RBB | Economics

ANZ / Suncorp Bank

Third report of Patrick Smith

RBB Economics, 17 July 2023

1 Introduction

1 I have been instructed by Ashurst to prepare a third expert economic report in relation to the proposed acquisition by ANZ of Suncorp Bank from Suncorp Group (**"the Proposed Acquisition"**). My first report was lodged alongside the authorisation application on 2 December 2022.[1] My second report was lodged alongside ANZ's response to the ACCC's Statement of Preliminary Views on 23 May 2023.[2]

2 I am a Partner at RBB Economics, a firm that specialises in the economics of competition and regulation. I have extensive experience as an expert on economic issues, and in testifying as an expert in a variety of court and arbitration forums. My credentials are provided at Annex A to this report. My business address is 199 Bishopsgate, London, EC2M 3TY, United Kingdom.

3 I have been instructed to prepare a third report in light of two reports prepared by Mary Starks, dated 16 June 2023 and 7 July 2023 respectively. More specifically, I have been instructed to consider the following questions in this third report:

- *"What factual information and/or evidence you would require as an independent expert economist, to express an expert opinion regarding the competitiveness of a merged BEN/Suncorp Bank entity in the "Alternative buyer counterfactual" (see 1.2 below) and its impact on competition in the supply of home loans?;*
- *Do you agree or disagree with Ms Starks' analysis / conclusions regarding the competitiveness of a merged Bendigo and Adelaide Bank and Suncorp Bank in the Alternative buyer counterfactual?;*

[1] Expert report of Patrick Smith, 1 December 2022.
[2] Expert report of Patrick Smith, 17 May 2023.

- *Does the Proposed Acquisition increase the likelihood of coordinated effects in the home loans market, taking into account the "Alternative buyer counterfactual"?; and*
- *Do you agree or disagree with Mary Starks' analysis / conclusions in Part 10A of the First Starks Report and Part 9 of the Second Starks Report regarding operating cost savings."*

4 A copy of my letter of instructions is attached to this report as Annex B.

5 I have read the 'Expert Evidence Practice Note – General Practice Note (GPN-EXPT)' including the 'Harmonised Expert Witness Code of Conduct' and the 'Concurrent Expert Evidence Guidelines' (collectively described as the Practice Note), and I have complied with the Practice Note and agree to be bound by the Practice Note.

6 I confirm that I have made all the inquiries that I believe are desirable and appropriate and that no matters of significance that I regard as relevant have, to my knowledge, been withheld from this report.

7 In preparing this report, I relied on the materials identified in Annex C.

8 My opinions expressed in this report are based wholly or substantially on my specialised knowledge arising from my training, study or experience as set out in Annex A.

9 I have been assisted in the preparation of this report by Jack Mays, an Associate Principal at RBB Economics, and Emma Rooney, an Associate at RBB Economics. All the conclusions I reach in this report are my own.

10 The structure of the remainder of this report is as follows:

- section 2 discusses the relevance to the operating cost savings claimed by ANZ of certain evidence cited by Mary Starks; and
- section 3 evaluates Ms Starks' assessment of the impact that the acquisition of Suncorp Bank by Bendigo and Adelaide Bank (**"BEN"**) would have on the competitiveness of BEN.
- section 4 assesses the likelihood of a substantial lessening of competition (**"SLC"**) in the home loans market due to coordinated effects.

Signed______ ____________________

Patrick Smith

17 July 2023

2 Response to Ms Starks' comments regarding the operating cost savings in the factual

11 In her first report, Ms Starks highlights a number of factors, as set out in the ACCC's Merger Authorisation Guidelines, that may be relevant when evaluating the operating cost savings from a proposed merger (such as those discussed in my first report). These factors are:

- whether the anticipated benefit is transaction specific;
- who the benefit accrues to and how widely it is shared in the community;
- whether the benefit is ongoing or a one-off;
- how the benefit will arise;
- when the benefit is likely to arise;
- the likelihood that the benefit will be realised; and
- the magnitude of the benefit.[3]

12 I agree that the above factors can be relevant to an assessment of a claimed public benefit.

13 However, I disagree with the suggestion from Ms Starks in her first report that certain past studies of efficiencies from bank mergers and the example of a couple of previous Australian bank mergers indicate that ANZ has overstated the likely benefit from operating cost savings arising from the Proposed Acquisition. I discuss this further in the rest of this section.[4]

14 Firstly, Ms Starks relies on a 2004 article published by McKinsey to cast doubt on the magnitude and timing of the operating cost savings estimated by ANZ.[5] This article discusses six measures that acquirers can take to improve their chances of realising their estimated synergies, according to the McKinsey consultants who authored the article.[6] I have no reason to doubt the soundness of this advice. However, in my view, these measures either (a) are not applicable to ANZ's estimation of operating cost savings or (b) appear to have been taken by ANZ in its estimations. For each of the six measures, I explain my reasoning below.

- *"Reduce top-line synergy estimates"* – Top-line synergies are revenue synergies. This measure is therefore not applicable to ANZ's estimation of operating cost savings, as ANZ's operating cost synergies are not "revenue synergies" (price rises), but rather cost reductions.
- *"Acknowledge revenue dis-synergies"* – As above, this measure relates to revenue (not cost) synergies and therefore is not applicable to the estimation of ANZ's operating cost

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3 Expert report of Mary Starks, 16 June 2023, paras 10.2.1-10.2.7.

4 In her second report, Ms Starks also relies on her view that the current level of competition in the home loans market reflects a temporary breakdown in coordination to cast doubt on the merged entity's incentive to pass on any operating cost savings to consumers in the home loans market. I address this in section 4.1 below.

5 Expert report of Mary Starks, 16 June 2023, paras 10.11.2 and 10.21.

6 Christofferson, S.A., McNish, R.S. and Sias, D.L., Where mergers go wrong, McKinsey & Company, 1 May 2004.

savings. In any event, as I noted in my first report, ANZ has explicitly accounted for dis-synergies in its estimates of operating cost savings.[7]

- *"Increase estimates of onetime costs"* – The McKinsey article states that *"[m]any deal teams neglect or underestimate the impact of onetime costs"*. However, as I explained in my first report, ANZ estimated material one-off integration costs of [redacted].[8] Moreover, based on the first statement of Louise Higgins (Managing Director, Suncorp Integration, ANZ), I understand that [redacted][9] In her second statement, Ms Higgins clarifies that [redacted].[10]

- *"Compare projections with realities"* – The McKinsey article clarifies that *"[m]any acquirers rely too heavily on assumptions about pricing and market share that are not consistent with overall market growth and competitive realities"*. Regarding pricing, I understand this to be relevant only to revenue (not cost) synergies. Regarding market share, I understand from the statement of Ms Higgins that [redacted][11]

- *"Apply outside-in benchmarks to cost synergies"* – As explained above, [redacted].[12]

- *"Be realistic about timing"* – ANZ has stated that it expects operating cost savings to be realised from Year 4 post completion, with the full run-rate synergies realised in Year 6.[13] However, according to the first statement of Ms Higgins, [redacted][14] Additionally, in her second statement, Ms Higgins explains that, [redacted][15] Moreover, as discussed further below, a six-year timeline for realising full run-rate synergies does not appear to be overoptimistic, even in the context of the banking industry.

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7 Expert report of Patrick Smith, 1 December 2022, section 3.4.1.
8 Expert report of Patrick Smith, 1 December 2022, Table 3, Table 4 and fn 72.
9 Statement of Louise Higgins, 17 May 2023, para 68.
10 Statement of Louise Higgins, 17 July 2023, para 12(b).
11 Statement of Louise Higgins, 17 May 2023, para 62.
12 Statement of Louise Higgins, 17 May 2023, paras 43(d)(iii), 64(b) and 64(e).
13 Expert report of Patrick Smith, 1 December 2022, para 42.
14 Statement of Louise Higgins, 17 May 2023, paras 80 and 82.
15 Statement of Louise Higgins, 17 July 2023, paras 9(d) and 19.

15 Secondly, Ms Starks refers to a 2003 academic article by Dario Focarelli and Fabio Panetta, again, to cast doubt on the timing of the operating cost savings estimated by ANZ.[16] In this article, the authors refer to various previous studies of real-life banking mergers, which found that efficiencies took some time to materialise. The authors also carried out their own empirical study of the effect of mergers on deposit rates in the Italian banking industry.

16 Putting aside any potential issues with drawing inferences from studies conducted more than 20 years ago (in 2003 or earlier), and studies that considered mergers whose characteristics may have differed substantially from those of the Proposed Transaction (albeit they were all banking mergers), the findings in these studies do not, in my view, undermine ANZ's estimate of how long it will likely take to realise the operating cost savings in this case. ANZ estimates that it will take six years for it to fully realise the estimated operating cost savings. In contrast:

- the studies by Berger et al. (1998) and Calomiris and Karceski (2000), which Focarelli and Panetta reference, found three years as (to quote Focarelli and Panetta) *"the gestation period needed to restructure the merged bank"*;[17] [18]
- a study by Rhoades (1998), which Focarelli and Panetta reference, found that most officials in banks involved in mergers told the US Federal Reserve Board that the cost savings would be fully achieved within three years after the merger;[19]
- a study by Houston et al. (2001), which Focarelli and Panetta reference, found that the cost savings and revenue gains from large bank mergers in the US took two to four years to materialise in full;[20]
- a study by Bizzocchi (1999), based on the experience of bank managers in Italy, found similar results to the above, according to Focarelli and Panetta;[21] and
- Focarelli and Panetta found that the results of their own econometric study were unchanged by the inclusion of years after the fifth year post completion, i.e. the efficiency gains (as measured by Focarelli and Panetta) from the bank mergers in Focarelli and Panetta's study were fully realised within five years.[22]

17 Thirdly, and lastly, Ms Starks cites two previous bank mergers in Australia – CBA's acquisition of BankWest and Westpac's acquisition of St George, both in 2008 - again, to suggest that the cost synergies from the Proposed Acquisition may not be full realised within the timeline currently set out by ANZ. In particular, she references an article published in the Australian Financial Review on 11 April 2023, which mentions that (at the time of publication) CBA was still transitioning customers from BankWest and that Westpac only migrated all of its

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16 Expert report of Mary Starks, 16 June 2023, fn 579. Focarelli, D. and Panetta, D., Are Mergers Beneficial To Consumers? Evidence From The Market For Bank Deposits, *American Economic Review*, 2003.

17 Berger, A.N. and Hannan, T.H., The Price-Concentration Relationship in Banking, *Review of Economics and Statistics*, 1989.

18 Calomiris, C. and Karceski, J., Is The Bank Merger Wave of the 1990s Efficient? Lesson from Nine Case Studies, in Kaplan, S., *Mergers and Productivity*, 2000.

19 Rhoades, S., The Efficiency Effects of Bank Mergers: An Overview of Case Studies of Nine Mergers, *Journal of Banking and Finance*, 1998.

20 Houston, J., James, C. and Ryngaert, M., Where Do Merger Gains Come From? Bank Mergers From the Perspective of Insiders and Outsiders, *Journal of Financial Economics*, 2001.

21 Bizzocchi, F., Le concentrazioni bancarie: l'esperienza del Credito Emiliano, *Quaderni dell'Associazione per lo Sviluppo degli Studi di Banca e Borsa*, 1999.

22 Focarelli, D. and Panetta, D., Are Mergers Beneficial To Consumers? Evidence From The Market For Bank Deposits, *American Economic Review*, 2003, fn 15.

customers onto the same banking system earlier this year (2023). However, Starks does not substantiate the relevance of these two examples to the question of whether ANZ would likely realise its estimated cost synergies within six years in this case. In particular, in neither case does Ms Starks show that, at the time that the acquisition was announced, the acquirer planned or expected to integrate the target's customers sooner than they ultimately did, and that these plans formed part of the estimated cost synergies. I also note Ms Higgins' view, which is that [redacted][23]

3 Evaluation of Ms Starks' assessment of BEN's competitiveness for home loans in the alternative buyer counterfactual

18 In her first report, Ms Starks finds that there is a "real chance" that the Proposed Acquisition would result in an SLC in the national market for home loans due to coordinated effects compared to the alternative buyer counterfactual – and, in her second report, continues to find that this is the case. This finding is premised on two beliefs:

- firstly, that the recent strong competition that she observes in the market may represent a *"breakdown in coordination"* caused by recent macroeconomic developments and that therefore there is a "real chance" that the major banks could return to coordination (in the factual or the status quo counterfactual); and
- secondly, that BEN would become a substantially stronger competitor to the major banks as a result of acquiring Suncorp Bank. In particular, Ms Starks considers that there is a real chance that BEN could be an effective competitor and having another "disruptor" in the market (in addition to Macquarie Bank) would reduce the chances of coordination *"re-establishing itself in a sustainable fashion"*.[24]

19 In section 4.1 I touch on this first belief of Ms Starks. However, in the rest of this section I focus on this second belief.[25]

20 This view of Ms Starks' regarding the likely competitiveness of the putative combined BEN/Suncorp Bank entity in the national market for home loans is crucial since Ms Starks finds that Suncorp Bank would likely not be a particularly vigorous competitor for home loans in the status quo counterfactual and that the elimination of Suncorp Bank as an independent competitive constraint would therefore not make coordination among the major banks more likely, effective or stable.[26] In other words, if Ms Starks had found that BEN would likely <u>not</u> become a substantially stronger competitor for home loans (in a putative BEN/Suncorp Bank counterfactual), Ms Starks would presumably have concluded that there was no "real chance"

23 Statement of Louise Higgins, 17 July 2023, para 20.
24 Expert report of Mary Starks, 16 June 2023, para 9.113.5.
25 I understand that the Parties dispute the proposition put forward by BEN that the alternative buyer counterfactual is or commercially realistic or has a real chance of occurring. This issue is outside the scope of my report. See Annex B, para 1.2.
26 Expert report of Mary Starks, 16 June 2023, paras 9.44.1, Table 11, 9.113.2.

that the Proposed Acquisition (by removing Suncorp Bank as an independent competitive constraint) could result in an SLC in the national market for home loans due to coordinated effects.

21 Below, I comment on Ms Starks' assessment of the likely competitiveness of BEN in the home loans market were it to acquire Suncorp Bank instead of Suncorp Bank being acquired by ANZ. In summary, I am not convinced that BEN would become a substantially more effective competitor to the major banks in this alternative buyer counterfactual.

3.1 Framework for assessing BEN's competitiveness in the alternative buyer counterfactual

22 A merger between competitors (i.e. a horizontal merger) can create a merged entity that is a stronger competitor than either of the two individual competitors. For example, by combining complementary assets, a merger of two ineffective competitors could create a more effective competitor.

23 Typically, the likely competitive constraint exerted by the merged entity is compared to the collective competitive constraints that would otherwise have been exerted by <u>the merging parties</u> continuing to operate independently absent the merger. However, in this case, I consider it appropriate to compare the competitive constraint exerted by the combined BEN/Suncorp Bank entity to the competitive constraint exerted by <u>only BEN</u> absent the alternative buyer counterfactual. This is because the relevant issue in this particular case is whether the home loans market would likely be substantially less competitive in the factual (i.e. the world with the Proposed Acquisition) than in the alternative buyer counterfactual; in both scenarios, Suncorp Bank would cease to exist as an independent competitive constraint.

