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AUSTRALIAN COMPETITION TRIBUNAL

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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 12:13 AM

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:	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

OUTLINE OF SUBMISSIONS FOR ANZ

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.

[APRA Confidential] […] for protected information within the meaning of s 56 of the *Australian Prudential Regulation Authority Act 1998* (Cth).

PART A: INTRODUCTION[1]

1. The Australian banking industry includes multiple competitive markets, in which no single bank, or group of banks, has a dominant position.[2] In the markets relevant to this review — for the supply of home loans, and banking products and services to business banking customers (including SME and agribusiness customers) — the competitive position of ANZ and other major banks varies, often dramatically (for example, CBA is a clear market leader in home loans and retail deposits, and NAB a clear market leader in business banking) and smaller banks have achieved significant (and in the case of agribusiness, leading) market positions. In each of these markets, new entrants — Macquarie in home loans, Rabobank in agribusiness, and Judo Bank in SME and more recently agribusiness — have captured, and continue to capture, material market share, and the market share of other banks has grown as the market share of major banks has declined, despite any alleged scale advantages that might accrue to larger banks.

2. The incorporation of Suncorp Bank (the ninth largest bank by banking system assets) into ANZ would not alter those competitive dynamics or substantially lessen competition in any relevant market. This is apparent from a comparison of the future with and without the proposed acquisition:

   (a) In the future *with* the proposed acquisition, ANZ, which will continue to be the smallest of the four largest banks by reference to banking system assets, will retain incentives to compete against, and will be constrained by, existing competitors, and by the credible threat that other banks will enter or expand into those markets, including through banks such as Bendigo, BOQ and/or ING merging with one another. Scale benefits will not dilute ANZ's incentives to compete to retain Suncorp Bank's customers, who can readily switch to other banks. (That is unsurprising, given that the increase in market share for home loans arising from the proposed transaction is very small: 13% plus 2.3%).

   (b) In the future *without* the proposed acquisition, there is no real commercial likelihood of an alternative merger of Bendigo and Suncorp Bank. The correct counterfactual is, therefore, the status quo. The competitive dynamics in such a counterfactual are materially the same as those in a world with the proposed acquisition. Even if a merger between Bendigo and Suncorp Bank were to occur, there is no real likelihood that a merged Bendigo/ Suncorp Bank would become a materially more effective competitor or impose a competitive constraint greater than that exerted by either bank alone. Accordingly, the competitive dynamics in the relevant markets are materially the same in both the Bendigo merger and the status quo counterfactuals and, therefore, in the future with the proposed acquisition.

3. The economists agree. Neither the ACCC's expert Ms Starks, nor ANZ's expert, Dr Williams, concluded that the proposed acquisition would be likely to give rise to unilateral effects resulting in a substantial lessening of competition in any of the relevant markets.[3]

4. The ACCC and Bendigo nevertheless contend that, in the future with the proposed acquisition, there will be a meaningful increase in the likelihood that, in the home loans market, coordination between ANZ, and other major banks would be initiated or sustained. That contention wrongly relies upon a static approach, whereby the ACCC and Bendigo consider whether banks *previously* have been competitive or have obtained market share. The inquiry of course is forward-looking: the real issue is

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1 These submissions adopt the terms defined in ANZ's SOFIC.

2 The relevant competitors of the parties include banks as well as non-banks, credit unions, "fintech" firms, "big tech" firms, and other franchises such as Virgin Money, Athena, Newcastle Permanent, Qantas and AGL (through their home loan offerings), Apple and Liberty Financial. These submissions principally use "banks" but this does not exclude or minimise the significance of non-bank suppliers of financial services, which are important competitive constraints in the relevant markets.

3 71925.043.001.0464 (Second Starks Report) at [2.4], [4.13], [7.35], [7.43]-[7.45]; 71925.002.001.8851 (First Williams report) at [100]-[120]. The ACCC accepts this in the market for home loans: 71925.047.001.1814 (ACCC Decision) at [6.172].

whether the major banks *would* at least maintain market share if they sought to coordinate pricing, accounting for the likely response of smaller banks to such conduct.

5. Once the correct approach is adopted, it is apparent that there would be no meaningful increase in the likelihood of coordination among ANZ and other larger banks in the home loans market in the future with the proposed acquisition, compared with the future without the proposed acquisition. The ACCC's and Bendigo's contentions rest on three incorrect premises: (i) that conditions in the market — which the ACCC and its expert agree is *presently* competitive, and in which the ACCC did not conclude there was past or present coordination — are nevertheless conducive to coordination; (ii) that the proposed acquisition would increase symmetry between ANZ and major banks in a way that would materially increase their incentives to coordinate rather than compete; and (iii) that if Suncorp Bank instead merged with Bendigo the merged entity would be materially more likely and able to disrupt any attempted coordination. The evidence before the Tribunal discloses substantial factual common ground and expert opinion contrary to the ACCC's and Bendigo's contentions and supportive of ANZ's and Suncorp Bank's contentions.

6. Part D of these submissions addresses why the ACCC's and Bendigo's contentions in respect of the home loans market are wrong. Parts E and F address why the proposed acquisition is not likely to substantially lessen competition in the market or markets for the supply of business banking products and services to SME and agribusiness customers. Part G addresses the substantial public benefits likely to result from the proposed acquisition. Before turning to those matters, Part B briefly outlines the framework for the Tribunal's review, and Part C the relevant markets. ANZ otherwise adopts the submissions of Suncorp Group, which explain why the likely counterfactual without the proposed acquisition is the status quo; why, in any event, a merger with Bendigo would not result in a materially more effective competitor; as well as the public benefits particular to Suncorp Group.

PART B: FRAMEWORK AND PRINCIPLES FOR THE TRIBUNAL'S REVIEW

7. In reviewing the ACCC's determination, the Tribunal's task is to determine whether the ACCC's decision was objectively the correct or preferable decision, making its own decision with respect to the application of the statutory criteria in s 90(7) of the CCA.[4] The ACCC's reasons may — and in this case do — nevertheless provide a "convenient reference point" for defining the matters in dispute, and where, as here, the parties agree with factual findings in the ACCC's determination, the Tribunal need not itself examine those facts in detail.[5]

8. The competition test in s 90(7)(a) requires the Tribunal to be satisfied in all the circumstances that the conduct would not have, or be likely to have, the effect, of substantially lessening competition. The principles for assessing whether conduct is likely to have the effect of substantially lessening competition are settled.[6] That assessment begins with the identification of markets, being the "field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive".[7] The assessment then requires a comparison between the nature and extent of competition in any market potentially affected by the proposed conduct in the future with and without the proposed conduct.[8] "Likely" does not mean more probable than not, but requires an assessment of what could reasonably be expected to be the consequences of the proposed conduct; it encompasses real commercial likelihoods, but

4 Sections 101(2) and (3) of the *Competition and Consumer Act 2010* (Cth); *Applications by Telstra Corporation Limited and TPG Telecom Limited* [2023] ACompT 1 (***Telstra TPG No 1***) at [69]-[70]; *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 1 (***Telstra TPG No 2***) at [108].

5 *Telstra TPG No 2* [2023] ACompT 2 at [108] citing *Re 7-Eleven Stores Pty Ltd* [1998] ACompT 3; ATPR 41-666 at 41,453.

6 *ACCC v Pacific National Pty Ltd* (2020) 277 FCR 49 (***Pacific National***) at [98] – [105], [161], [243] – [246].

7 *Re Queensland Co-operative Milling Association Ltd* (1976) 8 ALR 481 at 513.

8 *Pacific National* (2020) 277 FCR 49 at [103] and the authorities there cited.

not mere possibilities.[9] The lessening of competition must be "substantial", that is "real or of substance" and thereby meaningful and relevant to the competitive process.[10]

9. The ACCC contends[11] that s 90(7)(a) is materially different in its application from s 50 of the Act. While s 90(7)(a) requires satisfaction of a negative proposition, whereas s 50 requires proof of a positive proposition, and is focussed only on the effect of the conduct, s 90(7)(a) otherwise adopts the language of s 50, such that the legal principles in respect of s 50 apply.[12] Those principles require the Tribunal to engage in a "single evaluative judgement" to assess "both the counterfactual and the alleged competitive effects together" to determine if a "real commercial likelihood of a substantially lessening of competition has been shown".[13] If that has not been shown, the Tribunal can and should be satisfied of the negative proposition.

10. The public benefits test in s 90(7)(b) requires the Tribunal to be satisfied in all the circumstances that the conduct the subject of the authorisation would, or be likely to, result, in a benefit to the public and the benefit would outweigh the detriment to the public that would, or be likely to result, from the conduct. The principles are similarly settled and, like the competition test, require a comparison of the future with and without the proposed conduct.[14] A public benefit can include anything of value to the community generally, including achievement of the economic goals of efficiency and progress[15] and need not be quantified in precise terms.[16] Productive efficiency gains will constitute a public benefit even if captured in the first instance by the (private) parties to the proposed conduct.[17]

PART C: RELEVANT MARKETS

11. It is common ground that the relevant markets include a national market for the supply of home loans.[18] It is also common ground that the Applicants overlap in the supply of banking products or services to SME and agribusiness customers, which ANZ contends is part of a single business banking market. It is not the correct or preferable approach, as the ACCC and Bendigo contend, to assess the effects of the proposed acquisition in discrete product markets for business banking customers or markets that are regional or State-wide.[19] The Tribunal should consider the effects of the proposed transaction in a single national product market, for the following reasons.

12. ***SME and agribusiness customers cannot readily or coherently be defined separately from broader business banking customers***: There is no distinct cohort or accepted dividing line between SME, agribusiness, and other business customers.[20] The ACCC accepted this.[21] This is reflected in varying approaches to defining these segments and thus the absence of any consistent market share data. Two issues arise: *first,* many banks treat SME, agribusiness, and other business customers as a single customer cohort, or otherwise distinguish segments within the broader business customer cohort idiosyncratically;[22] *second*, even where banks distinguish, for instance, SME customers as a

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9 *Pacific National* (2020) 277 FCR 49 at [245]-[246].
10 *Pacific National* (2020) 277 FCR 49 at [104] and [219].
11 ACCC SOFIC at [7].
12 *Telstra TPG No 2* [2023] ACompT 2 at [111]. The Tribunal does not identify any material difference arising from the fact it is expressed in the negative.
13 *Pacific National* at [246]; *ACCC v Pacific National (No 2)* [2019] FCA 669 at [1276] and [1278].
14 *Re Qantas Airways Ltd* [2004] ACompT 9; (2005) ATPR 42-065 (***Qantas Airways***) at [151] – [156]; *Re Medicines Australia Inc* (2007) ATPR 42-164 (***Medicines Australia***) at [107] – [111], [117] – [121].
15 *Medicines Australia* at [107]. Economic development is a public benefit: *Re ACI Operations Pty Ltd* (1991) ATPR (Com) 50-108). The acceleration of renewable generation and storage build-out, reduction of greenhouse gas emissions and job creation, were recognised as public benefits in *Brookfield/Origin* (71925.047.001.1814 (ACCC Decision) at [7.193-6], [7.228], [7.264]).
16 *Qantas Airways* at [201]; citing *Howard Smith* (1977) 28 FLR 385 at 392.
17 *Qantas Airways*.
18 ANZ SOFIC [8], [16]; Suncorp SOFIC; ACCC SOFIC [24]; BEN SOFIC [5].
19 ACCC SOFIC [31], [34], [37], [39].
20 71925.002.001.8851 (First Williams report) at [52]; 71925.047.001.1814 (ACCC Decision) at [6.428], [6.435]-[6.436]. The ACCC in this context referred to businesses with turnover of less than $2 million at [6.430] and [6.436] and less than $50 million at [6.431], fig 16 and [6.435].
21 71925.047.001.1814 (ACCC Decision) at [6.428].
22 [Confidential to a third party]; [Confidential to Suncorp].

particular segment, those customers are not consistently defined. For instance, APRA considers an SME to be one with turnover under $50 million, ANZ generally considers SME customers to include business customers with [Confidential to ANZ] (which it classifies into Small Business Banking, Business Banking and Specialist Distribution)[23] and Suncorp Bank previously distinguished SME customers as business customers with [Confidential to Suncorp].[24] Dr Williams rejected business lending as an initial candidate market for assessing competitive effects for that reason.

13. ***Products and services supplied to agribusiness and SME customers and other business customers are generally substitutable:*** The banking products and services supplied to SME, agribusiness and other business customers are largely the same. This is for two reasons. *First,* as the ACCC accepted, the products and services demanded by and supplied to SME, agribusiness and other business customers are typically the same (one or more of a transaction account, business loan, commercial credit card and merchant service, even if some products may be tailored to particular customer segments).[25] The only material exception is Farm Management Deposit accounts, which are unique because they operate pursuant to a government tax concession scheme and are only available to eligible customers.[26] These accounts are less relevant to the competitive analysis than loans, which may be, and commonly are, supplied to agribusiness customers by different bank and non-bank lenders.[27] Generic business loans can and do accommodate the needs of agribusiness customers (such as flexibility in loan repayments).[28] *Second,* relationship management services provided to business customers (including agribusiness, SME and other business customers) are typically the same and, regardless of customer segment, business customers value a relationship with a bank that understands their business.[29] The contention that there is no substitutability in relationship management for SME and agribusiness customers is not correct: many SME and agribusiness customers are not served by dedicated relationship managers and are instead portfolio managed or are served by non-specialist relationship managers or managers serving both agribusiness and SME customers.[30] In any event, relationship managers can develop a specialty in agribusiness in the medium term.[31]

14. ***Competition is national:*** Competition for business banking (including agribusiness and SME) customers occurs nationally. It is overly simplistic to assess competition at a local or regional level, as Dr Williams observes.[32] That is so for three reasons. *First,* the products and services supplied to business customers are supplied nationally, the same credit policy and pricing frameworks typically apply to customers nationally, and pricing decisions are often made nationally.[33] The ACCC accepts

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23 71925.047.001.1814 (ACCC Decision) at [6.435]; [Confidential to ANZ]; 71925.002.001.8851 (First Williams report) at [52]; 71925.002.001.9102 (Rankin statement) at [9], [15]. [Confidential to ANZ].

24 71925.002.001.8851 (First Williams report) at [52]; SML.0004.0001.0033 (First van Horen statement) at [79]; 71925.002.001.0596 (ANZ Application) at [6.96]; [Confidential to Suncorp].

25 71925.047.001.1814 (ACCC Decision) at [6.426]-[6.247] and [6.602]; 71925.002.001.9014 (Mendelson statement) at [20], [25(b)]; [60]-[63]; 71925.002.001.9102 (Rankin statement) at [61]-[63]; 71925.002.001.9551 (First Bennett statement) at [33]-[43], [55]; 71925.043.001.0450 (Third Bennett statement) at [10], [55]; SML.0004.0001.0033 (First van Horen statement) at [91] and SML.0003.0001.0916 (CVH-2). [Confidential to a third party]; [Confidential to Suncorp] and [Confidential to a third party].

26 Division 393 of the *Income Tax Assessment Act 1997* (Cth) and Subdivision 398-A of the *Tax Administration Act 1953* (Cth) and 71925.047.001.1814 (ACCC Decision) at [6.604].

27 In respect of deposits, see 71925.034.001.1613 (Second Bennett statement) at [23]; for lending, see 71925.002.001.9551 (First Bennett statement) at [105]-[106]. See e.g. [Confidential to a third party].

28 [Confidential to ANZ]; 71925.002.001.9551 (First Bennett statement) at [32]-[43].

29 71925.002.001.9102 (Rankin statement) at [86], [90].

30 71925.047.001.1814 (ACCC Decision) at [6.646] and documents cited; 71925.002.001.9551 (First Bennett statement) at [55], [59]; 71925.043.001.0450 (Third Bennett statement) at [10] and [Confidential to Suncorp]; c.f. 71925.040.001.0171 (First Starks report) at [5.45]-[5.47]; [Confidential to a third party].

31 71925.043.001.0156 (ANZ response to the independent expert reports) at [4.6(d)]; 71925.002.001.9551 (First Bennett statement) at [64]; [Confidential to Suncorp].

