

MARKET STUDY INTO PERSONAL BANKING SERVICES
POST-CONFERENCE SUBMISSION
ANZ BANK NEW ZEALAND LIMITED

30 May 2024

Public version



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EXECUTIVE SUMMARY

- 1 ANZ appreciated the opportunity to participate in the three days of the Commerce Commission's (**Commission**) market study consultation conference (**Conference**). There appeared to be broad consensus among attendees on many of the Commission's draft recommendations, indicating a positive attitude in the industry towards continuing to improve market outcomes for the long-term benefit of consumers.
- 2 In this submission, ANZ comments on issues that were raised during, or are otherwise relevant to, the conference discussions, and provides additional evidence in relation to:
 - 2.1 the Commission's draft recommendations,
 - 2.2 the Commission's process to date, and
 - 2.3 the Commission's draft findings on:
 - (a) the nature of competition,
 - (b) profitability, and
 - (c) capital requirements.
- 3 ANZ provides with this submission:
 - 3.1 an expert economics report by Incenta Economic Consulting (**Incenta**) (**Annex A**), and
 - 3.2 an expert economics report by Charles River Associates (**CRA**) (**Annex B**).
- 4 ANZ has engaged meaningfully throughout this market study. This is a reflection of the importance of the market study to the banking industry, our customers and to New Zealand as a whole.
- 5 The Commission has observed that the market study arose in the context of criticism of the banking industry – in particular regarding our competitiveness and profitability. That criticism and debate is ongoing. While some of the debate is positive and fruitful, such as how we can progress and develop open banking, that is not universal. For example, many commentators and media continue to focus on the total dollar amounts of bank profits – despite the Commission recognising that *profitability* is more informative than *profits*.¹
- 6 The Commission's findings will carry a lot of weight in the future debate. As such we are keen to ensure that the Commission's analysis is robust and soundly supported by evidence. That is the aim of our final submission, which accordingly focusses on a few key issues within the market study rather than canvassing the breadth of the debate.

¹ Draft report at [6.7].

Recommendations

- 7 ANZ welcomes recommendations to improve competition in personal banking services, and we support many of the Commission's recommendations.
- 8 As the Commission has recognised, the financial services sector is highly regulated, and this creates an often-heavy compliance burden on all participants. Accordingly, ANZ encourages the Commission to consider the relative priority of its recommendations, so that:
- 8.1 the recommendations with the greatest potential to benefit consumers quickly are progressed
 - 8.2 work for market participants to implement any outcomes can be sequenced appropriately, and
 - 8.3 the costs of implementing the recommendations (both financial and resourcing opportunity cost) do not slow or stop other innovation projects.
- 9 We consider that early priorities could include:
- 9.1 taking further meaningful and productive steps towards facilitating open banking and data sharing in New Zealand, and
 - 9.2 those practical and meaningful recommendations that can make a difference to ordinary New Zealanders including:
 - (a) better understanding of the switching service,
 - (b) work towards availability of basic bank accounts, and
 - (c) Māori land initiatives that will encourage financial inclusion.

The Commission's process

- 10 The Commission is empowered to make recommendations that it considers will promote competition in markets for the long-term benefit of consumers. The market study provisions of the Commerce Act mean it does not need to make any particular findings about the level of competition – including whether or not it is 'workable'.
- 11 However, where the Commission does choose to make findings about the level of competition, those findings have the potential to make an important contribution by forming a base from which public, policy and political debate regarding personal banking services will proceed for years to come.
- 12 The potentially significant and influential nature of the Commission's work highlights why the Commission's findings must be firmly grounded in fact and evidence that has been rigorously tested by the Commission's expert analysts and each Commissioner working on the study, as well as with stakeholders. We believe it is important to highlight this because:
- 12.1 we do not feel that the Commission's process to date has allowed sufficient opportunity for critical aspects of the Draft report – the nature of competition and profitability outcomes – to be, and be seen to be, properly tested, and

- 12.2 we believe the Draft report contains findings that are not supported by the evidence before the Commission and no parties have presented any further evidence that would support those findings.
- 13 ANZ asks the Commission and each Commissioner to rigorously test the findings, and to use language in the Final report that reflects the extent and results of the testing, to ensure each finding has a sound evidential basis and can carry the weight it will need to bear in future discourse on personal banking services.

The Commission's draft findings on the nature of competition

- 14 The key points raised in submissions and at the conference were the draft findings that:
- 14.1 there is sporadic competition between the larger banks and the Commission would expect to see a higher frequency of more intense competition if there were stronger competition, and
- 14.2 the four large banks do not face strong competition from Kiwibank or other providers, which is evidenced amongst other things by the high and stable shares of supply of the large banks.
- 15 ANZ has shown – based on the Draft report's own evidence – that neither of these draft findings are sound. To the contrary, the weight of evidence which has been provided to the Commission demonstrates that competition is strong and sustained. In addition to the evidence referred to in the Commission's Draft report, and the submissions, the evidence at the conference was consistent that there is strong and sustained competition (both price and non-price) among the larger banks, and the larger banks include Kiwibank.
- 16 In this final submission, ANZ provides further evidence to demonstrate that:
- 16.1 there is strong and sustained competition among the larger banks, which includes ANZ, ASB, BNZ, Kiwibank and Westpac, and
- 16.2 market shares cannot be characterised as 'stable', both in general, and specifically by reference to Kiwibank, which presents disruptive competition in personal banking services.
- 17 The weight of evidence shows that workable competition is present in the supply of personal banking services. That said, as described above, the Commission can still make recommendations that it believes will promote additional competition for the long-term benefit of consumers.

The Commission's draft findings on profitability

- 18 The Commission has chosen not to follow its established methodology for analysing profitability. Although ANZ, and experts Incenta, have repeatedly raised this point, the Commission has not provided a valid reason for this departure. Further, the analysis that the Commission has conducted contains material flaws.
- 19 This topic has been canvassed in ANZ's submission on the preliminary issues paper, on the Draft report, and further analysis is set out below in Part D. We wish therefore to highlight one point in this executive summary.

- 20 As the Commission knows, Incenta does not agree with the Commission's inclusion of 'crisis countries' in the dataset. These are countries where the banking sector has been earning below the cost of capital on any measure. Incenta has conducted further analysis, which demonstrates that:
- 20.1 the Commission has included in its comparator analysis five countries (Portugal, Italy, Germany, Switzerland, and the UK), which over the period 2010-2021 banks have made returns lower than New Zealand's risk-free rate of 3.4%,² and
- 20.2 further, once adjustments are taken into account to make the aggregate bank returns comparable, both Japan and the Netherlands fall beneath the risk-free rate, with Denmark only slightly above it.
- 21 Including these countries in the sample skews the Commission's comparison of New Zealand banks' profitability by including countries whose banks earn below any measure of the cost of capital. Doing so, depresses the average of the sample, distorting the view of New Zealand's banks' profitability.
- 22 Putting this point another way, for the Commission to accept that New Zealand banks are making normal returns, their returns would need to be comparable to banks in countries (making up 8 of the 20 countries surveyed) whose banks on average have earned returns *below the average New Zealand 10-year Government bond yield*. ANZ does not consider it appropriate for New Zealand to aspire to such an outcome. If New Zealand banks had returns like the returns earned by banks in these countries, it would not be considered 'normal' – it would be a banking crisis.
- 23 Accordingly, at this stage, we believe the Commission has a choice:
- 23.1 based on Incenta's work the Commission can make a finding that ANZ's returns are within the normal range (or at least there is no cogent evidence that they are not). It would also be straightforward for the Commission to expand the analysis to ASB, BNZ and Westpac by utilising Incenta's models, which the Commission has, or
- 23.2 on the other hand, the Commission may choose not to undertake further analysis. In that case, based on the work it has done on international comparators, and without conducting a bottom-up assessment (which is a deviation from its usual methodology), it must conclude:
- (a) it does not have evidence that New Zealand banks are making above-average returns, and
- (b) the evidence it is relying on cannot corroborate any adverse finding about profitability in New Zealand's banking sector.

The Commission's draft findings on regulation

- 24 ANZ considers that there is much common ground on the intersection between regulation and competition – including that there is not necessarily, or in all cases, a

² This was the average NZ 10-year Government bond yield over the same period.

tension between competition and regulation.³ However, disagreement appears to centre on how to calibrate competition with the policy goal(s) underlying regulation in situations where these two goals are in tension with one another.

- 25 This debate at the conference focused on capital requirements, and accordingly in this final submission ANZ provides further insights on this form of regulation. However, given the other processes and regulatory bodies involved, we think it is important for the Commission to step back and focus the Final report on the intersection between regulation and competition more broadly, for example by finalising its draft recommendation 9 that, whenever appropriate, the Government and policy makers should seek competitive neutrality across banks and other providers in their decision-making.
- 26 In addition to the recommendations, the Commission could also consider providing its competition analysis input through making submissions to the appropriate regulator or decision-making body on regulatory projects.

³ For example, ANZ supports right-sized regulation for open banking and believes that this will help progress open banking, thereby increasing competition.

PART A – ANZ’S FURTHER RESPONSES TO THE DRAFT RECOMMENDATIONS

- 27 We welcome recommendations to improve competition in personal banking services. Given the impact that regulation has on the financial services industry (which was acknowledged by the Commission in the Draft report and at the conference) and its constraining impact on innovation, it is important that there is a degree of confidence that regulatory solutions will improve competition and that they are appropriately scoped, tested and prioritised. More regulation for regulation’s sake risks subverting the Commission’s objectives in promoting competition.
- 28 That being the case, ANZ encourages the Commission to consider the relative priority of its recommendations, so that work can be sequenced appropriately. As was discussed in submissions and at the conference, there is a cost to regulatory change. This includes the financial cost, but also the staff resourcing opportunity cost – each organisation can only implement a certain amount of change at any one time. Prioritisation and sequencing recommendations is important to ensure that other innovation projects, including the core systems transformation underway at certain banks, can continue without delay.
- 29 ANZ considers that taking meaningful and productive steps towards facilitating open banking and data sharing in New Zealand should be prioritised. Subsequently, priority should be given to recommendations that may make a practical and meaningful difference to ordinary New Zealanders and how they interact with financial service providers and perceive the provision of products and services in New Zealand, specifically: better understanding and knowledge of the switching service, work around basic bank accounts, and Māori land initiatives, will encourage financial inclusion.

Draft Recommendation		ANZ Responses
1	The Reserve Bank should review its prudential capital settings to ensure they are competitively neutral and smaller players are better able to compete	As noted in ANZ’s submission on the Draft report, and in Part E below, this is a matter on which ANZ is happy to engage with the RBNZ.
2	Kiwibank’s owners should consider what is necessary to make it a disruptive competitor, including how to provide it with more access to capital	ANZ has no comment on this recommendation, other than we consider Kiwibank to already be a disruptive competitor.

