

23 February 2022

Ellie Dwyer / Olivia King
Mergers, Exemptions and Digital Division
Australian Competition & Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne VIC 3000

BY EMAIL: ANZ-SUNCORP-MERGER@ACCC.GOV.AU

Dear Ms Dwyer and Ms King,

Re: ANZ proposed acquisition of Suncorp

This submission is made by Bank of Queensland Limited ABN 32 009 656 740 (**BOQ**) in response to the request by the Australian Competition and Consumer Commission (**ACCC**) in its market enquiries letter dated 12 December 2022.

BOQ welcomes the opportunity to comment on ANZ's proposed acquisition of SBGH LIMITED (**Suncorp**) (the **Proposed Acquisition**).

About BOQ

BOQ is one of Australia's leading regional banks. It operates nationwide, through specialist bankers and digital channels. BOQ also operates a network of 154 branches throughout Australia (as at 31 August 2022) including both owner managed and corporate branches, as well as transaction centres.

Over time, BOQ has acquired a portfolio of brands that form the basis of its multi brand strategy. Its retail brands are BOQ, VMA (a digital-first retail financial services company that provides a wide range of financial products) and ME (an online retail bank that provides a wide range of banking products to customers through mobile bankers, direct channels and brokers).

BOQ is supportive of a market structure that supports consumer choice and strong competition in financial services by ensuring a level playing field between the major banks and smaller and regional banks.

Confidentiality

This letter and the attached submission contains certain information that is confidential to BOQ. In accordance with ACCC Guidelines, both a confidential version and a public register version have been provided.

The confidential version is provided to the ACCC on the basis that it must not be shared with or otherwise disclosed to any third party, without the prior consent of BOQ other than in accordance with the ACCC's standard confidentiality terms.

RESTRICTION OF PUBLICATION OF PART CLAIMED

We welcome the opportunity to discuss our submission with the ACCC further, if required. However, please contact Ricky-Anne Lane-Mullins at ricky-anne.lane-mullins@boq.com.au if you have any questions or require further information.

Yours faithfully



Patrick Allaway

Executive Chairman

Bank of Queensland Limited

BOQ SUBMISSION - PROPOSED ACQUISITION OF SUNCORP BY ANZ

BACKGROUND

- 1 Competition law and regulation in Australia is underpinned by certain principles, including the core premise that Australia's open market economy depends on strong competition between businesses to drive consumer welfare and positive market outcomes.¹
- 2 In relation to the banking sector in particular the ACCC has previously articulated these principles as follows:

*'... 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.'*²
- 3 Across a number of previous merger enquiries the ACCC has repeatedly expressed the view that a larger variety of financial service providers in the market is preferable³ to a highly concentrated market, devoid of competitive variety. It has also expressed its concern about mergers that entrench or compound a party's market power.⁴
- 4 BOQ shares the ACCC's stated views on the importance of competition, and a range of viable competitors in Australia's financial services landscape. It is BOQ's view that maintaining competition in financial services markets is vital to maintain high levels of customer service, product innovation and accountability, as well as promoting more competitive consumer costs and prices.
- 5 Competition between mid-tier banks, the four largest banks (termed 'majors') and other suppliers of banking services in Australia occurs in the context of a number of factors, including Australia's current regulatory settings. These regulatory settings include the following benefits for the majors:
 - (a) risk weighting requirements and methods;
 - (b) lower capital requirements relative to balance sheets;
 - (c) scale advantages in conjunction with regulatory burden;
 - (d) lower debt funding costs (wholesale and debt deposits); and
 - (e) lenders mortgage insurance (LMI) requirements.
- 6 ANZ itself notes⁵ that the Proposed Acquisition will allow the merged entity to access lower cost wholesale funding, and thereby enable it to offer lower prices (interest rates and other

¹ ACCC, 'Competition and anti-competitive behaviour', <https://www.accc.gov.au/business/competition/competition-and-anti-competitive-behaviour>

² ACCC Submission to Productivity Commission Inquiry into Competition in the Australian Financial System, September 2017, p 8 (https://www.pc.gov.au/_data/assets/pdf_file/0019/221860/sub017-financial-system.pdf).