32 71925.035.001.0155 (Second Williams report) at [37].

33 71925.002.001.0596 (ANZ Application) at [6.134]-[6.137]; 71925.002.001.9551 (First Bennett statement) at [70]-[74]; 71925.002.001.9102 (Rankin statement) at [64]; SML.0004.0001.0033 (First van Horen statement) at [30]-[34], [49], [80]; Second William report [30]-[37]; although as the ACCC accepted, bankers may have discretion to adjust pricing at an individual transaction level: see 71925.047.001.1814 (ACCC Decision) at [6.445].

this.[34] *Second,* customer risk profile is relevant to individual pricing decisions for business loans; in agribusiness, that risk profile is informed by geographic location and product sub-sector.[35] In Dr William's opinion, the need for geographic diversity to balance risk in agribusiness is an important feature indicating competition occurs at a national level.[36] *Third,* business customers, including SME and agribusiness customers, do not necessarily require a local branch presence. For all business banking, structural changes — including digitisation, the decline of cash, alternative cash-handling options, and the use of brokers — have reduced the importance of local branch presence. Agribusiness customers in particular do not need or value a local branch presence (although they value local knowledge and commitment, which can be demonstrated without a local branch presence).[37] The ACCC again accepts this.[38] Many business customers are also portfolio managed or remotely managed nationally, rather than locally or regionally, and primarily use self-service banking.[39] For customers who are relationship-managed, relationship managers typically visit their business premises at least annually,[40] which can be, and is, achieved by basing relationship managers in key regional centres or capital cities from which they can travel (often) long distances.[41]

15. **Other markets:** It is not necessary for the Tribunal to consider competitive effects in the retail deposit market, because it is not in dispute that the proposed acquisition is <u>not</u> likely to result in a substantial lessening of competition in that market.[42]

PART D: NO SUBSTANTIAL LESSEING OF COMPETITION IN HOME LOANS

No likelihood of coordinated effects in the home loans market

16. The evidence does not establish, and the ACCC did not find, that CBA, Westpac, NAB or ANZ have engaged, or are presently engaging, in coordinated conduct.[43] To the contrary, the ACCC accepted that there is evidence of relatively strong price competition across 2021 and 2022, that the trend has continued from before 2019, that recent price competition is "intense" and that ANZ, as the smallest of the major banks, is incentivised to compete.[44] Nor does the evidence establish that, in the future with the proposed acquisition compared with any commercially realistic counterfactual, coordinated conduct is more likely to be initiated or be sustainable, let alone to any degree which could give rise to a concern of a substantial lessening of competition. The three premises on which the ACCC and Bendigo base that contention are wrong and not supported by the evidence.

Conditions in the home loans market are not conducive to coordination

17. The first premise of the ACCC and Bendigo's contentions is that conditions in the market are conducive to coordination between the major banks (ANZ, and CBA, Westpac and NAB). That premise is wrong. Properly characterised, none of the following conditions, on which the ACCC and Bendigo rely, makes the market conducive to coordination.

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34 71925.047.001.1814 (ACCC Decision) at [6.445].
35 71925.002.001.9551 (First Bennett statement) at [47] and [197]; 71925.034.001.1613 (Second Bennett statement) at [36]-[39]; see also [Confidential to Suncorp]; [Confidential to ANZ]; [Confidential to Suncorp]; [Confidential to a third party].
36 71925.035.001.0155 (Second Williams report) at [38].
37 71925.002.001.0596 (ANZ Application) at [6.137]; 71925.043.001.0229 (Lane statement) at [29]; 71925.002.001.9551 (First Bennett statement) at [105]-[110]; 71925.034.001.1613 (Second Bennett statement) at [23]; 71925.043.001.0450 (Third Bennett statement) at [10]-[12].
38 71925.047.001.1814 (ACCC Decision) at [6.447]-[6.448], [6.451] and [6.452].
39 See paragraph 46 below.
40 71925.002.001.9551 (First Bennett statement) at [61], [108].
41 71925.002.001.9551 (First Bennett statement) at [109]-[110]; 71925.043.001.0450 (Third Bennett statement) at [10]-[12]; 71925.043.001.0229 (Lane statement) at [21]; 71925.034.001.1314 (Second Campbell statement) at [32]. See also [Confidential to a third party]; [Confidential to ANZ].
42 71925.047.001.1814 (ACCC Decision) at [6.295], [6.297] and [6.396]. It is not raised in the ACCC or Bendigo SOFICs.
43 71925.035.001.0155 (Second Williams report) at [77]-[84]; see also 71925.047.001.1814 (ACCC Decision) at [6.185]-[6.186].
44 71925.047.001.1814 (ACCC Decision) at [6.115], [6.125], [6.141], [6.152], [6.153], [6.259], [6.266].

18. ***The home loans market is not concentrated:*** The national home loans market is not concentrated.[45] The market shares of the putative coordinating group are different and dynamic: CBA has, until very recently, been increasing its market share (to 25.6%), while the market shares of Westpac, NAB and ANZ have declined by approximately 10% combined over the past 10 years, and the market shares of other smaller banks have increased (with the exception of Suncorp Bank).[46] Further, current market shares reflect historic loans and do not accurately reflect current competitive dynamics; in particular, Macquarie's share of new loans is materially larger than its share of existing loans,[47] [Confidential to a third party].[48]

19. ***There is a lack of symmetry and alignment between the major banks*:** As the ACCC and Ms Starks accepted, CBA, Westpac, NAB and ANZ are asymmetrical in many respects.[49] *First,* their market shares vary significantly: ANZ has the smallest market share at 13%; approximately half of CBA's share of 25.6%, significantly less than Westpac's 21.4%, and less than NAB's 14.5%.[50] *Second,* the four banks are differentiated in other non-price attributes that the ACCC and Ms Starks accept are important to competition, including turnaround times from application to loan decision;[51] and Ms Starks concluded that the asymmetry in market shares and turnaround times are a feature of the market that make it *not* conducive to coordination.[52] *Third,* there is a lack of symmetry among those banks in their funding base, products and geographical diversity. Banks focus on different customer segments and their incentives and objectives vary depending on the size of their retail and business portfolios, source of deposit funding, and funding and margin requirements.[53]

20. ***No ability to coordinate and detect deviation because of lack of price transparency:*** There is no ability for ANZ and other larger banks to coordinate or punish deviation on price, given that the actual prices typically vary substantially from headline interest rates through discretionary discounts tailored to particular customers (resulting in what the ACCC describes as "opaque pricing").[54] The degree to which banks have an understanding of competitor pricing is (as the ACCC recognised) delayed, imperfect, indirect and inferential[55] and the discount that might be offered to an individual customer by a competitor bank "can only be guessed at".[56] The ACCC's contention that there is nevertheless a relatively high degree of price transparency conducive to coordination[57] is wrong: to the contrary, "opaque pricing" is a key reason why coordinated conduct is unlikely to occur.[58]

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45 It does not exceed the ACCC's merger guidelines thresholds, with a pre-merger HHI of 1550: 71925.047.001.1814 (ACCC Decision) at [6.47]. Dr Williams assesses the pre-merger HHI at 1579.1: see 71925.002.001.8851 (First Williams report) at [40]-[42], see also [69]. Dr Williams rejects the national home loans market as an initial candidate market, requiring further analysis or assessment on that basis.

46 71925.047.001.1814 (ACCC Decision) at [6.50]; see also ANZ SOPVR [3.10] Table 1 using APRA data.

47 71925.035.001.0155 (Second Williams report) at [76], estimating share at [Confidential to a third party].

48 [Confidential to a third party].

49 71925.047.001.1814 (ACCC Decision) at [6.215]; 71925.040.001.0171 (First Starks report) at [9.99].

50 Calculated on the basis of average monthly shares November 2021 to October 2022. 71925.043.001.0255 (Third Smith report) at [77]-[79]; see also 71925.040.001.0171 (First Starks report) at [9.99]; and 71925.047.001.1814 (ACCC Decision) at [4.7] and [4.8], [6.45]-[6.46].

51 71925.047.001.1814 (ACCC Decision) at [6.63]; relevant non-price factors are summarised in 71925.047.001.1814 (ACCC Decision) at [6.61]. 71925.002.001.9234 (First Campbell statement) at [16], [34]-[35], [91]-[97]; [Confidential to Suncorp] 71925.034.001.1622 (Second Elliott statement) at [25]; 71925.034.001.1096 (Second Smith report) at [46]; 71925.043.001.0255 (Third Smith report) at [80]; 71925.040.001.0171 (First Starks report) at [9.78]; SML.0004.0001.0033 (First van Horen statement) at [51].

52 71925.040.001.0171 (First Starks report) at [9.99].

53 71925.002.001.0596 (ANZ Application) at [7.223]; 71925.047.001.1814 (ACCC Decision) at [6.209]-[6.211], and see also [4.12], [4.15], [4.16], [4.17]; 71925.034.001.1622 (Second Elliott statement); ABG.5001.0048.2668 (SCE-4) and 71925.002.001.9697 (SCE-6); [Confidential to ANZ].

54 71925.043.001.0255 (Third Smith report) at [89]; discretionary discounting is described in 71925.002.001.9234 (First Campbell statement) at [23]-[27]; 71925.034.001.1314 (Second Campbell statement) at [51]-[55]; see also 71925.047.001.1814 (ACCC Decision) at [6.55]-[6.56], [6.123]-[6.125] and [6.225].

55 71925.047.001.1814 (ACCC Decision) at [6.226].

56 71925.047.001.1814 (ACCC Decision) at [6.227].

57 ACCC SOFIC [26(e)].

58 71925.035.001.0155 (Second Williams report) at [88].

21. ***Consumer choice frictions do not prevent customer switching***: Consumer choice frictions are not substantial and have reduced over time.[59] The contention that consumer choice frictions remain substantial, and switching is low, are inconsistent with the expert evidence of Ms Starks and Mr Smith and other factual findings made by the ACCC. Mr Smith's opinion is that consumer choice frictions are not substantial and any which might exist have not prevented refinancing demand from steadily increasing over the past 12 years.[60] Ms Starks similarly concluded that consumer choice frictions are not substantial and that the competitive effects of the proposed acquisition should be considered by reference to a customer cohort able and relatively willing to switch.[61] The factors that have led to the decrease in consumer choice frictions and increased switching are three-fold.

22. *First,* as the ACCC accepted, brokers have reduced search and switching costs, and facilitated price competition (by facilitating price transparency for consumers and by identifying opportunities for repricing and refinancing).[62] While there is a lack of price transparency for banks, brokers deliver price transparency for individual consumers and are a significant distribution channel for banks. Brokers are an important driver of competition in the home loans market, accounting for a large and increasing share of customer acquisition, particularly for many smaller banks: brokers account for at least half, with estimates up to [Confidential to a third party] of the total market, including [Confidential to ANZ] for ANZ, [Confidential to Suncorp] for Suncorp Bank and an estimated [Confidential to a third party] for Macquarie and [Confidential to a third party] ING respectively.[63] The imposition on brokers of an obligation to act in customers' best interests, combined with brokers' incentive to encourage switching because of their remuneration arrangements, has further increased the likelihood of customer switching.[64] *Second,* regulatory reform has made switching easier.[65] *Third,* banks have encouraged switching through streamlined switching processes (including ANZ's "simpler switch"), cashback offers and introductory rate pricing.[66] That consumer choice frictions are not substantial is evidenced by increased refinancing and repricing[67] and the fact that a significant proportion of customers have their home loan with a lender that is not their main financial institution.[68] In the three years to December 2022, refinancing increased by an estimated [Confidential to ANZ][69] and [Confidential to ANZ];[70] [Confidential to Suncorp].[71] Static market shares obscure the rate of churn from refinancing, repricing, and repayment (for instance, ANZ must replace [Confidential to ANZ] to maintain market share and Suncorp Bank [Confidential to Suncorp]).[72] This is consistent with a

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59 71925.043.001.0255 (Third Smith report) at [93]-[94]; 71925.040.001.0171 (First Starks report) at [3.34]; 71925.043.001.0464 (Second Starks report) at [8.1].

60 71925.043.001.0255 (Third Smith report) at [93].

61 71925.040.001.0171 (First Starks report) at [3.34]. See also [3.26]-[3.33].

62 71925.002.001.9234 (First Campbell statement) at [67]-[69], [74]-[75], [79]; 71925.034.001.1314 (Second Campbell statement) at [29(b) and(c)]; [Confidential to Suncorp]; 71925.002.001.9787 (First Elliott statement) at [40]-[43]; 71925.034.001.1622 (Second Elliott statement) at [54]-[56]; 71925.040.001.0171 (First Starks report) at [3.31]-[3.34]; see also [9.81] and [9.84]. See 71925.047.001.1814 (ACCC Decision) at [4.132]-[4.134], [6.111] and [6.94].

63 71925.002.001.0596 (ANZ Application) at [7.7(c)]; 71925.002.001.9234 (First Campbell statement) at [61]-[66]; 71925.034.001.1314 (Second Campbell statement) at [29(b)]; 71925.002.001.9787 (First Elliott statement) at [40]-[42]; 71925.034.001.1622 (Second Elliott statement) at [56]; SML.0004.0001.0033 (First van Horen statement) at [33], [47]; SML.0022.0001.0020 (Second van Horen statement) at [17(b)]; 71925.043.001.0519 (Third van Horen statement) at [52]; [Confidential to Suncorp]. See also 71925.047.001.1814 (ACCC Decision) at [6.74]-[6.79]; 71925.040.001.0171 (First Starks report) at [3.32], [9.38]; [Confidential to a third party].

64 71925.002.001.9234 (First Campbell statement) at [70]; 71925.034.001.1314 (Second Campbell statement) at [25], [34]; 71925.034.001.1622 (Second Elliott statement) at [57]-[58]; 71925.043.001.0519 (Third van Horen statement) at [52]; see also 71925.047.001.1814 (ACCC Decision) at [6.78] and 71925.040.001.0171 (First Starks report) at [3.31].

65 71925.034.001.1314 (Second Campbell statement) at [33]; see also 71925.047.001.1814 (ACCC Decision) at [4.111] and 71925.040.001.0171 (First Starks report) at [3.33].

66 71925.034.001.1314 (Second Campbell statement) at [30], [34]-[35]; SML.0022.0001.0020 (Second van Horen statement) at [17(d)]; 71925.034.001.1622 (Second Elliott statement) at [51].

67 71925.002.001.9234 (First Campbell statement) at [76]-[83]; 71925.034.001.1314 (Second Campbell statement) at [27]-[28], [36]-[39], [63]. Refinancing demand is not transient: 71925.043.001.0255 (Third Smith report) at [69]; this is reflected in other bank's internal analysis, [Confidential to a third party].

68 71925.002.001.9234 (First Campbell statement) at [81]; 71925.034.001.1314 (Second Campbell statement) at [29(a)].

69 71925.034.001.1314 (Second Campbell statement) at [37]; 71925.034.001.1622 (Second Elliott statement) at [23]-[24].

70 71925.034.001.1622 (Second Elliott statement) at [23].

71 [Confidential to Suncorp].

72 71925.034.001.1314 (Second Campbell statement) at [63], [65], [59]-[60]; 71925.034.001.1622 (Second Elliott statement) at [23]; [Confidential to Suncorp].

market-wide increase observed by the RBA (and accepted by the ACCC) and is inconsistent with the ACCC's contention that "opaque pricing" creates high consumer choice frictions.[73]

23. ***Banks can and have entered and expanded successfully***: Macquarie's meaningful and recently rapid growth (almost tripling its market share since 2016), without a branch network, demonstrates that new entrants can enter and expand.[74] The assumption that Macquarie's success is not replicable is unsound and not established by the matters on which the ACCC relies.[75] In particular, there is no evident reason why new entry is unlikely from [Confidential to a third party] groups, or why competitive success cannot be replicated through targeting particular customer segments or relying on the broker channel for loan origination.

