



PUBLIC VERSION

## ANZ PROPOSED ACQUISITION OF SUNCORP BANK

FURTHER ANZ RESPONSE TO INTERESTED PARTY SUBMISSIONS

22 MARCH 2023

## ANZ PROPOSED ACQUISITION OF SUNCORP BANK

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### 1. Introduction

- 1.1 ANZ's further submission addresses the key contentions raised against the Proposed Acquisition in the submission from the Bank of Queensland (**BOQ**) dated 23 February 2023, as published by the ACCC on its public register on 9 March 2023 with respect to the application by ANZ dated 2 December 2022 for merger authorisation for the proposed acquisition of SBGH Limited by ANZ (the "**Application**" and the "**Proposed Acquisition**" respectively).<sup>1</sup>
- 1.2 Unless otherwise stated, defined terms used in this submission have the same meaning as in the Application.
- 1.3 ANZ maintains that, for the reasons set out in the Application, ANZ 's submission of 9 March 2023 and this submission, the Proposed Acquisition should be authorised by the ACCC on the basis that it:
  - a. would not have the effect, and would not be likely to have the effect, of substantially lessening competition in any market; and/or
  - b. would result, and be likely to result, in a benefit to the public, and the benefit would outweigh any detriment to the public that would result, or be likely to result, from the Proposed Acquisition.
- 1.4 BOQ speculates that the Proposed Acquisition could affect the Australian banking landscape by removing Suncorp Bank as a competitor, thereby consolidating the market power of ANZ.<sup>2</sup> It also suggests that the Proposed Acquisition will not give rise to the public benefits ANZ identified in its Application.<sup>3</sup> This position is not supported by the evidence, and there are internal inconsistencies in the analysis BOQ relies on to support it.
- 1.5 For the reasons outlined in this submission:

<sup>1</sup> The fact that ANZ has not responded to each issue raised in interested party submissions should not be taken as agreement with or acceptance of positions asserted in interested party submissions.

<sup>2</sup> BOQ submission at Background paragraph [8].

<sup>3</sup> BOQ submission at [7](a).

- a. ANZ does not have market power; rather, ANZ faces intense competition from a range of competitors;
- b. ANZ will continue to face intense competition from a range of competitors following the Proposed Acquisition;
- c. the competition ANZ faces, and will continue to face, includes but is not primarily driven by competition from regional banks, and does not depend on the possibility of new entrants developing similar business models to the regional banks;
- d. Suncorp Bank is not an important driver of competition, and the Proposed Acquisition will not reduce the pressure on ANZ or other banks to innovate or offer attractive customer service and care, including at a localised level;
- e. the analysis of the Proposed Acquisition must focus on the particular acquisition proposed by ANZ, and not on the asserted possibility of future, unrelated acquisitions in the banking sector; and
- f. the Proposed Acquisition will result in substantial public benefits, and no public detriments.

## 2. Response to additional submission

*ANZ does not have market power and will not acquire market power as a result of the Proposed Acquisition*

- 2.1 ANZ, like BOQ, shares the ACCC's view of "*the importance of competition, and a range of viable competitors in Australia's financial services landscape*" and that "*maintaining competition in financial services markets is vital to high levels of customer service, product innovation and accountability, as well as more competitive consumer costs and prices*".<sup>4</sup>
- 2.2 ANZ submits that the Proposed Acquisition does not change this and, on careful examination of BOQ's submission, it appears that BOQ does not contend that the Proposed Acquisition will lead to lower levels of customer service, product innovation and accountability, or to less competitive consumer costs or prices.
- 2.3 BOQ's submission asserts that ANZ, perhaps alone but at least "collectively" with other major banks, currently has market power,<sup>5</sup> and that a further increase in scale for ANZ, and the major banks collectively, will make it even more difficult for regional banks and/or other providers to act as a competitive pricing constraint on the majors going forward.<sup>6</sup> To support this, BOQ minimises the competitive

<sup>4</sup> BOQ Submission at Background paragraph [4].

<sup>5</sup> BOQ submission at [2](c)-(g).