Draft Recommendation	ANZ Responses
<p>3 Government should set clear deadlines and work with industry to ensure open banking is fully operational by June 2026</p>	<p>ANZ noted in its submission on the Draft report that it is committed to timely progress of open banking, while noting that speed to market needs to be balanced against a system that is fit for purpose, safe, and trusted. There was widespread agreement at the conference that open banking needs to be done 'right', with a focus on customers. New Zealand should also ensure its approach benefits from the lessons of overseas experience. There is a clear willingness on the part of all market participants to move open banking forward. There also seemed to be agreement across participants that open banking was an evolving concept – there was no 'switch on' (we are already 'on' in certain aspects) and there was no state which is likely to be considered 'fully operational'. The extent of operations would continue to change and grow over time.</p> <p>It was also clear from Session 5 of the conference that there is a consensus around the need for a detailed and considered roadmap for the development of open banking. Session 5 illustrated that having a clear and agreed focus and direction for development is critical to achieving an open banking environment that will assist competition in New Zealand. Industry needs to be aligned on its desired outcomes, including to ensure that the costs of implementing open banking do not materially outweigh the benefits to consumers. There seemed to be general agreement that rolling out functionality on a modular basis would be the best approach to encouraging competition. As such, the roadmap would then define what deadlines are appropriate for open banking being fully operational i.e., create firm timeframes and milestones for which Government and industry could be accountable.</p> <p>Since the Preliminary Issues Paper and the Draft report were published, there have been two critical developments:</p> <ol style="list-style-type: none"> 1. Industry has implemented its first agreed readiness date of 30 May 2024 for Payments – meaning that as at 30 May 2024, ANZ, ASB, Westpac and BNZ, as API providers (Kiwibank currently has a 2 year delay) have standardised APIs operationally ready for use by third parties for payments. 2. On 16 May 2024 the Government introduced the Consumer and Product Data Bill to Parliament. The Bill will capture data on payments. But the Bill has a greater scope than banking, and affects data sharing in other areas. <p>ANZ considers that it will be important for the success of the roadmap that:</p> <ol style="list-style-type: none"> 1. An appropriately sized working group is established with Government, regulators, industry (including a fintech representative) and consumer advocates to identify the desired outcomes (i.e., the roadmap) for open banking, and to develop the priorities to achieve those outcomes. We strongly encourage a holistic view (data and payments) that is not dictated by individual parties, but puts customers and New Zealand first. In particular:

Draft Recommendation	ANZ Responses
	<p>(a) there needs to be clear customer centric measures of success – such as adoption, use, value and system failures. The working group should provide a prioritised view of the customer outcomes being sought that balances innovation, value and customer protections</p> <p>(b) the working group should give priority to developing strong foundations and customer protections and ensuring that they are properly implemented before development on new services. Integrating Digital Identity and Confirmation of Payee into Open Banking standards would be good starting points for those foundations, and</p> <p>(c) key risks, liability, and standardised customer protection frameworks need to be developed, standardised and balanced across a broad range of SMEs, market participants, and regulators. These frameworks should consider lessons from overseas.</p> <p>2. The Commission grants Payments NZ’s application to Commerce Commission for an authorisation to develop an accreditation framework. We agree that industry and the Government need to work together to achieve alignment and develop open banking. Payments NZ is already established, resourced, and underway with this work. No compelling reason was presented at the conference to incur the considerable time and financial cost of removing this work from Payments NZ and the Consumer and Product Data Bill will take time to be enacted and implemented. Granting authorisation will allow immediate collaboration to achieve standardisation and to develop priorities and desired outcomes, as the later steps in the roadmap are implemented.</p> <p>3. Parliament passes the Consumer and Product Data Bill. The Bill envisages an accreditation regime where data can be shared with accredited third parties. The Government’s drive to move this forward is in line with the Commission’s draft recommendation and will play an integral part in how New Zealand’s data economy develops. The Commission’s recommendation should recognise this development and seek to prevent duplication or contradiction with this process.</p> <p>4. A single regulator is appointed to develop right-sized regulation under the Consumer and Product Data Bill for open banking with a focus on customers’ data rights and actions and to undertake accreditation. There will be a natural ongoing overlap between payments and data from a standardisation, access terms and accreditation perspective. Under the current draft of the Bill, it is proposed that MBIE manage the accreditation process. ANZ sees merit and efficiency in it taking on the role of regulator for open banking, with appropriate input from specialist regulators such as the Commission, FMA and Reserve Bank.</p> <p>5. The Open Banking regulator should consider developing pricing principles for opening banking. Pricing should be reasonable but sustainable to allow for future investment. The Joint Regulatory Pricing</p>

Draft Recommendation		ANZ Responses
		<p>Committee in the UK has published commercial pricing principles for premium API models that could be adopted here. Those principles are that fees and charges for APIs should:</p> <ul style="list-style-type: none"> • broadly reflect relevant long run costs of providing premium APIs • incentivise investment and innovation in premium APIs • incentivise take up of open banking by consumers and businesses and use of network effects • treat third-party providers fairly, and • be transparent. <p>6. The roadmap should require reciprocity for data providers, encouraging early participation of data providers. In Australia, in order to ensure parties who 'take' data will also 'give' data, banks could only receive information if they were participating in the CDR. This led to a number of banks participating ahead of a requirement to do so. For example, Kiwibank has indicated that it wishes to retain its existing 2026 timeframes to meet the API Centre requirements. If that happened, under this model it would be allowed to take additional time, but would not be allowed to take data until it is ready to also give data.</p> <p>ANZ does not consider the Commission's proposed designation of the interbank payments network should form part of the roadmap. Payments is just one type of action for open banking, and a broader approach will be of greater benefit to New Zealand. As set out in our recent submission on the Commission's consultation of the interbank payment network we consider that the designation is unnecessary and is focused on regulating network/systems that ANZ believes is already efficient. Regulation should focus on open banking more holistically.</p>
4	The Government should reduce the barriers imposed by the AML/CFT regime on banks working with fintechs	<p>There is no evidence of any unique barriers in place for fintechs compared to any other industry. No evidence has been put forward that supports a proposition that entry or expansion of fintechs in the NZ market are hampered by bank conduct. ANZ works effectively with fintechs and already partners with a range of large and small fintechs that provide a wide variety of products and services.</p> <p>We have not seen any policy justification, at the conference or otherwise, for fintechs to be treated as having any unique characteristics that would warrant a bespoke broad brush treatment under the AML/CFT regime. The term 'fintechs' is very broad and could include a multitude of business propositions – for example, offering an international payment service, or operating a crypto-currency proposition, or operating an accounting app platform lined to other financial service providers – all of those propositions (appropriately) have different risk profiles under the AML/CFT regime.</p>

Draft Recommendation		ANZ Responses
		<p>Each fintech is assessed on its own merits, with regard to its business operations and how it wishes to use ANZ's products/services. As should be expected, product/service eligibility criteria and terms and conditions apply. Not all applicant businesses will meet such criteria, and therefore may not acquire banking services.</p> <p>We set out below our comments on the proposals discussed at the conference:</p> <ul style="list-style-type: none"> • Code of practice: While a Code of Practice may be a useful tool for reporting entities, we consider that a reporting entity will still need to retain its own freedom whether to commence a customer relationship in any given situation – consistent with the risk-based nature of the regime. New Zealand's AML/CFT regime sits within an international context, and different financial institutions may interact with different and multiple international jurisdictions, which may impact AML/CFT decisions. • Licencing: Any proposed licencing framework may assist but as above, should not over-rule a reporting entity's ability to make its own risk-based assessments. A licencing framework is a complex notion which would require some extensive public consultation. Matters that would need to be addressed include: <ul style="list-style-type: none"> ○ a licencing framework that is robust and can be relied on ○ the licencing body holding the appropriate level of responsibility for that licencing – both (i) in the initial stage of licencing and (ii) in an ongoing review of that to ensure the licencing remains current ○ the licencing body being properly accountable for its decisions, including the introduction of a liability framework for the licencing authority, and ○ a safe harbour for those relying upon those licences. <p>ANZ remains happy to engage with the Government and AML/CFT supervisors in regard to further developments.</p>
5	The Reserve Bank should use its new decision-making framework under the DT Act to explicitly and transparently consider competitive effects	If the Commission makes this recommendation, ANZ will engage constructively with the Reserve Bank.
6	The Reserve Bank should explicitly and transparently articulate how it is applying the purposes and principles of the DT Act to its Deposit Compensation Scheme levy advice	ANZ appreciates the Commission's contribution to the development of this regime (noting that we consider the current levy framework is already pro-competition given there is only a maximum 4x difference in levy across participants, despite there being a potentially far larger differential in the risk of default). If the Commission makes this recommendation, ANZ will engage constructively with the Reserve Bank.

Draft Recommendation		ANZ Responses
7	The Reserve Bank should consider broadening access to ESAS accounts	If the Commission makes this recommendation, ANZ will engage constructively with the Reserve Bank. We have provided comments on ESAS accounts in our submission on the Draft report.
8	The Government should amend the DT Act to allow the Reserve Bank to promote competition, rather than maintain competition	ANZ is neutral on changing the DTA reference from 'maintaining competition' to 'promoting competition'. We observe that section 4 of the DTA contains several principles that the Reserve Bank is required to take into account as part of a carefully calibrated regulatory policy.
9	The Government and policy makers should seek competitive neutrality across banks and other providers in their decision-making wherever possible	ANZ agrees that competitive neutrality is an appropriate consideration to be carefully calibrated along with the other goals of particular regulation, and that where appropriate Government and policy makers should seek competitive neutrality across banks and other providers in their decision-making. ANZ supports the Government's announced review of financial service regulations.
10	The CCCFA should be competitively neutral with respect to home loan refinancing to make it easier for consumers to switch providers	ANZ supports the Government's review of the CCCFA, as part of a wider review of financial services regulations. In particular, we support its intended aims of simplifying licensing requirements, and reducing overlapping and duplicative regulator scope, which should have the effect of reducing the regulatory burden without negatively impacting the stability of the financial system. While ANZ will engage with that process with the Government and regulators, there are aspects of the CCCFA that could be amended to better promote competition. ANZ sees benefit in ensuring that: <ul style="list-style-type: none"> • affordability and suitability requirements and guidance appropriately balance consumer protection with competition considerations (i.e., switching) • disclosure requirements are fit for purpose and appropriately calibrated for the extent of consumer protection they provide, and • liability provisions are sufficient to ensure that lenders take obligations seriously but not so extensive as to unnecessarily divert resources from innovation.
11	Industry should create an enhanced switching service with Government oversight	We agree that increased promotion of the existing switching service is warranted. We support promoting the existing switching service, including doing so on our website. Payments NZ's mandate could also be increased to track awareness and satisfaction with the service, and improvements to the service itself should be investigated – such as moving direct debits and enhancing the service to support volume. We have not seen justification, at the conference or otherwise, for the other proposals raised at the conference:

Draft Recommendation		ANZ Responses
		<ul style="list-style-type: none"> • Government or independent oversight of switching service: This proposal would add to the existing regulatory burden without evidence of a clear benefit to consumers. Further, an independent organisation is not required to establish industry standards and protocol around the transfer of accounts, as these have already been established by Payments NZ. • Reporting on the Switching Service: Consumer NZ proposed reporting on the effectiveness of the switching service. There may be benefit in reporting on metrics such as awareness and satisfaction. But it is important to note that reporting on numbers of people using the service may have limited value. As set out in the Draft report, customers often multi-bank, which would not be properly captured in this data. • Account portability: We would not support a recommendation to adopt account portability. The Productivity Commission concluded in 2014 that account portability is prohibitively expensive, finding 'there [was] no case to introduce it in New Zealand at [that] time as the cost would very likely exceed the benefits'.⁴ Account portability has not been widely implemented internationally, and certainly not in a way that can be adopted in New Zealand.
12	Home loan providers should present offers in a readily comparable manner	<p>We support providing customers with information that helps them to make informed decisions. We note that presenting offers in a readily comparable way is core to the role of mortgage advisors, so any recommendation of this type would be focused on those who do not use a mortgage advisor. Any recommendation to present home loan offers in a readily comparable way will require:</p> <ul style="list-style-type: none"> • careful policy development with clear objectives • consideration of available evidence about how customers make decisions • consideration of empirical evidence about conveying information to consumers in a way that they understand (for example, research undertaken by MBIE in 2015 indicated that Financial Product Disclosure should be short and simple, standardised, meaningful, well presented and tested⁵) • consideration of existing CCCFA obligations on lenders' disclosure of information • avoidance of unintended consequences, and • consultation with the industry.