24 Also, importantly, when assessing the competitiveness of the combined BEN/Suncorp Bank entity, the comparison should be with the competitiveness of BEN <u>in the factual</u> (i.e. the world with the Proposed Acquisition), which is not necessarily the same as the competitiveness of BEN under the status quo counterfactual. This is to avoid attributing to the acquisition of Suncorp Bank by BEN an increase in BEN's competitiveness that would have also occurred had the Proposed Acquisition taken place instead (for example either because BEN is likely to continue its evolution as a competitive force over time, or because BEN might respond to the Proposed Acquisition). This approach is consistent with the ACCC's approach to assessing public benefits claimed by the merging parties, in particular, the ACCC's consideration of whether a claimed public benefit is transaction specific.

25 In fact, all the factors that the ACCC has regard to when assessing public benefits, which Ms Starks reiterates when evaluating the claims of public benefits associated with the Proposed Acquisition, are also relevant to assessing a claim that a merger creates a stronger competitor:

- whether the anticipated benefit (i.e. creation of a stronger competitor) is transaction specific;
- who the benefit (i.e. creation of a stronger competitor) accrues to and how widely it is shared in the community;

- whether the benefit (i.e. creation of a stronger competitor) is ongoing or a one-off;
- how the benefit (i.e. creation of a stronger competitor) will arise;
- when the benefit (i.e. creation of a stronger competitor) is likely to arise;
- the likelihood that the benefit (i.e. creation of a stronger competitor) will be realised; and
- the magnitude of the benefit (i.e. how much greater the competitive constraint exerted by the merged entity would be).

26 Across her two reports, Ms Starks considers the likely impact that the following factors would have on the combined BEN/Suncorp Bank entity's competitiveness:

- the imposition of the Major Bank Levy on the combined BEN/Suncorp Bank entity;
- the combined BEN/Suncorp Bank entity receiving IRB accreditation;
- the likely credit rating of the combined BEN/Suncorp Bank entity (and in turn the likely funding costs that the combined BEN/Suncorp entity would face); and
- the scale of the combined BEN/Suncorp Bank entity.[27]

27 In regard to the first factor, the Major Bank Levy, [redacted][28] As I discuss later, this is in contrast with the likely timing of other factors that Ms Starks claims would contribute to a more competitive BEN. (I also note that in her second report, Ms Starks considers a scenario in which BEN is not subject to the Major Bank Levy.[29] [redacted][30]

28 In the rest of this section I comment on Ms Starks' assessment of the likely impact that the other three factors would have on the combined BEN/Suncorp Bank entity's competitiveness, namely the combined BEN/Suncorp Bank entity receiving IRB accreditation, the likely credit rating of the combined BEN/Suncorp Bank entity and the scale of the combined BEN/Suncorp Bank entity (sections 3.2 to 3.4 below). I also comment separately on Ms Starks' statement that there may be particular segments of the home loans market where competition is weak and where the combined BEN/Suncorp Bank entity may provide an additional competitive constraint (section 3.5 below).

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27 Expert report of Mary Starks, 16 June 2023, paras 7.18.1-7.18.4. Mary Starks' second report also responds to submissions from the Parties regarding the difficulties of integrating BEN's and Suncorp Bank's technology platforms, as well as the challenges resulting from trying to implement brand and culture alignment. See Expert report of Mary Starks, 7 July 2023, paras 6.20-6.29.

28 [redacted]

29 Expert report of Mary Starks, 7 July 2023, para 6.51.

30 [redacted]

3.2 Ms Starks' assessment of the significance of BEN receiving IRB accreditation

29 I understand that Ms Starks was instructed to consider two alternative scenarios within the alternative buyer counterfactual:

- BEN acquires Suncorp Bank and the combined BEN/Suncorp Bank entity attains IRB accreditation;
- BEN acquires Suncorp Bank and the combined BEN/Suncorp Bank entity does not attain IRB accreditation.[31]

30 Based on my review of the witness statements and the other expert evidence that has been briefed to me, there appears to be a great deal of uncertainty surrounding whether the combined BEN/Suncorp Bank entity would attain IRB accreditation. Additionally, assuming IRB accreditation in the alternative buyer counterfactual would be likely, there also appears to be a great deal of uncertainty regarding the merger-specificity of BEN receiving IRB accreditation, the magnitude of the benefit to BEN from IRB accreditation, the timing of that benefit and the likelihood that that benefit would be passed on to consumers (via increased competitive pressure from a stronger BEN). I discuss this below.

31 On **the likelihood of IRB accreditation**, Ms Starks was not instructed in either of her reports to assess the likelihood of each of the above two scenarios.[32] In other words, assuming BEN were to acquire Suncorp Bank in the counterfactual, Ms Starks' report does not assess the likelihood of the combined BEN/Suncorp Bank entity attaining IRB accreditation. By doing so, Ms Starks' report does not provide any clarity on the likelihood of an outcome (the combined BEN/Suncorp Bank entity's IRB accreditation) that appears to be highly uncertain.

32 Ms Starks' assumption that (in one scenario) the combined BEN/Suncorp Bank entity would receive IRB accreditation also means that Ms Starks avoids consideration of **whether this benefit would be merger-specific**. If BEN would be just as likely to receive IRB accreditation in the factual, the combined BEN/Suncorp Bank entity receiving IRB accreditation would not be a benefit arising from BEN's acquisition of Suncorp Bank.

33 In my view, neither Ms Starks' reports nor the other materials briefed to me contain compelling evidence indicating that the increase in BEN's scale from acquiring Suncorp Bank would likely be responsible for BEN receiving IRB accreditation in the foreseeable future. Clive van Horen (CEO, Suncorp Bank) explains that there is no increased likelihood of gaining IRB accreditation because of increased scale.[33] I understand from Jeffrey Carmichael's first report that larger banks tend to have a greater ability to invest in setting up and operating more sophisticated risk management systems, which are required for IRB accreditation.[34] However, the combined BEN/Suncorp Bank entity would remain considerably smaller than the major banks.[35] In addition, while the combined BEN/Suncorp Bank entity's loan book would be of a

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31 Expert report of Mary Starks, 16 June 2023, paras 7.16.1-7.16.2.
32 Expert report of Mary Starks, 16 June 2023, Annex 2.
33 Statement of Clive van Horen, 14 July 2023, para 11,
34 Expert report of Jeffrey Carmichael, 2 December 2022, p. 11.
35 Statement of Clive van Horen, 17 May 2023, para 56.

similar size to that of Macquarie Bank (which already has IRB accreditation), the latter bank is part of a much larger group (Macquarie Group).[36] In my view, therefore, it is unclear whether BEN's increased scale from acquiring Suncorp Bank would be sufficient to "tip" an investment by BEN in attaining and maintaining IRB accreditation from being commercially unviable (in the factual) to viable (in the alternative buyer counterfactual).

34 [redacted].[37] Even assuming that this would be the case, the entirety of any benefit from IRB accreditation would not be merger-specific; rather, only any benefit from IRB accreditation that BEN enjoyed <u>prior to when it would have received IRB accreditation in the factual</u> would be considered merger-specific.

35 As regards **the magnitude of the benefit <u>to the combined BEN/Suncorp Bank entity</u>** (as opposed to consumers in the home loans market) from receiving IRB accreditation (assuming it does receive IRB accreditation somewhat more quickly than it otherwise would), overall, Ms Starks considers that the combined BEN/Suncorp Bank entity would likely obtain a capital benefit.[38] [redacted] and in her second report considers that the benefits are *"potentially greater"* compared to those found in her first report.[39] However, I note that Ms Starks states that there is *"significant uncertainty about the magnitude of this benefit"* and that she cannot estimate the magnitude of the benefit *"with any degree of confidence"*.[40] I also note that Clive van Horen, informed by Suncorp's recent modelling (done prior to the Proposed Acquisition) of the capital impact on Suncorp Bank of IRB accreditation, expects that there would be a day-one capital cost <u>to Suncorp Bank</u> from receiving IRB accreditation; this is at odds with Ms Starks' conclusion that Suncorp Bank would be *"more likely than not"* to receive some day-one capital benefit and, if it were to be the case, would offset (to some degree) any capital benefit that BEN might enjoy from IRB accreditation.[41]

36 As for **the timing of IRB accreditation** (assuming the combined BEN/Suncorp Bank entity attains IRB accreditation), it appears that there is uncertainty regarding the precise timing but a consensus that the combined BEN/Suncorp Bank entity would be very unlikely to attain IRB accreditation in the short run. Ms Starks was instructed to assume that the combined BEN/Suncorp Bank entity would obtain IRB accreditation *"no sooner than one to two years following completion of the transaction"*.[42] Ms Starks herself appears to consider it more likely that the combined BEN/Suncorp Bank entity would receive IRB accreditation in the "short to medium term", defined by Ms Starks as the period three to five years post completion of the combined BEN/Suncorp Bank entity acquisition.[43] In his supplementary statement, Shayne

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36 In June 2023, the combined value of BEN's and Suncorp Bank's total loans and finance leases gross of provisions to residents was $141 billion, while the equivalent figure for Macquarie Bank was $130 billion. See APRA, Monthly authorised deposit-taking institution statistics June 2023, 31 July 2023, Table 1. See also APRA, Monthly authorised deposit-taking institution statistics – Glossary.

37 [redacted]

38 Expert report of Mary Starks, 16 June 2023, para 7.57.

39 [redacted] Expert report of Mary Starks, 7 July 2023, para 6.51.

40 Expert report of Mary Starks, 16 June 2023, para 7.57. Expert report of Mary Starks, 7 July 2023, para 6.38.

41 Statement of Clive van Horen, 14 July 2023, para 22. Expert report of Mary Starks, 7 July 2023, para 6.39.

42 Expert report of Mary Starks, 16 June 2023, para 7.16.1.

43 Expert report of Mary Starks, 16 June 2023, para 4.34.

Elliott (CEO, ANZ) expresses the view that BEN's acquisition of Suncorp Bank would delay any attempt by BEN to attain IRB accreditation.[44] In his third statement, Clive van Horen shares a similar view: *"… given the higher complexity of a combined entity for the three to five years post-merger, the low likelihood of BEN-SUN having the internal capacity to pursue AIRB accreditation in the face of many other integration priorities, and the likelihood that APRA will hold the combined entity to a high standard before granting accreditation, makes the prospect of achieving AIRB accreditation even lower for a number of years"*.[45]

37 As for **whether consumers in the home loans market would benefit** from the combined BEN/Suncorp Bank entity's IRB accreditation, Ms Starks states that BEN may target less competitive segments if it acquires Suncorp Bank and attains IRB status.[46] I discuss this further below.

38 Even if it were found that Macquarie Bank would likely be a weak competitor in a certain segment of the home loans market for the foreseeable future, it is unclear how IRB accreditation (which Macquarie Bank already has) would provide BEN with both a greater ability and incentive to target a segment of the home loans market that Macquarie Bank would not also have the ability and incentive to target.

39 Regarding BEN's ability to target a less competitive segment of the home loans market, Ms Starks states that BEN could *"strategically 'bank' a capital relief in one segment of the home loans market to offer more competitive lending rates in another market segment that may be more commercially attractive to target (for example, a less competitive part of the market)."*[47] The extent to which this ability would increase as a result of BEN attaining IRB accreditation would depend on the magnitude of the overall capital benefit to BEN from IRB accreditation, as well as the extent to which BEN would be unable to engage in such a strategy due to financial constraints absent IRB accreditation.

40 Importantly, regarding BEN's incentive to target a less competitive segment of the home loans market, it is unclear that IRB accreditation would provide BEN with any additional incentive to do so. Ms Starks' assessment indicates that attaining IRB accreditation would tend to lead to a reduction in the credit risk-weights on low-risk loans and an increase in the credit risk-weights on high-risk loans.[48] By making low-risk loans more financially attractive (because less capital is required to be held to cover potential losses) and high-risk loans less financially attractive (because more capital is required to be held to cover potential losses), IRB accreditation may incentivise BEN to target low-risk loans. However, there is evidence that Macquarie Bank is currently a particularly strong competitor for such loans.

41 In her second report, Mary Starks states that BEN would have the incentive to target certain segments because of its *"objective to boost its market share"* (as opposed to because of any shift in incentives due to IRB accreditation).[49] Noting that parts of Ms Starks' discussion are

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44 Statement of Shayne Elliott, 17 May 2023, para 93.
45 Statement of Clive van Horen, 14 July 2023, para 11. See also Statement of Clive van Horen, 17 May 2023, para 68.
46 Expert report of Mary Starks, 16 June 2023, para 7.43.
47 Expert report of Mary Starks, 16 June 2023, para 7.43.
48 Expert report of Mary Starks, 16 June 2023, para 7.28.
49 Expert report of Mary Starks, 7 July 2023, para 6.43.

redacted, I have not seen any evidence that this objective to boost market share is conditional on BEN acquiring Suncorp Bank. In any event, I understand that Macquarie Bank [redacted].[50]

42 In my view, it is therefore unclear that BEN's incentive to compete in a less competitive segment of the home loans market would increase as a result of IRB accreditation. Consistent with this, I note that in her second report Ms Starks is of the view that *"a portion of the benefit from IRB accreditation would be used to rebuild profitability rather than compete for market share"*.[51]

43 In section 3.5 below I consider in more detail Ms Starks' statement that there exist less competitive segments of the home loans market.

3.3 Ms Starks' assessment of the likely credit rating of a combined BEN/Suncorp Bank entity

44 Ms Starks expects that the combined BEN/Suncorp Bank entity [redacted].[52] All else equal, this would lead to the combined BEN/Suncorp Bank entity's cost of funding (expressed per dollar of lending) to increase relative to Suncorp Bank's current cost of funding. Moreover, Ms Starks expects this dis-synergy to occur *"with a high degree of certainty"*.[53]

45 At the same time, Ms Starks considers that the combined BEN/Suncorp Bank entity's increased scale may lead to its credit rating being higher than BEN's currently is.[54] However, in his expert report, David Howell finds that [redacted][55] Based on this evidence, Ms Starks agrees that the combined BEN/Suncorp Bank entity's rating would likely be lower than Suncorp Bank's current rating.[56]

46 In terms of the effect that a one notch upgrade by Moody's would have on BEN's funding costs, Mozammel Ali expresses the opinion in his expert report that [redacted].[57] A lower credit rating than Suncorp Bank's current rating would also mean that the combined BEN/Suncorp Bank entity would face higher wholesale funding costs than Suncorp Bank currently does. Based on the expert report of Mr Ali, [redacted]

50 [redacted]
51 Expert report of Mary Starks, 7 July 2023, para 6.51.
52 [redacted]
53 Expert report of Mary Starks, 16 June 2023, para 7.57.
54 Expert report of Mary Starks, 16 June 2023, para 7.56.
55 Expert report of David Howell, 15 May 2023, paras 17-21.
56 Expert report of Mary Starks, 7 July 2023, para 6.4.
57 Expert report of Mozammel Ali, 17 May 2023, para 146.