<sup>6</sup> BOQ submission at [2](g).

significance of regional banks, which it claims are not a "significant pricing constraint on the major banks".<sup>7</sup> Simultaneously, for other purposes, BOQ stresses the competitive significance of regional banks in customer service, innovation and engagement with the wider community, environmental issues and corporate social responsibility.<sup>8</sup>

- 2.4 Market power refers to a freedom from competitive constraint – an individual firm's ability to "give less, and charge more", without being undermined by rivals.<sup>9</sup>
- 2.5 The proposition that ANZ has market power in any capacity is not supported by the evidence.
- 2.6 There is no evidence for BOQ's proposition that ANZ currently is free from competitive constraints so that it can give less or charge more.
- 2.7 Rather, ANZ faces intense competition in each area of activity relevant to the analysis of the Proposed Acquisition.<sup>10</sup> The existence of that competition is wholly inconsistent with the assertion that ANZ has market power.
- 2.8 The following evidence demonstrates that neither ANZ nor, if it is relevant, the other major banks, have market power:
  - a. the substantial declines in the major banks' NIMs and ROE to 2022, including declines in the NIM and ROE of ANZ;<sup>11</sup>
  - b. the decline in the major banks' national home loans market shares between 2012 and 2022 in favour of other banks such as Macquarie Bank, Bendigo and Adelaide Bank, and BOQ<sup>12</sup>—and, in the case of ANZ, the fact that it quickly lost growth in home loans when it failed to manage home loan turnaround times;<sup>13</sup>
  - c. the decline in the major banks' national deposit market shares between 2012 and 2022;<sup>14</sup> and

<sup>7</sup> BOQ submission at [2](e).

<sup>8</sup> BOQ submission at [1](b).

<sup>9</sup> Expert witness statement of Dr Philip Williams AM dated 2 December 2022 at [77], quoting *Re QCMA and Defiance Holdings* (1976) ATPR 40-012, p 17245. Also see Maureen Brunt, "Market Definition" Issues in Australian and New Zealand Trade Practices Litigation', *Australian Business Law Review*, April 1990, pp 86-128 at 93.

<sup>10</sup> This is reflected in the statements of Shayne Elliott, Douglas John Campbell, Yiken Yang, Isaac Rankin, Guy Mendelson and Mark Bennett.

<sup>11</sup> Application at [5.72]-[5.76].

<sup>12</sup> Application at Table 12 citing data from APRA.

<sup>13</sup> Application at [7.40] citing the statement of Douglas John Campbell.

<sup>14</sup> Application at Table 14.

- d. the ongoing appetite of new entrants and existing bank and non-bank providers to enter the relevant markets and expand.<sup>15</sup> The fact that some providers have exited the market does not mean that meaningful entry and expansion is not credible, but a reflection of the competitiveness of the market and that not all new entrants will succeed.<sup>16</sup>
- 2.9 Neither of the bases BOQ identifies for its assertion that ANZ has market power withstand scrutiny.
- 2.10 First, BOQ cites views expressed by the Productivity Commission in a report from June 2018 to the effect that, at that time, the major banks "collectively" had substantial market power. BOQ states that it "*does not consider that the situation has materially changed in the time since this report was released*", without identifying any evidence for that statement.<sup>17</sup>
- 2.11 ANZ disagrees with the Productivity Commission's views regarding the position as at 2018. In any case, that historical position is not relevant to the ACCC's analysis: whatever the position may have been in 2018, the position at present, and the position in the future with the Proposed Acquisition, is as described at paragraph 1.5 above.
- 2.12 Further, whatever the position as at 2018, ANZ disputes BOQ's view that the competitive landscape has not materially changed since then. Since June 2018, significant regulatory reforms have been implemented with a focus on increasing competitiveness in banking. ANZ addresses these reforms, and their aims to improve competition and contestability in banking, in detail in its Application.<sup>18</sup> These reforms have promoted competition in the banking industry by making it easier for customers to choose and switch providers across Australia, and have significantly reduced barriers to expansion and new entry, leading to even more vigorous competition in relevant markets.<sup>19</sup> They have thereby further, and materially, increased the competitive constraint faced by ANZ and the other major banks, and the existence of that constraint is inconsistent with the proposition that ANZ or the major banks, whether individually or "collectively", have market power.
- 2.13 BOQ acknowledges that regulatory changes have allowed non-bank lenders, neo-banks and fin-techs easier entry into national markets,<sup>20</sup> although it seeks to differentiate between entry and "meaningful" entry, as discussed further below at paragraph 2.20.

<sup>15</sup> Application at [5.62]-[5.63].