24. The evidence establishes that barriers to entry are low and barriers to both entry and expansion are declining: regulatory requirements for entry are not insurmountable (as the ACCC accepted);[76] branch presence is no longer necessary to compete;[77] and new entrants are unburdened by legacy systems and have advantages in building technology more efficiently and cost-effectively based on open API and cloud based technology.[78] Ms Starks accepted that these features of the market, together with a significant number of new entrants, indicated barriers to entry were not insurmountable.[79] Ms Starks also concluded that brokers, increased price transparency for consumers, and ease of switching have reduced barriers to expansion.[80]

25. ***Non-bank lenders are also effective competitors***: There are numerous smaller non-bank lenders that have entered the home loans market and are competing effectively.[81] One example is Athena, which launched in February 2019, and provides innovative offerings such as a product which enables customers to pay off their loan faster with rates that automatically lower as the customer pays off their loan.[82] Banks take seriously the threat of competition and disruption from neobanks, fintech and big technology businesses such as Apple and Google, and other non-bank lenders.[83]

26. ***Banks compete through innovation***: ANZ and other larger banks have invested significantly in developing and responding to innovation by traditional banks, neobanks, non-bank lenders, fintechs and big tech businesses, including in product features (such as rate reducing loans) and services (such as fully automated application and assessment processes).[84] Ms Starks accepted that the market was characterised by innovation of this kind.[85]

27. ***Competition in the market is effective and presently vigorous***: There is effective and presently vigorous competition between ANZ and other larger banks and Macquarie, as well as other smaller banks.[86] That competition is manifest in recent price competition, to the point of banks writing loans

[73] 71925.040.001.0171 (First Starks report) at [3.27]-[3.30]; 71925.034.001.1096 (Second Smith report) at [30]-[31]; 71925.034.001.1314 (Second Campbell statement) at, figs 1 and 2; 71925.047.001.1814 (ACCC Decision) at [6.103].

[74] 71925.002.001.0596 (ANZ Application) at [7.45]; 71925.002.001.9234 (First Campbell statement) at [52(d)]; 71925.034.001.1314 (Second Campbell statement) at [9]-[12]; 71925.034.001.1622 (Second Elliott statement) at [44]-[45]. See also 71925.047.001.1814 (ACCC Decision) at [6.87], [6.90]; [6.249], referring to 71925.040.001.0171 (First Starks report) at [9.102]; c.f. 71925.047.001.1814 (ACCC Decision) at [6.254].

[75] 71925.047.001.1814 (ACCC Decision) at [4.140].

[76] 71925.047.001.1814 (ACCC Decision) at [6.82]; 71925.002.001.9234 (First Campbell statement) at [57]; Starks report [9.35].

[77] 71925.040.001.0171 (First Starks report) at [9.37]-[9.38].

[78] 71925.040.001.0171 (First Starks report) at [9.37]; 71925.002.001.9787 (First Elliott statement) at [25], [44]; see also SML.0004.0001.0061 (First Johnston statement) at [32(c)]. [Confidential to a third party].

[79] 71925.040.001.0171 (First Starks report) at [9.37].

[80] 71925.040.001.0171 (First Starks report) at [9.90] and [9.102], Table 11 and [9.41].

[81] 71925.002.001.9234 (First Campbell statement) at [52]-[53].

[82] 71925.002.001.9234 (First Campbell statement) at [60(c)].

[83] See, for instance: [Confidential to a third party]. See also for example [Confidential to ANZ].

[84] 71925.002.001.9234 (First Campbell statement) at [42], [57]-[60], see also [98]-[99]; 71925.034.001.1314 (Second Campbell statement) at [22]; 71925.034.001.1622 (Second Elliott statement) at [41] and [47]; [Confidential to a third party].

[85] 71925.040.001.0171 (First Starks report) at [9.92]-[9.93], [9.95].

[86] 71925.047.001.1814 (ACCC Decision) at [6.115], [6.119] and [6.141]; 71925.002.001.9234 (First Campbell statement) at [84]-[90]; 71925.034.001.1314 (Second Campbell statement) at [19], [40]-[45]; 71925.034.001.1622 (Second Elliott statement) at [18]-[23], [27]-[33]; 71925.002.001.8725 (First Smith report) at [29]-[31]; 71925.040.001.0171 (First Starks report) at [9.12]-[9.14], [9.70], [9.78] [9.44.2], [9.44.5]. [Confidential to a third party]: see 71925.047.001.1814 (ACCC Decision) at [6.118]-[6.119] referring to [Confidential to a third party]. See also for example, [Confidential to a third party].

below the cost of capital and offering material cash and other incentives to encourage customer switching and to retain existing customers.[87] The ACCC accepted this was a relevant condition of the existing market, as did Ms Starks and Mr Smith.

28. However, the ACCC and Ms Starks wrongly suggest that competition in the market is unlikely to endure.[88] That suggestion depends implicitly on the idea of a "return" to past coordination (or, as put by Ms Starks, a "propensity towards coordination"),[89] overstates the extent to which competition is attributable to transient macroeconomic factors, and gives insufficient weight to longer term trends of increasing competition, reflected in declining market shares and profitability measures including return on equity (**ROE**) and net interest margins (**NIM**).

29. *First,* even if competition reduces in intensity compared with its present state, that does not, as Ms Starks suggests, indicate present competition is a break from previous coordination or that past competition was ineffective. Nor does the evidence before the Tribunal support such a conclusion. As noted, the ACCC made no finding of past coordination, nor was such a finding made by any previous inquiry (and the findings of those inquiries with respect to the possibility of coordination are not supported by evidence before the Tribunal).[90] Recent reductions in cashback offers by some banks is not demonstrative of a lack of competition or evidence that competition is short lived.[91]

30. CBA ceased offering cashbacks at the end of May 2023. The APRA data to end September 2023 indicate that, in the period June to September 2023, the total mortgage lending increased by approximately $18.175 billion. The total mortgage lending of CBA did not increase in line with the total market. If the status quo had been maintained CBA's total home lending would have increased by approximately $4.6 billion. In fact, its total lending reduced by $4.102 billion. In contrast, the total mortgage lending of Westpac increased by $6.495 billion; that of NAB increased by $2.267 billion and that ANZ by $5.433 billion. The total mortgage lending of Macquarie increased by $4.186 billion. The total mortgage lending of the regional banks (Bendigo, Bank of Queensland and Suncorp Bank) reduced minimally by $477 million, and the total mortgage lending of other institutions increased by $4.295 billion. These data indicate that, far from the major banks accommodating each other to protect the status quo, they are competing vigorously to win business. They also indicate that the regional banks played little role in the competition and that the other smaller banks competed effectively. This recent experience in the market confirms that all banks must remain competitive on dimensions of price, policy and process or they will lose market share.[92]

31. *Second,* the process of competition may ebb and flow, but the long term trend is one of increasing and strong competition since at least 2018.[93] Structural and behavioural changes in the market have increased competitive intensity, including the growth of Macquarie (along with other banks), the entry and expansion of non-bank lenders and fintechs, the increased activity of mortgage brokers, and

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[87] 71925.002.001.9234 (First Campbell statement) at [84]; 71925.034.001.1314 (Second Campbell statement) at [42], [45], [53]; [Confidential to Suncorp] SML.0022.0001.0020 (Second van Horen statement) at [17(d)] and CVH-4, Tab 3 at [27]; 71925.034.001.1622 (Second Elliott statement) at [20], [22] and SCE-5; [32], [63]; 71925.034.001.1096 (Second Smith report) at [43]; see also 71925.047.001.1814 (ACCC Decision) at [6.128].

[88] 71925.047.001.1814 (ACCC Decision) at [6.141].

[89] 71925.043.001.0464 (Second Starks report) at [2.13], [8.4], [8.7].

[90] 71925.035.001.0155 (Second Williams report) at [77]-[84]; see also 71925.047.001.1814 (ACCC Decision) at [6.185]-[6.186] referring to 71925.002.001.7983 (Productivity Commission Inquiry) and 71925.046.001.5365 (ACCC's Residential Mortgage Price Inquiry).

[91] 71925.043.001.0519 (Third van Horen statement) at [51]; 71925.034.001.1622 (Second Elliott statement) at [62]-[63]; see also 71925.047.001.1814 (ACCC Decision) at [6.149].

[92] 71925.002.001.9234 (First Campbell statement) at [16]-[18], [84]-[87], [90].

[93] 71925.043.001.0255 (Third Smith report) at [65]-[6]; 71925.040.001.0171 (First Starks report) at [7.6] and [9.112]; SML.0022.0001.0020 (Second van Horen statement) at [17]; c.f. 71925.043.001.0464 (Second Starks report) at [8.3]. Also see, for example, [Confidential to a third party].

consumers increasingly seeking refinancing and repricing for lower interest rates.[94] These are changes which the ACCC and Ms Starks accepted were likely to have an enduring and positive impact on competition.[95]

32. Those longer term trends are reflected in data showing that Westpac, NAB and ANZ have lost market share over time (particularly to Macquarie)[96] and that their ROE and NIM have progressively declined since 2000: bank average ROE has [Confidential to a third party];[97] [Confidential to ANZ];[98] major bank average NIM has declined from 3.3% in 1999 to below 2.0% in 2022;[99] [Confidential to ANZ].[100] These declines represent a very significant shift in returns and margins and it is implausible to contend that this shift has not been driven by competition (and is therefore inconsistent with the existence of coordinated conduct).

33. The ACCC wrongly discounted that data. It concluded that reduction in bank NIM can be explained by an increase in equity ratios in response to tighter APRA capital standards and reductions in the cash rate target. It did so by misinterpreting RBA analysis, which instead shows that NIM should *increase,* not *decrease,* with higher capital requirements.[101] That NIM has *decreased* despite higher capital requirements, is consistent with the proposition that competition has prevented ANZ and other larger banks from being able to maintain, let alone increase, prices to maintain ROE or NIM.[102] The ACCC also relied on international comparisons of bank ROE and NIM but those comparisons provide no useful insight into competition in the Australian home loans market, including because of the absence of evidence of competitive conditions in those international markets.[103] The ACCC likewise ignores or marginalises evidence from the internal documents of competitors which specifically attribute reductions in NIM to competitive intensity.[104]

34. ***Coordination is not externally sustainable:*** ANZ and larger banks are constrained by each other, as well as Macquarie and other smaller banks (including non-bank lenders), which are increasingly capturing market share from ANZ and larger banks.[105] Macquarie's market share has almost tripled since 2016 and is increasingly rapidly ([Confidential to a third party]) and is likely to continue expanding, with its goal to capture [Confidential to a third party] share by 2026.[106]

35. It is not correct, as the ACCC contended, that Macquarie does not, or will not, act as an effective constraint because it competes largely on non-price factors.[107] To the contrary, Ms Starks found that [Confidential to a third party].[108] Nor is there any evidence that Macquarie's strategic focus renders it

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94 71925.002.001.9234 (First Campbell statement) at [63]-[75] and [76]-[82]; 71925.034.001.1314 (Second Campbell statement) at [8]-[45]; SML.0004.0001.0033 (First van Horen statement) at [31], [47]; 71925.043.001.0519 (Third van Horen statement) at [52]; see also SML.0004.0001.0061 (First Johnston statement) at [29]-[33], 71925.034.001.1622 (Second Elliott statement) at [18]-[19], [23], 71925.034.001.1096 (Second Smith report) at [41]-[47]; and 71925.043.001.0255 (Third Smith report) at [63]-[69]. This is reflected in other banks' documents: eg, [Confidential to a third party].

95 71925.040.001.0171 (First Starks report) at [9.81]; 71925.047.001.1814 (ACCC Decision) at [6.152].

96 See 71925.034.001.1096 (Second Smith report) at [29]-[30]; 71925.034.001.1622 (Second Elliott statement) at [26]; see also 71925.047.001.1814 (ACCC Decision) at [6.50].

97 71925.002.001.9787 (First Elliott statement) at [50] and SCE-3.

98 71925.002.001.9787 (First Elliott statement) at [49].

99 SML.0022.0001.0020 (Second van Horen statement) at [17(a)], based on RBA analysis.

100 71925.002.001.0596 (ANZ Application) at [5.72]-[5.757]; SML.0004.0001.0061 (First Johnston statement) at [29]-[33]; Second Johnston statement [41]; SML.0022.0001.0020 (Second van Horen statement) at [17(a)]; 71925.002.001.9787 (First Elliott statement) at [45]-[47], [49]; 71925.034.001.1622 (Second Elliott statement) at [27]-[33], [36]-[37]; 71925.034.001.1314 (Second Campbell statement) at [41].

101 71925.047.001.1814 (ACCC Decision) at [4.71]-[4.72] citing at 71925.046.001.3585 (RBA Research Paper) at p 13.

102 71925.047.001.1814 (ACCC Decision) at [4.71] and [4.72] citing 71925.046.001.3585 (RBA, *The Consequences of Low Interest Rates for the Australian Banking Sector – Research Discussion Paper*).

103 See also 71925.042.001.0030 (Third Elliott statement) at fig 4, indicating ROE in line with global peers.

104 See for example [Confidential to a third party]; 71925.034.001.1659 (SCE-8); [Confidential to ANZ].

105 71925.043.001.0255 (Third Smith report) at [81]; 71925.002.001.9234 (First Campbell statement) at [52]; 71925.047.001.1814 (ACCC Decision) at [6.66]-[6.67]; 71925.040.001.0171 (First Starks report) at [9.102].

106 71925.047.001.1814 (ACCC Decision) at [6.91], [Confidential to a third party]; 71925.040.001.0171 (First Starks report) at [9.102]; 71925.002.001.9234 (First Campbell statement) at [52(d)]; 71925.034.001.1314 (Second Campbell statement) at [10]-[12]; 71925.002.001.9787 (First Elliott statement) at [44].

107 71925.047.001.1814 (ACCC Decision) at [6.254].

108 71925.040.001.0171 (First Starks report) at [9.102].

unable to constrain other, bigger banks: it has historically targeted lenders with [Confidential to a third party] but remains competitive [Confidential to a third party].[109] Even accepting that Macquarie may seek to target particular customer segments, rather than competing across all customer types, that does not demonstrate a lack of competitive constraint or potential to expand. As the ACCC observed, both smaller and larger banks target specific market segments to compete effectively.[110] Further, it is not only Macquarie that is capturing market share from the major banks: each of the non-major banks (other than Suncorp Bank) has increased market share, while major banks' market share has declined: see [18] above. Importantly, regardless of the extent to which smaller banks have previously captured market share from ANZ and the other larger banks, they would certainly capture market share of ANZ and the other larger banks if those banks attempted to increase their prices by coordination. Ms Starks recognises this possibility.[111] ANZ and the other large banks could not effectively coordinate if doing so would cause a loss of market share to smaller banks providing cheaper alternatives. In this way too the smaller banks constrain the potential for coordination by ANZ and the larger banks. The need for the larger banks to be price competitive is reflected in the declines referred to in 29] above.

The proposed acquisition would not increase the likelihood of coordination

36. The Tribunal should be satisfied that the proposed acquisition would not and would not be likely to have the effect of substantially lessening competition as it does not create any material difference in the likelihood, severity or sustainability of coordination. The ACCC's and Bendigo's contentions to the contrary rest on two further premises, each of which, like the first, is incorrect and not supported by the evidence: *first*, that the symmetry of ANZ and other larger banks is likely to increase in such a way as to increase their incentives to coordinate;[112] and *second*, that a combined Bendigo/ Suncorp Bank would exert more competitive pressure on ANZ and other larger banks, resulting in a material loss of market share and thereby significantly reducing their incentives to coordinate.[113] No other factor relevant to coordination is materially affected by the proposed acquisition.[114] Ms Starks accepted this as, apparently, did the ACCC. In particular, the number of putative coordinators does not change[115] the market remains relatively unconcentrated[116] and the incremental increase in concentration does not make coordination more likely or sustainable.[117]

37. ***No material increase in symmetry****:* As to the first premise, the proposed acquisition results in a de minimis increase in ANZ's market share in the order of 2.3% and thus does not materially increase the symmetry in market shares between ANZ and the largest bank, CBA (25.6%).[118] Even with the proposed acquisition, ANZ would remain the smallest of the four largest banks, in overall banking system assets and marginally overtake NAB (14.5%) to be third in home loans (15.3%) behind CBA (25.6%) and Westpac (21.4%).[119] Both Ms Starks and Mr Smith conclude that this would not make coordination any more likely or sustainable.[120] *Second,* asymmetries in other important competitive

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109 71925.040.001.0171 (First Starks report) at [9.102].

