would not lessen competition in any meaningful way in any market, so there is no significant public detriment to take into account in that regard.

91. As to the proposition at ACCC Reasons [7.127]-[7.133] that the Proposed Acquisition would cause a detriment by foreclosing opportunities for other mid-tier banks to achieve scale (by merging with Suncorp Bank), this is not something that can sensibly be taken into account. We have identified above the reasons why a merger between BABL and Suncorp Bank in the counterfactual is not credible, and it is not possible to say that a merger with any other bank is more probable. But in any event, if an (unspecified) merger between Suncorp Bank and any other mid-tier bank is a relevant consideration in the counter-factual, then so too is a merger between banks other than Suncorp Bank in the factual (in circumstances where there are numerous banks, including banks who have entered the market and grown market share relatively recently). There is no detriment to take into account in this regard.

9 November 2023

Cameron Moore SC
Peter Strickland
Tim Rogan

Counsel for Suncorp Group Limited

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278 [redacted]
279 ACCC Reasons at [7.21]
280 [redacted]
281 See 71925.043.001.0560 (SGL submission on public benefits to the ACCC) at [16] – [20].
282 [redacted]