

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



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

REGISTRAR

Dated: 8/09/2023 4:49 PM

Important information

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



COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2023

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

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

CONCISE STATEMENT OF FACTS, ISSUES AND CONTENTIONS

SUNCORP GROUP LIMITED

A. KEY FACTS

(1) ANZ

1. ANZ is an ASX-listed banking corporation and the smallest of Australia's four major banks – the other three "**Major Banks**" being Commonwealth Bank of Australia (**CBA**), National Australia Bank (**NAB**) and Westpac Banking Corporation (**WBC**).
2. ANZ supplies a broad range of banking products and services to retail and business customers in Australia and New Zealand, and to institutional customers globally. It operates six divisions:
 - (a) Australia Retail (providing banking services to retail customers across Australia);
 - (b) Australia Commercial (providing banking services to commercial and private banking customers across Australia);
 - (c) Institutional (providing banking services to institutional and business customers across Australia, New Zealand, Asia, Europe and America, including Papua New Guinea and the Middle East);
 - (d) Corporate Centre (which provides internal services to ANZ's organization globally);
 - (e) New Zealand (providing banking services to retail, commercial and private banking customers in New Zealand); and

(f) Pacific (providing banking services to retail, small to medium sized enterprises, institutional customers and governments located in the Pacific Islands).

3. As at the date of the Application, ANZ had approximately [Confidential to ANZ] [REDACTED] retail customers, [REDACTED] customers who are not individuals but hold retail banking products, and approximately [REDACTED] business customers, in Australia.

(2) Suncorp Group and Suncorp Bank

4. Suncorp Group is headquartered in Brisbane, Queensland, and operates in Australia and New Zealand only. It is an ASX-listed corporation that provides insurance and banking products and services in Australia and New Zealand. It has three core businesses:

(a) Insurance in Australia (providing a range of personal and commercial insurance products through a number of brands including AAMI, Suncorp Insurance, GIO and Apia);

(b) Banking (providing banking services to retail and business customers in Australia through Suncorp Bank). As at 30 June 2022, Suncorp Bank had approximately 1.2 million customers [Confidential to Suncorp] ([REDACTED] [REDACTED]); and

(c) Suncorp New Zealand (providing a range of personal and commercial insurance products to customers in New Zealand).

5. In Australia, as at September 2022, Suncorp Bank has approximately a 2.4% share of home lending. Its business banking services comprise four portfolios (commercial, small-to-medium enterprise (SME), property finance and agribusiness (which includes other regional customers)). Suncorp Bank has a less than 2% share of commercial banking products in Australia.

(3) The Proposed Acquisition

6. Pursuant to the SSPA between ANZ and Suncorp Group:

(a) ANZ proposes to acquire all of the issued share capital in Suncorp Holdings (which is the immediate holding entity for Suncorp Bank);

(b) ANZ proposes to acquire certain "Property Assets" (including leases and plant and equipment) held by other Suncorp Group entities, to facilitate the operation of Suncorp Bank; and

(c) among other things, Suncorp Group must procure Suncorp Bank and Suncorp Corporate Services Pty Ltd to execute a Transitional Trade Mark Licence Deed at least one business day prior to completion,

(together, the **Proposed Acquisition**).

7. The Proposed Acquisition is subject to three conditions precedent:
- (a) approval by the Federal Treasurer under the *Financial Sector (Shareholdings) Act 1998* (Cth);
 - (b) a final determination by the Australian Competition and Consumer Commission (**Commission**) or Australian Competition Tribunal (**Tribunal**) to authorize the Proposed Acquisition, or a declaration made by the Federal Court of Australia that the Proposed Acquisition would not contravene s 50 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (and subject to there being no lodgment of a relevant application for review of the declaration or a notice of appeal); and
 - (c) the *State Financial Institutions and Metway Merger Act 1996* (Qld) (**Metway Merger Act**) being either repealed or amended such that it does not apply to any holding company of Suncorp Bank or ANZ or its related bodies corporate, with reference to certain agreed amendments and agreed commitments to the Queensland Government set out in Schedule 17 to the SSPA (or as otherwise agreed between the parties and the Queensland Government).
8. ANZ's rationale for the Proposed Acquisition is that it will generate significant synergies and efficiencies for ANZ, and deliver significant benefits to the customers of ANZ and Suncorp Bank, than otherwise would occur in any appropriate counterfactual.
9. Suncorp Group's rationale for the Proposed Acquisition is that will generate significant efficiencies for Suncorp Group, and deliver greater value for shareholders of Suncorp Group than otherwise would occur in any appropriate counterfactual.