⁴ Productivity Commission, *Boosting productivity in the services sector* (May 2014) at page 116. Available at: <https://www.treasury.govt.nz/publications/boosting-services-sector-productivity-productivity-commission-inquiry-material-2013-2014>

⁵ Financial Product Disclosure: Insights from Behavioural Economics. Johnston, Tether, Tomlinson February 2015 ISBN 978-0478-38229.

Draft Recommendation		ANZ Responses
		We can foresee difficulties in presenting cash contributions (or other promotional offers e.g. holidays, consumer goods) in a standardised and comparable way, as they are subject to different terms and conditions across the banks. Further, many elements of a home loan offer cannot be compared without the individual borrower's circumstances being considered, in the context of an individual lender's credit settings. A consumer may be able to compare basic prices (for example, for <80% LVR owner-occupied loans) but the amount that can be borrowed is specific to the individual lender's credit settings. Any recommendation to present home loan offers will need to consider how this can be addressed, including banks' need to price for risk in relation to a borrower's circumstances.
13	Mortgage lenders should pro-rate all clawbacks for adviser commissions and cash incentives	ANZ is open to pro-rating clawbacks of commissions from advisors and cash contributions from consumers diminishing on a linear basis and calculated monthly. ANZ already pro-rates on a less regular basis and encourages the Commission to consider the costs and benefits of doing this on a more granular basis. Implementing this recommendation will require technology and systems change and it would be important to ensure that there is a sufficient lead-in period to ensure proper testing.
14	The FMA should produce guidance and monitor advisers' compliance with their duties under the FMCA	ANZ agrees with the recommendation that the FMA should produce guidance and monitor advisers' compliance with their duties under the FMCA.
15	Industry and Government should prioritise work to reduce the barriers to lending on Māori freehold land	<p>ANZ is committed to improving the experiences of Māori and building on its existing policies and processes for borrowing against land in general collective Māori ownership and Māori freehold land, in line with Tākiri-ā-Rangi, our Te Ao Māori strategy to 2040.</p> <p>As discussed at the conference, ANZ has existing policies that already enable lending on Māori freehold land. These are applicable where:</p> <ul style="list-style-type: none"> • there is consensus among land-owners around the use of their land and their decision to borrow • the land-owners are willing to grant their whenua Māori as security to the lender, and • the land-owners meet standard lending criteria around the repayment of the proposed finance. <p>Work to reduce barriers to lending on Māori freehold land should, in our view, be focused on</p> <ul style="list-style-type: none"> • Clarity and consensus: Work by the Government and industry to support landowners in developing plans to best utilise their whenua Māori and to achieve consensus in the execution of these plans (we believe that the implementation of Tākiri-ā-Rangi, in particular building cultural competency, will enable ANZ to better support decision-making). It is easier to support lending where there is clarity and

Draft Recommendation		ANZ Responses
		<p>consensus from all relevant landowners, and challenges can arise when land is held by large groups of owners. While trust structures can help guide and drive decision-making, this is not always the case.</p> <ul style="list-style-type: none"> • Security: The Government identifying and supporting alternative ways to guarantee or underwrite lending would help banks provide lending. Kāinga Ora expanding the Kāinga Whenua Loan scheme to involve more banks and other options to provide buyouts, guarantees or resale options would be positive steps. It is easier for banks to support lending when they can take security or in some other way guarantee the lending. However, some landowners do not feel comfortable using their whenua Māori as security in case it could be sold if they were unable to repay the associated debt. In other instances, it may not be appropriate or possible to offer the land as security, for example if the borrower only has a license to occupy part of a land block. • Affordability: Housing project sponsors – whether they are Government/Kāinga Ora, iwi, Māori landowners, or charitable entities – exploring ways to improve affordability positions with borrowers on a project-by-project basis. It is easier to support lending when there is good evidence to establish the borrower meets the affordability criteria. In some circumstances, ANZ has found there is insufficient cashflow to enable ANZ to carry out a positive affordability assessment. Ways to improve the affordability position include selling leasehold land titles and/or retaining equity in the house/land. Both approaches help reduce costs to prospective home buyers. • Scalability: The Government, industry, and iwi/Māori groups exploring ways to share knowledge. ANZ is committed to continuing to work with iwi/Māori groups to find solutions that can be replicated. Ensuring that the solutions are scalable will be key to beneficial outcomes. For example, ensuring the Kāinga Whenua Loan scheme or any other form of Government credit enhancement is scalable and applicable as widely as possible should be a key consideration. ANZ is open to exploring participation in the Kāinga Whenua loan scheme and would support a review of the scheme. <p>We support the Commission’s draft recommendation that the Government explore ways to reduce the level of scrutiny imposed on Māori land trusts by the AML/CFT regime. In addition, we think the Te Ture Whenua Māori Act regime and the Māori Land Court processes create additional administrative burden that inhibits Māori land trusts from more efficient operation. For example, the time it takes the court to confirm changes in Trustees can impact the updating of bank account mandates and signing of loan documents.</p> <p>ANZ supports the work being undertaken by the Māori Bankers Rōpū, Tāwhia, to identify ways to minimise and resolve these challenges.</p>
16	Industry and Government should prioritise ensuring	ANZ notes there appears to be a general acknowledgement across the industry (illustrated in the submissions and the discussion on Day 3 of the conference) that not being able to access a bank account can be a significant

Draft Recommendation	ANZ Responses
widespread availability of basic bank accounts	<p>hinderance to vulnerable people within New Zealand. Examples include seasonal workers, immigrants, those escaping violence, and those with socio-economic barriers.</p> <p>There was also clear consensus during the conference that it is appropriate for banks not to provide services in certain circumstances. For example, when accounts are used for criminal conduct; when the customer's access to an account can be misused; or in cases of inappropriate or violent behaviour to bank staff.</p> <p>ANZ remains open to exploring this issue but urges the Commission to recognise the challenges that will need to be considered, including the overlay of AML/CFT obligations.</p>

PART B – THE COMMISSION’S PROCESS

The Commission can make recommendations that promote competition for the long term interests of consumers

- 30 The Commission’s discretion to make recommendations is not restricted to situations where the Commission concludes there is a lack of workable competition or a lack of effective competition.⁶
- 31 Competition (including workable competition) exists on a spectrum; monopoly is at one end and perfect competition at the other.⁷ If the Commission believes a recommendation will promote competition (i.e., move a market along the spectrum towards greater competition), it may make that recommendation.
- 32 In this respect, the Commerce Act simply provides:⁸
- 32.1 the Commission must prepare a competition report that records its findings from the competition study
- 32.2 the Commission may make recommendations in the report but it is not required to do so, and
- 32.3 in doing so, the Commission must seek to promote competition in markets for the long term benefit of consumers.⁹
- 33 No finding of a lack of workable competition or of effective competition is required for the Commission in order to make recommendations aimed at promoting additional competition for the long term benefit of consumers.
- 34 The market study power can be contrasted with Part 4 of the Commerce Act. Part 4 only applies to markets where there is little or no (workable) competition (and little or no likelihood of a substantial increase in competition). Part 4 then provides various regulatory frameworks that can be applied to such markets to promote outcomes that are consistent with outcomes produced in competitive markets (being those that have workable or effective competition).¹⁰ The services regulated under Part 4 include electricity transmission and distribution businesses, and gas pipelines businesses, which face little or no direct competition for their services.
- 35 If a market has more than ‘little or no competition’, then it has ‘workable’ competition. We acknowledge that workable competition is, itself, a wide spectrum. But these are markets that the market study function in Part 3A is designed for,

⁶ This point is noted for completeness, given Commissioner Small’s comments at the conference which appeared to conflict with it (emphasis added), ‘*If we find that competition is not working effectively, we may make recommendations to improve competition for the benefit of New Zealand consumers over the long-term*’. Commerce Commission, *Transcript of personal banking services market study conference: session 1* (13 May 2024) (**Session 1 Transcript**) at page 2, lines 11-13.

⁷ *Air New Zealand/Qantas v Commerce Commission (No 6)* (2004) 11 TCLR 347 (HC) at [42], cited with approval in *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [110]. See further, Commerce Commission, *Mergers and Acquisitions Guidelines* (May 2022) at [2.20]: “We ask... has the firm’s market power moved along the spectrum away from perfect competition towards monopoly?”.

⁸ Commerce Act, section 51B.

⁹ Commerce Act, section 1A.

¹⁰ Commerce Act, section 1A.

markets that do not meet the Part 4 threshold i.e., they have more than 'little or no competition'.

- 36 It follows then that even where there is workable competition, there will always be factors affecting competition, and often room to improve competition. Part 3A empowers the Commission to make recommendations that improve what competition there is, regardless of the level that exists.¹¹
- 37 This is important because, based on ANZ's stocktake of the evidence presented during the market study to date, some of the Commission's draft findings about the level of competition and profitability are not supported by the weight of evidence – for more detail, see Parts C and D below.
- 38 However, despite those views, ANZ accepts that many of the draft recommendations have the potential to continue to improve competition and/or consumer outcomes.
- 39 Simply put, there is no need for the Commission to seek to establish that these recommendations are needed and sensible by straining to make findings about the exact level of competition that exists that are not justified by the evidence before the Commission. Such an approach is not required by the Commerce Act. What matters is whether the Commission believes there are recommendations that have the potential to *improve* competition, which ANZ agrees there are.

