AUSTRALIAN COMPETITION & CONSUMER COMMISSION

Statement of Preliminary Views

4 April 2023

Australia and New Zealand Banking Group Limited

Application for merger authorisation MA1000023

Erratum 4 April 2023 – substitution of document to correct a publication error

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- The ACCC is considering an application for merger authorisation lodged by Australia and New Zealand Banking Group Limited (**ANZ**) in relation to its proposal to acquire 100% of the issued shares of SBGH Limited (which owns 100% of the shares of Suncorp Bank) from Suncorp Group Limited (the **Proposed Acquisition**).
- Merger authorisation provides statutory protection from legal action under section 50 of the *Competition and Consumer Act 2010* (Cth), which prohibits the acquisition of shares or assets if the acquisition would have or be likely to have the effect of substantially lessening competition in any market.
- In order to grant authorisation, the ACCC must be satisfied in all the circumstances that the Proposed Acquisition is not likely to have the effect of substantially lessening competition or that it is likely to result in public benefit that outweighs the public detriment that would be likely to result.
- This statement of preliminary views outlines the ACCC's views about key issues, including the future with and without the Proposed Acquisition, factors affecting competition in relevant markets, how the Proposed Acquisition is likely to impact competition in those markets, and the likely benefits and detriments of the Proposed Acquisition.
- In respect of the competitive effects of the Proposed Acquisition, the ACCC is considering:
  - whether the Proposed Acquisition is likely to result in, and the extent of, the potential loss of competitive constraint on the major banks, due to the removal of an independent established second-tier bank
  - the extent to which the Proposed Acquisition could give rise to coordinated effects in one or more relevant markets
  - the impact of the Proposed Acquisition on ANZ's incentives to compete vigorously in one or more relevant markets compared to its incentives if the Proposed Acquisition did not proceed
  - the impact of the Proposed Acquisition on the potential risk of unilateral effects arising in the supply of:
    - agribusiness banking
    - small and medium-sized enterprise (**SME**) banking
    - home loans
    - retail deposits

- The ACCC is also considering the implications of potential counterfactual scenarios (either Suncorp Bank continues to operate under the ownership of Suncorp Group, or Suncorp Bank merging with another second-tier bank, such as Bendigo and Adelaide Bank).
- The ACCC's preliminary view is that the information currently before it is insufficient to substantiate the nature, likelihood and extent of the claimed public benefits, including ANZ's estimates of future synergies that will be achieved and claims regarding public commitments to investment in Queensland or improvements in prudential stability arising from the Proposed Acquisition.

Next steps

- The ACCC invites submissions about any of the issues discussed in this statement of preliminary views. We request that you provide your submission by no later than 18 April 2023. The ACCC may not take into account submissions received after this date. Under the current statutory timeframe, the ACCC must issue a determination in relation to the application for merger authorisation by 12 June 2023.

1. The Proposed Acquisition

1.1. The Australian Competition and Consumer Commission (**ACCC**) is considering an application for merger authorisation lodged by Australia and New Zealand Banking Group Limited (**ANZ**) on 2 December 2022 (the **Application**).

1.2. ANZ is seeking authorisation in relation to its proposal to acquire 100% of the issued shares in SBGH Limited from Suncorp Group Limited (**Suncorp Group**) (the **Proposed Acquisition**).

1.3. Suncorp Group owns 100% of the shares in SBGH Limited, which in turn owns 100% of the shares in Suncorp Bank. SBGH Limited is a non-operating holding company and does not carry on any business other than the business of ownership of Suncorp Bank and Suncorp Bank's subsidiaries.

1.4. The Proposed Acquisition includes:

- ANZ acquiring 100% of the shares in SBGH Limited, and
- the transfer of real estate and intellectual and other property rights held by other Suncorp Group entities[1] to facilitate the operation of Suncorp Bank, to ANZ.[2]

1.5. Suncorp Group also owns and operates, via other entities, insurance businesses in Australia and New Zealand. Those insurance businesses do not form part of the Proposed Acquisition and will continue to be operated by Suncorp Group if the Proposed Acquisition proceeds.[3]

1.6. ANZ is aiming to complete the Proposed Acquisition in the second half of calendar year 2023.[4] The Proposed Acquisition is conditional on:[5]

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1 These property leases relate to Suncorp Bank, but are not held by an entity that is to be acquired by ANZ: ANZ application for Merger Authorisation, 2 December 2022, [3.1(b)]. The transfer regime for these property leases is set out in the Share Sale and Purchase Agreement (**SSPA**).

2 ANZ application for Merger Authorisation, 2 December 2022, [1.4(d)].

3 ANZ application for Merger Authorisation, 2 December 2022, [1.5].

4 ANZ application for Merger Authorisation, 2 December 2022, [3.38].

5 ANZ application for Merger Authorisation, 2 December 2022, [3.3].

a. approval by the Federal Treasurer under the *Financial Sector (Shareholdings) Act 1998* (Cth)

b. approval by the ACCC or the Australian Competition Tribunal (the **Tribunal**), or a declaration by the Federal Court of Australia under section 50 of the *Competition and Consumer Act 2010* (Cth) (the **Act**), and

c. the *State Financial Institutions and Metway Merger Act 1996* (Qld) being either repealed or amended such that it does not apply to any holding company of Suncorp Bank nor to ANZ or any of its related bodies corporate (excluding Suncorp Bank and its subsidiaries).

1.7. The Application was made under section 88(1) of the Act. A merger authorisation provides protection from legal action under section 50 of the Act, which relevantly prohibits an acquisition of assets that has or is likely to have the effect of substantially lessening competition in any market.

The Parties

ANZ

1.8. ANZ is an ASX-listed financial services group. It provides a range of banking products and services to retail business customers in Australia and New Zealand, and to international institutional customers.[6] ANZ is headquartered in Melbourne and operates in more than 25 countries.

Suncorp Group

1.9. Suncorp Group is an ASX-listed provider of insurance and banking products and services.[7] Suncorp Group has three core businesses:

- insurance in Australia
- insurance in New Zealand, and
- retail and business banking in Australia (this business is operated by Suncorp Bank).[8]

1.10. Suncorp Group is headquartered in Brisbane and operates in Australia and New Zealand only.[9]

Relevant areas of competition

1.11. The ACCC's preliminary view is that the areas of competition between ANZ and Suncorp Bank that have the most potential to raise competition concerns stem from the activities in which they overlap, including: the supply of agribusiness banking, small and medium-sized enterprise (**SME**) banking, home loans and retail deposits (including transactions and savings accounts and term deposits). The ACCC also considers there is a higher degree of geographic overlap between ANZ and Suncorp Bank in Queensland and northern New South Wales.

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6 ANZ application for Merger Authorisation, 2 December 2022, [2.1].

7 ANZ application for Merger Authorisation, 2 December 2022, [2.7].

8 ANZ application for Merger Authorisation, 2 December 2022, [2.7(j)-(l)], citing Annexure 4, Suncorp Group FY 22 Annual Report, p 4.

9 ANZ application for Merger Authorisation, 2 December 2022, [2.8].

Stated rationale for the Proposed Acquisition

ANZ

1.12. ANZ submits that the Proposed Acquisition will deliver benefits to ANZ, and to ANZ's and Suncorp Bank's customers,[10] including increased scale to enable continual and more efficient investment in digital transformation and innovation.[11] ANZ submits that this will help it to build a superior bank for customers and to better compete in the digital age.[12]

1.13. ANZ also submits that acquiring a strong customer franchise through Suncorp Bank will provide immediate growth in areas that are attractive to ANZ, particularly in home loans, as well as increase its presence in Australian retail and business banking.[13] ANZ also submits that the Proposed Acquisition will allow it to grow in Queensland, where it has a smaller presence (compared to its presence in other states).[14] ANZ submits that larger Australian retail and business banking portfolios will enable it to be a better-balanced bank, with these portfolios increasing in size relative to other parts of ANZ's business.[15]

1.14. ANZ submits that the Proposed Acquisition will also result in synergies of approximately $260 million per annum,[16] as well as attractive financial returns.[17] ANZ notes that it is expected that synergies will be phased in over years four to six post-completion with full synergies expected to be achieved by the end of the sixth year.[18]

Suncorp Group

1.15. ANZ submits that, for Suncorp Group, divesting Suncorp Bank to ANZ positions both Suncorp Group's insurance business and Suncorp Bank for ongoing growth and success as separate, monoline businesses.[19] ANZ submits that for Suncorp Group, the singular focus on its insurance businesses will better enable it to weather anticipated volatility in the insurance and reinsurance markets.[20]

The test for merger authorisation

1.16. Section 88(1) of the Act confers on the ACCC a discretionary power to authorise conduct. That discretion is enlivened when either the necessary conditions or 'statutory preconditions'[21] in section 90(7) are met. In summary, the ACCC must not

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10 ANZ application for Merger Authorisation, 2 December 2022, [3.8].

11 ANZ application for Merger Authorisation, 2 December 2022, [3.8(b)].

12 ANZ application for Merger Authorisation, 2 December 2022, [3.8(b)].

13 ANZ application for Merger Authorisation, 2 December 2022, [3.8(a)], citing statement of Shayne Elliott (ANZ), [63].

14 ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [2] and [51].

15 ANZ application for Merger Authorisation, 2 December 2022, [3.8(d)], citing statement of Shayne Elliott (ANZ), [63(c)].

16 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)], citing Annexure 6, ANZ Acquisition of Suncorp Bank and Equity Raising: Investor Discussion Pack, 18 July 2022, p 18.

17 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)].

18 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)]. See also, Annexure 6, ANZ Acquisition of Suncorp Bank and Equity Raising: Investor Discussion Pack, 18 July 2022, p 21.

19 ANZ application for Merger Authorisation, 2 December 2022, [3.36].

20 ANZ application for Merger Authorisation, 2 December 2022, [3.36(d)] and Executive Summary [55], citing Statement of Steven Johnston (Suncorp Group), [35 - 40], [92].

21 *Application by Flexigroup Limited (No 2)* [2020] ACompT 2, [138].

make a determination granting authorisation under section 88 unless it is satisfied, in all the circumstances, that:

a. the Proposed Acquisition would not have the effect, or not be likely to have the effect, of substantially lessening competition, or

b. the Proposed Acquisition would result, or be likely to result, in a public benefit, and this public benefit would outweigh the public detriment that would result, or be likely to result, from the Proposed Acquisition.[22]

1.17. For convenience, this statement of preliminary views refers to the criterion in (a) as the **Competition Test** and (b) as the **Net Public Benefit Test**.

Public consultation

1.18. The ACCC tests claims made by an applicant in support of an application for authorisation, and by others who may support or oppose authorisation, through an open and transparent public consultation process.

1.19. In response to the Application, the ACCC sought the views of a range of interested parties including providers of banking and financial services, consumer organisations, and brokers and aggregators.

1.20. The ACCC has received 24 public submissions from interested parties. All submissions are available on the merger authorisations register, except where information has been excluded in accordance with section 89 of the Act. The ACCC received submissions from a number of banks, an insurance company, an agribusiness consultant and from the peak body for consumer organisation in Australia. The ACCC has also received multiple submissions from consumers,[23] including customers of ANZ and Suncorp Bank, who oppose the Proposed Acquisition. These submissions raise a number of concerns regarding the conduct of ANZ and Suncorp Bank and the Proposed Acquisition, including general concerns about competition and regulation in the Australian banking industry, such as applicable dispute resolution obligations, potential branch closures, attrition of Suncorp Bank employees and potential price increases. Several of these submissions also raise concerns about how ANZ and Suncorp Bank have handled individual disputes with their customers.

1.21. Suncorp Group has provided a response to submissions published on the public register on or prior to 3 February 2023.[24] ANZ has provided a response to submissions published prior to 9 March 2023[25] and a separate response to Bank of Queensland's (**BOQ**'s) submission.[26] These responses are available on the public register.

[22] *Competition and Consumer Act 2010* (Cth), section 90(7).

[23] Christopher Gellie, 9 January 2023; John Curnow, 10 January 2023; Sinclair Hill, 13 January 2023; Nicholas Shae, 14 January 2023; Roy Featherstone, 16 January 2023; Carolyn Thomson, 18 January 2023; Jim Davidson, 19 January 2023; Ronald Feierabend, 19 January 2023; Ronald Feierabend, 23 January 2023; Peter Wheeldon, 23 January 2023; Goran Latinovich, 23 January 2023; Goran Latinovich #2, 23 January 2023; Henry Kummerfield, 29 January 2023; Jeff Forster, 29 January 2023; Robert Jacobucci, 30 January 2023; Carolyn Thomson, 19 February 2023.

[24] The submissions published on, or prior to, 3 February 2023 are Christopher Gellie (9 January 2023), John Curnow (10 January 2023), Consumers' Federation of Australia (11 January 2023), Sinclair Hill (13 January 2023), Nicholas Shae (14 January 2023), Aon (18 January 2023), BMAgBiz (18 January 2023), Rabobank (18 January 2023) and Robert Jacobucci (30 January 2023); Suncorp Group's response to interested party submissions, 7 February 2023.

[25] In addition to the submissions listed at footnote [23], the submissions published prior to 9 March 2023 are Carolyn Thomson (18 January 2023), Roy Featherstone (16 January 2023) and Judo Bank (7 February 2023); ANZ's response to interested party submissions, 9 March 2023.

[26] ANZ's response to Bank of Queensland's submission, 22 March 2023.

1.22. The ACCC's preliminary assessment in this statement of preliminary views is based on the Application, submissions from interested parties and ANZ's and Suncorp Group's (the **Parties'**) responses to submissions.[27] The ACCC notes that the Parties did not have the opportunity to view and respond to some late interested party submissions, including that of Bendigo and Adelaide Bank (**BEN**), before this statement of preliminary views was prepared.

1.23. The ACCC has also received, and will have regard to, a range of information and documents obtained from relevant parties using its statutory information gathering powers and through voluntary requests for information. This material is generally not placed on the public register, as it is confidential, but it is information to which the ACCC will also have regard.

2. The Australian banking industry

2.1. The supply of banking services in Australia is concentrated and has been for many years. The four largest providers of banking services are ANZ, Commonwealth Bank (**CBA**), National Australia Bank (**NAB**) and Westpac (referred to as the **major banks**). The major banks collectively account for 72% of banking system assets in Australia.[28] While the major banks are the largest providers in the banking industry (and associated markets), second-tier banks[29] play an essential role in applying competitive pressure to the major banks across a range of products. Second-tier banks include Suncorp Bank, Macquarie Bank, ING Bank Australia (**ING Bank**), BEN, BOQ and HSBC Bank Australia. Collectively these banks account for close to 14% of banking system assets and have increased their share of assets over the past decade.[30]

2.2. Within the banking industry, there exists a long tail of smaller providers who all have a share of banking system assets less than 0.7%.[31] This includes 49 foreign bank branches, who primarily target niche markets such as specialised corporate lending markets, and 59 mutual banks, credit unions and building societies who operate under a mutual structure where customers are members and profits are reinvested back into the business.[32] There are also a range of non-bank lenders who supply products in segments such as home loans and SME lending.[33]

2.3. While high market concentration and stable market shares of the major banks does not necessarily result in weak competition, there is a history of concern about the nature and extent of competition within the Australian banking sector, with several

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27 Suncorp Group's response to interested party submissions, 7 February 2023; ANZ's response to interested party submissions, 9 March 2023; ANZ's response to Bank of Queensland's submission, 22 March 2023.

28 ACCC calculations based on Australian Prudential Regulation Authority (**APRA**), Monthly Authorised deposit taking institution statistics, 28 February 2023. The share of banking system assets is calculated by dividing each entity's "total resident assets" by the total value of "total resident assets" reported by all authorised deposit-taking institutions (**ADIs**).

