NOTICE OF LODGMENT

AUSTRALIAN COMPETITION TRIBUNAL

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

Lodgment and Details

Document Lodged:	Concise Statement of Facts, Issues and Contentions
File Number:	ACT 1 of 2023
File Title:	APPLICATIONS BY AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED AND SUNCORP GROUP LIMITED

REGISTRAR

Dated: 22/09/2023 5:06 PM

Important information

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

Commonwealth of Australia

Competition and Consumer Act 2010

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2023

Re: Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited

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

Intervener: Bendigo and Adelaide Bank Limited

CONCISE STATEMENT OF FACTS, ISSUES AND CONTENTIONS

BENDIGO AND ADELAIDE BANK LIMITED

Note: Unless the context required, this concise statement of facts, issues and contentions adopts the defined terms as set out in the concise statements of facts, issues and contentions dated 8 September 2023 filed by ANZ and Suncorp Group.

A. KEY FACTS RELEVANT TO THE APPLICATION

1. Bendigo is an Australian, ASX-listed authorised deposit-taking institution headquartered in Bendigo, Victoria. Established in 1858, Bendigo provides retail banking services to over 2.3 million customers through its 443 branches across Australia.

2. Bendigo's retail banking business is spread across two customer-facing divisions:

   (a) the **Consumer Division** focuses on servicing consumer customers through lending and deposit products as well as credit cards, insurance, investment and superannuation products. The Consumer division includes Bendigo's branch network (including Community Banks), third party banking (including broker distribution), Up digital banking app, Homesafe and customer support functions. Bendigo also provides home loans through its partnership with tic:toc Online Pty Ltd (tic:toc), Australia's first fully digital lending platform launched in 2017; and

   (b) the **Business and Agribusiness Division** services business customers, with a particular focus on SMEs who are seeking a relationship banking experience, and includes all banking services provided to agriculture-based business (**agribusiness**), rural and regional Australian communities through the Rural Bank brand.

3. As at May 2023, the Major Banks account for around 72% of reported banking system assets in Australia (CBA 21%, Westpac 19%, NAB 18%, ANZ 13%). Second-tier banks such as Suncorp Bank and Bendigo, which each have a share of greater than 1% of banking system assets, collectively account for close to 14% of reported banking system assets. Bendigo has the seventh largest proportion of banking system assets (2.04%) and Suncorp Bank has the ninth largest proportion (1.75%). As at late 2022, the Major Banks collectively had around 75% market share in home loans nationally (CBA 26%, Westpac 21%, NAB 15%, ANZ 13%). Bendigo had the sixth largest market share (2.8%) and Suncorp the ninth (2.3%).

B. ISSUES

4. Bendigo intends to make submissions on the following issues:

   (a) What are the relevant markets for the purposes of analysing whether the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition within the meaning of s 90(7) of the CCA? In particular, are there separate markets or market segments for the supply of banking services to agribusiness customers, and is the geographic scope of such market(s) or segment(s) local/regional, state-wide, or national?

(b) What are the relevant counterfactual(s) for considering the likely state of competition in the future without the proposed acquisition? In particular, is there a real chance that, absent the proposed acquisition, Bendigo would acquire or merge with Suncorp Bank (**Bendigo merger counterfactual**)?

(c) Whether a combined Bendigo-Suncorp Bank would or would likely be a more effective competitor compared to Bendigo's position in the likely future with the proposed acquisition?

(d) Should the Tribunal be satisfied, in all the circumstances, that the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition in the market for the supply of home loans and the relevant market(s) for the supply of banking services to agribusiness compared to the appropriate counterfactual(s), including the following sub-issues:

i. Whether coordination in the market for the supply of home loans would be more likely in the future with the proposed acquisition, and whether such coordination is likely to have a substantial effect on competition;

ii. Whether the proposed acquisition would result in removal of a vigorous and effective competitor in the agribusiness banking market, particularly in Queensland, and whether this would be likely to have a substantial effect on competition;

(e) Are certain of the benefits to the public claimed by ANZ and Suncorp Group to arise from the proposed acquisition merger-specific, or would they also arise in the Bendigo merger counterfactual?

(f) Would the public detriments arising from the proposed acquisition arise in the Bendigo merger counterfactual?

C. CONTENTIONS

Relevant markets

5. The relevant markets for assessing the competitive effects of the proposed acquisition include:

(a) the national market for the supply of home loans;[1]

[1] Bendigo understands the parties agree in relation to this being a relevant market for assessing the competitive effects of the proposed acquisition.

(b) local/regional markets for the supply of banking products and services to agribusiness customers, particularly those market(s) either fully or substantially located within Queensland.

6. There are other markets relevant to the Tribunal's assessment (including markets in which banking services are supplied to SME customers) but Bendigo intends only to make submissions about the markets in which home loans and agribusiness products and services are supplied.