(4) The Queensland Commitments

10. ANZ and Suncorp Group have made the following commitments to the State of Queensland (together, the **Queensland Commitments**):
- (a) **[Confidential to ANZ]** [REDACTED], in order to satisfy part of a condition precedent relating to the *Metway Merger Act*, ANZ entered into an Implementation Agreement with the State of Queensland under which it committed to do the following upon completion of the Proposed Acquisition:
 - (i) **[Confidential to ANZ]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
 - (ii) **[Confidential to ANZ]** [REDACTED]
[REDACTED];

- (iii) 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, **[Confidential to ANZ]** [REDACTED]; and
 - (iv) establish partnerships with two Queensland universities to support development of technology skills in banking and finance **[Confidential to ANZ]** [REDACTED].
- (b) on 15 June 2023, in order to satisfy part of a condition precedent relating to the *Metway Merger Act*, Suncorp Group entered into an Implementation Agreement with the State of Queensland under which it committed to do the following upon completion of the Proposed Acquisition:
- (i) **[Confidential to Suncorp]** [REDACTED];
 - (ii) **[Confidential to Suncorp]** [REDACTED]; and
 - (iii) make various investments in Queensland including developing a disaster response centre of excellence in Brisbane employing more than 100 persons, spending \$12 million on an event control centre platform, maintain and grow its Disaster Response Team by 20 full-time positions (the value of this commitment is \$3 million), develop a Suncorp Regional Hub in Townsville and contribute at least \$3 million to community or educational initiatives specified by the State.

(5) The supply of home loans in Australia

11. The supply of home loans includes loans to finance purchasing residential property or refinancing, and includes investment property loans and new loans or refinancing to undertake renovations. In relation to the national market for the supply of home loans, further key facts relating to the supply of home loans are identified in the contentions below.

(6) The supply of commercial banking services

12. Suncorp Bank segments its business banking customers into four portfolios: commercial, SME, property finance and agribusiness (which includes other regional customers). Its portfolios are more strongly weighted to **[Confidential to Suncorp]** [REDACTED] than ANZ.
13. Further key facts relating to the supply of commercial banking services are identified in the contentions below with respect to SME and agribusiness banking.

(7) Retail deposits and credit cards

14. In relation to the supply of retail deposits and retail credit cards, it is unnecessary to assess these markets in detail, for the reasons described at paragraphs 34 and 35 below.

B. ISSUES

15. 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)(a) of the CCA (including whether SME banking services and/or agribusiness banking services form part of a broader business banking market, or whether they are supplied in separate State-based/region-based or national markets)?
16. What counterfactual(s) appropriately should be considered in assessing whether the criteria in s 90(7)(a) of the CCA are satisfied? In particular, in the future without the Proposed Acquisition, is there a real commercial likelihood that Bendigo and Adelaide Bank Limited (**Bendigo**) would acquire Suncorp Bank and become a materially more effective competitor?
17. Having regard to the appropriate counterfactual(s), would the Proposed Acquisition have the effect or likely effect of substantially lessening competition in any of the relevant markets within the meaning of s 90(7)(a) of the CCA? This raises the following key sub-issues:
- (a) In considering the likely competitive effect on the national market for home loans:
- (i) Is this market conducive to coordination between the Major Banks?
- (ii) Would the Proposed Acquisition increase the likelihood of coordination between the Major Banks being initiated and/or sustained relative to the appropriate counterfactual(s) in a manner that would have a meaningful competitive impact?
- (b) In considering the likely competitive effect on the relevant market in which banking products and services are supplied to SME customers relative to the appropriate counterfactual(s):
- (i) Is Suncorp Bank's offering materially differentiated?
- (ii) If so, would the removal of Suncorp Bank have a meaningful competitive effect, including in light of existing competitors and the threat of entry or expansion?
- (c) In considering the likely competitive effect on the relevant market in which banking products and services are supplied to agribusiness customers relative to the appropriate counterfactual(s):
- (i) Is Suncorp Bank's offering materially differentiated?
- (ii) If so, would the removal of Suncorp Bank have a meaningful competitive impact, including in light of existing competitors and the threat of entry or expansion?