29 As defined by those ADIs with a share of banking system assets > 1%. See APRA, Monthly Authorised deposit taking institution statistics, 28 February 2023.

30 ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, 28 February 2023. The share of banking system assets is calculated by dividing each entity's "total resident assets" by the total value of "total resident assets" reported by all ADIs.

31 ACCC calculations based on APRA, Monthly Authorised deposit taking institution statistics, 28 February 2023. The share of banking system assets is calculated by dividing each entity's "total resident assets" by the total value of "total resident assets" reported by all ADIs.

32 APRA, Quarterly authorised deposit-taking institution performance statistics, December 2022, issued 14 March 2023.

33 There are 102 finance companies that are non-ADI financial institutions as at December 2021, see Reserve Bank of Australia (**RBA**), Main types of financial institutions, December 2021.

inquiries and reviews highlighting signs of ineffective competition.[34] Relevantly, across 2017 and 2018, the Productivity Commission conducted a broad inquiry into Competition in the Australian Financial System (**PC Inquiry**) which examined, amongst other things, personal banking (including home loans and mortgage broking), business banking, payment systems, general insurance and wealth management.[35]

2.4. The PC Inquiry made a number of significant findings in respect of the Australian banking industry, including that large financial institutions, particularly in banking, have the ability to exercise market power over their competitors and consumers.[36]

2.5. The PC Inquiry also found that over the past 30 years, while Australia has seen pockets of competition from new entrants in certain markets,[37] the ongoing extent of competitive pressure from new entrants has been limited.[38] For example, during the global financial crisis there was a freeze in securitisation markets, making it difficult for smaller authorised deposit-taking institutions (**ADIs**) and non-ADIs to access funding due to their reliance on securitisation. At the time, this limited the ability of smaller providers to compete as securitisation markets were slow to re-emerge as a viable source of funding.[39]

2.6. The PC Inquiry ultimately concluded that experience across the past decade suggests that despite their entry, new providers have had limited success in spurring competition beyond their (often specialised) area of focus.[40] For example, the ACCC notes that the first wave of neobanks including Volt bank, Xinja Bank and 86 400 have had limited success in challenging incumbent banks (see [2.17]). Judo Bank is the only neobank to have materially challenged the incumbent second-tier banks through its SME focussed offering. As of 28 February 2023, Judo Bank has $15 billion of total residents assets, $7 billion of loans to non-financial businesses, and $5.2 billion in total residents deposits.[41] Judo received a banking license, without restrictions, in April 2019.[42]

2.7. The PC Inquiry's findings are consistent with there being high barriers to entry and expansion for new entrants and smaller providers. While recent changes to the ADI licensing framework have reduced some regulatory barriers to entry (discussed further from [2.10]), the PC Inquiry highlighted factors that have limited new entrants' and smaller providers' ability to compete with larger providers (the major and second-tier banks). These factors include:

a. the cost to raise funds in wholesale debt markets (which can provide a source of funding to grow) is higher for these providers[43]

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34 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 2; ACCC, Residential Mortgage Price Inquiry – Final Report, November 2018, p 6; ACCC, Home Loan Price Inquiry – Final Report, November 2020, p xii.

35 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 64.

36 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 2.

37 For example, the entry of Aussie Home Loans into the residential mortgage market in 1992. See Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 120.

38 In 2008, CBA acquired a 33% stake in Aussie Home Loans and increased its stake to 80% in 2012. CBA acquired the remainder of Aussie Home Loans in 2017. See Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 252.

39 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, pp 226 - 234.

40 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 120.

41 APRA, Monthly Authorised deposit taking institution statistics, 28 February 2023.

42 APRA, APRA grants new authorised deposit-taking institution licence to Judo Bank, 17 April 2019.

43 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, pp 218, 232 - 233 and 235.

b. less access to established distribution networks, such as branches, business centres and broker networks[44]

c. fewer known brands which can make it more difficult to draw customers away from incumbents,[45] and

d. smaller scale, which means they have a smaller asset base over which to spread fixed costs.[46]

2.8. In light of these factors, in assessing the Proposed Acquisition, the ACCC is closely considering the overall impact of the loss of an established independent second-tier provider in the Australian banking industry, noting expansion from new or smaller providers is likely to be limited.

2.9. Further background on the regulatory and structural barriers faced by new entrants and competitors in the Australian banking industry is set out below. As part of the ACCC's consideration of the overarching competitive conditions of banking in Australia, the ACCC is also considering key submissions made by the Parties with respect to industry trends.

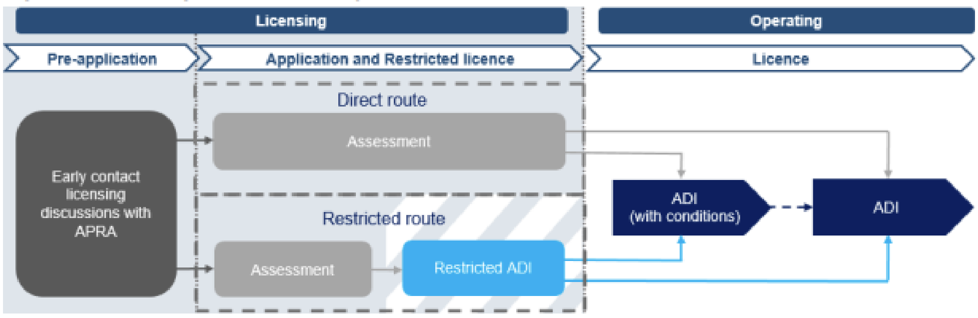
Key industry features and trends

Relevant regulatory requirements to supply banking services

Licensing requirements

2.10. To compete in retail banking, entities must be an ADI. The Australian Prudential Regulation Authority (**APRA**) provides two routes through which an entity can obtain an ADI licence: the direct route and the restricted route. An overview of the direct and restricted pathways is provided in Figure 1.

Figure 1: Licensing process for the direct route vs the restricted route[47]



2.11. An entity that obtains an ADI licence via the direct route can conduct the full range of banking activities (including deposit-taking) from the time it obtains the licence.[48] To obtain a licence via the direct route, the entity must meet certain requirements, including holding a specified amount of capital in reserve.[49]

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44 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 101.

45 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, pp 101 - 102.

46 Productivity Commission, Competition in the Australian Financial System – Inquiry Report, 29 June 2018, p 99.

47 APRA, ADI licensing - Restricted ADI Framework – Information Paper, 4 May 2018, p 9.

48 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 11.

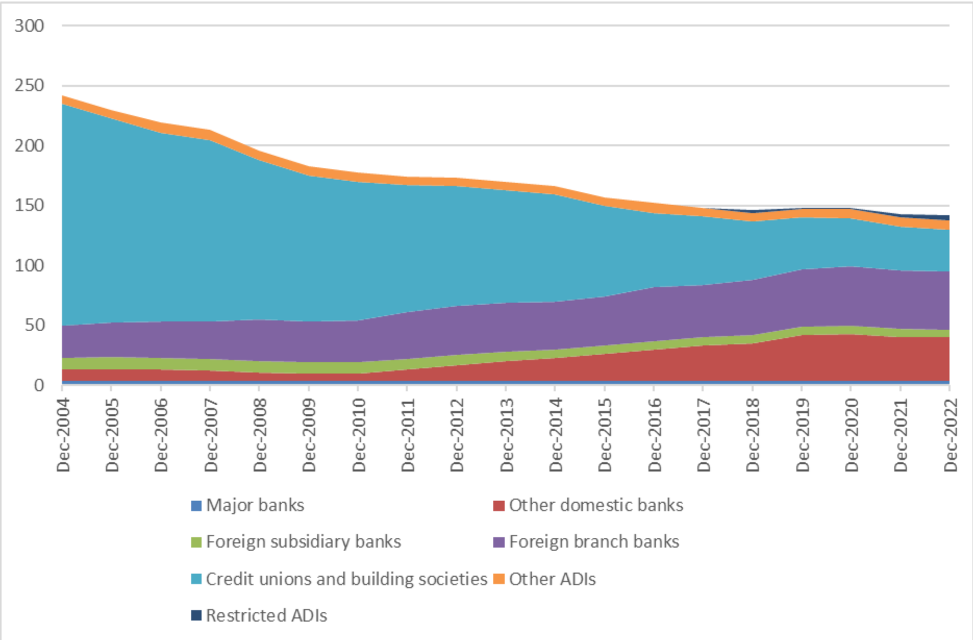
49 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 26.

2.12. Before licensing, an entity applying for an ADI licence via the direct route will need to achieve a limited launch of at least one income-generating asset product and be operationally ready to launch deposit products shortly after being granted a licence.[50] APRA's prudential requirements commence from the point of licence. This would typically require the applicant to have substantial capital resources at the point of application or a very clear avenue for access to such resources.[51]

2.13. Alternatively, an entity can apply for a restricted ADI licence via APRA's Restricted ADI Licensing Framework.[52] The framework was introduced in 2018 as a means of supporting competition in the banking industry by reducing barriers to new entrants. Under the Restricted ADI Licensing Framework, an entity can obtain a restricted ADI licence before they are ready to be a fully licensed ADI, with phased in regulatory obligations reflecting the restricted range of permitted activities. During this phase, entities can conduct limited banking business while seeking the investment required to operationalise their business, test their operational model and progress their compliance with the prudential framework and application for an unrestricted ADI licence.[53]

2.14. From 2004 to 2022, the number of entities with an ADI licence dropped from 242 to 142 — a reduction of around 40% (Figure 2). Consolidation over time is to be expected given the benefits the larger banks enjoy in terms of access to lower funding costs, scale economies, broad distribution networks, and technology advantages. Such benefits to larger banks raise challenges for smaller providers to remain competitive.

Figure 2: Entities with ADI licences[54]



50 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 11.

51 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 11.

52 APRA, ADI licensing - Restricted ADI Framework – Information Paper, 4 May 2018, p 10.

53 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, pp 12.

54 ACCC calculations based on APRA, Quarterly authorised deposit-taking institution performance statistics, December 2022, issued 14 March 2023.

Capital requirements

2.15. As referred to at [2.11], there are standards which require ADIs (both restricted and unrestricted) to hold a certain amount of capital. APRA sets the capital requirements in two parts:

- Firstly, as a precondition to being granted either a restricted or unrestricted ADI licence, an applicant will need to hold a minimum initial amount specified by APRA. The purpose of this initial capital requirement is to reduce an ADI's reliance on raising additional capital immediately after being licensed.[55]

- Secondly, having obtained a licence, the initial amount ceases to apply and is replaced by an ongoing prudential capital requirement plus buffers.[56]

2.16. Once licensed, new ADIs require significant and ongoing access to capital to:

- satisfy APRA's prudential capital requirements

- fund ongoing operating losses that are incurred until an ADI reaches sufficient scale, and

- develop its technology platform, hire staff and develop products.

2.17. Raising operational and regulatory capital appears to be the most significant challenge to ongoing commercial viability as a new ADI. Challenges raising capital were cited as the basis for neobank Xinja Bank's exit in 2020.[57] A second neobank, Volt Bank, also exited banking in mid-2022 when it was unable to secure sufficient capital via equity funding.[58]

Funding cost advantage for major banks

2.18. The major banks have historically enjoyed a funding cost advantage over smaller providers, and since 2008, from the approach (known as the Internal Ratings-Based approach)[59] they take to APRA's regulatory capital requirements. The funding cost advantage likely assisted in consolidating the strong market position held by the major banks after the global financial crisis.

2.19. However, since 2016, the major banks' funding cost advantage has progressively eroded as prudential regulation became increasingly focused on requiring the holding of additional capital to mitigate the systemic risks they present, as noted at [2.15]. While this can be costly, it can also support them to the extent it is viewed by credit rating agencies as recognition of their importance as significant providers. With a superior credit rating, the major banks can source funds from investors and depositors at lower interest rates than smaller banks and institutions.

2.20. The PC Inquiry report concludes that the net result of these regulatory measures is a funding advantage for the major banks over smaller banks that rises in times of

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55 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, pp 19 - 20 and 26.

56 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 26.

57 See, for example, Stephanie Palmer-Derrien, 'Xinja exits the neobank scene: What happened, and what does it mean for the competition?', *Smart Company,* 16 December 2020.

58 RBA, The Australian Financial System, *Financial Stability Review*, 6 October 2022, p 50.

59 For more information, see APRA, Prudential Practice Guide: APG 110 Capital Adequacy, July 2022; Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 103.

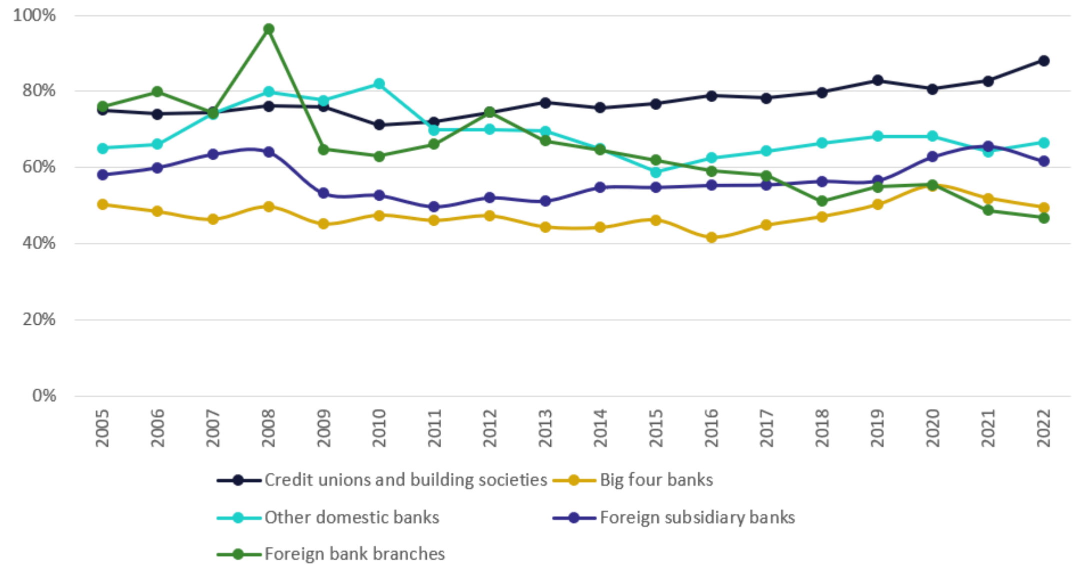
instability, resulting in a gap between the average operating costs of Australia's major banks and its smaller providers.[60]

Increasing scale

2.21. Scale is particularly important to ADIs to ensure cost-to-income ratios are reduced, thereby improving profitability and return on equity. In addition, without scale, ADIs will find it difficult to improve access to funding and lower costs.[61]

2.22. The major banks' scale advantage can be seen in Figure 3, which shows the lower cost-to-income ratios of the major banks compared to the second-tier providers.

Figure 3: ADIs cost-to-income ratios[62]



2.23. Customer growth is particularly important to enable new entrants to achieve scale, raise capital and compete with incumbents. The scale and longevity of the major banks contributes to brand recognition and the perception that they are safe, stable institutions compared to smaller providers.[63] Customers tend to be risk averse and reluctant to obtain important financial products from new entrants whose credibility is still untested,[64] which can make it difficult for new entrants and smaller banks to build customer awareness and attract customers.[65] The public difficulties experienced by neobanks (see [2.6]) may also exacerbate existing concerns that customers have in respect of switching to new entrants.

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60 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 6.

61 Melisande Waterford, 'Regulating challenger banks: balancing objectives and outcomes', Speech to the Future Banking Forum 2019, 9 October 2019.

62 ACCC calculations based on APRA, Quarterly authorised deposit-taking institution performance statistics, December 2022, issued 14 March 2023. APRA reports cost-to-income ratios for groups of ADIs on a quarterly basis. Figure 3 charts the simple average of the quarterly cost-to-income ratios for that year, for each group of ADIs.

