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# ANZ / Suncorp Bank

Expert reply report of Patrick Smith

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RBB Economics, 17 May 2023

## **1 Introduction**

- 1 I have been instructed by Ashurst to prepare a second expert economic report in relation to the proposed acquisition by ANZ of Suncorp Bank from Suncorp Group (“**the Proposed Acquisition**”). My first report was lodged alongside the authorisation application on 2 December 2022.<sup>1</sup>
- 2 I am a Partner at RBB Economics, a firm that specialises in the economics of competition and regulation. I have extensive experience as an expert on economic issues, and in testifying as an expert in a variety of court and arbitration forums. My credentials are provided at Annex A to this report. My business address is 199 Bishopsgate, London, EC2M 3TY, United Kingdom.
- 3 I have been instructed to consider the following matters in this second report:
  - a. *“the impact of the separation costs and stranded costs borne by Suncorp Group on your assessment of whether the net cost savings set out in the workbook entitled ‘Synergies and one-off costs’ should be considered a public benefit of the proposed acquisition, and identify any changes in the analysis and opinions expressed in your Original Report.”* I address this question in Section 2 of this report.
  - b. *“the competitiveness of the supply of home loans and ANZ’s incentives to pass on cost savings to consumers in the form of better quality or lower priced services, by reference to information and data on the supply of home loans (set out in Documents 1-9 in Annexure A).”* I address this question in Section 3 of this report.
- 4 A copy of my letter of instructions is attached to this report as Annex B.
- 5 I have read the ‘Expert Evidence Practice Note – General Practice Note (GPN-EXPT)’ including the ‘Harmonised Expert Witness Code of Conduct’ and the ‘Concurrent Expert Evidence Guidelines’ (collectively described as the Practice Note), and I have complied with the Practice Note and agree to be bound by the Practice Note.
- 6 I confirm that I have made all the inquiries that I believe are desirable and appropriate and that no matters of significance that I regard as relevant have, to my knowledge, been withheld from this report.
- 7 In preparing this report, I relied on the materials identified in Annex C.
- 8 My opinions expressed in this report are based wholly or substantially on my specialised knowledge arising from my training, study or experience as set out in Annex A.
- 9 I have been assisted in the preparation of this report by Jack Mays, an Associate Principal at RBB Economics, and Emma Rooney, an Associate at RBB Economics. All the conclusions I reach in this report are my own.

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<sup>1</sup> Expert report of Patrick Smith, 1 December 2022.

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Signed



Patrick Smith

17 May 2023

## **2 The public benefits arising from operating cost savings**

- 10 In my first report, I was instructed to consider whether the net cost savings set out in the workbook entitled 'Synergies and one-off costs' ("**Synergies workbook**") should be considered a public benefit of the Proposed Acquisition.<sup>2</sup> These net cost savings took into account cost synergies, cost dis-synergies and one-off integration costs borne by ANZ.<sup>3</sup>
- 11 I considered that these net cost savings represented a productive efficiency gain and in turn should be considered a public benefit. In particular, I found that a large share of the synergies would come from the removal of duplicative fixed costs, followed by the greater use of automation and improved processes. Such savings would enable ANZ to provide a given set of services, to a given customer base, over a given time period, at a lower cost than Suncorp Bank would have done in the counterfactual.<sup>4</sup>
- 12 In addition, I considered that the vast majority of the net cost savings were likely to be merger-specific. The NPV of the net cost savings in the Synergies workbook (which took into account that the synergies would recur in perpetuity and that the longer it would take for savings to materialise the less valuable they would be in present value terms) was [REDACTED]. I considered that the cost savings related to branch closures that Suncorp Bank had already implemented in FY22 were unlikely to be merger-specific. After approximating the NPV of these non-merger-specific cost savings and deducting this from the net cost savings in the Synergies workbook, I estimated that the NPV of the net cost savings arising from the Proposed Acquisition was roughly [REDACTED].<sup>5</sup>
- 13 As I noted in my first report, the net cost savings in the Synergies workbook did not include any separation costs borne by Suncorp Group.<sup>6</sup>
- 14 For this second report, I have been instructed to assume that Suncorp Group would incur separation costs of \$500 million spread evenly over three years: \$166.7 million prior to completion of the Proposed Acquisition (i.e. FY23), \$166.7 million in Year 1 post-completion (i.e. FY24) and \$166.7 million in Year 2 post-completion (i.e. FY25).<sup>7</sup>
- 15 I have also been instructed to assume that Suncorp Group would incur stranded costs of \$40 million per annum in years 1 to 3 post-completion (i.e. FY24 to FY26). Stranded costs are expenses that are linked to the operations of the divested business but that cannot easily be eliminated after the divestment.<sup>8</sup> In the case of the Proposed Acquisition, I am instructed to assume that Suncorp Group would eliminate these stranded costs by Year 4 (i.e. FY27).<sup>9</sup>

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<sup>2</sup> Expert report of Patrick Smith, 1 December 2022, para 3a.

<sup>3</sup> Expert report of Patrick Smith, 1 December 2022, paras 36, 65 and 70.

<sup>4</sup> Expert report of Patrick Smith, 1 December 2022, paras 53-56 and 73.

<sup>5</sup> This was based on the midpoint of the low- and high-end estimates of the one-off integration costs in the Synergies workbook. I also showed that if one were (conservatively) to assume the high-end estimate of the one-off integration costs, the NPV of the net cost savings arising from the Proposed Acquisition would be roughly [REDACTED]. See Expert report of Patrick Smith, 1 December 2022, para 74.

<sup>6</sup> Expert report of Patrick Smith, 1 December 2022, p. 18, fn 71.

<sup>7</sup> See Annex B.

<sup>8</sup> Keienburg, G. et al., Don't Let Carve-Out Costs Compromise Value Creation, BCG, 3 June 2021.

<sup>9</sup> See Annex B.



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16 Table 1 below shows the NPV of the merger-specific cost savings after Suncorp's separation and stranded costs are deducted from the merger-specific net cost savings in the Synergies workbook. Assuming the midpoint of the integration cost estimates, I estimate the NPV to be approximately [REDACTED]. If I instead assume (conservatively) the high-end estimate of the integration costs, I estimate the NPV to be [REDACTED].

**Table 1: NPV of merger-specific total cost savings**

	NPV assuming midpoint of integration costs (\$m)	NPV assuming high-end estimate of integration costs (\$m)
Net synergies	[REDACTED]	[REDACTED]
Less:	[REDACTED]	[REDACTED]
Integration costs	[REDACTED]	[REDACTED]
Non-merger specific synergies	[REDACTED]	[REDACTED]
<b>Merger-specific ANZ cost savings</b>	[REDACTED]	[REDACTED]
Less:	[REDACTED]	[REDACTED]
Separation and stranded costs	[REDACTED]	[REDACTED]
<b>Merger-specific total cost savings</b>	[REDACTED]	[REDACTED]

Source: RBB analysis; Expert report of Patrick Smith, 1 December 2022, p. 21, Table 5; Annex B.