[redacted].[59]

47 The above evidence shows not only that the combined BEN/Suncorp Bank entity would be at a disadvantage to the major banks and Macquarie Bank in terms of wholesale funding costs. It also shows that the combined BEN/Suncorp Bank entity would be at a disadvantage relative to Suncorp Bank at present. Ms Starks considers that Suncorp Bank is not a particularly vigorous competitor for home loans.[60] There therefore appears to be no basis for thinking that the combined BEN/Suncorp Bank entity would likely become a substantially stronger competitor to the major banks in this market due a credit rating that's higher than BEN's currently is.

3.4 Ms Starks' assessment of the impact of the combined BEN/Suncorp Bank entity's greater scale

48 Ms Starks considers that the combined BEN/Suncorp Bank entity would likely benefit from increased scale and that this impact would likely be substantial enough to outweigh the dis-synergies that Ms Starks identifies would arise from the acquisition of Suncorp Bank by BEN (namely from the Major Bank Levy and a change in credit rating).[61] Ms Starks identifies three mechanisms through which the combined BEN/Suncorp Bank entity's increased scale could make it a more effective competitor.[62] I discuss these below.

49 First, Ms Starks considers that, in the alternative buyer counterfactual, BEN would have a greater ability to invest due to its increased scale. In particular, BEN would be able to spread any fixed costs associated with an investment over a larger customer base, thereby making investments (assuming they have a fixed cost component) more financially attractive.[63] Noting that parts of Ms Starks' reasoning in each of her reports is redacted, I have not seen evidence of any specific investments that would be made likely as a consequence of BEN's acquisition of Suncorp Bank. Ms Starks gives the example of the combined BEN/Suncorp Bank entity investing in technology. However, I understand that BEN is already investing in a technological transformation, i.e. investment in this transformation may be just as likely to occur in the factual as in the alternative buyer counterfactual.[64]

50 Second, Ms Starks states that BEN's increased scale could help it attract more deposits by increasing the perceived safety of the bank.[65] Ms Starks references [redacted]

58 Expert report of Mozammel Ali, 17 May 2023, p. 13. [redacted]

59 [redacted]

60 Expert report of Mary Starks, 16 June 2023, para 9.44.1.

61 Expert report of Mary Starks, 16 June 2023, para 7.57.

62 Ms Starks also discusses the possibility that BEN's credit rating in the alternative buyer counterfactual may increase due to its increased scale. I discuss this in section 3.3 above.

63 Expert report of Mary Starks, 16 June 2023, para 7.54.

64 Expert report of Mary Starks, 16 June 2023, para 7.17.

65 Expert report of Mary Starks, 16 June 2023, para 7.55. [redacted]

[redacted][66] However, Ms Starks provides no analysis or recent examples that would indicate the likely magnitude of this benefit to BEN in terms of funding cost savings (which in turn could incentivise BEN to price more aggressively for home loans).[67] As for timing, Ms Starks suggests that BEN's increased scale could attract more deposits *"in times when things are stressed"* – but provides no indication as to when such a time might next arise.[68] Based on the evidence that Ms Starks references in her second report in relation to the likelihood of a banking crisis in Australia, I understand that a banking crisis is unlikely to arise in Australia in the foreseeable future.[69]

51 [redacted][70] However, in support of this, Ms Starks does not reference any analysis indicating the likely magnitude of these cost savings (in contrast, for example, with the analyses of Dr Howell and Mr Ali, [redacted][71]

52 More generally, as discussed in section 3.2 above, the increase in BEN's scale from acquiring Suncorp Bank would be small insofar as the combined BEN/Suncorp Bank entity would still be significantly smaller than each of the major banks and would be of similar size to Macquarie Bank. The combined BEN/Suncorp Bank entity therefore would still be at a disadvantage compared to the major banks (in terms of scale) and would have no material advantage over Macquarie Bank (in terms of scale), even assuming that Macquarie Bank enjoys no additional scale benefits from being part of a much larger group, Macquarie Group (beyond benefiting from a higher credit rating).

3.5 Ms Starks' assessment of the combined BEN/Suncorp Bank entity's impact in segments of the home loans market

53 As mentioned in section 3.2 above, Ms Starks considers that the combined BEN/Suncorp Bank entity would have a greater ability to target less competitive segments in the home loans market.[72]

54 Ms Starks goes on to state that the combined BEN/Suncorp Bank entity *"may be able to provide an additional competitive constraint by catering to customers who either have more*

66 Expert report of Mary Starks, 16 June 2023, para 7.55.
67 [redacted].
68 [redacted] Expert report of Mary Starks, 16 June 2023, para 7.55.
69 Expert report of Mary Starks, 7 July 2022, para 6.16.
70 [redacted]
71 Expert report of David Howell, 15 May 2023. Expert report of Mozammel Ali, 17 May 2023.
72 Expert report of Mary Starks, 16 June 2023, para 7.43.

complex needs *__or__* *care about non-price aspects of competition (such as service, trust local presence, or banking with a major bank* [emphasis added].*"*[73]

55 As regards customers with more complex needs, in my view, Ms Starks does not show that competition in this segment is weak. Ms Starks does not explicitly define this segment. However, the one piece of empirical evidence that Ms Starks references to support her finding that Macquarie Bank focusses on *"simple"* applications (and, by implication, focusses less on complex applications) [redacted][74] Elsewhere in her report, Ms Starks finds that Macquarie Bank's share of annual home loan market growth in recent years has been between 15 and 25%.[75] Even assuming that Macquarie Bank's share of home loan market growth over the foreseeable future is at the low end of this range, and that this difference in origination mix between Macquarie Bank and the market average would persist, Macquarie Bank would still be expected to account [redacted][76] There may also be other smaller lenders that compete more intensively for these high-LVR loans (compared to their competitiveness in the overall home loans market). Indeed, Ms Starks' own evidence suggests that smaller banks may have more of an incentive to target high-risk loans since the IRB approach used by the major banks and Macquarie Bank leads to higher risk-weights for high-risk loans and lower risk-weights for low-risk loans, compared to the standardised approach used by smaller banks.[77]

56 As well as not showing that competition for complex home loan applications is weak, Ms Starks does not show that there are substantial barriers to entry and expansion that would allow a relative lack of competition for complex applications to be sustainable. It is my understanding that lenders can and do adjust their home loan products from a process, policy and features perspective in response to the level of competition from other lenders.[78] For example, Clive van Horen provides [redacted].[79] If Macquarie Bank had an incentive to focus more intensively on complex loan applications in the foreseeable future, then I consider it likely that Macquarie Bank would do so.

57 Regarding local presence, I consider it plausible that the combined BEN/Suncorp Bank entity could be able to compete more effectively for more home loan customers who value a local presence than BEN would be able to in the factual, since Suncorp Bank might have branches in local areas where BEN does not. However, to establish that this factor would have a material effect on competition would require an analysis of banks' branch footprints at a local level and an analysis of how important a local presence is to customers, and how important the merger-specific change would be for competition in respect of a material number of

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73 Expert report of Mary Starks, 16 June 2023, para 9.113.5.
74 Expert report of Mary Starks, 16 June 2023, para 9.113.5. [redacted]
75 [redacted]
[redacted] [redacted]
77 Expert report of Mary Starks, 16 June 2023, para 7.28.
78 Application for Merger Authorisation, 2 December 2022, para 6.28.
79 Statement of Clive van Horen, 14 July 2023, para 51.

customers (by way of example, even if BEN might gain access to Suncorp Bank branches in new geographic areas, if customers in these new geographic areas are already well served with several other local effective competitors, then this change may not affect competition).

58 Moreover, BEN may become an attractive alternative for a home loan customer that values a local presence and currently resides or works near a Suncorp Bank branch but not a BEN branch (since, after BEN acquires Suncorp Bank, the Suncorp Bank branch would become a BEN branch). However, this would not necessarily make BEN a more attractive alternative for this home loan customer than Suncorp Bank currently is (since Suncorp Bank already has the local presence that this customer values). This is important because Ms Starks finds that Suncorp Bank is not a particularly vigorous competitor for home loans and that, consequently, the continued existence of Suncorp Bank as an independent competitive constraint in the status quo counterfactual would not make coordination less likely, effective or stable compared to the factual.[80] It is therefore difficult to see how acquiring Suncorp Bank's local presence would make BEN a substantially stronger competitor that would make coordination among the major banks less likely, effective or stable compared to the factual.

59 As for the other non-price factors, Ms Starks provides no empirical evidence that Macquarie is a weak competitor for customers who particularly value *"service, trust or banking with a non-major bank"*. Indeed, when it comes to service, the evidence shows that Macquarie Bank is the market leader when it comes to its turnaround time (which is a crucial element of service).[81]

4 Coordinated effects assessment in the home loans market

60 The framework for a coordinated effects assessment that Nick de Roos sets out in his expert report emphasises (rightly, in my view) that the focus should be on the Proposed Acquisition's impact on the likelihood and sustainability of coordination (rather than on the likelihood and sustainability of coordination absent the Proposed Acquisition).

61 In particular, after defining markets, Professor de Roos proposes that the coordinated effects assessment should:

- *"assess the likely impact of the Proposed Acquisition on the ability of firms to initiate cooperative behaviour"*; and
- *"assess the likely impact of the Proposed Acquisition on the ability of firms to sustain cooperative behaviour"*.[82]

62 Professor de Roos also puts forward the market features that are key to determining whether coordination is likely or sustainable.[83] Further below, I discuss these features in the context of the market for home loans, with the focus being on the likely impact that the Proposed

80 Expert report of Mary Starks, 16 June 2023, paras 9.44.1, Table 11, 9.113.2.
81 Jarden, Launching the Jarden Mortgage Competition Tracker, 20 July 2022, p. 3. Statement of Douglas John Campbell, 30 November 2022, para 91.
82 Expert report of Nick de Roos, 5 April 2023, p. 2.
83 Expert report of Nick de Roos, 5 April 2023, pp. 3-6.

Acquisition would have on these features (and in turn on the ability of the major banks to initiate or sustain cooperative behaviour), compared with the status quo counterfactual. In summary, contrary to the finding of Stephen King, I consider that the Proposed Acquisition is unlikely to give rise to an SLC in the home loans market due to coordinated effects, compared with the status quo counterfactual. Furthermore, because I am not convinced that BEN would likely become a substantially more effective competitor to the major banks in the alternative buyer counterfactual (see section 3 above), I also consider that the Proposed Acquisition is unlikely to give rise to an SLC in the home loans market due to coordinated effects, compared with the alternative buyer counterfactual.

4.1 Comment on Ms Starks' belief that current competition is temporary

63 Before I discuss the impact of the Proposed Acquisition on the features of the home loans market that are key to determining whether coordination is likely or sustainable, I first make some observations regarding Ms Starks' argument that the recent strong competition that she observes in the market may represent a short-run *"breakdown in coordination"* caused by a *"transient"* period of *"higher than average market demand"* (in turn driven by *"recent macroeconomic developments"*).[84]

64 While the above argument alone cannot justify a finding that the Proposed Acquisition would likely give rise to an SLC (since this "real chance" would exist in the status quo counterfactual), as discussed in section 3, Ms Starks relies on this argument, in combination with her belief regarding BEN's competitiveness in the alternative buyer counterfactual, to arrive at her conclusion that there is a real chance of an SLC in the home loans market due to coordinated effects compared to the alternative buyer counterfactual.[85] Ms Starks also relies on this argument to cast doubt on ANZ's incentive to pass on any operating cost savings to consumers in the factual.[86]

65 In short, I am not convinced by Ms Starks' argument that the recent strong competition that she observes in the market may represent a *"brief interruption of long-term coordination"* caused by recent macroeconomic developments.[87] I therefore continue to hold the opinion (first expressed in my second report) that, in the factual, ANZ would likely have a strong incentive to pass on cost savings to consumers in the home loans market via better quality or lower prices.[88]

66 Firstly, in my view, Ms Starks does not show that price competition was not strong in the home loans market before these recent macroeconomic developments that she mentions, namely the COVID-19 pandemic, the Russian invasion of Ukraine and the rapid rise in the RBA cash rate.[89]

67 Over many years, the RBA has published a series of annual articles on developments in banks' fundings costs and lending rates. Based on my review of the five most recent of these articles

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84 Expert report of Mary Starks, 16 June 2023, paras 7.6 and 9.112. Expert report of Mary Starks, 7 July 2023, para 8.4.
85 Expert report of Mary Starks, 7 July 2023, paras 8.1 and 8.8.
86 Expert report of Mary Starks, 7 July 2023, para 9.11.
87 Expert report of Mary Starks, 7 July 2023, para 8.3.
88 Expert report of Patrick Smith, 17 May 2023, para 26.
89 Expert report of Mary Starks, 16 June 2023, paras 7.6 and 9.112. Expert report of Mary Starks, 7 July 2023, para 8.4.

(covering each of 2018 to 2022), these articles suggest that there has been strong price competition in the home loans market since at least 2018.