63 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, pp 6 and 102.

64 This is despite the Government's Financial Claims Scheme, which protects retail deposits of up to $250,000 with all ADIs.

65 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, pp 101 - 102.

2.24. For financial products in general, switching rates between products or providers tends to be low.[66] Notable barriers to switching faced by consumers include:

- the costs and time associated with cancelling bank accounts to switch to a new provider, including the time associated with home loan discharges[67] and regular or scheduled payments linked to an existing account[68]
- lack of knowledge about the features of financial products which can lead to a lack of confidence in comparing products,[69] and
- behavioural biases, which lead customers to undervalue the potential benefits of switching to an alternative provider.[70]

2.25. These barriers to switching also contribute to the difficulties faced by new entrants and smaller banks to capture customers and grow scale. The ACCC is considering the extent to which certain customer segments may be more inclined to switch products or providers than others.

2.26. There have been many initiatives introduced to encourage customer switching, including the Consumer Data Right (**CDR**). The CDR gives customers the ability to consent to their bank sharing data held about them with accredited data recipients, allowing customers greater ability to compare and switch between financial products and providers. The ACCC is considering the extent to which these initiatives erode some of the barriers to customer switching, through the reduction of information asymmetry.[71]

Distribution channels

2.27. Banking products and services are sold through a range of channels including physical networks, online (such as through websites and mobile apps) and through intermediaries (such as brokers).

2.28. Technological advances and innovations in the retail banking industry have reduced the need for an expansive physical presence for most retail banking products. Consumers are increasingly managing their finances online (through websites and apps) rather than visiting a branch.

2.29. Due to the shift away from traditional banking branches, financial institutions have adjusted the way they reach customers face-to-face, including delivering banking services in alternative ways:[72]

- co-location (where banking services are co-located with other businesses at the same location)
- co-branding (where different brands of the one bank are co-located)
- community banks (where there is a franchise or joint venture relationship between a bank and local company)

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66 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, pp 149 and 630 - 631.

67 ACCC, Home Loan Price Inquiry – Final Report, November 2020, p 51.

68 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 157.

69 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, pp 87 - 89.

70 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 163.

71 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 138.

72 See APRA, Authorised deposit-taking institutions' points of presence statistics, 19 October 2022; Commonwealth Treasury, Regional Banking Taskforce Final Report, September 2022, p 8.

- banking hubs (where several banks use a common space to provide in-person banking services)
- advisory hubs (where banks provide information)
- mobile branches (where bankers travel to their customers)
- Bank@Post service (Australia Post outlets that perform some banking services)
- ATMs.

2.30. Despite customers' uptake of online banking, the ACCC understands that physical distribution networks continue to be important for transaction accounts and cash-handling purposes, elderly customers, customers without access to technology, and brand recognition and perceptions about customer service.

2.31. The Regional Banking Taskforce final report highlighted the importance of branches for elderly residents and community groups and found that consumers experiencing vulnerabilities face greater challenges when bank branches close.[73] The report provided a number of recommendations relating to how banks handle assessing and undertaking branch closures.[74]

2.32. The PC Inquiry also highlighted that while the importance of physical distribution networks has diminished over time, the physical presence of the major banks (through their extensive distribution network) contributes to their strong brand recognition.[75] This, combined with their established website and internet banking platforms, makes it easier for major banks to attract new customers relative to smaller competitors.[76]

The role of aggregators and brokers in lending product distribution

2.33. Brokers act as an intermediary by matching borrowers to lenders (and their loan products), assisting and advising borrowers on the loan application process and negotiating interest rates on loans. Brokers are particularly important to smaller lenders and lenders without widespread branch networks, as brokers enable diversification and growth in the loan portfolios of these lenders.[77]

2.34. Brokers are a key distribution channel for home loans, playing an important role for lenders in acquiring customers (see Figure 4). The ACCC is considering the importance of brokers for the distribution of different lending products, including SME and agribusiness lending products.

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[73] Commonwealth Treasury, Regional Banking Taskforce Final Report, September 2022, p 8.

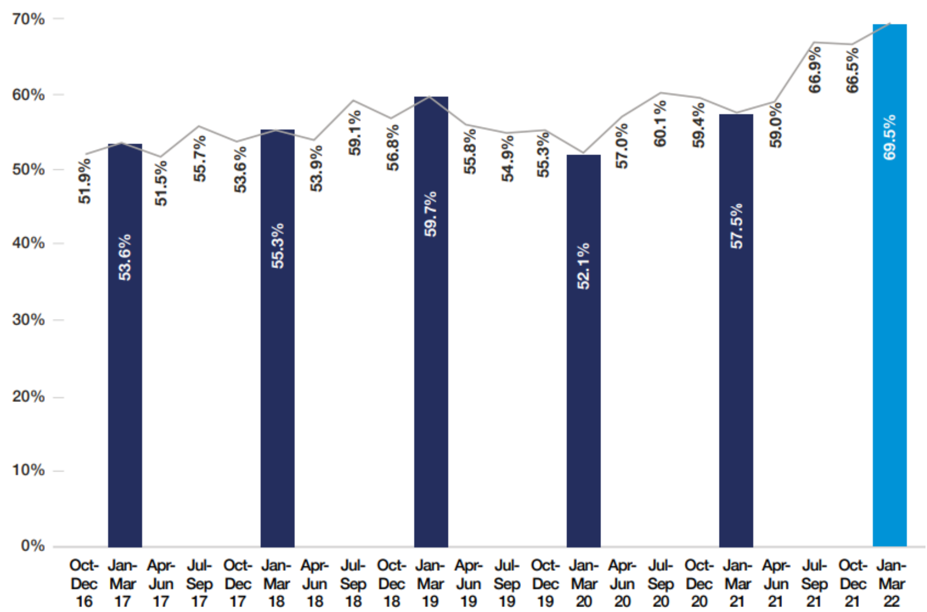
[74] Commonwealth Treasury, Regional Banking Taskforce Final Report, September 2022, pp 4 and 9 - 12.

[75] Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 101.

[76] Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 101.

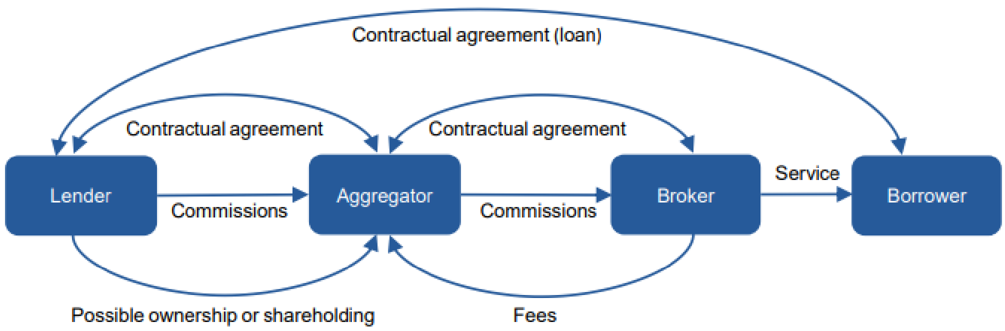
[77] Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 19.

Figure 4: Market share of new residential home loans settled by mortgage brokers as % of ABS Housing Finance Commitments/Lending to Households[78]



2.35. Aggregators act as intermediaries between brokers and lenders and provide the 'panel' of lenders (and their associated products) that brokers choose from. A stylised model of the relationship between a lender, mortgage aggregator, mortgage broker and borrower is at Figure 5.

Figure 5: Stylised model of the broking industry[79]



[a] This model outlines only business and contractual arrangements, and does not include the licensing regime outlined in the *National Consumer Credit Protection Act 2009* (Cth)

Technology as both a facilitator and barrier to competition

2.36. New technologies and innovations have emerged in recent years, which is changing the way that providers and consumers engage with the financial system.[80] The ways in which Australian consumers are banking is continually evolving, as demonstrated by the popularity of online banking, shifts in how consumers pay for goods and services, and greater accessibility to information about financial products.[81]

78 Mortgage & Finance Association, Industry Intelligence Service – 14th Edition (1 October 2021 – 31 March 2022), p 9.

79 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 304.

80 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 76.

81 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 76.

2.37. Technological developments have enabled new entrants to drive improvements in traditional financial services and promote disruption through innovative products and services.[82] Simpler business models and greater use of technology mean new entrants can offer better savings rates for customers, have lower costs and greater return on equity.[83]

2.38. However, the provision of banking services requires establishing and maintaining stable, reliable and secure IT systems.[84] IT risks cannot be fully outsourced to vendors, and it can be difficult to maintain secure and stable technology.[85] New entrants also need to make ongoing investment in technology and risk control frameworks, which can be burdensome and expensive.[86] New entrants may require more time and market experience to use this technology to develop attractive and sustainable customer value propositions to increase their customer base.

2.39. BOQ submits that non-price factors, such as innovative technology offerings, have become more important as banking and retail finance becomes increasingly digitised.[87] Existing financial service providers have had to make significant investments in technology in response to shifting customer expectations.[88] However, smaller providers struggle to invest in technological scale and expansion at the same rate as the major banks.[89] Improved cost efficiencies arising from scale can be directed towards a range of initiatives, enabling major banks to spread the fixed costs of new technology over a broader asset base.[90]

2.40. While technological advancements have enabled new entrants to provide innovative product and service propositions to customers, the ongoing investment required to develop emerging technologies highlights the difficulties that new entrants and smaller providers may face in effectively challenging the major banks. For example, see [2.17] for further details on the difficulties faced by some neobanks in raising operational capital.

Conclusion

2.41. The industry background, key features and trends are relevant to the ACCC's assessment of the impact of the Proposed Acquisition in relevant markets as set out in section 4. The ACCC's preliminary view is that despite the various developments and trends in Australian banking in recent years outlined above, there remain significant regulatory and structural barriers for new entrants and smaller providers.

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82 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 76, citing Commonwealth Treasury, Backing Australian FinTech, 18 March 2016, p 1.

83 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 133.

84 Melisande Waterford, 'Regulating challenger banks: balancing objectives and outcomes', Speech to the Future Banking Forum 2019, 9 October 2019.

85 Melisande Waterford, 'Regulating challenger banks: balancing objectives and outcomes', Speech to the Future Banking Forum 2019, 9 October 2019.

86 APRA, ADIs: New entrants, a pathway to sustainability – Information Paper, August 2021, p 24.

87 Bank of Queensland submission, 24 February 2023, Background [4(b)].

88 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 114, citing Bank for International Settlements, Sound Practices - Implications of fintech developments for banks and bank supervisors, 19 February 2018.

89 Bank of Queensland submission, 24 February 2023, Background [4].

90 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, pp 99, 251 - 252; Bendigo & Adelaide Bank submission, 3 March 2023, [5.3].

3. Future with and without the Proposed Acquisition

Approach to factual and counterfactuals

3.1. In considering whether it is satisfied of either the Competition Test or the Net Public Benefit Test, the ACCC seeks to understand the likely effects of the Proposed Acquisition. This is an evaluative judgement. The ACCC informs this judgement by analysing what is likely to occur in the future if the Proposed Acquisition occurs (the factual) compared to the future if the Proposed Acquisition does not occur (the counterfactual). By using the factual-counterfactual analysis, the ACCC is able to identify the effects that are likely to flow from the Proposed Acquisition (i.e. those that are caused by it) and to evaluate the likely size of those effects.

3.2. The ACCC will consider factual and counterfactual scenarios that have a non-trivial prospect of occurring. The ACCC will give most weight to factuals and counterfactuals that have a realistic prospect of occurring. More than one counterfactual may have a realistic prospect of occurring.

Counterfactuals that the ACCC is considering

3.3. This section outlines the ACCC's preliminary views about the scenarios that may occur in the future without the Proposed Acquisition, including:

- Suncorp Bank continuing to operate under the ownership of Suncorp Group (**No-Sale Counterfactual**), or
- Suncorp Bank merging with another second-tier bank (**Second-Tier Merger Counterfactual**).

3.4. Relevant to both these scenarios, the ACCC is also considering the manner and extent to which ANZ is likely to compete if it does not acquire Suncorp Bank, including what ANZ's incentives and ability to pursue growth in the relevant markets would be, and whether ANZ would compete more vigorously in the future without the Proposed Acquisition than it does currently (discussed further at [4.21]).

3.5. The ACCC's preliminary view is that each of the above counterfactual scenarios has a realistic prospect of occurring, and that identification of these scenarios is likely to assist the ACCC to identify the competition impacts and public benefits and detriments arising from the Proposed Acquisition. The ACCC proposes to assess the effects of the Proposed Acquisition against each of these counterfactuals.

Suncorp Bank continuing to operate under the ownership of Suncorp Group

3.6. ANZ submits that absent the Proposed Acquisition, Suncorp Bank would continue to be held by Suncorp Group and operated in accordance with the approved business plan for Suncorp Bank.[91] ANZ also submits that Suncorp Group would continue to support Suncorp Bank to pursue its strategic priorities.[92]

3.7. The ACCC is considering the extent to which Suncorp Bank currently constrains its competitors in relevant markets and how Suncorp Group would in future operate Suncorp Bank in this counterfactual.

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91 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [6].

92 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [6].

3.8. ANZ submits that Suncorp Bank is currently no more vigorous or effective than other competitors in the supply of any of the relevant products, noting that Suncorp Bank's market share is relatively modest and static.[93]

3.9. ANZ submits that for Suncorp Bank to deliver sustained growth, significant investment in transformational technology is required.[94] In his statement, Mr van Horen (CEO of Suncorp Bank) considers that if this investment is made, Suncorp Bank would be able to improve customer experience and drive incremental revenue growth.[95]

3.10. The ACCC is considering whether Suncorp Group would continue to operate Suncorp Bank as it is now, or whether it would be incentivised to grow market share organically (for example, by investing in transformational technology) and therefore increase its constraint on competitors in the relevant markets.

Suncorp Bank merging with another second-tier bank

3.11. As discussed at [1.15], ANZ submits that for Suncorp Group, divesting Suncorp Bank to ANZ positions both Suncorp Group's insurance business and Suncorp Bank for ongoing growth and success as separate, monoline businesses.[96] The ACCC is considering Suncorp Group's reasons for pursuing the Proposed Acquisition, and whether these are instructive as to the future without the Proposed Acquisition.

3.12. The ACCC understands that Suncorp Group has considered in detail a potential transaction involving a merger between Suncorp Bank and another second-tier bank, with BEN used as the benchmark for such a scenario.[97] However, in his statement, Mr Johnston (CEO of Suncorp Group) considers that a merger with a regional bank gives rise to execution and integration complexity and risks that makes a combination challenged.[98]

3.13. The ACCC understands that BEN has expressed interest in merging with Suncorp Bank.[99] BEN submits that prior to the announcement of the Proposed Acquisition, BEN was seeking to engage with Suncorp Group and preparing to make an offer to merge with Suncorp Bank.[100] BEN also submits that there is no basis for claims suggesting that a merger between BEN and Suncorp Bank would involve significant risk.[101]

3.14. BOQ also submits that transactions other than the Proposed Acquisition could be available and attractive to Suncorp Group.[102]

3.15. The ACCC's preliminary view is that a merger with a second-tier bank has a realistic prospect of occurring. The ACCC proposes to consider and place weight on this counterfactual scenario in its assessment of the Proposed Acquisition, notwithstanding

93 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [43].

94 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [8].

95 ANZ application for Merger Authorisation, 2 December 2022, Statement of Clive van Horen (Suncorp Bank), 25 November 2022, [23].

96 ANZ application for Merger Authorisation, 2 December 2022, [3.36], citing Statement of Steven Johnston (Suncorp Group), 25 November 2022, [18] and [42].

97 ANZ application for Merger Authorisation, 2 December 2022, Statement of Steven Johnston (Suncorp Group), 25 November 2022, [56].