110 71925.047.001.1814 (ACCC Decision) at [6.68]-[6.69], [6.95], referring to [Confidential to ANZ]; [Confidential to a third party]; see also 71925.034.001.1314 (Second Campbell statement) at [24].

111 71925.040.001.0171 (First Starks report) at [7.4]; see also [9.110].

112 71925.047.001.1814 (ACCC Decision) at [6.260].

113 71925.047.001.1814 (ACCC Decision) at [6.271]; see 71925.040.001.0171 (First Starks report) at [9.44.1].

114 71925.047.001.1814 (ACCC Decision) at [6.258]; see also 71925.043.001.0255 (Third Smith report) at [72]-[74],[85] [87] [90] [94].

115 71925.043.001.0255 (Third Smith report) at [72]-[73]; 71925.040.001.0171 (First Starks report) at [9.85].

116 71925.002.001.8851 (First Williams report) at [41]-[42] assessing post-merger HHI of 1641.4 (delta of 62.3); 71925.047.001.1814 (ACCC Decision) at [6.47] assessing post merger HHI at 1610 with a delta of 60 nationally and 1647 with a delta of 138 in Queensland.

117 71925.043.001.0255 (Third Smith report) at [75]; Ms Starks reaches the same conclusion in 71925.040.001.0171 (First Starks report) at [9.113.1].

118 71925.043.001.0255 (Third Smith report) at [71]-[75]; 71925.035.001.0155 (Second Williams report) at [100]; see also 71925.047.001.1814 (ACCC Decision) at [6.257] and [6.44]-[6.48].

119 71925.047.001.1814 (ACCC Decision) at [4.7] Table 1; [6.45] Table 2, [6.46]-[6.5], [6.50] Figure 8.

120 71925.040.001.0171 (First Starks report) at [8.54] and [9.18] and [9.113.1]; 71925.035.001.0155 (Second Williams report) at [89]-[101]; 71925.043.001.0255 (Third Smith report) at [77]-[79]. See 71925.047.001.1814 (ACCC Decision) at [6.261]-[6.265].

attributes such as turnaround times and credit policy would continue to undermine the stability of coordination; as illustrated by [Confidential to a third party].[121] *Third,* the proposed acquisition does not materially alter ANZ's funding base or focus; nor is it likely to materially increase the degree of symmetry in cost structures so as to increase ANZ's incentives to coordinate.[122] The proposed acquisition will not materially increase ANZ's split of retail to commercial/ institutional banking from [Confidential to ANZ].[123] The proposed acquisition will increase ANZ's Australian sourced income from [Confidential to ANZ][124] by approximately [Confidential to ANZ]: this will increase ANZ's ability to offer of franking credits to shareholders (which depend on the amount of Australian-sourced and taxed income) but there is no evidence it will make ANZ materially more dependent on market conditions in Australia so as to increase its incentive to coordinate.[125] The tension between the ACCC's contention that a de minimis increase in ANZ's market share, change to its funding base or domestic focus as a result of the proposed acquisition would increase ANZ's incentives to coordinate,[126] and its finding that the same changes as a result of organic growth would not,[127] confirms that the ACCC's contention is unsound.

38. ***No likely effect on ANZ's incentives to compete:*** As Ms Starks accepted, the proposed acquisition is not likely to change ANZ's incentives to compete (which the ACCC accepted are presently strong).[128] ANZ will be incentivised to retain the Suncorp Bank customers it obtains (who could readily refinance away from ANZ and are likely to be targeted by competitors as a result of the proposed acquisition) and to win new customers.[129] ANZ's incentives to maximise the prospect of retaining and growing Suncorp Bank customers means it is likely to offer those customers equal or better systems, features, pricing or other benefits.[130]

39. ***No removal of a vigorous and effective competitor and no material reduction in external constraint:*** Further, the proposed acquisition does not materially reduce the constraint from other banks outside the putative coordinating group. Ms Starks accepted this.[131] The proposed acquisition would only result in Suncorp Bank ceasing to operate as an independent competitor, in circumstances where Suncorp Bank is (as the ACCC and its expert accepted) not a vigorous or effective competitor.[132] Suncorp Bank's market share is [Confidential to Suncorp].[133] [Confidential to Suncorp].[134] It has consistently had the [Confidential to Suncorp] and it remains [Confidential to Suncorp]. Nor would the proposed acquisition reduce the constraint exerted by other smaller banks,

121 71925.043.001.0255 (Third Smith report) at [80]; 71925.040.001.0171 (First Starks report) at [9.100]; [Confidential to a third party].

122 C.f. 71925.047.001.1814 (ACCC Decision) at [6.260], noting the ACCC accepted it was uncertain precisely what impact this would have.

123 [Confidential to ANZ]; 71925.034.001.2199 (SCE-6) pp 7 and 16-19.

124 71925.002.001.9787 (First Elliott statement) at [63(c)(ii)] and ABG.5001.0032.0008 (SCE-7) at p 1.

125 C.f. 71925.047.001.1814 (ACCC Decision) at [6.259]. As the ACCC observed, [Confidential to ANZ]: 71925.047.001.1814 (ACCC Decision) at [6.260].

126 71925.047.001.1814 (ACCC Decision) at [6.259].

127 71925.047.001.1814 (ACCC Decision) at [6.259].

128 71925.040.001.0171 (First Starks report) at [9.43.2], [9.44.1]; 71925.047.001.1814 (ACCC Decision) at [6.266]; 71925.034.001.1622 (Second Elliott statement) at [68].

129 See 71925.047.001.1814 (ACCC Decision) at [6.166], referring to 71925.040.001.0171 (First Starks report) at [9.43]; see also 71925.002.001.9234 (First Campbell statement) at [100]-[101]; 71925.034.001.1314 (Second Campbell statement) at [64]-[66]; SML.0004.0001.0033 (First van Horen statement) at [130].

130 71925.002.001.9787 (First Elliott statement) at [74].

131 71925.040.001.0171 (First Starks report) at [9.113]. See also [9.43.3]-[9.43.4].

132 71925.047.001.1814 (ACCC Decision) at [6.156]- [6.157], [6.165]-[6.166]; 71925.002.001.0596 (ANZ Application) at [7.28]-[7.30]; 71925.040.001.0171 (First Starks report) at [9.31]; [9.32]; [9.43.1]; [9.44.1]; 71925.020.001.6300 (King Report) at [116]; 71925.034.001.1096 (Second Smith report) at [39]-[40]; 71925.002.001.9234 (First Campbell statement) at [23]-[27] and [60(b)].

133 71925.002.001.0596 (ANZ Application) at [7.4], [7.28]-[7.30], [7.42]; 71925.040.001.0171 (First Starks report) at [9.16], [9.22.3] and [9.44.3]-[9.44.4]; SML.0004.0001.0033 (First van Horen statement) at [46], [48],[50], [53]; [Confidential to Suncorp]. 71925.034.001.1096 (Second Smith report) at [35].

134 71925.034.001.1096 (Second Smith report) at [36]; SML.0004.0001.0033 (First van Horen statement) at [23], [52], [53], [126]; [Confidential to Suncorp]; SML.0004.0001.0061 (First Johnston statement) at [75]-[76]; [Confidential to Suncorp].

particularly Macquarie.[135] The ACCC's conclusion that [Confidential to a third party]— but an enlarged Bendigo Bank would — is untenable and, as already noted, [Confidential to a third party].[136]

40. ***No materially greater competitive constraint in the Bendigo merger counterfactual:*** A merged Bendigo/ Suncorp Bank is no more likely to increase ANZ's incentives to compete or to constrain any coordination in the market. [137] As explained in Suncorp Bank's submissions, a combined Bendigo/ Suncorp Bank will not be a more effective competitor, let alone strong enough to result in a material loss of market share sufficient to disrupt the ACCC's speculated propensity to coordinate that would not already be disrupted by competition from Macquarie and other banks. The contention that a combined Bendigo/ Suncorp Bank would win materially more market share compared with the factual, by offering a "different business model" or target "different niches in the competitive fringe",[138] is wholly speculative.

41. This was the only basis on which the ACCC's expert, Ms Starks, concluded that coordination was more likely in the future with the proposed acquisition. Ms Starks' conclusion was based on a flawed premise: she was instructed to assume both the likelihood of the Bendigo merger counterfactual and matters such as the likelihood and timing of advanced IRB accreditation that she regarded as relevant to Bendigo's competitiveness (such as to make a merged Bendigo/ Suncorp Bank "a challenger of similar importance to Macquarie, which would tend to disrupt any coordination").[139] For the reasons explained in Suncorp Bank's submissions, that counterfactual is neither commercially realistic nor likely to make Bendigo a more effective competitor. Once that is accepted, Ms Starks' opinion on coordinated effects falls away. Ms Starks otherwise concluded that the proposed acquisition did not make coordination more likely, that ANZ was not likely to stop competing or compete less aggressively, and that the removal of Suncorp Bank as an independent competitor does not reduce the competitive constraint to an extent that makes coordination more likely, effective, or stable.[140] The contention that the acquisition by the fourth largest bank of the ninth largest bank would lead to a structural change that would *increase* the propensity to coordination is highly speculative and without foundation.

42. The potential for Bendigo to merge with another bank, such as BOQ or ING in a future with the proposed acquisition must also be considered in this context. [Confidential to a third party] A merged Bendigo/ BOQ would exert a similar degree of competitive pressure on ANZ in a future with the proposed acquisition as would a merged Bendigo/ Suncorp in a world without the proposed acquisition. The same is true of a merged Bendigo/ ING. This is reflected in the similarity in the comparative market shares of each of these merged entities: a merged Bendigo/ Suncorp would raise Bendigo's national home loans market share to 5.22%; a merged Bendigo/ BOQ would raise Bendigo's market share to 5.8%; and a merged Bendigo/ ING would raise Bendigo's market share to 5.55%.[141] Accordingly, while ANZ denies that a combined Bendigo / Suncorp Bank would be an effective competitor in a world without the proposed acquisition, any competitive constraint offered by such an entity in that counterfactual can be expected to be replicated by a merged Bendigo/ BOQ or Bendigo/ ING in a future with the proposed acquisition. This further confirms that there is no materially greater competitive constraint in the Bendigo merger counterfactual.

135 71925.043.001.0255 (Third Smith report) at [81]; 71925.040.001.0171 (First Starks report) at [9.43.2].
136 C.f. 71925.047.001.1814 (ACCC Decision) at [6.188] referring to [Confidential to a third party].
137 71925.043.001.0255 (Third Smith report) at [51]-[59]; 71925.035.001.0155 (Second Williams report) at [102]-[108].
138 71925.047.001.1814 (ACCC Decision) at [6.269], by reference to 71925.040.001.0171 (First Starks report) at [9.113.5]; see also 71925.047.001.1814 (ACCC Decision) at [6.169].
139 71925.043.001.0464 (Second Starks report) at [8.1].
140 71925.040.001.0171 (First Starks report) at [9.113].
141 ANZ SOPVR [3.10] Table 1 using APRA data.

PART E: NO SUBSTANTIAL LESSENING OF COMPETITION IN SME BANKING

43. The proposed acquisition would not and would not be likely to have the effect of substantially lessening competition in the supply of banking products and services to SME customers, regardless of whether there exists a discrete product market for these services, and regardless of the geographic dimension of the market. Suncorp Bank's offering is not materially differentiated, such that it ceasing to operate as an independent competitor would not have a meaningful competitive effect. No expert concluded that there was a real chance that the proposed acquisition would substantially lessen competition in the supply of banking products and services to SME customers,[142] the ACCC conceded its conclusion to the contrary was "finely balanced",[143] and Bendigo does not make any contentions in respect of SME customers.

Suncorp Bank's offering is not materially differentiated

44. ***Suncorp Bank is no more vigorous or effective competitor than any other competitor:*** There is no dispute that Suncorp Bank [Confidential to Suncorp],[144] nor did the ACCC conclude that Suncorp Bank was a particularly vigorous or effective competitor for customers. To the contrary, Suncorp Bank's [Confidential to Suncorp]; it is the MFI for only ([Confidential to Suncorp]) of its business customers (compared with a market average of [Confidential to a third party]);[145] [Confidential to Suncorp]; [Confidential to Suncorp]; and [Confidential to Suncorp].[146] [Confidential to Suncorp].[147] By contrast, [Confidential to a third party].[148]

45. ***Suncorp Bank's customer service offering is not unique:*** Nor is Suncorp Bank's customer service offering unique or sufficient to impose a material competitive constraint.[149] As the ACCC accepted, many other banks — including ANZ — use a relationship management model for some or all SME customers (typically those with higher value loans or more complex banking needs, with most customers portfolio managed by generalist bankers using phone and digital channels).[150] The evidence does not establish that Suncorp Bank's model is different to, let alone better than, other banks, such that the proposed acquisition would result in the removal of an independent competitor providing a unique service offering and thereby imposing a material competitive constraint.[151]

46. *First,* although simply comparing the ratio of relationship managers to customers is an imperfect proxy, even using that measure, and contrary to the ACCC's contention, ANZ has a *[Confidential to a third party]* of relationship managers to customers for most small and medium-sized businesses[152] (and as the ACCC accepted, relationship management is more relevant to medium rather than smaller businesses).[153] ANZ provides a "higher touch" approach to managing its business banking customers[154] and ANZ's relationship managers are equally incentivised to focus on existing customer relationships as they are on winning new customers.[155] Relevantly, at the time of the ACCC determination:

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142 71925.043.001.0464 (Second Starks report) at [7.45].
143 71925.047.001.1814 (ACCC Decision) at [6.577].
144 71925.047.001.1814 (ACCC Decision) at [6.525], [6.257], [6.566]; SML.0004.0001.0033 (First van Horen statement) at [97].
145 71925.047.001.1814 (ACCC Decision) at [6.550]-[6.551], [6.560], [6.570].
146 71925.002.001.0596 (ANZ Application) at [7.141]-[7.148]; 71925.002.001.9102 (Rankin statement) at [102]-[104].; SML.0004.0001.0033 (First van Horen statement) at [85]-[88], [71]-[75] and [122]; [Confidential to Suncorp]; [Confidential to Suncorp],[Confidential to Suncorp]; see also 71925.047.001.1814 (ACCC Decision) at [6.517]-[6.521].
147 SML.0004.0001.0033 (First van Horen statement) at [85], [88]; see also [Confidential to Suncorp]; [Confidential to Suncorp].
148 See [Confidential to a third party].
149 See 71925.040.001.0171 (First Starks report) at [9.216]; SML.0004.0001.0033 (First van Horen statement) at [95].
150 71925.047.001.1814 (ACCC Decision) at [6.470]-[6.471], [6.529]; SML.0004.0001.0033 (First van Horen statement) at [95].
151 See 71925.047.001.1814 (ACCC Decision) at [6.530] and 71925.040.001.0171 (First Starks report) at [9.257].
152 71925.034.001.1096 (Second Smith report) at [47]; 71925.002.001.0596 (ANZ Application) at pp 141-142, Table 13.
153 71925.047.001.1814 (ACCC Decision) at [6.470], [Confidential to ANZ].
154 71925.043.001.0229 (Lane statement) at [11]-[16].
155 71925.043.001.0229 (Lane statement) at [23]-[24].

