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ANZ proposed acquisition of Suncorp Bank

Second Submission to the Australian Competition & Consumer Commission concerning merger authorisation

30 June 2023

Public version

Bendigo and Adelaide Bank

1. Introduction and overview

1.1 This submission is to confirm the views of Bendigo and Adelaide Bank Limited (**BEN**) set out in BEN's submission dated 3 March 2023 (**BEN's March Submission**) in light of the material that has been lodged by the merger parties since that date[1] and the independent expert report of Mary Starks of Flint Consulting dated 16 June 2023 (**Starks Report**).

1.2 In BEN's March Submission, BEN expressed the view that the Proposed Acquisition[2] would result in a substantial lessening of competition in home loans, deposits and agribusiness markets as compared to both a continuation of the status quo and as compared to a future in which BEN merged with Suncorp Bank (**BEN/Suncorp Bank counterfactual**). BEN also relied upon the expert report of Prof. Stephen King dated 3 March 2023 (**Prof. King's First Report**) in support of its views.

1.3 Prof. King has prepared a further report dated 28 June 2023 (**Prof. King's Second Report**) which BEN relies upon (Attachment 1 to this submission). In this Report, Prof. King responds to certain matters raised by the merger parties and Dr Philip Williams, an independent expert retained by ANZ and also comments on the Starks Report.

1.4 The recent material lodged by ANZ and Suncorp Group (**SUN**) does not change BEN's views on the likely state of competition with and without the Proposed Acquisition, as set out in BEN's March Submission. Further, the Starks Report is generally consistent with the views expressed in BEN's March Submission and as Prof. King notes in his Second Report, Ms Starks' views are substantially aligned with the views expressed in Prof. King's First Report.

1.5 Notwithstanding the merger parties' recently lodged material, BEN maintains that a merger with Suncorp Bank <u>is</u> a commercially realistic counterfactual, and that the Proposed Acquisition would result in a substantial lessening of competition (**SLC**) in at least the markets identified in BEN's March Submission, without any net public benefits, as compared to the BEN/Suncorp Bank counterfactual <u>and</u> the status quo counterfactual.

1.6 BEN submits that the ACCC should place minimal weight, if any, on ANZ's claimed public benefits. The claimed public benefits are unsubstantiated, and even if they were considered valid they would not outweigh, or likely outweigh, the public detriment from the significant SLC that would result from the Proposed Acquisition.

1.7 This submission is confined to matters on which BEN considers it can usefully assist the ACCC's consideration of the authorisation application at this stage (in particular, matters within BEN's

[1] Suncorp Group response dated 22 May 2023, with witness statements of Adam Bennett, Clive van Horen and Steven Johnston and reports of Dr David Howell and Mozammel Ali of the same date; ANZ's response dated 23 May 2023 with witness statements of Shayne Elliott, (Douglas) John Cameron, Mark Bennett, Yiken Yang, Louise Higgins and Adrian Went and reports of Dr Jeffrey Carmichael, Patrick Smith and Dr Philip Williams AM of the same date

[2] BEN adopts the definition of Proposed Acquisition in the ACCC's Statement of Preliminary Views dated 4 April 2023

specific knowledge and updates since BEN's March Submission). This should not be taken as BEN accepting any matter to which BEN does not specifically respond.

2. The BEN/Suncorp Bank merger is commercially realistic

2.1 BEN remains confident that it could make an offer to SUN to acquire Suncorp Bank that is compelling to SUN's shareholders. As set out in BEN's March submission, in the absence of the Proposed Acquisition an acquisition of Suncorp Bank by BEN is a commercially realistic counterfactual, including because:

- SUN has publicly stated the benefits of divesting Suncorp Bank. It announced the rationale of the Proposed Acquisition as enabling it to become a "pureplay insurer". Statements made by SUN in material submitted to the ACCC suggests they do not consider a sale of Suncorp Bank to BEN to be a commercially realistic counterfactual. BEN does not consider these statements foreclose a future acquisition of Suncorp Bank by BEN (given SUN is currently exclusively committed to the Proposed Acquisition) and that the strategic rationale for divestment of Suncorp Bank remains sound;
- BEN's interest is not opportunistic and it has undertaken significant work to ensure that it was and is well-positioned to make a binding offer to acquire Suncorp Bank, including before announcement of the Proposed Acquisition;
- BEN would have access to adequate funding to make a binding offer;
- BEN's offer would have been compelling; and
- BEN would be able to operate Suncorp Bank viably and sustainably.

2.2 The merger parties' criticisms of BEN's proposal, including that it was opportunistic or lacking in detail should be treated with caution given SUN has committed exclusively to the Proposed Acquisition and BEN's proposal has not been allowed to be developed by BEN and SUN.[3] BEN is also confident from its analysis and information presently available to BEN that a merger with Suncorp Bank would be value accretive, and deliver strategic benefits to BEN, and that the merged entity would benefit from scale and synergistic gains from the merger. While this would have to be validated by BEN and SUN through due diligence, the merger parties' recent submissions and evidence do not change BEN's view.

2.3 Further, SUN and ANZ assert a BEN-Suncorp Bank merger should be discounted as a viable counterfactual based on alleged integration and technology challenges, low synergies, and asserted

[3] This is discussed in further detail in BEN's March Submission

or assumed issues with credit ratings and funding. These allegations are unfounded as detailed below.

BEN's prior history of successful post-acquisition integrations and its ability to integrate Suncorp Bank successfully and efficiently

2.4 BEN has a long track record of successful integration of acquired businesses, as discussed in section 4.7 of BEN's March Submission.

2.5 BEN drew on its experience in successfully integrating acquired businesses in formulating the indicative proposal for acquiring Suncorp Bank and would draw on this experience to ensure a successful acquisition and integration.

Technology integration

2.6 In 2021, BEN began its core banking consolidation program for the consolidation of its eight banking platforms to a single core platform. BEN is well progressed and has good momentum in this program and has met all program targets. As at the date of this submission, BEN has successfully consolidated four of its banking platforms (including three in the last few months) and the remaining three will be consolidated into the core banking platform in the next 18 months to two years. In parallel, BEN continues to modernise its core banking platform and components.

2.7 Prior to this, BEN had a business strategy of operating its different brands separately, and maintenance of eight separate banking platforms was a function of this business strategy as the separate platforms supported the separate brands. This strategy was not inconsistent with the way other banks have managed, and continue to manage, core banking technology and infrastructure to support multiple brands, for example Westpac and St George.

2.8 Aligned with its core banking consolidation program, BEN is making swift progress with its transition to cloud-based applications. This transition to the cloud commenced in 2021 and approximately 34% of BEN's applications are now hosted in the cloud. BEN understands its rate of progress in transitioning to cloud-based applications has been faster than many of its competitors and it expects this rate of progress to continue to achieve 70% of applications in the cloud by 30 June 2025.

2.9 BEN is therefore well progressed in its technology transformation and on track to achieve the targets which form part of the assumptions Ms Starks was asked to make for the purposes of her report.