98 ANZ application for Merger Authorisation, 2 December 2022, Statement of Steven Johnston (Suncorp Group), 25 November 2022, [55] and [56].

99 Bendigo & Adelaide Bank submission, 3 March 2023, [4.1] - [4.2].

100 Bendigo & Adelaide Bank submission, 3 March 2023, [4.1] - [4.2].

101 Bendigo & Adelaide Bank submission, 3 March 2023, [4.6].

102 Bank of Queensland submission, 24 February 2023, Background [6(b)].

the inherent limitations on any attempt to predict with precision what will occur in the future, including the precise form such merger would take.

1. The ACCC invites views and any further information regarding:
   a. The commercial likelihood of the No-Sale Counterfactual and the Second-Tier Merger counterfactual, including the manner and extent to which ANZ is likely to compete?
   b. The competitive significance of any advantages or difficulties faced by banks operating in conglomerate structures to balance competing capital requirements and investment decisions?

4. ACCC preliminary views on the competitive effects of the Proposed Acquisition

4.1. When previously considering retail banking markets, the ACCC has stated:

> In situations of oligopoly, 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.[103]

4.2. If the Proposed Acquisition proceeds, Suncorp Bank will be removed as an established independent member of the group of second-tier banks. The ACCC is considering the extent of the impact of the removal of Suncorp Bank on competition, particularly in an oligopoly market structure where the major banks may be more likely to face competitive pressure from the second-tier banks than from other smaller providers of banking services.[104]

4.3. In particular, the ACCC is considering the impact of removing Suncorp Bank from the second-tier realm on non-price elements of competition. For instance, regional banks may play an important role in promoting competition in areas such as customer service and innovation, and in 'promoting engagement by financial service providers with their wider community, environmental issues and corporate social responsibility'.[105]

4.4. The ACCC is also considering the extent to which scope for new entry and expansion would be sufficient to replace the loss of competitive constraint from Suncorp Bank. As discussed throughout section 2, new entrants and existing providers seeking to expand may face challenges in growing sustainably to effectively compete against incumbents, including the major banks. These challenges include:

- Higher cost of funds to meet APRA regulatory capital requirements.
- Achieving scale to reduce cost-to-income ratios, improve profitability and return on equity and improve access to funds.[106]
- Acquiring and growing a customer base to achieve scale, due to weaker brand recognition and consumer trust, and general consumer 'stickiness' in financial

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103 ACCC, Submission to the Productivity Commission Inquiry into Competition in the Australian Financial System, September 2017, p 8.

104 See, for example, Bank of Queensland submission, 24 February 2023, Background [4] and Consumers' Federation of Australia submission, 11 January 2023, p 2.

105 Bank of Queensland submission, 24 February 2023, Background [1(b)].

106 Melisande Waterford, 'Regulating challenger banks: balancing objectives and outcomes', Speech to the Future Banking Forum 2019, 9 October 2019.

markets.[107] (The ACCC notes the introduction of the CDR and Open Banking regime may erode some barriers to consumer switching.).

- Access to relevant distribution networks. For example, despite the uptake of online banking, physical presence continues to be important for certain banking products and services or customer demographics; and access to aggregator/broker panels is important as they are an increasingly significant intermediary between lending providers and borrowers.

- Investment in technology, including to set up and maintain IT systems and use technology to develop attractive and sustainable customer value propositions to increase their customer base (noting that smaller banks' investment capabilities may be limited, as larger banks can spread fixed costs of technology over a broader asset base).

4.5. For instance, while neobanks were initially touted as the competitive force that would disrupt retail banking markets and challenge the incumbents (particularly the major banks), this has not transpired to date (as outlined at [2.6] and [2.17]).

4.6. The ACCC notes and is further considering ANZ's submissions that:

a. neither ANZ nor the other major banks, individually or collectively, have market power[108]

b. there is not limited competition between the major banks and there is also additional competitive constraint on the major banks from a range of competitors[109]

c. the competition faced by ANZ is not primarily driven by regional banks,[110] and does not depend on new entry or expansion that replicates the business models of regional banks,[111] and

d. the Proposed Acquisition will not remove a key driver of competition in relation to innovation, service levels or other non-price aspects,[112] and ANZ and other banks continue to face pressure to innovate and offer attractive customer service and care.[113]

4.7. The ACCC is considering the impacts of the Proposed Acquisition as it relates to removing an established second-tier competitor relative to the No-Sale Counterfactual and the Second-Tier Merger Counterfactual (see section 3). In either case, the ACCC is considering whether ANZ may potentially compete more vigorously than it does now (see [4.21]). For example, in a counterfactual where Suncorp Bank merges with another second-tier bank, such as BEN, the merged entity may be able to more effectively compete with the major banks (for example, the growth in scale may enable the merged entity to provide a stronger regional bank alternative to customers that is able to provide more compelling offerings on price, service and innovation),[114] leading to a more competitive outcome. In addition, if ANZ also competes more vigorously in

107 Productivity Commission, Competition in the Australian Financial System – Inquiry report, 29 June 2018, p 149.

108 ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.1] - [2.15].

109 ANZ response to interested party submissions, 9 March 2023, [4.1] - [4.5].

110 ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.19].

111 ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.29] - [2.34].

112 ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.34].

113 ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.32] - [2.33].

114 See, for example, Bendigo and Adelaide submission, 3 March 2023, Executive summary, p. 2.

this scenario than it does currently, this may lead to a further increase in competition that may not eventuate if the Proposed Acquisition proceeds.

2. The ACCC invites views and any further information regarding:
   a. The extent to which the major banks compete with each other?
   b. How, and the extent to which, the second-tier banks, including regional banks, compete with the major banks?
   c. The extent to which the removal of Suncorp Bank, as either an independent second-tier bank or as a constituent part of a merged and larger second-tier bank, affects competition in the banking industry, particularly on non-price elements of competition?
   d. The extent to which scope for new entry or the expansion of existing providers would be sufficient to replace the loss of competitive constraint from Suncorp Bank?

4.8. The ACCC is also assessing other specific competition concerns that may arise if the Proposed Acquisition proceeds, including:

- coordinated effects arising in one or more relevant markets
- impact on ANZ's incentives to compete vigorously in one or more relevant markets compared to its incentives in the No-Sale Counterfactual and the Second-Tier Merger Counterfactual, and
- unilateral effects in the supply of agribusiness banking, SME banking, home loans and retail deposits (including transactions and savings accounts and term deposits).

4.9. As noted at [1.11], the ACCC's preliminary view is that the areas of competition between ANZ and Suncorp Bank that have the most potential to raise concerns include: the supply of agribusiness banking, SME banking, home loans and retail deposits. The ACCC also considers there is a higher degree of geographic overlap between ANZ and Suncorp Bank in Queensland and northern New South Wales. For the purposes of its competition assessment, the ACCC has taken a purposive approach to market definition and has defined relevant markets by focusing on where competitive harm may occur.

4.10. However, the ACCC also notes that a lessening of competition in a significant section of a market can constitute a substantial lessening of competition in that market. On that basis, it does not expect that market definition will be a determinative basis for its competition assessment in respect of the Proposed Acquisition. Rather, the ACCC's competition assessment will focus on the areas of overlap, and the significance of that overlap relevant to the competitive process in that market.

4.11. The remainder of this section discusses each of the potential areas of concern outlined at [4.8].

Coordinated effects in one or more relevant markets

4.12. The ACCC is closely considering the extent to which the Proposed Acquisition may give rise to coordinated effects in any of the relevant markets.

4.13. Coordinated effects are described in the ACCC's Merger Guidelines as the tendency of mergers to incentivise firms to implicitly or explicitly coordinate their pricing, output, or related commercial decisions.[115] Mergers give rise to coordinated effects concerns

115 ACCC, Merger guidelines, 2008 (updated 2017), [6.1].

when they alter the nature of interdependence between rivals such that coordinated conduct is more likely, more complete, or more sustainable.[116] This conception of coordinated effects is broad enough to encompass varying levels of coordination, including:

a. cartel conduct

b. concerted practices, which refers to any form of cooperation between two or more persons, or conduct that would be likely to establish such cooperation, typically facilitated by the exchange of strategic commercial information,[117] and

c. 'conventional' coordinated effects, which refers to firms engaging in conduct that although not necessarily individually profit-maximising in the short run, increases their individual and joint profits in the long run. Such conduct is sustained by repeated interactions between firms and their ability to observe and 'punish' competitors that deviate from mutually beneficial strategies.

4.14. In the context of the Proposed Acquisition, the ACCC notes that coordinated effects may manifest in a number of ways, including:

a. prices to lending customers (including interest rates) above (or further above) competitive levels, and/or interest rates for deposit customers below (or further below) competitive levels

b. availability of loans or credit to lending customers below (or further below) competitive levels

c. reduced investment in product and service quality, development or innovation, and

d. forms of market division between market participants.

4.15. ANZ submits that the Proposed Acquisition will not increase the risk of coordinated conduct in any market.[118] ANZ submits there are features of the relevant markets that militate strongly against coodinated conduct, stating:[119]

a. the large number of competitors of varying sizes and with different business models across all markets makes coordination practically difficult, particularly when combined with the fact customers multi-bank and switch

b. the significant role of brokers in home loans and commercial lending (especially for smaller business customers) facilitates comparison and switching that is disruptive to any attempt to coordinate because brokers have an incentive to identify compelling offers to new and existing clients to demonstrate that their services are valuable

c. banks have different funding and margin requirements, meaning that they will seek to change their competitive position in deposit and lending markets in order to proactively manage their portfolios and therefore will have differing objectives and incentives from competitors, and

116 ACCC, Merger guidelines, 2008 (updated 2017), [6.3].

117 ACCC, Guidelines on concerted practices, 2018, [3.5].

118 ANZ application for Merger Authorisation, 2 December 2022, [7.222].

119 ANZ application for Merger Authorisation, 2 December 2022, [7.223].

d. home loan customers, large deposit holders, and business customers have the ability to, and do, negotiate on price and terms with banks either directly, or with the assistance of brokers. This means the pricing and other terms are less visible to competitors, making coordination very difficult.

ANZ submits that none of these features will be altered by the Proposed Acquisition.[120]

4.16. In contrast, some interested parties have raised concerns that the Proposed Acquisition will increase the likelihood of coordinated conduct in a number of markets. For example, Consumers' Federation of Australia (**CFA**) submits that the removal of Suncorp Bank as a key competitor will materially increase the risk of coordinated conduct because major banks operate largely as one with respect to pricing and product differentiation (so the removal of second-tier banks reduces competitive pressure on the major banks).[121] The ACCC notes that Professor Stephen King has produced a report, submitted to the ACCC by BEN, relevant to coordinated effects and is considering the issues raised by that report.[122]

4.17. The ACCC notes that its previous financial services inquiries into home loans have observed:

a. The major banks have previously exhibited signs of oligopolistic behaviour by engaging in an accommodative and synchronised approach to pricing,[123] and in particular, the major banks' pricing strategies are often used to accommodate, rather than challenge, rivals.[124]

b. There are pricing practices and market features which detract from price competition in the home loan market and adversely affect consumers, including the presence of discretionary discounts which leads to opaque prices and information asymmetry.[125]

4.18. Professor King states that there is a lack of vigorous competition and potential for coordination between the major banks.[126] The ACCC is considering whether the relevant markets are currently susceptible to coordinated conduct and whether conditions conducive to the establishment or sustenance of coordination may be strengthened post-acquisition. In particular, the ACCC is considering the extent to which factors, including the following, may be affected by the Proposed Acquisition, in any of the relevant markets:[127]

a. ***Number of coordinating firms:*** The fewer firms in the coordinating group, the lower the complexity and the easier it will be to reach a common understanding. Further, because firms need to share the collusive profit, as the number of firms reduces, the benefit of departing or 'deviating' from the coordinated strategy diminishes, helping to maintain collusion.

b. ***Product homogeneity:*** It may be easier for firms to reach mutually agreeable terms of coordination when their products are relatively similar.

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120 ANZ application for Merger Authorisation, 2 December 2022, [7.224].

121 Consumers' Federation of Australia submission, 11 January 2023, p 2.

122 Bendigo & Adelaide Bank submission, Expert report of Professor Stephen King, 3 March 2023.

123 ACCC, Residential Mortgage Price Inquiry – Final Report, November 2018, p 50.

124 ACCC, Residential Mortgage Price Inquiry – Final Report, November 2018, pp 6, 50, 51.

125 ACCC, Home Loan Price Inquiry – Final Report, November 2020, p 66.

126 Bendigo & Adelaide Bank submission, Expert report of Professor Stephen King, 3 March 2023, [45].

127 These factors are based on the list of factors in: Organisation for Economic Co-operation and Development, Competition enforcement in oligopolistic markets, Issues paper by the Secretariat, DAF/Comp, 16-18 June 2015, [22].

c. ***Symmetry between firms:*** Firms may find it easier to reach a common understanding if they are relatively symmetric in respect of, for example, their cost structures, product offerings, market shares, capacity levels and degrees of vertical integration.

d. ***Suitable focal point for coordination:*** It may be more difficult for firms to establish focal points of coordination in complex environments. Conversely, price caps/standards or public announcements may serve as focal points.

e. ***Observability of rival behaviours:*** Transparency around firms' strategic choices and market outcomes typically assists coordination, particularly where it enables the timely detection of deviations from collusive strategies.

f. ***Multi-market contact:*** Firms may find it easier to sustain collusion when they are present in several markets, in part because multi-market contact increases the ability to punish – and thereby deter – deviations from collusive strategies and in part because it may increase the frequency of the interaction between firms.

4.19. In addition to considering whether the Proposed Acquisition may increase the likelihood of coordinated effects, the ACCC is also considering if the Proposed Acquisition may make any actual or potential coordination easier, more stable or more effective. The ACCC notes that factors that make coordinated effects more likely to arise from the Proposed Acquisition and increase the likelihood of coordinated effects being sustained over time include:

a. ***Symmetry:*** The Proposed Acquisition increases the symmetry of market shares held by the major banks, by bringing ANZ closer to the size of the other major banks.

b. ***Transparency:*** The high degree of transparency of pricing information in the relevant markets from different sources, for example, via Reserve Bank of Australia (**RBA**) publication of average interest rates, data sharing via the CDR, price comparison websites and brokers (for example, as discussed from [2.33], there is increasing reliance on the broker channel in the supply of home loans). This potentially allows banks to more easily monitor each other and detect and react to any deviation.

c. ***Customer inertia:*** As discussed at [2.24], customers generally tend to be sticky and may face difficulties switching. The ACCC is considering the level of customer inertia and the extent to which it may vary across different customer segments and different providers, and the impact of customer inertia on the likelihood of coordinated effects due to the Proposed Acquisition in any of the relevant markets.

d. ***Barriers to entry and expansion:*** High barriers allow for the maintenance of uncompetitive outcomes stemming from coordination and raise the significance of retaliation against firms that deviate from collusive strategies. As discussed throughout section 2, new entrants tend to face challenges to grow and provide sustainable competition to incumbents.

4.20. The ACCC is assessing the extent to which the Proposed Acquisition could give rise to coordinated effects in any of the relevant markets relative to the No-Sale Counterfactual and the Second-Tier Merger Counterfactual (see section 3). In either case, the ACCC is also considering whether ANZ may compete more vigorously than it does now (see [4.21]). For example, in a counterfactual where Suncorp Bank merges with another second-tier bank, such as BEN, the merged entity may impose a stronger constraint on the major banks engaging in coordinated conduct.[128] In addition, if ANZ also competes more vigorously in this scenario than it does currently, coordination may be more difficult, less stable and less effective than it is now. Particularly as compared against such a counterfactual, the Proposed Acquisition could result in a substantial lessening of competition through coordinated effects.