³ See for example, the ACCC's decision to not oppose the Commonwealth Bank and Colonial merger (2000), and the decision to not oppose the proposed acquisition of St George Bank by Westpac (2008).

⁴ See for example, Rod Sims (then ACCC Chair), 'Protecting and promoting competition in Australia', 27 August 2021, <https://www.accc.gov.au/speech/protecting-and-promoting-competition-in-australia>

⁵ ANZ, 'ANZ Proposed Acquisition of SBGH Limited: Application for Merger Authorisation', p 206.

charges) while achieving the same level of profitability or, conversely, achieve greater profitability at the same pricing.

- 7 As others have recognised, there can be tension between properly ensuring stability via regulatory settings, and fostering competition, in Australia's financial markets.⁶ Indeed, the ACCC has previously identified that a variety of regulatory settings could impact the effectiveness of competition between the smaller banks and the majors.⁷ These regulatory settings continue to not only impede the ability of existing regional or smaller institutions to compete with the majors on the same level playing field, but could also impact the ability of new entrants to expand in terms of size or suite of product offerings to the size of a regional bank (let alone the majors).
- 8 BOQ acknowledges the Proposed Acquisition may have little impact on the pricing of the various product categories and will not significantly increase ANZ's immediate post-merger market share. However, the Proposed Acquisition could affect the Australian banking landscape by:
- (a) removing one more 'fringe competitor' (and with it, consumer choice and the 'vitality' of the competitive landscape);
 - (b) further consolidating the market power of ANZ and the oligopoly of 'major' banking providers more generally; and
 - (c) signalling a 'green light' for further acquisitions by the majors, leading to further market consolidation and restriction of consumer choice – particularly on non-price elements of products and services which are often the competitive advantage of the non-majors.
- 9 The Proposed Acquisition could further support an environment where the majors (by virtue of their size) continue to benefit from structural advantages against which smaller providers cannot always effectively compete. In such an environment there may be little incentive for new entrants, or existing smaller market participants, to pursue meaningful growth or expansion.

COMMENTS ON THE PROPOSED ACQUISITION

1 Regulatory settings can impact competition dynamics

- (a) As discussed above, in assessing previous mergers the ACCC has noted the important role that regional banks (as a collective) play in Australian financial markets.⁸ The ACCC has also expressed its preference for a larger variety of financial service providers in the sector.⁹
- (b) BOQ supports this view, in particular the importance of the role that regional banks play in promoting competition in non-price areas of banking, such as customer service, innovation, and their role in promoting engagement by financial service providers with their wider community, environmental issues and corporate social responsibility.

⁶ Productivity Commission, *Competition in the Australian Financial System*, (Inquiry Report, 29 June 2018) p 525.

⁷ For example the ACCC noted in its 2017 submission to the Productivity Commission that "...it could be argued that the policy insulates the large banks from competition. Arguably the effect of the "four pillars" policy in addition to the implicit guarantee and prudential measures entrenches the large banks' strong position in relevant markets and reinforces their "too big to fail" status. Whether this limits the ability of new entrants and smaller banks to constrain the large banks is a question we consider warrants further consideration" (p 10). We note it is unclear if the ACCC position has shifted in this regard.

⁸ See Points 1. and 2. above under "Background".

⁹ ACCC Submission to Productivity Commission Inquiry into Competition in the Australian Financial System, September 2017, p 18.

(c) As noted above, there can be tension between properly ensuring stability, and fostering competition, in Australia's financial markets. In these markets, the competitive landscape must take account of Australia's current regulatory settings, which include:

(i) *Risk weighting requirements and methods*

This includes differences between advanced (permitted to be used by the majors) vs standardised risk weighting (used by other ADIs) and between these weightings and capital treatment¹⁰. Under APRA's capital framework prior to 1 January 2023, mid-tier and smaller banks were required to hold significantly more capital against home loans relative to the majors due to the different risk weighting requirements and methods. APRA's new capital regime may reduce the disparity to some extent, however final outcomes for the industry from the new rules will not be known until later in 2023. Furthermore, any remaining disparity in capital costs between the majors and other market participants in turn reduces the latter's ability to compete on the same level playing field.