68 Below I quote the most relevant passages from these RBA articles (in chronological order).

- Discussing 2018 (i.e. prior to the COVID-19 pandemic): *"However, the average interest rate on outstanding variable rate housing loans increased by only a few basis points over the second half of the year (Graph 11). This was partly because not all lenders raised their SVRs in that period; one of the major banks increased its housing SVRs in early 2019. In addition, interest rates on new housing loans continued to be significantly lower than interest rates on outstanding loans, which provides an indication of the strength of competition for low-risk borrowers. Some existing borrowers refinanced at a lower rate with a different lender or renegotiated the rate of their loan with their existing lender. Moreover, advertised interest rates on fixed-rate housing loans, which account for around one-fifth of outstanding housing credit, declined throughout 2018."*[90]
- Discussing 2019 (i.e. prior to the COVID-19 pandemic): *"A large share of the decrease in funding costs flowed through to major banks' lending rates. The average rate paid on outstanding variable-rate housing loans decreased by almost 70 basis points following the 75 basis point decline in the cash rate in 2019, amid strong competition for new borrowers. Following the 25 basis point reduction in the cash rate in March 2020, the major banks have lowered their standard variable rates (SVRs) on housing loans by 25 basis points. Fixed rates for new mortgages declined by around 100 basis points in 2019, consistent with a similar decline in swap rates, which are often used as a benchmark for pricing fixed-rate loans."*[91]
- Discussing 2020: *"Interest rates on outstanding variable-rate housing loans declined by around 50 basis points (Graph 14). Lenders lowered their standard variable rates (SVRs) on housing loans by close to 30 basis points, on average, in the months following the Reserve Bank's initial package of policy measures announced in March last year. Reductions in SVRs automatically flow through to all variable-rate loans. The decline in outstanding variable rates also reflects ongoing competition for high-quality borrowers, with lenders offering particularly low interest rates to new and refinancing borrowers. Over the past year, rates for new fixed-rate loans also declined by around 90 basis points – slightly more than the estimated decline in banks' overall debt funding costs (Graph 15). This decline was broadly consistent with a decline in interest rate swap rates, which are often used as a benchmark for pricing fixed-rate loans given that they reflect expectations about the future path of monetary policy."*[92]
- Discussing 2021: *"We estimate that this lending spread for the major banks narrowed over 2021, as the average lending rate declined by more than these funding costs (Graph 14). The decline in the average lending rate primarily reflects decreases in the interest rates paid by new and refinancing borrowers (particularly on housing loans)… In total, the decline in outstanding funding costs over the past two years (of around 85 basis points)*

90 RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2019.
91 RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2020.
92 RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2021.

has flowed through to outstanding housing and business interest rates (which are lower by around 100 and 115 basis points, respectively)… The fall in outstanding housing interest rates over 2021 (of around 40 basis points) largely reflected the strong uptake of fixed-rate housing loans at low… interest rates by both new and refinancing borrowers. Fixed-rate loans became more popular as interest rates on many of these products declined to be below the interest rates charged on variable-rate loans (Graph 15). The stock of fixed-rate housing loans rose from 20 per cent to around 40 per cent of housing credit outstanding over the past two years. The average outstanding variable rate on housing lending also declined, as banks increased discounts (particularly on basic loans that do not include an offset account) and existing borrowers refinanced to lower rates.[7]… Although fixed rates on housing loans remain low, rates on new loans increased in the second half of the year, alongside higher swap rates (which are the key benchmarks for fixed-rate lending). The largest increases to date have been for loans with longer fixed terms, while shorter-term fixed rates rose by a smaller amount over 2021 (Graph 16). The effect of these increases on average outstanding housing rates has been limited, as borrowers increased their uptake of low-rate variable loans and pivoted away from longer-term to shorter-term fixed-rate housing loans."[93]

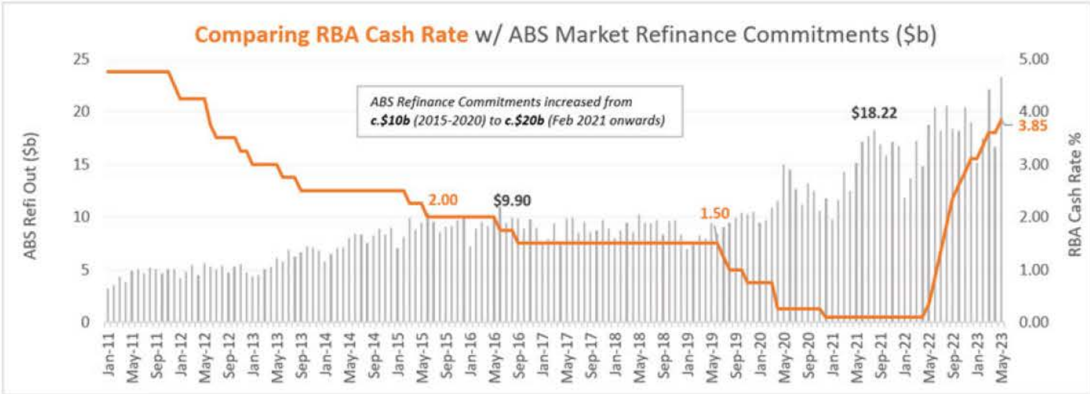
- Discussing 2022: *"During 2022, banks competed strongly for new and externally refinancing borrowers, particularly those of higher credit quality, in addition to adjusting discounts to retain existing borrowers. Liaison suggests that around 30 per cent of variable-rate borrowers have renegotiated a lower rate on their housing loan with their existing lender since May. Many borrowers have also refinanced with a new lender, with major banks extending cashback offers to customers of around two to four thousand dollars… We estimate that the implied lending spread for the major banks narrowed further over 2022 (Graph 14). Underpinning this, the aggregate lending rate increased by around 30 basis points less than funding costs. Key factors weighing on the aggregate lending rate included the high share of fixed-rate housing loans that did not reprice, and the effect of ongoing competition in housing lending on interest rates for new and outstanding variable-rate loans."*[94]

69 Secondly, in my view, the historic trend in refinancing demand does not support Ms Starks' argument that the recent level of refinancing demand represents a *"transient"* period of *"higher than average market demand"*.[95] Figure 1, which appears in Annexure B of my letter of instructions, shows that, while there have been fluctuations month to month, refinancing demand (represented by the grey bars) has stayed stable or increased over any meaningful period of time between January 2011 and May 2023.[96] Based on this long-term trend, it is far from clear to me that refinancing demand will soon reduce significantly and that therefore the recent level of refinancing demand represents a *"transient"* period of *"higher than average market demand"*.

93 RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2022.
94 RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2023.
95 Expert report of Mary Starks, 7 July 2023, para 8.4.
96 Annex B, Annexure B.

RESTRICTION OF PUBLICATION CLAIMED

Figure 1: Refinancing demand versus the RBA cash rate (January 2011-May 2023)



Source: ANZ.

4.2 Assessment of key market features

70 Below, drawing from Professor de Roos' expert report, I set out the feature of the home loans market that he cites as being important in determining whether coordination is likely or sustainable and consider the Proposed Acquisition's likely impact on each of them (and in turn on the ability of the major banks to initiate or sustain cooperative behaviour).

4.2.1 Market structure

71 As a matter of economic theory, and as explained by Professor de Roos, it is generally easier for fewer firms (relative to situations with more firms) to initiate and sustain cooperative behaviour. In particular, the number of different permutations of bilateral considerations that might be required can increase substantially as the number of competitors increases.[97]

72 While the number of competitors in the market would reduce by one relative the status quo counterfactual, I note that the number of competitors is not affected by the Proposed Acquisition when compared against the alternative buyer counterfactual.

73 Moreover, Ms Starks and Professor King are concerned about a form of "incomplete" coordination taking place between the major banks only. In this scenario, the Proposed Acquisition would not change the number of major banks (as Ms Starks acknowledges), nor any other sub-set of banks that might be considered to be relevant to putative coordination, relative to status quo or alternative buyer counterfactuals.[98]

74 Even with regard to the impact of the Proposed Acquisition on concentration in the home loans market more generally, I note the following.

[97] Expert report of Nick de Roos, 5 April 2023, p. 3.
[98] Expert report of Mary Starks, 16 June 2023, para 9.85.

- First, the pre-merger CR4 is 75.25% and the post-merger CR4 would be 77.64%, with an increment of 2.39%.[99] As Ms Starks acknowledges, [redacted].[100]
- Second, the pre-merger HHI is 1,583, the post-merger HHI would be 1,646 and the delta would be 62.[101] The ACCC will generally be less likely to identify horizontal competition concerns when the post-merger HHI is (a) less than 2,000 or (b) greater than 2,000 with a delta less than 100.[102]

75 In my view, the above increments in concentration measures do not indicate that the Proposed Acquisition would make coordination materially more likely or more sustainable – a similar conclusion to the one that Ms Starks reaches.[103]

4.2.2 Symmetry and alignment

76 As a matter of economic theory, and as explained by Professor de Roos, symmetry between firms (not only in terms of market shares, but also in regard to costs, product design, and other attributes) tends to make coordination between firms easier.[104] The incentives of symmetric firms to engage in coordination, and their ability to detect and punish any deviations from coordination, are more likely to be aligned than in the case of asymmetric firms.

77 Currently, ANZ is the fourth largest major bank in the home loans market (13.0%), behind CBA (25.8%), Westpac (21.5%) and NAB (14.9%). Ms Starks [redacted].[105] After the Proposed Acquisition, ANZ would be third largest major bank (15.4%), behind CBA and Westpac but slightly above NAB.

78 I agree with Professor King that absolute symmetry is not required for coordination to occur between firms. However, I disagree with his conclusion that the Proposed Acquisition would substantially lessen competition by making coordination between the major banks more likely and sustainable by increasing symmetry among the major banks.[106]

79 Firstly, the increase in symmetry between the major banks from the Proposed Acquisition would be minimal. The only aspect of symmetry that Professor King has regard to is market share (and not other attributes).[107] In regard to total market shares across all types of home loans, the increment from the Proposed Acquisition would be minimal (2.4%). The reduction in the difference between the largest major bank and the smallest major bank caused by the Proposed Acquisition would be even more minimal (from 12.8% to 10.9%). In my view, this

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99 Based on Table 12 of the Application for Merger Authorisation, 2 December 2022.

100 [redacted]

101 Application for Merger Authorisation, 2 December 2022, para 7.5.a.

102 ACCC Merger Guidelines, para 7.14

103 [redacted] Expert report of Mary Starks, 16 June 2023, para 9.113.1.

104 Expert report of Nick de Roos, 5 April 2023, p. 4.

105 [redacted]

106 Expert report of Stephen King, 28 June 2023, para 74.

107 Expert report of Stephen King, 3 March 2023, paras 83-85.

change in symmetry would not materially increase the internal stability of putative coordination amongst the major banks – and I note that Ms Starks arrives at a similar view.[108]

80 Secondly, asymmetries between the major banks in relation to other attributes would continue to undermine the internal stability of putative coordination between the major banks. For example, Ms Starks finds in her first report that [redacted].[109] Figure 2 below, taken from a report prepared by Jarden (an investment and advisory group), shows that CBA's and (more recently) NAB's turnaround times have been consistently faster than Westpac's and ANZ's in recent years.[110]

Figure 2: Average turnaround times for the major banks and Macquarie Bank

Source: Jarden

81 Secondly, in my view, the minimal increase in symmetry between the major banks' market shares would not increase the external stability of coordination between the major banks. By that I mean that the Proposed Acquisition would not materially reduce the constraint from other banks that would be "external to" (i.e. outside of) the putative coordinating group (i.e. the major banks). Rather, the Proposed Acquisition would only remove Suncorp Bank (who is not a particularly vigorous competitor) as an independent competitor. Importantly, Macquarie Bank (who has gained significant market share in the last ten years at the expense of the major banks) would continue to undermine any attempt at coordination (as would other smaller banks such as ING, BEN and Bank of Queensland).

108 [redacted]. Expert report of Mary Starks, 16 June 2023, para 9.113.1.
109 Expert report of Mary Starks, 16 June 2023, para 9.78.
110 Jarden, Launching the Jarden Mortgage Competition Tracker, 20 July 2022, p. 3.

82 Lastly, I note that one of the *"key drivers"* behind Ms Starks' conclusion that the home loans market exhibits a propensity towards coordination is *"[s]ymmetry in costs (with the RBA reserve rate being an important common driver of costs)"*.[111] I agree with Ms Starks that the RBA cash rate is an important common cost of the major banks. However, while I note that I am not well placed to comment on Ms Starks' assessment of the symmetry between the major banks' cost structures since parts of this assessment in her first report are redacted, an assessment of the symmetry between the major banks' cost structures should also account for the major banks' other (common and firm-specific) costs (particularly operating and capital costs), and a proper assessment of symmetry should also consider other factors beyond market shares and costs, such as product design. In any case, what is more relevant to the competition assessment of the Proposed Acquisition is, as discussed above, what impact (if any) the Proposed Acquisition would have on the ability of firms to initiate or sustain coordination (as per Professor de Roos' framework). On this point, Ms Starks finds that the Proposed Acquisition (compared to the status quo counterfactual) would be unlikely to lead to coordinated effects (for example, via increased symmetry in costs between the major banks).[112]

4.2.3 Multi-market contact

83 As a matter of economic theory, and as explained by Professor de Roos, multi-market contact can make coordination more likely to be initiated by providing firms with more experience interacting with their rivals and helping firms develop common expectations for behaviour.[113]

84 Meanwhile, the effect of multi-market contact on the sustainability of coordination is less clear. On the one hand, multi-market contact increases the effectiveness of punishment because providing more opportunities for firms to punish deviations from coordinated behaviour in a targeted fashion. On the other hand, multi-market contact expands the opportunities for deviation.[114]

85 In any event, I do not consider that the Proposed Acquisition would increase the degree of multi-market contact between the major banks. There is no product or geographic market in which ANZ would "interact" with (i.e. compete or, in theory, coordinate with) the major banks as a consequence of acquiring Suncorp Bank, i.e. ANZ is already present in the product and geographic markets where Suncorp Bank is present.

4.2.4 Communication devices

86 As a matter of economic theory, and as explained by Professor de Roos, if firms have opportunities to communicate pricing intentions or have commonly understood focal points on which to coordinate, this can make it easier to coordinate.[115]

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111 Expert report of Mary Starks, 7 July 2023, para 8.1.
112 Expert report of Mary Starks, 16 June 2023, para 9.113.1.
113 Expert report of Nick de Roos, 5 April 2023, p. 4.
114 Expert report of Nick de Roos, 5 April 2023, p. 4.
115 Expert report of Nick de Roos, 5 April 2023, p. 5.

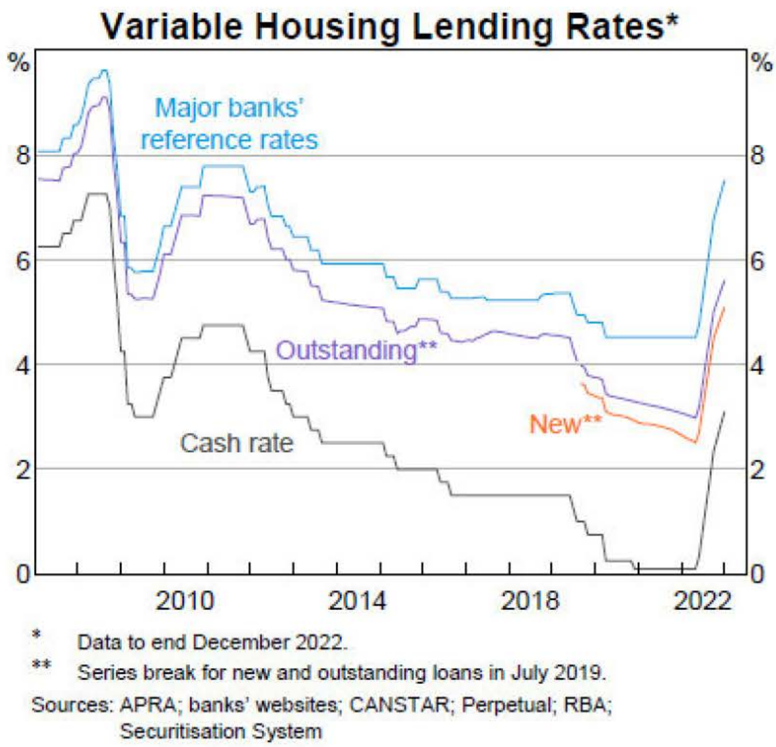
87 In my view, the Proposed Acquisition would not create opportunities to communicate pricing intentions or focal points on which to coordinate and, in this way, would not make coordination more likely.

4.2.5 Price transparency between firms

88 As a matter of economic theory, and as explained by Professor de Roos, if firms can more easily observe each other's prices it can make it easier for them to coordinate on price.[116] Price transparency can also make it easier to sustain price coordination (albeit it is still possible in theory for price coordination to be sustainable without it, and indeed it is also possible for effective competition to flourish with price transparency).