2.10 [In [97] of ANZ officer Louise Higgins' statement dated 17 May 2023, Ms Higgins states "*to integrate Suncorp bank effectively, [BEN] would need to make very substantial investments…to create a platform that can effectively accommodate twice as many customers as it has today…I expect the uplift and remediation work required to be undertaken by [BEN] would be materially greater than for ANZ*". BEN's core banking platform has such capability already. BEN has tested the scalability of its core banking platform and confirmed that it can accommodate a significant increase in customers (well beyond the combined number of BEN's and Suncorp Bank's existing customers) without any drop in performance. In fact, since 2018, BEN has increased its customer numbers by almost 50%

from 1.6 million to over 2.3 million, the majority of these new customers joining through BEN's digital bank Up[4], providing evidence of the scalability of BEN's core banking technology.

2.11 BEN is confident it has the technology, experience and capacity to deliver an integration project of this size and complexity.

Other integration issues

2.12 In its latest submission, SUN has argued that BEN's branch network will be an impediment to a BEN/Suncorp Bank merger. BEN is, however, confident that SUN is wrong in respect of the assumptions it has made about BEN's branch network, for the reasons set out below.

2.13 SUN refers at [118]-[120] of its submission dated 17 May 2023 (**Suncorp's Second Submission**) to BEN's community-owned branches. BEN does not consider its community branch network to present any significant integration challenges.

2.14 In Suncorp's Second Submission at [107] SUN notes that BEN has a larger branch footprint than ANZ. Branch consolidations in the event of a BEN-Suncorp Bank merger would relate to branches in very close geographic proximity, and BEN does not anticipate that such consolidations would adversely impact on customer experience. In fact, BEN is of the view that customers would benefit from access to a larger branch network and other improvements to customer service created by a BEN-Suncorp Bank merger.

Synergies

2.15 BEN's March Submission outlined the synergies BEN expects to unlock from a merger with Suncorp Bank. [redacted]

2.16 In addition, such synergies would provide greater proportional benefits to the merged BEN-Suncorp Bank compared to those that would arise for ANZ from the Proposed Acquisition.

Funding and credit rating implications

2.17 BEN remains confident that it would be able to fund a merged BEN-Suncorp Bank sustainably.

[redacted]

[redacted] BEN believes, and this has been confirmed by its professional advisers, that a merged BEN-Suncorp Bank would have access to sufficient funding capacity even if there was not a credit rating upgrade. BEN has strong deposit funding capability and relatively low reliance on wholesale funding [redacted]

[4] Up operates using BEN's core banking platform.

[redacted]

2.20 BEN continues to consider that a credit rating upgrade is likely for a merged BEN/Suncorp Bank, including based on the following:

(a) the Major Bank Levy would be payable by the merged group (in the absence of legislative change) as the total liabilities would exceed the threshold. A key rationale behind the Major Bank Levy is for the government to recoup at least some of the funding cost subsidy that the major banks (and Macquarie Bank) benefit from as a result of implicit government support. A merged BEN-Suncorp Bank would be larger than Macquarie Bank which pays the Major Bank Levy and gets the rating benefit of a two-notch uplift from government support[6]. Accordingly, it is reasonable to expect the credit rating of a combined BEN-Suncorp Bank would include the benefit of the implicit government support.

[redacted]

3. Current state of competition in banking markets

3.1 BEN has a different perspective on some of the matters raised by the merger parties in relation to the current state of competition in banking markets. This perspective is based on BEN's own market experience.

3.2 For example, ANZ sets out in section 3.12 of its submission (**ANZ's Second Submission**) quotes from various bank executives commenting on the recent high levels of competition for home loans. As set out in BEN's March Submission at [5.2], in more recent times, BEN has seen the major banks pricing aggressively for 'high quality' customers, which smaller banks cannot compete with due to the structural advantages that favour the major banks.

3.3 BEN's financial result announcement for the half year ended 31 December 2022 indicated "*We are seeing a continued contest for market share play out, primarily amongst the big four banks, using incentives in the form of cash back offers for housing loans.*" We note that these cash back offers for housing loans have largely since been removed.

3.4 BEN refers to the Prof. King Second Report [para [87(c)]] where Prof. King states that "*Under coordinated conduct there may be temporary outbreaks of increased competition before more profitable coordination resumes.... It does not mean that there is not ongoing coordinated conduct, but rather that the conduct is temporarily in a 'more competitive' phase*".

3.5 The merger parties have asserted that the market has changed since the PC Report[7] with the growth in the importance of brokers being a significant change driving competition in lending markets.

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[5] Confidential Annexure 12 to BEN's March Submission

[6] https://www.macquarie.com/assets/macq/investor/debt-investors/credit-ratings/sp-ratings-macquarie-bank-limited.PDF

[7] See Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89

Whilst the origination of loans through brokers has increased since the PC Report, the influence that brokers have on the market hasn't changed significantly.

3.6 ANZ has also submitted (at [3.3(c)]) that brokers have created *"a "reverse" information asymmetry where consumers have access to more price and non-price information than their bank"*. This is not consistent with BEN's experience.

4. A merged BEN/Suncorp Bank would be a more effective competitor

4.1 A merged BEN/Suncorp Bank would represent a material step change in BEN's scale and ability to successfully compete in relevant markets.

4.2 In [2.17] of ANZ's Second Submission, ANZ stated that BEN has provided no evidence to support its argument that a combined BEN-Suncorp Bank would result in a more effective competitor and that BEN's prior acquisitions have not had such a result. This is not correct. BEN's March Submission set out in detail how a merged BEN-Suncorp Bank would be a materially more effective competitor than BEN (or Suncorp Bank) is today. In summary, a BEN-Suncorp Bank merger would:

(a) provide BEN with a material increase in scale, with more than 3 million customers across Australia;

(b) unlock significant synergies[8];

(c) enhance BEN's ability to build on its history of successful innovation and provide superior offerings to customers, which has been and will continue to be a key driver of its ability to compete with the major banks.

4.3 BEN expects that the enhanced scale and the efficiencies that would be gained from acquiring Suncorp Bank would significantly enhance its ability to compete, including by attracting more deposit funding, allowing it to invest further in technology and accelerating the delivery of BEN's digital capabilities for the benefit of customers.

4.4 Contrary to ANZ's submissions, BEN's previous acquisitions have improved its ability to compete. These acquisitions have enabled BEN to access markets that would have been difficult to access organically and also added scale which enabled BEN to increase operational leverage (i.e. decreased fixed costs as a proportion of total costs), improving its ability to compete in relevant markets. For example:

(a) the acquisition of Adelaide Bank enabled better access to mortgage brokers and other third-party originators, which now represents more than half of BEN's home loan portfolio;

(b) the acquisition of Rural Bank and Rural Finance assisted BEN's access to agribusiness markets;

(c) the acquisition of Ferocia has enabled BEN to scale the Up digital bank at a greater pace (which now has more than 600,000 customers) and broaden the product offering to meet

[8] Confidential Annexure 12 to BEN's March Submission

more of BEN's customers' financial needs (for example, UpHome which is Up's home loan product);

(d) BEN's investment in tic:toc has enabled BEN to launch digital home loans in a rapid manner under the Up brand (UpHome), the Bendigo brand (BENExpress) and also through our partnership with Qantas (Qantas Money Home Loan).