18. Having regard to the appropriate counterfactual(s), would the Proposed Acquisition result, or be likely to result, in a benefit to the public that would outweigh any identified detriment to the public that would result, or be likely to result, from the Proposed Acquisition for the purposes of s 90(7)(b) of the CCA? This raises the following key sub-issues:
- (a) Would the ability of Suncorp Group to have a singular insurance focus if the Proposed Acquisition proceeds be a substantial, merger-specific benefit?
 - (b) Are the estimated cost synergies set out in the ANZ's application for merger authorization on 2 December 2022, pursuant to s 88(1) of the CCA (**Application**) and the further material provided to the ACCC substantial, sufficiently certain and merger-specific?
 - (c) Are the increased prudential safety benefits set out in the Application substantial, sufficiently certain and merger-specific?
 - (d) Are the lower funding costs and greater access to wholesale funding that Suncorp Bank would enjoy if the Proposed Acquisition proceeds substantial, sufficiently certain and merger-specific?
 - (e) Do the Queensland Commitments result from the Proposed Acquisition?
 - (f) If so, relative to the appropriate counterfactual(s), would the Queensland Commitments generate benefits that are substantial, sufficiently certain and merger-specific?
 - (g) What (if any) meaningful competitive detriments would be likely to result from the Proposed Acquisition?

C. CONTENTIONS

(1) Relevant markets

19. The key relevant markets for the purpose assessing whether the criteria in s 90(7) are satisfied are:
- (a) the national market for the supply of home loans;¹
 - (b) the national market for the supply of commercial banking products and services (which includes SME and agribusiness banking products and services). There is a national market for commercial banking products and services, which includes the supply of commercial banking products to SME and agribusiness, including because:
 - (i) with the exception of farm management deposit accounts (**FMDAs**), which are only offered to agribusiness customers given the terms on which FMDAs can be made available having regard to Division 393 of the *Income Tax Assessment Act 1997* (Cth) and Subdivision 398-A of the *Tax Administration Act 1953* (Cth), the banking products and services required by SME, agribusiness and other commercial

¹ ACCC Reasons [6.43].

customers are the same – i.e., it makes no difference whether the customer is categorised as an SME, agribusiness or commercial property customer;

- (ii) the same credit policy and pricing assessment framework applies to all of Suncorp Bank's business banking customers nationally, regardless of any differences in the profile or needs of agribusiness or SME customers. Pricing is also determined at a national level;
 - (iii) commercial banking products typically are administered using centralised IT systems, policies and procedures;
 - (iv) SME and agribusiness customers typically are managed in the same way as other commercial customers – all of Suncorp Bank's business banking customers (including its agribusiness customers) who have borrowings from Suncorp Bank are serviced via a relationship-focused model and agribusiness customers are not necessarily serviced by specialist agribusiness bankers;
 - (v) SME customers largely conduct banking remotely (via telephone and/or online), and relationship managers do not need to be based locally, even for agribusiness customers; and
 - (vi) personnel are recruited to work in Suncorp Bank's agribusiness portfolio based on their overall business banking technical competency, attitude and passion for the industry, rather than their technical knowledge, which Suncorp Bank builds once they are recruited.
20. Although the Commission assessed the competitive impact of the Proposed Acquisition on SME and agribusiness banking by reference to a separate Queensland market (as a proxy for local or regional markets) for the supply of SME banking products and services² and agribusiness banking products and services,³ this is not the objectively correct or preferable approach.
21. It is not necessary to assess in detail any other markets in which ANZ and Suncorp Bank overlap, such as the national market for the supply of retail deposits⁴ or the national market for the supply of credit cards. The Commission concluded correctly that the Proposed Acquisition would not be likely to substantially lessen competition in the retail deposits market,⁵ and otherwise did not consider it appropriate to analyse any other market.⁶
- (2) The Counterfactual**
22. In the future without the Proposed Acquisition, competition in the relevant markets would be likely to remain as it would in the *status quo* – that is, Suncorp Bank would continue to operate under the

² ACCC Reasons [6.438], [6.451] – [6.453].