89 Price transparency is a matter of degree and, in my view, prices actually paid by customers in the market for home loans may not be particularly transparent to other banks. As the RBA noted in an article dated March 2023, very few home loan customers are charged the headline rate (which is publicly available) and instead are offered or negotiate a discounted rate. Figure 3 (taken from the same March 2023 article) is consistent with this; in particular, it shows that the rate a borrower pays for a new variable rate home loan (and indeed the rates paid on all outstanding variable rate home loans) has tended to be materially lower than the major banks' reference (or headline) rate, as evidenced by the difference between the orange (and purple) and blue line respectively.[117]

Figure 3: Lending rates on variable rate home loans (2007-2022)



Source: RBA

[116] Expert report of Nick de Roos, 5 April 2023, p. 5.
[117] RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2023.

90 More importantly, in my view, it is unlikely that the Proposed Acquisition would increase price transparency between firms. Professor de Roos provides the example of how price transparency may increase if the major firms in the market are less familiar with the regime of discounts offered by the target (compared with those offered by the acquirer).[118] Based on my review of the evidence, I do not consider that the other major banks are less familiar with the regime of discounts offered by Suncorp Bank than they are with those offered by ANZ. [redacted].[119] In any case, I understand that Ms Starks and Professor King are concerned about coordination occurring between the major banks only, which would depend on the transparency of the major banks' pricing only and not on Suncorp Bank's (or, for that matter, any other banks') pricing.[120] The Proposed Acquisition would not make this incomplete form of coordination between the major banks any more likely or sustainable due to an increase in price transparency.

4.2.6 Consumer choice frictions

91 As a matter of economic theory, and as explained by Professor de Roos, consumer choice frictions can increase the stability of coordination, by making it more costly for consumers to switch suppliers and in turn reducing the effectiveness of deviations (although I note that consumer choice frictions might also make putative punishment less effective, and thereby make coordination less stable).[121] Professor de Roos provides the following examples of consumer choice frictions: *"products may include costs of exiting a contract or switching a supplier; consumers may face costs and require time to gather product information; product descriptions, including pricing, may themselves be complex, making them challenging to evaluate; and interest rates may vary frequently making them hard to compare."* Professor de Roos also states that consumers may be deterred from switching suppliers by a mere perception that barriers to switching are high, even if they are not.[122]

92 I note that Ms Starks and Professor King have different views on the magnitude of the consumer choice frictions currently present in the home loans market. In her second report, Ms Starks notes that "*the use of brokers has become more common, and customers are much more likely to handle their banking online*". Furthermore, she does not identify consumer choice frictions as one of the "*key drivers*" behind her conclusion that the home loans market exhibits a propensity towards coordination.[123] In contrast, Professor King considers that switching costs in the home loans market are "*high*" and notes that all the key features that raise the likelihood, extent, severity, or sustainability of coordination between firms (including the existence of substantial consumer choice frictions) are satisfied as regards the major banks.[124]

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118 Expert report of Nick de Roos, 5 April 2023, p. 8.

119 Statement of Douglas John Campbell, 30 November 2022, para 46(c). This understanding is also informed by my review of the ANZ internal documents briefed to me for the purpose of preparing my second report, [redacted]. See Expert report of Patrick Smith, 17 May 2023, paras 39-40.

120 Expert report of Mary Starks, 16 June 2023, para 9.85. Expert report of Stephen King, 28 June 2023, para 71.

121 Expert report of Nick de Roos, 5 April 2023, pp. 5-6.

122 Expert report of Nick de Roos, 5 April 2023, pp. 5-6.

123 Expert report of Mary Starks, 7 July 2023, para 8.1.

124 Expert report of Stephen King, 3 March 2023, para 95. Expert report of Stephen King, 28 June 2023, para 61.

93 Based on my review of the materials that have been briefed to me (both for my second report and this third report), I agree with Ms Starks that consumer choice frictions are not currently substantial and nor is there reason to expect that they will be in the foreseeable future.[125] Figure 1 above is consistent with this; any consumer choice frictions that might exist have not prevented refinancing demand from steadily increasing over the past 12 years.

94 However, consistent with the framework set out by Professor de Roos (discussed above), what matters for merger review is whether the merger would increase firms' ability to initiate or sustain coordination. In my view, the Proposed Acquisition would not increase the major banks' ability to initiate or sustain coordination by increasing the magnitude of consumer choice frictions.

[125] Expert report of Mary Starks, 16 June 2023, paras 3.34 and 9.91. Expert report of Mary Starks, 7 July 2023, para 8.5.

Annexes

A CV of Patrick Smith

Patrick Smith is a partner at RBB Economics, and applies economics, econometrics and industrial expertise to competition policy, litigation and arbitration. He has testified and consulted to parties, agencies and interveners in high-profile, complex and multi-jurisdictional proceedings over the past fifteen years.

Patrick has acted as an expert witness in investigations of mergers, horizontal and vertical agreements, and abuse of dominance inquiries, covering excessive pricing, price discrimination, margin squeeze and predation, as well as in the assessment of pricing, profitability valuation and damages estimation within mediation, dispute resolution, and international arbitration.

His expert witness experience includes:

- Pacific National/Aurizon, cleared by the Federal Court of Australia, citing with approval Mr Smith's evidence, "I propose to proceed largely adopting the above economic framework as expounded by Mr Smith." and "I found him to be highly skilled and very thorough in his written and oral evidence.",
- GUG v NERSA, in which the Constitutional Court of South Africa recently confirmed the decision of the Supreme Court of Appeal, which itself had upheld an appeal against NERSA's gas pricing regulation that was brought by a group of 6 large industrial gas users, prominently citing Mr Smith's expert reports in its judgment;
- Streetmap v Google, the first concurrent expert evidence ("hot tub") procedure adopted in UK competition litigation (EWHC);
- Tabcorp/Tatts, in which Mr Smith appeared as one of 7 experts examined in four hot tubs (Australian Competition Tribunal);
- Bread cartel class action damages, which was the first competition class action damages case in South Africa (and which was heard across multiple courts including the Constitutional Court); and
- First Quantum v DRC, an international arbitration in which Mr Smith submitted expert evidence regarding the damage caused by the loss of mining permits and facilities, and which culminated in a USD 1.25 billion settlement and acquisition (ICC and ICSID).

He has particular expertise in advising clients through in-depth merger investigations before the European Commission as well as authorities in South Africa, Germany, Spain and the UK, and has worked on several transactions involving the coordination of economic advice and analysis across multiple jurisdictions globally. His merger experience includes leading roles in Dow/DuPont, AB InBev/SABMiller, PRS/GEMA/STIM, Chiquita/Fyffes, Federal Mogul/Honeywell, Syniverse/MACH, Universal/EMI, Kenilworth Racing/Gold Circle, Thaba Chueu/SamQuarz, Sun Capital/DSP, Dow/Rohm & Haas, InBev/Anheuser Busch, ABF/GBI Business, Thomson/Reuters, Syniverse/BSG, Universal/BMG Music Publishing, and Inco/Falconbridge. Work for government agencies and third parties includes Vodacom/Neotel, Pioneer/Futurelife, Cisco/Tandberg, T-Mobile/Orange UK and Anglo American/Kumba/Avmin.

Mr Smith previously trained and worked as a chemical engineer, and often combines his knowledge of chemical processes with economic analysis in sectors such as mining, metals and minerals processing, oil, gas and petrochemicals, and food and beverage processing. He has also had particularly extensive experience in the fields of: music publishing and recorded music; copyright; media and information processing; sports administration; audio-visual rights; gaming; gambling and betting; and financial services.

Patrick holds a BSc (Hons. First Class), and MSc in chemical engineering from the University of Cape Town, and a BA (First Class) in economics and management and an MSc in economics for development from Oxford University. Mr Smith is an affiliate member of the Institute of Chemical Engineers.

Qualifications

2003 OXFORD UNIVERSITY

M.Sc. Economics for Development

2002 OXFORD UNIVERSITY

MA in Economics and Management (First Class)

2000 UNIVERSITY OF CAPE TOWN

M.Sc. in Chemical Engineering

1998 UNIVERSITY OF CAPE TOWN

B.Sc. in Chemical Engineering (First Class Honours)

Selected prizes and awards

2003 Thesis prize, MSc in Economics for Development, Oxford

2000 Rhodes Scholarship, Zimbabwe and St John's College, Oxford

1998 Sasol Award and Malan Gold Medal (University of Cape Town, 1st Prize in Chemical Engineering), Thesis Prize, Design Project Prize

1995 Murray MacDougall Scholarship, Triangle Sugar Corporation Ltd.

Career details

2012 – present **RBB Economics**
Partner (previously *Principal*)

2003 – 2012 **LAW AND BUSINESS ECONOMICS (later NERA ECONOMIC CONSULTING)**

	Associate Director (previously *Senior Consultant*), European Competition Policy Practice
2002 – 2003	*Analyst*, European Competition Policy Practice
1999 - 2000	**TRIANGLE SUGAR CORP LTD (TONGAAT HULETT)** *Graduate Chemical Engineer, Laboratory Manager* (2000)
1995 - 1998	**TRIANGLE SUGAR CORP LTD (TONGAAT HULETT)** *Undergraduate Trainee Chemical Engineer*

Expert witness work – litigation, mediation and arbitration

The following projects include some of the work Mr Smith has undertaken involving testimony or expert witness roles.

- **VW NOx Emissions Group Litigation (England and Wales) (2022)**
  - Crossley & Ors v Volkswagen Aktiengesellschaft [2019] EWHC 783(QB)
  - Damages claim in regard to EA189 diesel engines, circa 91,000 claims.
  - Initial work setting out potential causes of action, scoping claims, and considering methodologies for the estimation of damages.
  - Case settled, involving a payment of £193m, plus further payments towards the claimants' legal costs and other fees.
- **City of Cape Town vs WBHO, Stefanutti Stocks and Aveng (2022)**
  - The City Of Cape Town Metropolitan Municipality, WBHO Construction (Pty) Ltd, Stefanutti Stocks Holdings Limited, and Aveng Africa (Pty) Ltd High Court, Pretoria, case number 86873/14, referred to arbitration.
  - Follow-on damages in regard to the construction of Green Point Soccer World Cup Stadium.
  - Expert report submitted.
  - Settled.
- **Facebook v Govchat (2021)**
  - Govchat (Pty) Ltd; Hashtag Letstalk (Pty) Ltd and Facebook Inc; Whatsapp Inc; Case number: IR165Nov20
  - Interim relief application, online messaging platforms, government communications, market definition and the economic implications of the application of certain commercial terms to the use of messaging platforms.
  - Expert report submitted.
  - Interim relief granted.

- **Seriti/South 32 (2020)**
  - Thabong Coal and South32 SA, South African Competition Tribunal, LM144Jan20.
  - Merger. Coal mining and thermal coal supply.
  - Oral testimony.
  - Merger approved, subject to conditions.
- **ACCC vs NSW Ports (2020)**
  - Australian Competition and Consumer Commission v NSW Ports. Federal Court of Australia, NSD2289/2018; NSD751/2021.
  - Competition complaint. Container port services, dynamic competition.
  - Expert reports submitted, oral testimony.
  - Case dismissed by the Federal Court; Appeal lodged, judgment reserved.
- **Tongaat-Hulett Starch MAC Notice Arbitration (2020)**
  - Arbitration before an Independent Expert. Starch business, and material adverse change notice.
  - Expert report submitted and oral testimony.
  - MAC claim rejected.
- **JSE/Link (2020)**
  - JSE Ltd and Link Market Services South Africa (Pty) Ltd, Competition Tribunal South Africa, Case number: IM141Dec19.
  - Merger. Financial exchanges, transfer secretarial services, settlement and custodial services.
  - Expert report submitted and oral testimony.
  - Merger approved, subject to conditions.
- **Dischem Excessive Pricing (2020)**
  - Competition Commission of South Africa v Dis-Chem Pharmacies Limited. Competition Tribunal, Case No: CR008Apr20.
  - Excessive pricing during a national emergency (Covid-19 Pandemic). Face masks.
  - Expert report submitted, oral testimony.
  - Complaint upheld, noting Mr Smith's contribution: "*Mr Smith from RBB correctly sets out the essence of the enquiry. A price that is being evaluated as being excessive must be compared to a competitive benchmark.*" Appeal raised, but later abandoned.

- **Pacific National/Aurizon (2020)**
  - Australian Competition and Consumer Commission v Pacific National Pty Limited & Ors. Federal Court of Australia, VID864/2018, FCA 669; VID695/2019, FCAFC 77.
  - Merger appeal. Rail freight, terminal operation.
  - Expert report submitted, oral testimony.
  - Merger approved, citing with approval Mr Smith's evidence, *"I propose to proceed largely adopting the above economic framework as expounded by Mr Smith."*; *"I found him to be highly skilled and very thorough in his written and oral evidence."*
- **Bosch v Defy (2019)**
  - Bosch Home Appliances (Pty) Ltd t/a Bosch v International Trade and Administration Commission and Others; Bosch Home Appliances (Pty) Ltd t/a Bosch v Minister of Trade Industry and Others (12160/18; 67553/18) [2021]. North Gauteng High Court. ZAGPPHC 8 (5 January 2021)
  - Complaint against a trade decision. Gas cookers.
  - Expert report submitted.
  - Complaint dismissed, citing with approval the expert report submitted by RBB: "*in any event, RBB has pointed out […] that the basis on which Genesis asserts that Defy's profitability was not low […] is not only wrong in principle but has also not been accurately performed by Genesis*".
- **Vodafone Hutchison Australia / TPG (2019)**
  - Vodafone Hutchison Australia Pty Limited (ACN 096 304 620) v Australian Competition And Consumer Commission & Anor. Federal Court of Australia, NSD818/2019
  - Merger appeal. Mobile telephony.
  - Expert report submitted, oral testimony.
  - Merger approved, citing with approval Mr Smith's evidence: "*Clearly Mr Smith is highly skilled and very thorough in his written and oral evidence, specialising as he does in the economics of competition and regulation.*"
- **VW Diesel Emissions Australian Class Action Damages (2019)**
  - Alister Dalton & Others v Volkswagen AG & Others, Federal Court of Australia, NSD1459/2015.
  - Class action claim for damages, assessment of how the diesel emissions issue might have affected the value of the affected vehicles, in particular if consumers had had access to more information at the time of purchase.
  - Expert report submitted, oral testimony.
  - In-principle settlement reached for approximately AUD 120 million, in respect of the 100,000 affected vehicles, across 21 models.

- **ACCC v trivago (2019)**
    - Australian Competition and Consumer Commission v trivago N.V.. Federal Court of Australia, VID1034/2018.
    - Misleading advertising. Online hotel price comparison services.
    - Expert report submitted, oral testimony.
    - Complaint upheld.
- **Gas Users Group v NERSA (2019)**
    - High Court, Gauteng Division, Pretoria, Case No.: 57506/13 (4 October 2016); Supreme Court of Appeal (South Africa); *PG Group & others v NERSA* (150/2017) [2018] ZASCA 56, (10 May 2018), Constitutional Court of South Africa, *National Energy Regulator of South Africa and Sasol Gas Limited vs PG Group & Others* ZACT Case No: CCT 131/18
    - Piped gas price regulation methodologies, fair terms for access to gas, regulatory review.
    - Expert reports submitted.