4.5 A BEN-Suncorp Bank merger would involve significantly greater improvements in scale compared to these prior acquisitions. Further, the benefits of scale have become even more important in recent years and will continue to be of greater importance in the future, given the increased regulatory compliance costs and the importance of investing in technology to accelerate the transition to digital product delivery. Accordingly, while BEN's previous acquisitions have materially improved its competitive position, BEN expects a merger with Suncorp Bank would deliver materially greater improvements in its ability to compete.

5. The Starks Report

5.1 Ms Starks has been instructed to assume that if the Proposed Acquisition does not proceed Suncorp Bank will either continue to be owned by SUN or Suncorp Bank would merge with BEN, and to assume certain other matters about BEN or a merged BEN/Suncorp Bank in forming her views. In short, BEN confirms that the assumptions relied upon by Ms Starks in relation to the BEN/Suncorp Bank counterfactual are valid and reliable.

5.2 The Starks Report concludes that the Proposed Acquisition has a real chance of resulting in an SLC in the local/regional markets for agribusiness banking and SME banking compared to both the status quo and the BEN/Suncorp Bank counterfactual, and in the national market for home loans compared to the BEN/Suncorp Bank counterfactual. Ms Starks also concludes that she cannot rule out an SLC in the national markets for transaction accounts and deposit/term products compared to the BEN/Suncorp Bank counterfactual.

5.3 BEN generally agrees with these conclusions but additionally contends that there is real chance of an SLC in the national market for home loans, as well as the national market for deposits/term products, on either counterfactual. In this regard, BEN relies upon Prof. King's two reports as well as on its own experience as a competitor in these markets. BEN considers that the coordinated effects theory of harm and horizontal concerns identified in the Starks Report would produce an SLC in at least the national market for home loans for the reasons expressed by Prof. King.

5.4 Ms Starks is in substantial agreement with Prof. King's conclusions with the only area of difference being on conclusion as to whether there is a real chance that the Proposed Acquisition would result in an SLC in the national home loans market compared to the status quo counterfactual. Even on this issue, Ms Starks and Prof. King agree on the key premises underlying their opinions, and the differences between them are matters of professional judgement.

Attachment 1 – Prof. King's Second Report

Expert economist's report regarding ANZ/Suncorp

Professor Stephen P. King

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June 28, 2023

Introduction

1. I am currently a Professor of Practice in the Department of Economics at Monash University, and a Commissioner with the Australian Productivity Commission. Before joining Monash University in January 2009, I was a Member of the Australian Competition and Consumer Commission (ACCC) and Chair of the ACCC's Mergers Review Committee from 2004 to 2009. Since 2003, I have been a Lay Member of the High Court of New Zealand. I have a PhD in Economics from Harvard University.
2. I have previously provided an expert report regarding the proposed acquisition of Suncorp Bank by ANZ (dated March 3, 2023). My curriculum vitae was attached to that first report as Annexure 1.
3. I have been asked to provide this second report to respond to and update any of my opinions as relevant following the provision of a number of additional reports in this matter.
4. I have read and have complied with the Federal Court of Australia's Expert Evidence Practice Note (GPN-EXPT) and Harmonised Expert Witness Code of Conduct which is attachment A to Annexure 1.
5. I have prepared this report myself and all views and opinions expressed in this report are my own. I have made all the inquiries which I believe are desirable and appropriate (save for any matter identified explicitly in this report). No matters of significance which I regard as relevant have, to my knowledge, been withheld from me.

(Stephen Peter King)

Analysis of Dr Williams' Report in Reply

6. In my *Expert economist's report regarding ANZ/Suncorp*, dated March 3, 2023 (my first report), I analysed the statement of 1 December 2022 by Dr Williams.
7. I have been provided with a copy of Dr Williams' *Report in Reply* dated 19 May 2023. I consider the arguments presented by Dr Williams in his second report below.

Market definition

8. At paragraphs 196 to 201 of my first report, I discuss Dr Williams' approach to market definition. In paragraph 196, I noted that "[t]he approach used by Dr Williams to determine the markets relevant for analysing the competitive effects of the acquisition of Suncorp Bank by ANZ is inconsistent with both the approach outlined in the ACCC's Merger Guidelines and the standard economic approach adopted in merger analysis."
9. Dr Williams rejects my criticism of his market definition analysis in paragraph 15 of his second report. He correctly notes that market definition is purposive.[9]
10. Dr Williams then restates his approach to market definition in paragraph 22: "I began with wider markets and narrowed the focus until I found a market … that the ACCC might consider to be adversely impacted by the Proposed Acquisition". Dr Williams considers that he has found a 'market' when the shares of the participant firms identified by Dr Williams exceeds the HHI threshold identified in paragraph 7.14 of the ACCC merger guidelines.[10]
11. The inconsistency of Dr Williams' approach is highlighted by the ACCC merger guidelines. These guidelines clearly present the 'HHI threshold' that Dr Williams uses to define markets as part of concentration analysis that occurs *after* the relevant markets for competition analysis are defined.[11]
12. The potentially misleading nature of Dr Williams' approach to market definition for competition analysis is highlighted in his second report. Dr Williams' approach considers the broadest market that exceeds the ACCC HHI threshold. Dr Williams defines a Queensland agribusiness market.[12] Then in paragraph 59(a) of his second statement, Dr Williams dismisses competition concerns in agribusiness on the basis that "[t]he market is relatively unconcentrated …". In other words, Dr Williams defines agribusiness markets on the basis of concentration (the HHI threshold) then dismisses competition concerns on the exact same basis

[9] See paragraph 4.9 of Australian Competition and Consumer Commission (2008, revised 2017) *Merger Guidelines*, available at https://www.accc.gov.au/system/files/Merger%20guidelines%20-%20Final.PDF accessed February 1, 2023. See also paragraphs 153 and 162 of my first report.

[10] See Dr Williams first statement at paragraph 35(d). Note that Dr Williams states that "[i]n applying these thresholds, I ceased the narrowing process when I had discovered a group of buyers for which the post-merger HHI was greater than 2,000 and the delta was greater than 100".

[11] Australian Competition and Consumer Commission (2008, revised 2017) *Merger Guidelines*, at paragraphs 7.6 to 7.8.

[12] Formally he defines a market for "the supply of loans to Queensland agribusiness" (Dr Williams' first statement at paragraph 54).

that he used to define the relevant market in the first place. Such an approach is circular and inconsistent with economics and competition analysis.

13. As Dr Williams notes in paragraph 27, he does not consider geographic markets in agribusiness that are more localised than a state (such as local/regional agribusiness markets) because his mechanical approach to 'narrowing down' market definition stops before it gets to a local level.
14. In my opinion, Dr Williams' approach to market definition is inconsistent with the ACCC merger guidelines and has no basis in economics. As a result, his competition analysis in agribusiness banking is circular and misleading. I restate the conclusion from my first report that, based on the principles of economic analysis outlined in the ACCC's merger guidelines, the appropriate markets for the analysis of agribusiness banking when considering the acquisition of Suncorp Bank by ANZ are local/regional agribusiness banking markets, particularly those local/regional agribusiness banking markets either fully located or substantially located within Queensland.

