

Ms Gina Cass-Gottlieb
Chairman
Australian Competition & Consumer Commission
27/135 King Street
SYDNEY NSW 2000
Email: ANZ-Suncorp-Merger@acc.gov.au

18 April 2023

Dear Ms Cass-Gottlieb,

Re: ANZ proposed acquisition of Suncorp Bank

I would like to express appreciation for the support provided by [REDACTED] and [REDACTED] [REDACTED] when preparing this review for ANZ and Suncorp's customers.

There are several allegations that would be known [REDACTED] but not dealt with by the government and regulators previously. These practices were dishonest and will appear on several occasions in the statement of the preliminary views. I have also included a summary of allegations outlined in the Council of Small Business Organisation in Australia (COSBOA) in December 2010.

This review was on the public website and available to politicians, regulators, and banks' directors. For avoidance of doubt, I arranged to have a copy of this COSBOA's paper hand-delivered to [REDACTED] [REDACTED] on 15 April 2013. I was asked by the ANZ and Suncorp's customers (banks' customers) to explain in detail these small businesses and farmers were facing.

Responses to ACCC Statement of Preliminary Views

1. The ACCC invites views and any further information regarding:

a. The commercial likelihood of the No-Sale Counterfactual and the Second-Tier Merger counterfactual, including the manner and extent to which ANZ is likely to compete?

b. The competitive significance of any advantages or difficulties faced by banks operating in conglomerate structures to balance competing capital requirements and investment decisions?

This response will appear later in this submission by these individual and small business clients

2. The ACCC invites views and any further information regarding:

a. The extent to which the major banks compete with each other?

b. How, and the extent to which, the second-tier banks, including regional banks, compete with the major banks?

c. The extent to which the removal of Suncorp Bank, as either an independent second-tier bank or as a constituent part of a merged and larger second-tier bank, affects competition in the banking industry, particularly on non-price elements of competition?

d. The extent to which scope for new entry or the expansion of existing providers would be sufficient to replace the loss of competitive constraint from Suncorp Bank?

In May 2004, ANZ and Suncorp Bank entered into a non-competitive agreement whereby [REDACTED] [REDACTED] published the 2004 Code, omitting ASIC Regulatory Guide 165 (2001) from clause 35.1(b) of the Code. This meant no Australian banking clients could resolve disputes free of charge for the next 20 years. I have been asked by the banks' customers to prepare a Statutory Declaration supporting allegations that the [REDACTED] [REDACTED] The 2004 Code was [REDACTED] [REDACTED] and retail customers would have to resolve disputes in a court. It meant the major banks like ANZ and second-tier banks like Suncorp had relied on a document that was deceitful, and they did not compete with each other.

3. The ACCC invites views and any further information on how the Proposed Acquisition may give rise to coordinated effects in the relevant market(s), relative to the counterfactuals outlined in section 3, including:

a. Are there any relevant markets in Australia that presently exhibit signs of coordinated conduct or are more susceptible to coordination? Explain why.

b. What are the features of each relevant market that would facilitate coordinated effects from the Proposed Acquisition, for example:

i. Are customer switching costs high and how would this affect any coordinated conduct?

ii. How do brokers, price comparison websites, and other intermediaries affect price transparency?

c. Whether coordination risk lies within the major banks or is likely to be more widespread? Explain why.

d. Whether Suncorp Bank is a particularly significant competitor in any relevant market?

e. How the Proposed Acquisition increases concentration and brings the major banks closer together in size in any relevant market in a way that could:

i. increase the symmetry in cost structure of the major banks and make it easier to coordinate?

ii. reduce the incentives for ANZ to compete as vigorously for market share than it otherwise would, absent the Proposed Acquisition?

<p>I believe this merger could provide a significant benefit to the industry if ACCC requires these banks to rectify any misconduct prior to allowing to be merged.</p>

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

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

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

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

Refers to both our clients' responses in Question 2

5. The ACCC invites views and any further information on the likely effect of the Proposed Acquisition on competition in agribusiness banking, relative to the counterfactuals outlined in section 3, including:

a. Do agribusiness banking customers require different products or services to other business banking customers? List and describe any differences.

i. How important is a local presence, such as branches and access to specialist bankers, to agribusiness banking customers?

ii. How easily can agribusiness banking customers switch to online offerings and services?

b. Is Suncorp Bank a strong competitor in agribusiness banking, in particular does it compete strongly in local or regional areas? Does Suncorp Bank drive competition in terms of its pricing, service quality and range, or innovation?

c. How closely do ANZ and Suncorp Bank compete in agribusiness banking? Who are their competitors and how strongly do they compete?

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

e. What is the role of brokers in facilitating customer switching?