(ii) *Lower capital requirements relative to balance sheet / capital divergences between the majors and mid-tier / smaller banks*

Although the risks associated with a mortgage (and related responsible lending obligations) are not necessarily different between majors and regional or smaller banks, smaller lenders are still required to hold significantly more capital against home loans when they are meeting the same obligations and risks.

Most relevantly we note that following the Proposed Acquisition, Suncorp's mortgage book, which contains predominantly Queensland mortgages, will no longer be subject to the same capital risk requirements. Rather, as part of the ANZ mortgage book they will be subject only to ANZ's capital model, meaning that materially less capital may have to be held against the same mortgages. [CONFIDENTIAL]

(iii) *Scale advantages*

Regulatory requirements are uniform across the market(s), and are anchored around the majors' operating model/structure, as compared to smaller or regional banks. [CONFIDENTIAL] The costs of regulatory compliance are more readily absorbed within the capital and capacity envelopes of the majors.

(iv) *Debt funding costs (wholesale and debt deposits)*

The major banks generally have access to lower costs of funding in wholesale and debt markets by virtue of their lower credit ratings. By comparison smaller players generally face higher wholesale funding rates.

This advantage was enhanced by the Australian government response to the Global Financial Crisis,¹¹ which 'reinforced the perception that

¹⁰ Under the standard foundation IRB, banks model only the probability of default. Under the advanced IRB approach, banks can also model their own loss given default (LGD) and exposure-at-default (EAD) levels. See <https://www.risk.net/definition/internal-ratings-based-irb-approach>

¹¹ During the global financial crisis (GFC), the Australian government enacted three key policies to reinforce financial stability: the financial claims scheme; the wholesale funding guarantee; and residential mortgage backed security

government will bail out banks which are 'too big to fail' in times of stress.¹² The implicit government backing of the major banks provides these banks with an uplift in their credit rating and as a result, access to lower costs of funds.¹³

Moreover, in terms of deposits, regional banks have a structural disadvantage to the majors due to:

- (i) the relative size of their low cost deposits base (and conversely their reliance on higher cost/volatile retail funding sources);
- (ii) higher wholesale costs due to lower credit ratings; and
- (iii) the implicit value and protection of the 'too big to fail' mentality, which eases funding efforts on behalf of the majors.

[CONFIDENTIAL]

- (iv) *LMI requirements (in-house vs outsourced)*

Access to LMI is particularly important for smaller lenders as they are generally less able to bear the risk of high-leverage loans. However, smaller lenders typically do not have the scale to use in-house mortgage insurers which are typically used by the majors (eg ANZ LMI). With a limited choice of two main LMI operators in the market it is likely that smaller lenders pay higher LMI rates relative to majors.

- (d) ANZ itself notes in its submission the benefits it has over smaller players, stating the Proposed Acquisition will allow the merged entity to increase efficiencies. These include accessing lower cost wholesale funding, which will allow the entity to offer lower prices (interest rates and other charges) while achieving the same level of profitability or, conversely, achieve greater profitability at the same pricing.¹⁴
- (e) Given the role that size and scale play in delivering these advantages, continued concentration in the major banks could further support an environment that impacts the ability of remaining providers and new entrants to compete with the majors on a level playing field.

2 Consolidation of market power

- (a) BOQ acknowledges that the Proposed Acquisition will not result in a significant increase in concentration in some financial markets (if considered on a national basis). For example, concentration levels do not appear to increase substantially in national markets for home loans or deposits as a result of the Proposed Acquisition.
- (b) However, the Australian financial sector and particularly retail banking is already dominated by the majors.¹⁵ As the Productivity Commission noted in its 2018 report:¹⁶

'Australia's banking sector is an established oligopoly with a long tail of smaller providers. The four major banks as a group hold substantial market power, as a

purchases. Productivity Commission, *Competition in the Australian Financial System*, (Inquiry Report, 29 June 2018) p 182.

¹² See above.

¹³ See above at page 182 and 189.

¹⁴ ANZ, 'ANZ Proposed Acquisition of SBGH Limited: Application for Merger Authorisation', p 212.

¹⁵ ACCC Submission to Productivity Commission Inquiry into Competition in the Australian Financial System, September 2017, p 8.