Competition in local/regional agribusiness markets in Queensland

15. In section 3 of his second report, Dr Williams considers the "likely effects on competition in agribusiness banking".
16. At paragraph 30, Dr Williams states that he does not agree with the local/regional market definitions that I present in paragraph 65 of my first report. He presents three reasons for his opinion.
17. First, at paragraph 30, Dr Williams states that there is no evidence that the acquisition will lead to a contravention at a local level, so that local markets are irrelevant. This is incorrect. See paragraphs 143 to 180 of my first report. There are clear and, in my opinion, substantial competition concerns that arise in local/regional agribusiness markets.
18. Dr Williams second reason (paragraph 31) is his belief that competition in agribusiness does not occur at a local level. This belief appears to be based on internal control and decision mechanisms within the ANZ bank (paragraphs 31 to 36). However, competition depends on demand and supply substitution, something that Dr Williams does not consider in these paragraphs. The internal structure of a large corporate entity like ANZ may provide information about internal decision-making but it provides little if any useful information about supply-side or demand-side substitution and competition at a local level.
19. To see this, consider a simple example. Suppose a remote country town has only two supermarkets, a branch of a large national chain and an independent grocer. The two supermarkets actively compete for business and there is significant demand-side substitution between the two supermarkets. There are substantial barriers to entry for any alternative (third) supermarket and consumers would need to incur significant costs to travel to another town to purchase groceries. Finally, suppose that the large national supermarket chain makes a range of decisions at a national level. For example, the local manager may be required to seek national approval before meeting local price discounts from the independent grocer.

Based on Dr Williams' logic, summarised in paragraph 37 of his second report, there would be no competition issue if the large chain bought the local independent supermarket creating a local monopoly even though this conclusion would clearly be incorrect from an economic perspective. While decision making of the national chain may provide some useful information, as this example shows, it is not definitive when considering competition at a local level and may not even be relevant when considering competition at a local level.

20. Dr Williams' confusion is highlighted by paragraph 37 where he states that "competition in lending to agribusiness takes place at many levels within ANZ". While competitive decisions may be made at various levels within ANZ, competition occurs between ANZ and other agribusiness bankers. In my opinion, based on the evidence provided in my first statement, this competition between agribusiness bankers occurs at a local/regional level for Queensland.
21. In summary, the information on internal ANZ decision making provided by Dr Williams at paragraphs 31 to 36 of his second statement, with the conclusion about market definition in paragraph 37, provides little if any useful information about either market definition for competition analysis or local competition.
22. Dr Williams third reason is that "bankers seek to mitigate risk by developing a loan book that is geographically diverse" (paragraph 38). While banks may seek geographic diversification to diversify the risk of their entire operations, this tells us little if anything about local competition or the markets that are relevant for merger analysis. A large bank (or any other large business) may seek to diversify risk by operating in a range of separate markets. However, this does not somehow mean that these local markets cease to exist, or that local competition is irrelevant.[13]
23. In summary, none of the three reasons presented by Dr Williams is valid when he rejects the relevance of local/regional agribusiness banking markets for the purpose of analysing the competition effects of the acquisition of Suncorp Bank by ANZ.
24. In my first report, I noted that there is a lack of data on market shares at local/regional agribusiness markets in Queensland (paragraph 159). I noted at paragraph 160 that using Queensland state-wide agribusiness market shares "may understate (and potentially significantly understate) the competitive impact of the acquisition on certain regional agribusiness banking markets".
25. Dr Williams comments on my competitive analysis of local/regional agribusiness banking markets in Queensland in paragraphs 40 to 51 of his second report.
26. Dr Williams agrees (paragraph 41), at a Queensland state-wide level, that the agribusiness shares for ANZ and Suncorp combined exceed the ACCC merger guidance thresholds. Under Dr Williams mechanistic approach to market definition using market shares, he 'stops' his market analysis as soon as he finds a

[13] Indeed, diversification of risk requires that the behaviour over geographic areas is not perfectly correlated, as otherwise there would be no diversification of risk. In this sense, diversification itself provides some, albeit weak, evidence of 'separate markets'.

geographic region where the combined market shares exceed the ACCC merger guidance thresholds. As I note above, Dr Williams' approach to market definition is inconsistent with the ACCC merger guidelines and has no basis in economics.

27. Dr Williams also agrees that at a local/regional level "one may find particular segments that are more concentrated" (paragraph 43).
28. At paragraphs 44 to 47 of his second report, Dr Williams comments on my analysis of entry and expansion. At paragraph 46, Dr Williams notes the entry of Rabobank and states that "Mr Bennett suggests that the initial success of Rabobank came from their poaching experienced agribusiness bankers". Dr Williams quotes Mr Bennett who notes the importance of "relationships". At paragraph 47, Dr Williams agrees that barriers to entry might be quite high but argues that the experience of Rabobank shows that barriers to expansion/mobility among lenders are not high. I disagree. In my opinion, the experience of Rabobank, including their dependence on 'poaching' experienced agribusiness bankers and the need for these bankers to have or build up local relationships, highlights key impediments to entry and expansion in local/regional agribusiness markets. Rabobank shows that, while high, and a significant constraint on competition, these impediments are not insurmountable.
29. The experience of Rabobank outlined by Dr Williams is completely consistent with my analysis of entry and expansion at paragraphs 164 to 170 of my first report. In that report I concluded that "entry and potential entry is unlikely to provide a significant competitive constraint in a local or regional agribusiness banking market. It is possible that expansion may provide a competitive constraint subject to the relevant bank already having the physical presence and relationships relevant for agribusiness banking" (paragraph 170).
30. In paragraphs 48 to 51, Dr Williams discusses switching costs between ANZ and Suncorp Bank in agribusiness. Dr Williams does not consider the switching costs for customers when seeking to move from a merged Suncorp Bank/ANZ to an alternative agribusiness provider and whether these switching costs mean that the merged entity would be able to exercise market power post acquisition.
31. I consider switching costs for the relevant agribusiness markets in paragraphs 171 to 175 of my first report. At paragraph 175 I concluded that "there are significant switching costs for agribusiness consumers. In order to reduce future switching costs, some agribusiness customers develop 'dual relationships' with alternative banks, bankers or brokers. In this sense, the barriers to switching for consumers in agribusiness banking are high but not insurmountable".
32. At paragraphs 52 to 60 of his second report, Dr Williams considers the likely effect of the acquisition of Suncorp Bank by ANZ compared to the 'status quo' counterfactual.