7. There are local/regional markets for the supply of banking products and services to agribusiness customers, including because:

(a) In relation to the product dimension, both demand-side and supply-side substitution is limited, including because:

i. agribusiness customers demand specific agribusiness banking products (e.g. farm management deposit accounts) rather than general business banking products. More generally, agribusiness customers require a tailored set of banking products that provide long-term funding with flexibility (e.g. flexible repayment schedules and **[Confidential to Bendigo]** [redacted] to deal with cycles of farming and the volatility of agribusiness in Australia, particularly in respect of seasonal and regional conditions, international trade flows, commodity prices and natural disasters;

ii. agribusiness banking requires, and agribusiness customers demand, specialised knowledge and understanding of farm assets. The supply of agribusiness banking products and services requires dedicated and specialist agribusiness managers who understand the unique nature of farming businesses, which depend on the local area conditions and industry. Relatedly, the supply of agribusiness products and services is relationship-focused, with bankers engaging face-to-face with agribusiness customers at the customer's premises and offering bespoke terms and conditions, including pricing;

iii. many agribusiness customers would be unlikely to switch to general business banking products and services in response to a small but significant increase in price or reduction in quality (a **SSNIP**) due to the differences in agribusiness products and services. On the supply side, banks supplying broader business banking products and services are unlikely to be able to promptly redeploy assets and staff to the supply of specialised agribusiness products and services in response to a SSNIP.

(b) In relation to the geographic dimension, substitution occurs at a local or regional level (and no broader than state-wide, although a regional market may cross state borders), including because:

i. agribusiness customers demand relationships with specialised bankers who understand their local area conditions and industry; and

ii. agribusiness customers demand in-person meetings with their banker. This means geographic substitution is limited by the area able to be reasonably covered in person by a banker attending the customer's premises or a mutually agreeable proximate location.

8. In the absence of sufficiently granular detail to allow analysis of local/regional markets, assessing the competitive impact of the proposed acquisition on agribusiness banking markets by reference to a Queensland-wide market as a proxy for local or regional markets within the state is a reasonable approach as a matter of law and economics.

Bendigo merger counterfactual

9. There is a real chance that, in the future without the proposed acquisition, Bendigo would make an offer to acquire or merge with Suncorp Bank that would be accepted by Suncorp Group, including having regard to the following:

(a) Suncorp Group has strong incentives to separate its banking and insurance businesses;

(b) Suncorp Group's stated desire to divest Suncorp Bank and become a "pureplay insurer";

(c) Suncorp Group invested significant time and resources into considering a merger of Suncorp Bank with another regional bank, with specific reference to Bendigo. **[Confidential to Suncorp Group]** [redacted];

(d) Bendigo has strong incentives to merge with Suncorp Bank in order to increase its scale and improve its competitiveness (see paragraph 10 below);

(e) Bendigo's interest in Suncorp Bank is not speculative, opportunistic or lacking detail. Prior to the announcement of the proposed acquisition, Bendigo was preparing to make an offer to merge with Suncorp Bank, had done significant work to ensure it was well-positioned to make a binding offer to acquire Suncorp Bank, and was seeking to engage substantively with Suncorp Group to make such an offer;

(f) Bendigo would or would likely have access to adequate funding to make a binding offer, **[Confidential to Bendigo]** [redacted];

(g) Bendigo's offer would or would likely be compelling. A Bendigo-Suncorp Bank merger would be value accretive to both Bendigo and Suncorp Group shareholders, and the merged Bendigo-Suncorp Bank would have significant synergies. **[Confidential to Bendigo]** [redacted];

(h) Bendigo would be able to operate and successfully integrate the Suncorp Bank business viably and sustainability. Bendigo has a strong record of successful integration of acquisitions, including integration of technology platforms. Bendigo has the ability to successfully and efficiently integrate Suncorp Bank with Bendigo **[Confidential to Bendigo]** [redacted]. Any risks arising from integration of Suncorp Bank and Bendigo are not prohibitively greater than the risks of any bank integration (such as the proposed acquisition) and do not outweigh the commercial incentives for Bendigo and Suncorp Bank to merge in the future without the proposed acquisition; and

(i) there are no insurmountable execution risks.

Bendigo-Suncorp Bank would be a more effective competitor

10. Major Banks have a significant scale advantage over smaller banks, including in relation to operational cost efficiency and cost of funding. This makes it harder for smaller banks to compete with Major Banks on price.

11. A merged Bendigo-Suncorp Bank would or would likely (in comparison to the likely future with the proposed acquisition): more aggressively challenge the Major Banks across all dimensions of competition, including price, service and innovation; be better placed to increase its market share; provide a stronger regional bank alternative for consumers; and trigger a stronger competitive response from the Major Banks.