<sup>16</sup> Application at [5.63].

<sup>17</sup> BOQ submission at [2](b).

<sup>18</sup> Application at [5.64]-[5.71].

<sup>19</sup> Application at [5.72].

<sup>20</sup> BOQ Submission at [3](b).



- 2.14 Secondly, BOQ seeks to infer the existence of market power from the "ability to withstand major market shocks".<sup>21</sup> This conflates two quite different concepts. The ability to withstand major market shocks is a function of prudential strength and contributes to overall financial system stability. It is not, however, the same as market power, or an attribute or function of it.
- 2.15 For the above reasons, ANZ submits that neither ANZ, nor the major banks, have market power, and the Proposed Acquisition will not substantially lessen competition by changing that. Following the Proposed Acquisition, the merged entity will continue to face the constraints set out in the Application.

*ANZ will continue to face intense competition from a range of competitors following the Proposed Acquisition*

- 2.16 If the Proposed Acquisition is authorised, ANZ and Suncorp Bank will continue to face significant competition from a range of existing competitors in each of the markets in which they operate, including from CBA, Westpac and NAB, which vigorously compete and differentiate themselves by their product offerings, policies and processes. ANZ identifies extensive evidence on this point in its Application and in the supporting witness statements<sup>22</sup> and the public commentary from ANZ's competitors referred to in ANZ's response to interested parties dated 9 March 2023.<sup>23</sup>
- 2.17 Consistently with this, BOQ acknowledge that the Proposed Acquisition may have little impact on the pricing of the various product categories and will not significantly increase ANZ's immediate post-merger market share.<sup>24</sup>

*The competition faced by ANZ is not primarily driven by regional banks and does not depend on new entry or expansion that replicates the business models of regional banks*

- 2.18 BOQ appears to take the position that while there are material limits on the extent to which Suncorp Bank and other regional banks provide a competitive constraint on ANZ or the other major banks (particularly in relation to price),<sup>25</sup> the removal of Suncorp Bank as a result of the Proposed Acquisition will nonetheless be material to competition.<sup>26</sup>

<sup>21</sup> BOQ Submission at [2](d).

<sup>22</sup> For example, see the Application at [7.7], [7.60], [7.146], and [7.196]. See also the statement of Douglas John Campbell at [52], [90] and [99]; the statement of Yiken Yang at [35] to [40]; the statement of Isaac Rankin at [93]; and the statement of Mark Bennett at [159] to [165].

<sup>23</sup> ANZ submission (9 March 2023) at [2.23].

<sup>24</sup> BOQ submission at Background at [8].

<sup>25</sup> BOQ submission at [2](e).

<sup>26</sup> BOQ submission at [2](g).

- 2.19 ANZ's experience is that regional banks are one of many sources of competition faced by ANZ, and that that competition is not primarily driven by regional banks. For example:
- a. in home loans, there is intense competition on price<sup>27</sup>, policy and process<sup>28</sup> from over 100 suppliers of home loan products.<sup>29</sup> The statement of John Campbell provides an illustrative example of when a reduction in service levels adversely impacted ANZ's growth in home loans;<sup>30</sup>
  - b. in deposits, there are 80 ADIs in Australia, the majority of which offer retail deposit products, and which compete vigorously;<sup>31</sup> and
  - c. in commercial banking, there are a large number of established banks competing to supply a broad suite of commercial banking products and services, as well as a range of specialised competitors with limited or no physical points of presence and simplified product offerings focussing on discrete propositions. In commercial banking, being competitive on price, policy and process is also very important.<sup>32</sup>
- 2.20 BOQ's submission suggests that there are barriers to "meaningful" growth and expansion in retail banking markets, and that to be meaningful, entry and expansion must entail a bank attaining a "scale and range of product offerings that approaches a regional bank".<sup>33</sup>
- 2.21 The proposition that the standard for entry to be meaningful is the scale and scope of a regional bank is inconsistent with BOQ's position that there are material limits on the extent to which Suncorp Bank and other regional banks provide a competitive constraint on ANZ or the other major banks. For example, BOQ submits regional banks are at a disadvantage because of their relatively smaller size and scale, higher funding costs and differences in regulatory requirements that apply to banks of different sizes<sup>34</sup> and regional banks are not a significant pricing constraint on the major banks.<sup>35</sup>
- 2.22 In addition, BOQ's proposition concerning meaningful entry and expansion is unsupported by evidence.

