

PRODUCTIVITY COMMISSION
INQUIRY INTO COMPETITION IN THE
AUSTRALIAN FINANCIAL SYSTEM

RESPONSE TO DRAFT REPORT

March 2018

CONTENTS

Executive Summary	3
Competition Assessment	7
Home Loans and Brokers	21
Interchange Fees	25
New Payments Platform	27
Other Topics	29

EXECUTIVE SUMMARY

1. ANZ thanks the Productivity Commission for the opportunity to comment on its draft report on *Competition in the Australian Financial System (Draft Report)*.
2. With ~15% market share, ANZ welcomes competition settings that allow us to win in the market through the provision of compelling products and services that meet customer's needs.
3. The Draft Report represents the collation and synthesis of an impressive amount of material. It proposes new or endorses existing recommendations that could support contestability including open data and reducing the barriers to entry for new banks. Other recommendations, such as making the E-Payments Code mandatory, have the potential to enhance consumer wellbeing.
4. As the Commission moves to finalise its work, however, we believe that some findings and recommendations could be improved and some should not be carried through to the Commission's final report. In particular, we believe the findings concerning the competitiveness of the Australian banking would benefit from further consideration. Our core feedback on the Draft Report's findings and recommendations is set out below.

FEEDBACK ON FINDINGS AND RECOMMENDATIONS

Report component	Core feedback
Competition assessment 	<p>We would ask the Commission to reconsider its findings on the competitiveness of the Australian banking market (particularly Draft Finding 3.1)</p> <ul style="list-style-type: none">• The evidence presented in the Draft Report does not support the finding that banks hold substantial market power<ul style="list-style-type: none">◦ None of Australia's banks holds a dominant enough position individually to sustain uncompetitive prices<ul style="list-style-type: none">▪ This is particularly true of ANZ which holds ~15% of the market, well below thresholds set by various regulatory agencies for assessing dominance¹• If the Draft Report is suggesting that the major banks collectively hold substantial market power, this is contradicted by evident competition

¹ In Australia, the ACCC's *Interim Guidelines on the Misuse of Market Power* (October 2017) do not set a market share threshold for determining substantial degree of market power. However, in its *Informal Merger Review Process Guidelines* (September 2013), the ACCC encourages merger parties to consult with the ACCC only where the merged firm will have a market share of greater than 20% (para 2.5). In the European Union, the European Commission's (EC) *Guidance on Enforcement Priorities in applying Article 82 of the EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings* states that it considers low market shares as generally a 'good proxy for the absence of substantial market power' (para 14). The EC further states that in its experience dominance is not likely to be found if the firm has a market share below 40% in the relevant market (para 14). The US Department of Justice guidance '*Competition and Monopoly: single firm conduct under section 2 of the Sherman Act*' states that the courts usually begin by looking at the firm's market share when determining whether they possess monopoly power in the relevant market. The guidance states that '*as a practical matter a greater than 50% market share has been necessary for courts to find the existence of monopoly power*' although, at least in theory, it might be possible for a firm to be dominant with a market share of less than 50%. Although both the EU and US apply a 'dominance' test rather than a substantial degree of market power test, the level of market shares applied are informative.

Report component	Core feedback
	<p>between the banks²</p> <ul style="list-style-type: none"> ○ Key features of the banking market militate strongly against a finding of collective market power: discounting in the home loan market means banks operate under conditions of price uncertainty, while rivalry between the four largest banks is strong and competitors are free to enter banking and adjacent markets ○ The number of banks in the market also argues against this finding, as indicated by the rule of thumb that tacit collusion is 'frequently observed with two sellers, rarely in markets with three sellers, and almost never in markets with four or more sellers'³ ○ The conclusion of a unit of the Commission's predecessor in 1995 was that '<i>the pre-conditions for collusion among banks are not present</i>'.⁴ Although the Commission cites this unit's work for the relevance of the question of tacit collusion, the Commission has not made out the case for reversing its conclusion ● Tellingly, key return metrics for ANZ have all trended down since 1995 despite Australia's long run of economic growth: <ul style="list-style-type: none"> ○ Return on equity (ROE) is down 36% (down 51% since 2002) ○ Net interest margin (NIM) is down 41% ○ Revenue per dollar of average interest earning assets (AIEA) is down 49% <p>If ANZ does share substantial market power, it curiously does so without sustained financial benefit⁵</p> <ul style="list-style-type: none"> ● While relying on concentration alone for competition assessments is problematic,⁶ the concentration of key banking submarkets is already below the threshold set by the Australian Competition and Consumer Commission

² We note that Australian competition law generally assesses whether a corporation, on its own, has substantial market power (see section 46 of the *Competition and Consumer Act 2010* (Cth)). To aggregate the power of unrelated corporations, there needs to be an agreement, understanding or arrangement between the corporations; see *Re Eastern Express Pty Limited v General Newspapers Pty Limited* (1992) 35 FCR 43

³ See Niklas Horstmann, Jan Kramer and Daniel Schnurr 'Number Effects and Tacit Collusion in Experimental Oligopolies' (October 2014); available at <https://ssrn.com/abstract=2535862>, finding that although there is little empirical evidence to suggest that the decline in tacit collusion is as great between three and four sellers as it is between two and four sellers, experiments suggest a linear decline in collusion opportunities from two to three to four sellers.

⁴ Office of Regulation Review, *Competition and Retail Banking* (1995), 3; available at:

<http://www.pc.gov.au/research/supporting/retail-banking-competition>

⁵ We acknowledge that a finding of substantial market power is possible even if the relevant corporation is not profitable: see *Seven Network Ltd vs News Ltd* (2009) 182 FCR 160.

⁶ Analyses which look at concentration derive from the 'structure-conduct-performance' (SCP) paradigm of competition. Claessens states that '[t]heoretically and empirically there are a number of problems with the SCP-paradigm and its implications that, directly and indirectly, structure determines performance [ie competitiveness]': Stijn Claessens 'Competition in the Financial Sector: Overview of Competition Policies IMF Working Paper (WP/09/45), 7. Claessens notes that this was the 'the dominant paradigm in industrial organization from 1950 till the 1970s...''

Report component	Core feedback
	<p>(ACCC) for merger reviews and declining</p> <ul style="list-style-type: none"> Lastly, the Commission recognises that fees are declining and services are improving but seems equivocal on whether this means consumers are benefiting. Data concerning revenue per dollar of AEIA reflects changes in both interest and fee costs. Declines in this metric for ANZ shows the margin paid by customers has fallen. Simultaneously, consumers are benefiting from better services through innovations such as internet banking and new ways of paying. We would encourage the Commission to reach more definitive conclusions on consumer outcomes even if it remains convinced it could be easier for consumers to switch banks
Home loans & brokers 	<p>We agree with the Commission's recommendation on refunds of lenders mortgage insurance (LMI)</p> <ul style="list-style-type: none"> We have already approved a refund policy for eligible ANZ LMI premiums paid on or after 1 Oct 2017 and are working to automate payment of these refunds later this year <p>We also agree in principle with enhancing consumer protections in the broker market, and note that a best interests duty could support the existing law to promote consumer interests when receiving help from a broker. The Commission's recommendations on brokers should consider the need for trust in the sector, consumer propensity to pay upfront for loan help and brokers' role in levelling the playing field for those banks without extensive branch networks</p> <p>Finalisation of the Commission's proposal for a comparison tool concerning actual rates paid on home loans proposal should take into account the actual utility that consumers could derive from the tool in light of the large number of factors that drive home loan rates and its impact on market dynamics</p>
Card interchange fees 	<p>Card interchange fees have just been reviewed by the Reserve Bank of Australia (RBA) and we do not support the proposal to ban these fees. Banning them risks removing a commercial incentive to innovate in cards payments and should not be proposed without careful consideration of the benefits that merchants derive from payment networks</p>
Payments 	<p>While we can see some merit with certain payments-related recommendations (such as making the E-Payments Code mandatory), we believe that:</p> <ul style="list-style-type: none"> An access regime for the New Payments Platform (NPP) is premature as there is no evidence of exclusion of service providers from what is, by design, an open platform and one that is in its nascent stages of operation A distinct open data framework for overlay service providers could cut across the Government's likely introduction of the consumer data right

Report component	Core feedback
	<p>(CDR) and associated regulatory protections</p> <ul style="list-style-type: none"> ○ If consumers wish to share their data transmitted through overlay service providers, then the CDR may facilitate this and in a way that offers strong consumer protections (subject to its final design) ● Amending the E-Payments Code to effectively allow screen-scraping also intersects with the proposed CDR regime and should not be considered now

5. In the four sections that follow, we expand on the points above. In the fifth, we set out a table that provides very brief feedback on selected other topics.