      High Court: review application dismissed, SCA: appeal upheld, citing with approval Mr Smith's expert reports:

      "As was correctly stated in the report dated 16 September 2014 prepared of behalf of RBB Economics by Mr Smith, an expert witness relied upon by the appellants:

      'Despite having kept average piped-gas prices roughly the same, Sasol Gas has set its current prices significantly below what it is permitted to charge under the Methodology. This, too, highlights that the Methodology is not effective in alleviating the effects of a lack of effective competition: it permits Sasol Gas to achieve significantly higher prices (and profits) than it did when it was an unregulated monopolist."

      "*a further report of Mr Smith dated 9 February 2015, encapsulates the difficulty the respondents face in this regard*:

      '...(W)hat makes the choice of Sasol Gas' comparators so unsuitable is that they include the very alternative energy sources that Sasol Gas, as a monopolist, has already taken into account when increasing gas prices without regard to costs, up until the point allowed by these weak outside options.'"
    - SCA decision largely upheld by the Constitutional Court.
- **CCSA v NPC and others (2019)**
    - The Competition Commission of South Africa and NPC CIMPOR (Pty) Ltd, AfriSam (South Africa) (Pty) Ltd, Lafarge South Africa (Pty) Ltd, and PPC Co Ltd. CC Case No.2008Sep3988, CT Case Nos. 63/CR/Sep09, 09/CR/Jan07 and CR206Feb15, and Competition Appeal Court Case No: 178/CAC/Dec/19.
    - Complaint referral, alleged infringement of the Competition Act, Section 4(1)(b)(i) and (ii) (price fixing and market allocation). Cement and cementitious products.
    - Expert report submitted, oral testimony, including concurrent evidence. Complaint dismissed, citing with approval Mr Smith's oral evidence: "*As Mr Smith*

noted 'these initiatives marked a stark contrast in the strategic direction of NPC and demonstrated a clear break from its conduct as a passive controlled subsidiary of the three other respondents. These initiatives also indicated that NPC was trying to compete on its merits to expand outward in order to enable it to win new business.'"

- **Competition Commission Data Services Market Inquiry (2019)**
  - Competition Commission Market Inquiry into Data Services.
  - Market inquiry. Data services.
  - Multiple reports and analyses submitted and presented. Analysis and advice throughout the course of the inquiry from 2017-2019, including additional interactions with the Commission into 2020.
- **Dimension Data v Main Street 450 Arbitration (2018)**
  - Dimension Data (SA) Holdings (Pty) Ltd v Main Street 450 (Pty) Ltd. Arbitration between two shareholders of Tradebridge (Pty) Ltd concerning the proposed sale of Dimension Data's shares in Tradebridge to Huge Group Ltd. Assessment of the nature and scope of competition between Huge Group and Tradebridge.
  - Expert report submitted, meeting of experts. Claim upheld.
- **Inquiry into the Competitive Neutrality of the National Broadcasters (2018)**
  - Australian Government's inquiry into the competitive neutrality of the national broadcasters, the Australian Broadcasting Corporation ("ABC") and the Special Broadcasting Services ("SBS").
  - RBB report prepared to accompany the ABC's submissions, testing for "*net competitive advantages over private sector competitors*", in particular potential crowding out of audiences available to other media operators, and potential pro-competitive effects. Competitive differentiation, innovation, effect on advertising revenues, cross country studies, investment and licensing.
  - The Expert Panel's final report makes no substantive adverse findings against the ABC, and concludes that "*this Inquiry considers the National Broadcasters are not causing significant competitive distortions beyond the public interest*", citing the RBB report.
- **Securinfo v SAP (2018)**
  - Systems Applications Consultants (Pty) Limited T/A Securinfo v Systems Applications Products AG, High Court, Case No: 08120378
  - Vertical restraints, infringements of EC competition law, and competition amongst software platforms.
  - Expert report submitted, oral testimony. Competition arguments abandoned.
- **CCSA v Enviroserv Waste Management (2018)**
  - The Competition Commission of South Africa and Wasteman holdings (Pty) Ltd, Enviroserv Waste Management (Pty) Ltd, Competition Tribunal case number CR210Feb17.

- Complaint referral, alleged infringement of the Competition Act, Section 4(1)(b)(i) (price fixing). Landfill site management and waste management services.

- Expert report submitted, oral testimony. Administrative penalty applied, accepting almost all of Enviroserv's submissions on the quantum of the penalty, and noting the contribution of Mr Smith "*The evidence of Mr Smith […] is the only economic evidence of the effects of the agreement on Enviroserv's pricing*".

- **Foskor (Pty) Limited and Omnia Group (Pty) Limited Mediation and Arbitration (2018)**

  - Mediation and arbitration following the settlement of an excessive pricing investigation, (Case No: 43/CR/Aug10: The Competition Commission South Africa vs Foskor (Pty) Ltd.)

  - Appointed as the independent economic expert, who had to advise the Mediator, and together with the Mediator had to prepare a report to make a determination of phosphoric acid pricing.

- **Netcare / Lakeview (2018)**

  - Netcare Hospitals (Pty) Ltd/Lakeview Hospital, , CC Case No: 2017Jul001, CT Case No: IM193Oct17

  - Intermediate merger. Private hospital operations.

  - Expert report submitted, concurrent oral testimony (hot tub). Merger cleared subject to conditions.

- **Ocean Network Express container liner joint venture (2018)**

  - Competition Tribunal, case number IM091JUL17, Container Liner Joint Venture of Nippon Yusen Kabushiki Kaisha ("NYK"), Mitsui O.S.K. Lines Ltd. ("MOL") and Kawasaki Kisen Kaisha, Ltd. ("K-Line").

  - Merger inquiry. Container liner shipping, car carrier and bulk shipping services, spill-over coordinated effects.

  - Expert report. Merger cleared subject to conditions.

- **Tabcorp Holdings Limited / Tatts Group Limited (2017)**

  - Australian Competition Tribunal, ACT 1 of 2017, taken on review to the Federal Court, returned to the Australian Competition Tribunal.

  - Merger inquiry. Wagering, racing media, net economic effects.

  - Expert report and oral testimony (hot tubs). Merger cleared by the ACT, subject to pre-announced divestment of Odyssey gaming monitoring business in Queensland. Reviewed by the Federal Court and cleared again by the ACT, citing with approval Mr Smith's expert evidence: "*As noted by Mr Smith in his expert reply report:*

    "the mechanics of how wagering markets work mean that it can be highly misleading to consider movements in long term average payout rates in the same way that one might consider posted prices in a consumer goods context."

- **BAT v OGT (2017)**
  - Civil Case Claim by OGT before the Tbilisi City Court on 12 July 2016 (Decision of 10 February 2017)
  - Case 330210016001430393 (No 2B/1895-2017) Tbilisi Appeals Court (Decision of 8 June 2017), British American Tobacco Georgia Limited; the Georgian Representation of British American Tobacco Georgia Limited in Tbilisi; and T&R Distribution Ltd v OGT Ltd.
  - Expert reports. Predatory pricing and vertical foreclosure. Tbilisi City Court awarded significant damages; damages cancelled on appeal. Supreme Court denied leave to appeal.
- **BAT v Tbilisi Tobacco (2016)**
  - Civil Case Claim by JSC Tbilisi Tobacco before the Tbilisi City Court, 24 February 2016.
  - Expert report. Predatory pricing. Claim withdrawn.
- **Richards Bay Minerals exclusivity complaint (2017)**
  - Hermes Apollo Process engineering CC v Richards Bay Minerals (Pty) Limited 2015Oct0559.
  - Exclusive distribution agreements, efficiency rationale, likelihood of exclusionary effects.
  - Expert report submitted.
  - Complaint non-referred.
- **US DOJ Review of PRO Consent Decrees (2016)**
  - Instructed as an expert economist in the preparation of a report submitted to the US Department of Justice ("DOJ") as part of its review of antitrust consent decrees that regulate the licensing practices of the performance rights organizations ("PROs") ASCAP and BMI.
  - United States v. ASCAP, 41 Civ. 1395 (S.D.N.Y.), and United States v. BMI, 64 Civ. 3787 (S.D.N.Y.).
  - Expert report. Consent Decrees confirmed.
- **Anthony et al v Phumelela Gaming and Leisure Limited and 3 others (2016)**
  - Competition Tribunal (South Africa), Referral, Commission File No. 2014 March 0105.
  - Claims of abuse of dominance, anti-competitive agreements, and damages. Horseracing administration and betting, audio-visual coverage.
  - Complaint withdrawn.

- **Southern Sun Hotels / Hospitality Property Fund (2016)**
  - Southern Sun Hotels (Pty) Ltd/Hospitality Property Fund, CC Reference No: 2015Dec0720, CT Reference No: LM218Jan16
  - Large merger. Hotel operations and hotel property ownership and leasing.
  - Expert report submitted. Merger approved subject to conditions.
- **Mpact/Remade (2016)**
  - Mpact Limited and Remade Holdings (Pty) Ltd and the Property Companies, CC Case No. 2015Jul0421 / CT Case No LM078 Jul15.
  - Large merger. Paper and plastic recycling and processing.
  - Expert report and oral testimony. Merger approved subject to conditions.
- **CTP/CDT (2016)**
  - CTP Limited and Compact Disc Technologies (a division of Times Media (Pty) Ltd) v Competition Commission (IM232Feb16) [2016] ZACT 38 (11 May 2016).
  - Intermediate merger. Compact disc and DVD replication.
  - Expert report and oral testimony. Merger approved subject to conditions.
- **Vodacom/Neotel (2015)**
  - Vodacom Proprietary Limited/Neotel Proprietary Limited CC Case Number: 2014Jul0382 / CT Case No: 19299.
  - Large merger. Mobile telecommunications and spectrum allocation.
  - Expert report submitted. Merger abandoned.
- **Streetmap v Google (2015)**
  - Streetmap.EU Limited v Google, Inc., Google Ireland Limited and Google UK Limited. High Court, Chancery Division, [2016] EWHC 253 (Ch) Case No: HC-2013-000090 (12/02/2016).
  - Alleged abuse of dominance in internet search.
  - Expert reports and oral testimony (hot tub). Complaint dismissed, denied leave to appeal (by CoA).
- **Pioneer/Futurelife (2015)**
  - Pioneer Foods Proprietary Limited/Future Life Health Products Proprietary Limited Competition Tribunal Case No: LM017May15Pioneer; Competition Commission Case No: 2015Apr0205.
  - Large merger. Breakfast cereals and closeness of competition.
  - Expert report and oral testimony. Merger cleared, subject to hold-separate remedies.

- **Kwazulu-Natal Bookmakers' Association and 2 others v Phumelela Gaming and Leisure Limited and 16 others (2015)**
  - High Court (South Africa), Case No. 38728/2015.
  - Damages claim, assessment of effect of sports betting on bookmakers, and FRAND terms for horseracing content.
  - Expert report submitted in response to claimants' report. Ongoing.
- **Shopping centre exclusivity litigation and arbitration (2014)**
  - High Court of South Africa, Gauteng Division, Pretoria, case number 31739/14. Pick n' Pay Retailers Proprietary Limited / Liberty Group Limited & Liberty Properties Group Proprietary Limited. Arbitration.
  - Shopping centre exclusivity lease agreements with potential effect on competition. Settled.
- **LME vs BNK, BOC (2014)**
  - LCIA arbitrations 132365 & 132366, LITASCO Middle East DMCC vs BNK (UK) Ltd and Closed Joint Stock Company Belarusian Oil Company.
  - Arbitration relating to an agreement to supply oil at a European port, and ancillary agreements to facilitate the transport of that oil.
  - Expert report prepared to address allegations of infringements of competition law (Articles 101 and 102 of TFEU). Settled.
- **Ferro/Arkema (2014)**
  - Ferro Industrial Products (Pty) Limited / Arkema Resins (Pty) Limited, Competition Tribunal Case No: 018358, Competition Commission Case No: 2013Dec0602.
  - Intermediate Merger. Unsaturated polyester resins.
  - Expert reports and oral testimony for the merging parties. Merger approved subject to conditions.
- **Bankserv/Emid/Nomad (2014)**
  - Comesa Financial Exchange Proprietary Limited / Emid Holdings Proprietary Limited and Lexshell 129 General Trading Proprietary Limited / Nomad Information Systems Proprietary Limited, Competition Tribunal Case Numbers 017657 and 017665. Contested merger reconsideration proceedings.
  - Banking services.
  - Expert report submitted for the merging parties. Merger settled subject to amended conditions.
- **Almenta Proprietary Limited and Others v Phumelela Gaming And Leisure Limited and Others (2014)**
  - High Court (South Africa), Case No. 2014/03504.

  - FRAND terms for access to intellectual property. Dominance, pricing conduct, and abuse of dominance; competitive justification, net effect on competition.
  - Expert report submitted in response to application for interim relief. Interim relief application denied.

- **Satellite transmission litigation (2013)**
  - Anticipated action in the High Court (England and Wales), relating to an ICC arbitration.
  - Exclusionary abuse (Art 101 and 102 TFEU). Market definition, economies of scale, competitive tender processes, incentives to exclude, effect on competition.
  - Settled.

- **Bread cartel (follow on damages, class action) (2013)**
  - Competition Tribunal: Pioneer Foods, Case No. 15/CR/Feb07 and 50/CR/May08.
  - Western Cape High Court: case number 25302/2010, 26 November 2011.
  - Supreme Court of Appeal: Children's Resource Centre Trust v Pioneer Food, (50/2012)[2012] ZASCA 182 (29 November 2012).
  - Supreme Court of Appeal: Mukaddam and Others v Pioneer Food and Others (49/2012) [2012] ZASCA 183, Constitutional Court: Mukaddam and Others v Pioneer Foods and Others, Case CCT 131/12 [2013] ZACC 23.
  - Expert reports submitted. Class action cartel damages litigation. Settled.

- **Gold Circle/Kenilworth Racing (2012)**
  - Kenilworth Racing (Pty) Ltd / Gold Circle (Pty) Ltd (South African Competition Commission, CC Case No.: 2011DEC0429); The Thoroughbred Horseracing Trust / Kenilworth Racing (Pty) Ltd (South African Competition Commission, CC Case No.: 2011DEC0427); (Competition Tribunal, CT Case No: 36/AM/APR12)
  - Intermediate merger. Horseracing administration and betting.
  - Expert report and oral testimony for the merging parties. Merger approved subject to employment condition.

- **Thaba Chueu/SamQuarz (2012)**
  - Thaba Chueu Mining (Pty) Ltd / Samquarz (Pty) Ltd (South African Competition Commission, CC Case No 2011OCT0291; South African Competition Tribunal, CT Case No 10/Am/JAN12).
  - Intermediate merger. Mining, silica, silicon metal and ferrosilicon.
  - Expert report and oral testimony for the merging parties, merger approved subject to conditions.