33. At paragraph 59(a) of his second report, Dr Williams claims that the 'market' is relatively unconcentrated. Unfortunately, Dr Williams does not consider the local/regional agribusiness markets that are relevant for the acquisition of Suncorp Bank by ANZ.
34. At paragraph 59(b) of his second report, Dr Williams claims that "the proposed merging parties are not particularly close competitors". He bases this conclusion on the fact that there are some (large) agribusiness customers that can be served by ANZ but not by Suncorp Bank. The ACCC merger guidelines deal with this situation in detail at paragraphs 4.35 to 4.38. In particular, the Guidelines note that in this situation the ability of a supplier to discriminate on terms and conditions between different groups of buyers is a key element of market definition. I have seen no information that suggests that ANZ sets similar terms and conditions for small and large agribusiness customers in local/regional agribusiness markets in Queensland. If ANZ, Suncorp Bank and others compete for the business of small and medium agribusiness customers in local/regional agribusiness markets in Queensland, then the acquisition of Suncorp Bank by ANZ may substantially lessen that competition.

Competition in the national market for retail home loans

35. In section 4 of his second report, Dr Williams considers the "likely effects on competition for retail home loans".
36. At paragraph 12 of his second report, Dr Williams claims that my "analysis of the likely effects of the Proposed Acquisition on the state of competition in the national market for retail home loans relies on [my] assumption that the four largest banks are currently charging monopoly-like prices on housing loans". This is incorrect. My analysis relies on the evidence presented at paragraphs 79 to 128 of my first report.[14]
37. As part of my analysis, I rely on the observations and findings of both the Productivity Commission (PC) and the ACCC in their independent reports on the banking system.[15] I summarise part of these observations and findings at paragraphs 40 to 45 of my first report, noting that the "accommodative and synchronised pricing behaviour" of the major banks observed by both the PC and the ACCC is consistent with coordinated conduct by these banks.[16]
38. At various stages of his second report, when considering the national market for retail home loans, Dr Williams uses the term 'monopoly-like prices'. Dr Williams does not explain this term.[17] However, I assume that he means prices that are close to the prices that would be charged by a monopoly provider in the

[14] I note that in paragraph 92 of my first report I use an example of the four major banks behaving as if they were one company in order to illustrate why HHI analysis can be distorted in the presence of coordinated conduct. This is an illustrative example only. Nothing in the economics of coordinated conduct requires that the conduct leads to 'monopoly-like pricing'. Rather, it leads to conduct inconsistent with independent competitive conduct and generally pricing above a workably competitive level. I apologise for any confusion caused by my use of this illustrative example.

[15] See Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June and Australian Competition and Consumer Commission *Residential Mortgage Price Inquiry final report*, November 2018.

[16] At paragraph 81 of my first report I state that "[i]n my opinion, the conduct of the four major banks, as discussed by the PC and ACCC, can be characterised as 'coordinated conduct'."

[17] At paragraph 69, Dr Williams does refer to a numerical example presented by Massimo Motta that explicitly considers 'the monopoly price'.

market (i.e. prices that are 'close to' a monopoly price). I would note that the theory of coordinated conduct does not require that the coordinating business set prices 'close to' monopoly prices. However, if successful, coordinated conduct will lead to prices above the prices that would arise in the market if the relevant firms engaged in independent competitive conduct. In my opinion it is these competitive prices (i.e. the prices that would arise if the market were not characterised by coordinated conduct but involved independent competitive conduct) that are the most relevant comparator for pricing under coordinated conduct. The higher prices (and potentially lower service offerings) set by businesses that are engaged in coordinated conduct, relative to competitive prices, reflect the reduction of competition and detriment to consumers of the coordinated conduct.[18]

39. At paragraphs 81 to 85 of my first statement I discuss the competitive implications of coordinated conduct by the four major banks for the acquisition of Suncorp Bank by ANZ. At paragraph 86 I conclude that "[i]n my opinion, as a matter of economics, the changes to market share resulting from the acquisition of Suncorp Bank by ANZ will stabilise the on-going anti-competitive coordinated conduct by the major banks in the national market for retail home loans. The merger will change the incentives facing ANZ and reduce ANZ's incentives to arrest its declining market share in home loans through competition".

40. It is my understanding that extensive evidence was gathered by both the PC and the ACCC in their inquiries which led (among other things) to their conclusions that I summarise in paragraphs 40 to 45 of my first report.[19, 20].

41. Dr Williams notes some of the data presented by the PC at paragraphs 80 to 84 of his second report. He considers that, by itself and in isolation from other evidence collected and analysed by the PC, this data does not support "the proposition that the four largest home lenders are engaged in coordinated conduct ...".[21] While I note that in isolation, specific data may be open to multiple interpretations, the PC's conclusions were not simply based on the specific data considered by Dr Williams but on a wide range of qualitative and quantitative information (see footnote 11).

42. At paragraphs 86 to 88 of his second report, Dr Williams criticises a small part of the data and analysis used by the ACCC in its Residential Mortgage Price Inquiry. In paragraph 87, Dr Williams notes that the ACCC refers to the practice of opaque pricing *for consumers*. In paragraph 88 Dr Williams argues that

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[18] Similarly, at paragraph 95 of his second report, Dr Williams claims that I propose "that the four largest banks are currently charging monopoly-like prices for housing loans". I reject this claim, in part because it is far from clear what Dr Williams means by a 'monopoly-like price'. It is not a term that I use. I do, however, consider that there is substantial evidence that the major banks do not behave as independent competitors.

[19] For example, the PC noted that as part of its inquiry, it held three public Roundtable Hearings with representatives from the financial regulators, the regional banks, and consumer groups; it held a Roundtable discussion with representatives from non-bank financial institutions; it had separate discussions throughout the course of the Inquiry with around 90 businesses, business groups, government agencies, academics and other individuals; it held 4 days of public hearings and it received 137 public submissions. The PC also made detailed data and information requests to a number of entities and collected some data and information by serving formal notices under section 48 of the Productivity Commission Act 1998 (Cth) to eleven parties. See Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June at pages 561-562.

[20] As I noted at paragraph 2 of my first report, I was one of the three Commissioners who oversaw the Productivity Commission's 2018 Inquiry into Competition in the Australian Financial System.

[21] Dr Williams' second report at paragraph 82.

opaque pricing is inconsistent with coordinated conduct. However, as he notes in paragraph 88, it is the observability of competitive pricing *by rivals* that Professor de Roos refers to when summarising the literature on coordinated conduct.[22] Indeed, opaque pricing for consumers may make it easier to coordinate conduct, by making it less profitable for a participant to deviate from the coordinated conduct and lower its prices, as the opaque pricing will mean that it attracts fewer new consumers.[23] It is clear from the quote provided by Dr Williams' in paragraph 87 of his second report that it is "opaque pricing practices and unnecessary steps" for consumers that is being considered by the ACCC.

43. Dr Williams' appears to disagree with the conclusions of both the PC and ACCC without undertaking the type of wide-ranging whole-of-market analysis conducted by the PC and ACCC when they reached their conclusions. Indeed, in paragraph 99, Dr Williams' argues that "... a proper assessment of dominance and coordinated conduct in the supply of retail housing loans would require consideration of the structure, conduct and performance of the market as a whole". This type of analysis was independently caried out by both the PC and the ACCC in their respective reports. Dr Williams does not carry out this analysis. In this sense, it is hard to place significant (if any) weight on Dr Williams' disagreement with, and dismissal of, the findings of these two independent, government reports.