COMPETITION ASSESSMENT

Key points

Competition in the Australian banking market is demonstrably more effective than concluded in the Draft Report

- **The Draft Report does not present compelling evidence that banks hold substantial market power**
- **ANZ returns have fallen over the long term due, in part, to competition between the major banks**
- **There is evidence that consumers are benefiting from competition including through lower fees and interest costs and better services**

Introduction

1. The Commission's draft findings and recommendations rest on significant data and analysis and, in their final form, have the potential to provide a strong reference point for policy development.
2. For example, we agree with Draft Finding 5.1 that 'attempts to artificially raise the cost of funds for larger institutions to offset their cost advantages do not improve competition and harm consumers'. These interventions rely on the affected banks consequentially charging higher prices while the unaffected banks do not. If affected banks do not charge higher prices, then consumers will see no added utility through competition while shareholders will be poorer through lower returns and/or employees will earn less through offsetting cost reductions. If affected banks do charge higher prices, consumers will pay more if the unaffected banks take the opportunity to also charge higher prices rather than secure greater market share (as Draft Finding 3.1 suggests smaller-banks and non-bank financial institutions have done from time-to-time).
3. We also support Draft Recommendation 4.1 that the regulatory barriers to entry be reduced. High levels of contestability, within a context of systemic stability, are the best policy settings for bank competition that delivers economic welfare.⁷
4. That said, we believe it is open to the Commission to offer final findings that are more robustly evidenced and reasoned. In particular, we would urge the Commission to revisit its Draft Finding 3.1 that Australian banks hold substantial market power and can thus pass on costs without losing market share. While this finding is consistent with popular belief, it is not well supported, including by the evidence presented in the Draft Report.
 - ANZ has ~15% of the market and demonstrably does not hold substantial market power
 - If the Draft Report is suggesting that banks hold substantial market power collectively, we believe the evidence instead indicates that banks compete against one other

⁷ In our prior submission to the Commission, we summarised academic and official sector work that suggests contestability within a stability-reinforcing framework is the optimal policy setting. The submission is available at: http://www.pc.gov.au/_data/assets/pdf_file/0011/222698/sub049-financial-system.pdf.

- Further, the Commission's analysis of cost pass-through may benefit from additional consideration of the costs at issue and other factors

An unsupported finding of substantial market power could risk directing policy at measures that do not help consumers or the financial system. We would prefer focus be directed on enhanced contestability and support for consumers.

5. We also believe the Commission's observations on consumers and whether they are benefiting could be improved. The evidence is available for the Commission to conclude that consumers are paying less for more. Fees and bank interest margins are declining, meaning prices are lower, while innovation is evident. This conclusion is open to the Commission even if it believes that switching between financial institutions could be easier for consumers.
6. As a concluding note to this introduction which is not taken further below, we would agree that mental shortcuts and biases in consumer decision making are important policy considerations.⁸ However, conclusions on consumer behaviour should be grounded in research of that specific behaviour. Extrapolating research findings from one context to another may lack justification and should be approached cautiously. For example, just because individuals exhibit a decisional bias in one context does not necessarily mean that different individuals will do the same in other contexts. We would encourage the Commission to view consumers as heterogeneous, with differing preferences and capabilities to engage with financial matters. Policy which is built on an assumption of the universally irrational consumer is likely to be as unhelpful as policy founded on the universally rational one.

There is no evidence that banks have *substantial market power*

7. Draft Finding 3.1 proposes that the major banks have substantial market power due to their structural advantages. Importantly, this finding does not suggest that any single bank has substantial market power by itself.
8. As large as Australia's banks are, none are dominant enough individually to sustain uncompetitive pricing and merit the conclusion that they hold substantial market power. With ~15% market share, this is particularly true of ANZ. As we note above, this market share is below thresholds used by the ACCC and offshore regulators in assessing dominance.
9. If Draft Finding 3.1 is suggesting that Australian banks in some way *collectively* have substantial market power then this is problematic as:
 - The banks do not act collectively and compete strongly against one other, as evidenced by discounting in the home loans market and competition for deposits
 - The structure of the market makes collective behaviour difficult

⁸ See, for example, the consumer biases cited in the Draft Report; Productivity Commission *Competition in the Australian Financial System Draft Report* (2018) (**Draft Report**), 90, 361, 362.

10. While the Draft Report asks if there is tacit collusion, it neither answers the question directly nor offers compelling evidence on this point. However, the source cited by the Draft Report for the relevance of the question did answer it. In 1995, a unit of the Commission's predecessor, the Office of Regulation Review (**ORR**) within the Industry Commission, looked at retail banking competition and found that:

From a number of perspectives, it is apparent that there is now significant competition in the retail banking industry in Australia. For one thing, no bank has significant market power on its own. Moreover, given the number of sellers of banking services, the diversity of banking products sold, and the demonstrated capacity for entry to and exit from the banking industry, the pre-conditions for collusion among banks are not present. Similarly, the high number of sellers means that oligopoly pricing models are inappropriate. Increased competition since deregulation is supported by evidence of a reduction in the interest rate margin received by Australian banks, as well as other indicators such as reduced profitability and increased cost efficiency.⁹

11. We would argue this finding continues to hold today.
12. Since 1995, ANZ's key return metrics have all trended down, with the difference between what ANZ pays in interest costs and what it receives in interest revenue having fallen by 40%. Returns on equity have seen similar declines. Banks are clearly competing against one another, with competitive discounting in the home loan market unambiguously evidence of rivalry. Indeed, it is difficult to conceive an alternative, plausible rationale for these particular discounts. If ANZ does share in collective market power, it is not increasing our returns or prices or suppressing our drive to innovate.
13. Critically, the preconditions for collective behaviour are absent in the banking market. Drawing on European Union law, establishing collusive behaviour would require that:
 - There is a focal point for coordination that allows banks to monitor the behaviour of other banks
 - Coordinating banks face a disincentive to deviate from the coordination (ie they can be punished by non-deviating banks) and
 - The coordination is immune from competition¹⁰
14. Respectfully, we do not think that the Draft Report offers substantive evidence on any of these factors. As we set out below, consideration of these three factors suggests that collective behaviour would not be possible in the Australian banking market. This is consistent with the conclusion of the unit in the Commission's predecessor. Because of this, we would ask that the Commission reconsider the unstated assumption that the major banks act as a unity that, to us, currently flows through the Draft Report.

⁹ Office of Regulation Review, *Competition and Retail Banking* (1995), 3; available at: <http://www.pc.gov.au/research/supporting/retail-banking-competition>.

¹⁰ See *Airtours plc v Commission of the European Communities* (T-342/99) [2002] ECLI:EU:T:2002:146, para 62.