³ ACCC Reasons [6.605], [6.627] – [6.628].

⁴ ACCC Reasons [6.295], [6.297].

⁵ ACCC Reasons [6.396].

⁶ ACCC Reasons [6.4].

ownership of Suncorp Group (the **Status Quo Counterfactual**). **[Confidential to Suncorp]**

[REDACTED]

23. In the future without the Proposed Acquisition, there is no realistic commercial likelihood that, in the relevant timeframe, Bendigo would acquire Suncorp Bank and become a materially more effective competitor than Suncorp Bank and/or Bendigo on their own (**Bendigo/Suncorp Bank Counterfactual**).

24. In particular, there is no realistic commercial likelihood that Bendigo would acquire Suncorp Bank, given that:

(a) any offer by Bendigo to acquire Suncorp Bank likely would be comprised wholly or mostly of Bendigo scrip, and, as a result:

- (i) Suncorp Group's board would need to consider the likely value of the merged Bendigo and Suncorp Bank before it could approve or recommend the sale; and
- (ii) Bendigo's shareholders would be required to approve the acquisition and would need to be provided with all of the information relevant to making that decision;

(b) the value of a merged Bendigo and Suncorp Bank likely would be adversely affected by significant funding cost dis-synergies (the S&P Global credit rating applied to Suncorp Bank would fall from A+ to **[Confidential to Suncorp]** [REDACTED] under Bendigo ownership);

(c) realising any synergies would be difficult, and more difficult than suggested by analyses prior to the current year, including because of difficulties in closing branches, reducing offices, or reducing headcount. In that regard, Bendigo likely would need to give the Queensland Government a commitment **[Confidential to ANZ]** [REDACTED] [REDACTED] and make other commitments to the Queensland Government equivalent to those provided by ANZ and Suncorp Group;

(d) Suncorp Group's board would not approve or recommend a sale to Bendigo unless the consideration offered exceeded Suncorp Bank's current value based on its present organic plan before factoring in the benefit from unwinding any conglomerate discount that presently applies to Suncorp Group's share price. **[Confidential to Suncorp]** [REDACTED]

[REDACTED]

(e) **[Confidential to Suncorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED];
- (f) in any event, Bendigo acquiring Suncorp Bank would be earnings dilutive for Bendigo shareholders if Suncorp Bank were sold at the multiples at which Bendigo trades. For a combined Bendigo-Suncorp bank to achieve earnings neutrality within the next 2 years, Suncorp Bank would need to be sold to Bendigo at a value which is significantly below this level, being significantly less than the value which would be delivered by way of the Proposed Acquisition or the value generated by way of Suncorp Group continuing to operate Suncorp Bank. An offer by Bendigo to acquire Suncorp Bank with a consideration that is equal to or exceeds Suncorp Bank's current value (calculated by reference to its present organic plan) would likely be significantly value dilutive for Bendigo's current shareholders, who therefore would be unlikely to approve the acquisition;
- (g) in addition, any potential acquisition of Suncorp Bank by Bendigo would face substantial, and likely insurmountable, execution risks both before and (if it proceeded that far) after completion. Such risks would include:
- (i) the need to obtain shareholder approval from Bendigo and possibly Suncorp Group shareholders;
 - (ii) the need to immediately procure replacement wholesale funding of approximately **[Confidential to Suncorp]** \$ [REDACTED] due to Suncorp Bank's lower credit rating once Suncorp Bank is no longer considered a core business of the Suncorp Group / under Bendigo ownership;
 - (iii) the ongoing higher funding costs that Suncorp Bank would face due to Suncorp Bank's lower credit rating under Bendigo ownership **[Confidential to Suncorp]** [REDACTED];
 - (iv) the need for Bendigo to undertake a **[Confidential to Suncorp]** [REDACTED] equity capital raising to cover total integration costs and ensure sufficient capital in the combined entity (and more if any of the consideration for acquiring Suncorp Bank were to be paid in cash);
 - (v) the difficulty, complexity and cost of integrating the different technology platforms presently operated by Bendigo and Suncorp Bank, and integrating the businesses more generally;
 - (vi) the complexity associated with negotiating a repeal of, or amendment to, the *Metway Merger Act*. This legislation requires that Suncorp Bank (and any holding company and subsidiary of it) locate its head office in Queensland and that its managing director be ordinarily resident in Queensland. A resolution purporting to change the articles of Suncorp Bank (and any holding company and subsidiary of