The importance of getting the findings right

- 40 Allied to this, the Commission's findings on competition must be robust and supported by the evidence. The Commission's findings will be an important contribution by forming the fact base from which public, policy and political debate regarding personal banking services will proceed for years to come and will affect the interests of many stakeholders.
- 41 The fact these findings are made in a Part 3A market study rather than in a regulatory determination, or clearance or authorisation decision, does not mean they are any less important. The Commission should apply the same rigour to its findings in a market study as it does in those contexts. As the Court of Appeal has indicated in the context of clearance and authorisations, the Commission's assessments must be informed by as much practical evidence as possible¹² and should not be based on theory or speculation¹³ alone.
- 42 Moreover, where findings are made, the language used to describe the evidence that has been gathered and analysed must also be carefully calibrated with the strength of that evidence. We return to this below. This is particularly the case for findings relating to the level of competition and profitability.

¹¹ For example, the Commission's Market Study Guidelines state, 'market studies sit alongside and complement enforcement tools available to us under the Act by allowing us to investigate a market where there are indications that features of the market may not be working *as competitively as they could be*' (emphasis added). Commission, *Market Study Guidelines* (19 November 2020), at [24].

¹² *Commerce Commission v Woolworths* [2008] NZCA 276 (The Warehouse) at [191].

¹³ See for example *Telecom Corporation of New Zealand v Commerce Commission* CA CA34/92, 23 June 1992 at page 33: 'pure speculation as to the impact of constraints and simple intuition are no substitute for hard data drawn from empirical studies and evidence from participants in the industry'.

- 43 As the Commission has observed, this market study arose in the context of criticism regarding the level of profitability earned by the large banks, criticism which is ongoing from several sources.
- 44 In summary, the potentially enduring, significant and influential nature of the Commission's work highlights why the Commission's findings must be firmly grounded in evidence that has been rigorously tested by the Commission's expert analysts and each Commissioner working on the study, as well as with stakeholders. The Commission has the expertise and the mana to provide a sound factual basis for the debate to proceed from.
- 45 We believe it is important to highlight this because:
- 45.1 we do not feel that the Commission's process to date has allowed sufficient opportunity for critical aspects of the draft Report – the nature of competition and profitability outcomes – to be, and be seen to be, properly tested, and
- 45.2 for reasons we explain in Parts C and D of this submission and the previous submissions, we believe the Draft report contains findings that are not supported by the evidence before the Commission and no parties have presented any further evidence that would support those findings.

The Commission's process to date has not provided sufficient opportunity to test the preliminary findings in the Draft Report

- 46 We are concerned that the process the Commission has followed has not allowed for fully testing the robustness of the Draft report's findings. It was striking to ANZ that at the three-day conference, only 1.5 hours out of a total of 18.5 hours of public conference time was used to address the nature of competition and profitability combined. ANZ was surprised profitability was only discussed for approximately 20 minutes.¹⁴
- 47 While we acknowledge and support the Commission's focus on looking for ways to improve competition for the benefit of consumers, if the Commission is to make findings that there is not strong competition or banks make above normal profits, then those issues should be aired in a way that is proportionate to their importance.
- 48 And while we have highlighted the conference, this is not the only example where we feel the Commission has given the appearance of being reluctant to engage with ANZ on these topics. In particular, in December 2023, when ANZ was given an opportunity to engage with the Commission, we sought to bring our expert economist, Incenta, to the meeting. We did so on the basis the profitability topic, and therefore Incenta's work, are of real significance to the findings in the market study and to the public, policy and political debate it informs. The Commission did not wish to engage with Incenta at that time and in the subsequent draft Report, ANZ considers the Commission misinterpreted material aspects of Incenta's work, an outcome which could have been avoided.
- 49 It is not clear to us why the Commission has not been more willing to engage and discuss these important issues. We trust the Commission is carefully and

¹⁴ [

dispassionately assessing all the evidence that ANZ has presented to the Commission on these issues with an open mind, without any predetermination.

The Commission's assessment or language must be calibrated with the evidence

- 50 As already highlighted, it is critical that all findings in the final Report have a sound basis in evidence. We note three examples.
- 51 First, as would be expected given the nature of the discussion, comments were made at the conference that were not expressly substantiated.¹⁵ If they are to be included in the final Report, then we trust the Commission will obtain corroborating evidence. It is difficult to tell whether this was carried out for the Draft report. In many cases the source for points (often introduced by the phrase "we have heard") is redacted. ANZ does not contest the appropriateness of the redactions, but notes that in such cases it is not possible for us to evaluate the expertise or experience of the source.
- 52 Second, there are examples where the Commission's assessment does not yet appear to reflect the available evidence. We trust the Commission will focus on this in the final Report. For example, the Commission made a draft finding that customer inertia is a key feature of personal banking markets. The consumer survey undertaken for the Commission provided evidence that the majority of consumers are content with their current provider, and that only 8% of respondents who had switched in the past three years found it difficult. Despite this, and further evidence in submissions of switching levels, the Commission continued to emphasise 'customer inertia' at the conference.
- 53 Finally, the Draft report states that the Commission has not observed any evidence of tacit coordination. We agree and we can add that we do not experience accommodating conduct or tacit coordination – we have made submissions on these points¹⁶ – and that no such evidence was presented in the Conference. But despite that positive finding, the Commission also stated that it could not rule out tacit coordination was occurring.
- 54 Applying a 'we cannot rule out' standard when testing a hypothesis is an impossible standard for any party to dispel, especially when it is accepted that there is no positive evidence to support the hypothesis. ANZ submits that such a statement is not appropriate for the Commission to make when the Commission has positively concluded that there is no evidence of tacit coordination actually occurring. As described above, such a comment from an agency such as the Commission carries

¹⁵ For example, BlinkPay commented that 12 CEOs had mothballed their companies (Commerce Commission, *Transcript of personal banking services market study conference: session 6* (14 May 2024) (**Session 6 Transcript**) at page 13, lines 23-25). Centrapay commented, in relation to banks declining fintech applications that '[the banks] go this is too hard, AML says no. It's not typically that AML has said no; it's typically that it's too hard for [the banks] to go through the extra due diligence' (Session 6 Transcript at pages 3 – 4, lines 29-32 and 1-8 respectively); and Simplicity commented that break fees on home loans mean banks 'have an incentive to fix the rates' and customers are 'actively discouraged from taking out a floating rate loan' (Commerce Commission, *Transcript of personal banking services market study conference: session 9* (15 May 2024) (**Session 9 Transcript**) at page 10, lines 1-11). We assume that the Commission would ensure such comments can be substantiated if it intended to place weight on them in the final report.

¹⁶ ANZ submission on Market study into personal banking services – Draft report (18 April 2024), at [83]-[85].

weight and risks being misinterpreted as indicating a conclusion that such conduct is occurring. Indeed, this is what happened when the Draft report was released.¹⁷

- 55 That said, if there are further observations the Commission considers it needs to make in order rule out tacit coordination, over and above its acceptance that there is no evidence that it is occurring, then please let us know so that we can address any outstanding points.

¹⁷ See for example, Rebecca Stevenson, 'ComCom: Big four banks may limit rivalry to boost profits' (Business Desk, 21 March 2024). Available at: <https://businessdesk.co.nz/article/markets/comcom-big-four-banks-may-limit-rivalry-to-boost-profits>

PART C – THE COMMISSION’S DRAFT FINDINGS ON THE NATURE OF COMPETITION

ANZ’s post-conference stocktake, and overview of this section

- 56 As described above, any findings the Commission makes about the nature and level of competition in the personal banking sector must be robust and supported by evidence.
- 57 The key points raised in submissions and at the conference were the draft findings that:
- 57.1 there is only sporadic competition between the larger banks and the Commission would expect to see a higher frequency of more intense competition if there were stronger competition, and
- 57.2 the four large banks do not face strong competition from Kiwibank or other providers, which is evidenced amongst other things by the high and stable shares of supply of the large banks.
- 58 The evidence in the Draft report demonstrates:
- 58.1 it cannot be inferred from a period of more intense competition that competition is not workable at other times, as providers are constantly closely monitoring market conditions and propositions by their competitors¹⁸
- 58.2 providers compete on price and non-price measures such as range of products, service, perceptions of trust and security, credit settings, turnaround times, digital capabilities, and brand awareness¹⁹ – these non-price features are important to consumers.²⁰ This competition is continuous, and
- 58.3 Kiwibank is a close constraint and a disruptor.²¹
- 59 That is, competition is strong and sustained. Put another way, the evidence clearly demonstrates that competition in this market meets the standard of workable competition.
- 60 In the following sections, ANZ addresses points that have been raised since submissions on the Draft report, and on which we consider we can provide additional evidence, to further demonstrate that:
- 60.1 the evidence indicates there is strong and sustained competition among the larger banks, which includes ANZ, ASB, BNZ, Kiwibank and Westpac, and

¹⁸ Draft report at [5.38].

¹⁹ Draft report at [2.55].

²⁰ For example, the Commission recognises that ‘innovations like mobile applications [can] help attract customers away from major banks’. Draft report at [7.57.2].

²¹ For example, the Commission acknowledges that ANZ, ASB, BNZ, Westpac, and Kiwibank closely monitor each other’s interest rates (Draft report at [5.38]). The Draft report also notes that Kiwibank is the only provider that has grown consistently at or above system growth over the period March 2019 to September 2023 (Draft report at [4.13.1]).

60.2 market shares cannot be characterised as 'stable', both in general and specifically by reference to Kiwibank, which presents disruptive competition in personal banking services.

61 The evidence presented in the process to date, and the additional evidence presented below, does not support the draft findings. Instead, the evidence is that there is strong and sustained competition among the larger banks.

Evidence of strong and sustained competition among the larger banks

62 In addition to the evidence referred to in the Commission's Draft report, and the submissions, the evidence at the conference was consistent that there is strong and sustained competition (both price and non-price) among the larger banks and, as set out in more detail in the following section, the larger banks include Kiwibank.

63 For example, mortgage advisors commented during the conference:

63.1 'If somebody's got a market leading two year rate, it doesn't normally take 24 hours for the other banks to be matching that market rate. They realise that consumers want choice and that they have the ability to make that choice to move.'²²

63.2 'I know in our business we will switch the lender right up until sometimes a week before settlement day to make sure that we get a better rate if there's another better rate on our panel, because we're also very paranoid about losing clients.'²³

63.3 'I still believe that price is inherently important and it's often the starting point of a conversation. That very quickly leads into policy... Policy varies significantly between provide providers... so just because a product provider comes in saying you can have 6%, it may well be that the trade-off of that product might be you can only borrow \$500,000 whereas actually you need to borrow \$600,000. So although the price point was the starting point, it's very rare that it ends up being the finishing point.'²⁴

64 In this submission, ANZ comments on two specific points from the conference and provides additional evidence, that is:

64.1 varying intensity of price competition by individual banks over time is consistent with effective competition overall, and

64.2 the competing away of fees provides further evidence of strong and sustained competition.

²² Comments by Sarah Curtis, mortgage adviser. Commerce Commission, *Transcript of personal banking services market study conference: session 8* (15 May 2024) (**Session 8 Transcript**) at page 11, lines 7-10.