<sup>27</sup> Statement of Douglas John Campbell at [90].

<sup>28</sup> Statement of Douglas John Campbell at [91] to [97].

<sup>29</sup> Application at [7.7](a).

<sup>30</sup> Statement of Douglas John Campbell at [91] to [97].

<sup>31</sup> Application at [7.59] to [7.61] and the statement of Yiken Yang at [38].

<sup>32</sup> Application at [7.123] and the statement of Isaac Rankin at [90].

<sup>33</sup> BOQ's submission at [3](d) and [3](g).

<sup>34</sup> BOQ submission at [1](c).

<sup>35</sup> BOQ submission at [2](e).

- 2.23 A key source of the competition which ANZ experiences comes from entry and expansion by competitors which do not adopt the scale and product range of a regional bank, and the prospect of further entry and expansion. To ANZ, meaningful entry and expansion involves the presence of a meaningful cohort of existing providers and potential new entrants willing to continuously contest the relevant markets and take market share from larger incumbents. ANZ notes and agrees with the following extract of the ACCC's submission to the Productivity Commission that was included in BOQ's submission: "*all else being equal, a market structure that enables a competitive fringe of second tier firms to effectively challenge the price and service decisions of large incumbents is likely to produce significantly better outcomes for consumers than one that does not*".<sup>36</sup>
- 2.24 This is the case, as illustrated by the following examples of competitors which have been able to effectively challenge the price and service decisions of industry incumbents:
- a. Macquarie's focus on home loans and deposits;<sup>37</sup>
  - b. online bank and non-bank lenders, like Athena, Tic:Toc, Reduce Home Loans and Pepper Money, focussing on home loans and other lending;<sup>38</sup>
  - c. ING's focus on deposits;<sup>39</sup>
  - d. Judo Bank's focus on SME banking<sup>40</sup> (including agribusiness)<sup>41</sup> and commercial lenders such as Prospa, Liberty Financial Group, Tyro Payments, Zeller and Novatti;<sup>42</sup> and
  - e. Rabobank in agribusiness and food<sup>43</sup> and non-bank lenders that have begun to supply commercial banking products to agribusiness customers, such as StockCo, Agrifunder and Merricks Capital, and Legacy Livestock.<sup>44</sup>
- 2.25 This entry and expansion is facilitated by key trends and regulatory reforms in banking which mean that entrants do not need to be a "full service" bank in order

<sup>36</sup> BOQ submission at Background paragraph [2].

<sup>37</sup> Application at [7.45] and [7.60](d) and the statements of Douglas John Campbell at [52](d) and Yiken Yang at [38](d).

<sup>38</sup> Application at [7.46] to [7.47] and the statement of Douglas John Campbell at [52](i)-(j) and .

<sup>39</sup> Application at [7.60](e) and statement of Yiken Yang at [38](e).

<sup>40</sup> Application at [7.123](b) and paragraph [7.150].

<sup>41</sup> Application at [7.215] citing the statement of Mark Bennett at [179] and [180].

<sup>42</sup> Application at [7.151]. The Productivity Commission has observed the growing number of non-bank lenders commercial lenders in Australia: Australian Government Productivity Commission, *Small business access to finance: The evolving lender market* (Research Paper, September 2021).

<sup>43</sup> Application at [7.196](a) and the statement of Mark Bennett at [160]-[163].

<sup>44</sup> Application at [7.216].



to be successful, and that targeted entry allows banks to compete effectively.<sup>45</sup> These key trends and reforms include:

- a. the increase in customers multi-banking, which enables providers to compellingly target customers with a single proposition;<sup>46</sup>
  - b. the reduced importance of physical points of presence and the growth of digital banking and self-service options, which reduces the cost and physical footprint needed to offer banking services competitively;<sup>47</sup>
  - c. open banking, as part of the Customer Data Right reforms, which reduces the impact of data asymmetry between "full service" providers and other providers when competing to offer services to customers, and makes it easier for consumers to compare offers and switch banks;<sup>48</sup> and
  - d. restricted ADI registration, enabling entrants to "conduct limited, lower risk banking businesses during [their] start-up phase".<sup>49</sup>
- 2.26 Further, BOQ submits that the major banks continue to benefit from a scale advantage in service as they are able to process loans faster, through increased automation (supported by their scale and available funding) and that smaller players do not necessarily have the infrastructure to service these customers effectively.<sup>50</sup> ANZ notes that, in fact, due to increased digitisation and technological developments, new entrants are coming into the market with attractive digital propositions, which may include fast turnaround times as a point of difference, and they are not necessarily burdened by legacy platforms (and the associated cost and investment required to maintain and upgrade these older platforms).<sup>51</sup>
- 2.27 The Proposed Acquisition will not affect these key trends and reforms, or otherwise change the fact that ANZ faces competition from many sources, including the prospect of entry and expansion by competitors which adopt a range of different business models.
- 2.28 The examples BOQ refers to do not provide support for its submissions. In particular:

<sup>45</sup> Compare BOQ's submission at [3](f).

<sup>46</sup> Application at paragraph [5.39] citing research from the ABA and RFI Research.

<sup>47</sup> Application at paragraphs [5.28] to [5.37], citing research and data from RFI Research, the ABA, BCG, the University of South Australia Business School and APRA.

<sup>48</sup> Application at paragraph [5.44](d).

<sup>49</sup> Application at [5.68](c).

<sup>50</sup> BOQ submission at [3](e).

<sup>51</sup> [Confidential to Suncorp] [REDACTED]

- a. the recent exit of some fin-techs and neo-banks does not mean the relevant markets are not competitive, or that barriers to entry are insurmountable – they instead provide evidence for the attractiveness of entering and striving to compete in retail banking, and the intense competition that prevails in the relevant markets;<sup>52</sup>
- b. the fact that smaller providers do not always seek to compete with the major banks' strategy of "securing a position as a customer's preferred institution across a range of products and services", does not evidence substantial barriers to entry,<sup>53</sup> but rather a strategic choice by those providers, which does not prevent them from being effective competitors, as illustrated by the success of ING in deposits over a long period, Macquarie in home loans and deposits recently, Judo Bank in SME lending, Rabobank in agribusiness, and a range of micro-lenders, fin-techs, online banks and non-bank lenders, including those mentioned at paragraph 2.24; and
- c. brokers provide a material competitive constraint, regardless of whether they "completely offset all barriers to entry or fully constrain the majors"<sup>54</sup> – they are one of several factors that have reduced barriers to entry and expansion in banking markets, and which contribute to the intense competition ANZ faces. BOQ's suggestion that major banks gain the greatest advantages from brokers is inconsistent with evidence of the decline in the major banks' national home loans market shares<sup>55</sup> and the role that brokers play in promoting competition by reducing search costs, reducing customer administration costs, and providing an additional and significant distribution channel that can amplify the presence of a bank across geographies.<sup>56</sup> Relevantly, the MFAA has published statistics to suggest that origination of all home loans from brokers has increased from 60% in 2020 to over 70% in the period between July and September 2022, and that an increasing proportion of home loans originated by brokers is going to non-major bank lenders.<sup>57</sup>

<sup>52</sup> Application at paragraph [5.63], citing the ACCC, *Inquiry into Australia as a Technology and Financial Centre – third issues paper* (29 June 2021) (Annexure 64 to the Application). BOQ recognises, in its submission, that the lower regulatory changes has led to entry and numerous new entrants, particularly in the home loan sector: BOQ submission at [3](c).

<sup>53</sup> BOQ's submission at [3](f).

<sup>54</sup> BOQ's submission at [3](h)-(j).

<sup>55</sup> Application at Table 12 citing data from APRA.

<sup>56</sup> Application at [5.54] to [5.60] citing the statements of Douglas John Campbell, Isaac Rankin, Clive van Horen, and citing data from the Productivity Commission, the MFAA and APRA.

<sup>57</sup> See <https://www.brokernews.com.au/news/breaking-news/mortgage-brokers-hit-more-than-70-market-share-281539.aspx> and <https://www.afgonline.com.au/wp-content/uploads/2022/04/AFG-Index-April-2022.pdf>.