Notes: The NPV of the non-merger-specific synergies is roughly estimated by calculating its share of net synergies in full run-rate terms (i.e. [REDACTED]) and applying that share to the NPV of net synergies.

17 In my view, the above table shows that the merger-specific total cost savings would still be substantial after Suncorp's separation and stranded costs are deducted from the merger-specific net cost savings in the Synergies workbook.

18 I also note that, while Suncorp's separation and stranded costs affect the quantum of the public benefit associated with the operating cost savings, they would not affect the quantum of any cost savings that ANZ may have the incentive to pass on to consumers in the home loans market (as discussed in the next section). This is because these separation and stranded costs would be borne by Suncorp Group and not by ANZ.

### **3 Pass on of cost savings to consumers in the home loans market**

- 19 In my first report I was instructed to assess two claimed public benefits of the Proposed Acquisition. As well as an assessment of the net cost savings in the Synergies workbook (on which I elaborated in Section 2 above), my first report also included an assessment of whether the impacts on funding costs identified in the witness statement of Adrian Went (Group Treasurer, ANZ) would be considered a public benefit of the Proposed Acquisition.<sup>10</sup> My conclusion was that the claimed reduction in Suncorp Bank's cost of wholesale funding, as described in Mr Went's statement, was a productive efficiency gain and in turn a public benefit.<sup>11</sup> Moreover, I considered that these cost of funds savings would be merger-specific.<sup>12</sup>
- 20 In my first report, I considered that the consolidation of operations that would lead to the net cost savings in the Synergies workbook could directly benefit Suncorp Bank's customers if ANZ's services would be of higher quality than those of Suncorp Bank.<sup>13</sup>
- 21 I also considered the likelihood that each cost saving – the net cost savings in the Synergies workbook and the cost of funds saving – would be passed on in the forms of additional investments in quality or lower prices to consumers. This is because, as I acknowledged in my first report, *"the [ACCC's] Merger Authorisation Guidelines state that the ACCC may give more weight to benefits if they flow through to consumers or the wider community."*<sup>14</sup>
- 22 Firstly, I explained that as a matter of economic theory some pass on to consumers would be likely, even in the absence of competition from other banks. I explained that even without competition from other banks ANZ would have an incentive to pass some of its savings back to consumers in the form of additional investments in improving the quality of its service.<sup>15</sup> I also explained that the cost of funds saving can be characterised as a reduction in Suncorp Bank's marginal cost of lending and that as a matter of economic theory even a monopolist typically has incentives to pass on some portion of a marginal cost reduction in the form of lower prices.<sup>16</sup>
- 23 Secondly, I explained that *"a degree of competition amongst the remaining banks will give the merged entity an incentive to pass on a portion of its productive efficiency cost savings to consumers in the form of better quality or lower priced services"*.<sup>17</sup> The intuition behind this is simple. A monopolist that reduces its price or improves the quality of its product may attract additional customers who otherwise would not buy the monopolist's product, i.e. the monopolist may benefit from an increase in market demand. However, a firm that faces competition from rival firms and that reduces its price or improves the quality of its product may benefit from an increase in market demand and from additional sales won from rivals.

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<sup>10</sup> Expert report of Patrick Smith, 1 December 2022, para 3b.

<sup>11</sup> Expert report of Patrick Smith, 1 December 2022, paras 87-90.

<sup>12</sup> Expert report of Patrick Smith, 1 December 2022, paras 91-94.

<sup>13</sup> Expert report of Patrick Smith, 1 December 2022, para 17a.

<sup>14</sup> Expert report of Patrick Smith, 1 December 2022, para 99.

<sup>15</sup> Expert report of Patrick Smith, 1 December 2022, paras 80 and 98b.

<sup>16</sup> Expert report of Patrick Smith, 1 December 2022, para 96.

<sup>17</sup> Expert report of Patrick Smith, 1 December 2022, para 79.

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- 24 However, in my first report I acknowledged that an assessment of the likely degree of competition amongst banks post completion of the Proposed Acquisition was outside the scope of my instructions, and I stated that “[t]he strength of this incentive will depend on the intensity of competition that is likely to prevail post the Proposed Acquisition, which I understand is a factual matter being addressed in separate evidence.”<sup>18</sup>
- 25 For this second report, I have been instructed to consider the evidence regarding competition in Australia for the supply of home loans specifically and what implications this has for ANZ’s incentives to pass on cost savings to home loan customers in the form of better quality or lower priced services. The documents which Ashurst briefed to me for this second report are listed in Annexure A of my letter of instructions, which appears as Annex B to this report.
- 26 Based on this evidence, I am convinced that ANZ faces – and is likely to continue to face post-merger – effective competition in the supply of home loans. In particular, the evidence in my view shows that ANZ is facing competitive pressures, which are not driven by Suncorp, and furthermore that ANZ has shown that it is responsive to these competitive pressures. The effective competition in the supply of home loans that ANZ would likely continue to face post the Proposed Acquisition would provide it with a strong incentive to pass on cost savings to consumers in the form of better quality or lower prices.
- 27 I explain this in more detail below.

### 3.1 Competition in the supply of home loans

#### 3.1.1 Evidence that ANZ faces competitive pressures

- 28 Based on my review of the evidence, I consider that ANZ currently faces effective competitive pressure from rival suppliers of home loans. This finding is informed by the following key pieces of evidence in particular.
- 29 First, ANZ has lost market share to rivals over recent years.<sup>19</sup> I understand that the home loans market is large and has continued to grow.<sup>20</sup> However, over the past five years, ANZ’s share of this market has decreased from 16% in 2017 to 13% in September 2022.<sup>21 22</sup>
- 30 Second, ANZ data show that an increasing proportion of ANZ customers are refinancing, switching from their existing lender to another lender. The statement of Douglas John Campbell (General Manager of ANZ’s Australian home loans business) includes a chart

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<sup>18</sup> Expert report of Patrick Smith, 1 December 2022, para 79.

<sup>19</sup> I note that a firm can also have a stable market share and face intense competition. For example, a lender may respond very quickly to competitors offering new borrowers substantial discounts by offering new borrowers substantial discounts itself and, in this way, completely negate competitors’ attempts to win market share.

<sup>20</sup> Merger authorisation application, 2 December 2022, paras 7.8-7.11. See also Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-3, p. 7.

<sup>21</sup> Merger authorisation application, 2 December 2022, p. 131, Table 12.

<sup>22</sup> Between September 2022 and January 2023, ANZ’s share increased slightly from 13.0% to 13.2%, while Suncorp Bank’s share remained unchanged at 2.4%. See Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-2, p. 15, Exhibit 14a. As explained in section 3.1.3 below, this small increase in ANZ’s market share coincided with ANZ competing more aggressively for new and existing customers.