3. The ACCC invites views and any further information on how the Proposed Acquisition may give rise to coordinated effects in the relevant market(s), relative to the counterfactuals outlined in section 3, including:
   a. Are there any relevant markets in Australia that presently exhibit signs of coordinated conduct or are more susceptible to coordination? Explain why.
   b. What are the features of each relevant market that would facilitate coordinated effects from the Proposed Acquisition, for example:
      i. Are customer switching costs high and how would this affect any coordinated conduct?
      ii. How do brokers, price comparison websites, and other intermediaries affect price transparency?
   c. Whether coordination risk lies within the major banks or is likely to be more widespread? Explain why.
   d. Whether Suncorp Bank is a particularly significant competitor in any relevant market?
   e. How the Proposed Acquisition increases concentration and brings the major banks closer together in size in any relevant market in a way that could:
      i. increase the symmetry in cost structure of the major banks and make it easier to coordinate?
      ii. reduce the incentives for ANZ to compete as vigorously for market share than it otherwise would, absent the Proposed Acquisition?

Impact on ANZ's incentives to compete vigorously in one or more relevant markets

4.21. The ACCC is considering the manner and extent to which ANZ is likely to compete in one or more relevant markets if it does not acquire Suncorp Bank, including the extent to which ANZ would compete more vigorously than it does currently (in either or both of the No-Sale Counterfactual and Second-Tier Merger Counterfactual scenarios (see section 3). In particular, the ACCC is considering ANZ's incentives and ability to pursue growth absent the Proposed Acquisition.

4.22. The ACCC understands that ANZ's share of supply in the relevant markets is in decline. For example, ANZ submits that it has experienced a decline in market share in home loans,[129] retail deposits[130] and SME lending.[131] ANZ also submits that it is currently behind CBA, Westpac and NAB in national market shares in home lending, household deposits, business lending, business transactions and business deposits.[132]

[128] Bendigo & Adelaide Bank submission, 3 March 2023, Executive summary.

[129] ANZ application for Merger Authorisation, 2 December 2022, [7.5(d)]; ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.8(b)].

[130] ANZ application for Merger Authorisation, 2 December 2022, [7.56], Table 14; ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.8(c)].

[131] ANZ application for Merger Authorisation, 2 December 2022, [7.104].

[132] ANZ application for Merger Authorisation, 2 December 2022, [19].

4.23. The ACCC understands that key to ANZ's rationale for the Proposed Acquisition is to provide immediate growth in areas that are attractive to ANZ, particularly in home loans, and to increase its presence in Australian retail and business banking.[133] If ANZ does not acquire Suncorp Bank, ANZ may be incentivised to compete more vigorously to attract customers than it does currently and thereby increase its market share in the relevant markets.

4. The ACCC invites views and any further information on:

   a. Whether, and if so, why ANZ is a particularly strong competitor, in any of the relevant markets?

   b. The extent to which ANZ is likely to compete more vigorously than it does currently in one or more relevant markets in the No-Sale Counterfactual?

   c. The extent to which ANZ is likely to compete more vigorously than it does currently in one or more relevant markets in the Second-Tier Merger Counterfactual?

Unilateral effects in agribusiness banking, SME business banking, home loans and retail deposits

4.24. The ACCC is considering the extent to which the Proposed Acquisition may give rise to unilateral effects through increased prices (for example, increased lending rates, decreased deposit rates, higher fees and charges), decreased consumer choices, reduced services levels, and/or reduced innovation in each of:

- agribusiness banking
- SME banking
- home loans
- retail deposits (including transactions and savings accounts and term deposits).

4.25. As noted at [1.11], the ACCC is focusing on these impacts in the areas of overlap between ANZ and Suncorp Bank, noting the higher degree of geographic overlap between ANZ and Suncorp Bank in Queensland and northern New South Wales. The ACCC is considering the potential for unilateral effects if the Proposed Acquisition proceeds relative to the No-Sale Counterfactual and the Second-Tier Merger Counterfactual (see section 3). In either case, the ACCC is considering whether ANZ may potentially compete more vigorously than it does now (see [4.21]).

Agribusiness banking

4.26. ANZ and Suncorp Bank overlap in the supply of banking products and services to agricultural businesses. These products and services include: transaction accounts, savings accounts, term deposit products, lending products (including equipment finance), risk management products, and commercial credit cards.

Market definition

4.27. The Parties submit that agribusiness banking should be considered part of a broader market for the supply of commercial banking products and services because all

133 ANZ application for Merger Authorisation, 2 December 2022, [3.8(a)].

business customers generally require the same suite of products and services.[134] Further, ANZ submits that products and services offered to all business customers are substitutable on the supply-side.[135] ANZ also submits that this market should be assessed at a national level because ANZ, Suncorp Bank and their competitors set products, policies and pricing at the national level.[136]

4.28. For the purposes of assessing the competitive impact of the Proposed Acquisition, the ACCC is considering if agribusiness banking competition should be assessed separately to other business banking products and services. The ACCC understands that ANZ segments business customers based on customer types, needs, total business limits and complexity,[137] and one of these segments includes agribusiness customers.[138] Suncorp Bank also has a specific business portfolio servicing agribusiness customers.[139] The ACCC is considering the extent of any differences in the requirements of agribusiness customers from other business banking customers. For example, agribusiness banking products may be specifically designed for businesses with 'uneven cashflows',[140] and require 'specialised knowledge and understanding of farm assets and its relationship-focussed nature'.[141]

4.29. The ACCC is considering if it is appropriate to assess the competitive impact of the Proposed Acquisition in agribusiness banking on a state, regional or local basis rather than on a national basis. While there is now more digitisation in the supply of agribusiness products and services,[142] various interested parties consider that customers still place significant value on providers who offer a physical presence and in-person contact with agribusiness specialists who understand their local conditions.[143] These customers therefore may not readily switch to online services.[144] The ACCC is also considering if the customer demographic may have preferences for a physical presence and the significance of this element of competition. The ACCC is further considering ANZ's submission that customer-specific tailoring of nationally set pricing frameworks and product and lending/risk management policies based on localised considerations is not inconsistent with competition occurring on a national basis.[145] The ACCC also notes the report of Dr Philip Williams, submitted to the ACCC by ANZ, concludes that the only relevant market for assessing the likely effect on competition is the market for the supply of loans to Queensland agribusiness customers.[146]

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134 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [10] and [7.160]; Suncorp Group's response to interested party submissions, 7 February 2023, p 1; ANZ response to interested party submissions, 9 March 2023, [2.3].

135 ANZ application for Merger Authorisation, 2 December 2022, [6.135].

136 ANZ application for Merger Authorisation, 2 December 2022, [5.2] and [6.137].

137 ANZ application for Merger Authorisation, 2 December 2022, [6.92].

138 ANZ application for Merger Authorisation, 2 December 2022, [6.92(c)].

139 ANZ application for Merger Authorisation, 2 December 2022, [6.94].

140 ANZ application for Merger Authorisation, 2 December 2022, [6.43].

141 Bendigo & Adelaide Bank submission, 3 March 2023, [6.3(a)], citing Expert report of Professor Stephen King, 3 March 2023, [65(a) - (b)].

142 See, for example, Rabobank submission, 18 January 2023, p 3; Bank of Queensland submission, 24 February 2023, [5(a)].

143 See, for example, BMAgBiz submission, 18 January 2023, p 3; Rabobank submission, 18 January 2023, p 3; Judo Bank submission, 7 February 2023, p 2; Bank of Queensland submission, 24 February 2023, [5.3(a) - (b)]; Bendigo & Adelaide Bank submission, 3 March 2023, [6.3(b)].

144 Bank of Queensland submission, 24 February 2023, [5(b)].

145 ANZ's response to interested party submissions, 9 March 2023, [2.4] - [2.7].

146 ANZ application for Merger Authorisation, 2 December 2022, Expert report of Dr Phillip Williams, 1 December 2022, [12] and [72].

Effect on competition

4.30. Based on information available to the ACCC, Suncorp Bank appears to be proportionally more significant in agribusiness banking in Queensland than nationally. The ACCC notes that Suncorp Bank appears to focus on agribusiness banking in Queensland and northern New South Wales.[147] The ACCC also notes that interested parties submit that Suncorp Bank is particularly strong in Queensland.[148]

4.31. The Parties submit that if the ACCC considers there is a narrower market for the supply of agribusiness banking, such as in Queensland, there is no substantial lessening of competition if the Proposed Acquisition proceeds,[149] because:

a. there will not be a material increase in market concentration[150]

b. ANZ and Suncorp Bank are not each other's closest competitors and have propositions that complement each other[151] (for example, ANZ has greater capability to provide lending services to larger customers with complex needs nationally, than does Suncorp Bank)[152]

c. Suncorp Bank has not driven pricing, innovation or product development[153]

d. competition will remain intense post-acquisition,[154] and there will remain at least 15 banks and non-bank financing providers and "new technology" finance companies[155]

e. there is the threat of effective new entry and expansion, for example, by Judo Bank,[156] and

f. brokers are a material and growing constraint.[157]

4.32. Some interested parties have raised concerns about the competitive impact of the Proposed Acquisition on the supply of agribusiness banking. For example, it has been submitted that:

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147 ANZ application for Merger Authorisation, 2 December 2022, [7.206].

148 BMAgBiz submission, 18 January 2023, p 2; Rabobank submission, 18 January 2023, p 2.

149 ANZ application for Merger Authorisation, 2 December 2022, [7.219]; Suncorp Group's response to interested party submissions, 7 February 2023, p 1; ANZ's response to ACCC RFI, 10 March 2023, p 1.

150 ANZ application for Merger Authorisation, 2 December 2022, [7.161(a)] and [7.164] - [7.170]; Suncorp Group's response to interested party submissions, 7 February 2023, p 2.

151 ANZ application for Merger Authorisation, 2 December 2022, [7.161(c)] and [7.197] - [7.206]; Suncorp Group's response to interested party submissions, 7 February 2023, pp 1-2 and 4; ANZ's response to interested party submissions, 9 March 2023, [2.15] - [2.17].

152 ANZ application for Merger Authorisation, 2 December 2022, [7.145], [7.198] and [7.199(c)]; Suncorp Group's response to interested party submissions, 7 February 2023, pp 1-2; ANZ's response to interested party submissions, 9 March 2023, [2.16].

153 ANZ application for Merger Authorisation, 2 December 2022, [7.161(d)] and [7.207] - [7.210]; Suncorp Group's response to interested party submissions, 7 February 2023, p 3; ANZ's response to interested party submissions, 9 March 2023, [2.21].

154 ANZ application for Merger Authorisation, 2 December 2022, [7.161(b)], [7.171] - [7.183] and [7.196]; Suncorp Group's response to interested party submissions, 7 February 2023, pp 1, 3 and 4; ANZ's response to interested party submissions, 9 March 2023, [2.22] - [2.23].

155 Suncorp Group's response to interested party submissions, 7 February 2023, p 1.

156 ANZ application for Merger Authorisation, 2 December 2022, [7.161(e)] and [7.211] - [7.217]; ANZ's response to interested party submissions, 9 March 2023, [2.25] - [2.28].

157 ANZ application for Merger Authorisation, 2 December 2022, [7.161(f)] and [7.189] - [7.192].

a. The Proposed Acquisition will lead to increased market concentration,[158] and reduced choice in an already concentrated market in Queensland,[159] dominated by the major banks, Rabobank and Suncorp Bank.[160]

b. Suncorp Bank is an important driver of competition on elements other than price.[161] For instance, it takes a more flexible and diverse approach to lending,[162] it has a greater focus on tailored relationships with smaller agribusiness customers,[163] and the Proposed Acquisition may lead to a loss of competition on non-price elements such as customer service and consumer care (through access to specialist bankers with local knowledge and industry expertise, particularly in respect of the 'lending requirements and cyclical nature of funding' for agricultural businesses).[164]

c. The Proposed Acquisition will raise barriers to entry and expansion by 'further entrenching concentration' amongst the major banks.[165]

4.33. The ACCC is assessing the extent to which ANZ and Suncorp Bank compete closely, and in respect of which aspects of competition, in agribusiness banking. The ACCC is also assessing the extent to which Suncorp Bank competes strongly in agribusiness banking in terms of pricing, product differentation and/or service offerings, and therefore whether a significant competitive constraint will be lost post-acquisition. The ACCC notes ANZ's submission that non-price aspects of competition, including customer service, are important for agribusiness customers who seek strong relationships with their bankers,[166] and is considering ANZ's submission that there are strong competitors equivalent to Suncorp Bank's offering.[167]

4.34. Further, the ACCC is assessing the extent to which the merged ANZ-Suncorp Bank entity is likely to be constrained by other competitors, including new entrants or the expansion of existing providers. For instance, the ACCC is considering ANZ's submission that NAB and Rabobank are particularly aggressive in agribusiness lending;[168] Suncorp Group's submission that Suncorp Bank competes vigorously with the major banks, BOQ, BEN, Rabobank and non-ADIs;[169] and ANZ's submission that Judo Bank is an example of successful new entry with the potential to expand.[170] Noting that agribusiness customers appear to value relationships with specialist bankers who understand their local conditions, the ACCC is also considering the likelihood of customers switching between providers, including the extent of the role of brokers in facilitating this.

158 Bendigo & Adelaide Bank submission, 3 March 2023, [6.3(c)].

159 BMAgBiz submission, 18 January 2023, pp 2 - 3.

160 BMAgBiz submission, 18 January 2023, p 2.

161 Bank of Queensland submission, 24 February 2023, [5(d)]; BMAgBiz submission, 18 January 2023, p 2.

162 BMAgBiz submission, 18 January 2023, p 2.

163 Bendigo & Adelaide Bank submission, 3 March 2023, [6.3(d)].

164 Bank of Queensland submission, 24 February 2023, [5(c)].

165 Bendigo & Adelaide Bank submission, 3 March 2023, [6.3(e)].

166 ANZ application for Merger Authorisation, 2 December 2022, [7.184] – [7.188]; ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.33].

167 ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.33].

168 ANZ application for Merger Authorisation, 2 December 2022, [7.196].

169 Suncorp Group's response to interested party submissions, 7 February 2023, p 2.

170 ANZ application for Merger Authorisation, 2 December 2022, [7.215]; ANZ's response to interested party submissions, 9 March 2023, [2.25] - [2.28].

5. The ACCC invites views and any further information on the likely effect of the Proposed Acquisition on competition in agribusiness banking, relative to the counterfactuals outlined in section 3, including:
    a. Do agribusiness banking customers require different products or services to other business banking customers? List and describe any differences.
        i. How important is a local presence, such as branches and access to specialist bankers, to agribusiness banking customers?
        ii. How easily can agribusiness banking customers switch to online offerings and services?
    b. Is Suncorp Bank a strong competitor in agribusiness banking, in particular does it compete strongly in local or regional areas? Does Suncorp Bank drive competition in terms of its pricing, service quality and range, or innovation?
    c. How closely do ANZ and Suncorp Bank compete in agribusiness banking? Who are their competitors and how strongly do they compete?
    d. What are the requirements to enter as, or expand into, an effective competitor in agribusiness banking? How strongly do new entrants compete?
    e. What is the role of brokers in facilitating customer switching?

SME banking

4.35. ANZ and Suncorp Bank overlap in the supply of business banking products and services. These products and services include: transaction accounts, savings accounts, deposit products, lending products (including equipment finance), risk management products, merchant services, commercial credit cards. They are supplied to SME customers, agribusiness customers, and large commercial customers. The ACCC understands that there are differences in how SME businesses are defined, and is considering whether to define SME customers as business customers who have a turnover of less than $50 million.[171]

Market definition

4.36. ANZ submits that ANZ and Suncorp Bank overlap in the supply of banking products and services to SME customers.[172] ANZ also submits that the supply of business banking products and services to SME customers is part of competition for the supply of commercial banking products and services, because all business customers generally require the same suite of products and services.[173] ANZ submits that products and services offered to all business customers are substitutable on the supply-side.[174]

4.37. ANZ also submits that this market should be assessed on a national basis because:

a. ANZ, Suncorp Bank and their competitors set products, policies and pricing at the national level

171 APRA generally uses a total exposure and turnover-based definition, whereby SMEs are defined as businesses with turnover of less than $50 million, see APRA, Reporting Standard ARS 701.0, August 2017, pp 40 and 52.