(a) ANZ's [Confidential to ANZ] small business banking customers (**SBB**) are typically served by a group of generalist bankers, with approximately [Confidential to ANZ] (those with business limits between [Confidential to ANZ]) served by relationship managers typically serving [Confidential to ANZ] customers (or remote managers managing [Confidential to ANZ] customers)[156] — compared with Suncorp Bank's model in which [Confidential to Suncorp].[157]

(b) ANZ's [Confidential to ANZ] business banking (**BB**) customer groups (limits between [Confidential to ANZ]) are served by one of [Confidential to ANZ] dedicated relationship managers supported by [Confidential to ANZ] assistant managers each typically serving [Confidential to ANZ] customer groups[158] (compared with Suncorp Bank's [Confidential to Suncorp] for customers [Confidential to Suncorp]).[159]

(c) ANZ's [Confidential to ANZ] specialist distribution (**SD**) customers (for particular industry segments in healthcare, agribusiness, and commercial property and emerging corporate customers with credit requirements between [Confidential to ANZ]) are served by specialist relationship managers.[160] [Confidential to Suncorp].[161]

47. *Second,* ANZ has invested in automation and digitisation (where [Confidential to Suncorp]), which improves the speed and quality of service and frees up staff capacity to perform higher-value work conducive to better customer experiences and cost reduction.[162] By comparison, [Confidential to Suncorp].[163]

48. *Third,* Suncorp Bank's brand recognition and branch network is not unique. That Suncorp Bank tends to win a higher volume of business in Queensland due to its historical footprint does not reflect any material difference in the drivers of competition or make Suncorp Bank a particularly strong competitor.[164] As the ACCC recognised, ANZ similarly benefits from brand recognition (indeed, more so than smaller banks like Suncorp Bank).[165]

49. *Fourth,* Suncorp Bank's [Confidential to Suncorp] does not indicate material differentiation in its customer service offering.[166] Its customer service offering is not market leading or unique, it is not recognised as a leader in NPS scores,[167] its average net promoter score is slightly lower than market level, and customer intent to switch is higher.[168]

Incorporation of Suncorp Bank into ANZ is not likely to have a meaningful competitive effect

50. Given Suncorp Bank's offering is not materially differentiated, it ceasing to operate as an independent competitor is not likely to have a meaningful competitive effect, having regard to the fact that, in the future with the proposed acquisition, ANZ will remain constrained by other competitors (including five competitors larger than Suncorp Bank by national market share)[169] and the credible threat of new entry and expansion, including by reason of the merger of existing banks.

51. ***SME banking is not concentrated:*** Even considering the supply of SME banking products and services separately from the broader business banking market, the segment is not concentrated and

156 71925.002.001.9102 (Rankin statement) at [15], [21] and [24]-[25].
157 [Confidential to Suncorp].
158 71925.002.001.9102 (Rankin statement) at [15] and [31], [34], [36]; 71925.043.001.0229 (Lane statement) at [14] and [25].
159 71925.047.001.1814 (ACCC Decision) at [6.531], referring to [Confidential to Suncorp].
160 71925.002.001.9102 (Rankin statement) at [15], [41]-[42].
161 [Confidential to Suncorp].
162 71925.043.001.0229 (Lane statement) at [15]-[17]; see 71925.047.001.1814 (ACCC Decision) at [6.473]- [6.475].
163 [Confidential to Suncorp]; see also 71925.047.001.1814 (ACCC Decision) at [6.517].
164 71925.002.001.9102 (Rankin statement) at [93(c)].
165 71925.047.001.1814 (ACCC Decision) at [4.113]-[4.119].
166 71925.047.001.1814 (ACCC Decision) at [6.567].
167 71925.002.001.0596 (ANZ Application) at [7.72]-[7.74].
168 71925.047.001.1814 (ACCC Decision) at [6.359].
169 71925.047.001.1814 (ACCC Decision) at [6.495] (Table 10).

the proposed acquisition is not likely to materially increase concentration. Given there is no defined cohort of SME customers, it is impossible to calculate concentration with any reasonable degree of precision,[170] but the available data indicates supply is not concentrated nationally or in Queensland (notwithstanding the ACCC's view, on the same data, that it is concentrated)[171] and the proposed acquisition would not substantially increase concentration.[172]

52. ***ANZ remains constrained by other stronger competitors*:** There is effective competition nationally and in Queensland from larger banks, particularly NAB, CBA, Westpac and Rabobank and smaller banks including Macquarie, Judo Bank and BOQ (with a scale, physical presence and product range similar to Suncorp Bank).[173] On the ACCC's assessment, [Confidential to a third party] [174] [Confidential to a third party].[175] [Confidential to a third party].[176] Even if competition occurs on a local/ regional basis, in the future with the proposed acquisition, there will be no town in Queensland which would have fewer than five alternative bank branches[177] (noting that having a bank branch is not necessary to compete for or supply banking products and services to SME customers).[178] Competition between these banks occurs on the basis of price, quality of service, product features, and credit policy[179] and is dynamic as non-banks lenders and fintechs force banks to respond to changes in customer expectations by investing in and providing new technology to consumers (which the ACCC accepted are a key dimension of non-price competition in SME banking).[180]

53. ***Suncorp Bank and ANZ are not each other's closest competitor:*** The ACCC accepted that ANZ and Suncorp Bank are not particularly close competitors.[181] ANZ does not regard Suncorp Bank as a particularly strong competitor in business banking and does not set prices or make product changes in response to Suncorp.[182] ANZ and Suncorp Bank have different geographic presence and capabilities to serve medium and larger business customers ([Confidential to Suncorp]).[183] This is reflected in very limited refinancing between ANZ and Suncorp Bank.[184] That ANZ targets small business customers with home loans[185] does not make ANZ and Suncorp Bank any more likely to compete closely in the status quo: [Confidential to ANZ].[186]

54. ***ANZ will remain constrained by the threat of expansion and new entry***: As the ACCC accepted, competition from new entrants is an existing feature of the market:[187] Judo Bank was granted an ADI licence in 2019, entering the market with a single loan product and expanding to offer term deposits, business loans, asset finance, line of credit and home loans with a focus on SME,[188] with a loan

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170 71925.047.001.1814 (ACCC Decision) at [6.491]-[6.497]; see also 71925.002.001.8851 (First Williams report) at [40], [52].

171 71925.047.001.1814 (ACCC Decision) at [6.498].

172 71925.002.001.0596 (ANZ Application) at [7.109]-[7.112].

173 71925.047.001.1814 (ACCC Decision) at [6.503], [6.573]-[6.574]; 71925.002.001.9102 (Rankin statement) at [93]; 71925.002.001.9014 (Mendelson statement) at [71] and [73]; 71925.043.001.0229 (Lane statement) at [25]-[28], [31]. SME [Confidential to a third party].

174 71925.047.001.1814 (ACCC Decision) at [6.495].

175 [Confidential to a third party].

176 71925.047.001.1814 (ACCC Decision) at [6.495], Table 10; [Confidential to a third party]; [Confidential to a third party].

177 71925.040.001.0171 (First Starks report) at [9.266], table 26.

178 71925.040.001.0171 (First Starks report) at [6.13]-[6.14].

179 71925.002.001.9102 (Rankin statement) at [88]-[90], [92].

180 71925.047.001.1814 (ACCC Decision) at [6.505]-[6.507] and [6.473]-[6.475]; see also 71925.002.001.9014 (Mendelson statement) at [64]-[72] and [71(b)]; 71925.002.001.9102 (Rankin statement) at [95]; 71925.002.001.9234 (First Campbell statement) at [60]; 71925.034.001.1314 (Second Campbell statement) at [15]-[18]; 71925.002.001.9787 (First Elliott statement) at [20]-[26], [29(b)] and 71925.034.001.1622 (Second Elliott statement) at [46]-[47] and [51]; 71925.002.002.1502 (Dalton statement) at [25]-[28] and [31]-[44].

181 71925.047.001.1814 (ACCC Decision) at [6.571], [6.538]-[6.540]; see also 71925.040.001.0171 (First Starks report) at [9.264]; 71925.002.001.0596 (ANZ Application) at [7.198]-[7.199], [7.143]; 71925.002.001.9102 (Rankin statement) at [102]-[104].

182 71925.002.001.9102 (Rankin statement) at [102]-[104].

183 71925.002.001.0596 (ANZ Application) at [7.205]-[7.206]; 71925.002.001.9014 (Mendelson statement) at [71]; 71925.002.001.9102 (Rankin statement) at [93]; 71925.002.001.9234 (First Campbell statement) at [52]; SML.0004.0001.0033 (First van Horen statement) at [122].

184 71925.047.001.1814 (ACCC Decision) at [6.540].

185 71925.047.001.1814 (ACCC Decision) at [6.541].

186 71925.047.001.1814 (ACCC Decision) at [6.482]-[6.485]; [Confidential to ANZ].

187 71925.047.001.1814 (ACCC Decision) at [6.501].

188 71925.002.001.0596 (ANZ Application) at [7.150]; see 71925.002.001.9787 (First Elliott statement) at [39].

portfolio almost 13% the size of ANZ's; [Confidential to a third party].[189] The possibility of Bendigo merging with BOQ or ING may also constrain ANZ in the future, as discussed above. Barriers to entry and expansion are not high, particularly for SME lending and for expansion by existing banks including Bendigo and BOQ.[190]

55. Potential barriers to expansion identified by the ACCC — such as acquiring personnel and branch presence — are not significant. *First,* there is no evidence that potential new entrants (or existing banks seeking to expand) cannot compete effectively to attract SME bankers, particularly SME bankers that typically serve smaller business customers (to the contrary, Judo Bank has been successful in winning bankers from ANZ in Queensland).[191] *Second,* the evidence does not establish that branch presence is necessary to compete.[192] As the ACCC accepted, and as Judo Bank and Macquarie demonstrate, branch presence is not a barrier to entry or expansion.[193]

56. Other barriers identified by the ACCC are not likely to prevent new entry: in particular the regulatory barriers to becoming an ADI have not prevented the establishment of over 100 ADIs nationally,[194] and the regulatory environment has been found to be conducive to competition and to support new entrants in SME banking.[195] In any event, it is not necessary to offer a full range of deposit and lending products to be an effective competitor.[196] As the ACCC accepted, competitive constraint (whether from new or existing entrants) can come from competition in particular industry segments and "unbundled" products and services.[197] New entrants are also likely to face lower technological barriers, given they are unburdened by legacy technology systems (as the ACCC accepted).[198]

57. ***Brokers are a significant factor in driving competition and switching:*** As the ACCC also accepted, brokers play an increasing role in driving competition, are critical for new entry and expansion particularly for new, online and non-bank lenders, and originate a significant proportion of new SME loans[199] (approximately 40% of SME businesses overall, [Confidential to ANZ] for ANZ and [Confidential to Suncorp] for Suncorp Bank).[200] ANZ has made significant investments to be a bank of choice for brokers.[201] Although business customers may be stickier than retail, SME customers can and increasingly do switch and multi-bank (particularly smaller business customers).[202] Banks are making significant investments in developing their broker relationships as they recognise that SME customers are increasingly turning to commercial brokers for the business lending needs.[203]

58. ***ANZ remains incentivised to compete:*** The proposed acquisition does not change ANZ's incentives to compete to retain and attract SME customers. Given the importance of relationship

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189 [Confidential to a third party]

190 71925.047.001.1814 (ACCC Decision) at [6.555], [6.561]- [6.563]; 71925.002.001.0596 (ANZ Application) at [7.152]; 71925.002.001.9102 (Rankin statement) at [95]; see also 71925.040.001.0171 (First Starks report) at [9.272] and [Confidential to a third party].

191 See 71925.047.001.1814 (ACCC Decision) at [6.469], referring to [Confidential to a third party] and c.f. 71925.047.001.1814 (ACCC Decision) at [6.554], [6.561].

192 71925.047.001.1814 (ACCC Decision) at [6.556] and [6.572].

193 71925.040.001.0171 (First Starks report) at [9.269], [9.272]; 71925.047.001.1814 (ACCC Decision) at [6.558].

194 71925.047.001.1814 (ACCC Decision) at [4.31]; c.f. 71925.047.001.1814 (ACCC Decision) at [6.552]-[6.553], [6.574].

195 71925.047.001.1814 (ACCC Decision) at [6.553]; 71925.040.001.0171 (First Starks report) at [9.270].

196 71925.047.001.1814 (ACCC Decision) at [6.557].

197 71925.047.001.1814 (ACCC Decision) at [6.566], [6.568]-[6.569]; 71925.002.001.0596 (ANZ Application) at [6.132].

198 71925.047.001.1814 (ACCC Decision) at [6.555]; 71925.034.001.1314 (Second Campbell statement) at [26]; 71925.002.001.9787 (First Elliott statement) at [25]; 71925.034.001.1622 (Second Elliott statement) at [47]; [Confidential to ANZ]; 71925.002.002.1502 (Dalton statement) at [102].

199 Decision [6.509]-[6.515]; see also 71925.002.001.9014 (Mendelson statement) at [64]; 71925.002.001.9102 (Rankin statement) at [58], [94]; 71925.002.001.9787 (First Elliott statement) at [43]; and [Confidential to ANZ]; SML.0004.0001.0033 (First van Horen statement) at [84]; see also 71925.043.001.0229 (Lane statement) at [22].

200 71925.047.001.1814 (ACCC Decision) at [6.513]; 71925.002.001.9102 (Rankin statement) at [58]; SML.0004.0001.0033 (First van Horen statement) at [83].

201 71925.002.001.9102 (Rankin statement) at [91(d)].

202 71925.002.001.0596 (ANZ Application) at [6.123], [7.128]-[7.129]; 71925.002.001.9102 (Rankin statement) at [96]-[100]; 71925.047.001.1814 (ACCC Decision) at [6.543], [6.546].

203 [Confidential to a third party].

management to supplying business customers,[204] and given competitors are likely to see the proposed acquisition as an opportunity to win both business and relationship managers from Suncorp Bank,[205] ANZ will have incentives to offer equal or better services to Suncorp Bank customers. To the extent that Suncorp Bank's relationship management or customer service model offers any competitive advantage over ANZ's (which is not apparent from the evidence), ANZ will be incentivised to maintain that model to retain the Suncorp Bank customers it acquires. There is thus unlikely to be any material loss of service quality in the future with the proposed acquisition.

59. ***No greater constraint in the Bendigo merger counterfactual**:* For the reasons given in Suncorp Bank's submissions, in the Bendigo merger counterfactual a merged Bendigo/ Suncorp Bank is unlikely to impose any materially greater competitive constraint than Bendigo or Suncorp Bank alone in the status quo counterfactual. Neither Bendigo nor (apparently) the ACCC contend to the contrary. In particular, there is no increase in competitive constraint in the Bendigo merger counterfactual, given Bendigo is currently not present, or has only limited presence, in many of the locations in which ANZ and Suncorp Bank supply banking products and services to SME customers.[206] Indeed, the competitive constraints on ANZ may well be greater in the factual than in the Bendigo merger counterfactual, given that in the factual Bendigo may merge with BOQ and expand its presence in the locations in which ANZ and Suncorp supply banking products and services to SME customers.