12. Acquisition of Suncorp Bank would effectively allow Bendigo to double its current size. The Bendigo-Suncorp merger, and in particular this significant increase in scale, would or would likely materially enhance Bendigo's competitiveness, including by:

(a) achieving costs efficiencies from synergies, thereby reducing its proportion of operating costs;

(b) enabling increased investment in innovation and technology, accelerating the delivery of Bendigo's digital capabilities, including from its reduced proportion of operating costs and by **[Confidential to Bendigo]** [redacted];

(c) increasing Bendigo's ability to reach customers, **[Confidential to Bendigo]** [redacted];

(d) attracting increased deposit funding;

(e) providing a real chance of an upgrade to Bendigo's credit rating through the increased scale and revenue base gained by acquiring Suncorp Bank, which will assist in reducing Bendigo's cost of funding. **[Confidential to Bendigo]** [redacted];

(f) **[Confidential to Bendigo]** [redacted];

(g) providing a real chance of a merged Bendigo-Suncorp Bank gaining IRB accreditation from APRA, which would allow Bendigo to maintain (on average) a lower level of regulatory capital. **[Confidential to Bendigo]** [redacted]. IRB accreditation would also have greater benefits to a merged Bendigo-Suncorp Bank compared to a standalone Bendigo.

13. By contrast to the likely future with the Bendigo -Suncorp Bank counterfactual, the proposed acquisition would or would likely hinder Bendigo's ability to compete, including because the proposed acquisition would or would likely:

(a) further increase the concentration of the Major Banks, increasing the market power of ANZ-Suncorp Bank and the likelihood of coordinated effects, and further exacerbate the scale disparity between the Major Banks and Bendigo;

(b) remove the real chance for Bendigo to acquire significant scale, and the associated competitive benefits, through a merger with Suncorp Bank. There are significant structural impediments which inhibit smaller banks like Bendigo from achieving scale organically.

Likely effect of the proposed acquisition on competition in the national home loans market

14. The Tribunal should not be satisfied that the proposed acquisition would not have the effect, or not be likely to have the effect, of substantially lessening competition in the national home loans market.

15. Coordinated conduct arises where a small number of businesses recognise their ongoing strategic interdependence and moderate their individual levels of competition in order to raise both the overall level, and their share, of total profitability, rather than engaging in vigorous competition.

16. Coordination between the Major Banks is more likely in the future with the proposed acquisition, by comparison to the likely future without the proposed acquisition, including because:

(a) the Major Banks dominate the home loans market with approximately 75% market share, and exhibit oligopolistic behaviour;

(b) the concentrated structure of the Australian banking industry, with a small number of Major Banks interacting repeatedly over time, is conducive to coordinated conduct by these banks in the home loans market;

(c) as the smallest Major Bank by market share and proportion of banking assets, who has seen declines in market share in home loans in recent years, ANZ currently has, and will in the future without the proposed acquisition have, stronger incentives to compete harder than the other Major Banks and lower incentives to engage in coordination. Without the proposed acquisition, and particularly under the Bendigo merger counterfactual, it is likely that existing coordinated conduct will become more unstable over time and that active competition would break out between the Major Banks;

(d) the proposed acquisition would allow ANZ to “buy market share” and arrest its decline in home loans market share that has occurred since 2017. In contrast, in the future without the proposed acquisition, ANZ would or would likely seek to win back its lost market share through competition in the market. The proposed acquisition would reduce ANZ’s incentives to arrest its declining market share in home loans through competition;

(e) switching costs and barriers to entry are high, supporting coordinated conduct in the market;

(f) symmetry between firms, including in relation to market shares, costs and product design, makes coordination easier to achieve and sustain. The proposed acquisition would result in increased symmetry between the Major Banks, including because it would:

   i. reduce asymmetry in the Major Banks' market shares by "closing the gap" between ANZ's market share (currently 13%, post-acquisition 15%) and the other Major Banks (15%, 22% and 26%). This would increase ANZ's incentives to initiate and/or sustain coordination as it would have less to gain from deviating from cooperation;

   ii. reduce asymmetry between ANZ's funding base and the other Major Banks. This would impact on the way ANZ competes to maintain and grow market share in the home loans market. This would further align ANZ's incentives with the Major Banks, and increase ANZ's incentives to coordinate;

   iii. further increase ANZ's focus towards domestic retail banking, bringing it into closer alignment with the other Major Banks. The proposed acquisition would make ANZ's income and profits more dependent on market conditions in Australia, which would increase its incentives to coordinate with the Major Banks in relation to home loans;

(g) a merged Bendigo-Suncorp Bank would strengthen and diversify the competition in the home loans market by creating a mid-tier bank of significant scale that, together with Macquarie Bank, would create significant competitive tension in the market. This would result in ANZ having stronger incentives to compete with the other Major Banks. A merged Bendigo-Suncorp Bank would also be likely to attenuate the ability and incentives of all of the Major Banks to engage in or sustain coordination in relation to home loans more effectively than Bendigo as a standalone entity; and

(h) the increased likelihood of coordination in the home loans market in the future with the proposed acquisition, in comparison to the likely future without the proposed acquisition, would or would likely substantially lessen competition, having regard to the dominant market share of the Major Banks in home loans, the Major Banks' significant scale and costs advantages, and the high barriers to entry and expansion in the market.

