SUBMISSION TO SENATE ECONOMICS COMMITTEE INQUIRY

INTO

COMPETITION WITHIN THE AUSTRALIAN BANKING SECTOR

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1. INTRODUCTION

1.1 In recent times the Big 4 Banks – Commonwealth, NAB, ANZ and Westpac – have come in for a lot of criticism from a variety of sources and in particular the Government, the Opposition, the Greens and various parts of the media. This criticism reminds me of Matt Taibbi's description of the US merchant bank, Goldman Sachs. He described Goldman Sachs as:

"… a great vampire squid wrapped around the face of humanity, relentlessly jamming its blood funnel into anything that smells like money".[1]

Whilst perhaps lacking the metaphorical flourish, the Big 4 have been accused of being opportunistic and greedy and having little sympathy for the consequences of their decisions on their customers with mortgages. The perfect example is the recent behaviour of the banks in increasing home mortgage interest rates by more than the increase in the cash rate determined by the Reserve Bank. This criticism has been accompanied by calls for action to prevent the banks from engaging in such practices. Who is it that the makers of such calls expect to do "something" about it – the government of course. This Inquiry by the Senate Economics Committee is one response to the call for the banks to be pulled into line.

1.2 The terms of reference appear to be driving the Committee to finding ways and means of injecting a bigger dose of "competition" into the banking industry in Australia. Motivated by the egregious behaviour of the Big 4 in exploiting the opportunity to raise interest rates by nearly double the increase set by the Reserve Bank, there appears to be a consensus at least amongst the mainstream players that this type of behaviour can be prevented by more competition.

1.3 The argument appears to be that if the Big 4 were subject to sufficient competitive pressure then their willingness and capacity to increase interest rates in the way they have done recently, would be removed or at least diminished.

1.4 Competition, it appears, is the panacea, the golden egg laid by the goose, the silver lining in the cloud or whatever other metaphor that sings its praises. This view from the mainstream is not surprising given many of its contemporary advocates are still smitten

[1] Tabbi M., Taibbi's Takedown of 'Vampire Squid" Goldman Sachs, ROLLING STONE, April 6, 2010, www.rollingstone.com/politics/news/12697/64796

by the neo-liberal bug – that same bug that gave the world the global financial crisis. What is surprising and somewhat disturbing is that the lessons of the global financial crisis appear to have by passed many who should know better. Like the saying about the French Bourbon monarchy – they learnt nothing and forgot nothing.

1.5 Inherent in the call for greater competition is the call for less regulation.

1.6 Unsurprisingly, given the above, I do not share the view of competition that seems to be taken for granted in the terms of reference of this inquiry. It is my submission that based on the history of the economy since at least the mid 1980's when deregulation and competition became the guiding lights of economic policy makers in the both the public and private sector, that competition is not the economic and social driving force that its adherents claim it to be. In saying this I do not disagree with the views that the recent behaviour of the banks is reprehensible. But there is a need to look beyond competition for the solution. Relying solely on competition will only meet with disappointment and expressions of wishful thinking.

1.7 It follows in my view that if the Federal Government wants to prevent a repeat of the recent behaviour of the Big 4 on interest rates, the answer will not be found in fiddling around with competition. It may not do any harm but it will not be the salvation that it is expected to be.

1.8 It is highly questionable whether competition is missing to the degree that has been suggested and to the degree that it is single handed, both the cause and solution to the Big 4's bad habits.

1.9 Another problem is the psychology that appears to be endemic in the financial industry across the world. There is little appreciation or empathy or understanding or recognition of the public interest and social responsibility. This can be seen in their behaviour before the global financial crisis, during the global financial crisis and coming out of the global financial crisis.