- **First Quantum v DRC (2012)**
  - Congo Mineral Developments Limited, Industrial Development Corporation of South Africa, and the International Finance Corporation vs the Democratic Republic of Congo and Gécamines (ICC International Court of Arbitration, Case No. 16918/ND).
  - Congo Mineral Developments Limited vs Highwind Properties Limited, Pareas Limited, Interim Holdings Limited, and Blue Narcissus Limited (British Virgin Islands Commercial Court).
  - International Quantum Resources Limited, Frontier SPRL and Compagnie Minière de Sakania SPRL vs Democratic Republic of Congo (ICSID)
  - International arbitration. Copper and cobalt mining and refining.
  - Expert reports submitted for the claimants, USD 1.25 billion settlement and acquisition.
- **Pioneer/Pannar (2011)**
  - Pioneer Hi-Bred International Inc / Pannar Seed (Pty) Ltd (CT Case No: 81/AM/Dec10;
  - Pioneer Hi-Bred International Inc and Pannar Seed (Pty) Ltd vs The Competition Commission And African Centre For Biosafety (CAC Case No: 113/CAC/Nov11)
  - Large merger. Maize seeds.
  - Expert reports and oral testimony for the Competition Commission, merger prohibition by the Competition Commission upheld by the Competition Tribunal, overturned by the Competition Appeal Court, leave to appeal denied by the Supreme Court of Appeal; appeal against Competition Appeal Court award of costs against the Commission upheld by the Constitutional Court.
- **Polymers (2010)**
  - Competition Commission v Sasol Chemical Industries Ltd & Safripol (Pty) Ltd (South African Competition Commission, CC Case No. 2007/Nov3338; South African Competition Tribunal, CT Case No. 48/CR/Aug10, South African Competition Appeal Court, Case No: 131/CAC/Jun14).
  - Propylene, ethylene, polypropylene and polyethylene.
  - Horizontal agreements: expert reports submitted for Safripol, case settled.
  - Pricing complaints: complaint, reports submitted, complaint upheld, overturned on appeal.
  - Mediation and arbitration: settled.
- **Commodity trading (2008)**
  - Challenge to trading arrangements. Market definition, pro-competitive justification, limitations on potentially anti-competitive conduct, net effect on competition.

- Expert report in anticipation of litigation under Art 101 TFEU.

- **Universal Music Group/Vale Music (2006)**
  - Spanish TDC Phase II merger, for merging party. Expert submissions. Merger approved.

Administrative proceedings

The following projects include some of the work Mr Smith has undertaken involving administrative proceedings before competition authorities and other regulatory agencies, excluding confidential matters (in particular cartel investigations), risk assessments (including Art 101 self-assessments), unannounced, abandoned transactions and on-going projects.

- **Idwala excessive pricing complaint (2020).** Complaint by the Competition Commission of South Africa against Idwala Industrial Holdings Limited, 2017Jan0042. Excessive pricing complaint, calcium carbonate products. Reports prepared, analysis submitted, oral meetings with the SACC. Complaint non-referred.

- **IRL/Mapochs (2020).** IRL (South Africa) Resources Investments (Pty) Ltd and Mapochs Mine (Pty) Ltd. Competition Tribunal, Case No: SM148Jul18. Merger, approved subject to conditions.

- **Isuzu/UD Trucks (2020).** Competition Tribunal of South Africa. Case no: LM070Jul20. Merger cleared unconditionally.

- **PepsiCo/Pioneer Foods (2020).** SIMBA (PTY) LTD/ PIONEER FOOD GROUP LIMITED. South African Competition Commission and Competition Tribunal, Case No: LM108Sep19. FMCGs. Merger approved, subject to conditions.

- **Kwande/Nampak (2020).** Kwande Capital (Pty) Ltd and the glass packaging business and plant of Nampak Glass, a division of Nampak Products Limited. Competition Commission. Merger, approved subject to conditions.

- **Asahi/CUB (2020).** Asahi Group Holdings – proposed acquisition of Carlton & United Breweries, ACCC Merger Investigation. Beer and cider. Merger approved, subject to conditions.

- **ANZ/Graincorp (2019).** ANZ Terminals Pty Ltd - proposed acquisition of GrainCorp Liquid Terminals, ACCC Merger Investigation. Bulk liquid storage. Merger approved, subject to conditions.

- **ASF/SIS (2019).** Mphome Agric (Pty) Ltd and The business being disposed of by Silicon Smelters (Pty) Ltd. 2019Apr0023. Competition Commission of South Africa, merger investigation. Forestry. Reports prepared, analysis submitted, oral meetings with the SACC. Merger approved unconditionally.

- **Mpact/Seyfert (2019).** Rebel Packaging (Pty) Ltd/Seyfert Corrugated Western Cape (Pty) Ltd. Competition Tribunal, Case No: IM002Apr19. Manufacture of corrugated paper and paperboard and of containers of paper and paperboard. Reports prepared, analysis submitted. Merger approved conditionally.

- **Emergent Cold Oxford (2019).** Emergent Cold proposed acquisition of AB Oxford Cold Storage Company, ACCC Merger Investigation. Cold storage. Merger approved unconditionally.
- **Choppies/Payless (2019).** Botswana Competition Authority. Merger investigation. Grocery retail. Merger approved, subject to conditions.
- **Samancor/Hernic (2018).** K2018239983 (South Africa) (Pty) Ltd and Hernic Ferrochrome (Pty) Ltd. Competition Tribunal, Case No: LM141Jul18. Merger, approved subject to conditions.
- **MSV Group / Donington Park (2017)**. UK CMA merger inquiry, ME/6669/16. Cleared.
- **Dow/DuPont (2017).** EC Phase II merger, US FTC, Canadian Bureau of Competition, Japanese FTC, ACCC, NZ CC, CADE, SACC, Competition Commission of India. EC case number M.7932, Art. 8(2) conditions & obligations.
- **Phumelela/Supabets (2016).** South African Competition Commission, Case No: 2016MAY0253, for merging parties. Cleared subject to conditions.
- **AB InBev/SABMiller (2016).** EC Phase I merger, for merging party. South African Competition Commission, Competition Tribunal. Additional filings in COMESA, Botswana, Ethiopia, Kenya, Malawi, Namibia, Swaziland, Tanzania, Zambia, Zimbabwe. Cleared subject to conditions.
- **MTN/Smartvillage (2016).** South African Competition Commission, Case No: 2015NOV0608, for merging parties. Cleared subject to conditions.
- **MTN/Telkom RAN Roam (2015).** South African Competition Commission, Case No: 2014Apr0165, for merging parties. Withdrawn.
- **PRS/GEMA/STIM (2015).** EC Phase II merger, for merging party. Case number M.6800, Art. 8(2) with conditions & obligations.
- **Takealot/Kalahari (2014).** South African Competition Commission, for merging party. Cleared unconditionally.
- **Chiquita Brands International/Fyffes (2014).** EC Phase I merger, for merging party. Case number M.7220, Art. 6(1)(b) with conditions & obligations.
- **Nashua/MTN/Vodacom/Altech (2014).** South African Competition Commission, for merging party. Cleared unconditionally.
- **Federal Mogul/Honeywell Friction Materials (2014).** EC Phase I merger, for merging party. Case number M.7174, Art. 6(1)(b) with conditions & obligations.
- **Microsoft/Nokia (2014)**. EC Phase I merger, for third party. Case number M.7047, Art. 6(1)(b).

- **Premier Swazi Bakeries/Ngwane Mills (2014).** Swaziland Competition Commission and Board, for merging parties, cleared subject to conditions.
- **Polyurethane Foam (2014).** Work for a major defendant in the European Commission investigation under Art 101 TFEU.
- **Pay TV Market Inquiry (2013).** Work for a major FTA broadcaster.
- **Premier Group (Pty) Ltd /Eastern Cape Bakeries (2013).** South African Competition Commission and Tribunal, for merging parties. Commission case number 017434, cleared unconditionally.
- **Bidvest/Mvelaserve (2013).** South African Competition Commission, for third party.
- **Syniverse/MACH (2013).** EC Phase II merger, CADE, Ukraine, Jersey, Argentina, Colombia, Taiwan, for merging party. EC case number M.6690, Art. 8(2) with conditions & obligations.
- **Universal Music Group/EMI Music (2012).** EC Phase II merger, US FTC, Canadian Bureau of Competition, Japanese FTC, ACCC, NZ CC, CADE, for merging party. EC case number M.6458, Art. 8(2) conditions & obligations.
- **High Voltage Power Cables (2011).** Work for a major defendant in the European Commission investigation under Art 101 TFEU. Work included detailed quantitative analysis of the likelihood of significant damages to customers. EC Case No 39610.
- **CRT (2011).** Work for a major defendant in the European Commission investigation under Art 101 TFEU. Work included detailed quantitative assessment of the potential effects of the cartel.
- **Sun Capital/DSM Special Products (2010).** EC Phase I merger, for merging party. Case number M.5785, Art. 6(1) (b).
- **Cisco/Tandberg (2010).** EC Phase I merger, for third party. Case number M.5669, Art. 6(1)(b).
- **T-Mobile/Orange (2010)**. EC Phase I merger, for third party. Case number M.5650, Art. 6(1)(b) with conditions & obligations. .
- **Flat Glass (2009).** Work for a major defendant in connection to follow on damage claims subsequent to the European Commission investigation under Art 101 TFEU.
- **ABF/Azucarera (2009).** EC Phase I merger, for merging party. Case number M.5449, Art 6(1)(b).
- **Mitsubishi Rayon/Lucite (2009).** Bundeskartellamt phase 1 merger, for merging party.
- **Dow/Rohm & Haas (2009).** EC Phase I merger, for merging party. Case number M.5424, Art. 6(1)(b).

- **EdF/British Energy (2008).** EC Phase I merger, for merging party. Case number M.5224, Art. 6(1)(b) with conditions & obligations.
- **BHP Billiton/Rio Tinto (2008).** EC Phase II merger, for third party. Case number M.4985, Art. 6(1)(c), aborted / withdrawn.
- **InBev/Anheuser Busch (2008).** UK OFT, economic submissions, oral presentations, for merging party.
- **ABF/GBI Business (2008)**. EC Phase II merger, for merging party. Case number M.4980, Art. 8(2) with conditions & obligations.
- **Thomson Corporation/Reuters Group (2008).** EC Phase II merger, for merging party. Case number M.4726, Art. 8(2) with conditions & obligations.
- **iTunes pricing differential complaint (2008)**. EC complaint, referred by UK OFT. Complaint dismissed.
- **Syniverse/BSG (wireless business) (2007)**. EC Phase II merger, for merging parties. Case number M.4662, Art. 8(1).
- **Universal Music Group/BMG Music Publishing (2007).** EC Phase II merger, for merging party. Case number M.4404, Art. 8(2) with conditions & obligations.
- **Classified Directory Advertising Services ("Yellow Pages") (2006).** UK Competition Commission Market Investigation, for the Competition Commission.
- **ABF/PDL (2006).** UK OFT, for merging party.
- **Nokia/Siemens (2006).** EC phase 1 merger, for merging parties. Case number M.4297, Art. 6(1)(b).
- **Inco/Falconbridge (2006).** EC phase II merger, economic submissions, oral hearing, for merging party. Case number M.4000, Art. 8(2) with conditions & obligations. Related cases:
    - **Xstrata/Falconbridge (2006).** EC Phase I merger, for third party. Case number M.4256, Art. 6(1)(b).
  - **Teck Cominco/Inco (2006).** EC Phase I merger, for merging party. Case number M.4240, Art. 6(1)(b).
  - **Phelps Dodge/Inco/Falconbridge (2006).** EC Phase I merger, for merging party. Case number M.4310, Art. 6(1)(b).
  - **CVRD/Inco (2006).** EC Phase I merger, for merging party. Case number: M.4374, Art. 6(1)(b).
  - **Dong/Elsam/ENERGI E2 (2006).** EC Phase II merger, for merging party. Case number M. 3868, Art. 8(2) with conditions & obligations.
- **Afrox Health/Bidco (2004).** South African Competition Tribunal, for merging parties.

- **Copper Tubes and Fittings (2004).** Work for a major defendant in the European Commission investigation under Art 101 TFEU.
- **Taminco/Air Products (2004)**. UK OFT and Competition Commission, economic submissions, oral hearing, for merging party.
- **Estate Agents Inquiry (2003).** UK OFT analysis of local markets, for the OFT.
- **Anglo American/Kumba/Anglovaal Mining Limited (Avmin) (2002).** South African Competition Tribunal merger, for third party. Case number 45/LM/Jun02 & 46/LM/Jun02.

Selected publications and presentations

- "Observations on the economics of excessive pricing during a crisis", *Competition Law International*, International Bar Association, Vol 16 No 1 – October 2020.
- "Public Interest Considerations and Competition Law", *American Bar Association* Antitrust Section conference, Düsseldorf, 8 May, 2018.
- "Class Action Litigation in South Africa", edited by Du Plessis, M; Oxenham, J A; Goodman, I; Kelly, L; and Pudifin-Jones, S, *Juta*, First Edition, 2017; Patrick co-authored two chapters: "Litigating the Class Action", and "Class Action Litigation in the United Kingdom".
- "Principles of competition law in South Africa" (with Luke Kelly, David Unterhalter, Isabel Goodman, and Paula Youens), *Oxford University Press*, First Edition, 2017.
- "The Concentration Problem", and "The presentation of expert evidence", invited presentations at the *UCT Faculty of Law conference on Competition Law*, 11-12 October 2017.
- "Observations on competition policy", invited presentation before the *High Level Panel on the Assessment of the Impact of Key Legislation*, chaired by former president Kgalema Motlanthe, Sandton, 26 July 2017.
- "The economics of class actions in follow-on competition damages", *Competition Law Journal*, Vol 14, Issue 2, 2015, pages 111-126.
- "Price announcements and competition law: an economic perspective" (with Derek Ridyard and Monica Petrescu), *Competition Law & Policy Debate*, Vol 1 Issue 2, May 2015 pages 33-45
- "Public Interest Factors in Competition Decisions", *The African and Middle Eastern Antitrust Review 2015*, Global Competition Review, presented at *GCR Live Cape Town: African Competition Regimes in the Spotlight*, 16-17 February 2015.
- "Away From Market Shares? The Increasing Importance of Contestability in EU Competition Law Cases" Geert Goeteyn, Patrick Smith and Sara Ashall, *Journal of European Competition Law & Practice* (2015) 6 (3): 197-199.