172 ANZ application for Merger Authorisation, 2 December 2022, Executive Summary [10(b)] and [6.96].

173 ANZ application for Merger Authorisation, 2 December 2022, [6.97] and [6.133]; ANZ's response to interested party submissions, 9 March 2023, [2.3].

174 ANZ application for Merger Authorisation, 2 December 2022, [6.135].

b. ANZ and Suncorp Bank monitor competitor product and pricing changes on a national basis

c. the broker distribution channel promotes choice across competing providers across geographic boundaries

d. digital payments reduces the need to use a local ADI for banking and customers who require cash-handling facilities can rely on alternative physical networks, and

e. business customers can be served effectively remotely through call centres, online and by visits from relationship managers.[175]

4.38. For the purposes of assessing the competitive impact of the Proposed Acquisition, the ACCC is considering if SME banking competition should be assessed as a distinct market or market segment. The ACCC understands that both ANZ and Suncorp Bank categorises business banking customers into specific customer segments, which includes segments for customers that may be defined as SME.[176] The ACCC also notes that some interested parties consider there are narrower product markets in the supply of banking products and services to business customers,[177] though different providers segment business customers differently. For example, Judo Bank considers its 'SME business lending' suite includes agribusiness banking.[178] The ACCC is considering the extent of any differences in the requirements of SME customers from other business banking customers.

4.39. The ACCC is considering if it is appropriate to assess the competitive impact of the Proposed Acquisition in SME banking on a state, regional or local basis, rather than on a national basis. Some interested parties consider that SME banking involves state-based, regional or local elements of competition,[179] such as tailoring of product pricing and choice considerations to particular customers,[180] and that customers have traditionally been driven by service based-banking so are more likely to opt for a physical presence despite increasing digitisation.[181] The ACCC is also further considering ANZ's submission that customer-specific tailoring of nationally set pricing frameworks and product and lending/risk management policies based on localised considerations is not inconsistent with competition occurring on a national basis.[182]

Effect on competition

4.40. Based on information available to the ACCC, Suncorp Bank appears to be proportionally more significant in SME banking in Queensland than nationally. The ACCC also notes that Judo Bank submits that Suncorp Bank is a strong competitior in SME banking in Queensland.[183]

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175 ANZ application for Merger Authorisation, 2 December 2022, [5.2] and [6.137].

176 ANZ application for Merger Authorisation, 2 December 2022, [6.92] and [6.94].

177 Bendigo & Adelaide Bank submission, 3 March 2023, [6.3(a)]; Bank of Queensland submission, 24 February 2023, [5(a)].

178 Judo Bank submission, 7 February 2023, pp 2 - 3.

179 Bank of Queensland submission, 24 February 2023, [5(a)]; Judo Bank submission, 7 February 2023, p 2.

180 Judo Bank submission, 7 February 2023, p 2.

181 Bank of Queensland submission, 24 February 2023, [5(b)].

182 ANZ's response to interested party submissions, 9 March 2023, [2.4] - [2.7].

183 Judo Bank submission, 7 February 2023, p 3.

4.41. ANZ submits that the Proposed Acquisition will not substantially lessen competition in the supply of commercial banking products,[184] including to SME customers, because:

a. nationally and in Queensland, the market is not concentrated and the Proposed Acquisition will not materially increase concentration[185]

b. the market is intensely competitive and will remain so after the acquisition[186]

c. Suncorp Bank is no more vigorous or effective than other competitors because it does not drive pricing, innovation or product development[187]

d. ANZ and Suncorp Bank are not particularly close competitors, with different strategies and customer portfolio compositions. ANZ and Suncorp Bank compete more closely with other competitors,[188] and

e. the merged entity will be competitively constrained by new entry and expansion.[189]

4.42. The ACCC notes that some interested parties have raised concerns about the competitive impact of the Proposed Acquisition on the supply of SME banking. For example, it has been submitted that:

- Suncorp Bank is a vigorous and effective competitor, particularly for Queensland SMEs.[190] The Proposed Acquisition further reduces the pool of SME lenders nationally, and particularly in Queensland, and makes it more challenging for SMEs to access finance.[191]

- Smaller regional banks like Suncorp Bank are important drivers of competition with the major banks and between themselves, with smaller banks generally seeking to distinguish themselves on product dimensions other than price.[192]

4.43. The ACCC is assessing the extent to which ANZ and Suncorp Bank compete closely in SME banking, and in respect of which elements of competition. The ACCC is also assessing the extent to which Suncorp Bank competes strongly in SME banking in terms of pricing, service quality and range, and therefore whether a significant competitive constraint will be lost post-acquisition.

4.44. Further, the ACCC is assessing whether, and the extent to which, the merged ANZ-Suncorp Bank entity is likely to be constrained by other competitors, including new entrants or the expansion of existing providers. The ACCC notes that Judo Bank, which focuses on servicing SMEs, has pointed to a number of barriers to entry.[193] The ACCC understands that SMEs may find it difficult to access finance on price or terms that suit their needs, particularly as borrowing costs remain higher than those of larger

184 ANZ application for Merger Authorisation, 2 December 2022, [7.97].

185 ANZ application for Merger Authorisation, 2 December 2022, [7.102] - [7.111].

186 ANZ application for Merger Authorisation, 2 December 2022, [7.122] - [7.140]; ANZ's response to interested party submissions, 9 March 2023, [2.22] - [2.23].

187 ANZ application for Merger Authorisation, 2 December 2022, [7.141]; ANZ's response to interested party submissions, 9 March 2023, [2.21].

188 ANZ application for Merger Authorisation, 2 December 2022, [7.143] - [7.148]; ANZ's response to interested party submissions, 9 March 2023, [2.15] - [2.19].

189 ANZ application for Merger Authorisation, 2 December 2022, [7.149] - [7.153]; ANZ's response to interested party submissions, 9 March 2023, [2.25] - [2.28].

190 Judo Bank submission, 7 February 2023, p 3.

191 Judo Bank submission, 7 February 2023, p 2.

192 Bank of Queensland submission, 24 February 2023, [5(d)].

193 Judo Bank submission, 7 February 2023, p 3.

businesses (including as a result of their smaller scale, less diversified nature and lack of collateral).[194] Further, while there are a variety of non-bank lender options, the vast majority of SME lending has remained with ADIs.[195] This may mean that there is limited competition in SME banking.

6. The ACCC invites views and any further information on the likely effect of the Proposed Acquisition on competition in SME banking, relative to the counterfactuals outlined in section 3, including:
   a. Do SME banking customers require different products or services to other business banking customers? List and describe any differences.
      i. How important is a local presence, such as branches and access to specialist bankers, to SME banking customers?
      ii. How easily can SME banking customers switch to online offerings and services?
   b. Is Suncorp Bank a strong competitor, in particular does it compete strongly in local or regional areas in SME banking? Does Suncorp Bank drive competition in SME banking in terms of its pricing, service quality and range, or innovation?
   c. How closely do ANZ and Suncorp Bank compete in SME banking? Who are their competitors and how strongly do they compete?
   d. What are the requirements to enter as, or expand into, an effective competitor in SME banking? How strongly do new entrants compete?
   e. How important are brokers in the supply of SME banking?

Home loans

4.45. ANZ and Suncorp Bank overlap in the supply of home loan products, which is an amount loaned to a customer to finance the construction or purchase of a residential property for owner-occupation or investment. These loans include customers switching from an existing loan to a new bank (or to a new loan product within the same bank) to finance the same property.

Market definition

4.46. ANZ submits that there is generally limited substitution between home loans and other lending products,[196] as other forms of funding such as credit card debt or personal loans are generally unsuitable due to high interest rates, fees and smaller credit limits.[197] ANZ also submits that competition for the supply of home loans should be assessed on a national basis,[198] because ANZ, Suncorp Bank, and their competitors supply products, develop and price products, advertise and market, and monitor and benchmark against competitors on a national basis.[199]

4.47. The ACCC is considering if it is appropriate to assess the competitive impact of the Proposed Acquisition in home loans on a regional or local basis rather than on a national basis. For instance, BEN submits that while pricing is set on a national basis, banks' approach to lending may be determined by local risks (for example, flood-prone

194 Productivity Commission, Small Business Access to Finance: The evolving lending market - Research paper, September 2021, pp 18 and 24; RBA, The Australian Economy and Financial Markets - Chart pack, March 2023, p 9.

195 Productivity Commission, Small Business Access to Finance: The evolving lending market - Research paper, September 2021, p 17.

196 ANZ application for Merger Authorisation, 2 December 2022, [6.5] and [6.21].

197 ANZ application for Merger Authorisation, 2 December 2022, [6.21].

198 ANZ application for Merger Authorisation, 2 December 2022, [6.3] and [6.30] - [6.35].

199 ANZ application for Merger Authorisation, 2 December 2022, [6.30].

areas) or local reliance on one particular industry or employer.[200] The ACCC is further considering the extent of the importance of physical presence and the role of digital distribution of these home loan products.

Effect on competition

4.48. Home loans are supplied by bank and non-bank lenders including: major banks, regional banks (including BOQ, BEN and Suncorp Bank), online banks (Judo Bank, Macquarie Bank) and non-bank lenders (such as Athena Home Loans, Firstmac Limited, and Liberty Financial). As discussed from [2.33], aggregators and brokers are playing an increased role in distributing loans to consumers.

4.49. The major banks account for the majority of home loans by value. Based on ANZ's submission, ANZ currently sits behind NAB and significantly trails CBA and Westpac.[201]

4.50. ANZ submits that the Proposed Acquisition will not substantially lessen competition in the supply of home loans nationally, because:

a. the market is not concentrated, and the Proposed Acquisition would result in a *de minimis* increase in concentration[202]

b. the market is intensely competitive and will remain so post-acquisition[203]

c. Suncorp Bank is no more vigorous or effective than other competitors and does not drive price, innovation or product development[204]

d. Suncorp Bank is not a particularly close competitor to ANZ,[205] and

e. there is a credible prospect of effective entry and expansion, which will competitively constrain the combined business.[206]

4.51. The ACCC notes that some interested parties have raised concerns about the competitive impact of the Proposed Acquisition on the supply of home loans. For example, it has been submitted that:

a. Due to the concentration of ANZ and Suncorp Bank branches in larger coastal areas in Queensland,[207] the Proposed Acquisition could remove a local competitor from the home loan market and impact the level of competition and service within that market.[208]

b. The Proposed Acquisition would result in the merged ANZ-Suncorp Bank entity becoming the second largest provider of home loans in Queensland,[209] remove

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200 Bendigo & Adelaide Bank submission, 3 March 2023, [6.1(a)].

201 ANZ application for Merger Authorisation, 2 December 2022, Table 12.

202 ANZ application for Merger Authorisation, 2 December 2022, [7.1(a)] and [7.3] - [7.5].

203 ANZ application for Merger Authorisation, 2 December 2022, [7.1(b)] and [7.6] - [7.27].

204 ANZ application for Merger Authorisation, 2 December 2022, [7.1(c)] and [7.28] - [7.30].

205 ANZ application for Merger Authorisation, 2 December 2022, [7.1(d)] and [7.31] - [7.43].

206 ANZ application for Merger Authorisation, 2 December 2022, [7.1(e)] and [7.44] - [7.49].

207 Rabobank submission, 18 January 2023, p 5.

208 Rabobank submission, 18 January 2023, p 5.

209 Bendigo & Adelaide Bank submission, 3 March 2023, [6.1(b)].

Suncorp Bank as a material competitor in Queensland and New South Wales,[210] and reduce service levels (including through reduced branch presence).[211]

4.52. The ACCC is assessing the extent to which ANZ and Suncorp Bank compete closely in home loans. The ACCC is also assessing the extent to which Suncorp Bank competes strongly in home loans and in respect of which elements of competition, such as pricing (for example, by offering competitive rates to new customers), service quality (for example, speed of approval) and range, and therefore whether a significant competitive constraint will be lost post-acquisition.

4.53. Further, the ACCC is assessing whether, and the extent to which, the merged ANZ-Suncorp Bank entity is likely to be constrained by other competitors, including new entrants or the expansion of existing providers. ANZ submits that customers are increasingly shopping around to compare home loans and lenders and switching providers.[212] The ACCC also notes that Macquarie Bank has been gaining market share in recent years,[213] and there have been reports that it has recently been competing aggressively.[214]

4.54. The ACCC is also considering interested party submissions about barriers to entry and expansion, including that new entrants (such as neobanks) have not been able to provide sustainable competition to the major banks,[215] and while brokers do allow smaller banks to compete by accessing consumers and saving them distribution costs, it does not eliminate the importance of economies of scale in home lending.[216] The ACCC is further considering how easy it is for new entrants and smaller banks to join a broker/aggregator panel (for example, ANZ submits that brokers provide a material competitive constraint),[217] the importance of investing in technology to provide digital offerings, and how effectively non-bank lenders compete (noting their access to funding tends to be limited).

7. The ACCC invites views and any further information on the likely effect of the Proposed Acquisition on competition in the supply of home loans, relative to the counterfactuals outlined in section 3, including:

   a. Is Suncorp Bank a strong competitor in home loans nationally or in any regions or local areas? Does Suncorp Bank drive competition in terms of its pricing, service quality and range, or innovation?

   b. How closely do ANZ and Suncorp Bank compete in home loans? Who are their competitors and how strongly do they compete?

   c. How effectively do non-bank lenders compete in the supply of home loans?

   d. What are the requirements to enter as, or expand into, an effective competitor in the supply of home loans? How strongly do new entrants compete?

   e. How important are brokers and aggregators in the supply of home loans?

210 Bendigo & Adelaide Bank submission, 3 March 2023, [6.1(c)].

211 Bendigo & Adelaide Bank submission, 3 March 2023, [6.1(e)].

212 ANZ application for Merger Authorisation, 2 December 2022, [6.25].

213 APRA, Monthly Authorised deposit taking institution statistics, 28 February 2023.

214 See, for example, Ayesha de Krester, Jonathan Shapiro and Lucy Dean, Banks fight for customers in “crazy” home loan war’, *Australian Financial Review*, 24 February 2023.

215 Bendigo & Adelaide Bank submission, 3 March 2023, [6.1(f)].

216 Bank of Queensland submission, 24 February 2023, [3(h) and (i)].

217 ANZ’s response to Bank of Queensland’s submission, 22 March 2023, [2.28(c)].

Retail deposits

4.55. ANZ and Suncorp Bank overlap in the supply of retail deposits products. This includes transactions accounts, savings accounts and term deposits products.