*Suncorp Bank is not an important driver of competition, and the Proposed Acquisition will not reduce the pressure on ANZ or other banks to innovate, or to offer attractive customer service and care*

- 2.29 There is some internal inconsistency in BOQ's position on the competitive significance of Suncorp and other regional banks. On the one hand, BOQ describes material limits on the competitive constraints imposed by such banks; on the other hand, it identifies that those constraints are sufficiently material that the Proposed Acquisition could harm competition – in particular, that:
- a. "the removal of a smaller player ... and the subsequent acquisitions that may follow, may further erode the pressure on the majors to innovate" (although BOQ also notes that "the extent to which [small banks] competitively constrain a major bank is not clear");<sup>58</sup>
  - b. the Proposed Acquisition may affect competition regarding "customer service and customer care dimensions of consumer choice" at a local level;<sup>59</sup> and
  - c. "smaller regional banks like Suncorp" are an important driver of "competition with the majors and between themselves" particularly in relation to the non-price aspects of supply of commercial banking products, including to agribusiness customers.<sup>60</sup>
- 2.30 BOQ provides little evidence to support these propositions – it does not point to specific examples of Suncorp Bank's innovation or customer service standards, but rather refers to its own Owner Manager network to illustrate its proposition about customer service.<sup>61</sup>
- 2.31 In fact, the evidence in support of the Application demonstrates that Suncorp Bank is no more vigorous or effective than other competitors in relevant markets because it does not drive pricing, innovation or product development.<sup>62</sup>
- 2.32 ANZ considers that the pressures on it and other existing banks to innovate their offering arise from factors, particularly customer preferences, that are independent of any one provider such as Suncorp Bank. ANZ's significant

<sup>58</sup> BOQ's submission at [4](d) and (e).

<sup>59</sup> BOQ's submission at [5](c).

<sup>60</sup> BOQ's submission at [5](d).

<sup>61</sup> BOQ's submissions at [5](d).

<sup>62</sup> In respect of the supply of commercial banking products generally, see the Application at [7.141] and [7.142] citing the statement of Clive van Horen; in respect of the supply of commercial banking products to agribusiness customers, see the Application at [7.207] and [7.210] citing the statement of Clive van Horen. **[Confidential to Suncorp]**



investment in technology and innovation has occurred and is occurring because ANZ considers that competition demands it.<sup>63</sup> As the Application summarises, customers are: increasingly switching between banking providers; using brokers; multi-banking; shifting away from cash and cheques in favour of online/digital payments; preferencing digital banking; and reducing branch visits.<sup>64</sup> It is these trends in customer preferences that are driving innovative responses among providers of banking products and services. The Proposed Acquisition will not change any of these trends in customer preferences, nor it will it change the need for ANZ and Suncorp Bank to continue to respond to them if it is authorised to proceed.

- 2.33 ANZ recognises that non-price aspects of competition, including customer service, are important in the supply of commercial banking products to SME customers, particularly for agribusiness customers who seek strong relationships with their bankers.<sup>65</sup> However there is no evidence that Suncorp Bank significantly drives competition in relation to customer service. Rather, ANZ faces, and will continue to face, competition from a range of strong competitors that will continue to compete vigorously for SME customers generally, and agribusiness customers specifically, including in regional and rural areas.<sup>66</sup> Those strong competitors include providers which compete specifically on service,<sup>67</sup> and adopt relationship-focused service models for the supply of commercial banking products to agribusiness customers that are equivalent to Suncorp Bank's offering.<sup>68</sup> Following the Proposed Acquisition, ANZ will need to continue to compete vigorously to retain Suncorp Bank's customers, and the Suncorp bankers who deliver its relationship-based model with customers.<sup>69</sup> In fact, following the Proposed Acquisition, a combined ANZ/Suncorp Bank will be a stronger competitor than they would be separately without the Proposed Acquisition, because of the combination of their complementary geographic coverage and strengthened competitive proposition.<sup>70</sup> These observations apply to competition in the supply of commercial banking products to SME and agribusiness customers regardless of whether that competition is considered by reference to a national market for all such customers (as ANZ submits is

<sup>63</sup> See the statement of Shayne Elliott at [20]-[26] and the statement of Peter Dalton generally for an overview of that investment.

<sup>64</sup> Application at paragraph [27] citing data from the ABA, RFI Research and the RBA.

<sup>65</sup> Application at [7.184] to [7.188] citing the statements of Mark Bennett and Clive van Horen.

<sup>66</sup> Application at paragraph [7.196] citing the statement of Mark Bennett.

<sup>67</sup> Application at paragraph [7.196](c), citing the statement of Mark Bennett.

<sup>68</sup> Application at paragraph [7.210], citing the statement of Clive van Horen.