- "Merger control and the national public interest; An economic perspective", *GCR Live* 6th Annual Conference, Brussels, 12 November 2014.
- "Key Competition Law Developments Relating to Abuse of Dominance (Locally and Abroad)", *Spring Client Seminar,* Webber Wentzel, Johannesburg, 18 September 2014.
- "What is competition good for – weighing the wider benefits of competition and the costs of pursuing non-competition objectives", (with John Oxenham) *8th Annual Conference on Competition Law, Economics and Policy*, Johannesburg, paper and presentation, 5 September 2014.
- "Economics, intellectual property and competition policy", *Cliffe Dekker Hofmeyr and Spoor & Fisher Competition Seminar*, Sandton, 14 August 2014.
- "Anticipating issues in merger control – Remedies", panel discussion with Geert Goeteyn, Michele Piergiovanni, and Frederic Depoortere, *The American Lawyer: U.S.-EU Legal Summit*, Steigenberger Grand Hotel, Brussels, 16 June 2014
- "The economics of abuse of dominance - The example of conditional rebates", *Internal training day*, Freshfields Bruckhaus Deringer, Brussels, 6 March 2014.
- "The South African Constitutional Court sets aside costs order related to decision by the Court of Appeal to overturn merger prohibition decision (Pioneer Hi-Bred International / Pannar Seeds)", *e-Competitions*, 2014.
- "Gold Circle/Kenilworth Racing: a case of horizontal substitutes", *ECLR,* [2014], volume 35, Issue 3, pages 99-102.
- "Public Interest Factors in Competition Decisions" (with Andrew Swan), *The African and Middle Eastern Antitrust Review 2014*, Global Competition Review, and presentation at *GCR Live Cape Town: African Competition Regimes in the Spotlight*, 5-6 December 2013.
- "Behavioural Economics", *Internal Training*, Freshfields Bruckhaus Deringer, London, 28 November 2013.
- "Where economists roam: Syniverse/MACH and contestability", *e-Competitions*, 2013.
- "Towards an effects based cartel policy" (with Andrew Swan), *7th Annual Conference on Competition Law, Economics and Policy,* Johannesburg, paper and presentation 5 September 2013.
- "The role of economics in class actions" *A new class - the problems and promises of class action litigation in South African law,* Class Action Seminar Coordinated by Nortons Inc., the South African Chamber of Commerce and Industry (SACCI) and the Mandela Institute at Wits School of Law, paper submitted and presented 12 June 2013.
- "What is competition?", *Developments in Competition Law and Economics*, RBB Economics Conference, Johannesburg, 14 February 2013.

- "Don't believe the hype...A philosophical approach to competition policy following Universal/EMI", *Google Summit*, Google London, 31 January 2013.
- "The wrong side of the tracks: what are the empirical differences between collusion, parallelism and competition?", chapter in "The development of competition law and economics in South Africa", ed. Kasturi Moodaliyar, Simon Roberts, 2012.
- "The Objectives of Competition Law for African States", *Africa Competition Law Seminar*, Bowman Gilfillan, Sandton, 9 February 2012.
- "International Developments and Implications for South Africa", *IIR Competition Law* Masterclass, Johannesburg, 26 January 2011.
- "Economic quantification and the black letter of the law", *4th Annual Conference on Competition Law*, Economics and Policy Johannesburg, 2 September 2010.
- "The Wrong Side of the Tracks: What are the empirical differences between collusion, parallelism and competition?", *3rd Annual Competition Conference and Ten Year Celebration*, Competition Commission, Competition Tribunal and Mandela Institute, Pretoria, 3-4 September 2009.
- "Merger Simulation; Looking inside (Pandora's?) black box", *4th NERA European Competition Policy Symposium*, Oxford, 21-23 November 2008.
- "Economic Analysis in Merger Control" (with Mark Williams and Paul Hofer), *Seminar to the Chief Economist Team*, Brussels, 2008.
- "Quantitative Techniques in Competition Policy Analysis" (with Paul Hofer and Lawrence Wu), *The Asia Pacific Antitrust and Trade Review 2005*, Global Competition Review, 2005.
- "Merger Simulation: Hard Science or Dark Art?" (with Gregory Leonard), *3rd NERA European Competition Policy Symposium*, Villa d'Este, Cernobbio, 1-3 October 2004.
- "Competition Policy in South Africa: the impact and role of the public interest", *International Conference on Industrial Organisation*, Law and Economics; Porto Carras, Chalkidiki, Greece, 17-20 June 2004.
- "Competition Scorecard: What has Determined the South African Competition Commission's First Years of Merger Decisions?" Michelangelo Hotel, Sandown, South Africa, December 2003.
- "Competition policy in South Africa: the impact and role of the public interest", Thesis submitted in partial fulfilment of the requirements for the Degree of Master of Science in Economics for Development, St John's College, Oxford, June 2003.

B Letter of instructions

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Nathan Lindsay

17 July 2023

Patrick Smith
RBB Economics LLP
Level 51
101 Collins Street
Melbourne, VIC, 3000

Dear Mr Smith

ANZ proposed acquisition of SBGH Limited – RBB report on Mary Starks' reports

We refer to our letter of engagement dated 24 August 2022 and our letters of instructions dated 1 December 2022 and 17 May 2023 respectively.

We previously sought your expert opinion, in the form of a written report:

- in connection with the Authorisation Application, and you prepared a report dated 1 December 2022 (**Original Report**); and
- in connection with the ACCC's Statement of Preliminary Views (**SOPV**), and you prepared a report dated 17 May 2023 (**Supplementary Report**).

On 23 June 2023, the ACCC published a redacted version of a report prepared by Mary Starks, Partner at Flint Global, dated 16 June 2023 (**First Starks Report**). On 10 July 2023, the ACCC published a redacted version of a supplementary report prepared by Mary Starks, dated 7 July 2023 (**Second Starks Report**).

The purpose of this letter is to confirm your instructions to prepare a further supplementary expert report in this matter, in light of the First Starks Report and Second Starks Report (collectively the **Starks Reports**), and to confirm the questions that your supplementary report is to address.

1. INSTRUCTIONS

1.1 You are instructed to prepare a further written report, which addresses the matters raised in the Starks Reports including in so far as they relate to the opinions set out in your Original Report and/or Supplementary Report. In particular, please consider the following questions:

(a) What factual information and/or evidence you would require as an independent expert economist, to express an expert opinion regarding the competitiveness of a merged BEN/Suncorp Bank entity in the "Alternative buyer counterfactual" (see 1.2 below) and its impact on competition in the supply of home loans?;

(b) Do you agree or disagree with Ms Starks' analysis / conclusions regarding the competitiveness of a merged Bendigo and Adelaide Bank and Suncorp Bank in the Alternative buyer counterfactual?;

(c) Does the Proposed Acquisition increase the likelihood of coordinated effects in the home loans market, taking into account the "Alternative buyer counterfactual"?; and

(d) Do you agree or disagree with Mary Starks' analysis / conclusions in Part 10A of the First Starks Report and Part 9 of the Second Starks Report regarding operating cost savings.

1.2 The Alternative buyer counterfactual involves an acquisition of Suncorp Bank by Bendigo and Adelaide Bank. ANZ and Suncorp Bank dispute that the Alternative buyer counterfactual is commercially realistic. However, for the purpose of your report, please assume that the Alternative buyer counterfactual has a real chance of occurring.

2. BACKGROUND DOCUMENTS

2.1 In preparing your supplementary report, please have regard to the documents listed in **Annexure A** and the graph in **Annexure B**.

3. CONTENTS OF YOUR REPORT AND EXPERT WITNESS CODE OF CONDUCT

3.1 Your written report may be submitted to the ACCC as part of the Authorisation Application, and may be made available to the Australian Competition Tribunal and Federal Court of Australia in any subsequent reviews and appeals of the ACCC's determination.

3.2 Accordingly, we ask that you review the requirements for expert reports set out in the Federal Court's Expert Evidence Practice Note (GPN-EXPT) (Practice Note), which includes the Harmonised Expert Witness Code of Conduct (Code). We have previously provided you with a copy of the Practice Note and Code, and an outline of their requirements. We request that your report adhere to them.

4. CONFIDENTIALITY

4.1 You must not disclose or discuss any of our correspondence or instructions, or any of your work products, with any third parties. This duty of confidentiality will continue beyond the conclusion of your instructions.

4.2 Please ensure that you keep all documents (including electronic documents) relating to these instructions confidential and separate from your other files.

4.3 Any documents you prepare under this retainer, except for your final report, should be marked as follows: "Confidential and subject to legal professional privilege".

4.4 All communications in relation to this matter, whether verbal or written, should be directed to Ashurst, with attention to Tihana Zuk.

4.5 To the extent your report refers to confidential information please:

(a) include the words "RESTRICTION OF PUBLICATION CLAIMED" in the header of each page of your report;

(b) highlight any information confidential to ANZ in yellow;

(c) highlight any information confidential to Suncorp in green; and

(d) highlight any information confidential to third parties in pink.

4.6 We may provide you with further instructions as to specific material in your report that should be highlighted as confidential, once you have prepared it.

5. CONFLICT OF INTEREST

5.1 As an independent expert, it is important that you are free from any actual or possible conflict of interest. This includes ensuring that you have no connection with any other party which would prevent you from preparing your analysis in an objective and independent manner.

5.2 We confirm our understanding that you have no conflicts of interest in this matter. Please inform us immediately if you do become aware of a conflict or potential conflict.

6. NEXT STEPS

We look forward to receipt of your report in due course.

Your sincerely

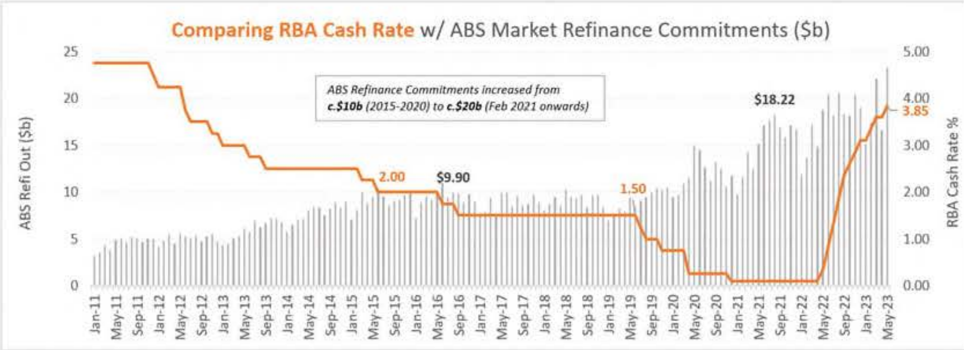
Ashurst

ANNEXURE A - DOCUMENTS

No.	Document description
1.	Independent expert report prepared by Mary Starks, dated 16 June 2023 (version with ANZ and Suncorp confidential information unredacted) This document contains **CONFIDENTIAL** information.
2.	Supplementary independent expert report prepared by Mary Starks, dated 7 July 2023 (version with ANZ and Suncorp confidential information unredacted) This document contains **CONFIDENTIAL** information.
3.	Letter from the ACCC, 'ANZ proposed acquisition of SBGH Limited – report of Mary Starks – disclosure of material', 7 July 2023 This document contains **CONFIDENTIAL** information.
4.	Letter from the ACCC, "ANZ proposed acquisition of SBGH Limited – independent expert reports by Mary Starks', 12 July 2023, containing extracts of further unredacted material from Mary Starks' report of 16 June 2023. This document contains **CONFIDENTIAL** information.
5.	Witness Statement of Louise Higgins (including exhibits), 17 May 2023 (Confidential Version) This document contains **CONFIDENTIAL** information.
6.	Witness statement of Peter Dalton (including exhibits), 13 December 2022 (Confidential Version) This document contains **CONFIDENTIAL** information.
7.	ANZ submission – response to SOPV, 17 May 2023 (Confidential Version) This documents contain **CONFIDENTIAL** information.
8.	Suncorp Group submission – response to SOPV, 17 May 2023 (Confidential Version) This document contains **CONFIDENTIAL** information.
9.	Expert Report prepared by Dr David Howell, 15 May 2023 (Confidential version) This document contains **CONFIDENTIAL** information.
10.	Expert Report prepared by Mozammel Ali, 17 May 2023 (Confidential version)

No.	Document description
	This document contains **CONFIDENTIAL** information.
11.	Second witness statement of Clive van Horen, 17 May 2023 (Confidential version) This document contains **CONFIDENTIAL** information.
12.	Second witness statement of Steven Johnston, 17 May 2023 (Confidential version) This document contains **CONFIDENTIAL** information.
13.	Third witness statement of Steven Johnston, 17 May 2023 (Confidential version) This document contains **CONFIDENTIAL** information.
14.	Witness statement of Adam Lee Bennett, 16 May 2023 (Confidential version) This document contains **CONFIDENTIAL** information.
15.	Suncorp response to Mary Starks' reports, 14 July 2023 (Confidential version) This document contains **CONFIDENTIAL** information.
16.	Third witness statement of Clive van Horen, 14 July 2023 (Confidential version) This document contains **CONFIDENTIAL** information.
17.	Second witness statement of Louise Higgins, 17 July 2023 (Confidential version)] This document contains **CONFIDENTIAL** information.

ANNEXURE B – REFINANCING DEMAND VERSUS THE RBA CASH RATE (JANUARY 2011 - MAY 2023)



C Table of materials

Table 1: Table of materials relied upon to prepare this report

Name of document
ACCC Merger Guidelines
ANZ proposed acquisition of SBGH Limited – independent expert reports by Mary Starks, 12 July 2023
ANZ proposed acquisition of SBGH Limited – report of Mary Starks – disclosure of material, 7 July 2023
Application for Merger Authorisation, 2 December 2022
APRA, Monthly authorised deposit-taking institution statistics – Glossary
APRA, Monthly authorised deposit-taking institution statistics June 2023, 31 July 2023
Berger, A.N. and Hannan, T.H., The Price-Concentration Relationship in Banking, Review of Economics and Statistics, 1989
Bizzocchi, F., Le concentrazioni bancarie: l'esperienza del Credito Emiliano, Quaderni dell'Associazione per lo Sviluppo degli Studi di Banca e Borsa, 1999
Calomiris, C. and Karceski, J., Is The Bank Merger Wave of the 1990s Efficient? Lesson from Nine Case Studies, in Kaplan, S., Mergers and Productivity, 2000
Christofferson, S.A., McNish, R.S. and Sias, D.L., Where mergers go wrong, McKinsey & Company, 1 May 2004
Expert report of David Howell, 15 May 2023
Expert report of Jeffrey Carmichael, 2 December 2022
Expert report of Mary Starks, 16 June 2023
Expert report of Mary Starks, 7 July 2023
Expert report of Mozammel Ali, 17 May 2023
Expert report of Nick de Roos, 5 April 2023
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Focarelli, D. and Panetta, D., Are Mergers Beneficial To Consumers? Evidence From The Market For Bank Deposits, American Economic Review, 2003
Houston, J., James, C. and Ryngaert, M., Where Do Merger Gains Come From? Bank Mergers From the Perspective of Insiders and Outsiders, Journal of Financial Economics, 2001
Jarden, Launching the Jarden Mortgage Competition Tracker, 20 July 2022
RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2019
RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2020

Name of document
RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2021
RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2022
RBA, Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2023
Rhoades, S., The Efficiency Effects of Bank Mergers: An Overview of Case Studies of Nine Mergers, Journal of Banking and Finance, 1998
Statement of Clive van Horen, 14 July 2023
Statement of Clive van Horen, 17 May 2023
Statement of Douglas John Campbell, 30 November 2022
Statement of Louise Higgins, 17 July 2023
Statement of Louise Higgins, 17 May 2023
Statement of Shayne Elliott, 17 May 2023