44. At paragraph 68 of his second report, Dr Williams notes that "in order to be sustainable, collusion must incorporate two elements: ... there must be a credible mechanism to punish those who deviate". I would note that a simple reversion to independent competitive conduct including competitive pricing may be a "credible mechanism to punish" a deviation from coordinated conduct. In other words, the risk that competition will 'break out' can be sufficient to deter any aggressive pro-competitive conduct from occurring when businesses are engaged in tacit coordination.[24]

45. At paragraph 71, Dr William's refers to paragraph 46.a. of my first report and then, in his own words, incorrectly states what I mean. Dr William's statement of what I mean and his use of the term 'monopoly-like prices 'is misleading.

46. At paragraph 46.a. of my first report I note that "[t]he national market for retail home loans is characterised by dominance and coordinated conduct of the major banks". I then refer to my discussion of the PC and ACCC reports at paragraphs 42 to 45 of my first report. Coordinated conduct by the four largest home lenders (the major banks) means that they are able to sustain prices for home loans above a competitive level and that this conduct is supported by their ongoing interactions and mutual recognition of interdependence. This is consistent with the analysis and conclusions of both the PC and ACCC. Under

[22] Report by Professor Nicolas de Roos, "Framework for assessing coordinated effects", April 5, 2023 at p.5 under "Price transparency between firms". I note that Professor de Roos also considers that coordinated conduct can be maintained in the situation where "firms are able to observe partial information about the interest rates of rival firms, such as headline interest rates, but they are not able to observe individual customer transaction interest rates".

[23] See Report by Professor Nicolas de Roos, "Framework for assessing coordinated effects", April 5, 2023 at p.5-6.

[24] See for example Report by Professor Nicolas de Roos, "Framework for assessing coordinated effects", April 5, 2023 at p.3 where he notes that a "punishment" may simply be "triggering interest rate reductions from their rivals".

coordinated conduct, each of the major banks finds it in its own interest to temper competitive conduct in order to share the benefits of higher prices. If one of the major banks significantly increased its competitive activity, then it would risk the coordinated conduct breaking down as other major banks respond.

47. In paragraph 76 of his second report, Dr Williams notes that "Macquarie Bank accounts for 12.13 per cent of new home loans". I note that this is consistent with coordinated conduct by the major banks where their pricing above a competitive level opens the possibility for a (slow) decline in market share as smaller banks that are not engaged in the coordinated conduct are able to engage in pricing and other conduct that is more competitive than the conduct of the major banks. Such slow erosion of market share for the major banks over time will undermine the effectiveness and sustainability of their coordinated conduct. It also creates incentives for the major banks to 'buy back' market share through mergers with smaller banks.
48. I discuss in detail the competitive implications of the entry and expansion of Macquarie Bank and other smaller banks at paragraphs 102 to 111 of my first report.
49. At paragraphs 89-91 of his second report, Dr Williams appears to agree with my theoretical economic analysis around the importance of symmetry in sustaining coordinated conduct. Dr Williams does not address or disagree with my empirical analysis of the increased symmetry created by the acquisition of Suncorp Bank by ANZ (paragraph 79.f. of my first report).
50. At paragraph 93 of his second report, and (a) while appearing to agree with the underlying economic theory and (b) without presenting any evidence to show that the Proposed Acquisition will not substantially lessen competition through increasing symmetry among the major banks, Dr Williams rejects the argument that the Proposed Acquisition will stabilise the existing coordinated conduct. The basis for his rejection appears to be the assertion that the major banks are not "currently charging monopoly-like prices for housing loans" (paragraph 95) and that the market shares in the national market for retail home loans fail to cross the thresholds in the ACCC merger guidelines.
51. With regards to pricing and coordinated conduct, I reiterate my comments from paragraphs 37-40 above. The ACCC and PC have done the whole of market analysis that Dr Williams states is required, and their conclusions are clear and are presented in paragraphs 40 to 45 of my first report.
52. With regards to market shares, Dr Williams focusses on HHIs but confuses the use of HHIs. Concentration analysis, such as the use of HHIs is one, but only one, tool to consider the structure of the market and the nature of competition once a market is defined for competition analysis. In contrast to Dr Williams, the PC and ACCC both rely on a range of qualitative and quantitative evidence when they reach their conclusions.
53. At paragraph 99, Dr Williams argues that the use of HHIs is appropriate because the relevant market is not characterised by coordinated conduct. However, this simply assumes away my criticism of the use of HHIs for competitive analysis when there is coordinated conduct (see paragraphs 87 to 93 of my first report).

Put simply, my argument, which Dr Williams assumes away, is that competitive analysis based on HHIs will be misleading if there is coordinated conduct. This means that if it is found that there is indeed coordinated conduct between the major banks in the national market for retail home loans, then any competition analysis based on HHI analysis will be of little if any economic worth.

54. At paragraph 100 of his second report Dr Williams states that "I reject Professor King's proposition that the presence of coordinated conduct makes the HHI misleading and irrelevant". However, Dr Williams provides no basis for this rejection. Rather, he seems to simply assert that there is no coordinated conduct. See for example paragraphs 99 and 100 of Dr Williams' second report.

55. A simple example can illustrate how HHI analysis is misleading in the presence of coordinated conduct. Suppose there is a market with five equally sized firms. Each firm has a market share of 20% and the HHI is 2000. Such a market would exactly meet the ACCC's competition threshold presented in paragraph 7.14 of the merger guidelines. However, suppose that, through coordinated conduct, the five firms are able to raise prices to a duopoly level. A duopoly of two equally sized firms would involve an HHI of 5000 – well in excess of the ACCC's HHI threshold. The coordinated conduct, that mimics a duopoly, would substantially lessen competition and raise prices to a duopoly level (but not to a 'monopoly-like price' that Dr Williams refers to). The market HHI of 2000 would give a misleading indication of competition, due to the presence of the coordinated conduct.

56. At paragraph 106 of his second report, Dr Williams disagrees with the proposition that "increased access to lower cost funds would increase the ability of BEN to effectively compete in the national market for retail home loans". He disagrees with the proposition that increased competition from BEN would undermine the coordinated conduct between the major banks. At paragraph 107 Dr Williams states that "it is not true that all small lenders face a barrier to expansion because they do not have access to lower cost funds". Dr Williams provides no evidence to back up this assertion. At paragraph 108, Dr Williams notes the expansion of Macquarie Bank in the national market for retail home loans over the last decade. However, neither of these paragraphs provides any evidence contrary to the proposition that BEN would be more competitive if it could access lower cost funds or that such increased competition would potentially undermine the existing coordinated conduct between the major banks.

57. In summary, Dr Williams arguments in section 4 of his second report where he considers the effects of the acquisition of Suncorp Bank by ANZ, largely rest on the assertion that there is no coordinated conduct at present between the major banks. Dr Williams disagrees with the conclusions of the PC and ACCC reports despite the fact that both of these independent government organisations undertook the extensive analysis that Dr Williams argues is required for market analysis. Dr Williams does not undertake such analysis.