2. COMPETITION IN THE AUSTRALIAN BANKING INDUSTRY

2.1 Two years ago this Committee's sister committee in the House of Representatives conducted an inquiry into competition in the banking and non-banking sectors. The very first paragraph in the forward to the report of that inquiry stated:

"Competition within the mortgage market has grown considerably since financial deregulation in the 1980's. In particular, the entry into the market of non-bank lenders and overseas financial institutions has resulted in greater competition, lower interest rates and margins, and an increase in mortgage products."[2]

It went on to say, two paragraphs later:

"During the past year there has been a noticeable increase in interest rates due to increases in the official cash rate but also increases in the cost of funding. Between January and September, Australia's four largest banks increased their interest rates by an average of 100 basis points, of which 50 to 60 basis points were raised independently of the Reserve Bank of Australia's (RBA) official cash rate."[3]

In the very next line it states:

There has also been a reduction in the number of institutions offering home loan products."[4]

With this Senate inquiry, one could be forgiven for having a sense of déjà vu. Then, as now, the motive for the inquiry is the same as the solution – competition.

2.2 If the mortgage market had been infused with competition since the advent of deregulation in the 1980's, what happened so that by 2008 the Big 4 felt comfortable enough to believe they could increase interest rates by more than the Reserve Bank increase in the cash rate and survive the tell the story. Was there a significant reduction in competitive forces that saw the tension of competition released and disappear?

2.3 Based on figures published in the House of Representatives Report, this was not the case. According to a submission to the Committee by the financial research organisation CANNEX, the number of financial institutions had fallen from "over 150"

[2] House of Representatives Standing Committee on Economics, COMPETITION IN THE BANKING AND NON-BANKING SECTORS, Parliament of the Commonwealth of Australia, Canberra, November 2008, Forward
[3] House of Representatives Report, 2008, Forward
[4] House of Representatives Report, 2008, Forward

to “over 140” and the number of home loan products had fallen from 2,300 to 1,750.[5] Further, according to the Reserve Bank submission to the same inquiry:

“…the variety and flexibility of mortgage products offered in Australia is high by international standards.”[6]

In a market the size of Australia, I do not believe that any reasonable person could conclude that “over 140” players playing with over 1750 products could be described as an absence of competition.

2.4 According to the list of authorised deposit- taking authorities published by the Australia Prudential Regulatory Authority, there are[7]:

- 12 Australian-owned banks
- 9 Foreign-owned banks
- 35 Branches of foreign banks
- 11 Building Societies
- 106 Credit Unions
- 4 Other authorised deposit-taking authorities

This list does not include other mortgage providers that are not defined as authorised deposit-taking authorities.

2.5 Further, a browse at a couple of web sites can reveal a range of mortgage providers offering home loans at interest rates well below those now set by the Big 4. Looking at 2 web sites – RateCity and InfoChoice – revealed 11 institutions offering loans at interest rates between 6.29% and 7.24%.[8] The institutions mentioned are:

- Collins Home Loans
- MB Banking and Financial Services
- RAMS Home loans
- MECU
- Holiday Coast

[5] House of Representatives Report, 2008, paragraphs 2.28 and 2.29, p.13
[6] House of Representatives Report, 2008, paragraph 2.30, p.13
[7] Australian Prudential Regulatory Authority, LIST OF AUTHORISED DEPOSIT-TAKING AUTHORITIES, www.apra.gov.au/ACI/ADILIST.cfm?
[8] See www.RateCity.com.au and www.infochoice.com.au for the names of the institutions and the rates being offered. These web sites were accessed on 13 November 2010

- Match Home Loans
- Carrington
- Mortgage Home
- CUA
- Newcastle Permanent
- MeBank

2.6 If the figures set out in points 2.3, 2.4 and 2.5 above still lead some to believe that the problem in the banking and finance industry – as witnessed by the behaviour of the Big 4 increased in mortgage interest rates - is due to a lack of competition then it is incumbent upon them to say what the market will look like when it is competitive.[9] How many banks and other financial institutions, including home loan providers does there need to be? How many financial products are necessary? Importantly, how many banks and other financial institutions can an economy the size of Australia sustain? Further they must justify why their position will work and in doing so move beyond market rhetoric a la the Chicago School and the American Enterprise Institute.