Price uncertainty precludes a focal point and has helped competition

15. At most, the Draft Report asserts that '[t]he Reserve Bank of Australia setting of cash rates offers an opportunity for coordinated pricing in banking that is unique to this industry'.¹¹ However, as the Draft Report highlights, the current dominant pricing model in the variable rate home loan market involves the major banks offering discounts from their standard variable rates to individual customers. While the Commission is concerned about what this means for transparency for consumers, it also means that banks operate under a condition of significant price uncertainty. Such uncertainty appears at odds with a finding there is an opportunity for coordinated pricing.
16. Further, banks do not fund at the cash rate.¹² While RBA official cash rate decisions typically trigger reviews of home loan interest rates, the rationale for this is historical. Funding rates for individual banks are determined by their funding mix, ability to access funding markets, the structure of interest rates in the market and the attractiveness of the bank to lenders in that market.¹³

Banks compete with each other

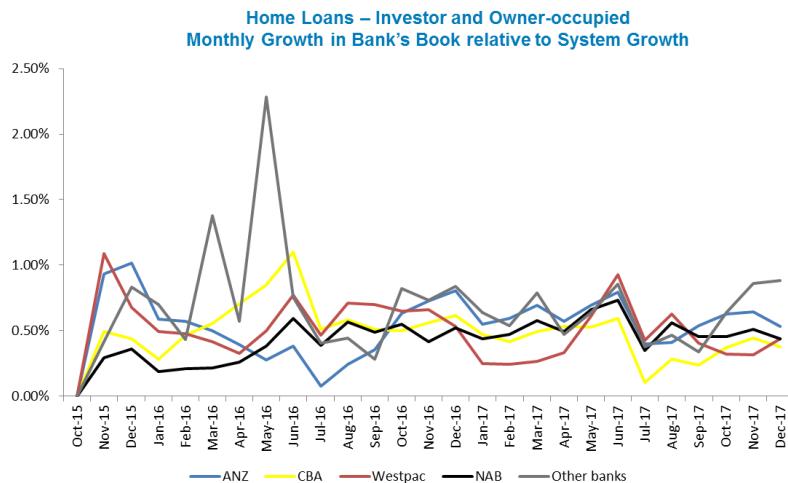
17. The Draft Reports presents no evidence that any of Australia's banks can prevent other banks from taking unilateral competitive action. This is unsurprising because, as stated above, tacit collusion is 'frequently observed with two sellers, rarely in markets with three sellers, and almost never in markets with four or more sellers'.
18. For example, it is clear that there is significant monthly volatility in the change in stock of home loans that banks respectively capture. This volatility is driven by unilaterally determined competitive strategies that do not appear dictated by the threat of punishment by other competitors. Competition between ANZ, Westpac, NAB and CommBank is particularly rivalrous. Discounting in the home loan market is unambiguously evidence of competition (it is difficult to conceive of an alternative rationale).

¹¹ Draft Report, above n 8, 32.

¹² See ANZ *Bank Lending Rates and Linkages to the Cash Interest Rate* (October 2016) ; available at: http://shareholder.anz.com/sites/default/files/bank_lending_rates_and_linkages_to_the_cash_interest_rate_paper.pdf?qa=2.6266547.1294556528.1521426178-548475294.1503980293.

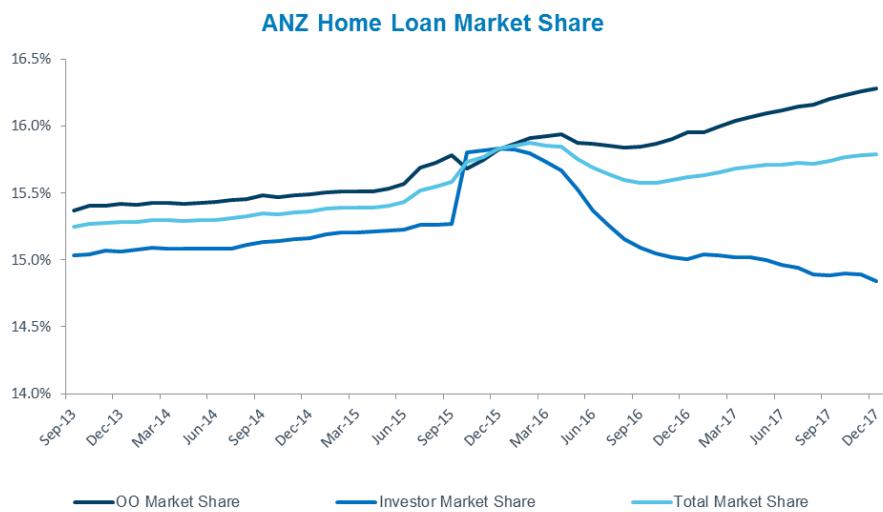
¹³ We note that, contrary to the Draft Report's commentary on page 164, banks do not raise funds via bond issues that track the cash rate plus a margin. Domestic bank funding programs are typically priced on a fixed yield basis which can only be hedged back to a BBSW reference rate. There can be substantial volatility between the cash rate and the BBSW reference rate.

Figure 1¹⁴



19. To highlight this, ANZ's current strategy in the Australian retail market is to be the best bank for people who want to buy and own a home or start and run a small business. As part of this, we are focusing on the owner-occupier home loan market. Through a mixture of pricing, service and underwriting policies, we have grown our market share in this market significantly, from 15.8% to nearly 16.3% in the two years to December 2017. To achieve this increase, we've had to consistently win business from others who are trying to do the same thing. In some periods, we have managed to expand our book 1.5 times faster than the system as a whole. At other times, we have only expanded at 0.5 times the system growth. The market is fluid and competitive.

Figure 2¹⁵



¹⁴ Data source: APRA Monthly Banking Statistics (December 2017) © Australian Prudential Regulation Authority (APRA). This work is licensed under the Creative Commons Attribution 3.0 Australia Licence (CCBY 3.0); ANZ calculations. We note that the early 2016 spikes in the shares of 'Other Banks' may be attributed to the inclusion of two new entities into the APRA data as follows:

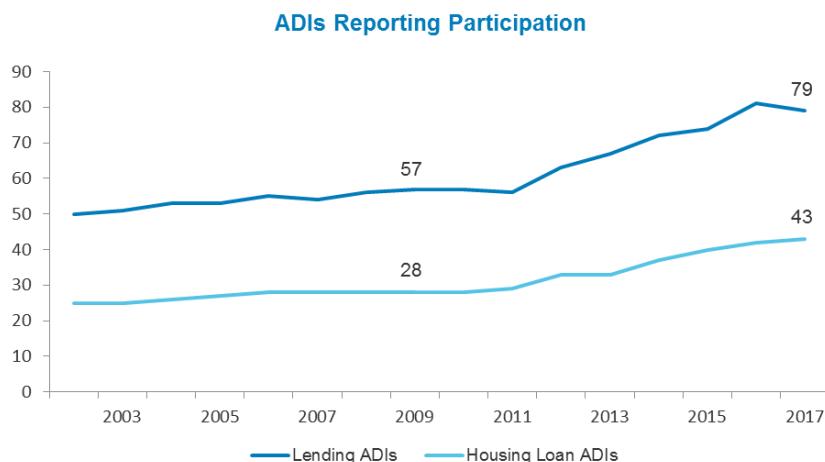
- Mar16 - Qudos Mutual Ltd Incorporated with ~\$2.5bn total gross loans and advances
- May16 - Greater bank Limited Incorporated with ~\$4.5b total gross loans and advance

¹⁵ Data source: APRA Monthly Banking Statistics (December 2017) © Australian Prudential Regulation Authority (APRA). This work is licensed under the Creative Commons Attribution 3.0 Australia Licence (CCBY 3.0); ANZ calculations.

The market is relatively contestable

20. Lastly, we note that while there are regulatory barriers to becoming a bank, and certain minimum efficient scales, these are not insurmountable, as evidenced by the entry of foreign banks into the market. Further, competition does not require firms to be of equal size. There is ample evidence that competition from non-bank lenders exists and is increasing. Indeed, the Commission notes that 'Australia has seen pockets of competition as a result of new entrants to the financial system, primarily from foreign banks and non-ADIs'.¹⁶ These pockets of competition can be sufficient to drive rivalry and benefit consumers even if they do not lead to the creation of a large bank. As also acknowledged by the Commission, the Government is currently implementing policies to enhance contestability.
21. Draft Finding 4.1 suggests that there has been substantial consolidation in the Australian banking system. This finding appears to be based on the number of entities that hold authorisations to take deposits. However, counting the number of ADI licensees in a market does not explain the number of active participants in the various banking sub-markets. For example, as we set out in our prior submission, the number of banks reporting participation on the home loan and lending market has increased not decreased. Thus, more institutions appear to be using their ADI status to offer loans, notwithstanding that there are fewer ADIs overall. We would suggest that the Commission cite alternative metrics in assessing the concentration of the market (we note that some of these are set out in Appendix C of the Draft Report).