it) which is inconsistent with the Act has no effect. The Queensland Treasurer can also seek injunctive relief for relevant contraventions of the Act. As a consequence, unless an acquirer could negotiate the *Merger Metway Act* being relevantly repealed or amended, any proposed acquirer of Suncorp Bank would need to have its head office and its principal operational offices in Queensland, or relocate its offices to Queensland; and

(h) these execution risks also would need to be taken into account by Suncorp Group's board and likely would weigh heavily against approving or recommending the sale.

25. Further matters would weigh heavily against Suncorp Group's board approving or recommending the sale, **[Confidential to Suncorp]** [REDACTED]

26. Accordingly, for the purpose of assessing the criteria in s 90(7), only the Status Quo Counterfactual arises. That is, it is necessary only to compare the future with the Proposed Acquisition to the future without the Proposed Acquisition in which the *status quo* continues.

27. In addition, even if Bendigo were to acquire Suncorp Bank, it is unlikely that the combined bank would be materially more competitive than Bendigo and/or Suncorp Bank on their own (including with respect to home loans, SME banking and agribusiness banking), because:

- (a) Suncorp Bank would incur increased funding costs under Bendigo ownership **[Confidential to Suncorp]** [REDACTED];
- (b) the time, complexity and cost involved in integrating the technology platforms of each bank would hamper their ability to compete in the short to medium term; and
- (c) even with the additional scale brought about by acquiring Suncorp Bank, the combined bank still would be very small relative to the Major Banks and would be unlikely to be viewed as systemically important such that it would receive a credit rating uplift due to an implied government guarantee.

(3) No likely substantial lessening of competition in the national home loans market

28. The Proposed Acquisition is unlikely to have the effect of substantially lessening competition in the national home loans market, principally for the following reasons:

- (a) the national home loans market is intensely competitive with over 100 home loan providers and the Proposed Acquisition will not materially increase concentration;
- (b) more than half of all new home loans are originated by a mortgage broker, which reduces search costs for consumers and promotes competition between banks;

- (c) the Proposed Acquisition would only minimally increase concentration, with ANZ's national share increasing from 13.02% to 15.41% once combined with Suncorp Bank;
 - (d) Macquarie Bank is a particularly vigorous and effective competitor in the supply of home loans, having grown its national share from 0.49% in 2012 to 4.71% in July 2022, and likely will continue to be with and without the Proposed Acquisition;
 - (e) Suncorp Bank is no more competitive than other mid-tier banks in the supply of home loans (and not as effective as Macquarie Bank). It has not been a key driver of pricing, innovation or product development in the market. Instead, Suncorp Bank's significance as a competitor is commensurate with its relatively modest and static market position;
 - (f) ANZ and Suncorp Bank are not particularly close competitors in the supply of home loans, with Suncorp accounting for a very small proportion of lending refinanced to or from ANZ and with more lending refinanced from Suncorp to CBA, Westpac, Macquarie and NAB than to ANZ;
 - (g) there has been significant entry and expansion by new and innovative home loan providers, and barriers to entry and expansion are low; and
 - (h) the Major Banks have to innovate in order to respond to competition and innovation by other banks and fintechs in an increasingly digital market.
29. In relation to the likelihood of coordinated effects arising from the Proposed Acquisition, and contrary to the Commission's findings, it is not the case that:
- (a) the national home loan market is currently likely to be conducive to coordination;⁷
 - (b) the Proposed Acquisition would increase symmetry between the Major Banks with respect to their market share, funding base and level of domestic focus, and therefore increase their incentive to coordinate relative to the Status Quo Counterfactual;⁸ and/or
 - (c) if the Bendigo/Suncorp Bank Counterfactual is to be considered, a combined Bendigo/Suncorp Bank would strengthen and diversify the competitive fringe in a way that would decrease the incentive of the Major Banks to coordinate such that purported coordination effects would be even greater relative to the Bendigo/Suncorp Bank Counterfactual.⁹
30. The Proposed Acquisition would be unlikely to have the effect of substantially lessening competition in the national home loans market on the basis of coordinated effects, because:
- (a) strong competition in the national home loans market is not a recent or temporary phenomenon and has been present for a number of years. The sustained growth and

⁷ ACCC Reasons [6.255].