¹⁶ Productivity Commission, *Competition in the Australian Financial System*, (Inquiry Report, 29 June 2018) p 37.

result of their size, strong brands and broad geographical reach. This is substantially supported by regulatory settings, which contribute to the major banks' structural advantages.'

BOQ does not consider that the situation has materially changed in the time since this report was released.

- (c) The major banks in Australia, if not ANZ alone, hold market power due to (amongst other factors):
- (i) scale (that delivers a more productive cost base as well as cost relativity advantage for necessary capital expenditure);
 - (ii) funding and capital advantages;
 - (iii) regulatory advantages;
 - (iv) brand recognition (including consumer confidence arising from the perception that they are 'too big to fail');
 - (v) barriers to meaningful expansion; and
 - (vi) strong representation in other distribution networks (eg. on mortgage broking panels).
- (d) ANZ asserts in its submission that it holds no significant market power (as an individual banking institution).¹⁷ However, the majors (including ANZ) have demonstrated their ability to withstand major market shocks in a manner that indicates market power (at a minimum on a collective basis).¹⁸
- (e) These structural advantages are reflected in pricing behaviour. In its 2018 report, the Productivity Commission identified that the regional and smaller banks and non-bank financial institutions typically follow the pricing trends set by the major banks, and are not a significant competitive pricing constraint on the major banks.¹⁹
- (f) As ANZ notes in its submission, smaller banks and non-bank lenders may compete with the majors on price in relation to very specific products, for example savings accounts but, generally, smaller competitors do not typically restrain the majors in relation to price. While their individual power in the market may change, as a group, the majors remain the dominant force in the market and are the 'price makers'.
- (g) This market power could be further consolidated for ANZ, and the majors collectively, by acquisitions that further increase their scale, such as the Proposed Acquisition. **[CONFIDENTIAL]** Relative to the counterfactual, this will make it even more difficult for regional banks and/or other providers to act as a competitive pricing constraint on the majors going forward, rather than broadly remaining 'price takers'.

3 Certain barriers to entry can still be high (and the possibility of meaningful expansion appears limited)

- (a) The ACCC has previously stated that it considers barriers to entry to national retail banking markets are high²⁰ due to, for example, regulatory, capital, reputational and consumer choice factors. BOQ considers that this is still the case.

¹⁷ ANZ, 'ANZ Proposed Acquisition of SBGH Limited: Application for Merger Authorisation', p 8.

¹⁸ Productivity Commission, *Competition in the Australian Financial System*, (Inquiry Report, 29 June 2018), p 10.; ACCC Submission to Productivity Commission Inquiry into Competition in the Australian Financial System, September 2017, p 8.

¹⁹ Productivity Commission, *Competition in the Australian Financial System*, (Inquiry Report, 29 June 2018) p 37.

²⁰ Noting some difference in barriers relevant to different products and services.