²³ Comments by Hamish Patel, Mortgages OnLine. Session 8 Transcript at page 11, lines 22-25.

²⁴ Comments by Jeff Royle, iLender. Session 8 Transcript at page 19, lines 23-30.

Varying intensity of price competition by individual banks is consistent with effective competition overall

- 65 At the conference, in relation to sporadic competition, the Commission queried whether periods of particularly strong price competition may not be a good guide for what effective competition might look like on an ongoing basis.²⁵
- 66 The Draft report acknowledges that external factors affect price competition at different times, in relation to home loans 'fluctuations in the intensity of competition can often be related to the broader economic environment – including the state of the property market, the interest rate cycle, inflation and/or wholesale funding markets'.²⁶
- 67 The CRA expert report responds to the further comments on sporadic competition at the conference and concludes that varying intensity of price competition by individual banks over time is consistent with effective competition overall.

Competing away of fees evidences strong and sustained competition

- 68 In its submission, ANZ noted the fact that transactional accounts are largely free of fees is a strong indicator of price competition, as these fees have effectively been competed away.
- 69 In addition to the evidence presented in the submission, ANZ notes as a result of strong competition, it has removed over \$190m in fees over the period from FY2018 to FY2024, either by reducing or removing fees.

The Commission's draft findings drawn from market shares are not accurate

- 70 At the conference, the Commission placed emphasis on high and stable shares of supply of the larger banks evidencing that the larger banks do not face strong competition and that competition between them is sporadic rather than strong and sustained.²⁷ The CRA expert report responds to those comments and concludes that stable market shares, even over long periods of time, do not imply that competition is not working well, and there should be no expectation of greater movement in market shares in an effectively competitive market. Further, in ANZ's view, the evidence shows that market shares are not "stable", and in fact evidence continuous competition. Kiwibank's market share over time illustrates its important contribution to the competitive dynamic, as further demonstrated by the fact that the larger banks closely monitor Kiwibank's interest rates, as stated in the Draft report.²⁸

Kiwibank's market shares evidence strong and sustained competition

- 71 The Draft report states there is no 'maverick' currently in New Zealand. In contrast, the Commission has described Macquarie as a maverick in Australia.²⁹

²⁵ Session 1 Transcript at page 10, lines 17 – 18.

²⁶ Draft report at [4.43].

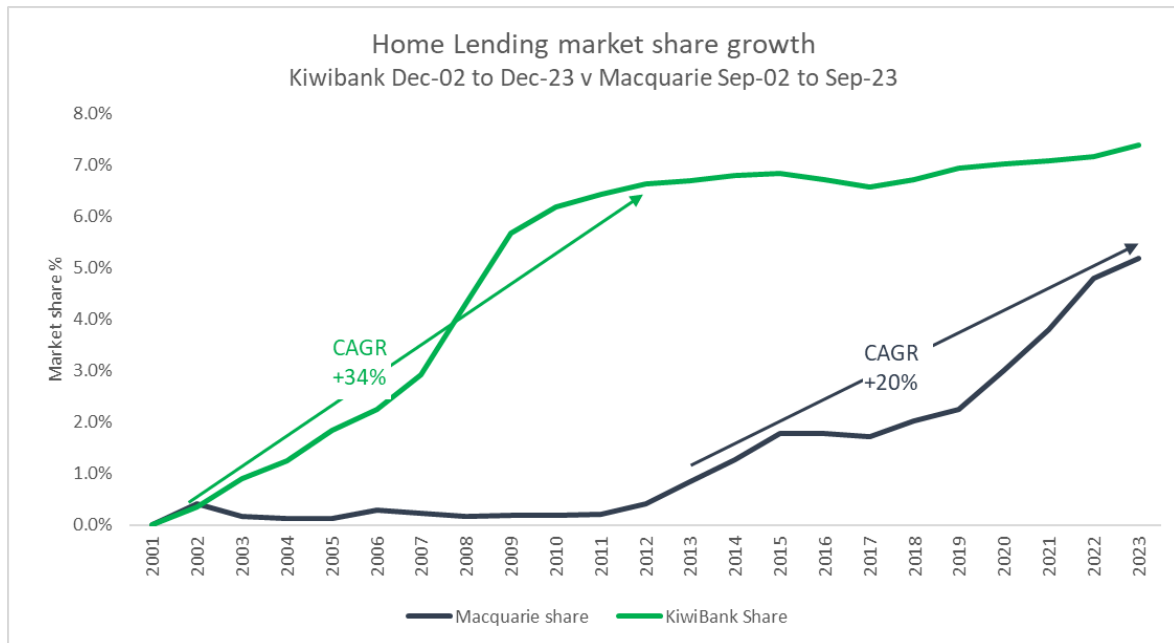
²⁷ Session 1 Transcript at page 2, lines 21-23.

²⁸ Draft report at [5.38].

²⁹ Draft report at 4.128.

72 However, Kiwibank's compound annual growth rate (**CAGR**) compared with that of Macquarie does not support the distinction the Commission is drawing, and instead ANZ's assessment suggests both banks' rapid growth have a disruptive or maverick character – see Figure 1 below, which compares the two based on ANZ's assessment. Kiwibank's market share growth has slowed more recently, which is consistent with ANZ's view that as banks increase market share their ability to continue to grow at pace is impacted by existing customers also switching out– the focus becomes both acquiring and retaining customers. But Kiwibank is still growing 'above system', meaning its presence is continuing to expand. It has increased its share of net switching³⁰ and has been consistently growing at or above system over the last 5 years.³¹

Figure 1: Home lending market share growth (Kiwibank and Macquarie)



Source: ANZ assessment based on RBNZ/APRA/Bank disclosure statements

73 [

REDACTED

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³⁰ Net switching is a measure of customers switching into banks less those switching to another bank.

³¹ Indeed, Kiwibank's home loan growth has been 1.5 times the system growth over the last 5 years (RBNZ Dashboard), but this has translated into Kiwibank gaining less than 1% of market share. Co-operative Bank's latest results demonstrate it grew its home loan book at twice the system rate over the last year. Co-operative Bank, *News release: The Co-operative Bank delivers consistent and fair profit in full-year result* (27 May 2024). We note, further, that Kiwibank's business lending market share has more than doubled since September 2019, growing at 11 times the system rate during that period (the RBNZ dashboard shows the Kiwibank business lending market share has grown from 1.73% in September 2019 to 3.90% in September 2023).

Figure 2: [

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Figure 3: [

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- 74 Separately, at the conference, there was discussion regarding processing times for home loans, with a suggestion that banks give priority to home loan processing in their proprietary channels over the mortgage adviser channel. ANZ has assessed its data in relation to the percentage of applications for home loans that are approved the same day that the application is created. Figure 4 below sets out that data and illustrates that ANZ does not discriminate on processing time between proprietary

and mortgage adviser channels, as turnaround times are similar across both channels over time. ANZ notes there are some difficulties with comparing processing times in this way, given the more complex the application is, the longer it will take to get to the approval stage. This is true for all channels, and is not controlled for in the data used to produce Figure 4.

Figure 4: [

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The position following the conference

- 75 The totality of the evidence does not support a finding that the major banks do not face strong competition when providing personal banking services. The evidence supports a finding that there is strong and sustained price and non-price competition between ANZ, ASB, BNZ, Kiwibank and Westpac. That is, the evidence supports a finding that competition is workable.
- 76 As set out above, such a finding does not prevent the Commission from making the recommendations aimed at improving competition for the long-term benefit of consumers. The Commission is free to indicate that it would like to see more (workable) competition or more bouts of what it perceives as more intense sustainable competition between the larger banks even if it concludes that there is currently workable competition.
- 77 Further, the market share evidence supports a finding that the larger banks face strong competition from Kiwibank. Such a finding does not preclude the Commission indicating that it would like to see Kiwibank continue to grow, or to grow faster, and to offer recommendations to facilitate that outcome.
- 78 Overall, the evidence set out above and at the conference demonstrates that ANZ faces strong competition across price and non-price aspects of its personal banking services, including from Kiwibank. ANZ monitors and responds to that competition. As such, it is clear that workable competition is present in the supply of personal banking services.

PART D – THE COMMISSION’S DRAFT FINDINGS ON PROFITABILITY

Stocktake and overview of this section

- 79 As set out in ANZ’s submission on the Draft report, if the Commission’s established methodology is followed, with appropriate adjustments made:³²
- 79.1 ANZ’s average post-tax return on equity (**ROE**) over the 2010 to 2021 period – 12.3% – was materially the same as the average post-tax returns of a valid peer group of international banks – 12.2% – when compared on a like-for-like basis, and
 - 79.2 an estimated cost of equity for ANZ was 12.1%-12.8%, with ANZ’s actual post-tax ROE of 12.3% within the range of normal returns.
- 80 As set out in more detail in this section, the Commission’s draft findings on profitability are not supported by the evidence before the Commission. The Commission’s departure from its established methodology, and the errors in approach, undermine its draft findings. In particular, the Commission has:
- 80.1 not used a comparable set of banks against which to assess the financial performance of New Zealand’s banks (in contrast to its established approach)
 - 80.2 chosen a methodology for deriving its profitability benchmarks that contains material errors which undermine its conclusions, and
 - 80.3 chosen not to cross-check its work with a comparison against a bottom-up estimate of the cost of capital, despite previously relying on a bottom-up estimate as a primary measure and cautioning about the limitations of international comparisons.³³ The Commission has not explained the reason it has adopted the opposite approach to weighting its profitability findings in this case.
- 81 Based on its analysis to date, ANZ considers that the Commission cannot make the findings it has in the Draft report about the reasonableness of profits.
- 82 Nevertheless, for the reasons set out in paragraph 75 above, and with the Commission’s focus being on how competition can be improved above whatever level of competition is already present, the Commission does not need to make any findings about profitability:
- 82.1 as set out in ANZ’s submission on the Draft report,³⁴ ANZ agrees with the Commission that profitability is not conclusive evidence of how competition is working in a market – high profitability does not necessarily mean a market could be more competitive, and low profitability does not necessarily mean competition is working well. Profitability is an outcome of the competitive process – it is well recognised and accepted that caution is needed when trying to draw inferences about the level of competition from profitability

³² ANZ, *Submission on Draft report* at [148].

³³ See the final report in the grocery market study at chapter 3.

³⁴ ANZ, *Submission on Draft report* at [146].

measures. Accordingly, it would be credible for the Commission to decline to make a finding about profitability, while still reaching findings about competition, and

82.2 as noted above in Part B, the Commission’s obligation is to carry out a competition study into any factors that ‘*may* affect competition for the supply or acquisition of personal banking services’.³⁵ Matters to be considered in the study *may* include comparative indicators of bank financial performance (including profitability).³⁶ Even if the Commission chooses to examine comparative indicators of profitability, the Commission is not obliged to make findings on profitability in order to make recommendations about improving competition.