PART F: NO SUBSTANTIAL LESSENING OF COMPETITION IN AGRIBUSINESS

60. The proposed acquisition similarly would not have the effect or likely effect of substantially lessening competition in the supply of banking products and services to agribusiness customers, regardless of whether there exists a discrete product market for these services, and regardless of the geographic dimension of the market. Suncorp Bank's offering to agribusiness customers is not materially differentiated and its removal as an independent competitor will not have a meaningful competitive effect. Neither the ACCC's nor ANZ's experts concluded otherwise.[207]

Suncorp Bank's offering is not materially differentiated

61. ***Suncorp Bank is no more vigorous or effective a competitor than any other competitor:*** Suncorp Bank does not lead the market or drive competition on price and its competitive influence is commensurate with its modest and relatively static market share.[208] Suncorp Bank does not compete materially differently to other banks in the market (including ANZ, NAB and Rabobank) on price or non-price factors and there is no evidence it is more flexible in service or pricing than ANZ.[209] [Confidential to Suncorp]. Nor does the evidence establish that Suncorp Bank is materially more competitive in servicing "non-standard" agribusiness banking needs, "niche markets" or "bespoke businesses".[210] That it tends to win a higher volume of business in Queensland is due to its historical footprint rather than any material difference in the drivers of competition.[211]

62. ***Suncorp Bank's relationship management model is not unique:*** Suncorp Bank's relationship management model is, as Ms Starks concluded, not unique and is able to be (and is) replicated by other competitors.[212] ANZ and Suncorp Bank — like other banks in agribusiness — use a relationship

204 71925.002.001.9551 (First Bennett statement) at [91]-[94].
205 71925.043.001.0229 (Lane statement) at [31]; this is supported by [Confidential to a third party].
206 71925.043.001.0229 (Lane statement) at [33]-[34].
207 71925.040.001.0171 (First Starks report) at [7.35]; 71925.002.001.8851 (First Williams report) at [120].
208 71925.047.001.1814 (ACCC Decision) at [6.695]; see also SML.0004.0001.0033 (First van Horen statement) at [97], [105]; [Confidential to Suncorp]; 71925.035.001.0155 (Second Williams report) at [55]-[58]; see also, for instance, [Confidential to a third party].
209 71925.043.001.0450 (Third Bennett statement) at [24].
210 C.f. 71925.047.001.1814 (ACCC Decision) at [6.707]. The ACCC relied only on the 71925.007.001.0037 (BMAgBiz submission), stating Suncorp Bank competes for small and new businesses and 71925.030.001.0176 (Cowbank submission), stating it was willing to fund its business where other banks were not.
211 71925.002.001.9102 (Rankin statement) at [93(c)]; 71925.002.001.9551 (First Bennett statement) at [167].
212 71925.043.001.0464 (Second Starks report) at [7.33].

management model for certain agribusiness customers and (as the ACCC accepted) compete to develop and maintain relationships with agribusiness customers.[213] The evidence does not establish that Suncorp Bank's relationship management is more personalised and attentive than other banks.[214] In particular, and as noted above at [46], it cannot necessarily be inferred that a bank's customer service is materially better based only on the number or ratio of relationship managers to customers.[215] As the ACCC accepted, banks vary in their target customer segments, the extent to which they serve agribusiness customers using a relationship management model, the ratio of customers to relationship managers, and the way they serve those customers who are (and are not) relationship managed.[216] The reputation of banks and their bankers has a material impact on a bank's competitiveness (as the ACCC accepted)[217] and, as noted in respect of SME customers, ANZ's relationship managers are incentivised to value customer relationships as much as winning new customers.[218] Further, banks that have invested in automation to reduce manual work (like ANZ) are better able to reduce administrative burden and so maximise the time, quality and number of their relationships with customers.[219]

63. Against that background, a brief survey demonstrates Suncorp Bank's offering is comparable to ANZ's in [Confidential to Suncorp] and that differences between those models are likely to decrease in the status quo counterfactual. Suncorp Bank currently offers a relationship management model to [Confidential to Suncorp] [Confidential to Suncorp], who are allocated to [Confidential to Suncorp] managers, each serving approximately [Confidential to Suncorp] customers ([Confidential to Suncorp]).[220] [Confidential to Suncorp], but it is not likely [Confidential to Suncorp][221] [Confidential to Suncorp]future.[222] [Confidential to Suncorp] This reflects the fact that smaller customers are likely to continue to decline as agribusinesses consolidate, and farm and working capital costs increase,[223] ([Confidential to a third party]).[224] It also reflects the economic reality that relationship-management that relies on visiting very small customers is unlikely to be economic.[225]

64. ANZ relationship manages all agribusiness customers with lending over [Confidential to ANZ] (and some under that amount), consistently with its approach to other business customers.[226]

(a) ANZ Commercial had [Confidential to ANZ] agribusiness customer lending groups in Queensland compared to [Confidential to ANZ] non-agribusiness customer lending groups (April 2023).

(b) [Confidential to ANZ] of the customers are directly managed by a business banking relationship manager.[227] These fall into three categories:

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213 71925.047.001.1814 (ACCC Decision) at [6.639]; 71925.002.001.9551 (First Bennett statement) at [119]-[122], [159] [160], [164] [171]; 71925.043.001.0450 (Third Bennett statement) at [13] and [24]; SML.0004.0001.0033 (First van Horen statement) at [90] and [95].

214 The only evidence the ACCC relied on in reaching this conclusion was [Confidential to a third party]: see 71925.047.001.1814 (ACCC Decision) at [6.702].

215 C.f. 71925.047.001.1814 (ACCC Decision) at [6.649]. The only evidence the ACCC cited in support was Suncorp Bank's [Confidential to Suncorp]: 71925.047.001.1814 (ACCC Decision) at [6.649], referring to [Confidential to Suncorp].

216 71925.047.001.1814 (ACCC Decision) at [4.12], [6.649].

217 71925.047.001.1814 (ACCC Decision) at [6.650] referring to 71925.002.001.9551 (First Bennett statement) at [111]-[113] and [Confidential to ANZ].

218 71925.043.001.0229 (Lane statement) at [23]-[24].

219 71925.043.001.0229 (Lane statement) at [11]-[17]; see also [Confidential to a third party]; see also [Confidential to a third party].

220 SML.0004.0001.0033 (First van Horen statement) at [90] and [Confidential to Suncorp]; [Confidential to Suncorp].

221 SML.0004.0001.0033 (First van Horen statement) at [93] and [Confidential to Suncorp].

222 [Confidential to Suncorp].

223 71925.002.001.9551 (First Bennett statement) at [52], [81]-[82]; 71925.043.001.0450 (Third Bennett statement) at [16]; SML.0004.0001.0061 (First Johnston statement) at [96]; [Confidential to Suncorp].

224 [Confidential to a third party].

225 71925.043.001.0450 (Third Bennett statement) at [14].

226 71925.002.001.9551 (First Bennett statement) at [28], [53], [55], [56], [200]; 71925.043.001.0450 (Third Bennett statement) at [11], [19]; [Confidential to ANZ].

227 71925.043.001.0450 (Third Bennett statement) at [19] Table 1.

(i) Agribusiness customer lending groups in the SBB segment (typically with total business limits between [Confidential to ANZ] and [Confidential to ANZ]) are allocated to a business banking relationship manager (based in a location closest to the customer). These are not specialist agribusiness bankers, although depending on their location and customer mix, they may be experienced in serving agribusiness customers and will also have training and tools to assist them to evaluate credit risk for agribusiness including support from a specialised agribusiness team in the national business centre. Relationship managers are each allocated approximately [Confidential to ANZ] customers (including agribusiness).[228]

(ii) Agribusiness customer groups with total limits between [Confidential to ANZ] in the BB segment are serviced by relationship managers allocated [Confidential to ANZ] customers,[229] supported by an assistant relationship manager and State agribusiness managers.[230] ANZ has [Confidential to ANZ] managers nationally, with [Confidential to ANZ] managers and [Confidential to ANZ] assistant managers in Queensland.[231]

(iii) Agribusiness customer groups with total limits that exceed [Confidential to ANZ] are serviced by [Confidential to ANZ]each allocated [Confidential to ANZ] customers, and supported by a [Confidential to ANZ].[232] ANZ has [Confidential to ANZ] serving this segment nationally with [Confidential to ANZ] senior relationship managers and [Confidential to ANZ] based in Queensland.[233]

(c) Approximately [Confidential to ANZ] Queensland agribusiness customer groups in the SBB segment are remotely managed by one of a [Confidential to ANZ] specialised remote team in the National Business Centre (in Melbourne), each allocated [Confidential to ANZ] agribusiness customers nationally.[234]

(d) Approximately [Confidential to ANZ] very small customer lending groups (typically with limits [Confidential to ANZ]) whose [Confidential to ANZ] are portfolio managed by a team of small business specialists.[235]

(e) Customers with turnover over [Confidential to ANZ] or particularly complex farming operations are managed by ANZ's institutional division.[236]

65. For the core customer overlap group of [Confidential to ANZ], ANZ has approximately [Confidential to ANZ] per relationship manager and Suncorp Bank has approximately [Confidential to ANZ] and for the overlap group of [Confidential to ANZ] ANZ has approximately [Confidential to ANZ] customer lending groups per relationship manager. By contrast, Suncorp Bank has approximately [Confidential to Suncorp].[237]

66. By contrast, NAB — [Confidential to a third party][238] and relationship manages other customers with a ratio of approximately [Confidential to a third party] customers to each manager.[239] Rabobank presently serves all agribusiness loan customers using a [Confidential to a third party]but similarly [Confidential to a third party].[240]

228 71925.002.001.9551 (First Bennett statement) at [68].
229 71925.002.001.9551 (First Bennett statement) at [59]; 71925.043.001.0450 (Third Bennett statement) at [19].
230 71925.002.001.9102 (Rankin statement) at [42].
231 71925.002.001.9551 (First Bennett statement) at [68].
232 71925.002.001.9551 (First Bennett statement) at [55], [59]-[60]; 71925.043.001.0450 (Third Bennett statement) at [10]; 71925.002.001.9102 (Rankin statement) at [21]-[42].
233 71925.002.001.9551 (First Bennett statement) at [68]; 71925.002.001.9102 (Rankin statement) at [42].
234 71925.002.001.9551 (First Bennett statement) at [57]-[58]; 71925.043.001.0450 (Third Bennett statement) at [10] and [19].
235 71925.043.001.0450 (Third Bennett statement) at [10], [14]-[15] and [19].
236 71925.002.001.9551 (First Bennett statement) at [23]; 71925.002.001.9102 (Rankin statement) at [42].
237 See [Confidential to Suncorp].
238 See [Confidential to a third party].
239 71925.047.001.1814 (ACCC Decision) at [6.647] referring to [Confidential to a third party].
240 [Confidential to a third party].

Incorporation of Suncorp Bank into ANZ would not have a meaningful competitive effect

67. The incorporation of Suncorp Bank into ANZ is not likely to have a meaningful competitive effect in the market in which banking products and services are supplied to agribusiness customers, for the following reasons.

68. ***Supply is not concentrated:*** Both ANZ's and the ACCC's analysis indicates that the market is not concentrated nationally, with an HHI that does not exceed the ACCC's threshold following the proposed acquisition (on ANZ's analysis) or only slightly exceeds it (on the ACCC's analysis) and with a delta less than 100.[241] Compared with either counterfactual, the proposed acquisition is likely to result in a moderate increase in concentration in Queensland, where Suncorp Bank has a greater presence, but the geographic overlap area will remain relatively unconcentrated.[242]

69. ***Competition is vigorous:*** Competition to supply agribusiness customers is vigorous nationally, and in Queensland.[243] Agribusiness is an attractive sector for banks,[244] and many agribusinesses do not hold debt, such that there is strong competition to win customers when opportunities arise.[245] Agribusinesses are not uniformly spread across Queensland but cluster in regions depending on sub-sector (such as beef, cotton or dairy). In any location, the opportunity to win customers and the number of banks competing will depend on factors including the concentration of agribusinesses, their sizes, and the extent to which they need capital and lending.[246] The extent of competition thus varies from bank to bank, in different geographies, across different time periods, and across different product types.[247] Price competition is one factor. Other important factors include loan value, flexibility of terms and conditions, ease of approvals, variation, and processing speed, and quality of relationships.[248] Different banks adopt different competitive strategies: Rabobank traditionally has [Confidential to a third party].[249]

70. ***ANZ remains constrained by other larger banks, including the market leaders NAB and Rabobank:*** ANZ faces effective competition from banks nationally and in Queensland, particularly [Confidential to a third party].[250] [Confidential to a third party].[251] Rabobank will (as the ACCC accepts) continue to act as a competitive constraint. It presently [Confidential to a third party] (precisely the customer cohort in which the ACCC concluded ANZ and Suncorp Bank are likely to compete, and in which the ACCC's analysis showed Rabobank and Suncorp Bank are equally weighted).[252] Rabobank has an [Confidential to a third party] for which it is likely to compete closely with ANZ.[253]

71. Even if competition occurs on a local or regional basis, all but two of the eleven towns in which ANZ and Suncorp Bank each have an agribusiness banker are also serviced by agribusiness bankers from one or more of Rabobank, NAB, Westpac or CBA located in that town[254] (and the remaining two

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[241] 71925.002.001.0596 (ANZ Application) at [7.165]-[7.169]; 71925.002.001.8851 (First Williams report) at [41]-[42] estimating HHI of 1,504.5 with a delta of 106.7 nationally.

[242] 71925.002.001.8851 (First Williams report) at [16], [49], assessing the HHI at 2143.4 with a delta of 553.9; 71925.035.001.0155 (Second Williams report) at [59], [62]-[63]. The ACCC's analysis assesses the HHI post acquisition in Queensland at 2238 with a delta of 238.

[243] 71925.002.001.9551 (First Bennett statement) at [115]-[118]; [Confidential to Suncorp]; this is consistent with observations of [Confidential to a third party].

[244] 71925.002.001.9551 (First Bennett statement) at [77]-[80]; see also [Confidential to a third party]

[245] 71925.002.001.9551 (First Bennett statement) at [83]-[84]; 71925.043.001.0450 (Third Bennett statement) at [20].

[246] 71925.043.001.0450 (Third Bennett statement) at [22].

[247] Firs Bennett statement [17]; 71925.043.001.0450 (Third Bennett statement) at [17]-[18]; see also [Confidential to Suncorp].

[248] 71925.002.001.9551 (First Bennett statement) at [96], [123]-[128].

[249] [Confidential to a third party].

[250] 71925.002.001.8851 (First Williams report) at [16]; 71925.035.001.0155 (Second Williams report) at [59], [110]-[111]; 71925.040.001.0171 (First Starks report) at [9.222]-[9.223]; 71925.002.001.9551 (First Bennett statement) at [156]-[190]; [205]- [209]; 71925.043.001.0450 (Third Bennett statement) at [25]; 71925.002.001.9102 (Rankin statement) at [93(b)]; see also 71925.043.001.0229 (Lane statement) at [25]-[27], [31] in relation to business banking segment.

[251] [Confidential to a third party].

[252] 71925.047.001.1814 (ACCC Decision) at [6.748] citing [Confidential to a third party]; 71925.047.001.1814 (ACCC Decision) at [6.724]-[6.725].

[253] [Confidential to a third party].

[254] 71925.047.001.1814 (ACCC Decision) at [6.679], referring to 71925.040.001.0171 (First Starks report) at [9.228]-[9.229].

towns — Ayr and Chinchilla/ Miles — are within reasonable drive times of other towns in which NAB, Rabobank and CBA are located and from which they can readily compete and supply banking products and services to customers).[255] Rabobank is present in all towns in which ANZ is present, save for Cairns (within a reasonable drive time of Atherton where Rabobank is present)[256] and Chinchilla/ Miles (within a reasonable drive time of multiple towns in which Rabobank is present).[257]

72. ***ANZ and Suncorp Bank are not each other's closest competitors***:[258] ANZ and Suncorp Bank's agribusiness portfolios are largely complementary by geography and industry, and by customer size, and that is unlikely to materially change in the status quo counterfactual.

73. *First,* [Confidential to ANZ][259] Queensland comprises approximately [Confidential to ANZ] of ANZ's national agribusiness portfolio, where ANZ is [Confidential to ANZ].[260] Suncorp Bank is more active in Queensland, particularly north of Toowoomba,[261] where it services [Confidential to Suncorp].[262] The ACCC speculates the Applicants are likely to compete more closely in the future without the proposed acquisition. That is not borne out on the evidence, which does not establish that the Applicants are or will be particularly close competitors in Queensland in beef (which comprises over half of agribusiness lending in Queensland)[263] or in dairy (which comprises less than 1% of agribusiness lending in Queensland and is declining):[264] [Confidential to Suncorp][265] — and [Confidential to ANZ].[266]

74. *Second,* by customer size, ANZ [Confidential to ANZ].[267] ANZ is better able than Suncorp Bank to service and win customers with lending requirements [Confidential to ANZ].[268] The [Confidential to Suncorp] of customers are under [Confidential to Suncorp].[269] Suncorp Bank has only [Confidential to Suncorp].[270] [Confidential to Suncorp].[271] [Confidential to Suncorp].[272]

75. ***Brokers increase competitive tension:*** Brokers, including specialised agribusiness brokers, create competitive tension and drive material amounts of lending (including refinancing) in agribusiness.[273] For ANZ, in Queensland approximately [Confidential to ANZ] of agribusiness loans [Confidential to ANZ] are broker-originated, [Confidential to ANZ] for loans between [Confidential to ANZ] and [Confidential to ANZ] for loans over [Confidential to ANZ].[274] For Suncorp Bank, approximately [Confidential to Suncorp] of new agribusiness loans are broker-originated,[275] for [Confidential to a third party][276] and [Confidential to a third party].[277] Brokers are likely to make customer relationships less

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255 71925.043.001.0464 (Second Starks report) at [7.26]-[7.27].