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showing an upward trend in the annual value of ANZ home loan customers lost to other lenders between the 12-month periods ending June 2020 and June 2022.<sup>23 24</sup>

31 This increase in ANZ customer switching is consistent with the market-wide increase in refinancing activity (i.e. customer churn) shown in Figure 1 of Mr Campbell's supplementary statement.<sup>25</sup> It is also consistent with a recent article published by the RBA, which found that "[m]any borrowers have also refinanced with a new lender, with major banks extending cashback offers to customers of around two to four thousand dollars."<sup>26</sup>

32 I note that, while the cost of funds savings would be realised immediately, the net cost synergies identified in the Synergies workbook would not begin to materialise until Year 4 post-completion.<sup>27</sup> While the pass-through of the cost of funds savings may be informed by the state of competition immediately post-completion, a relevant question in regard to the pass-through of the net cost savings in the Synergies workbook may therefore be whether ANZ is likely to face more or less competitive pressure in the long run. It becomes increasingly difficult to predict the future state of competition the further into the future one looks. However, if recent trends persist into the future then I would expect the home loans market to be at least as competitive, and likely more competitive than it is now. By way of a simple illustration, extrapolating the trends in market shares over the past five years to the next five years, the merged entity's market share would decrease from 15.4% in 2022 to 12.8% in 2027.<sup>28</sup>

### 3.1.2 Evidence that those competitive pressures are not driven by Suncorp Bank

33 Based on my review of the evidence, I consider that the competitive pressures outlined above are not being driven by Suncorp Bank. This finding is informed by the following key pieces of evidence in particular.

34 First, Suncorp Bank's market share has stayed relatively constant over the past five years, continuing to account for a small share of the total market, 2.6% in 2017 and 2.4% in 2022. In contrast, other non-major banks, such as Macquarie Bank, have gained significant market share in that time. Macquarie Bank's share increased from 1.8% in 2017 to 4.8% in 2022 (almost tripling its share in a growing market).<sup>29</sup>

35 Second, ANZ's data for the 12 months ending June 2022 show that customers who switch away from ANZ are more likely to switch to several other banks than they are to switch to Suncorp Bank. Suncorp Bank accounted for only [REDACTED] of switches away from ANZ (in terms of value), behind five other banks (CBA, Westpac, NAB, Macquarie Bank and BOQ).<sup>30</sup> This is

<sup>23</sup> Statement of Douglas John Campbell, 30 November 2022, p. 18, Figure 2.

<sup>24</sup> [REDACTED] See Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-2, p. 4, Exhibit 3c. As explained in section 3.1.3 below, this coincided with ANZ competing more aggressively for existing (as well as new) customers.

<sup>25</sup> Supplementary statement of Douglas John Campbell, 17 May 2023, p. 5, Figure 1.

<sup>26</sup> Carse, V. et al., Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2023, p. 70.

<sup>27</sup> Expert report of Patrick Smith, 1 December 2022, para 42.

<sup>28</sup> Based on the market shares in Table 12 of the Merger authorisation application, 2 December 2022, p. 131.

<sup>29</sup> Merger authorisation application, 2 December 2022, Table 12, p. 131.

<sup>30</sup> Merger authorisation application, 2 December 2022, para 7.42.

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direct evidence regarding the (lack of) closeness of competition between ANZ and Suncorp Bank.<sup>31</sup>

36 Third, Suncorp Bank has consistently had slower turnaround times than many of the other non-major banks. I understand from Mr Campbell's statement that turnaround times (in terms of time between the customer submitting an application to a lender and that customer receiving a decision from that lender) are an important source of differentiation between lenders, with borrowers and brokers more likely to choose a lender the shorter that lender's turnaround time.<sup>32</sup> An analysis carried out in July 2022 by Jarden (an investment and advisory group), which compared the average turnaround times of certain non-major lenders (such as AMP, BOQ, ING and Suncorp Bank) since September 2019, showed that Suncorp Bank almost always had the [REDACTED] average turnaround time.<sup>33</sup>

37 Fourth, having reviewed the home loan product comparison tables in the authorisation application, I do not find that Suncorp Bank's products, relative to those of third-party rivals, are uniquely comparable to ANZ's products in terms of product features (e.g. whether the product can come with a redraw facility, offset account or the ability to make additional repayments).<sup>34</sup> I do not find any evidence that the Parties products are uniquely substitutable (from a borrower perspective) in terms of features.

38 Fifth, I understand from Mr Campbell's statement that ANZ regularly monitors the home loan prices of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>35</sup> Moreover, the [REDACTED]  
[REDACTED]  
[REDACTED]<sup>36</sup>

39 Sixth, while I note that the headline rate for a loan is only one component of the effective rate paid by the borrower, and that the positioning of competitors' headline rates tends to fluctuate from week to week or month to month, I do not find that Suncorp Bank's pricing is particularly aggressive based on the ANZ internal documents briefed to me.<sup>37</sup>

a. In regard to standard variable rate loans, a comparison of 14 bank brands carried out by ANZ in July 2022 showed that Suncorp Bank had the [REDACTED] headline rate of the owner occupier, principal and interest loans; the [REDACTED] of the owner occupier, interest-only loans; the [REDACTED] of the investor, principal and interest loans; and [REDACTED] of the investor, interest-only loans.<sup>38</sup> A comparison of competitor quotes for standard variable rate loans, also in July 2022, showed [REDACTED]

<sup>31</sup> I understand that Suncorp Bank's home loan portfolio is weighted towards Queensland. I have therefore also considered the ANZ refinancing data specifically for Queensland, which covers October 2019 to December 2022. Excluding switches where the new lender was not identified and grouping subsidiaries by parent company, Suncorp Bank accounted for [REDACTED] of customers who switched away from ANZ (by value), behind CBA ([REDACTED]), Westpac ([REDACTED]) and NAB ([REDACTED]) and just in front of BOQ ([REDACTED]) and Macquarie Bank ([REDACTED]). See file 'Refinance\_Out\_OFI'.  
<sup>32</sup> Statement of Douglas John Campbell, 30 November 2022, para 91.

<sup>33</sup> Jarden, Launching the Jarden Mortgage Competition Tracker, 20 July 2022, p. 3.

<sup>34</sup> Merger authorisation application, 2 December 2022, pp. 248-250, tables 37-39.

<sup>35</sup> Statement of Douglas John Campbell, 30 November 2022, para 46(c).

<sup>36</sup> Also, [REDACTED]

<sup>37</sup> [REDACTED] See ANZ, Home Loans – Competitive Landscape and Returns Update, 14 December 2022, p.2.

<sup>38</sup> Statement of Douglas John Campbell, 30 November 2022, paras 23-27 and 60(b).

<sup>38</sup> Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-3, pp. 19-20.