RESTRICTION OF PUBLICATION OF PART CLAIMED

- (b) A number of regulatory changes were designed to address these barriers and have allowed non-bank lenders, neo-banks and fin-techs an easier entry into national markets for specific products.
- (c) As ANZ outlined²¹ in its submission, this has resulted in lower barriers to entry and numerous new entrants, particularly in the home loan sector. Taking into account buy now pay later (**BNPL**), micro-lenders, charge cards, personal loans, fin-techs and wholly online banks, there is indisputably a large range of companies offering (primarily single) financial products and services. For example the fin-tech offerings are generally specific to particular target customers or to specific industry segments.
- (d) However, even in light of regulatory changes designed to mitigate barriers to entry, barriers to *meaningful growth and/or expansion* remain in place across the broader retail banking market (in terms of range of products and scale of business/market share). These factors, including those set out above (reputation, consumer stickiness, regulatory settings etc.), mean the merged entity is unlikely to be significantly constrained by the threat of timely entry and/or expansion by a large competitor, or a competitor of the same scale as a regional bank or larger.
- (e) For example, the majors continue to benefit from a scale advantage in service as they are able to process loans faster, through increased automation (supported by their scale and available funding). By contrast, smaller players may quickly win share through aggressive pricing, however do not necessarily have the infrastructure to service these customers effectively, potentially leading to customer churn. Funding also plays a role in a new entrant's ability to satisfy investor growth and expansion expectations within reasonable timeframes, particularly for fin-techs.
- (f) For this reason, BOQ submits the majors are unlikely to be overly constrained by neo-banks, fin-techs and small players in the short to medium term. The majors focus on offering the 'whole wallet' and securing a position as a customer's preferred institution across a range of products and services. Smaller players are unable to compete on this scale and as a result, many new entrants are expanding through partnership with the majors, rather than via 'organic' expansion and growth.
- (g) With the exception of Macquarie Bank, which is not a small start-up entrant but rather a well-resourced and well-backed player that has made a strategic decision to focus on a single product, new retail bank entrants have been broadly unsuccessful to date in growing to a scale and range of product offerings that approaches a regional bank.²²
- (h) Finally, BOQ notes and agrees that brokers have played a key role in facilitating access to the market for new entrants, particularly in the home loan product space²³. However, brokers do not completely offset all barriers to entry or fully constrain the majors.
- (i) While brokers have changed the home loan landscape by providing a scalable and accessible workforce, large players can and do still seek to win direct consumer business. Therefore, while brokers do allow smaller banks to access consumers and save them distribution costs, it does not eliminate the economies of scale still enjoyed by the majors.

²¹ ANZ, 'ANZ Proposed Acquisition of SBGH Limited: Application for Merger Authorisation', p 7.

²² The recent exit of a number of fin-techs and neo-banks via acquisition by (or partnerships with) larger banks and the seeming difficulties in growing scale and taking market share from the majors casts further doubt on the vigorousness of a broader competitive constraint.

²³ The new lending proportion of the market written by brokers has increased materially over the last 5 years to over 60%.

- (j) In addition, though brokers are bound by their best interests' obligations, if a bank is not 'on front screen' for a broker it is less likely to secure significant volumes. Whether a bank is 'on front screen' is based heavily on price and additional features (including 'time to yes') and majors have more resources and capability to invest in and manage broker relationships.

4 Potential impact on non-price factors – innovation

- (a) Smaller lenders in the banking sector can (and do) drive innovation, particularly in customer service and technology.
- (b) Small and mid-size financial service providers, including the regional banks, who have the agility and drive to innovate tech based non-price offerings for their customers contribute to innovation in the market. This is particularly the case in relation to offering innovative products (for example green home loans and investments). These non-price factors are increasingly important as banking and retail finance become increasingly digitised.
- (c) However, for reasons discussed above, smaller banks can struggle to invest capital into technological scale and expansion at the same rate as the majors. While technology costs have decreased in and of themselves, it remains capital intensive to establish and maintain a significant technology offering. **[CONFIDENTIAL]**
- (d) As a result, while it is true to say that small banks may be driving technological innovation, the extent to which they effectively constrain a major bank is not clear.
- (e) Nonetheless, the removal of a smaller player in this environment, and the subsequent acquisitions that may follow, may further erode the pressure on the majors to innovate. This effect will be heightened if the Proposed Acquisition provides a green light for further acquisitions of smaller players.

5 Reduction of competition with respect to small and medium sized enterprises (SME) and agribusiness (in local/state markets)²⁴

- (a) Although the relevant Australian product markets are predominantly national, it is arguable that there remain regional or state markets for agribusiness and SME products. The ACCC has previously identified the existence of these markets²⁵ and, while BOQ acknowledges that digitisation is increasing across all banking segments²⁶, it is not clear that SME and agribusiness customers can or will switch to online services with the same ease.
- (b) Customers who have traditionally been driven by serviced based-banking, are more likely to opt for a physical presence compared to online. There are customers for whom branches and local service providers are an important component of financial services. Online banking, call-centres, smart ATMs and Bank@Auspost are not necessarily substitutable for these customers,²⁷ and competition (particularly on service elements) occurs at a local level.

²⁴ In addition to SME and agribusiness, it is possible these arguments also apply to particular sub-sets of customers for whom the option to bank with a smaller lender, credit union, regional bank or 'anyone but the majors' is highly important.

²⁵ See for example, the ACCC assessment of the Commonwealth Bank and Colonial merger (2000).