2.7 The position taken by the Big 4 is that there is plenty of competition in the banking industry. It is not competition that is the problem but, as Sydney Morning Herald finance journalist Elizabeth Knight describes it:

"The big banks appear to interpret increased competition as finding a way to allow them access to cheaper pools of wholesale funding so they can pass those on to borrowers."[10]

Is the Big 4 correct? It's difficult to tell – the banks do little to convince people other than to make the claim. It's as though simply by making the claim it becomes fact. On the other hand what happens if the Big 4 is correct? If it is correct what difference would more competition make? If the Big 4 cannot get access to cheaper wholesale capital, what hope have a bunch of smaller players got?

2.8 Interestingly enough, on 17 November the Sydney Morning Herald and the Australian used a report from the Australian Prudential Regulatory Authority and the minutes of the recent Reserve Bank board meeting respectively to reach conflicting

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[9] Whilst the terms of reference refer to the "banking sector" any proper look at competition amongst the various providers of home loans and finance in general must go beyond any narrow definition of banks. Hence this submission in many places refers to the finance industry as an all encompassing definition.

[10] Knight E., More lenders will bring real change, SYDNEY MORNING HERALD, Thursday 4 November 2010, Business Day, p. 10

conclusions on the cost to the banks of raising capital and its impact on the increase in the cash rate.[11] Then the debate became more arcane and confusing as the media released contradictory views on the position being taken by the Reserve Bank – or perhaps the Reserve Bank was having an each way bet.[12] How the citizenry is expected to understand what is going on here is a mystery.

2.9 To confuse the debate even more is the fact that in countries like the US and Japan the interest rates are the lowest they have been for many years. Yet the banks claim it is the cost of raising capital on the international markets that is the cause of their interest rate increases in excess of the cash rate. In what international market/s have the big 4 been sending their executives in their search for capital funds?

2.10 If this is not enough there is the irony where the bank that initiated the latest round of "higher than RBA" interest rates – the Commonwealth Bank – is advertising "a 3 year special economiser discounted base variable rate" of 6.99%.[13] The Commonwealth Bank is apparently prepared to wear the ire of all and sundry in the name of "economically responsible management" by raising interest rates by more than the cash rate, only to advertise lower rates a few weeks later.

2.11 Despite the fact that there remain a large number of players and the fact that the criticism of the banks in raising interest rates as high as they did comes from across the political spectrum, the Big 4 still felt secure enough to raise interest rates by greater than the increase set by the Reserve Bank.

[11] See Martin P., Banks caught out over costs, SYDNEY MORNING HERALD, Wednesday 17 November 2010. Maher S., Reserve bank argues big banks' case, THE AUSTRALIAN, Wednesday 17 November 2010, p.1

[12] ABC News, Top RBA official goes into bat for the banks, ABC NEWS, November 19, 2010 www. abc.net.au/news/stories/2010/11/18/3070480.htm. Martin P., Reserve gives bank boss no room for argument, SYDNEY MORNING HERALD, 19 November 2010, p.7

[13] See SYDNEY MORNING HERALD, Thursday 18 November 2010, p.5

3. THE NOTION OF COMPETITION

3.1 The term "competition" has a superficial attractiveness. And, better still, it's easy to explain. It's simple - it's the game played in the interaction of supply and demand; a game that results in the price of the product or commodity. By increasing the supply – in this case increasing the number of player in the market – pressure is put on the players to help keep the price down. It follows in this example that the pressure of increased players in the home loan market should mean pressure to keep the home loan interest rate low. If a player increases interest rates above those of others, customers will go elsewhere, thus competition has a self regulating mechanism. If it's not happening, it is axiomatic that the solution is more competition.