Other matters

Comments on "Framework for assessing coordinated effects" prepared by Professor de Roos

58. I have been provided with a copy of the report titled "Framework for assessing coordinated effects" that was prepared by Professor de Roos and dated 5 April 2023.
59. I consider that this Framework is correct as a matter of economics.
60. I note that Professor de Roos considers the market conditions that impact on the ability of firms to initiate cooperative behaviour on page 2 of his report. I agree with the analysis in that section but note that in the current matter cooperative behaviour (or coordinated effects) is already occurring between the major banks. See paragraphs 40-45 of my first report, and the independent reports by the PC and ACCC.[25]
61. I note that the key features highlighted by Professor de Roos, in section 2.1 of his report, in my opinion, are all satisfied for the major banks in Australia. I note that, while there is not perfect price transparency between the major banks with regards to retail home loans, as Professor de Roos notes, this is not required for on-going coordinated conduct between the major banks.
62. On page 7 of his report, Professor de Roos notes that there can be "incomplete participation in coordination". I note that the coordinated conduct in the national market for retail home loans is incomplete, in that there is coordinated conduct between the four major banks that together account for approximately 75% of the market (paragraph 79a of my first report).
63. On page 7 of his report, Professor de Roos notes the conditions for coordination to continue in a market when there are 'personalised discounts'. He notes that "if firms have developed an understanding of discounting practices, then deviations may be easier to detect, making coordination easier to sustain. Firms could develop such an understanding through extensive experience interacting with the same group of competitors, and by obtaining information through interaction with customers, and mortgage brokerage and interest rate comparison services". I note that these conditions are satisfied for the major banks in the national market for retail home loans.
64. On page 4 of his report, Professor de Roos notes that "[s]ymmetry between firms … tends to make coordination between firms easier. A firm with smaller market share has more to gain from deviating from cooperation, and less to lose in the event that such deviation is punished".
65. On page 8, Professor de Roos notes that "if the acquisition leads to a more symmetric distribution of market shares, then this could make coordination easier to achieve and more sustainable. The smallest

[25] Productivity Commission (2018) *Competition in the Australian Financial System*, Inquiry report No. 89, June and Australian Competition and Consumer Commission *Residential Mortgage Price Inquiry final report*, November 2018.

firms in the market have the most to gain from deviating from cooperative strategies. Thus, a more symmetric distribution of market shares could also make coordination easier to sustain".

Comments on ANZ's response

66. I have been provided with a copy of ANZ's Response to Statement of Preliminary Views, dated 17 May 2023.
67. At paragraph 35 of the Response it is claimed that my approach to considering the use of HHIs in markets that involve coordinated conduct, as presented in my first report, is "unorthodox and unsupported". I reject this claim. My analysis follows from simple economics.
68. Paragraph 35 of the Response also claims that in my first report, I failed "to engage in any meaningful way with the clear evidence of the state of competition". I reject this claim and refer to the competition analysis starting at paragraph 79 of my first report.
69. Section 4 of the Response considers the effects of the acquisition of Suncorp Bank by ANZ on stabilising the coordinated conduct between the major banks.
70. At paragraph 4.8, the response argues that the acquisition "will not materially increase concentration" in any market. It states that "there is no product in which the post-merger HHI that would exceed 2,000 on a national basis ...". I note that HHI analysis presented here assumes a 'national basis' and is not consistent with the markets relevant in this matter for competition analysis. National shares and national HHIs are irrelevant if markets are narrower in geographic scope, as is agreed by Dr Williams and myself for the relevant agribusiness markets.
71. At paragraph 4.14 of the Response it is stated that "it is implausible that coordinated effects could arise across the market". As noted above, Professor de Roos in his report considers incomplete participation in coordinated conduct. I am unaware that any party, including the PC or the ACCC, has claimed that all banks in the national market for retail home loans are engaging in coordinated conduct. Rather, it is the major banks that represent approximately 75% of the market that have been observed by both the ACCC and PC to have been engaging in coordinated conduct.
72. At paragraph 4.17 of the Response, it is stated that "ANZ as the smallest of the major banks, has considerable incentive to grow ...". I agree with this statement. Indeed, the incentives for ANZ and how it 'grows' with or without the acquisition of Suncorp are at the heart of the competition analysis for the national market for retail home loans. ANZ is the smallest of the four major banks in this market. ANZ can grow market share in two ways:
    a. ANZ can 'buy market share' by taking over Suncorp Bank. Doing this will raise its share above that of NAB, continue the dominance of the market by the four major banks and stabilise the coordinated conduct between the major banks; or

b. ANZ can 'compete for market share' by deviating from the coordinated conduct of the major banks. Such competitive behaviour to acquire market share would risk a general 'outbreak of competition' between the major banks and would represent a substantial increase in competition.

73. In my opinion, the change of incentives and likely competitive actions of ANZ if it acquires Suncorp Bank, compared with the situation where it is unable to acquire Suncorp Bank and Suncorp Bank either continues as a standalone entity or is acquired by another mid-tier bank, represent a substantial lessening of competition.

74. At paragraph 4.22 of the Response it is claimed that it is "not open to the ACCC, to infer from [the national home loan market share numbers presented in table 10 of the Response] that the proposed acquisition will result in the major banks being symmetric ...". This claim misstates the competitive issue. There is no claim that the major banks will be completely 'symmetric' post acquisition. Further, absolute symmetry is not required for coordinated conduct between the major banks. Rather, greater symmetry makes it easier for the major banks to sustain coordinated conduct. As the analysis in my first report shows the acquisition of Suncorp Bank by ANZ will increase symmetry among the major banks relative to either counterfactual. The acquisition will substantially lessen competition by making ongoing coordinated conduct between the major banks more likely and reducing the pressure on ANZ to break with the coordinated conduct and compete to increase its market share.

75. Section 5 of the Response considers agribusiness.

76. Paragraphs 5.5 and 5.7 of the Response note the importance of diversification for agribusiness. While the Response appears to use this diversification to conclude that there is a national agribusiness market, diversification implies the opposite conclusion. Diversification requires activities to occur in separate markets so that individual risk in one market can be moderated by a "portfolio" of business across a variety of markets. Diversification of risk requires a portfolio of activities or assets that have risks that are not perfectly correlated (and preferably are uncorrelated or even negatively correlated). If there were indeed a single national market for agribusiness then the market risk would not be diversified by gaining a larger portfolio of customers in the same market.

77. Paragraph 5.8 of the Response refers to the lack of data to fully identify local or regional agribusiness markets, that I referred to in paragraphs 7(f) and 181 to 188 of my first report. The Response then states that the "existence of such markets and the impact of the proposed acquisition on competition in them is mere speculation". This is false. There is considerable qualitative evidence to show that there are regional/local agribusiness markets in Queensland. I summarise that qualitative evidence in paragraphs 65-70 of my first report. The lack of quantitative evidence, however, means that I was unable to specifically identify those local/regional markets in my first report. Just because the quantitative data to perfectly

identify a local/regional market does not exist does not in any way undermine the qualitative evidence about those markets or mean that those markets are speculative.