Figure 3¹⁷



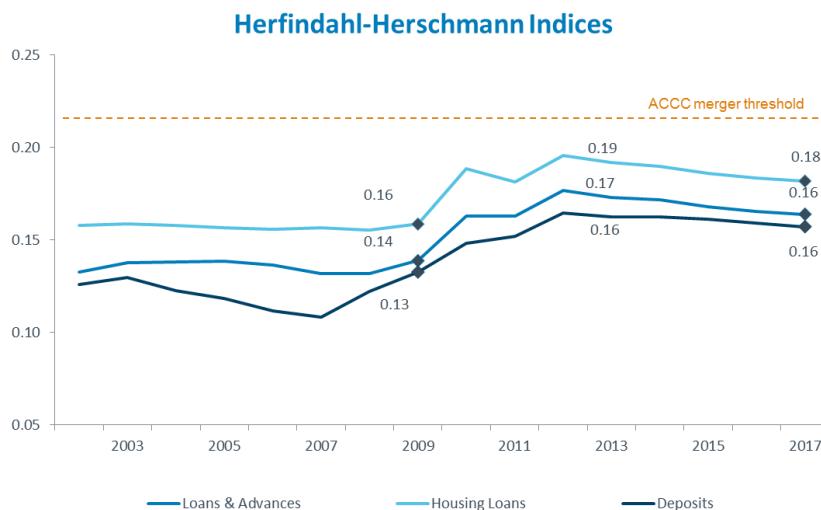
22. High levels of concentration do not necessarily mean that large players are able to exercise their market power or, as discussed in the introduction, that competition is weak. That said, the Herfindahl-Hirschmann Index (**HHI**) for the key banking sub-markets is below the threshold at

¹⁶ Ibid, 121.

¹⁷ Data source: APRA Monthly Banking Statistics (August 2017) © Australian Prudential Regulation Authority (APRA). This work is licensed under the Creative Commons Attribution 3.0 Australia Licence (CCBY 3.0); ANZ calculations.

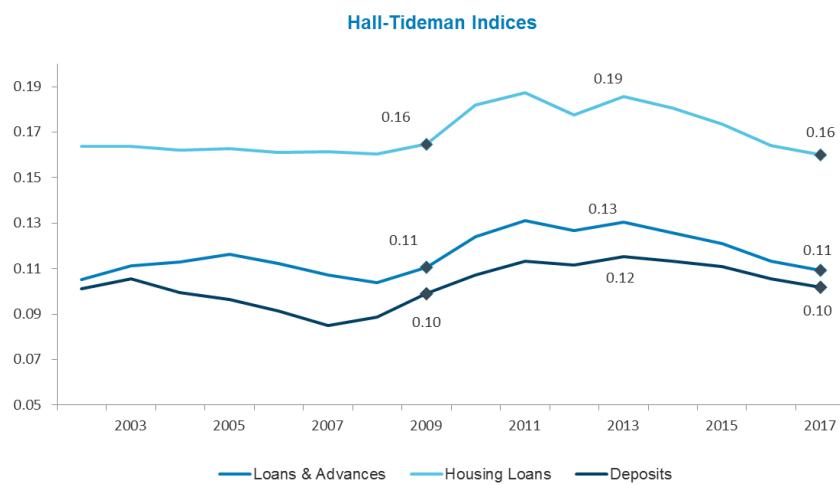
which the ACCC is generally less likely to identify horizontal merger concerns.¹⁸ The concentration of the banking industry has been falling recently.

Figure 4¹⁹



23. Reinforcing the idea that more banks are participating in the banking sub-markets, the Hall-Tideman Index, which enriches the HHI by considering the number of banks in the industry, has shown a more significant decline across loans and advances, housing loans and deposits. This indicates a reversion to pre-crisis levels of concentrations, ostensibly due to new entrants as well as a declining market share of incumbents.²⁰ The HHI and the Hall-Tideman Index indicate that any apparent concentration of providers since the crisis has been unwinding.

Figure 5²¹



¹⁸ Australian Competition and Consumer Commission *Merger guidelines* (November 2008), 35; available at: <https://www.accc.gov.au/system/files/Merger%20guidelines.pdf>.

¹⁹ Data source: APRA Monthly Banking Statistics (August 2017) © Australian Prudential Regulation Authority (APRA) This work is licensed under the Creative Commons Attribution 3.0 Australia Licence (CCBY 3.0); ANZ calculations.

²⁰ Data source: APRA Monthly Banking Statistics (August 2017) © Australian Prudential Regulation Authority (APRA) This work is licensed under the Creative Commons Attribution 3.0 Australia Licence (CCBY 3.0); ANZ calculations.

²¹ Data source: APRA Monthly Banking Statistics (August 2017) © Australian Prudential Regulation Authority (APRA) This work is licensed under the Creative Commons Attribution 3.0 Australia Licence (CCBY 3.0); ANZ calculations.

24. In light of this evidence, we would suggest to the Commission that, similar to the ORR's conclusion in 1995, the preconditions to tacit collusion are absent in today's market.

Commission's cost pass-through analysis is incomplete

25. Draft Finding 3.1 states the major banks can apparently pass on costs due to their market power. The Draft Report suggests that in competitive markets, the ability to pass on costs is constrained. A report of the ACCC on retail electricity prices is cited in support of this proposition.
26. The Commission may like to refine these observations through further inquiry into the nature of the relevant costs (fixed or marginal), whether they are industry-wide or idiosyncratic and, more ambitiously, the curvature of the demand curve for banking services.
27. A report prepared for the United Kingdom Office of Fair Trading suggests that there is no clear relationship between market structure and the extent of a pass-through.²² Rather, all of the above-mentioned factors are relevant in assessing the degree to which cost pass-through is expected to occur. The Draft Report's observations on cost pass-through do not appear to take these factors into account. Many of the cost increases that have affected Australian banks have been industry-wide (such as funding increases). Such cost pass-through is consistent with a competitive market as opposed to firms having market power.
28. We note that the Commission has observed:

*But as just described, profit margins have managed to persist despite shocks. Appendix C offers more data in support of the ability of banks as a group to persistently set prices in a cost-plus-margin fashion that allows them to remain highly profitable in almost any environment.*²³

However, the graphs in Appendix C do not, respectfully, directly support the proposition that banks persistently set prices in a cost-plus fashion. Contrary to the statement that 'profit margins have managed to persist', Figures C.21 and C.23 indicate that major bank ROE and NIM have declined over time. This is consistent with ANZ's experience since 1995. Further, Figures C.32 and C.37 show that lending rates for housing and business have decreased. To the extent that the spread over the cash rate has increased in Figures C.32 and C.37, we would note that banks do not fund at the cash rate, NIM (which takes into account actual funding rates) has declined and banks have costs beyond interest expenses, as demonstrated by Figure C.26. Such non-interest expenses mean that there is a lower bound to credit interest rates even if official rates can reduce to zero (and perhaps beyond).

29. As we noted in our prior submission, ANZ has been focused on reducing costs absolutely.²⁴ The Draft Report also presents evidence of the cost efficiency of Australian banks (see Figure C.25).

²² RBB Economics *Cost pass-through: theory, measurement, and potential policy implications* A Report prepared for the Office of Fair Trading (February 2014); available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320912/Cost_Pass-Through_Report.pdf.

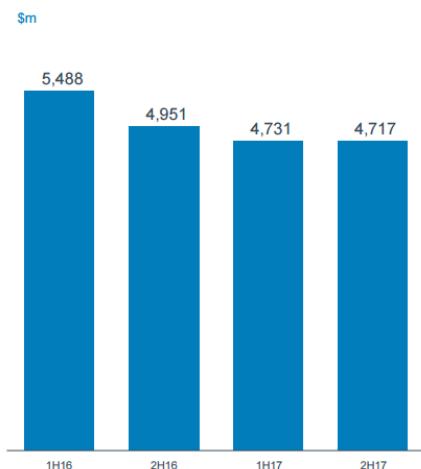
²³ Draft Report, above n 8, 118.

²⁴ ANZ 2017 Half Year Results Presentation (2 May 2017); available at:

Even if such cost efficiencies are not directly comparable to overseas dynamics, they are firmly part of the Australian competitive response to cost increases. Australian banks have been attempting to mitigate cost increases which could otherwise lead to higher prices for their customers. Draft Finding 3.1 should reflect this.