Market definition

4.56. ANZ submits that deposit products are not perfect substitutes for one another.[218] The main purpose of a transaction account is to carry out transactions using deposited funds, whereas the main purpose of savings accounts and term deposits is to save and earn interest on money deposited.[219] Savings and term deposits consequently offer less access to funds, fewer features and lower utility than transaction accounts.[220] Despite this, ANZ submits that the relevant market is the supply of deposits products to retail customers on a national basis, because customers acquire a combination of these deposit products to meet their requirements, which are readily offered by competing banks.[221] Alternatively, ANZ submits that there are separate markets for the supply of transaction accounts on a national basis, and the supply of savings and term deposits on a national basis.[222]

4.57. ANZ submits that deposit products supplied to retail customers should be assessed on a national basis because:

a. product and pricing decisions are made at a national level, not a state or regional level[223]

b. deposit products are available nationally, with the same terms and conditions and release dates[224]

c. physical presence is decreasingly important because most accounts can be opened online or over the phone, and there has been a marked and permanent shift toward electronic funds transfers as the preferred payment method instead of cash (meaning that customers do not need to use a local ADI)[225]

d. new entrants provide deposit products nationally without physical networks or with a much more limited branch network,[226] and

e. key banking services are available through a range of delivery models, including alternative physical networks, such as Bank@Post and ATMs.[227]

4.58. ANZ submits that the ACCC’s position in Westpac's acquisition of St George Bank Limited and CBA's acquisition of BankWest – that transaction accounts was a local market with national competition on price because physical presence was a key

218 ANZ application for Merger Authorisation, 2 December 2022, [6.51].

219 ANZ application for Merger Authorisation, 2 December 2022, Statement of Yiken Yang (ANZ), 30 November 2022, [15].

220 ANZ application for Merger Authorisation, 2 December 2022, [6.51].

221 ANZ application for Merger Authorisation, 2 December 2022, [6.59].

222 ANZ application for Merger Authorisation, 2 December 2022, [6.59].

223 ANZ application for Merger Authorisation, 2 December 2022, [6.57(a)].

224 ANZ application for Merger Authorisation, 2 December 2022, Statement of Yiken Yang (ANZ), 30 November 2022, [20].

225 ANZ application for Merger Authorisation, 2 December 2022, [6.57(b)].

226 ANZ application for Merger Authorisation, 2 December 2022, [6.57(c)].

227 ANZ application for Merger Authorisation, 2 December 2022, [6.57(d)].

determinant of customer choice – is now different with competition overwhelmingly occurring nationally.[228]

4.59. The ACCC is considering whether there are separate markets for transactions and savings accounts and term deposits. The ACCC is considering if it is appropriate to assess the competitive impact of the Proposed Acquisition in retail deposits on a regional or local basis, noting Suncorp Bank appears to have a stronger presence in Queensland and New South Wales. The ACCC is further considering the extent of the importance of physical presence and the role of digital distribution of these deposits products.

Effect on competition

4.60. Retail deposit products are only able to be offered by ADIs (see [2.10]) including: major banks, regional banks (including BOQ, BEN and Suncorp Bank), online banks, building societies and credit unions; with the major banks taking the majority of the market. Based on ANZ's submission, ANZ is currently the fourth largest supplier of retail deposit products nationally, marginally behind NAB, and further behind CBA and Westpac.[229]

4.61. ANZ submits that the Proposed Acquisition will not substantially lessen competition in the supply of retail deposits products nationally, because:

a. the market is not concentrated and the Proposed Acquisition will result in a *de minimus* increase in market concentration[230]

b. the market is intensely competitive and will remain so post-acquisition[231]

c. Suncorp Bank does not drive price, innovation or product development[232]

d. Suncorp Bank is not a particularly close competitor to ANZ,[233] and

e. there is a credible prospect of effective entry and expansion which will competitively constrain the combined business.[234]

4.62. The ACCC is considering the competitive impact of the Proposed Acquisition on the supply of retail deposits products, noting ANZ's submission outlined above, and an interested party's concern about a potential reduction in service levels, particularly due to a reduction in branch presence, which is still important for older customers.[235] The ACCC is also considering ANZ's submission that Macquarie Bank and ING Bank have been effective competitors in deposits.[236] The ACCC is further considering the extent of the challenges new entrants may face (for example, higher cost of funding due to

228 ANZ application for Merger Authorisation, 2 December 2022, [6.56] - [6.57].

229 ANZ application for Merger Authorisation, 2 December 2022, [7.56].

230 ANZ application for Merger Authorisation, 2 December 2022, [7.53(a)] and [7.55] - [7.57].

231 ANZ application for Merger Authorisation, 2 December 2022, [7.53(b)] and [7.58] - [7.68].

232 ANZ application for Merger Authorisation, 2 December 2022, [7.53(c)] and [7.69] - [7.75].

233 ANZ application for Merger Authorisation, 2 December 2022, [7.53(d)] and [7.76].

234 ANZ application for Merger Authorisation, 2 December 2022, [7.53(e)] and [7.77] - [7.80].

235 Bendigo & Adelaide Bank submission, 3 March 2023, [6.2(d)].

236 ANZ application for Merger Authorisation, 2 December 2022, [7.60(d) - (e)]; ANZ's response to Bank of Queensland's submission, 22 March 2023, [2.24] and [2.28(b)].

lack of scale, which may inhibit their ability to compete with the major banks) and the extent of customer switching and multi-banking.

8. The ACCC invites views and any further information on the likely effect of the Proposed Acquisition on competition in the supply of retail deposits, relative to the counterfactuals outlined in section 3, including:
   a. Whether there are separate markets for transactions accounts, savings accounts and term deposits products?
      i. How important is physical presence for the supply of each of these products?
      ii. How important is digital distribution of each of these products?
   b. Is Suncorp Bank a strong competitor in retail deposits nationally or in any regions or local areas? How does Suncorp Bank drive competition in terms of its pricing, service quality and range, or innovation?
   c. How closely do ANZ and Suncorp Bank compete in retail deposits? Who are their competitors and how strongly do they compete?
   d. What are the requirements to enter as, or expand into, an effective competitor in the supply of retail deposits? How strongly do new entrants compete?
   e. How extensive is customer switching and multi-banking?

5. ACCC's preliminary views on the likely public benefits and public detriments

The net public benefit test

5.1. As described at [1.16], the ACCC must not make a determination granting authorisation unless satisfied, in all the circumstances, that:

- The conduct would not have the effect, or not be likely to have the effect, of substantially lessening competition (the '**Competition Test**'), <u>or</u>
- the conduct would result, or be likely to result, in a public benefit, and this public benefit would outweigh the public detriment (including any lessening of competition) that would result, or be likely to result, from the conduct (the '**Net Public Benefit Test**').

5.2. The tests are alternative: the ACCC may grant authorisation if it is satisfied of either the Competition Test or the Net Public Benefit Test.

5.3. Consistent with the Tribunal, the ACCC adopts a broad approach to considering public benefits:

> …we do not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress.[237]

[237] *Re Queensland Co-operative Milling Association Ltd* (1976) 8 ALR 481, at 507-8.

5.4. Similarly, the ACCC adopts a broad approach to its assessment of public detriment. This is consistent with the Tribunal which has defined it as:

> …any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.[238]

5.5. In applying the Net Public Benefit Test, the ACCC assesses all benefits and detriments to the public that are likely to result from the Proposed Acquisition, not just those related to effects on competition.

5.6. The ACCC will have regard to the competitive or other detriments to the public that would result, or be likely to result, from the proposed conduct. A lessening of competition does not have to be substantial to comprise a detriment to the public.[239]

ACCC's preliminary views on public benefits

5.7. ANZ submits that the Proposed Acquisition will deliver substantial public benefits, including:

a. Suncorp Group will become a stronger insurer

b. ANZ will become a stronger bank

c. substantial benefits for the Queensland economy and Queenslanders, and

d. increase in the major bank levy paid.[240]

5.8. ANZ submits that none of these benefits will accrue if the Proposed Acquisition does not proceed.[241]

5.9. ANZ's assessment of these public benefits is based on its submitted counterfactual, the No-Sale Counterfactual. Some of the benefits claimed relate to acquisition by ANZ specifically; for example, that ANZ will become a stronger bank.

5.10. The ACCC notes that, in addition to the No-Sale Counterfactual, it is considering public benefits with reference to the Second-Tier Merger Counterfactual.

Suncorp Group will become a stronger insurer

5.11. ANZ submits that from completion of the Proposed Acquisition, Suncorp Group will be able to more efficiently and effectively focus on and run its insurance business.[242] Suncorp Group expects that its insurance business will benefit from a 'singular focus' on its growth strategies and investment requirements.[243]

5.12. ANZ submits that Proposed Acquisition will strengthen Suncorp Group's insurance business and that public benefits will flow from this, including:

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238 *Re 7-Eleven Stores Pty Ltd* [1994] ATPR 41-357 at 42,683 (Lockhart J, Prof M Brunt and Dr B Aldrich).

239 ACCC, Merger Authorisation Guidelines, October 2018, [8.20].

240 ANZ application for Merger Authorisation, 2 December 2022, [8.1].

241 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [59].

242 ANZ application for Merger Authorisation, 2 December 2022, [8.1].

243 ANZ application for Merger Authorisation, 2 December 2022, [3.36(b)].

- driving improvements to and streamlining of Suncorp Group's operating model and support functions reflecting the reduced complexity of a pureplay insurance business[244]
- allowing Suncorp Group to re-focus its insurance business and make available funding for capital improvement projects including technology improvements,[245] and
- provide Suncorp Group with better access to sources of funding.[246]

5.13. Mr Johnston (CEO of Suncorp Group) in his statement states that divesting Suncorp Bank will allow Suncorp Group to improve its processes and leverage data from sales and underwriting activities which will improve Suncorp Group's product suite, sales and distribution, customer service and interface and improve claims processes.[247] Mr Johnston claims that this will allow Suncorp Group to better meet the needs of its insurance customers by developing more competitive product offerings, delivering more responsive customer engagement and improving claims processing times.[248]

5.14. In relation to Suncorp Group's claim that it will have better access to sources of funding, Mr Johnston states that Suncorp Group's current market value is a blended average of its various businesses.[249] Mr Johnston claims that this means it is challenging for investors to assess, whereas if the Proposed Acquisition proceeds, investors will have the option of investing in monoline activities.[250] Mr Johnston concludes that the 'sale of Suncorp Bank could achieve a rebalancing and rerating with the consequential enhancement of value for shareholders, as well as the capacity to attract capital to support the Suncorp [Group's] general insurance operations at a higher value'.[251]

5.15. Aon supports the claim that the Proposed Acquisition will result in Suncorp Group being a stronger insurer, stating that the divestiture of Suncorp Bank will leave Suncorp Group more focused on the insurance industry, driving needed innovation in the insurance industry to address unmet client needs.[252]

5.16. BEN submits that this is not a relevant public benefit as it could be achieved absent the Proposed Acquisition by divestment of Suncorp Bank to another buyer.[253]

5.17. The ACCC notes that the underlying premise of this submitted public benefit is that in the future without the Proposed Acquisition, Suncorp Bank would continue to be held and operated by Suncorp Group. The ACCC notes that Suncorp Group appears to have successfully operated this dual model for many years. While it is possible that there may be benefits for the Suncorp Group in terms of increased board focus, there

244 ANZ application for Merger Authorisation, 2 December 2022, [8.4(b)].

245 ANZ application for Merger Authorisation, 2 December 2022, [8.4(c)].

246 ANZ application for Merger Authorisation, 2 December 2022, [8.4(d)].

247 ANZ application for Merger Authorisation, 2 December 2022, Statement of Steven Johnston (Suncorp Group), 25 November 2022, [46].

248 ANZ application for Merger Authorisation, 2 December 2022, Statement of Steven Johnston (Suncorp Group), 25 November 2022, [46].

249 ANZ application for Merger Authorisation, 2 December 2022, Statement of Steven Johnston (Suncorp Group), 25 November 2022, [101].

250 ANZ application for Merger Authorisation, 2 December 2022, Statement of Steven Johnston (Suncorp Group), 25 November 2022, [102].

251 ANZ application for Merger Authorisation, 2 December 2022, Statement of Steven Johnston (Suncorp Group), 25 November 2022, [106].

252 AON submission, 18 January 2023, p 1.

253 Bendigo & Adelaide Bank submission, 3 March 2023, [7.1].

are also possible disadvantages, for example the loss of any synergies that result from the combined business.

5.18. As discussed at section 3, there are a number of scenarios that may occur if the Proposed Acquisition does not proceed. Some of these scenarios may also result in the separation of Suncorp Bank from Suncorp Group and may still allow Suncorp Group to obtain any benefits of being a stronger insurer. To the extent that Suncorp Group would benefit from being a stronger insurer, these benefits may be realised absent the Proposed Acquisition.

5.19. The ACCC's preliminary view is that it is not clear whether the Proposed Acquisition would be likely to overall improve the performance of Suncorp Group's insurance business compared to a future without the Proposed Acquisition. The ACCC is also considering the weight that should be given to any such benefits, noting that the extent to which they might pass through to insurance customers is unclear.

ANZ will become a stronger bank

5.20. ANZ submits that, with Suncorp Bank under ANZ ownership, benefits will accrue to customers, shareholders and the broader public.[254] ANZ estimates that the Proposed Acquisition will deliver cost synergies of approximately $260 million per annum (pre-tax) from economies of scale and improved processes.[255] ANZ, and the report of Patrick Smith prepared for ANZ, state that these synergies are likely to enhance productive efficiency, as a combined business will be able to serve both ANZ and Suncorp Bank customers at a lower cost, compared to collective costs incurred by each of the Parties absent the Proposed Acquisition.[256]

5.21. ANZ has not provided evidence describing the basis on which the synergy estimates, provided with the Application, were prepared.

5.22. ANZ has also not sought to quantify what proportion, if any, of the cost savings will be passed on to consumers, compared to what it will retain. ANZ states that this will depend on investment and pricing decisions following the Proposed Acquisition.[257] However, ANZ, and the report prepared by Mr Smith, submits that in a competitive market, ANZ would have an incentive to pass a portion of cost savings to consumers in the form of better quality or lower priced services.[258] ANZ also submits that, to the extent customers respond to investments in improving the quality of services, ANZ will have an incentive to apply a portion of cost savings towards such investments.[259]

5.23. ANZ also states that any efficiencies claimed will substantially arise four to six years post-completion,[260] and notes there are substantial costs for ANZ in the transition period. ANZ forecasts total pre-tax integration costs of ~$680 million over five years,[261] while Suncorp Group is forecasting separation costs of ~$500 million and "stranded" costs of approximately $40 million per year for up to three years following

254 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [57].

255 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)].

256 ANZ application for Merger Authorisation, 2 December 2022, [8.7], Expert report of Patrick Smith,1 December 2022.

257 ANZ application for Merger Authorisation, 2 December 2022, [8.33].

258 ANZ application for Merger Authorisation, 2 December 2022, Expert report of Patrick Smith, 1 December 2022, [17(b)] and [79].

259 ANZ application for Merger Authorisation, 2 December 2022, [8.16].

260 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)] and [3.32].

261 ANZ application for Merger Authorisation, 2 December 2022, Annexure 6, ANZ Acquisition of Suncorp Bank and Equity Raising: Investor Discussion Pack, 18 July 2022, pp 15, 21.

the merger (giving total transaction and integration costs of up to $1.3 billion).[262] The estimated synergies claimed by ANZ excludes these one-off costs to Suncorp Group in splitting out the banking and insurance businesses.[263]

5.24. Rabobank submits that in theory a stronger merged bank should be in a better position to provide the continuation of banking products and services to the food and agribusiness market in Queensland.[264] However, Rabobank notes that this does not seem to be the case historically, especially where the expected synergies adversely impact the level of service being delivered to customers.[265]

5.25. ANZ also submits that the combined businesses will have increased scale to enable continual investment in digital transformation and innovation.[266]

5.26. The CFA rejects ANZ's submission that the combined business will yield efficiencies and that its increased scale will enable digital transformation and innovation.[267] The CFA considers that these claimed public benefits are highly unlikely to eventuate because ANZ will face less incentive in these areas due to lack of competitive pressure.[268] The CFA submits that without competitive pressure, firms are less likely to innovate, and any efficiency gains will not be shared with customers.[269]

5.27. The ACCC's preliminary view is that it is likely some efficiencies will be realised through integration. However, the ACCC has not received any material to support or underpin the synergy estimates submitted by ANZ in its application and its report. Such estimates necessarily depend on a range of factors, including assumptions about the market share of the merged entity in the future. This is particularly important in circumstances such as the present where the forecast synergies are not expected to materialise for some years. It is therefore difficult for the ACCC to assess the likelihood and extent to which such synergies may arise.