3.2 If only it were so simple! Dig deeper and it's not so simple. Competition can contain the seeds of its own destruction or diminution, particularly in industries where there are economies of scale. Every salesperson searches for a way to gain the "competitive edge" so that the threat posed by their competitor/s will disappear – and hopefully, for good. The whole idea – particularly in the world of profit maximisation – is not simply to "wound" the competition but to remove it permanently or to try to stop them from getting a toehold in the industry in the first place. Competition is a good thing only as long as it applies to everybody else. Corporations spend massive sums of money seeking to dominate the market; they don't do it so that their competitive edge lasts only up to a point where it will ensure the survival of their competitor/s. This will be the case regardless of whether you have a so-called level playing field or not. A level playing field may envisage the removal of artificial barriers but it does not seek to remove the ability for a corporation to obtain a competitive edge.[14] The outcome may be monopoly or oligopoly. It may mean a small number of big players and a large number of small players with the small players not being able to influence to any significant degree the position of the large players. In that regard the banks in the Big 4 are a consolidation of a much larger number of banks that have been absorbed into them since the advent of deregulation in the mid 1980's.

[14] A corporation may gain a competitive advantage in a number of ways including advanced technology, a marketing fad, historical reputation, advertising, and a catchy logo amongst others. Indeed where a company has more money to spend it will have a competitive advantage

3.3 There is also the position of being able to outlast the competition. If you want to be a player you need to be sure that you can hang around long enough to consolidate your position. Otherwise you are not a real competitor. The global financial crisis is a case in point. Elizabeth Knight states:

"Meanwhile, everyone acknowledges that thanks to the global financial crisis there has been a concentration of banking services – the big four have increased their market share significantly."[15]

The global financial crisis is indicative of the fact that when the real pressure comes on, some do not survive. In a crisis competition cleans out the "weak".

3.4 Like it or not many proponents of competition reluctantly and obliquely admit the problems of competition. For example, Elizabeth Knight states:

"The big banks seized the opportunity to grab more share during the world financial crisis, but the government and the competition regulator enabled them to do so."[16]

What this quote acknowledges is that the big banks used their competitive position in a competitive market in a period of crisis to increase their share. Why wouldn't they? Isn't that what competition is about? But the quote is also saying that they should not have been allowed to do so – that they got away with it because the government and the regulator allowed them to do so. Thus the problem becomes not a problem of competition but the role of government. How convenient!

3.5 Here the government, to the market based cheer leaders, becomes an inexhaustible source of fault; the source of the failure of competition and deregulation to produce the outcome its proponents claim. Somehow it's the job of government to ensure an outcome the proponents of competition can't. And it can hardly be said that deregulation and competition policy have not dominated public policy making in the finance industry. In the early 1980's each government – state and federal – owned a bank; that's not the case today.

3.6 An irony here is that typically the proponents of deregulation, privatisation and competition policy spend much of their time exhorting the government to get out of the way. On this occasion it appears that, to them at least, the government is both the source of the problem and its solution.

[15] Knight E., Sydney Morning Herald, 4 November 2010, p.10
[16] Knight E., Sydney Morning Herald, 4 November 2010, p.10

3.7 There are other negative implications of deregulation and competition in the finance or banking industry. As pointed out in the House of Representatives Report:

"There were some downsides to the increased competition. Having lost some market share, the banks closed down a number of branches, especially in regional areas, and staff lost their jobs. Fees and charges also rose dramatically after the early 1990's. The Treasury noted that 'between 1997 and 2007, banks' total fee income rose from $3.9 billion, an increase of $6.6 billion or 170 per cent'."[17]

The losers in this case were bank employees and bank customers. But their interest appears to be outweighed by the interests of the banks.

3.8 There appears to be a naïve and/or optimistic belief amongst the supporters of deregulation and competition that the economics text book notion of "perfect competition" either exists, or can exist or, perversely, can be legislated into place. This is the ideal world where everybody has equal access to all information and no one player in the market can influence the composition or outcome of the interaction of supply and demand. No one can seriously believe that this situation exists in the finance industry in Australia or anywhere else. Competition may exist in some way, shape or form, however adulterated, but not in the manner that will produce the outcome its proponents allege it can. Competition like everything else has its limits.

[17] House of Representatives Report, 2008, paragraph 2.10, p.10

4. THE INGRATITUDE OF THE BANKS

4.1 Confronted with significant public pressure to meet the challenge of the global financial crisis, the Federal Government undertook a number of significant steps.