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[REDACTED]  
[REDACTED]<sup>39</sup>

- b. In regard to fixed rate loans, a month-by-month comparison conducted by ANZ covering May to July 2022 showed that Suncorp Bank's rates were [REDACTED]<sup>40</sup>
- c. In regard to basic variable rate loans, a month-by-month comparison conducted by ANZ covering May to July 2022 showed that Suncorp Bank's rates were [REDACTED]<sup>41</sup> However, a more recent comparison covering October to December 2022 showed that Suncorp Bank's rates were [REDACTED]<sup>42</sup>

40 Additionally, my analysis of the rates advertised by banks between October 2022 and March 2023 (based on fortnightly price comparisons carried out by ANZ) indicates that Suncorp Bank did not compete particularly aggressively on price (relative to some other lenders) during that period. For a given type of home loan (i.e. standard variable, basic or fixed), borrower type (i.e. owner-occupier or investor) and repayment type (i.e. principal plus interest or interest only), Table 2 below names the bank that most often advertised the lowest rate during that period. In [REDACTED] did Suncorp Bank most often advertise the lower rate. Instead, the banks that most often advertised the lowest rate were [REDACTED]  
[REDACTED]

**Table 2: Lender that most often advertised the lowest rate, October 2022-March 2023**

	Owner occupier		Investor	
	Principal plus interest	Interest only	Principal plus interest	Interest only
Standard variable rate	[REDACTED]			
Basic variable rate	[REDACTED]			
Fixed (1 year)	[REDACTED]			
Fixed (2 years)	[REDACTED]			
Fixed (3 years)	[REDACTED]			
Fixed (5 years)	[REDACTED]			

Source: Fortnightly ANZ price comparison ("market scan") data between 10 October 2022 and 27 March 2023, extracted from fortnightly ANZ home loans pricing updates between 13 October 2022 and 30 March 2023.

Notes: The standard variable rates are the index/reference rates, the basic variable rates are the effective rates after discounting and the fixed rates are the effective rates after package discounts have been applied. Suncorp Bank does not offer a 4-year fixed rate home loan. Subsidiaries controlled by the same parent are grouped together.

<sup>39</sup> Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-3, p. 17.

<sup>40</sup> Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-3, p. 15.

<sup>41</sup> Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-3, p. 16.

<sup>42</sup> ANZ, Home Loans – Competitive Landscape and Returns Update, 14 December 2022, p. 8.



45 Use of discounts, cashback offers and other incentives (such as frequent flyer points) allows ANZ (like other home loan lenders) to compete aggressively for price-sensitive customers, where price-sensitive customers are likely to include both customers new to the market and existing customers considering switching to or from ANZ. According to the RBA, competition for these customers is currently strong. A report published by the RBA in March 2023 stated that “[d]uring 2022, banks competed strongly for new and externally refinancing borrowers, particularly those of higher credit quality, in addition to adjusting discounts to retain existing borrowers” and that “around 30 per cent of variable-rate borrowers have renegotiated a lower rate on their housing loan with their existing lender since May [2022].”<sup>50</sup>

46 Fourth, Mr Campbell's statement describes how ANZ recently invested in improving its turnaround times in response to a decline in the growth of ANZ's home loan book. According to Mr Campbell, the decline in ANZ's home loan growth in late 2020 was in large part due to an increase in ANZ's turnaround times, which began around March 2020.<sup>51</sup> To improve its turnaround times, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] as evidenced by Figure 5 of Mr Campbell's statement.<sup>53</sup>

47 Lastly, I have seen no evidence that these competitive responses by ANZ have been targeted at (or driven as responses to) Suncorp Bank. Recent ANZ data show that ANZ won few home loan customers from Suncorp Bank. Suncorp Bank customers accounted for only [REDACTED] of refinancing to ANZ in the 12 months ending June 2022, with customers from Westpac ([REDACTED]), CBA ([REDACTED]), NAB ([REDACTED]), Macquarie Bank ([REDACTED]) and ING ([REDACTED]) all accounting for more.<sup>54</sup>

**3.2 ANZ's incentives to pass on cost savings to home loan customers**

48 The strong competition for the supply of home loans that ANZ would likely face post the Proposed Acquisition would provide it with a strong incentive to pass on cost savings to consumers in the form of better quality and/or lower prices. By passing on some of these cost savings, ANZ could expect to win customers from other lenders (or retain customers that would otherwise be won by other lenders), thereby increasing the gains from passing on some of those cost savings.

49 Based on the evidence I have reviewed in preparation of this second report, I consider that the merger-specific cost savings that I discussed in the first report (namely, the net cost savings in the Synergies workbook and the cost of funds savings) could in practice be passed through to home loan customers in the following ways.

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<sup>50</sup> Carse, V. et al., *Developments in Banks' Funding Costs and Lending Rates*, Bulletin, March 2023, p. 70.  
<sup>51</sup> Statement of Douglas John Campbell, 30 November 2022, para 96.  
<sup>52</sup> Statement of Douglas John Campbell, 30 November 2022, para 97. See also Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-1, p. 17.  
<sup>53</sup> Statement of Douglas John Campbell, 30 November 2022, p. 23, Figure 5.  
<sup>54</sup> Merger authorisation application, 2 December 2022, pp. 141-142, Table 13.



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- 50 Firstly, the cost savings could be passed on to some degree via lower prices, which could take the form of lower headline rates, greater discounts, lower fees and/or more generous incentives (e.g. cashback offers, frequent flyer points, etc.), relative to the counterfactual in which Suncorp Bank continued to be owned and operated by Suncorp Group.
- 51 Based on the evidence, I consider pass-on via ANZ's pricing to be the most likely mechanism for pass-on in the case of the Proposed Acquisition, both in relation to the cost of funds savings and the net cost savings in the Synergies workbook (i.e. operating cost savings).
- 52 Mr Campbell states that one of the key metrics that ANZ considers when making home loan pricing decisions is the cost of funds.<sup>55</sup> Another key metric that Mr Campbell lists is the net interest margin ("**NIM**"), which itself is influenced heavily by ANZ's cost of funds. This is because the NIM on a home loan is equal to the effective rate charged to the customer minus ANZ's cost of funds, meaning if ANZ's cost of funds increases, the NIM decreases.<sup>56</sup>
- 53 Additionally, based on my review of the internal documents briefed to me, I understand that ANZ takes into consideration both the cost of funds and operating expenses when making pricing decisions affecting home loans. It does so by taking into consideration the "fully costed" return on equity ("**ROE**") for new home loans. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]<sup>58</sup>
- 54 Cost of funds and operating expenses both impact the fully costed ROE. In this regard, I understand that:
- the fully costed ROE for a loan is equal to the net income from the loan divided by the amount of capital that the bank absorbs (based on regulations and the bank's own risk modelling);
  - the net income from the loan is equal to the net interest income from the loan minus costs associated with the loan, costs allocated to the loan and company income tax;
  - the net interest income is equal to the interest income from the loan minus the cost of funds associated with the loan; and
  - the costs allocated to the loan include an allocation of operating expenses.<sup>59</sup>

55 [REDACTED]

<sup>55</sup> Statement of Douglas John Campbell, 30 November 2022, para 46(b).

<sup>56</sup> Merger authorisation application, 2 December 2022, p. 243.