Likely effect of the proposed acquisition on competition in the agribusiness markets

17. The Tribunal should not be satisfied that the proposed acquisition would not have the effect, or not be likely to have the effect, of substantially lessening competition in the local, regional or Queensland-wide markets for the supply of banking products and services to agribusiness customers, including because:

(a) there is significant overlap in ANZ and Suncorp Bank's agribusiness banking operations in Queensland. ANZ and Suncorp Bank are competitors across a broad range of agribusiness customers and are particularly close competitors for small to medium agribusiness customers in certain areas of regional Queensland;

(b) the proposed acquisition would remove Suncorp Bank as a vigorous and effective competitor in agribusiness banking, particularly in Queensland and for smaller agribusiness customers. Suncorp Bank has a strong local presence and reputation in agribusiness banking in Queensland and imposes an important competitive constraint on ANZ and other suppliers of agribusiness banking products in Queensland. Suncorp Bank has a differentiated offering, including on price and non-price factors such as customer service and its ability and willingness to serve non-standard agribusiness needs. If ANZ acquires Suncorp Bank, ANZ would likely align Suncorp Bank's relationship model for agribusiness customers with its own. ANZ has strong incentives to do so and little incentive to maintain Suncorp Bank's specific relationship model and focus on service quality;

(c) the removal of Suncorp Bank is likely to result in worse competitive outcomes given the specific and diverse needs of agribusiness banking customers.

(d) a combined Bendigo-Suncorp Bank would or would likely impose a stronger competitive constraint than Bendigo and Suncorp Bank would individually impose in agribusiness banking markets in Queensland;

(e) brokers have not been widely used in agribusiness banking and therefore have a limited effect on stimulating competition or customer switching;

(f) there are high switching costs for agribusiness customers, particularly where the customer holds multiple products with the same bank and has strong relationships with their bankers;

(g) barriers to entry are high and barriers to expansion are at least moderately high. Barriers to entry are high due to regulatory barriers, and barriers to both entry and expansions are high due to the need to recruit suitable bankers, invest in key resources such as premises and vehicles, establish relationships, reputation and trust with agribusiness customers, and demonstrate commitment to agribusiness and local communities. The proposed acquisition will further raise barriers to entry and expansion by further entrenching concentration among the Major Banks.

18. Even if agribusiness banking was a part of a single general business banking market, agribusiness banking would remain a significant segment of that broader market and the Tribunal should not be satisfied that the proposed acquisition would not be likely to substantially lessen competition in such a market.

Claimed public benefits are not merger-specific, and public detriments would not arise on the Bendigo merger counterfactual

19. The following claimed public benefits, to the extent the Tribunal accepts they are public benefits that should be taken into account under s 90(7)(b), are not specific to the proposed acquisition and would or would be likely to arise in the Bendigo merger counterfactual:

(a) any public benefits arising from divestment of Suncorp Bank allowing Suncorp Group to focus on its insurance business. If this is a public benefit, it would arise equally in the Bendigo merger counterfactual;

(b) any public benefits arising from synergies and efficiency gains. **[Confidential to BEN]** [redacted] in the Bendigo merger counterfactual;

(c) any public benefits arising from increased contributions to the major bank levy. This would also arise on the Bendigo merger counterfactual as, absent legislative change, a merged Bendigo-Suncorp Bank would also become liable to pay the major bank levy. This may result in a greater increase in total contributions to the major bank levy compared to the proposed acquisition as the combined Bendigo-Suncorp Bank's liabilities would become subject to the levy, and not just Suncorp Bank's;

(d) any benefits that may accrue to Queensland economy or Queenslanders arising from the Queensland Commitments. These benefits do not result from the proposed acquisition and, to the extent that they are profitable lending or other investment opportunities in Queensland, then it is likely that another bank would pursue them.

20. The following public detriments would or would likely arise from the proposed acquisition in comparison to the likely future in the Bendigo merger counterfactual:

(a) competitive harm in various markets in which ANZ and Suncorp Bank operate, including the markets for home loans and agribusiness banking; and

(b) harm to the Australian retail banking industry, including further entrenching the oligopoly market structure which is highly concentrated and dominated by the Major Banks, and removing the real chance for a second-tier bank such as Bendigo to bolster its ability to effectively challenge the major banks through a step-change in scale.

Webb Henderson

Nicholas De Young KC & Shipra Chordia

22 September 2023