[Redacted content]

6. The ACCC invites views and any further information on the likely effect of the Proposed Acquisition on competition in SME banking, relative to the counterfactuals outlined in section 3, including:

a. Do SME banking customers require different products or services to other business banking customers? List and describe any differences.

i. How important is a local presence, such as branches and access to specialist bankers, to SME banking customers?

ii. How easily can SME banking customers switch to online offerings and services?

b. Is Suncorp Bank a strong competitor, in particular does it compete strongly in local or regional areas in SME banking? Does Suncorp Bank drive competition in SME banking in terms of its pricing, service quality and range, or innovation?

c. How closely do ANZ and Suncorp Bank compete in SME banking? Who are their competitors and how strongly do they compete?

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

e. How important are brokers in the supply of SME banking?

[REDACTED] my view that the self-regulation of the banks and the financial sector has been handled carefully. I understand the Federal Treasurer has enjoyed significant powers to claim misconduct by these banks' directors would be identified and prosecuted 'in the public interest.' Therefore, small businesses and farmers have not been protected by the ASIC Act and the new Federal Government should have addressed these concerns.

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

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

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

- c. How effectively do non-bank lenders compete in the supply of home loans?*
- d. What are the requirements to enter as, or expand into, an effective competitor in the supply of home loans? How strongly do new entrants compete?*
- e. How important are brokers and aggregators in the supply of home loans?*

I refer to my clients' response in Question 2. However, the decision by ANZ and Suncorp to omit Regulatory Guide 165 (2001) from the 2004 Code is only one concern to the small businesses and farmers. There is evidence that the major and second-tier banks have attended Farm Debt Mediation in bad faith. We have reviewed cases where banks took customers to Farm Debt Mediation and on no occasion did the mediators or the banks comply with Code Compliance Monitoring Committee's Bulletin 8. The politicians and regulators knew that this bulletin requires the banks and their external lawyers to comply with clause 35 of the Code, when it was evident that ASIC Regulatory Guide 165 (2001) was omitted from clause 35.1(b).

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

a. Whether there are separate markets for transactions accounts, savings accounts and term deposits products?

i. How important is physical presence for the supply of each of these products?

ii. How important is digital distribution of each of these products?

b. Is Suncorp Bank a strong competitor in retail deposits nationally or in any regions or local areas? How does Suncorp Bank drive competition in terms of its pricing, service quality and range, or innovation?

c. How closely do ANZ and Suncorp Bank compete in retail deposits? Who are their competitors and how strongly do they compete?

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

e. How extensive is customer switching and multi-banking?

It is essential for banks to comply with the rule of law, which has been absent from the industry since the 2004 Code was published. The other factors referred to above could then be addressed by the Treasurer. He has the powers to suspend or cancel the banks' licensees when they have not complied with the Code, the Standard, and the rule of law.

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

a. Any additional public benefits likely to result from the Proposed Acquisition?

b. Whether the claimed public benefits would arise even without the Proposed Acquisition?

c. How substantive the claimed public benefits are?

This question has been referred to in several of the clauses in this submission.

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

a. Any additional public detriments likely to result from the Proposed Acquisition?

b. Whether these public detriments would arise only in the event of the Proposed Acquisition?

I am encouraged by events of the last 3 months when ACCC has reviewed the events of recent years.

The Suncorp's clients who are named below have asked me to refer to what we have directed to the banks' [REDACTED], stating:

When I reviewed this clause, it was evident the code did not identify the 'industry dispute or guideline which ASIC declares to apply in this Code'. [REDACTED]

[REDACTED] while working with me, could not identify ASIC Regulatory Guide 165 (2001) as the missing document.

- [REDACTED] under AS 4269-1995, had to ensure 'there was a commitment to IDR procedure for all levels of an organisation, particularly the higher level. In larger organisations commitment had to be at the level of the board.'
- Without ASIC Regulatory Guide 165 (2001), retail clients would have to use the court to resolve disputes. However, ASIC 'considers that material explaining IDR procedures should be provided free of charge to complainant.'
- [REDACTED] were familiar with these concerns, which should have been addressed when these codes were adopted. The damages caused to individuals, small businesses and farmers, who were the bank's retail clients since August 2003, would have been significant.

The Suncorp's clients referred to in this submission include:

- Archer Field
- Ron Feierabend
- James Davidson
- [REDACTED] and
- Henry Kummerfield

We have reviewed the COSBOA's submission with the letter setting out many of the allegations published on 5 December 2010 that should have been addressed by the government. The small businesses and farmers are concerned successive governments have not investigated and prosecuted the misconduct by the four leading banks and three second-tier banks.

The Suncorp's clients' response to ACCC's Statement of Preliminary Views may encourage the new government to accept it has taken too long to deal with misconduct that was well known to the politicians and regulators. For 20 years, customers were told that the 2003 and 2004 Code were binding contract.

[Redacted]

We are privileged to have [Redacted] review our allegations. We believe they have powers to require politicians and regulators to redraft the ASIC Act so that the banks' directors who do not comply with the code, the standard, or the rule of law are removed from the industry and prosecuted.

Should you require any further information, please contact me.

Yours sincerely,

[Redacted]

Archer Field

[Redacted]

Copy: [Redacted]

[Redacted]

[Redacted]

Attachments:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]