<sup>57</sup> Statement of Douglas John Campbell, 30 November 2022, para 90(a). See also Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-2, p. 1.

<sup>58</sup> Statement of Douglas John Campbell, 30 November 2022, para 90(b). See also Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-3, p. 9.

<sup>59</sup> See, for example, ANZ, Home Loans – Competitive Landscape and Returns Update, 14 December 2022, p. 4.

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[REDACTED]

56 It follows from the above that a reduction in cost of funds and/or operating costs would increase the fully costed ROE for new home loans. This means that, if ANZ's pricing policy was to ensure that the fully costed ROE on new home loans exceeded the cost of capital, ANZ's pricing team could recommend approvals of lower-priced home loans in response to a reduction in cost of funds and/or operating expenses (which would help drive customer acquisition and retention), while continuing to earn a fully costed ROE in excess of the cost of capital.

57 Recently, in line with ANZ's strategy to grow its home loan portfolio in FY23, [REDACTED] [REDACTED]<sup>62</sup>  
However, during this period, ANZ has still made decisions dependant on metrics that factor in the cost of funds and operating costs.

58 In particular, [REDACTED] [REDACTED]<sup>63</sup>

[REDACTED]

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<sup>60</sup> See Annex B.  
<sup>61</sup> Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-2, p. 5.  
<sup>62</sup> ANZ, Home Loans – Competitive Landscape and Returns Update, 14 December 2022, pp. 1 and 5.  
<sup>63</sup> ANZ, Home Loans – Competitive Landscape and Returns Update, 14 December 2022, p. 2.  
<sup>64</sup> Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-2, p. 5.  
<sup>65</sup> ANZ, Home Loans – Competitive Landscape and Returns Update, 14 December 2022, p. 4.  
<sup>66</sup> Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-2, p. 5.  
<sup>67</sup> Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-3, p. 5.  
<sup>68</sup> ANZ, Home Loans – Competitive Landscape and Returns Update, 14 December 2022, p. 2.  
<sup>69</sup> Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-3, p. 5.



## RESTRICTION OF PUBLICATION CLAIMED

- 59 Importantly, given the adverse impact on business performance of low-ROE home loan growth recently, ANZ's strategy of focussing on growing home loan volumes could change, leading to ANZ only approving pricing that achieves a fully costed ROE for new home loans in excess of the cost of capital. An analysis presented to ANZ's Board in December 2022 showed that the level of discounting required to achieve ANZ's targeted growth was having an adverse impact on ANZ's revenue and NIM.<sup>70</sup> More recently, in a presentation to ANZ's Board in May 2023, it was acknowledged that ANZ's focus on growing its home loan portfolio may need to change if the fully costed ROE on new home loans does not return to a level above the cost of capital.<sup>71</sup> Shayne Cary Elliott (CEO of ANZ), in his supplementary statement, also talks of how to write business with returns below the cost of capital for a sustained period would not be an "*economically rational*" way to increase market share and how ANZ's strategy is "*not static*".<sup>72</sup> This emphasises the importance of the cost savings arising from the Proposed Transaction to ANZ's medium-to-long-term competitiveness in the market for home loans.
- 60 The second way in which the cost savings could be passed on to home loan customers, in theory at least, is via quality-enhancing investment (for example, investment in further improving turnaround times). A cost saving improves the rate of return on any investment, which in theory could lead to some quality-enhancing investments that otherwise would not be made.

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<sup>70</sup> ANZ, Home Loans – Competitive Landscape and Returns Update, 14 December 2022, p. 6.  
<sup>71</sup> Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-3, p. 8.  
<sup>72</sup> Supplementary statement of Shayne Cary Elliott, 17 May 2023, paras 62-63.

**Annexes**

**A CV of Patrick Smith**

## RESTRICTION OF PUBLICATION CLAIMED

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

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

His expert witness experience includes:

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

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

## RESTRICTION OF PUBLICATION CLAIMED

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

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

### Qualifications

- 2003 OXFORD UNIVERSITY  
M.Sc. Economics for Development
- 2002 OXFORD UNIVERSITY  
MA in Economics and Management (First Class)
- 2000 UNIVERSITY OF CAPE TOWN  
M.Sc. in Chemical Engineering
- 1998 UNIVERSITY OF CAPE TOWN  
B.Sc. in Chemical Engineering (First Class Honours)

### Selected prizes and awards

- 2003** Thesis prize, MSc in Economics for Development, Oxford
- 2000** Rhodes Scholarship, Zimbabwe and St John's College, Oxford
- 1998** Sasol Award and Malan Gold Medal (University of Cape Town, 1st Prize in Chemical Engineering), Thesis Prize, Design Project Prize
- 1995** Murray MacDougall Scholarship, Triangle Sugar Corporation Ltd.

### Career details

- 2012 – present **RBB Economics**  
*Partner* (previously *Principal*)
- 2003 – 2012 **LAW AND BUSINESS ECONOMICS (later NERA ECONOMIC CONSULTING)**



## RESTRICTION OF PUBLICATION CLAIMED

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

### Expert witness work – litigation, mediation and arbitration

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

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



## RESTRICTION OF PUBLICATION CLAIMED

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

## RESTRICTION OF PUBLICATION CLAIMED

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

## RESTRICTION OF PUBLICATION CLAIMED

- **ACCC v trivago (2019)**

- Australian Competition and Consumer Commission v trivago N.V.. Federal Court of Australia, VID1034/2018.
- Misleading advertising. Online hotel price comparison services.
- Expert report submitted, oral testimony.
- Complaint upheld.

- **Gas Users Group v NERSA (2019)**

- High Court, Gauteng Division, Pretoria, Case No.: 57506/13 (4 October 2016); Supreme Court of Appeal (South Africa); *PG Group & others v NERSA* (150/2017) [2018] ZASCA 56, (10 May 2018), Constitutional Court of South Africa, *National Energy Regulator of South Africa and Sasol Gas Limited vs PG Group & Others* ZACT Case No: CCT 131/18
- Piped gas price regulation methodologies, fair terms for access to gas, regulatory review.
- Expert reports submitted.

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

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

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

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

*'...(W)hat makes the choice of Sasol Gas' comparators so unsuitable is that they include the very alternative energy sources that Sasol Gas, as a monopolist, has already taken into account when increasing gas prices without regard to costs, up until the point allowed by these weak outside options."*

- SCA decision largely upheld by the Constitutional Court.