256 71925.040.001.0171 (First Starks report) at, p 220 Table 29, based on google map drive times relied upon in Starks report.

257 71925.040.001.0171 (First Starks report) at [9.228].

258 71925.002.001.8851 (First Williams report) at [16], 71925.035.001.0155 (Second Williams report) at [59], [110]-[111]; 71925.040.001.0171 (First Starks report) at [9.222]-[9.223]; see also 71925.002.001.9551 (First Bennett statement) at [169]-[171], [205]-[209]; 71925.043.001.0450 (Third Bennett statement) at [25]; 71925.002.001.9102 (Rankin statement) at [104(c)].

259 71925.002.001.9551 (First Bennett statement) at [47].

260 71925.002.001.9551 (First Bennett statement) at MSB-2, p 2.

261 [Confidential to Suncorp].

262 SML.0004.0001.0033 (First van Horen statement) at [98]; [Confidential to Suncorp].

263 71925.002.001.9551 (First Bennett statement) at 71925.002.001.9365 (MSB-5) at pp 40-45; 71925.002.001.9425 (MSB-7) at pp 6-7, 12; see also [Confidential to Suncorp].

264 71925.002.001.9551 (First Bennett statement) and 71925.002.001.9425 (MBS-7) at p 35 and 84-86.

265 71925.047.001.1814 (ACCC Decision) at [6.721], citing SML.0004.0001.0033 (First van Horen statement) at [68(b)].

266 [Confidential to a third party].

267 71925.002.001.9551 (First Bennett statement) at [27]-[31] and [45]-[46].

268 71925.002.001.9551 (First Bennett statement) at [167]-[168]; SML.0004.0001.0033 (First van Horen statement) at [100]-[102].

269 SML.0004.0001.0033 (First van Horen statement) at [93], [100]. [Confidential to Suncorp].

270 SML.0004.0001.0033 (First van Horen statement) at [100].

271 SML.0004.0001.0033 (First van Horen statement) at [102], [71]-[76].

272 SML.0004.0001.0033 (First van Horen statement) at [99], [105]; 71925.054.001.0220[Confidential to Suncorp].

273 71925.002.001.9551 (First Bennett statement) at [147]-[155]; 71925.034.001.1613 (Second Bennett statement) at [26]-[27]; SML.0004.0001.0033 (First van Horen statement) at [103]-[104]; 71925.043.001.0450 (Third Bennett statement) at [24]. This is supported by the BMAgBiz submission, 13 April 2023, p 4.

274 [Confidential to ANZ]; 71925.002.001.9551 (First Bennett statement) at [150] (indicating slightly lower figures).

275 [Confidential to Suncorp] new loans broker originated and SML.0004.0001.0033 (First van Horen statement) at [104] indicating [Confidential to Suncorp].

276 71925.047.001.1814 (ACCC Decision) at [6.689]

277 71925.047.001.1814 (ACCC Decision) at [6.689] citing [Confidential to a third party]. [Confidential to a third party]; [Confidential to a third party].

significant as a point of differentiation because customers have a direct relationship with their broker,[278] particularly as experienced agribusiness bankers switch from banking to brokering.[279]

76. ***ANZ is constrained by the threat of new entry and expansion***: The principal barrier to entry for existing banks is obtaining specialised agribusiness bankers.[280] That is not sufficiently difficult to limit the threat of expansion or entry: to the contrary, Rabobank expanded its market share from [Confidential to ANZ] to become the [Confidential to ANZ] supplier in Queensland; Judo Bank recently entered agribusiness and captured agribusiness bankers from ANZ in Queensland.[281] Rabobank's and Judo Bank's recent entry demonstrates that barriers are not insurmountable and are not likely to be high for existing banks not serving agribusiness or banks serving agribusinesses outside Queensland.[282] Barriers to expansion are low and are likely to be particularly low for existing smaller banks such as BOQ, Judo Bank and Bendigo.[283] This is evident in the strategies of [Confidential to a third party];[284] [Confidential to a third party];[285] and Bendigo's [Confidential to a third party][286] and is likely [Confidential to a third party].[287] The competitive threat posed by Bendigo and BOQ in agribusiness in the factual is further buttressed by the possibility of those entities merging in the future.

77. ***ANZ must compete to retain Suncorp Bank customers:*** The ACCC wrongly speculates that ANZ will have little incentive to maintain Suncorp Bank's specific relationship management model and focus on service quality.[288] ANZ's incentives will reflect the fact that agribusiness customers are well informed and will test and switch banks that fail to meet their needs.[289] There is a material degree of churn in the market that means banks need to continue to attract customers to maintain market share (for example, ANZ has about [Confidential to ANZ] attrition each year due to paydown, amortisation or refinancing for agribusiness customers away from ANZ).[290] Continuity of customer relationships is not guaranteed: agribusiness bankers need to earn the right to maintain customers on an ongoing basis;[291] agribusiness bankers invest in developing long term relationships with other banks' clients to position themselves as the customers' alternative bank (and deliberately target other banks' customers);[292] and Suncorp Bank is [Confidential to Suncorp].[293] In those circumstances, ANZ will have to work to retain Suncorp Bank agribusiness customers or they will switch.[294] Given the importance of relationship management to supplying business customers (particularly agribusiness customers)[295] from both a demand and supply perspective, and the likelihood that ANZ's competitors will see the proposed acquisition as an opportunity to win customers away from Suncorp Bank,[296] ANZ will be incentivised not to cease offering a relationship management model which is attractive

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278 SML.0004.0001.0033 (First van Horen statement) at [103].
279 [Confidential to Suncorp].
280 71925.047.001.1814 (ACCC Decision) at [6.749]; 71925.002.001.9551 (First Bennett statement) at [191]; [Confidential to Suncorp].
281 See 71925.047.001.1814 (ACCC Decision) at [6.736], referring to 71925.040.001.0171 (First Starks report) at [9.234] and 71925.002.001.9551 (First Bennett statement) at [179]-[180].
282 71925.002.001.9551 (First Bennett statement) at [179]-[180] and [192]; 71925.035.001.0155 (Second Williams report) at [47]; 71925.040.001.0171 (First Starks report) at [9.234].
283 71925.002.001.9551 (First Bennett statement) at [116]; 71925.002.001.8851 (First Williams report) at [112]-[113]; 71925.035.001.0155 (Second Williams report) at [44]-[47]; 71925.034.001.1622 (Second Elliott statement) at [45]; see also 71925.040.001.0171 (First Starks report) at [9.222]-[9.223], [9.272], [9.236].
284 [Confidential to a third party].
285 [Confidential to a third party].
286 [Confidential to a third party].
287 [Confidential to a third party]
288 71925.047.001.1814 (ACCC Decision) at [6.745]; [Confidential to ANZ].
289 71925.035.001.0155 (Second Williams report) at [51]; 71925.002.001.9551 (First Bennett statement) at [98]-[107]; 71925.034.001.1613 (Second Bennett statement) at [23]-[25]. This is reflected in the experience of other banks, including [Confidential to a third party].
290 71925.034.001.1613 (Second Bennett statement) at [25].
291 71925.002.001.9551 (First Bennett statement) at [101].
292 71925.002.001.9551 (First Bennett statement) at [122]. This is consistent with [Confidential to a third party].
293 SML.0004.0001.0033 (First van Horen statement) at [99], [105].
294 71925.002.001.9551 (First Bennett statement) at [210]; SML.0004.0001.0033 (First van Horen statement) at [130].
295 71925.002.001.9551 (First Bennett statement) at [91]-[94].
296 71925.043.001.0450 (Third Bennett statement) at [25]; 71925.043.001.0229 (Lane statement) at [31].

to Suncorp Bank's customers so as to retain both Suncorp Bank's agribusiness bankers and customers.[297]

78. ***A merged Bendigo/ Suncorp Bank imposes no greater constraint than either bank alone:*** A combined Bendigo/ Suncorp Bank is not likely to be a more vigorous or effective competitor than Bendigo or Suncorp Bank alone, for the reasons outlined in Suncorp Bank's submissions. Bendigo is not a significant competitor in the locations in which ANZ and Suncorp Bank overlap and in those locations an acquisition by Bendigo would simply mean that Suncorp Bank has a different owner.[298] To the extent that a combined Bendigo/ Suncorp Bank would impose a constraint similar to Suncorp Bank alone (as the ACCC accepts),[299] there is no increase in competitive constraint in the Bendigo merger counterfactual. This is further confirmed by the fact that in the factual there is a possibility of Bendigo merging with BOQ, such that any competitive constraint posed by a merged Bendigo/ Suncorp entity in the Bendigo merger counterfactual is replicated in the factual.

PART G: PUBLIC BENEFITS

79. The proposed acquisition results in significant and measurable public benefits, including substantial cost-savings, increase in prudential safety, an increase in the major bank levy, and substantial benefits for the Queensland economy. ANZ otherwise relies on and adopts Suncorp Group's submissions with respect to the benefits to Suncorp Group's insurance business, lower wholesale funding costs and greater access to wholesale funding, the benefits resulting from its commitments to the Queensland government and why no comparable benefits are likely to be achieved in a Bendigo merger counterfactual. To the extent the proposed acquisition would give rise to any public detriments, they would be *de minimis* and clearly outweighed by the substantial public benefits.

Productive efficiencies from integration synergies

80. The proposed acquisition is likely to achieve substantial merger-specific integration synergies, in the order of $260 million (pre-tax) per annum, with material synergies to be phased in within four to six years from completion and full run rate synergies to be achieved by the end of year six.[300] These synergies have a net present value of approximately [Confidential to ANZ] compared with the status quo, after accounting for dis-synergies, integration costs and Suncorp Group's separation costs.[301]

81. The ACCC contends that the estimated quantum of cost savings is uncertain and likely less substantial than estimated. That contention fails to give any proper regard to the substantial body of evidence before the Tribunal from ANZ's Managing Director, Suncorp Integration and the expert evidence of Mr Smith. That evidence should satisfy the Tribunal that the estimated synergies are substantial and sufficiently certain, conservatively estimated, and merger specific.

82. ***Quantum and likelihood of synergies is sufficiently certain:*** The evidence establishes that ANZ's synergies estimates are reliable and sufficiently certain.[302] Each of the relevant matters on which the ACCC relies to undermine ANZ's synergies estimates has already been taken into account by ANZ in estimating and validating likely synergies.[303] With its consultants, ANZ modelled initial synergies and one-off costs estimates and has continued to carefully validate and refine those estimates and

[297] 71925.043.001.0464 (Second Starks report) at [7.32]; 71925.002.001.9551 (First Bennett statement) at [129]-[133] and [209]; [Confidential to Suncorp].

[298] 71925.043.001.0450 (Third Bennett statement) at [25(c)]; 71925.043.001.0229 (Lane statement) at [33].

[299] ACCC SOFIC [36(g)]; 71925.047.001.1814 (ACCC Decision) at [6.748].

[300] 71925.034.001.1328 (First Higgins statement) at [15]; 71925.002.001.8725 (First Smith report) at [64]-[74]; see also 71925.002.001.9787 (First Elliott statement) at [75] and 71925.034.001.1659 (SCE-8); 71925.034.001.1622 (Second Elliott statement) at [108]. [Confidential to ANZ]. See: [Confidential to ANZ]; 71925.034.001.1328 (First Higgins statement) at [80].

[301] 71925.034.001.1328 (First Higgins statement) at [15]; 71925.002.001.8725 (First Smith report) at [64]-[74]; 71925.034.001.1096 (Second Smith report) at [16]-[18]; see also 71925.002.001.9787 (First Elliott statement) at [75] and SCE-8; 71925.034.001.1622 (Second Elliott statement) at [108].

[302] 71925.034.001.1328 (First Higgins statement) at [83]-[85] [93]-[94]; 71925.043.001.0250 (Second Higgins statement) at [7]-[12].

[303] 71925.043.001.0255 (Third Smith report) at [14].

timeframes.[304] That in-depth work has only reinforced ANZ's confidence that the estimated synergies are realistically achievable and indeed conservatively estimated.[305] ANZ has done so relying on more granular Suncorp Bank data and sensitivity analysis, assessing options to accelerate integration (including a complete review of the timeframe and sequencing of integration steps), undertaking detailed work to estimate technical migration costs, and refining its estimates of the incremental cost to serve Suncorp Bank customers.[306] In parallel, ANZ has further developed its integration plans and is planning for integration in a progressive and controlled manner to maximise staff and customer retention.[307] ANZ has also benchmarked integration costs, operating cost savings and expected timeframes against comparable transactions (both international and domestic) and has done so conservatively at the top of the range.[308] As a result, it is highly unlikely that the information ANZ will obtain following completion of the proposed acquisition will be materially different or that ANZ will face impediments not already factored into its analysis.[309]

83. ***Synergies timing is realistic and conservatively estimated*** ANZ's estimated timeframes of 4 to 6 years for achieving material synergies are conservative, even by comparison with the international studies relied upon by the ACCC's expert, which found synergies fully achieved within 3 to 5 years.[310] ANZ has also carefully considered past bank mergers, including those of Westpac/ St George and CBA/ Bankwest, noting those timeframes reflected their own integration strategies and technology systems ([Confidential to a third party])[311] and ANZ's strategy is unique to this proposed acquisition.[312]

84. ***Synergies are merger specific:*** The vast majority of ANZ's estimated synergies of $260 million per annum are merger-specific.[313] The cost savings derive primarily from reduction in fixed costs through project spend, technology rationalisation, greater use of automation and improved processes, each of which represent an increase in productive efficiency.[314] Only a very small proportion ([Confidential to Suncorp]) of ANZ's estimated synergies, relating to branch closures, could be realised by Suncorp Bank (under Suncorp Group) without the proposed acquisition.[315] The major component of cost savings result from the migration of Suncorp Bank customers to ANZ technologies and platforms, in circumstances where ANZ has already invested [Confidential to ANZ] in transforming its technology estate through ANZx — a simplified highly automated digital platform, which offers a lower incremental cost to serve Suncorp Bank customers compared with Suncorp Bank's [Confidential to Suncorp].[316] To achieve comparable efficiencies, [Confidential to Suncorp].[317] Technology transformation of this kind requires material time and cost and will be more expensive and difficult for

[304] 71925.034.001.1328 (First Higgins statement) at especially [15], [26],[34]-[38]; [55]-[60]; 71925.043.001.0250 (Second Higgins statement) at [6]; 71925.002.001.9787 (First Elliott statement) at [66].
[305] 71925.043.001.0250 (Second Higgins statement) at [7]-[8]; [Confidential to ANZ].
[306] 71925.043.001.0250 (Second Higgins statement) at [10], [80]
[307] 71925.002.001.9787 (First Elliott statement) at [70]; [Confidential to ANZ]; 71925.043.001.0250 (Second Higgins statement) at [14].
[308] 71925.034.001.1328 (First Higgins statement) at [67]-[68] and [88]-[90]; 71925.043.001.0250 (Second Higgins statement) at [10], [12], [19], c.f. 71925.043.001.0464 (Second Starks report) at [9.6].
[309] 71925.043.001.0250 (Second Higgins statement) at [11] and [18], referring to 71925.034.001.1328 (First Higgins statement) at [84]; 71925.034.001.1096 (Second Smith report) at [16]; c.f. 71925.040.001.0171 (First Starks report) at [10.11.2] and 71925.043.001.0464 (Second Starks report) at [9.4]-[9.5].
[310] 71925.034.001.1328 (First Higgins statement) at [83], [93]; 71925.043.001.0255 (Third Smith report) at [14]-[16].
[311] SML.0027.0001.0001 (Adam Bennett statement) at [17].
[312] 71925.043.001.0250 (Second Higgins statement) at [20]; 71925.043.001.0255 (Third Smith report) at [17].
[313] 71925.002.001.8725 (First Smith report) at [60]; 71925.043.001.0250 (Second Higgins statement) at [16]; c.f. 71925.040.001.0171 (First Starks report) at [10]-[11] and 71925.043.001.0464 (Second Starks report) at [9.3].
[314] 71925.002.001.8725 (First Smith report) at [11], [12] [16], [36]-[58].
[315] 71925.002.001.8725 (First Smith report) at [14], [61]-[63]; 71925.043.001.0250 (Second Higgins statement) at [16].
[316] 71925.043.001.0250 (Second Higgins statement) at [17]; 71925.002.002.1502 (Dalton statement) at especially at [100]-[101] and PJD-3, p 48; 71925.002.001.9787 (First Elliott statement) at [53], [76]; SML.0004.0001.0061 (First Johnston statement) at [32(d)], [75]-[76]; SML.0004.0001.0033 (First van Horen statement) at [127]; SML.0022.0001.0020 (Second van Horen statement) at [99].
[317] SML.0027.0001.0001 (Adam Bennett statement) at [12]-[14], [17(e)], [17(f)] and [21]; SML.0022.0001.0020 (Second van Horen statement) at [30].