⁸ ACCC Reasons [6.261] – [6.265].

⁹ ACCC Reasons [6.268] – [6.270].

strength of brokers has underpinned this competition – this competition and the role of brokers is inconsistent with the market being conducive to coordination between the Major Banks;

- (b) with and without the Proposed Acquisition, there is no real commercial likelihood of coordination occurring between the Major Banks, because there are numerous providers of home loans operating throughout Australia, brokers commonly participate in arranging home loans, consumer switching friction is not substantial and discounting on a customer-by-customer basis makes home loan interest rates insufficiently transparent to the Major Banks for coordination to be initiated and sustained;
- (c) the Proposed Acquisition would not be likely to materially increase the level of symmetry between the Major Banks – in particular, the market shares of the Major Banks would remain asymmetric (and the Commission’s expert economist rejected this as a basis for finding increased likelihood of coordinated effects), the Major Banks differ on other attributes such as turnaround times and this would not change, the Major Banks have differing customer focuses and the relative size of their retail and business portfolios vary, and ANZ’s funding base (i.e., sourcing a greater proportion of its funding from retail deposits) and focus would not materially change; and
- (d) if the Bendigo/Suncorp Bank Counterfactual were to be considered (which it should not be for the reasons described at paragraphs 24 to 26 above), a combined Bendigo/Suncorp Bank in that scenario would not have any material impact on the prospect of coordination by the Major Banks.

(4) No likely substantial lessening of competition in any markets in Queensland for SME banking products and services

31. As stated above, SME and agribusiness banking form part of the same national commercial banking products market. In this market, the Proposed Acquisition is unlikely to have the effect of substantially lessening competition, principally because:

- (a) the Proposed Acquisition would only minimally increase concentration, with ANZ’s national share increasing by less than 5% (and in most products by less than 3%) once combined with Suncorp Bank;
- (b) ANZ and Suncorp Bank are not particularly close competitors, with Suncorp Bank predominantly focused on **[Confidential to Suncorp]** and ANZ losing the most volume to the Major Banks rather than other banks, let alone Suncorp; and
- (c) the commercial banking products market has experienced significant new entry and expansion in recent years, and barriers to entry and expansion in commercial banking products are low, including with respect to SME banking services.

32. If local or regional SME banking markets in Queensland are the correct markets for assessing the competitive effect of the Proposed Acquisition, the Proposed Acquisition would be unlikely to have the effect of substantially lessening competition in these markets, principally because:
- (a) it would not increase concentration in SME banking markets in Queensland to any substantial degree and there would remain many banks and other lenders competing to supply SME lending products in Queensland;
 - (b) none of the local areas in Queensland where ANZ and Suncorp Bank branches overlap would have fewer than four branches of competitor banks;
 - (c) there is growing competition from non-bank lenders and fintechs in SME banking, and brokers originate a significant and increasing proportion of new SME loans (as well as in agribusiness), which reduces customer search costs and promotes competition;
 - (d) **[Confidential to Suncorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
 - (e) ANZ and Suncorp Bank are not particularly close competitors in the supply of SME banking services, with each not featuring significantly in each other's refinancing switching data, and each targeting different segments of the SME market;
 - (f) even if Suncorp Bank's relationship-focused model for SME customers is valued by customers to an extent sufficient to create some material competitive advantage (which would not be accepted by the Tribunal), ANZ would have a strong incentive to retain those customers by maintaining that model and it would be irrational for ANZ to discontinue this (and thus unlikely that it would), so this relationship-managed offering would not be lost in the future with the Proposed Acquisition;
 - (g) further, Suncorp Bank's relationship-managed model is not unique and ANZ itself offers a relationship-managed service to its SME banking customers, with its service being comparatively "higher touch" compared with other Major Banks, so there is unlikely to be any material loss of relationship-managed services relative to the future without the Proposed Acquisition; and
 - (h) in any event, SME banking customers are increasingly demanding more digitally-oriented services in contrast to "bricks and mortar" or face-to-face banking services, which reduces any significance of the relationship-managed model.