- **CCSA v NPC and others (2019)**

- The Competition Commission of South Africa and NPC CIMPOR (Pty) Ltd, AfriSam (South Africa) (Pty) Ltd, Lafarge South Africa (Pty) Ltd, and PPC Co Ltd. CC Case No.2008Sep3988, CT Case Nos. 63/CR/Sep09, 09/CR/Jan07 and CR206Feb15, and Competition Appeal Court Case No: 178/CAC/Dec/19.
- Complaint referral, alleged infringement of the Competition Act, Section 4(1)(b)(i) and (ii) (price fixing and market allocation). Cement and cementitious products.
- Expert report submitted, oral testimony, including concurrent evidence. Complaint dismissed, citing with approval Mr Smith's oral evidence: *"As Mr Smith*



## RESTRICTION OF PUBLICATION CLAIMED

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

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

## RESTRICTION OF PUBLICATION CLAIMED

- Complaint referral, alleged infringement of the Competition Act, Section 4(1)(b)(i) (price fixing). Landfill site management and waste management services.
- Expert report submitted, oral testimony. Administrative penalty applied, accepting almost all of Enviroserv's submissions on the quantum of the penalty, and noting the contribution of Mr Smith "*The evidence of Mr Smith [...] is the only economic evidence of the effects of the agreement on Enviroserv's pricing*".
- **Foskor (Pty) Limited and Omnia Group (Pty) Limited Mediation and Arbitration (2018)**
  - Mediation and arbitration following the settlement of an excessive pricing investigation, (Case No: 43/CR/Aug10: The Competition Commission South Africa vs Foskor (Pty) Ltd.)
  - Appointed as the independent economic expert, who had to advise the Mediator, and together with the Mediator had to prepare a report to make a determination of phosphoric acid pricing.
- **Netcare / Lakeview (2018)**
  - Netcare Hospitals (Pty) Ltd/Lakeview Hospital, , CC Case No: 2017Jul001, CT Case No: IM193Oct17
  - Intermediate merger. Private hospital operations.
  - Expert report submitted, concurrent oral testimony (hot tub). Merger cleared subject to conditions.
- **Ocean Network Express container liner joint venture (2018)**
  - Competition Tribunal, case number IM091JUL17, Container Liner Joint Venture of Nippon Yusen Kabushiki Kaisha ("NYK"), Mitsui O.S.K. Lines Ltd. ("MOL") and Kawasaki Kisen Kaisha, Ltd. ("K-Line").
  - Merger inquiry. Container liner shipping, car carrier and bulk shipping services, spill-over coordinated effects.
  - Expert report. Merger cleared subject to conditions.
- **Tabcorp Holdings Limited / Tatts Group Limited (2017)**
  - Australian Competition Tribunal, ACT 1 of 2017, taken on review to the Federal Court, returned to the Australian Competition Tribunal.
  - Merger inquiry. Wagering, racing media, net economic effects.
  - Expert report and oral testimony (hot tubs). Merger cleared by the ACT, subject to pre-announced divestment of Odyssey gaming monitoring business in Queensland. Reviewed by the Federal Court and cleared again by the ACT, citing with approval Mr Smith's expert evidence: "*As noted by Mr Smith in his expert reply report:*

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



## **RESTRICTION OF PUBLICATION CLAIMED**

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

## RESTRICTION OF PUBLICATION CLAIMED

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

## RESTRICTION OF PUBLICATION CLAIMED

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



## RESTRICTION OF PUBLICATION CLAIMED

- FRAND terms for access to intellectual property. Dominance, pricing conduct, and abuse of dominance; competitive justification, net effect on competition.
- Expert report submitted in response to application for interim relief. Interim relief application denied.
- **Satellite transmission litigation (2013)**
  - Anticipated action in the High Court (England and Wales), relating to an ICC arbitration.
  - Exclusionary abuse (Art 101 and 102 TFEU). Market definition, economies of scale, competitive tender processes, incentives to exclude, effect on competition.
  - Settled.
- **Bread cartel (follow on damages, class action) (2013)**
  - Competition Tribunal: Pioneer Foods, Case No. 15/CR/Feb07 and 50/CR/May08.
  - Western Cape High Court: case number 25302/2010, 26 November 2011.
  - Supreme Court of Appeal: Children's Resource Centre Trust v Pioneer Food, (50/2012)[2012] ZASCA 182 (29 November 2012).
  - Supreme Court of Appeal: Mukaddam and Others v Pioneer Food and Others (49/2012) [2012] ZASCA 183, Constitutional Court: Mukaddam and Others v Pioneer Foods and Others, Case CCT 131/12 [2013] ZACC 23.
  - Expert reports submitted. Class action cartel damages litigation. Settled.
- **Gold Circle/Kenilworth Racing (2012)**
  - Kenilworth Racing (Pty) Ltd / Gold Circle (Pty) Ltd (South African Competition Commission, CC Case No.: 2011DEC0429); The Thoroughbred Horseracing Trust / Kenilworth Racing (Pty) Ltd (South African Competition Commission, CC Case No.: 2011DEC0427); (Competition Tribunal, CT Case No: 36/AM/APR12)
  - Intermediate merger. Horseracing administration and betting.
  - Expert report and oral testimony for the merging parties. Merger approved subject to employment condition.
- **Thaba Chueu/SamQuarz (2012)**
  - Thaba Chueu Mining (Pty) Ltd / Samquarz (Pty) Ltd (South African Competition Commission, CC Case No 2011OCT0291; South African Competition Tribunal, CT Case No 10/Am/JAN12).
  - Intermediate merger. Mining, silica, silicon metal and ferrosilicon.
  - Expert report and oral testimony for the merging parties, merger approved subject to conditions.

## **RESTRICTION OF PUBLICATION CLAIMED**

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

## RESTRICTION OF PUBLICATION CLAIMED

- Expert report in anticipation of litigation under Art 101 TFEU.
- **Universal Music Group/Vale Music (2006)**
  - Spanish TDC Phase II merger, for merging party. Expert submissions. Merger approved.

### Administrative proceedings

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

- **Idwala excessive pricing complaint (2020).** Complaint by the Competition Commission of South Africa against Idwala Industrial Holdings Limited, 2017Jan0042. Excessive pricing complaint, calcium carbonate products. Reports prepared, analysis submitted, oral meetings with the SACC. Complaint non-referred.
- **IRL/Mapochs (2020).** IRL (South Africa) Resources Investments (Pty) Ltd and Mapochs Mine (Pty) Ltd. Competition Tribunal, Case No: SM148Jul18. Merger, approved subject to conditions.
- **Isuzu/UD Trucks (2020).** Competition Tribunal of South Africa. Case no: LM070Jul20. Merger cleared unconditionally.
- **PepsiCo/Pioneer Foods (2020).** SIMBA (PTY) LTD/ PIONEER FOOD GROUP LIMITED. South African Competition Commission and Competition Tribunal, Case No: LM108Sep19. FMCGs. Merger approved, subject to conditions.
- **Kwande/Nampak (2020).** Kwande Capital (Pty) Ltd and the glass packaging business and plant of Nampak Glass, a division of Nampak Products Limited. Competition Commission. Merger, approved subject to conditions.
- **Asahi/CUB (2020).** Asahi Group Holdings – proposed acquisition of Carlton & United Breweries, ACCC Merger Investigation. Beer and cider. Merger approved, subject to conditions.
- **ANZ/Graincorp (2019).** ANZ Terminals Pty Ltd - proposed acquisition of GrainCorp Liquid Terminals, ACCC Merger Investigation. Bulk liquid storage. Merger approved, subject to conditions.
- **ASF/SIS (2019).** Mphome Agric (Pty) Ltd and The business being disposed of by Silicon Smelters (Pty) Ltd. 2019Apr0023. Competition Commission of South Africa, merger investigation. Forestry. Reports prepared, analysis submitted, oral meetings with the SACC. Merger approved unconditionally.
- **Mpact/Seyfert (2019).** Rebel Packaging (Pty) Ltd/Seyfert Corrugated Western Cape (Pty) Ltd. Competition Tribunal, Case No: IM002Apr19. Manufacture of corrugated paper



## RESTRICTION OF PUBLICATION CLAIMED

and paperboard and of containers of paper and paperboard. Reports prepared, analysis submitted. Merger approved conditionally.