Suncorp Bank alone because approximately [Confidential to Suncorp] of the costs are fixed and do not depend on scale.[318]

85. ***Savings likely to be passed through*** Almost all of the estimated synergies can be passed through to consumers in the form of higher quality offerings to Suncorp Bank customers, lower prices or better products to all customers, and further technological investment to improve the quality of services.[319] As matter of economic theory, pass-through is likely even in the absence of competition, but the competitive dynamics in home loans increase ANZ's incentives to pass on cost savings to consumers in form of lower prices or in higher quality services (such as further investment in improving turnaround times).[320] Costs savings not passed on to customers will be retained and benefit ANZ's shareholders, which also constitutes a public benefit.[321]

86. ***No comparable synergies achievable by Bendigo:*** There is no reliable evidence that demonstrates comparable synergies are likely to be achieved in the Bendigo merger counterfactual at all,[322] [Confidential to a third party], for the reasons set out in Suncorp Bank's submissions. [Confidential to a third party].[323] [Confidential to a third party] and, to the contrary, [Confidential to a third party].[324] In those circumstances, it is highly unlikely Bendigo would be able to achieve comparable integration synergies sooner than ANZ.

Prudential safety benefits

87. The proposed acquisition will improve the prudential safety of Suncorp Bank, by subjecting it to the capital requirements of a domestic systemically important bank (**D-SIB**) and thereby benefit Suncorp Bank depositors, and taxpayers and the broader public more generally.[325] All banks need to hold a minimum level of capital under APRA's prudential regulations but D-SIBs are required by APRA to hold additional capital, and to meet a higher "unquestionably strong" capital benchmark compared to other banks.[326] The enhanced capital requirements for D-SIBs are intended to reduce their probability of failure compared to non-systemic institutions, as well as to avoid the possibility that any direct costs of support may be borne by taxpayers. In the future with the proposed acquisition, prudential safety is increased in the following ways.

88. ***Increased safety and soundness of Suncorp Bank***: As a result of the proposed acquisition, ANZ will be required to hold additional capital against Suncorp Bank's assets to comply with prudential safety requirements. Dr Carmichael finds that by subjecting Suncorp Bank assets to those greater capital adequacy requirements (increasing its risk-weighted capital ratio by almost 60%), the proposed acquisition will reduce the probability of failure by a substantial amount, to a negligible level, representing a material public benefit to Suncorp Bank's depositors in terms of the increased safety and soundness of their deposits.[327] Further, Suncorp Bank's safety and soundness would be strengthened through more intensive supervisory oversight of its activities, greater access to wholesale funding, efficiencies and cost savings, applying ANZ's stronger risk management

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318 SML.0027.0001.0001 (Adam Bennett statement) at [17(a)], [19]-[20]; 71925.002.001.9787 (First Elliott statement) at [20]-[26]; 71925.034.001.1622 (Second Elliott statement) at [47]; 71925.002.002.1502 (Dalton statement) at [30]-[44] and [102]-[110], [113].

319 71925.002.001.8725 (First Smith report) at [10], [17], [75]-[80]; 71925.034.001.1096 (Second Smith report) at [10]-[18], [26], [28], [48]-[60]; 71925.043.001.0255 (Third Smith report) at [11]-[17]; First and 71925.043.001.0250 (Second Higgins statement); 71925.034.001.1622 (Second Elliott statement) at [109]-[111].

320 71925.002.001.8725 (First Smith report) at [79], [80] and [98(b)]; 71925.034.001.1096 (Second Smith report) at [26]; [48]-[60].

321 71925.047.001.1814 (ACCC Decision) at [7.57].

322 71925.002.001.8725 (First Smith report) at [60], 71925.034.001.1096 (Second Smith report) at [49].

323 71925.047.001.1814 (ACCC Decision) at [7.56].

324 [Confidential to a third party]; see also [Confidential to a third party].

325 71925.002.001.8706 (First Carmichael report); 71925.034.001.1142 (Second Carmichael reports).

326 71925.034.001.1142 (Second Carmichael report) at [2.15].

327 71925.002.001.8706 (First Carmichael report) at s 2.3, 3; 71925.034.001.1142 (Second Carmichael report) at [2.12], [2.16].

techniques and systems to Suncorp Bank's assets and from diversification benefits associated with integrating Suncorp Bank's assets into the merged entity's more diversified portfolio of loans.[328]

89. ***Reduction in residual systemic risk:*** The increased safety and soundness of Suncorp Bank will reduce net systemic risk of the Australian financial system, reducing the risk of systemic disruption and the probability that taxpayers will be called on to support Suncorp Bank. [329] Dr Carmichael finds that residual systemic risk is reduced, to the substantial benefit of the broader community, particularly when compared to the Bendigo merger counterfactual.[330] A merged Bendigo/ Suncorp Bank would decrease prudential safety because the merger would increase underlying systemic risk (by increasing size of merged entity), without any corresponding mitigation through a change in capital adequacy requirements (in contrast to a merged ANZ/Suncorp Bank).[331] Dr Carmichael rejects the argument that the increased capital adequacy requirements merely offset the increase in systemic risk posed by an enlarged ANZ: he estimates that given the relatively small increase in size of the merged entity, and offsetting the increase in capital adequacy requirements against the increased risk, the proposed acquisition results in a net positive impact on system stability (although the precise extent of the net benefit is impossible to estimate with any degree of precision).[332]

90. These benefits are not theoretical: although the likelihood of bank failure may be small, the likelihood of severe stress periods is greater and the risk of Suncorp Bank facing challenges during these periods (including access to credit markets) is not immaterial.[333] Ms Starks agrees that it is reasonable to treat any material reduction in the risk of bank failure as a significant public benefit.[334]

Increase in major bank levy

91. The major bank levy applies to ADIs with liabilities over $100 billion, and is an annual tax of 6 basis points on those ADIs' liabilities. ANZ is currently subject to the levy; Suncorp Bank is not (and is unlikely to be if it remains owned by Suncorp Group). The proposed acquisition will result in Suncorp Bank's liabilities becoming liabilities of the combined business, increasing ANZ's contributions to the levy by around $24 million per year.[335] Amounts raised through the major bank levy form part of the Government's consolidated revenue, leaving the expenditure of the levy at the Government's discretion. The availability of additional funds to Government for uses beneficial to the public constitutes a public benefit. The levy is not merely offsetting an increase in systemic risk (which is addressed via APRA's capital requirements for D-SIBs, in the case of the proposed acquisition) and to the extent it is not, there is no dispute that this represents a public benefit.[336]

92. Even if Bendigo/Suncorp Bank became subject to the major bank levy, this would be a disproportionately large cost for the merged entity, compared with ANZ, which is likely to affect its competitiveness adversely. Whether any major bank levy payable by a merged Bendigo/Suncorp Bank would offset the increased systemic risk created by the combination is uncertain.

Queensland benefits

93. After the Applicants entered into the SSPA, and to satisfy the condition precedent in the SSPA requiring the amendment of the Metway-Merger Act so that it ceases to apply to Suncorp Bank, ANZ entered into an Implementation Agreement with the State of Queensland under which it made

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328 71925.002.001.8706 (First Carmichael report) at ss 2.5, 3.
329 71925.002.001.8706 (First Carmichael report) at, sections 2.4 and 3.
330 71925.002.001.8706 (First Carmichael report) at [2.6], [3]; 71925.034.001.1142 (Second Carmichael report) at [2.16], [2.17].
331 71925.034.001.1142 (Second Carmichael report) at, [3.8].
332 71925.002.001.8706 (First Carmichael report) at section 2.4; 71925.034.001.1142 (Second Carmichael report) at [2.20], [3.4]. Ms Starks accepts that "increasing ANZ's size by 7% should not significantly increase systemic risk" (71925.043.001.0464 (Second Starks report) at [9.17]).
333 Second Ali report [24], [58]-[64]; see also SML.0022.0001.0020 (Second van Horen statement) at [18]-[19].
334 71925.040.001.0171 (First Starks report) at [10.54].
335 71925.002.001.0596 (ANZ Application) at [8.71].
336 71925.047.001.1814 (ACCC Decision) at [7.89]-[7.90].

substantial commitments to benefit Queenslanders and the Queensland economy, aligned with the State of Queensland's priorities and policies (the **Queensland commitments**), including to:[337]

(a) allocate $15 billion of new lending for certain renewable projects and $10 billion of new lending for energy projects, particularly those targeting bioenergy and hydrogen, in Queensland over 10 years ([Confidential to ANZ]), $10 billion of new lending for SME in Queensland over three years, and $350 million of new lending to support affordable housing projects [Confidential to ANZ] schemes in Queensland over five years (the **lending commitments**);

(b) [Confidential to ANZ];

(c) establish a tech hub in Brisbane (Tech Hub) for technology specialists in digital, cloud and data, and hire or place 700 individuals into the Tech Hub over five years, which has been estimated to contribute $621 million in GDP and support 2,925 jobs (with (b), the **employment commitments**); and

(d) establish partnerships with two Queensland universities to support development of technology skills in banking and finance and contribute at least $2.5 million to each university over a five year period (the **investment commitments**).

94. ***The benefits are merger-specific and certain:*** The benefits of the Queensland commitments are merger-specific because ANZ would not make the Queensland commitments absent the proposed acquisition.[338] The benefits cannot be discounted on the basis that, absent the proposed acquisition, it is likely ANZ or other banks would take advantage of profitable lending or investment opportunities in Queensland.[339] [Confidential to ANZ][340] But the very point of the lending and other Queensland commitments is that ANZ is bound to give effect to them regardless of whether there is economic benefit to be obtained. The Queensland commitments [Confidential to ANZ].[341] Under the Implementation Agreement, ANZ is subject to self-reporting obligations and the State of Queensland may seek monetary compensation for loss resulting from any breach or failure to fulfil a commitment, or mandatory injunctive relief to compel performance of the commitment.[342]

95. The question identified by the ACCC — as to whether a commitment to a State that results in correlative detriments in other States of Territories can be considered a public benefit — does not arise:[343] the Queensland benefits do not create correlative detriments in other States or Territories or constrain ANZ's capacity to make investments or lend funds elsewhere.[344]

96. ***The benefits are a likely result of the conduct for which authorisation is sought:*** The Queensland commitments are causally connected to (and not merely coincident with) the conduct for which authorisation is sought, being the conduct specified in the SSPA. The commitments are a necessary and likely consequence of that conduct, and therefore amount to a likely result of the proposed acquisition for the purposes of assessing whether the criteria in s 90(7) of the CCA are satisfied, consistently with the Tribunal's decision in *Telstra TPG No 1*.[345] Although the benefits result immediately from the Implementation Agreement, the Implementation Agreement results from the conduct for which the Applicants seek authorisation in the SSPA. The SSPA and Implementation Agreement are not coincident agreements entered into as part of one commercial transaction. Rather,

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337 71925.034.001.1622 (Second Elliott statement) at [118], [121], [133]-[134] and 71925.034.001.1795 (SCE-14).
338 71925.002.001.9787 (First Elliott statement) at Part E; 71925.034.001.1622 (Second Elliott statement) at Part H, [115], [122], [126], [135] and 71925.042.001.0030 (Third Elliott statement) at [9].
339 ACCC SOFIC [55].
340 71925.002.001.9787 (First Elliott statement) at [82]-[83],[86], [88]-[89]; 71925.034.001.1622 (Second Elliott statement) at [122]-[130]; [Confidential to ANZ].
341 71925.047.001.1814 (ACCC Decision) at [7.104].
342 71925.002.001.9787 (First Elliott statement) at [84]-[85].
343 ACCC SOFIC [54(b)].
344 See e.g. 71925.034.001.1622 (Second Elliott statement) at [124], [130].
345 C.f. Bendigo SOFIC [19(d)].

the Implementation Agreement was entered into after the SSPA was executed on 18 July 2022, as contemplated in the SSPA for the purposes of satisfying the condition precedent in the SSPA by bringing about the State of Queensland's commitment to amend the Metway Merger Act.[346] The Implementation Agreement is conditional on the proposed acquisition completing and, if it does, cannot be terminated by ANZ or Suncorp Group. The effects of the Implementation Agreement are thus properly to be considered effects or results of the proposed acquisition.

No meaningful competitive detriments would be likely to result from the proposed acquisition

97. Any lessening of competition in the supply of home loans, or the supply of banking products and services to business customers (including SME and agribusiness customers) would not be meaningful for the reasons identified in Parts D, E and F. There is no dispute that the proposed acquisition would not be likely to substantially lessen competition in retail deposits, and to the extent there is any public detriment in that market from a loss of competition, it would not be meaningful.

98. The Tribunal should reject the Commission's contention that the proposed acquisition creates a meaningful competitive detriment by removing an attractive acquisition target for existing smaller banks to build scale and better compete with larger banks and thereby entrench an existing oligopoly. Each of the relevant markets is competitive and the evidence does not establish an existing oligopoly comprising ANZ and other major banks in any relevant market (a conclusion apparently not disputed by the ACCC at least in respect of agribusiness banking and SME banking). In each of those markets, meaningful scale may be helpful, but is not necessary for effective competition, as evidenced by effective competition from smaller players who have achieved organic growth in the relevant markets — including Macquarie in home loans, Rabobank in agribusiness and Judo Bank in SME and agribusiness. It is not disputed that there is no minimum efficient scale to compete.[347] As the ACCC accepts, smaller banks are effective non-price competitors in the absence of scale (and the ACCC does not suggest that the scale achievable in the Bendigo merger counterfactual will be sufficient to compete other than on non-price aspects of competition).[348]

99. In any event, there are other second-tier banks of similar scale to Suncorp Bank[349] and as explained above there is no evident reason why an opportunity to acquire scale is not available through other combinations of Bendigo, BOQ, ING or other smaller banks (just as BOQ has done previously, when it acquired ME Bank as part of its strategy to be a customer-centric alternative to major banks).[350] The fact that the proposed acquisition is particularly attractive and complementary for ANZ does not make it the only available or attractive opportunity for other banks.[351] There is no inconsistency in this position: rather it reflects in part the different capital and technology requirements of ANZ and other larger banks, and their different competitive focus.[352]

100. Finally, as the ACCC conceded, its assessment of the competitive effect of the proposed acquisition in the relevant markets, and the alleged detriments arising in the Australian banking industry, are overlapping.[353] For the reasons outlined above, to the extent the alleged detriments are considered detriments at all, the Tribunal ought properly to consider them as arising in respect of particular markets and as such, no additional detriments arise for consideration under the public benefits test.

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346 SSPA, cl. 2.1(c), cl. 2.6, Sch. 17 (Part A); 71925.043.001.0582 (Fourth Johnston statement) at [7]-[16]; 71925.034.001.1622 (Second Elliott statement) at [113].
347 71925.047.001.1814 (ACCC Decision) at [4.87].
348 71925.047.001.1814 (ACCC Decision) at [7.119]-[7.120].
349 71925.047.001.1814 (ACCC Decision) at [7.128]-[7.129].
350 NAB.0001.0001.3336 (NAB FY22-FY26 strategic plan) at p 8.
351 [Confidential to ANZ].
352 71925.047.001.1814 (ACCC Decision) at [5.28]-[5.29], [7.127].
353 71925.047.001.1814 (ACCC Decision) at [7.154].

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