83 If the Commission is going to make findings about the profitability of participants in the personal banking sector, then those findings must be robust and supported by evidence. This is particularly important given the context for the market study:

83.1 criticism about profitability is ongoing from several sources; the debate appears to often start from the assertion that banks are earning abnormally high returns (frequently, referencing total dollar profits, or referencing the preliminary analysis by Reserve Bank and Treasury, the Draft report, or the recent OECD report). In this regard:

- (a) the Reserve Bank’s preliminary ROE analysis was based on a country-to-country comparator, using World Bank data.³⁷ As Incenta observed in its expert report on the Draft report, there are inherent limitations in the World Bank data set and it is not suitable for a profitability analysis.³⁸ The Commission’s well-established profitability methodology does not deploy this type of comparator, and instead involves firm-by-firm comparisons using Bloomberg data
- (b) the Treasury’s report relied on the Reserve Bank’s analysis and findings on profitability.³⁹ Treasury did not make any firm findings about profitability, and instead (reflecting the preliminary nature of the Reserve Bank’s work) recommended that the Ministers consider a market study as the Commission would have the resources, expertise and information-gathering powers to conduct a full analysis⁴⁰
- (c) in any event, neither the Reserve Bank nor the Treasury undertook a thorough profitability analysis using the Commission’s established methodology. While both are experts in their respective fields, it is the Commission’s specific competition expertise the Government and public rely on for analysis of competition and its outcomes (including profitability) and factors affecting it, and

³⁵ [Terms of Reference](#), Gazette 20 June 2023.

³⁶ [Terms of Reference](#).

³⁷ See figure 2.12: Reserve Bank [Financial Stability Report](#) (May 2023).

³⁸ Incenta, [Personal banking services market study – response to the Commission’s draft report](#) (April 2024) at [56]-[57].

³⁹ The Treasury, [Budget 2023 Tax Initiatives Information Release](#) (July 2023) at [6]-[7].

⁴⁰ The Treasury, [Budget 2023 Tax Initiatives Information Release](#) (July 2023) at [56].

- (d) as discussed below, the recent OECD report is largely a summary of the work of others (including the Commission's Draft report) and it does not provide any additional insights into the profitability of the New Zealand banks from the OECD's recent country summary, and

83.2 the debate can be beset by inaccuracy. For example, some commentators have incorrectly claimed ANZ's net interest margin (**NIM**) in New Zealand for the first half of our financial year was materially higher than ANZ's NIM in Australia.⁴¹ However, the 'Australia' NIM was for ANZ's global operations,⁴² including our global markets business, which has a large and fluctuating negative impact on overall NIM. In contrast, the 'New Zealand' NIM of 2.56% is for our New Zealand Personal and Business and Agri businesses. The accurate comparison to that New Zealand NIM is the combined margin of ANZ's Retail and Commercial businesses in Australia, which is 2.52%. This 4-basis point difference is more than explained by the higher levels of capital ANZ must hold in New Zealand. That is, in its decisions on the capital review, the Reserve Bank estimated the impact on lending rates of the 2019 reforms to be 20.5 basis points, based on what it considered to be conservative assumptions.⁴³ The decisions are being implemented, and in ANZ's view 4 basis points is at least proportional with the increased capital it has been required to hold so far.

- 84 Incenta's final report, the key findings of which we summarise below, builds on Incenta's reports prepared in response to the Preliminary Issues Paper⁴⁴ and to the Draft report⁴⁵ and we do not repeat those points here.

Incenta's further analysis

- 85 Incenta's report discusses a number of specific questions and topics raised during the course of the conference. Based on that report:
- 85.1 the countries from which the Commission's sample of comparable banks have been drawn include a large number of countries whose banks have on average been failing to cover their cost of capital over a long period – bank returns in countries where the average aggregate bank return is below any plausible measure of the cost of capital are an inappropriate comparator for New Zealand banks
- 85.2 a cross-check of profitability figures against a bottom-up estimate of the cost of capital should be undertaken, which would be straightforward and which would be likely to reinforce that New Zealand banks are not earning excess returns
- 85.3 there are sound reasons supported by economic literature to include intangible assets (including goodwill) for the benchmarking of profitability.

⁴¹ If the Commission would like to discuss ANZ's financial reporting disclosures in more detail, or if it has any other questions on how ANZ calculates its returns measures, please let us know.

⁴² ANZ operates in close to 30 markets, including Australia and New Zealand.

⁴³ Reserve Bank, [Capital Review Decisions 2019](#) at [54].

⁴⁴ Incenta, [Benchmarking the profitability of the New Zealand banks against international peers](#) (September 2023).

⁴⁵ Incenta, [Personal banking services market study – response to the Commission's draft report: Report for ANZ](#) (April 2024).

But whether or not goodwill is included, the analysis must adjust firms' returns to create a comparable level of booked intangible assets to allow an apples-with-apples comparison

85.4 no inferences can be drawn from the profitability of the large New Zealand banks relative to the small banks, and

85.5 the recent OECD Economic Survey for New Zealand,⁴⁶ which commented on the profitability of the New Zealand banks was drawn from, and therefore did not add any insight to, the Draft report.

The Commission is comparing ANZ to a sample that contains 'crisis countries'

86 Incenta's previous reports explained that it was an error to benchmark returns of New Zealand banks to 'crisis countries'. In its final report, Incenta expands on these concerns by reference to the table below:

Table 1 – Returns by country included in the Commission's sample (average 2010 to 2021)

	ROE - World	Incenta individual firm ROE		Included by Incenta?
	Bank	Raw	Adjusted	
Canada	15.0%	18.1%	11.9%	Yes
Hong Kong SAR, China	13.0%	15.5%	16.1%	Yes
Sweden	12.2%	12.3%	9.8%	No
Australia	11.9%	12.8%	9.5%	Yes
Norway	11.7%	11.7%	10.2%	Yes
Singapore	10.2%	11.1%	13.0%	Yes
United States	9.3%	9.4%	13.1%	Yes
Israel	9.2%	8.7%	8.0%	Yes
Belgium	8.9%	8.0%	8.6%	No
Finland	7.9%	10.1%	7.6%	No
Netherlands	7.5%	7.5%	3.1%	No
Austria	7.3%	5.8%	7.6%	No
France	7.1%	n/a	n/a	No
Denmark	6.2%	6.7%	3.7%	No
Japan	4.7%	5.2%	3.1%	No
United Kingdom	3.1%	2.7%	3.4%	No
Switzerland	2.4%	n/a	n/a	No
Germany	0.5%	1.7%	1.3%	No
Italy	-0.6%	0.4%	2.0%	No
Portugal	-5.1%	n/a	n/a	No
Average - all countries	7.1%	8.7%	7.8%	
Average - Incenta countries	11.5%	12.5%	11.7%	
Median - all countries	7.7%	8.7%	8.0%	
Median - Incenta countries	11.7%	11.7%	11.9%	

Sources: World Bank database, Bloomberg and Incenta analysis.

87 This table demonstrates that the Commission has included in its comparator analysis five countries (Portugal, Italy, Germany, Switzerland, and the UK), where banks

⁴⁶ OECD, [Economic Surveys New Zealand](#) (May 2024).

made returns less than New Zealand's risk-free rate of 3.4%.⁴⁷ Further, once adjustments are taken into account to make the returns comparable, both Japan and the Netherlands fall beneath the risk-free rate, with Denmark only slightly above it.

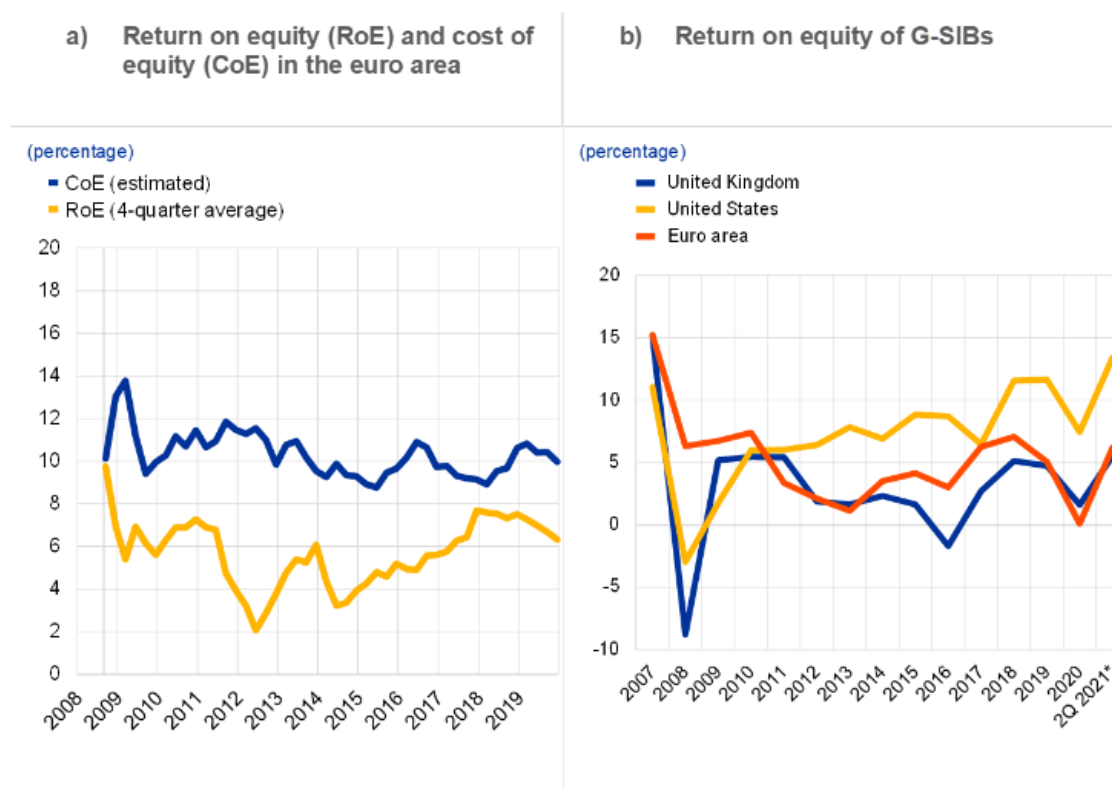
- 88 This point bears emphasis: the table does not show the returns of single banks or single years which might be outliers. Rather, it shows the average returns for the country's entire banking sector across a 12-year period. This suggests that, for the Commission to accept that New Zealand banks are making normal returns, their returns would need to be comparable to banks in countries (making up eight of the 20 countries) whose banks on average have earned returns *below the average 10-year New Zealand Government bond yield*. ANZ does not consider it appropriate to aspire to such an outcome. It is certainly not the case that such an outcome would be considered normal – it would be a banking crisis.
- 89 Incenta's perspective is supported by 2021 comments made by Andrea Enria, chair of the supervisory board of the European Central Bank between 2019 and 2023.⁴⁸ Mr Enria noted that euro area banks have been struggling with low profits for more than a decade. He also affirmed that, 'whatever choices they make, banks need to ensure their business model performance is sustainable throughout the cycle, including in challenging business environments, such as those that followed on from the great financial crisis, the sovereign debt crisis and, more recently, the coronavirus (COVID-19) pandemic'. The focus of the speech was ways to address and win the 'profitability challenge' – strongly supporting the idea the euro area banks are not an appropriate comparator for New Zealand.
- 90 Mr Enria used the chart below to illustrate that the average euro area bank had been unable to earn the sector's estimated cost of equity.⁴⁹ Mr Enria's chart therefore provides a further illustration of why the Commission has erred by including crisis countries.