Figure 6²⁵

ANZ cost reductions



30. Lastly, we note that the case studies in the ACCC report referred to by the Draft Report concern a range of fact patterns in the context of increases in electricity prices.²⁶ For example, one case study involves the partial passing on of the cost increases to customers (the shopping centre) while another involves the impact of idiosyncratic cost increases (the winery competing on the international market). Respectfully, we do not think these case studies support the proposition that 'costs can only be persistently passed on in sectors such as banking, where pricing power exists'.²⁷ At most, they suggest that responses to cost increases, and whether they provide evidence of market power or not, are highly contextually dependent.

Consumers have been benefiting

31. The Commission recognises that fees are declining and services are improving (see Figure C.13 in the Draft Report for example) but seems equivocal on whether this means consumers are benefiting. The Commission should look at this further as the data is available to reach conclusions that consumers are benefiting.
32. Consumers can derive utility from bank services through deposit safety, the interest rate earned on those deposits, the availability and cost of credit, payment functions and the collateral services that

http://shareholder.anz.com/sites/default/files/anz_1h17_results_presestation.pdf?qa=2.124197902.58547158.1505963074-729656290.1487816405.

²⁵ ANZ 2017 Full Year Results Presentation (26 October 2017); available at:

http://shareholder.anz.com/sites/default/files/fy17_results_presentation_and_idp_lodgement - 26 oct 2017.pdf.

²⁶ Australian Consumer and Competition Commission *Retail Electricity Pricing Inquiry – preliminary report* (September 2017); available at: <https://www.accc.gov.au/system/files/Retail%20Electricity%20Inquiry%20-%20Preliminary%20report%20-%202013%20November%202017.pdf>.

²⁷ Draft Report, above n 8, 118.

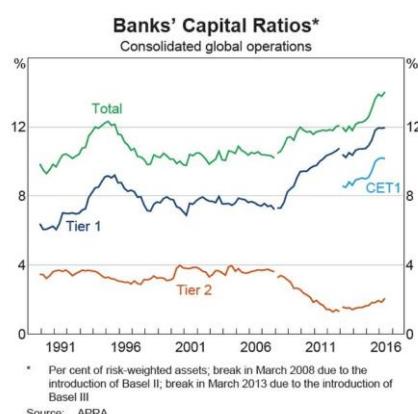
banks offer to customers, such as means of access to accounts. To help the Commission reach a conclusion on benefit to consumers, we can quantify:

- Deposit safety, through bank capitalisation
 - Interest earned on deposits, as a spread to the cash rate and as a driver of NIM
 - Availability and affordability of credit to households
 - Fees paid by consumers
 - Revenue generated per dollar of AIEA as a way of understanding the changes in total fee and interest costs paid by consumers
33. On all these metrics it is clear that, despite a seemingly concentrated banking system, consumers have been benefiting. As such, we would suggest that the Commission can be less equivocal concerning what consumers are deriving from competition. It is open to the Commission to find that consumers are doing better even if it believes that switching could be made easier.

Deposit safety

34. Consumers benefit from the confidence that money deposited with a bank will be repaid. Trust is the most identified factor for consumers selecting financial institutions for transaction accounts.²⁸ The Government's Financial Claims Scheme provides this confidence through a guarantee for amounts up to \$250,000 per Australian incorporated ADI.
35. The ability of the Australian taxpayer to provide this guarantee rests, in large part, on the adequate capitalisation and supervision of banks. These factors reduce the probability of the guarantee being needed and the quantum that could be paid out if it is. The financial strength of the banks also underpins the ability of the Government to impose a levy on the broader industry to pay for any shortfall in the assets of the failed ADI. Australian bank capitalisation has increased markedly in the post-crisis era, giving depositors (and taxpayers) greater reason to trust the safety of bank deposits.

Figure 7²⁹



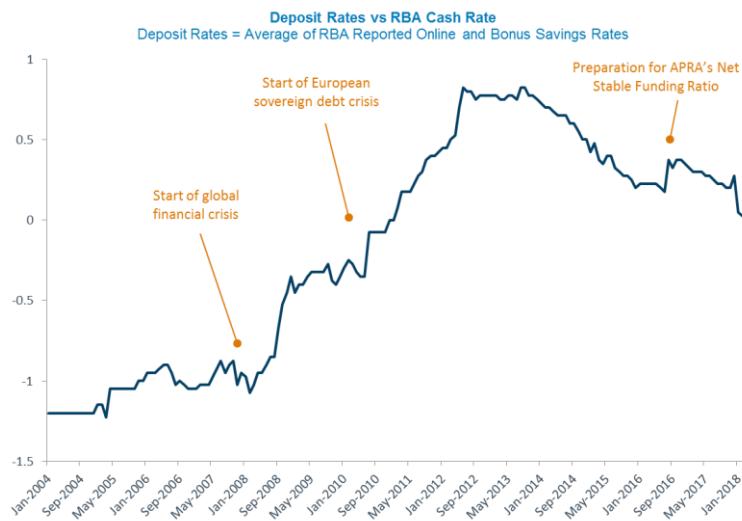
²⁸ Sourced from RFI research 2017.

²⁹ RBA, Financial Stability Review (October 2016), graph 3.9; available at: <http://www.rba.gov.au/publications/fsr/2016/oct/graphs.html>.

Interest earned on deposits

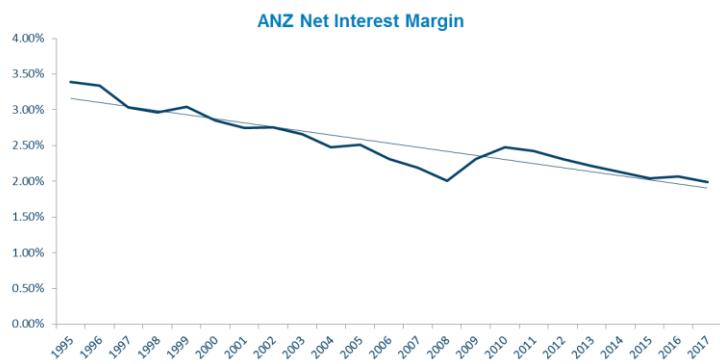
36. Price competition for deposits has benefited consumers. At ANZ, deposit rates have improved by an average of 220 basis points relative to the cash rate since the crisis. This has been driven by multiple factors including the movements in the relative cost of wholesale debt and regulation. We acknowledge that deposit rates relative to the cash rate have declined recently.

Figure 8³⁰



37. The impact of strong deposit rates appears in ANZ's NIM. NIM measures the difference between what banks pay in interest and what they receive. The importance of the metric goes to the intermediary role of banks between savers and borrowers. Changes in NIM reflect loan costs and deposit rates. Since 1995, ANZ's group NIM has declined 41% (as set out in the graph below). In 1995, the net interest average margin for ANZ Australia was 4.12%. In 2017, the 'Australia' division was 2.68%, a decline of approximately 35% from 1995.³¹ While the activities contributing to these results will have changed over time, we would argue that the decline indicates that consumers are benefiting.

Figure 9³²



³⁰ Data source: RBA F4 Retail Deposit and Investment Rates and F13 International Official Interest Rates; available at: <http://www.rba.gov.au/statistics/tables/>; ANZ calculations.

³¹ ANZ 2017 Full Year Results Presentation (26 October 2017); available at:

http://shareholder.anz.com/sites/default/files/fy17_results_presentation_and_idp_lodgement - 26 oct 2017.pdf.

³² ANZ annual reports.