Comments on the Independent Expert Report prepared by Mary Starks

78. I have been provided with a link and downloaded from the ACCC website a copy of the Independent Expert Report prepared by Mary Starks and dated 16 June 2023. I have been asked to consider whether anything in this report causes me to change any of the opinions that I expressed in my first report.
79. I note that Ms Starks' analysis and conclusions are largely consistent with my first report. Ms Starks and I agree that:
    a. Relevant markets include the national market for (retail) home loans and local/regional markets for agribusiness banking in Queensland;
    b. The acquisition of Suncorp Bank by ANZ will lead to a "real chance of an SLC" in at least some of the relevant agribusiness banking markets; and
    c. The acquisition of Suncorp Bank by ANZ will lead to a "real chance of an SLC" under the alternative buyer counterfactual when coordinated effects (coordinated conduct) among the major banks is considered.
80. Ms Starks and I disagree about the likelihood of any potential SLC due to the acquisition in the national market for retail home loans under the status quo counterfactual (whether or not there are coordinated effects) and under the alternative buyer counterfactual in the absence of coordinated effects.
81. In my opinion, these differences largely reflect a difference in professional judgement rather than any difference of opinion about the underlying economics.
82. With regards to competition analysis in the absence of coordinated conduct in the national market for retail home loans, assuming the 'alternative buyer' counterfactual:
    a. Ms Starks concludes that "[p]urely in terms of horizontal effects" while she "cannot rule out an SLC, [Ms Starks does] not believe that there is a real chance of an SLC" (paragraph 9.45.7).
    b. In contrast, at paragraph 141 of my first report I state that "even if current conduct by the major banks falls short of coordinated conduct, in my opinion and as a matter of economics, the acquisition of Suncorp Bank by ANZ is a clear substantial lessening of competition compared to the 'alternative buyer' counterfactual". The reasons for my opinion are summarised in paragraph 140 of my first report. These include the pressure on ANZ to competitively increase market share if it is unable to 'buy' that market share through the acquisition of Suncorp Bank, the presence of two significant mid-tier competitor banks, and the likely pro-competitive response by the other major banks to increased competition from either ANZ and/or a combined BEN/Suncorp Bank.

c. I consider these differences of opinion between myself and Ms Starks largely reflect professional judgements about the current and likely ongoing level of competition between the major banks, recognising that these banks are an oligopoly and do not engage in long term 'perfect competition' even in the absence of coordinated conduct.

83. With regards to competition analysis in the absence of coordinated conduct in the national market for retail home loans, assuming the 'status quo' counterfactual:

    a. Ms Starks notes that the continued independent operation of Suncorp Bank under the status quo counterfactual "implies a modest increase in competition compared to the counterfactual" (paragraph 9.44.1) and given other competitive constraints she considers it "unlikely that the acquisition will lead to a significant increase in in market power for ANZ" (paragraph 9.44.2).

    b. In contrast, at paragraph 142 of my first report I state that "if ANZ is unable to purchase Suncorp Bank it may find that increased competition in the market is its next best alternative. In this sense, and even in the absence of coordinated conduct, the acquisition of Suncorp Bank by ANZ, as a matter of economics, may be considered a substantial lessening of competition against the status quo counterfactual".

    c. Again, I consider that the differences here largely reflect professional judgements about the current and likely ongoing level of competition between the major banks. Nonetheless, we both consider that a substantial lessening of competition is more likely under the 'alternative buyer' counterfactual.

    d. I note that considerable parts of Ms Stark's statement have been redacted and I am unable to say whether these sections include information that would lead me to modify my opinion.

84. With regards to competition analysis when considering 'coordinated effects' (or equivalently coordinated conduct) in the national market for retail home loans, assuming the 'alternative buyer' counterfactual, Ms Starks and I are largely in agreement that the acquisition of Suncorp Bank by ANZ has a 'real chance' of resulting in an SLC (see Ms Starks at paragraph 9.113.5, and my first report at paragraph 132).

85. When considering 'coordinated effects' in the national market for retail home loans, assuming the 'status quo' counterfactual:

    a. Ms Starks considers it "unlikely that the acquisition will lead to an SLC in the market for home loans due to coordinated effects relative to the status quo counterfactual" (paragraph 9.113.4).

    b. In contrast, in my opinion, the acquisition will lead to an SLC due to its impact on coordinated effects under the status quo counterfactual, albeit that the SLC is not as clear as in the alternative buyer counterfactual.

86. In large part, Ms Starks and I differ in terms of whether we consider that the acquisition of Suncorp Bank by ANZ, compared to Suncorp Bank operating independently, has a significant enough *impact on ANZ* and its market share (compared to the other major banks) so that it stabilises coordinated conduct between the major banks. In my opinion, it does, so that the acquisition represents a substantial lessening of competition compared to the status quo counterfactual (paragraphs 133 to 136 of my first statement). Ms Starks has reached a different opinion (paragraph 9.113.4)
87. Ms Starks and I also have a minor difference of either interpretation or terminology for the current state of competition between the major banks.
    a. Ms Starks notes that "there is a range of quantitative evidence ... which indicates that competition has been strong in recent months (paragraph 9.77). However, this "may be a temporary breakdown in coordination likely driven by a sudden sharp increase in refinancing demand in response to the rapid increase in interest rates after a long period when rates were low" (paragraph 9.80).
    b. At the same time, Ms Starks notes that "the market for home loans is conducive to coordination, even though it has likely become less so over time. ... I believe that the recent period of intense price competition is more likely to reflect a temporary breakdown in coordination, than a permanent shift away from coordination towards competition" (paragraph 9.111).
    c. While Ms Starks refers to the current situation as a temporary breakdown of coordination, in my opinion the word 'breakdown' is too strong. Under coordinated conduct there may be temporary outbreaks of increased competition before more profitable coordination resumes. This is to be expected, particularly where there are shocks to demand and imperfect information between the relevant firms. It does not mean that there is not ongoing coordinated conduct, but rather that the conduct has temporarily entered a 'more competitive' phase. This is well understood in the economics literature, and I consider the difference between Ms Stark and myself most likely reflects either a difference in language or a minor difference in interpretation rather than any difference in economic principles.[26]
88. In summary, I consider that the analysis and conclusions in Ms Starks report and my first report are largely consistent and differences, where they exist, reflect professional judgements, and do not reflect differences in the underlying economic analysis. I have not seen anything in Ms Starks' report that causes me to change any of the opinions that I expressed in my first report. That said, significant parts of Ms

[26] For two classic articles dealing with these issues, particularly relating to changes in demand, see Edward J. Green and Robert H. Porter, "Noncooperative collusion under imperfect price information" *Econometrica*, 52(1):87–100, 1984. (see references in report by Professor de Roos for link) and Julio Rotemberg and Garth Saloner "A Supergame-Theoretic Model of Price Wars during Booms" *The American Economic Review*, 76(3):390-407, 1986. In particular, the article by Rotemberg and Saloner considers temporary demand shocks, of the type considered by Ms Starks in paragraph 9.80 of her statement, and the implications for coordinated conduct and prices.

Starks' report are redacted. It is possible that there is material in these redacted sections that would impact my opinion.