4.2 On 26 September 2008, the Federal Government announced it would invest $4 billion in residential mortgage backed securities.

4.3 On 12 October 2008 the Federal Government announced it would invest a further $4 billion in residential mortgage backed securities.

4.4 On 12 October 2008, the Federal Government announced a guarantee on deposits and wholesale lending. On 24 October 2008 the Federal Government announced that the guarantee arrangements would include a $1 million deposit guarantee threshold.

4.5 On 13 October 2008 the Federal Government announced a $10.4 billion economic stimulus package.

4.6 Not only did the government become a massive investor in mortgage securities – a significant source of funding for non-bank finance companies – it guaranteed bank deposits and injected a massive amount of money into the economy, much of which would find its way in to the banks at some point as the multiplier effect kicked in.

4.7 All this occurred at a time when on the international stage it was clear that the banks and finance companies were the chief culprits behind the global financial crisis. This was particularly the case in the United States. The use and abuse of the sub-prime mortgage market; the use and abuse of derivatives such as collateralised debt obligations, synthetic collateralised debt obligations, and credit default swaps saw literally billions of dollars disappear overnight.[18] The problem was exacerbated by the ratings agencies who gave a seal of approval to financial instruments built on a foundation of quicksand. It was further exacerbated by an industry whose players paid themselves gargantuan salaries and then topped them up with bonuses even as their corporation was going backwards.

4.8 Whilst the finance industry was a willing participant during the good times – falling over themselves to make credit available – and advocating more and more deregulation at every turn, they soon raised the shutters when the going got a bit rough. This behaviour provides plenty of reinforcement to the veracity of the

[18] For an example in the case of the US merchant bank Merrill Lynch that was ultimately taken over by the Bank of America see, Thomas A., Illusions and reality: Living by one, dying by the other – the world of Merrill Lynch, AUSTRALIAN OPTIONS, Autumn 2009, pp. 15-16

aphorism: “privatise the profits and socialise the losses”. At this point the eyes of the finance industry turned firmly towards Canberra.

4.9 But the idea that the finance industry should make some contribution to pulling Australian out of the global financial crises – let alone make some sacrifice – was antithetical to the industry. As is pointed out in the House of Representatives report:

“…just after the credit crisis hit, banks independently raised their interest rates by 50 to 60 basis point more than the increases in the RBA cash rate.”[19]

Even when they were on the receiving end of help from the Australian taxpayer, the banks were doing their best to ensure that the taxpayer paid in more ways than one.

Two years later and the big 4 are at it again with interest rates.

Two years later and the big 4 can total up a combined profit in the order of $21 billion in the 2009-2010 financial year.

Two years later and the combined annual remuneration of the chief executive officers of the big 4 is around $44 million.[20]

4.10 Two years later and the finance industry, employers and conservative economics pundits are urging the Federal Government to reduce the budget deficit in a hurry – a deficit that was a product of an endeavour to clean up their mess. As Nobel Prize winning economist Joseph Stiglitz writing in the United Kingdom stated recently:

“Now, financial markets – the same shortsighted markets that created the crisis – are focusing on soaring deficits and debts.”[21]

Stiglitz went on to say:

“We should be clear. Most of the increase is not due to the stimulus but to downturns and the bank bailouts.”[22]

[19] House of Representatives Report 2008, para. 2.23, p.12
[20] John D., Big four CEO’s share $44m for a year’s work, SYDNEY MORNING HERALD, Business Day, 17 November 2010, p.4
[21] Stiglitz J., To choose austerity is to bet it all on the confidence fairy, THE GUARDIAN, Tuesday 19 October 2010.
[22] Stiglitz J., The Guardian, Tuesday 19 October 2010

Fellow Nobel Prize winner, Paul Krugman, writing on the austerity budget in the United Kingdom recently stated:

"Over-reliance on the financial industry largely explains why Britain which came into the crisis with relatively low public debt, has seen its budget deficit soar to 11 percent of GDP".[23]