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

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

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



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

### Selected publications and presentations

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

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

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



**B Letter of instructions**

## RESTRICTION OF PUBLICATION CLAIMED

Our ref: [REDACTED]  
Partner: Tihana Zuk  
Direct line: [REDACTED]  
Email: [REDACTED]  
Contact: John McKellar  
Direct line: [REDACTED]  
Email: [REDACTED]

17 May 2023

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Patrick Smith  
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101 Collins Street  
Melbourne, VIC, 3000



Dear Mr Smith

### Letter of instructions – ANZ / Suncorp Bank proposed transaction

We refer to our letter of engagement dated 24 August 2022 and our letter of instructions dated 1 December 2022.

We previously sought your expert opinion, in the form of a written report, in connection with the Authorisation Application, and you prepared a report dated 1 December 2022 (**Original Report**).

On 4 April 2023, the ACCC published a Statement of Preliminary Views (**SOPV**). The SOPV addresses, among other things, the public benefits claimed in the Authorisation Application.

As part of the ACCC's public consultation process in relation to the Authorisation Application, the ACCC has sought submissions from third parties regarding the Proposed Transaction. Relevantly, Bendigo and Adelaide Bank (**BEN**) has made a submission to the ACCC dated 3 March 2023, a public version of which has been made available on the ACCC's public register (**BEN Submission**). The BEN Submission addresses, among other things, cost synergy aspects of your Original Report.

The purpose of this letter is to confirm your instructions to prepare a supplementary expert report in this matter, in light of the SOPV, and to confirm the questions that your supplementary report is to address.

#### 1. INSTRUCTIONS

1.1 You are instructed to prepare a further written report, which addresses the matters raised in the SOPV in so far as they relate to the questions asked of you in our letter of instructions of 1 December 2022, and the opinions set out in your Original Report. In particular, please consider:

- (a) the impact of the separation costs and stranded costs borne by Suncorp Group on your assessment of whether the net cost savings set out in the workbook entitled 'Synergies and one-off costs' should be considered a public benefit of the proposed acquisition, and identify any changes in the analysis and opinions expressed in your Original Report; and

## **RESTRICTION OF PUBLICATION CLAIMED**

- (b) the competitiveness of the supply of home loans and ANZ's incentives to pass on cost savings to consumers in the form of better quality or lower priced services, by reference to information and data on the supply of home loans (set out in Documents 1-22 in Annexure A).

### **2. BACKGROUND DOCUMENTS, FACTS AND ASSUMPTIONS**

2.1 In preparing your supplementary report, please rely on the documents listed in Annexure A, the figures in Annexure B and the assumptions set out in this section 2.

2.2 In relation to paragraph 1.1(a), please have specific regard to the assumptions in paragraphs 2.4(a) and 2.4(b).

2.3 In relation to paragraph 1.1(b) please have specific regard to:

- (a) the assumptions provided in paragraph 2.4(c) and 2.4(d) below, relating to how ANZ factors fixed costs into its home loan pricing.
- (b) the Authorisation Application (document 1 listed in Annexure A, in particular, paragraphs 6.3-6.36, and 7.1-7.52); and
- (c) documents 2-22 listed in Annexure A.

2.4 Please assume:

- (a) that Suncorp Group would incur separation costs of \$500 million spread evenly over three years: \$166.7 million prior to completion of the Proposed Acquisition (i.e. FY23), \$166.7 million in Year 1 post-completion (i.e. FY24) and \$166.7 million in Year 2 post-completion (i.e. FY25). The NPV of those costs is shown in Annexure B.
- (b) that Suncorp Group would incur stranded costs of \$40 million per annum in years 1 to 3 post-completion (i.e. FY24 to FY26). The NPV of those costs is shown in Annexure B.

(c) [Confidential to ANZ] [REDACTED]

(d) [REDACTED]

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

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



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- 3.2 Accordingly, we ask that you review the requirements for expert reports set out in the Federal Court's Expert Evidence Practice Note (GPN-EXPT) (**Practice Note**), which includes the Harmonised Expert Witness Code of Conduct (**Code**). A Copy of the Practice Note (including Code) is available at this link: <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-expt>
- 3.3 We ask that you prepare your expert report in accordance with the requirements of the Practice Note and the Code. You are expected to be objective, professional and to form an independent view regarding matters relevant to your analysis. It is important that you carefully read and comply with the Code.
- 3.4 We note that under the Code, you report must clearly state the following:
- (a) your name and address;
  - (b) an acknowledgement that you have read the Code and agree to be bound by it;
  - (c) your qualifications as an expert to prepare the report;
  - (d) the assumptions and material facts on which each opinion expressed in the report is based (this letter of instructions may be annexed);
  - (e) the reasons for and any literature or other material utilised in support of each such opinion;
  - (f) (if applicable) that a particular question, issue or matter falls outside your field of expertise;
  - (g) any examinations, tests or other investigations on which you have relied, identifying the person who carried them out and that person's qualifications;
  - (h) the extent to which any opinion which you have expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
  - (i) a declaration that you have made all the inquiries which you believe are desirable and appropriate (save for any matter identified explicitly in the report), and that no matters of significance which you regard as relevant have, to your knowledge, been withheld from the court;
  - (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
  - (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
  - (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.
4. **CONFIDENTIALITY**
- 4.1 You must not disclose or discuss any of our correspondence or instructions, or any of your work products, with any third parties. This duty of confidentiality will continue beyond the conclusion of your instructions.
- 4.2 Please ensure that you keep all documents (including electronic documents) relating to these instructions confidential and separate from your other files.

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- 4.3 Any documents you prepare under this retainer, except for your final report, should be marked as follows: "*Confidential and subject to legal professional privilege*".
- 4.4 All communications in relation to this matter, whether verbal or written, should be directed to Ashurst, with attention to Tihana Zuk.
- 4.5 To the extent your report refers to confidential information in Documents 5 or 6, or to any information highlighted as confidential in Annexure A or in Document 1, please:
- (b) include the words "**RESTRICTION OF PUBLICATION CLAIMED**" in the header of each page of your report; and
  - (c) highlight any information confidential to ANZ in yellow, and highlight any information confidential to Suncorp Bank in green. We may provide you with further instructions as to specific material in your report that should be highlighted as confidential, once you have prepared it.