<sup>69</sup> statement of Mark Bennett at paragraph [210].

<sup>70</sup> See the Application at [7.197] to [7.296] citing the statements of Mark Bennett and Clive van Horen.

appropriate)<sup>71</sup>, or any narrower market (including a market for the supply of commercial loans to agribusiness customers).

- 2.34 Consequently, the Proposed Acquisition will not remove a key driver of competition, whether in relation to innovation, service levels or other non-price aspects, in any relevant market. Rather, ANZ faces and will continue to face competition from a range of sources, including competition on non-price matters, such as policy and process.

*The abstract possibility of further, unrelated acquisitions in the banking sector has no relevance to the assessment of the Proposed Acquisition*

- 2.35 BOQ's submission that the Proposed Acquisition will lessen competition seeks to aggregate the effect of the Proposed Acquisition with "subsequent acquisitions that may follow".<sup>72</sup> However, neither BOQ nor any other interested party has identified what further acquisitions might occur in future, let alone explained how the effect of any such acquisition could properly be attributed to the Proposed Acquisition.

- 2.36 As ANZ noted in its previous submission in response to interested party submissions, the prospect of further acquisitions in the banking sector after the Proposed Acquisition is simply not relevant to the competition assessment of the Proposed Acquisition.<sup>73</sup> Rather, the assessment of the Proposed Acquisition must focus on this particular acquisition, and the factual circumstances in which it occurs, and the assessment of any future acquisition must similarly focus on the that acquisition, in its factual context.

*The Proposed Acquisition will result in substantial public benefits and no public detriments*

- 2.37 BOQ submits that:
- a. there is uncertainty about whether some of the public benefits ANZ has identified in its Application will arise as a result of the Proposed Acquisition, or are "true" public benefits;<sup>74</sup> and
  - b. the Proposed Acquisition "could" give rise to a competitive detriment.<sup>75</sup>

<sup>71</sup> See the Application at [6.87] and the following paragraphs.

<sup>72</sup> BOQ's submission at [4](e).

<sup>73</sup> ANZ, Response to interested party submissions, 9 March 2023 at [4.4].

<sup>74</sup> BOQ submission at [7](a) and (c)(i), (iii) and (iv).

<sup>75</sup> For example, BOQ says that the Proposed Acquisition "could affect the Australian banking landscape" and "could further support an environment where the majors...continue to benefit from structural advantages" (emphasis added): BOQ submission at Background paragraphs [8] and [9].

- 2.38 These submissions are not supported by evidence or analysis, and do not address ANZ's evidence that the Proposed Acquisition will result in substantial public benefits, and will not result in any public detriments.
- 2.39 ANZ makes the following observations regarding BOQ's submissions on public benefits.
- 2.40 First, BOQ does not explain the factual or analytical basis for its submission that it is "not clear" whether the public benefits generated by the Proposed Acquisition will only arise as a result of the transaction,<sup>76</sup> or its suggestion that certain benefits identified by ANZ may not be "true" benefits.<sup>77</sup> Therefore, these submissions should be given little, if any, weight.
- 2.41 Secondly, BOQ's submission does not address ANZ's position or extensive evidence regarding the public benefits from the Proposed Acquisition.<sup>78</sup> In particular, focusing on the specific benefits addressed in BOQ's submission:<sup>79</sup>
- a. There is no tension between ensuring stability, and fostering competition, in Australian financial markets in relation to the Proposed Acquisition because the increased financial security arising from the merger of ANZ and Suncorp Bank will not be undermined by any identified damage to competition, given the ongoing competition that ANZ and Suncorp Bank will continue to face as outlined in this submission, and the Application.
  - b. The Proposed Acquisition's effect of reducing Suncorp' Bank's wholesale funding costs and increasing its access to funding clearly constitutes a relevant public benefit. A reduction in wholesale funding costs will mean that Suncorp Bank will become a more efficient (lower-cost) supplier of lending products to customers, and therefore be better able to compete more effectively in the supply of lending products compared to if Suncorp Bank remained a part of Suncorp Group.<sup>80</sup> This reduction in funding costs would amount to a productive efficiency (as described in section 4 of the RBB report) that itself constitutes a public benefit, whether or not the cost reduction is passed on to end consumers in the form of lower prices.<sup>81</sup> While the degree to which the combined ANZ/Suncorp Bank may pass through lower prices to its customers depends on a range of factors, given the competitive banking markets described in the Application, Suncorp

<sup>76</sup> BOQ submission at [7](a).