⁴⁷ This was the average New Zealand Government 10-year bond yield over the same period.

⁴⁸ 'The many roads to return on equity and the profitability challenge facing euro area banks', speech by Andrea Enria at the 26th annual financials CEO conference. Available at: <https://www.bankingsupervision.europa.eu/press/speeches/date/2021/html/ssm.sp210922~df2b18acb9.en.html>.

⁴⁹ Notes: 'G-SIBs' refers to global systemically important banks.

Chart 1



Panel a):

Sources: Bloomberg, Refinitiv, Kenneth R. French data library, S&P Market Intelligence and ECB calculations.

Note: the latest observation is for December 2019.

Panel b):

Sources: Bloomberg and ECB calculations.

Note: Q2 2021 data are annualised.

91 The chart also shows that:

91.1 US banks were able to recover profitability post-crisis more steadily and quickly than Europe, and

91.2 the UK banks' ROE also remained depressed in the wake of the global financial crisis and the Eurozone Debt Crisis that followed.

92 Incenta's previous reports outlined why it was an error to rely on the World Bank comparator countries data (which is a composite, incomplete and opaque dataset). Further, using country-level observations means that every country is given equal weight, regardless of the size of the country or the number of banks included in that country's data.⁵⁰ This distorts the data in favour of small countries.

93 These fundamental errors with the comparator sample means that it is not possible for the Commission's work to support a finding that New Zealand banks are making persistently, or abnormally high, profits.

⁵⁰ Incenta, Market review of personal banking – post conference submission at [10.c].

A bottom-up estimate of cost of capital supports that ANZ is not earning excess returns

- 94 In previous market studies, the Commission has relied on a bottom-up estimate as the primary measure to assess profitability. Although Incenta has expressed caution in the past about placing excessive weight on a bottom-up estimate, it is nonetheless a useful cross-check that the Commission should perform.
- 95 It is not clear to ANZ why the Commission has not undertaken this analysis; it has an established method to perform a bottom-up estimate that Incenta was able to apply to the banking sector. This demonstrated the average returns of ANZ over the assessment period has been within the range of normal returns. Further, it is a simple exercise for the Commission, and Incenta has made its models available to the Commission to enable the Commission to easily perform its own bottom-up estimate of the other large banks.
- 96 The relative riskiness of New Zealand, when compared to banks in comparable countries, was also discussed during the conference. ANZ, for example, noted our isolated location, trading patterns and prevalence of natural disasters as particular risks that are not present in some other countries.⁵¹ Incenta observes that:
- 96.1 Government interest rates in New Zealand are typically higher than overseas, and this differential in the risk-free rate of return is likely to allow for part of this risk. In turn, that higher risk-free rate will naturally be factored into the bottom-up cost of capital, and needs to be adjusted for when comparing returns of New Zealand banks with banks in other countries, and
- 96.2 this relative risk could also impact the average beta for New Zealand banks, and the extent of any self-insurance premium. However, Incenta has taken the conservative approach of assuming the average beta and that any self-insurance premium is immaterial.

Intangible assets should be included (but ANZ is not earning excess returns even if intangible assets are excluded)

- 97 Incenta's final report also discusses the position of intangible assets in more depth. The Commission has previously expressed the view that it does not consider goodwill to be an investment in a revenue earning asset.⁵² We observe that the use of the term 'goodwill' may be distracting: the key point is whether an allowance for unbooked intangible assets should be included. As an example, the Draft report demonstrates that banks invest in their brand, and that having a strong brand is a driver of competition, hence it is a revenue earning asset. In this way, the banking sector is fundamentally different to regulated natural monopolies and there should be no dispute that intangible assets are relevant in banking.
- 98 Accordingly, the real question is how to measure a bank's intangible assets. Goodwill recorded on a purchase is a reasonable proxy for the unbooked intangible assets that are acquired as part of the transaction. But where there is no purchase (and for the unbooked intangible assets that had been created internally by the acquiring firm) then there needs to be another recognition of the amount of intangible assets.

⁵¹ Session 1 Transcript at page 30, lines 25-30.

⁵² See, for example: [Market study into the retail grocery sector – Final report](#) at [B99].

- 99 As set out in Incenta's report, the economics literature supports the view that modern firms create and employ intangible assets which, despite being valuable, can only be included in the books under accounting rules where a business is sold (and the asset is reported as 'goodwill'). A firm's intangible assets should be included when benchmarking returns to ensure:
- 99.1 a proper comparison is made (as some firms will have booked goodwill providing some estimate of intangible assets, and others will have non-booked intangible assets), and
- 99.2 an appropriate allowance is made to reflect these intangible assets.
- 100 Incenta observes that returns derived after the exclusion of goodwill would be an overstatement of the economically correct value. Nonetheless, Incenta found that its conclusion – 'namely, that ANZ's return is materially the same as the average of the comparable banks' – would remain unchanged if goodwill were excluded altogether.⁵³

It is not possible to draw inferences from comparisons of New Zealand banks' profitability

- 101 The Commission queried whether it was possible to draw any inferences about the returns of smaller banks, when considering the returns for the large New Zealand banks.⁵⁴ As Incenta notes, it is not possible to draw any simple conclusions from these banks' relative returns:
- 101.1 *when properly analysed, the ROE for five smaller banks was materially the same as the large banks* – the large banks were more highly levered than the small banks. Once the leverage was standardised, to enable an apples-with-apples comparison, Incenta found that the ROE for five small banks was materially the same as the large banks
- 101.2 *the ownership structure for the remaining smaller banks may account for differences in their acceptable returns* – The Co-Operative Bank and TSB Bank do not raise equity capital, while for Kiwibank equity is provided by the Government, which removes the requirement to earn a market return on equity to attract investment. Heartland Bank is the only other bank that has its equity listed on the ASX and NZX and so must raise and retain funds from the equity market and, tellingly, it has the highest (adjusted) ROE of all the New Zealand banks, and
- 101.3 *by itself, the comparison says nothing about whether large banks are making above-normal returns* – in any event, Incenta observed that a difference in returns only demonstrates the relative profitability of large and small banks. It does not demonstrate whether: the large banks are making normal returns, with the small banks making sub-normal; the small banks are making normal returns with the large banks making above-normal; or both large and small banks are making sub/above normal returns. An external benchmark, whether a bottom-up assessment and/or international comparator, is required to determine which banks, or set of banks, are earning 'normal' returns.

⁵³ Incenta, Market review of personal banking – post conference submission at [26].

⁵⁴ Session 1 Transcript at page 24, lines 17-21.

The OECD Economic Survey for New Zealand does not alter the analysis

102 Some participants at the conference relied on the OECD's recent Economic Survey for New Zealand report to criticise banks' profitability.⁵⁵ Incenta has reviewed the OECD's analysis and concluded that:

102.1 it is largely a summary of the work of others (including the Commission)

102.2 no additional insights may be gained into the profitability of the New Zealand banks from the OECD's recent country summary, and

102.3 the OECD's work is subject to a number of defects, including some of the same errors as the Commission's own analysis.

The position following the conference

103 As Incenta commented at the conference, the conclusions in the Draft report – namely that the large New Zealand banks have higher profits than the countries in the World Bank data set – flow from the data and analysis used by the Commission. However, the question the Commission indicates it is considering is whether the returns of the New Zealand banks are above and have been persistently above the returns that would be earned in a workably competitive market.⁵⁶ That is a more difficult question, and it requires the Commission to apply its established methodology for analysing profitability.

104 Based on its analysis to date, ANZ considers that the Commission cannot make the findings it has in the Draft report about profitability. As noted above, the Commission's findings are important and have the potential to carry real weight in the public, policy and political debate. What the Commission says about profitability should be carefully calibrated to the evidence in front of it.

105 At this stage, we believe the Commission has a choice:

105.1 based on Incenta's work the Commission can make a finding that ANZ's returns are within the normal range (or at least there is no cogent evidence that they are not). It would also be straightforward for the Commission to expand the analysis to ASB, BNZ and Westpac by utilising Incenta's models, or

105.2 on the other hand, the Commission may choose not to undertake further analysis. In that case, based on the work it has done on international comparators, and without conducting a bottom-up assessment (which is a deviation from its usual methodology), in our view:

- (a) the Commission does not have evidence that banks are making above-average returns, and
- (b) the evidence it is relying on cannot corroborate any adverse finding about profitability in New Zealand's banking sector.

⁵⁵ For example, Session 1 Transcript at pages 29-30, lines 31-34 and 1-7 respectively.

⁵⁶ Session 1 Transcript at page 28, lines 9-29; compare Draft report from paragraph 6.3.

PART E – THE COMMISSION’S DRAFT FINDINGS ON REGULATION

Stocktake and overview of this section

- 106 It is apparent that there is a lot of common ground amongst the submitters, and between submitters and the Commission, on the intersection between regulation and competition. In particular, the following general propositions do not seem to be controversial:
- 106.1 for very good reasons, regulation is a significant feature of personal banking services, and some types of regulation can operate as barriers to entry and expansion
 - 106.2 regulation is implemented to achieve a variety of important policy goals, such as consumer protection, preventing/identifying crime, or promoting and maintaining financial stability
 - 106.3 promoting competition in markets is for the long-term benefit of consumers within New Zealand
 - 106.4 there is not necessarily or in all cases a tension between competition and regulation,⁵⁷ but
 - 106.5 there are at least some areas where regulation is unduly duplicative or burdensome, or where it unnecessarily hinders competition. For example:
 - (a) submitters generally supported widening access to ESAS accounts, which would create a more level playing field for competition (and this work is already underway by the Reserve Bank),⁵⁸ and
 - (b) there was wide-spread support for the CCCFA review, which would in part focus on reducing the burden it imposes (and which has now commenced as part of the Government’s ‘Fit for purpose financial services reform’ review).⁵⁹
- 107 Where the participants appear to disagree is how to calibrate competition with the policy goal(s) underlying regulation in situations where these financial stability and competition goals are in tension with one another.
- 108 Although the calibration of regulation and competition has been discussed in a number of contexts, the Draft report, submissions and conference focused on prudential regulation (in particular, capital requirements). Accordingly, in this final submission we will likewise focus on capital requirements (we also provide additional evidence regarding the Deposit Compensation Scheme).

⁵⁷ As observed by the Commission: Session 1 Transcript at page 3, lines 23-25.