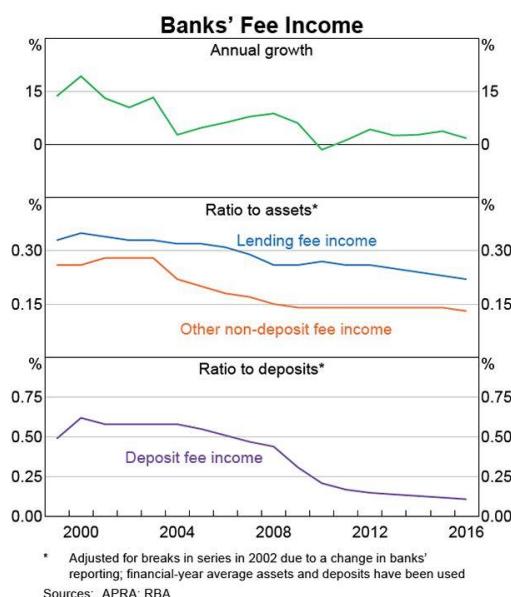
Availability and affordability of credit

38. It is clear that, in recent years, Australians have sought more credit as housing prices have appreciated. The market has worked to supply this credit. The decline in NIM (above) shows that margins have not increased even as demand for credit has risen. Of course, there are other public policy issues with the appreciation of housing prices beyond the competitiveness of the banking market.

Fees

39. The Draft Report identifies that fee income growth has been slowing while asserting that 'fees charged to households remained unchanged overall between 2010 and 2015...'.³³
40. As indicated by the RBA chart replicated below, fee growth has been minimal since the financial crisis (and, indeed, was negative around 2009).
41. However, when fees are taken as a ratio against deposits and assets, the trend is unequivocally down. These ratios are critical as they represent the fee price that consumers are paying for deposit services and loans. As such, we would ask the Commission to reconsider its observation that fees have remained unchanged.

Figure 10³⁴



42. The Draft Report goes on to argue that declines in fees are '...not necessarily indicative of competition' because the lost fee revenue can be recouped through interest charges.³⁵ Thus, '[w]hile this behaviour may appear competitive, it may not improve outcomes for consumers, if they pay more overall'.³⁶ The Draft Report appears to cite its own chapter 13 in support of this

³³ Draft Report, above n 8, 112.

³⁴ Reserve Bank of Australia Banking Fees in Australia (June Quarter 2017), 36; available at: <http://www.rba.gov.au/publications/bulletin/2017/jun/pdf/bu-0617-4-banking-fees-in-australia.pdf>.

³⁵ Draft Report, above n 8, 112.

³⁶ Ibid, 113.

proposition. We respectfully cannot see that chapter 13 establishes that consumers are paying more.

43. To test whether consumers are paying more, however, we can look at revenue as a ratio of AIEA. This takes into account fees and interest charges paid by customers, less debt funding costs.³⁷ As such, it represents the bank margin, in interest and fees, paid for a dollar of borrowed money by consumers. For ANZ, this ratio has halved since 1995. This evidence suggests that consumers are not paying more.

Figure 11³⁸

ANZ Revenue per \$ of Average Interest Earning Assets



44. We note that the Draft Report further argues that while '...competitive pressures may have contributed to lower fees for some products...technology changes, such as increased use of mobile banking applications, were an important factor in keeping fees low'.³⁹ To support this proposition, the Draft Report cites a RBA paper.⁴⁰
45. When this underlying paper is considered, the relevant technology changes are the decreased use of ATMs due to contactless payments and the increased use of online savings accounts that attract lower fees. Contactless payments and internet banking are two of the key innovations that have been introduced by the banking system in recent years. Thus, the underlying research suggests that fees are declining because the banking system is providing better services and consumers are rationally choosing lower cost products. To us, this is evidence of effective demand- and supply-side dynamics working to see consumers pay materially less.
46. We also note that the RBA paper is clear that the fees which were subject to these dynamics are those relating to deposit accounts. As such, while the Draft Report could be read as suggesting that

³⁷ Debt funding costs are fees and interest paid to depositors and other funders excluding returns to equity. AIEA does not take into account non-funding expenses such as the cost of branches, technology or marketing.

³⁸ ANZ annual reports.

³⁹ *Draft Report*, above n 11, 113.

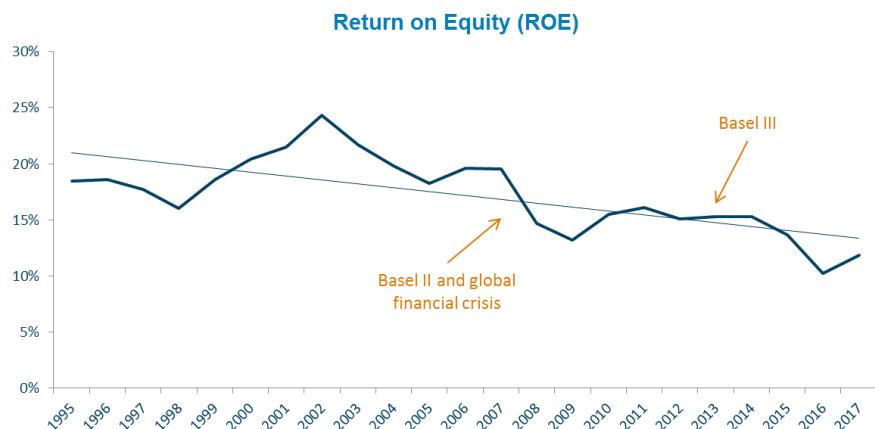
⁴⁰ Reserve Bank of Australia *Banking Fees in Australia* (June Quarter 2017), 36; available at: <http://www.rba.gov.au/publications/bulletin/2017/jun/pdf/bu-0617-4-banking-fees-in-australia.pdf>.

technology changes affected fees for all products, the RBA paper concerns deposit fees only (about 25% of total bank fee income).⁴¹

Bank returns

47. The Draft Report acknowledges that returns of banks with larger market shares have fallen although it cites the improving returns of smaller banks as evidence that such declines are not evidence of a competitive market.⁴² It is true that the returns of smaller banks have trended up in recent times. However, the returns of these banks were severely impacted by the global financial crisis as their funding costs increased significantly. As the RBA suggests, the improvement in the NIM of these banks is partly related to the lowering of funding costs, which could allow their profitability to return to pre-crisis levels.⁴³ The Commission may like to consider this explanation further.
48. Nonetheless, ANZ's returns have been trending downwards over a period of decades and suggest that the notion that returns have reverted to a mean does not hold for all market participants or over a longer time period. Further to the NIM and return on AIEA graphs presented above, ANZ's ROE has fallen roughly a third since 1995 and about half since its high point in 2002.

Figure 12⁴⁴



49. While regulation has impacted both NIM and ROE, the downward trends for both metrics predate the commencement of both the Basel II and Basel III reforms that, particularly in the case of the latter, increased capitalisation (thus affecting ROE) and holdings of low-yielding liquid assets (thus affecting NIM). The long-term structural decrease in bank returns merits more detailed exploration as a marker of competition.

⁴¹ Reserve Bank of Australia *Banking Fees in Australia*, 36. Table 2 of this report indicates the deposit fee income was about \$1.1 billion while total fee income was \$4.4 billion.

⁴² Draft Report, above n 8, 117

⁴³ Reserve Bank of Australia *Competition in the Australian Financial System – Public Inquiry – Submission to the Productivity Commission Inquiry* (September 2017), 14.

⁴⁴ ANZ annual reports

HOME LOANS AND BROKERS

Key points

- **ANZ agrees with LMI refunds and is aiming to automate refunds later this year**
- **Integrity in the broker channel is critical and we agree in principle with enhancing consumer protections**
- **The design of any interest rate transparency tool needs to take into account consumer utility**

Introduction

50. The Commission has proposed a number of recommendations concerning home loan pricing and brokers. We support measures that help consumers navigate the process of selecting and taking out a home loan. Such measures may help consumers form expectations concerning rates being struck in the market, particularly where rates are being discounted. We note that discounting introduces significant price uncertainty for lenders and this can lead to lower prices for consumers.
51. Further, consumers use brokers to understand the market, help with loan paperwork and negotiate a better deal. We are happy to serve customers whether they choose to use a broker, our branch network or our mobile lenders. Roughly half of our mortgages originate from brokers. As such, while we don't own a broker network, we believe the integrity of the channel is critical. In addition to helping our customers, we also think that brokers help those banks without branch networks compete.
52. We look forward to the Commission's conclusions concerning the interest rates obtained by customers through broker channels relative to the rates achieved through branches (Draft Finding 8.1). Analysis of these rates would obviously need to adjust for differences in customer and loan characteristics between loans originated through brokers and direct channels. However, we would suggest that a competitive market would deliver convergence of the rates. If one channel delivered better rates through better negotiating power or market insight, it would be reasonable to expect the other channel to drop its rates in response.
53. We also note that comparison of the rates achieved through brokers and direct channels does not answer the question of whether rates in the market are lower overall because of brokers. Answering that question would require consideration of the counterfactual scenario where brokers did not exist and thus did not lower search costs for consumers and increase distribution opportunities for banks without extensive branch networks.
54. In general terms, we:
- Agree with the Commission's recommendation on refunds of lenders mortgage insurance (**LMI**)
 - We have already approved a refund policy for eligible ANZ LMI premiums paid on or after 1 Oct 2017 when an insured loan is repaid in full within the first two years of its term
 - We are working to automate payment of these refunds later in the year