(5) No likely substantial lessening of competition in any markets in Queensland for agribusiness banking products and services

33. If regional agribusiness banking markets in Queensland are the correct markets for assessing the competitive effect of the Proposed Acquisition, the Proposed Acquisition would be unlikely to have the effect of substantially lessening competition in these markets, principally because:

(a) there will remain a range of strong competitors in agribusiness banking in Queensland, including the Major Banks (NAB, CBA and Westpac), Rabobank and other mid-tier banks including Bank of Queensland, Rural Bank and Judo Bank, brokers drive material amounts of competition in agribusiness banking, and agribusiness customers can and do switch banks;

(b) **[Confidential to Suncorp]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

(c) ANZ and Suncorp Bank are not particularly close competitors, with Suncorp Bank predominantly focused on customers with agribusiness lending **[Confidential to Suncorp]** [REDACTED] and ANZ less focused on small agribusiness customers and more focused on larger agribusiness customers;

(d) in towns where ANZ and Suncorp Bank overlap, there would continue to be at least three other banks supplying agribusiness banking products in each of these locations, and the two towns which will not have a regional or second-tier bank are both within reasonable drive times of other larger towns with more competitors;

(e) to the extent to which Suncorp Bank is seen as a competitor to other banks, this will continue with the Proposed Acquisition;

(f) while Suncorp Bank offers its customers a relationship-based agribusiness banking service, this is not unique to Suncorp Bank, and ANZ offers a relationship-based model for customers with total business limits of **[Confidential to ANZ]** [REDACTED] [REDACTED] – so relationship-based agribusiness banking will not be lost in the future with the Proposed Acquisition;

(g) in any event, going forward Suncorp Bank will generally **[Confidential to Suncorp]** [REDACTED]
[REDACTED] and

- (h) barriers to entry and expansion for existing banks are not high, because servicing agribusiness customers depends more on agribusiness bankers who are able to service the relevant region as opposed to a physical branch.

(6) No likely substantial lessening of competition in any other markets

34. The Proposed Acquisition is unlikely to have the effect of substantially lessening competition in the national retail deposits market, whether based on either unilateral effects or coordinated effects,¹⁰ because:

- (a) the market for deposit products is not concentrated and the proposed acquisition will result in a *de minimis* increase in market concentration;
- (b) Suncorp Bank **[Confidential to Suncorp]** ██████████ ██████████ in the supply of deposit products;
- (c) Suncorp Bank is not a particularly close competitor to ANZ in the supply of deposit products;
- (d) switching and multi-banking is common and increasingly easy, and the differences between banks have reduced, including because the Australian Government guarantee for deposits under \$250,000 makes switching to smaller banks safe; and
- (e) there is a credible prospect of effective entry and expansion which will competitively constrain the combined business if the Proposed Acquisition were to proceed.

35. The Proposed Acquisition is also unlikely to have the effect of substantially lessening competition in the national credit card market because Suncorp Bank is not a supplier of credit cards (i.e., Suncorp Bank merely distributes NAB-issued white-labelled credit cards).

(7) The Proposed Acquisition is likely to result in public benefits that would outweigh any public detriments

36. The Proposed Acquisition would be likely to result in substantial public benefits relative to the appropriate counterfactual, principally including the following benefits.

37. First, by divesting Suncorp Bank, Suncorp Group would be able to have singular focus on its insurance business and **[Confidential to Suncorp]** ██████████ ██████████. This would be likely to generate operational efficiencies and assist Suncorp Group to meet increasing risks and challenges in providing insurance, thereby enabling it to better meet the needs of its insurance customers.

38. Second, by combining Suncorp Bank with ANZ, ANZ would be required to hold additional capital against Suncorp Bank's assets to comply with prudential safety requirements. This increase in

¹⁰ ACCC Reasons [6.366], [6.395].

capital adequacy would be likely to amount to a material public benefit to depositors in Suncorp Bank in terms of the increased safety and soundness of their deposits, and to the public more generally through reduced systemic risk. The Proposed Acquisition will also increase ANZ's major bank levy payments, because Suncorp Bank's liabilities would become subject to that levy. This represents a public benefit because it is not merely offsetting an increase in systemic risk.