5.28. The ACCC notes that the extent to which any efficiencies are likely to arise needs to be weighed against any likely loss such integration may bring about to quality and types of services offered.

5.29. Assuming cost synergies do arise from integration, the extent to which they will be passed through to the public is unclear, with some interested parties making submissions on this point. Mr Smith's report states that this may depend on the intensity of competition following the Proposed Acquisition.[270] To the extent that cost savings due to the acquisition lead to ANZ offering customers more competitive prices and higher-quality products and services, such benefits will be considered in the ACCC's competition assessment of the Proposed Acquisition.

5.30. In a situation where merger-specific cost savings are retained, or largely retained by ANZ and its shareholders, they may constitute a public benefit. However, such benefits may be given less weight in the ACCC's assessment than public benefits that would be shared more widely amongst members in the community.

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262 ANZ application for Merger Authorisation, 2 December 2022, Annexure 48, Sale of Suncorp Bank Presentation, 18 July 2022, pp 6 - 7.

263 ANZ application for Merger Authorisation, 2 December 2022, [3.8(c)].

264 Rabobank submission, 18 January 2023, p 4.

265 Rabobank submission, 18 January 2023, p 4.

266 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [57(b)].

267 Consumers' Federation of Australia submission, 11 January 2023, p 6.

268 Consumers' Federation of Australia submission, 11 January 2023, p 6.

269 Consumers' Federation of Australia submission, 11 January 2023, p 6.

270 ANZ application for Merger Authorisation, 2 December 2022, Expert report of Patrick Smith, 1 December 2022, [79].

Benefits to Queensland

5.31. ANZ submits that it has made a number of public commitments to demonstrate its intention to continue investing in Queensland following the Proposed Acquisition. These commitments include:

- $15 billion in new lending and banking solutions to support renewable energy targets and to support development ahead of the 2032 Olympic Games
- $10 billion of new lending to support new energy projects, and
- $10 billion to support Queensland businesses over the next three years.[271]

5.32. In his statement, Mr Elliott (CEO and Executive Director of ANZ) states that these commitments would not have been made absent the Proposed Acquisition.[272] ANZ notes that it may have made some new lending available in support of the Queensland Government's renewable energy targets or new energy projects in the absence of the Proposed Acquisition.[273] ANZ however also states that the public commitment to this lending ensures it is prioritised and materially increases the certainty that the lending targets will be reached.[274]

5.33. The ACCC considers that, though these lending commitments are intended to facilitate the Proposed Acquisition, it is not clear to what extent these investments will occur absent the Proposed Acquisition. It is also not clear what weight should be afforded to them, given, absent the Proposed Acquisition, this lending support may be directed to other purposes. The ACCC invites views about whether this constitutes a public benefit, and the extent of any such benefit.

Other public benefits claimed

5.34. ANZ also submits that the Proposed Acquisition will likely result in other public benefits including reduced wholesale funding costs, greater assurance of access to wholesale funding, increased prudential safety and an increase to the major bank levy.

Reduced wholesale funding costs and greater assurance of access to wholesale funding

5.35. ANZ submits that Suncorp Bank is likely to obtain wholesale funding at a lower cost following the Proposed Acquisition.[275] ANZ sources funding from wholesale markets at a lower cost than Suncorp Bank,[276] and post-integration of the entities, ANZ would source funds for the merged entity. ANZ submits that a reduction in wholesale funding costs would result in lower prices to Suncorp Bank customers and may benefit ANZ shareholders through increased profitability, or the broader public through economic resource savings.[277]

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271 ANZ application for Merger Authorisation, 2 December 2022, [8.62].

272 ANZ application for Merger Authorisation, 2 December 2022, Statement of Shayne Elliott, 30 November 2022, [82].

273 ANZ application for Merger Authorisation, 2 December 2022, [8.63].

274 ANZ application for Merger Authorisation, 2 December 2022, [8.63].

275 ANZ application for Merger Authorisation, 2 December 2022, Executive summary [57(c)].

276 ANZ application for Merger Authorisation, 2 December 2022, [8.25].

277 ANZ application for Merger Authorisation, 2 December 2022, [8.17].

5.36. ANZ also submits that absent the Proposed Acquisition, Suncorp Bank may find it more challenging to secure wholesale funding during periods of financial stress.[278] It submits that following the Proposed Acquisition, Suncorp Bank is likely to have greater assurance of continued access to wholesale funding during such periods as debt investors would assume ANZ's support.[279]

5.37. BEN submits that it is unlikely that there would be cost savings and that any cost savings that did arise from the Proposed Acquisition are unlikely to be passed on to consumers.[280] BEN and the report it provided by Professor King submit that a reduction in wholesale funding costs for Suncorp Bank as a result of the Proposed Acquisition may benefit the individual companies but is not necessarily a broader economic benefit.[281]

5.38. Regarding ANZ's submission that the Proposed Acquisition will result in greater assurance of access to wholesale funding, BEN submits that ANZ does not acknowledge that the risk of global debt investors withdrawing funding is greater for smaller banks that have a proportionately heavier reliance on wholesale funding.[282] BEN submits this is because the significance of the risk posed by reduced access to debt funding in periods of financial stress is dependent on a bank's exposure to wholesale funding.[283]

5.39. The ACCC considers that the information currently before it is insufficient to support this being a likely or substantive public benefit. The ACCC notes that, to the extent that any lower funding costs are attributable to the merged entity becoming larger, these lower costs may be offset by an increase in other costs.

5.40. The ACCC also notes that, in a situation where merger-specific cost savings are retained, or largely retained by ANZ and its shareholders, they may constitute a public benefit. However, such benefits may be given less weight in the ACCC's assessment than public benefits that would be shared more widely amongst members in the community. The ACCC invites views about the extent and likelihood of this as a public benefit.

Increased prudential stability

5.41. ANZ is subject to greater capital requirements than Suncorp Bank as APRA has classified ANZ as a domestic systemically important bank (**D-SIB**).[284] Following the Proposed Acquisition, Suncorp Bank would be subject to these greater requirements. ANZ submits that this would benefit Suncorp Bank customers by improving the safety of the bank's assets, and also benefit the broader public by reducing the net systemic risk to the Australian financial system.[285]

5.42. The CFA submits that such benefits are unlikely to be shared with consumers and notes that it considers any public benefits that are captured by the supply side should not be assessed as outweighing anti-competitive detriments associated with the

[278] ANZ application for Merger Authorisation, 2 December 2022, [8.35] - [8.37].

[279] ANZ application for Merger Authorisation, 2 December 2022, [8.63].

[280] Bendigo & Adelaide Bank submission, 3 March 2023, [7.3].

[281] Bendigo & Adelaide Bank submission, 3 March 2023, [7.3], Expert report of Professor Stephen King, 3 March 2023, [190 - 194].

[282] Bendigo & Adelaide Bank submission, 3 March 2023, [7.3].

[283] Bendigo & Adelaide Bank submission, 3 March 2023, [7.3].

[284] ANZ application for Merger Authorisation, 2 December 2022, [8.48].

[285] ANZ application for Merger Authorisation, 2 December 2022, [8.41].

Proposed Acquisition.[286] In response to the claim that the Proposed Acquisition will increase prudential safety, the CFA notes that Australia's system for prudential regulation, the banking system and relevant capital benchmarks are already 'unquestionably strong'.[287] The CFA also submits that any safety beyond what is required by regulation is unlikely to be significant.[288]

5.43. The ACCC notes that the greater regulatory requirements on banks designated as D-SIB are intended to reduce the probability of failure compared to non-systemic institutions.[289] However, the ACCC considers that limited material has been provided to date in support of this claimed public benefit and its extent, compared to the future without the Proposed Acquisition. The ACCC's preliminary view is that any improvement in prudential stability arising out of the Proposed Acquisition is unlikely to be substantial. The ACCC invites views about the extent and likelihood of this as a public benefit.

Increase to the major bank levy

5.44. ANZ submits that following the Proposed Acquisition, the combined business will make a greater contribution to government through the major bank levy.[290] This is due to the current liabilities of Suncorp Bank becoming liabilities of the combined business and therefore being subject to the levy.[291] ANZ estimates that this will increase its levy payments by approximately $24 million each year.[292]

5.45. The ACCC's preliminary view is that, to the extent this represents a transfer from the merged entity's shareholders and customers to taxpayers, it is not clear whether this constitutes a public benefit of the Proposed Acquisition. Rather, it may represent an offset to the increased taxpayer risk stemming from ANZ becoming larger.

9. The ACCC invites views and any further information on:
   a. Any additional public benefits likely to result from the Proposed Acquisition?
   b. Whether the claimed public benefits would arise even without the Proposed Acquisition?
   c. How substantive the claimed public benefits are?

ACCC's preliminary views on public detriments

5.46. The definition of public detriment is broad and can include any impairment to the community generally and any harm or damage to the aims pursued by society.

5.47. The ACCC considers the most significant detriments from the Proposed Acquisition are likely to be its effects on competition. These are discussed in detail in section 4.

5.48. In addition to the competitive detriments which may result, the ACCC is also considering whether there are other effects that may give rise to public detriments, including two potential detriments raised by ANZ:

- reduced physical branch networks in regional areas, and

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286 Consumers' Federation of Australia submission, 11 January 2023, p 7.

287 Consumers' Federation of Australia submission, 11 January 2023, p 7, citing APRA, 'APRA announces 'unquestionably strong' capital benchmarks', 19 July 2017.

288 Consumers' Federation of Australia submission, 11 January 2023, p 7.

289 RBA, Domestic systemically important banks in Australia – Information paper, December 2013, p 19.

290 ANZ application for Merger Authorisation, 2 December 2022, [8.1(d)].

291 ANZ application for Merger Authorisation, 2 December 2022, [8.1(d)] and [8.71].

292 ANZ application for Merger Authorisation, 2 December 2022, [8.71].

- employment impacts.

5.49. ANZ submits that it has committed that during the three-year period following completion, there will be:

- no further reduction in Suncorp Bank branch numbers in Queensland, and
- no net job losses in Queensland for Suncorp Bank

as a result of the Proposed Acquisition.[293]

5.50. The ACCC notes that, as part of its claimed public benefits, ANZ claims that it will be able to realise annual cost savings through labour rationalisation.[294] The ACCC also notes that ANZ has not made the same commitment with respect to ANZ branches and job losses in Queensland.

5.51. ANZ also states that it has not made any decisions about the numbers or roles of employees, or the numbers or locations of branches or contact centres that it would need to serve customers following the separation period.[295] ANZ further submits that in its claimed counterfactual, there is no guarantee Suncorp Bank would retain its current branch network and current workforce.[296]

Reduced physical branch networks in regional areas

5.52. As discussed at [5.20], ANZ submits that it anticipates realising cost synergies following integration through reductions in branches and contact centres.[297]

5.53. Several submissions from interested parties raise concerns regarding the closure of branches, particularly in regional areas.[298] The CFA submits that the reduction in physical places for accessing banking is a significant public detriment, particularly affecting people in regional and remote areas.[299] The CFA notes that ANZ has committed to maintaining the total number of Suncorp Bank branches in Queensland for at least three-years post-completion but submits that this does not obviate the public detriments like to arise.[300] The CFA notes that this commitment does not include branch closures in other areas and is for three-years only, after which the CFA considers ANZ intends to close Suncorp Bank branches in Queensland.[301]

5.54. The ACCC is continuing to consider whether the Proposed Acquisition will result in any immediate ANZ branch closures, particularly as ANZ has not made any commitment to maintain the total number of ANZ branches in Queensland post-acquisition.

5.55. A submission from Mr Featherstone raised concerns that the Proposed Acquisition is likely to remove Suncorp Bank customers' access to Bank@Post services.[302] Mr Jacobucci's submission also raised the issue that ANZ is the only major bank without

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293 ANZ application for Merger Authorisation, 2 December 2022, [8.79].

294 ANZ application for Merger Authorisation, 2 December 2022, [3.33(b)].

295 ANZ application for Merger Authorisation, 2 December 2022, [3.35].

296 ANZ application for Merger Authorisation, 2 December 2022, [8.67].

297 ANZ application for Merger Authorisation, 2 December 2022, [3.33(c)].

298 See submissions from: John Curnow, 10 January 2023; Robert Jacobucci, 30 January 2023; Nicholas Shae, 14 January 2023.

299 Consumers' Federation of Australia submission, 11 January 2023, p 7.

300 Consumers' Federation of Australia submission, 11 January 2023, p 7.

301 Consumers' Federation of Australia submission, 11 January 2023, p 7.

302 Roy Featherstone submission, 16 January 2023, p 2.

an agreement for Bank@Post services.[303] However, ANZ submits that it intends to continue Suncorp Bank's contract with Australia Post for Bank@Post services (provided the commercial terms offered by Australia Post are equivalent to those currently offered to Suncorp Bank), such that Suncorp Bank would continue offering services via Bank@Post post-acquisition.[304] The ACCC notes that ANZ itself does not currently offer services through Bank@Post. It is unclear whether the continued availability of Suncorp Bank services through Bank@Post would be for a limited duration, such as the integration period.

5.56. The ACCC considers that, to the extent that the Proposed Acquisition results in a lessening of competition, there is a risk that the merged entity may not provide the same level of service as ANZ and Suncorp Bank currently do, particularly in areas where there are fewer or no alternatives for consumers (such as regional or remote areas).

5.57. The importance of bank branches to regional and remote areas is supported by the Final Report for the Regional Banking Taskforce, which found that branch losses could result in impacts beyond loss of competition, and made several recommendations in relation to how banks handle branch closures.[305]

5.58. The ACCC notes the ongoing trend towards branch closures and the current inquiry into bank closures in regional Australia.[306] The ACCC notes that this increases the level of uncertainty regarding the likelihood of branches remaining open or closing (with or without the Proposed Acquisition); and the extent to which any such closures might occur in the next three years. The ACCC invites views about the likelihood of this potential detriment.

5.59. The ACCC also considers, even if it were able to determine this, it is also unlikely to be able to determine whether avoiding branch closures would be an efficient use of resources for society.

Employment impacts

5.60. In describing its anticipated cost synergies as a result of integration following the Proposed Acquisition, ANZ claims that it will be able to realise annual cost savings through labour rationalisation.[307] ANZ submits that this rationalisation would be due to increased automation and rationalisation of duplicative managerial roles, consolidation of enabling functions and retail functions.[308] The claimed public benefits from these synergies are discussed above.

5.61. Based on the information and evidence currently available, the ACCC considers it is difficult to assess which scenarios in the future with or without the Proposed Acquisition are likely to result in more or less employment, and therefore it is difficult to accord weight to claims about negative employment impacts. The ACCC also notes, even if it were able to determine this, it is also difficult to determine whether

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303 Robert Jacobucci submission, 30 January 2023, p 1.

304 ANZ application for Merger Authorisation, 2 December 2022, [8.67].

305 Commonwealth Treasury, Regional Banking Taskforce Final Report, September 2022, pp 4, 9 - 12.

306 Parliament of Australia, Senate Standing Committees on rural and regional affairs and transport, 'bank closures in regional Australia'.

307 ANZ application for Merger Authorisation, 2 December 2022, [3.33(b)].

308 ANZ application for Merger Authorisation, 2 December 2022, [3.33(b)].

employment changes in a particular market would be an efficient use of resources for society, and therefore would constitute a public detriment.[309]

10. The ACCC invites views and any further information on:
    a. Any additional public detriments likely to result from the Proposed Acquisition?
    b. Whether these public detriments would arise only in the event of the Proposed Acquisition?

[309] For more information on efficiencies in the merger authorisation context, see ACCC, Merger Authorisation Guidelines, October 2018, p 34.