⁵⁸ Commerce Commission, *Transcript of personal banking services market study conference: session 5* (14 May 2024) (**Session 5 Transcript**) at page 1, lines 15-16; and Reserve Bank [Submission on Draft report](#) (18 April 2024) at page 10.

⁵⁹ For example, Session 9 Transcript at page 17, lines 32-33 and at page 19, lines 18-19. See also: Westpac [Submission on Draft report](#) (18 April 2024) at [16] and [52]-[53].

- 109 However, it is worth noting that capital requirements are simply one strand in the weave of regulatory requirements (and it is one that has received detailed and recent attention from the Reserve Bank) and we would ask the Commission not to place undue focus on this strand. Instead, ANZ considers that it would be valuable if the Commission focused the Final report on the intersection between regulation and competition more broadly, for example by finalising its draft recommendation 9 that where appropriate the Government and policy makers should seek competitive neutrality across banks and other providers in their decision-making.
- 110 In addition, we recognise that as the competition regulator the Commission has a valuable role to play in providing fact-based analysis on the competitive impacts of regulation. One way it could provide this input is through making submissions to the appropriate regulator or decision-making body on regulatory projects (as the Reserve Bank has done in the market study).

Capital Requirements

- 111 We recognise that the balance between prudential regulation and competition is difficult and complex.
- 112 For example, New Zealand's level of tolerance for a bank failure is at the heart of the considerations involved in prudential regulation, and is a complex matter with significant and wide-ranging implications. Financial stability can be threatened by failures of both small and large deposit takers, as was seen recently in the US with Silicon Valley Bank, and New Zealand's own experience in the Global Financial Crisis with the failure of finance companies. The failure of a small deposit taker will obviously have significant consequences for its customers (even once the Deposit Compensation Scheme (**DCS**) is in place), and it can also create contagion risks among other deposit takers, particularly if they are seen as being subject to lighter regulation.
- 113 The Reserve Bank's decisions to set its risk tolerance at a 1-in-200-year chance of financial crisis (as well as its pre-existing capital adequacy of \$30 million) do present barriers to entry. However, we also recognise that the Reserve Bank came to this decision after an extensive, multi-year capital review.
- 114 Further, it is clear the Reserve Bank was aware during the capital review that its capital requirements involved a calibration of competition with regulation.⁶⁰

⁶⁰ By way of example only, in its [Capital Review decisions paper](#), the Reserve Bank concluded that it had adequately taken competition into account:

61. *Views on the 2018 proposal to increase the risk weights applied by the large four banks were mixed. Small banks objected that the measures did not go far enough to reduce the unintended and uneven impact on competition coming from regulation. In contrast, the large banks said the models they use provide robust estimates of risk making the 2018 risk weight-related proposals unnecessary.*

62. *The Reserve Bank is of the view that the risk weight-related aspects of the 2018 proposal (retained in the 2019 reforms) strike a satisfactory balance, retaining risk sensitivity in the large banks' models whilst reducing the unintended uneven impacts of regulation on competition.*

Further, in its [Submission on Draft report](#) (18 April 2024) the Reserve Bank argued that the D-SIB buffer, in conjunction with the other aspects of its Capital Review have 'all but removed any advantage' of the IRB model (at pages 5-6 and 12 and Annex).

- 115 We note that in response to Recommendation 5 (that the Reserve Bank should use its new decision-making framework under the DT Act to explicitly and transparently consider competitive effects) the Reserve Bank observed:⁶¹

As highlighted by the capital review, competition has been an important consideration in our prudential decision making previously. The need to maintain competition within the deposit-taking sector is helpfully even more explicit as one of a number of principles we need to take into account when developing standards under section 4 of the DTA.

Our policy consultation material on the DTA standards, which will set out our proposed prudential requirements, will outline our analysis of the policy proposals against the relevant DTA principles, including the need to maintain competition within the deposit taking sector. All principles will be taken into account when policy decisions are made following consultation.

- 116 This demonstrates the Reserve Bank's analysis of the competitive effects of its policy/ies has been and will continue to be explicitly and transparently considered. ANZ welcomes this approach and the Commission's input in the process.
- 117 In any event, while ANZ did not support all decisions in the capital review, we consider that the IRB approach has not provided a material benefit historically, and once the D-SIB buffer is taken into account it is competitively neutral. We discuss these points below.

IRB model

- 118 As was observed at the conference, historically there was a difference between the standardised and IRB approaches.⁶² It is important to recognise the effects of capital requirements regulation are complex and do not all go one way. Indeed, as the Reserve Bank's submission on the Draft report noted even before the introduction of the output floor, the increased scalar and the introduction of the D-SIB buffer, the different capital requirements had a relatively small impact:⁶³

In the past, two aspects of our regulatory capital framework may have contributed towards a funding cost advantage for larger banks, as discussed in the Commission's draft report. This resulted from the use of internal ratings-based (IRB) models for risk-weighting purposes, and a single set of capital ratio requirements that didn't incorporate the importance of larger banks relative to smaller ones in terms of the systemic impact of their failure. **Our calculations suggest the impact of these settings was relatively small historically, particularly when compared to other costs.** We consider that the changes we introduced as part of the capital review, including to both the IRB approach and with the introduction of a domestic systemically important bank (DSIB) buffer requirement, have all but removed any advantage (see our response to recommendation 1 below and additional information in the annex). (emphasis added)

- 119 However, in any event any difference has been removed.⁶⁴

⁶¹ Reserve Bank, [Submission on Draft report](#) (18 April 2024) at page 9.

⁶² Reserve Bank, [Submission on Draft report](#) (18 April 2024) at page 5.

⁶³ Reserve Bank, [Submission on Draft report](#) (18 April 2024) at page 5.

⁶⁴ Further, depending on the broader economic cycle, the IRB approach may lead to higher capital requirements than under the standardised approach.

- 120 The IRB approach is a more accurate risk assessment model and widely accepted internationally. Whether or not we are on the efficient frontier between competition and stability is a matter of opinion – we have not seen any data-driven assessment of this. What is clearer though is that the downside risks of getting the balance wrong are highly asymmetric and significant to the system. That complexity needs to be acknowledged in any reflection the Commission may make on that balance.
- 121 We note it is worth ANZ investing in the IRB models even though that does not provide significantly lower capital requirements overall, because the approach provides a more accurate and granular view of risk, and understanding the risks a bank takes on is critical.⁶⁵ It ensures banks can allocate capital correctly, and price assets correctly.⁶⁶

D-SIB buffer

- 122 The Commission has queried whether it should take the D-SIB buffer into account when considering the competitive impact of the capital requirements on the basis that:⁶⁷

if the riskiness of given lending is treated more or less the same, there's then an additional risk from the systemic risk posed. And so if you are equalised once you've taken account of that systemic risk, then actually there is a differential for the risk weighting on those assets.

- 123 It is uncontroversial that once the D-SIB buffer is taken into account, the overall capital stacks banks are required to hold are approximately equivalent (even before the costs of operating IRB models are taken into account).
- 124 ANZ addressed this in our submission on the Draft report⁶⁸ (we encourage the Commission to review that part of the submission), and at the conference, so we make only brief comments in this final submission. We consider:

124.1 first, capital requirements exist to internalise the externality of a bank's failure by requiring banks to hold more capital than they otherwise might. The basic RWA – whether determined by the IRB or standardised approach – reflects a way of measuring the risk *and impact* of that bank's loans defaulting. As mentioned at the conference, this means the same loan does not have the same risk and impact when held by two different banks. This is because while the individual loan holder may have the same risk of default regardless of which bank they choose; the impact of that default will be different for the different bank. The example given at conference was the impact of a loan default in Taranaki or a natural disaster there will be more significant for TSB than for ANZ because TSB has a greater proportion of its loans in that area. Seen in that context, the D-SIB buffer simply reflects the larger impact of a D-SIB bank defaulting. The bigger the impact of failure, the more capital a bank is required to hold. Ultimately, the risk weightings and the D-SIB buffer are simply internalising the externality of the cost of failure onto the shareholders, and

⁶⁵ Commerce Commission, *Transcript of personal banking services market study conference: session 2* (13 May 2024) (**Session 2 Transcript**) at page 6, lines 2-8.

⁶⁶ Session 2 Transcript at page 6, line 10.

⁶⁷ Session 2 Transcript at page 2, lines 21-24.

⁶⁸ ANZ, *Submission on Draft report* at [196]-[197].

124.2 second, from a competition perspective the IRB banks are also the D-SIB banks and when comparing the two approaches it is important to analyse the practical impact of the capital requirements. The rationale for including the D-SIB buffer when considering competitive position is quite simply that it is capital. As capital, it directly influences the way we operate the business, and the way in which shareholders assess returns. As a secondary point, it is an impost that no amount of risk management can mitigate – it is fixed. The Commission’s analysis should compare the overall capital stack for the IRB/D-SIB banks with the standardised approach banks.

Deposit Compensation Scheme

125 Finally, we make three brief comments on the Deposit Compensation Scheme (DCS), which is still under consideration by the Reserve Bank:

125.1 first, there was a broad spectrum of views on whether the current proposed levy framework is pro-competitive, or anti-competitive. For its part, ANZ considers that the proposed levy framework is pro-competitive. The smaller entities are those that are most likely to benefit from the DCS. Based on credit ratings, a deposit taker with a “B” credit rating is considered 10-12x more likely to default and call upon the DCS than an “A” rated deposit taker, but under the proposed levy framework the levy for deposit takers with the lowest credit rating (which includes unrated deposit takers) is no more than 4x higher than the large banks⁶⁹

125.2 second, as ANZ noted at the conference, it is not considered likely that there will ever actually be a pay-out under the DCS for the large banks as they would be put into Open Bank Resolution.⁷⁰ Although the DCS fund may be used to contribute to the resolution of one of the D-SIB banks, estimates provided by Treasury during the consultation process suggest that the estimated maximum contribution the DCS fund would make to the resolution of a large bank is broadly equivalent to the upper end of the range of use of the fund that would be required to pay out depositors of one medium-sized bank,⁷¹ and

125.3 third, as was shown by the spectrum of views in submissions on the Draft report, and at the conference, the competitive effects of the proposed levy are being explicitly and transparently discussed by participants in the Reserve Bank’s process and will be a factor in its decision making.⁷²

Position following the conference

126 It is beneficial to have a competition lens over prudential and other types of regulation. ANZ welcomes the Commission’s input – see further the responses to the recommendations in Part A of this submission.

⁶⁹ Session 2 Transcript at page 20, lines 2-7.

⁷⁰ Session 2 Transcript at pages 20-21, lines 8-34 and 1-2 respectively.

⁷¹ The Treasury, [Statement of Funding Approach \(SoFA\) – Consultation](#) at page 7.

⁷² Session 2 Transcript at page 20, lines 2-7 (ANZ); page 22, lines 1-26 (Unity); pages 22-23, lines 28-19 (General Finance); pages 23-24, lines 21-2 (TSB); ASB Submission on Draft report at [3.8]-[3.15]; and NBDT Joint Submission on Draft report at [11]-[14].