²⁶ Improved digital access to internet banking and banking apps, has improved customer choice when it comes to how and when they transact with a bank. The last four years has seen digital offerings improve and increase customer choice to services and products.

²⁷ See for example ABC reporting on regional centres fighting against bank closures. ABC News, "Australian towns are fighting to hold on to their bank branches, as government flags review of replacement services", 20 December 2022. <https://www.abc.net.au/news/2022-12-20/regional-communities-facing-bank-closures/101788566>

- (c) Given that pricing is often set at a national level, the competitive impact arises from the potential loss of competition on customer service and consumer care dimensions of consumer choice. Regional business customers, particularly agribusiness customers, value specialised bankers with local knowledge. To a significant extent agribusiness customers in particular seek bankers with local knowledge and industry expertise, particularly when they have business lending requirements and the cyclical nature of funding for agricultural enterprise.
- (d) In this regard smaller regional banks like Suncorp are important drivers of competition with the majors and between themselves, with smaller banks generally seeking to distinguish themselves from the majors on product dimensions other than price. For example, at BOQ a relationship-based service model is a core competency underpinned by our Owner Manager network, specialised bankers and niche commercial lending segments.
- (e) Regional banks²⁸ often perform better overall in customer care and service levels than the majors. The importance of this as a feature of regional banking is evident in the commercial positioning of regional banks and the way in which customer care is centred.
- (f) In addition, the Proposed Acquisition could adversely impact the cost of competitor operations in regional areas by further raising the price for services that already represent a proportionally higher cost to small/regional players, such as cash in transit services. This will disproportionately impact customers of the SME and Agribusiness products.

6 The proposed counterfactual should be closely analysed

- (a) The ANZ submission proposes the relevant counterfactual is a world in which Suncorp remains independent and there is no possibility of acquisition by another buyer. It is on this basis that many of the ANZ submissions regarding public benefits are made.
- (b) The counterfactual as stated in the ANZ submission should be closely analysed. It is possible that alternative transactions could be available, and attractive, to the Suncorp Group Board in relation to Suncorp Bank.

7 The claimed public benefits are not sufficiently linked to the Proposed Acquisition

- (a) In BOQ's view, it is not clear that the public benefits generated by the Proposed Acquisition can and will only arise as a result of the transaction.
- (b) There is an inherent tension between ensuring stability, and fostering competition, in Australia's financial markets.²⁹ In this regard BOQ acknowledges that the Proposed Acquisition could contribute to increased financial security of the Australian system, although to what degree this would occur remains unclear. Moreover, it is not clear that this increase in stability will offset the potential competitive impact of further consolidation.
- (c) In relation to the other 'public benefits' ANZ submits will arise from the Proposed Acquisition, BOQ does not consider it is clear that:

²⁸ There are many examples available, see: The Bank Doctor, "Regional banks – Why SMEs prefer them to the Big Four", 27 May 2015, <http://thebankdoctor.org/why-regional-bankss-are-beating-the-big-4-in-the-fight-for-the-sme-dollar/>; Product Review, "Best Banks", <https://www.productreview.com.au/c/banks>

²⁹ Productivity Commission, *Competition in the Australian Financial System*, (Inquiry Report, 29 June 2018) p 525.

RESTRICTION OF PUBLICATION OF PART CLAIMED

- (i) Accessing lower cost wholesale funding on a stand-alone basis, including when not passing the savings on to the consumer, represents a true public benefit.³⁰
- (ii) The Queensland businesses which might benefit from “*certain levels of finance*” ANZ commits to “*make available*” would not receive similar (or better loans) in the absence of the acquisition, either from Suncorp, ANZ or another lender to a degree which makes this benefit dependent upon the Proposed Acquisition.
- (iii) Queensland’s disaster preparedness requires the establishment of an ANZ Disaster Preparedness Centre to a degree that this represents a true public benefit which would outweigh any competitive detriment.
- (iv) ANZ exploring the establishment of one or more 'Centres of Excellence' in Queensland represents a true public benefit which would outweigh any competitive detriment.

³⁰ ANZ, ‘ANZ Proposed Acquisition of SBGH Limited: Application for Merger Authorisation’, 2 December 2022, p 17.