39. Third, the Proposed Acquisition would result in Suncorp Bank benefiting from ANZ's higher credit rating (S&P Global "AA" versus its current "A+" rating under Suncorp Group). This would be likely to reduce Suncorp Bank's wholesale funding cost to a substantial degree and constitutes a productive efficiency. This cost saving would be unlikely to be materially offset by any increased Major Bank Levy that ANZ would pay based on adding Suncorp Bank's assets, or by any higher capital requirements or greater systemic risk.
40. Fourth, the Proposed Acquisition would be likely to result in cost synergies for ANZ with a net present value of approximately **[Confidential to ANZ]** \$ [REDACTED] after accounting for integration costs and Suncorp Group's additional separation costs. These cost synergies are likely to result from a combination of eliminating duplicative project spend, technology rationalisation, eliminating duplicate roles, improvements to processes, particularly through increased automation, and branch closures.
41. Fifth, the Queensland Commitments would be likely to result in material public benefits to the State of Queensland that otherwise would not be likely to occur. For example:
- (a) The disaster recovery centre and employment commitments given by Suncorp Group were made possible only because of the size of the consideration to be paid by ANZ for Suncorp Bank. Suncorp Group would not, and would not be able to, pursue these initiatives in the same way or to the same extent in the Status Quo Counterfactual or the Bendigo/Suncorp Bank Counterfactual;
 - (b) **[Confidential to ANZ]** [REDACTED]
[REDACTED]; and
 - (c) The Tech Hub commitment given by ANZ has been estimated to potentially contribute **[Confidential to ANZ]** \$ [REDACTED] ANZ would not have committed to establishing such a Tech Hub in Queensland without the Proposed Acquisition. Nor would ANZ be likely to engage **[Confidential to ANZ]** [REDACTED].
42. The Queensland Commitments are causally connected to (and not merely coincident with) the Proposed Acquisition. They are a necessary and likely consequence of the Proposed Acquisition, 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. In this respect:

44. The Commission concluded that the Proposed Acquisition would be likely to result in two detriments to the public:
- (a) the detriment arising from a lessening of competition it had identified in markets for home lending, retail deposits, SME banking services and agribusiness banking products; and
 - (b) the detriment arising from depriving mid-tier banks of the opportunity to acquire Suncorp Bank and become a more effective competitor by gaining a step-change increase in scale.
45. Neither of these detriments would be likely to result from the Proposed Acquisition. Any lessening of competition in the relevant markets (including from depriving mid-tier banks of the opportunity to acquire Suncorp Bank, which necessarily must be analysed in the context of a market) would not be meaningful for the reasons identified above. Further, as to the hypothesis that mid-tier banks, as a matter of fact, would be deprived of the opportunity to become more effective competitors by acquiring Suncorp Bank, this rises no higher than mere possibility or speculation, for the reasons identified above in the context of the counterfactual.
46. Having regard to paragraphs 36 to 45 above, the Proposed Acquisition would result, or be likely to result, in benefits to the public, and the benefits would outweigh any possible detriment to the public that would result, or be likely to result, from the Proposed Acquisition.

(8) Determination sought and confidential parts of the Determination

47. The objectively correct or preferable determination would be for the Tribunal to determine as follows:
- (a) under s 102(1) of the CCA, that the Commission's Determination dated 4 August 2023 be set aside; and
 - (b) under ss 88(1) and 102(1) of the CCA, that ANZ be granted unconditional merger authorisation for the Proposed Acquisition, as contemplated by the Application.
48. Suncorp Group notes that a number of aspects of the Commission's reasons in the Determination refer to evidence, submissions and other information which are said to be confidential. While Suncorp's external legal representatives have been provided with those aspects of the reasons (apart from Protected Information under s 56 of the *Australian Prudential Regulation Authority Act 1998* (Cth)), much of the underlying evidence, submissions and other information remains largely redacted and inaccessible to Suncorp Group and its external legal representatives. In these circumstances, Suncorp Group foreshadows that, following review of that confidential/redacted material, Suncorp Group may apply to the Tribunal for leave, or otherwise for a relevant direction from the Tribunal, to amend or supplement this Concise Statement of Facts, Issues and Contentions.

Dated: 8 September 2023