- The refunds cover complete loan repayments within the first two years of the loan term
 - Agree in principle with enhancing consumer protections in the broker market, and note that a best interests duty could support the existing law to promote consumer interests when receiving help from a broker. Finalisation of the Commission's recommendations should take into account:
 - The need for trust in brokers as advisors
 - Whether consumers are willing to pay for loan help; and
 - Brokers' role in levelling the playing field by lowering distribution costs for banks without extensive branch networks
 - Understand the concerns behind, but would suggest careful design of, a comparison tool that discloses actual rates paid on home loans
55. We set out further details on broker consumer protections and the home loan comparison tool below.

Broker consumer protections can be improved

General

56. As the Draft Report correctly notes, Australian consumers have a strong preference to use a broker when selecting and taking out a home loan. Brokers contribute to a competitive home loan market by:
- Helping consumers understand the market, deal with paperwork and negotiate with lenders; and
 - Increasing contestability by offering distribution channels for banks without branch infrastructure.
57. In helping consumers, brokers act as the advisor to the consumer. We appreciate that this places them in a position of trust in relation to their client. To underpin this trust, the Commission has proposed:
- A best interests duty for brokers in respect of their clients (Draft Recommendation 8.1)
 - Moving towards a client-pays upfront fee model (away from commissions paid by the lender) (Information Request 8.2)
 - Better disclosure of commissions to the client (Draft Recommendation 8.2)

Best interests duty

58. The following points may be helpful to the Commission as it considers its recommendation concerning the best interests duty.
59. The Draft Report interchangeably refers to a 'duty of care' and a 'best interests duty'. These are distinct concepts, with the former having its origins in negligence law and the latter most relevantly

grounded in Chapter 7.7A of the *Corporations Act 2001* (Cth) concerning personal financial advisors. The broker-client relationship would be subject to the laws of negligence in dealing with their clients, we suspect the Commission is actually interested in introducing a best interests duty and not a duty of care.

60. The basis of the Commission's concerns about brokers appears to lie in the conflict of interest that they apparently face in taking a commission from lenders while serving their clients. We note that section 47(1)(b) of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) already requires holders of Australian credit licences and their representatives to

have in place adequate arrangements to ensure that clients of the licensee are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the licensee or its representatives

61. The Explanatory Memorandum concerning the NCCP Act provides the following guidance on this section:

This obligation only applies to conflicts of interests where an interest of the licensee conflicts with a legal obligation or duty that person owes to their client, including where that obligation arises under statute, at common law or under a contract between the licensee and the client. It does not otherwise require a licensee to take action in respect of different interests of parties where they do not constitute a conflict of interest at law.⁴⁵

62. The Explanatory Memorandum provides some examples to help explain this obligation, including the following which may be of interest to the Commission:

A finance broker has appointed credit representatives and has entered into agreements under which the level of remuneration increases if the credit representative arranges 30 loans in a month. A credit representative needs to arrange two more loans to achieve this target, and does so by placing borrowers in credit contracts that are unsuitable. By being placed in an unsuitable credit contract, these clients have been disadvantaged by the credit representative's conflict of interest in receiving the higher remuneration.⁴⁶

63. We also note that section 113 of the NCCP Act requires the disclosure of information concerning commissions payable to credit assistance providers. Specifically, section 113(2)(g) requires credit assistance providers to give information about:

- (i) *any commissions that the licensee, or an employee, director or credit representative of the licensee, is likely to receive, directly or indirectly, from credit providers in relation to credit contracts for which the licensee has provided credit assistance; and*
- (ii) *a reasonable estimate of the amounts of those commissions or the range of those amounts; and*

⁴⁵ Revised Explanatory Memorandum National Consumer Credit Protection Bill 2009 (Cth), para 2.117.

⁴⁶ Ibid, para 2.118.

(iii) the method for working out those amounts...

64. Beyond statutory law, we note that brokers can also owe fiduciary duties towards their clients (see *Perpetual Trustee Co Ltd v Burniston (No 2)* (2012) 271 FLR 122). The duties that fiduciaries owe will vary with the specific relationship but generally these are prescriptive duties that would, if they applied, prevent the broker from obtaining any unauthorised benefit from the relationship or acting in a position of conflict, without the client's informed consent.⁴⁷

Interest rate transparency for home loans needs to be considered carefully

65. The Commission has proposed that lenders provide home loan data to APRA which would, in turn, provide the data to ASIC. ASIC would use the data to develop an online tool that allows prospective borrowers to see the median interest rates for loans issued by lenders in the previous month with specific characteristics and allows the borrower to see specific fees and charges that would affect the total cost of a loan.
66. We can appreciate the policy rationale behind this proposal. As the Commission considers this recommendation further we would, however, ask it to consider two points.
67. First, home loan pricing is often highly contingent on individual circumstances. Thus, while median interest rates may be helpful to consumers in understanding the general level of rates being struck in the market for a given set of borrower and loan characteristics at a given point in time, these may not be indicative of the rate that the consumer would eventually be offered by a lender. Home loan pricing is dynamic with changes in interest rates occurring frequently due to competitive tactics and other drivers.
68. In sum, consumers would need to be made aware that the rate displayed on the comparison site could be higher or lower than the rate that may be offered to them by a specific lender. Such a disclaimer, and the range of loan rate determinants, may reduce the utility of the site for consumers. Before taking this proposal forward, testing on the utility of the tool should be undertaken.
69. Second, we note that banks currently operate under a condition of price uncertainty as to the level of interest rate offered by their competitors. This type of comparison site would remove some of that price uncertainty.

⁴⁷ See Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry *Everyday Consumer Credit – Overview of Australian Law Regulating Consumer Home Loans, Credit Cards and Car Loans – Background Paper 4* (2018), 41 for a discussion of brokers and fiduciary duties.

INTERCHANGE FEES

Key points

- **Card interchange fees should not be banned**
- **The RBA recently considered interchange fees and set rate ceilings that it believes are appropriate for the market**
- **The Commission has not analysed whether the benefits that merchants obtain from card schemes exceeds the costs**

70. Draft Recommendation 10.3 proposes banning interchange fees because, we understand, consumers do not face directly the costs of card payments. It has also recommended that any remaining fees should be directly related to the costs of operating the credit card payment system.
71. ANZ agrees with the Draft Report that Australia is a leader in embracing electronic payments, particularly contactless payments. Innovation in the payments systems reflects the substantial investments made by system participants, underpinned by a robust regulatory framework.
72. However, we do not agree that interchange fees should be banned (with remaining fees based on costs) for two reasons.
73. First, the RBA completed a card payments review in 2016 that led to new interchange regulation. In addition to new interchange regulation, other changes affecting payments markets include the likely market entry of new providers, the NPP, least cost routing for merchants, and 2018 legislated credit card reforms. New interchange and other changes now affecting the Australian payments system should be 'bedded down' before a case for new price regulation is assessed.
74. Second, we do not agree that the costs of providing card systems to a group of system participants such as merchants should be the sole justification for the charges to that group.
75. Card systems are multi-sided platforms, with consumers and merchants participating together with banks and system providers. Users of multi-sided platforms gain benefits from the platforms that depend on the other users that participate on the platform.⁴⁸ Optimal prices to different users do not necessarily reflect the marginal cost of providing services to them and can reflect the benefits they obtain from the platform. We would encourage the Commission to consider the decision of the UK High Court concerning Mastercard interchange fees. In that decision, Popplewell J stated:

... I regard the only relevant questions under the fair share requirement to be (1) whether the benefits to MasterCard merchants from a MIF [multilateral interchange fees] at any given level (if any) match the cost to those merchants of the MIF at that level and (2) whether the MIF at that level generates unduly high profits for issuers so that merchants

⁴⁸ See Gönenç Gürkaynak, Öznur İnanlır, Sinan Diniz and Ayşe Gizem Yaşar, 'Multisided markets and the challenge of incorporating multisided considerations into competition law analysis' *Journal of Antitrust Enforcement* 15, 1 (2017), 107.

are not getting a fair share of the benefits generated by a MIF which matches the value of the benefit to them conferred by the MIF. ⁴⁹

76. Some of the relevant benefits to merchants from cards are avoided costs of other payments methods such as cash, competitive advantage over merchants who do not accept the particular card, online commerce, guaranteed payment (ie fraud or default costs avoided), costs avoided in providing credit and increased or earlier consumer spending. In short, merchants gain benefits from the participation of consumers in card schemes. Consumers participate because they derive value from the schemes (ie innovation such as contactless payments, insurance and fraud protection and reward schemes). We would encourage the Commission to consider these benefits to merchants in considering the appropriate grounds for interchange fees.