## **5. CONFLICT OF INTEREST**

- 5.1 As an independent expert, it is important that you are free from any actual or possible conflict of interest. This includes ensuring that you have no connection with any other party which would prevent you from preparing your analysis in an objective and independent manner.
- 5.2 We confirm our understanding that you have no conflicts of interest in this matter. Please inform us immediately if you do become aware of a conflict or potential conflict.

## **6. NEXT STEPS**

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

Your sincerely



**Ashurst**

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### ANNEXURE A - DOCUMENTS

No.	Document description
1.	Authorisation Application, 2 December 2022 (Confidential Version)  This document contains <b>CONFIDENTIAL</b> information.
2.	Witness statement of Douglas John Campbell (and exhibits), 30 November 2022 (Confidential Version)  This document contains <b>CONFIDENTIAL</b> information.
3.	Supplementary witness statement of Douglas John Campbell, 17 May 2023 (Confidential Version)  This document contains <b>CONFIDENTIAL</b> information.
4.	Supplementary witness statement of Shayne Elliott (and exhibits), 17 May 2023 (Confidential Version)  This document contains <b>CONFIDENTIAL</b> information.
5.	Jarden Mortgage Competition Tracker (20 July 2022)  This document is <b>CONFIDENTIAL</b> .
6.	ANZ, 'Refinancing in and out by top 10 home loan providers in Queensland' data  This document is <b>CONFIDENTIAL</b> .
7.	ACCC Statement of Preliminary Views
8.	Bendigo and Adelaide Bank Submission (public version), 3 March 2023 (Public version)
9.	Stephen King expert report prepared for Bendigo and Adelaide Bank (public version), , 3 March 2023
10.	ANZ, Home Loans Pricing Fortnightly update, 13 October 2022  This document is <b>CONFIDENTIAL</b> .
11.	ANZ, Home Loans Pricing Fortnightly update, 27 October 2022  This document is <b>CONFIDENTIAL</b> .
12.	ANZ, Home Loans Pricing Fortnightly update, 10 November 2022

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This document is **CONFIDENTIAL**.

13. ANZ, Home Loans Pricing Fortnightly update, 24 November 2022

This document is **CONFIDENTIAL**.

14. ANZ, Home Loans Pricing Fortnightly update, 7 December 2022

This document is **CONFIDENTIAL**.

15. ANZ, Home Loans Pricing Fortnightly update, 22 December 2022

This document is **CONFIDENTIAL**.

16. ANZ, Home Loans Pricing Fortnightly update, 19 January 2023

This document is **CONFIDENTIAL**.

17. ANZ, Home Loans Pricing Fortnightly update, 2 February 2023

This document is **CONFIDENTIAL**.

18. ANZ, Home Loans Pricing Fortnightly update, 16 February 2023

This document is **CONFIDENTIAL**.

19. ANZ, Home Loans Pricing Fortnightly update, 2 March 2023

This document is **CONFIDENTIAL**.

20. ANZ, Home Loans Pricing Fortnightly update, 16 March 2023

This document is **CONFIDENTIAL**.

21. ANZ, Home Loans Pricing Fortnightly update, 30 March 2023

This document is **CONFIDENTIAL**.

22. ANZ, Home Loans Pricing Fortnightly update, 13 April 2023

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## C Table of materials

The below table lists the documents upon which I have relied in the preparation of this report (excluding my first report). Alongside the name of each document (as it appears in this report), I also list the name of the corresponding file (in the case of a document that has been briefed to me) or the URL (in the case of a publicly available document).

**Table 3: Documents relied upon for this report**

<b>Name of document</b>	<b>Name of file/URL</b>
ANZ, Home Loans – Competitive Landscape and Returns Update, 14 December 2022	Board - Home Loans - Delivering Growth update - December 2022 Final_amended
Carse, V. et al., Developments in Banks' Funding Costs and Lending Rates, Bulletin, March 2023	<a href="https://www.rba.gov.au/publications/bulletin/2022/mar/developments-in-banks-funding-costs-and-lending-rates.html">https://www.rba.gov.au/publications/bulletin/2022/mar/developments-in-banks-funding-costs-and-lending-rates.html</a>
Fortnightly ANZ home loans pricing updates between 13 October 2022 and 30 March 2023	HL Pricing Fortnightly Meeting 02 March 2023
	HL Pricing Fortnightly Meeting 10 November 2022
	HL Pricing Fortnightly Meeting 13 October 2022
	HL Pricing Fortnightly Meeting 16 February 2023
	HL Pricing Fortnightly Meeting 16 March 2023
	HL Pricing Fortnightly Meeting 19 January 2023
	HL Pricing Fortnightly Meeting 2 February 2023
	HL Pricing Fortnightly Meeting 22 December 2022
	HL Pricing Fortnightly Meeting 24 November 2022
	HL Pricing Fortnightly Meeting 27 October 2022
	HL Pricing Fortnightly Meeting 30 March 2023
HL Pricing Fortnightly Meeting 7 December 2022	
Jarden, Launching the Jarden Mortgage Competition Tracker, 20 July 2022	06. Jarden Mortgage tracker (20 July 2022) (CONFIDENTIAL)
Keienburg, G. et al., Don't Let Carve-Out Costs Compromise Value Creation, BCG, 3 June 2021	<a href="https://www.bcg.com/publications/2021/beware-of-separation-costs-compromise-value-creation">https://www.bcg.com/publications/2021/beware-of-separation-costs-compromise-value-creation</a>
Merger authorisation application, 2 December 2022	Confidential Merger authorisation application - 02 December 2022
Refinance_Out_OFI	Refinance_Out_OFI
Statement of Douglas John Campbell, 30 November 2022	01. Witness Statement of John Campbell - Executed 30 November 2022 (CONFIDENTIAL)
Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-1	DJC-1 - CONFIDENTIAL - Home Loans Australia - Business Writing Strategy for FY22
Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-2	DJC-2 - CONFIDENTIAL - Fixed Rate Proposal - April 2022



## RESTRICTION OF PUBLICATION CLAIMED

<b>Name of document</b>	<b>Name of file/URL</b>
Statement of Douglas John Campbell, 30 November 2022, Exhibit DJC-3	DJC-3 - CONFIDENTIAL - HL Pricing Fortnightly Meeting 20 July 2022
Supplementary statement of Douglas John Campbell, 17 May 2023	Supplementary Statement of Douglas John Campbell - 17 May 2023 - Signed
Supplementary statement of Shayne Cary Elliott, 17 May 2023	Confidential - Supplementary Statement of Shayne Elliott - 17 May 2023 - Signed
Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-2	SCE-2 - Confidential - Presentation - Home Loan and Retail Board Update - 4 May 2023
Supplementary statement of Shayne Cary Elliott, 17 May 2023, Exhibit SCE-3	SCE-3 - Confidential - Board Paper - Home Loan and Retail Board Update - 4 May 2023