Nevertheless it is fairly clear that it is the expectation of the finance industry that it is not they who will pay to patch up the deficit. A good example of who will pay for the deficit can be seen in the recent submission by the Federal Government to the Fair Work Australia case on equal pay in the community services sector. According to the Sydney Morning Herald:

"The federal government has put the budget surplus ahead of equal pay for women, telling Fair Work Australia that without cutting services it cannot afford higher wages that might result from a test case."[24]

In other words, persons involved in the socially critical work in the disability, domestic violence, aged care, homeless and other sectors not only had to accept the difficulties of the global financial crisis but, even though it was little fault of theirs, to pay again in putting the budget back in the black. And to that they can add interest rates on home loans at a level higher than the Reserve Bank cash rate.

4.11 There have been some endeavours in the community to take the banks to task over some of their behaviour. Two class actions have recently been initiated against the one or more of the Big 4. According to the ABC:

"Hundreds of institutional and retail investors are taking NAB to court for losses linked to the subprime mortgage crisis.

The 250 shareholders are claiming to have lost around $450 million because the bank did not adequately inform them of the investment risk"[25]

A further class action is being taken against 11 banks with respect to bank fees. According to the law firm, Maurice Blackburn:

"ANZ is the first bank set to face legal action involving three lead applicants and at least 27,199 individuals and business holding about 40,000 personal and business

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[23] Krugman P., British Fashion Victims, NEW YORK TIMES, Thursday October 21 2010. It should also be noted that the current crisis in Ireland is not so much a crisis of government but a crisis of the Irish banking system and an expectation that the Irish government will borrow billions to bail them out.

[24] Needham K., Gillard backtracks on support for equal pay for women, SYDNEY MORNING HERALD, Friday 19 November 2010, p. 1

[25] Investors sue NAB over bad debts, ABC NEWS, 18 November 2010, www.abc.net.au/news/stories/2010/11/18/3070137.htm.

accounts. The bank penalty or ‘exception’ fees imposed by ANZ to customers consist of honour and dishonour fees on bank accounts, and over limit and late payment fees on credit cards.”[26]

As can be seen in both of these examples we are talking about a lot of people and a lot of money. Whether they succeed or not is, at this point, unknown, but you can rest assured that the banks won’t struggle to find the money to finance their legal defence.

[26] Maurice Blackburn, ANZ first of the banks to face penalty fees class action, PRESS RELEASE, 21 September 2010

5. WHERE TO FROM HERE?

5.1 For all the bleating from the punditry about the merits of competition, in practical terms, they have not had much to say about exactly it will do the job. For example in an article arguing that a level playing field would open the door for small lenders, Clancy Yeates advocates three (hardly novel) ideas. They are for the government to extend its credit rating to AAA-rated mortgage backed securities, to make the deposit guarantee a permanent feature, and to simplify the process for people to change finance institution.[27] Two points are worth making here. Firstly, they are already in play in various ways. Secondly, the first two essentially involve the public guaranteeing the financial position of privately owned financial institutions whilst no reciprocal obligation exists and whilst, as seen, those institutions essentially treat the public as a secondary consideration to profit maximisation.

5.2 It seems to me that a number of things can be done or investigated further.

5.3 Firstly, there is a need to make the banks and their fellow financial institutions more accountable and transparent to the public. The notions of "commercial in confidence" and the sanctity of "private enterprise" are in my view used to hide information and behaviour that rightly belongs in the public realm. This is particularly the case when their decisions, as we have seen with the latest interest rate decision, have such an impact on the Australian community. An example of the current problem is that other than make the claim the banks have given no explanation – in the face of contradictory evidence – of why their costs of raising capital are such that interest rates have to increase by the rate they did. It is simply not good enough that the decision of the banks have to be accepted at face value and that the banks do not have the properly justify their decisions.

5.4 Secondly, the notion of accountability and transparency extends beyond the movement of interest rates. Financial institutions have been the subject of a range of public criticism. We are continually hearing complaints about the setting of fees and charges by the banks. We are continually hearing complaints about banking executives being paid excessive salaries. Again the banks do little to justify their position.