⁴⁹ *Arcadia & Ors v MasterCard & Ors* [2017] EWHC 93 (Comm).

NEW PAYMENTS PLATFORM

Key points

- **The New Payments Platform (NPP) is open by design and there is no current evidence that an access regime is needed**
- **The Consumer Data Right, as proposed by the Productivity Commission and endorsed by Government, should be the focus of data sharing**

Introduction

77. ANZ believes it is premature to conclude that a regulatory access regime is required for accessing the NPP. Initial services over the NPP have just been launched. It would be preferable if the Payments Systems Board were to assess the need for a regime in light of any specific issues that arise.
78. The NPP is open by design and will succeed for its ADI shareholders if innovative overlay services have access to the platform. These services will make it more attractive to consumers and this will drive volume that will benefit the shareholders.
79. ANZ supports the Productivity Commission's consumer data right (**CDR**) as endorsed by the Government. We would prefer to see that right used by consumers, at their discretion, to share their data with overlay service providers. We acknowledge that the ability of consumers to use the CDR to do this would depend on its final form.

No demonstrable need for an access regime

80. ANZ believes it is too early to reach a conclusion on whether a mandated access regime is required for the NPP. It may be useful for the Productivity Commission to have further discussions with the RBA and NPP Australia in relation to the proposed approaches to access.
81. The NPP has been designed as an open access platform. Services over it have just commenced operating. The RBA has stated that it will actively monitor the performance of the NPP as services begin to be delivered.
82. The fees set by NPPA to date have, in our view, been open and fair given the inevitable uncertainties associated the introduction of new services over a new platform. Fees will no doubt be amended as volumes increase and new services are added.
83. ANZ is not aware of any specific complaints related to access to the NPP.
84. NPP to date has been funded by the participant shareholders all of which are ADIs. We consider that encouraging use of the NPP is central to the success of the new platform.
85. Those not wanting to subscribe as a shareholder still have the choice, for a much lower commitment, to submit their ideas and champion their cause as a fintech or other potential service provider. Those who wish to provide the NPP service to their customers can by using one of several different model types via one of the existing participants.

86. ANZ supports both the freedom of potential individual overlay service providers to add new services on the rails or utilise existing ones as well as recognising that some of the bigger broad use concepts (eg request to pay, Mandates) will need additional new investment to support those services.
87. NPPA is well placed to facilitate the build out of a future roadmap by taking input from and ideas from all sources protecting any individual IP as appropriate. This would include principles of operating and prioritisation from the ACCC and PSB as appropriate.
88. The Board of NPPA is currently structured in a way that the four major banks have one vote each and the smaller ADIs have four votes between them. Other independent votes go to the CEO and the RBA with the Chair voting if needed to tiebreak.
89. Finally, access regimes have proven to be poor at facilitating ongoing investment in new and evolving technologies such as the NPP. ANZ notes the conclusions of the 2013 Productivity Commission National Access Regime review.⁵⁰ These conclusions suggest that access regulation should only be considered when an enduring problem has been identified and net benefits should be carefully evaluated against the substantial administrative and compliance costs:
 - *Access regulation can address an enduring lack of effective competition, due to natural monopoly, in markets for infrastructure services where access is required for third parties to compete effectively in dependent markets. This is the only economic problem access regulation should address. ...*
 - *Government intervention can be costly — in particular where it adversely affects investment incentives — and is only warranted when it generates net benefits to the community. Access regulation should be applied sparingly.*⁵¹

No need for parallel open access regime for NPP data

90. The Draft Report recommends all overlay service providers be provided with de-identified data going through their service and that the ACCC is consulted on data-sharing obligations.
91. ANZ supports the Commission's CDR as endorsed by the Government. We would prefer to see that right used by consumers, at their discretion, to share their data with overlay service providers accredited by the ACCC to receive data under the CDR. If the data were transaction data from a deposit account held with an ADI, it is likely that the consumer would be able to share that data with the service provider under the CDR.
92. This will allow consumers to benefit from the protections that the Farrell Review contemplated. This includes the accreditation and privacy regimes that will form part of the open data framework.

⁵⁰ Productivity Commission *National Access Regime, Inquiry Report no. 66* (2013).

⁵¹ Ibid. 71.

OTHER TOPICS

Report component	Feedback
Draft Recommendation 7.1 Revised APS 120 to be limited to ADIs	<p>APS 120 changes have been positive for Australian securitisation market, even though they impose higher capital charges.</p> <p>This is because the framework now recognises both funding-only and capital relief deals. The lack of difference between warehouse and term securitisations eliminates any potential capital arbitrage between different securitisation transactions.</p> <p>Changes to APS120 are for APRA but we would encourage alignment with the Basel framework and implementation of Basel's simple, transparent and comparable securitisation regime to reduce securitisation funding costs.</p> <p>We note the latest figures presented by the RBA indicate an increase in the number of other ADIs issuing RMBS.⁵²</p>
Draft Recommendation 10.1 Review regulation of purchased payment facilities	<p>ANZ supports enhanced contestability in the market.</p> <p>We note, however, lower barriers to entry for all or a phased process to licensing are preferable to differentiated regulation that seeks to promote competition by permanently lowering the cost of one cohort of competing entities. This is particularly the case where lower regulatory requirements may reduce consumer protection for a significant number of consumers.</p>
Draft Recommendation 10.2 Make ePayments Code mandatory	<p>ANZ agrees with this recommendation.</p>
Information Request 10.1 How should liability for unauthorised transactions be shared?	<p>ANZ does not agree that the ePayments Code should now be amended to share liability.</p> <p>This change would allow screen scraping.</p> <p>We agree with the Commission that innovators should be able to use open data to offer services to consumers in a way that ensures consumers' interests are protected. The open data regime proposed by the Farrell inquiry has consumer protections as a central element.</p>
Draft Recommendation 10.4 Merchant choice of default network routing	<p>ANZ is working with the RBA to support merchant choice of default network routing.</p>

⁵² <http://www.rba.gov.au/speeches/2018/sp-ag-2018-03-14.html>

Report component	Feedback
Draft Recommendation 11.1, 11.2 and 11.3 Comparative pricing information on insurance renewal notices, transparency on insurance underwriting and phasing out of distortionary taxes	ANZ agrees with these recommendations.
Information Request 12.1 Increase the scope of financial advice to include some credit products	We appreciate the Commission's intent here. We note that it is already possible for holders of Australian financial services licences to obtain Australian credit licenses and thus advise on credit products. As such, the barrier to planners providing credit advisory services is relatively low and the potential economic benefit of the proposed change may be marginal.
Draft recommendation 12.1/Information request 12.2 Rename general advice	ANZ agrees with this recommendation. We note that the replacement phrase for 'general advice' would benefit from consumer testing to ensure that it resulted in better consumer understanding. We note that there would be significant cost in making a change and appropriate implementation time should be allowed to permit rewording of materials and training.
Draft recommendation 17.2/17.3 Transparency of policy	ANZ supports transparent and evidence-based policy making.