<sup>77</sup> BOQ submission at [7](c)(i), (iii) and (iv).

<sup>78</sup> ANZ's submissions on public benefits are supported by detailed statements of the CEO's of ANZ and Suncorp Bank, Shayne Elliott and Steven Johnston, an expert report of Patrick Smith of RBB Economics and other supporting documentation.

<sup>79</sup> Compare the BOQ submission at [7](c).

<sup>80</sup> See RBB report at section 4 and the Application at [8.30].

<sup>81</sup> Ibid.



Bank is likely to have an incentive to pass on a portion of its funding cost savings to consumers in the form of better quality and/or lower priced services, delivering benefits to Suncorp Bank customers and ANZ shareholders.<sup>82</sup>

- c. A result of the Proposed Acquisition is a public commitment by ANZ to providing additional funding to Queensland businesses. This gives rise to a public benefit that will not arise in the absence of the Proposed Acquisition. As described in the Application ANZ has made commitments to provide \$15 billion of new lending and banking solutions to support the Queensland Government's renewable energy targets and infrastructure developments, \$10 billion of new lending to support new energy projects in Queensland and \$10 billion of lending to support Queensland businesses over the next three years.<sup>83</sup> Those commitments would not have been made in the absence of the Proposed Acquisition.<sup>84</sup> While it may be the case that *some* businesses would receive funding to which ANZ has committed in the absence of the Proposed Acquisition (although ANZ is not aware of any evidence addressing this point), the lack of any comparable commitment from other lenders means that there is a lower likelihood that all such businesses would have access to equivalent funding absent the Proposed Acquisition. Further, to the extent that funding is an enabler of the development and successful rollout of renewable energy projects, infrastructure development projects and new energy projects in Queensland, and the growth of Queensland businesses, ANZ's commitments, and the greater certainty they provide, will also give rise to economic, employment and environmental benefits.<sup>85</sup>
- d. Suncorp Group's establishment of a Disaster Preparedness Centre will help support Queensland's disaster preparedness and response. The Centre will incorporate the latest technology to monitor, prepare for and respond to extreme weather and natural disasters, and will include an employment hub for its flexible workforce.<sup>86</sup> The question whether the establishment of this Centre constitutes a public benefit does not depend on whether such a Centre satisfies some test of essentiality (i.e. of whether Queensland's disaster preparedness "requires" such a Centre). Rather, the establishment of such a centre is a clear public benefit through the creation of jobs in Queensland and the research that comes from it. This public benefit only arises as a result of the Proposed Acquisition, as part of the

<sup>82</sup> Application at [8.31].

<sup>83</sup> Application at [8.62].

<sup>84</sup> Statement of Shayne Elliott at [82].

<sup>85</sup> Application at [8.63] and [8.64].

<sup>86</sup> Application at [8.66].

Agreed Commitments negotiated as part of the commercial documents underpinning the Proposed Acquisition.

- e. ANZ's commitment to explore establishing one or more 'Centres of Excellence' in Queensland is a 'true' public benefit that would not arise in the absence of the Proposed Acquisition.
- 2.42 ANZ makes the following observations regarding BOQ's submissions concerning the possibility of a public detriment arising from the Proposed Acquisition.
- 2.43 First, as BOQ's asserted "competitive detriment"<sup>87</sup> appears to refer to the BOQ's submissions addressed in paragraph 2.1 to 2.36 above, BOQ's position regarding the potential for the Proposed Acquisition to cause such a competitive detriment is not supported by the evidence, and is based on internally contradictory analysis. ANZ repeats its submissions above in this respect.
- 2.44 Secondly, BOQ's submissions on public detriment do not undermine ANZ's position, or evidence, that the Proposed Acquisition will not give rise to any "competitive" or any other public detriment. ANZ submits that the Proposed Acquisition would lead to real public benefits, as described in section 8 of its Application, and that these public benefits are not offset by any competitive impacts. In fact, following the Proposed Acquisition, a combined ANZ/Suncorp Bank will be a stronger competitor than they would be separately without the Proposed Acquisition, because of the combination of their complementary geographic coverage and strengthened competitive proposition.

<sup>87</sup> BOQ submission at [7](b) and [7](c)(iii) and (iv).