5.5 Thirdly, the banks in particular have been making seriously big profits in recent years and in many cases the rate of profit has been increasing with alacrity. The banks argue they are behaving in a manner consistent with their duty to shareholders. A failure to meet profit "expectations" will lead to a fall in the stock price. This raises important issues of public policy. How much profit is enough? Why should

[27] Yeates C. Level playing field would open doors for small lenders, SYDNEY MORNING HERALD, Weekend Business, Saturday October 30 2010, p. 6-7

shareholders expect the rate of profit to increase on an ongoing basis? The government should establish a process to address these issues.

5.6 Fourthly, the overall regulatory regime in the finance industry fails to meet the public interest. The fact that the global financial crisis had its basis in the uncontrolled behaviour of financial institutions is testimony to that position. The regulators either lack the will or the power to control the behaviour of the financial institutions[28]. And it's not only the regulators but the broader regulatory regime that is failing the public. The truth is that despite some involvement at an international level, the Australian Government has not undertaken any public examination into the global financial crisis, the role of the financial institutions in that crisis and what the government needs to do to protect the Australian population from that sort of crisis in the future. A full scale public inquiry into the finance system is necessary; an inquiry that has as its objective a financial system that operates in the interests of the Australian people and is wide ranging in its nature.[29] Whilst this should have been done in the wake of the global financial crisis it's better late than never. To date the banks and finance corporations and the stock market have avoided their responsibility in dealing with the global finance crisis and the regulatory requirements to ensure that the crisis will not happen again.

5.7 Fifthly the interest rate regime for home loans should be addressed. According to a recent article in the Sydney Morning Herald:

"Australian variable rate mortgages are unusual, unconscionable and should be banned to even the balance of power between banks and their customers, says a leading finance expert."[30]

Undoubtedly there is something inherently unfair about a contractual situation where one party has the discretion to change the terms of the contract and the other party has no option but to accept it. This is the case for mortgages that have a life of 25 years.

5.8 The Senate Committee must examine a range of "competitive" measures. In that regard I hope it has better luck that the House of Representatives did, if its report is anything to go by. But, in my submission, it should not "hold its breath" about what will fall out of that category to assist the government in finding ways and means of

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[28] In contrast some of the regulators in the United States who had a history of doing little are now standing up. For example, on the Commodity Futures Trading Commission, see, Creswell J., and Bowling G., Once on sleepy beat, regulator is suddenly busy, NEW YORK TIMES, 4 November 2010

[29] This should include the Ratings Agencies.

[30] Martin P. Banks on top of the world in charging what they like, SYDNEY MORNING HERALD, Tuesday 9 November 2010, p.3. The "leading finance expert" referred to is Kevin Davis, research director of the Australian Centre for Financial Studies.

ensuring an interest rate regime and finance industry that puts the interest of the Australian community in first place.

5.9 Whilst the terms of reference of the Committee focus on the forces of competition it is my submission that it should recommend a more far reaching analysis of the finance industry and that such analysis should be as public as possible. It should also be established and operate in such way that encourages the public; those outside the financial industry, to attend. On my estimation, of the 60 submissions made to the House of Representatives inquiry some 40 came from the finance industry. The rest were mainly government departments/authorities and think tanks. There was one trade union representing employees in the industry and a couple of non government organisations representing the community sector.[31]

5.10 In the absence of a wide ranging consideration of the forces in the financial industry other than competition it is my submission that the government will get a partial analysis with partial results and miss some of the big issues that need to be confronted if we are to have a financial industry that operates in the public interest.[32] In that case we will probably be back in 2 years time with another inquiry on the same subject. Let us actually learn something this time – and better, actually do something about it.

[31] House of Representatives Report 2008, Appendix A- Submissions, pp. 111-113

[32] It is noted that the Federal Opposition is making some noises about an investigation into the finance industry. I suspect, however, that the terms of reference I would propose would look very much different to those prepared by the Opposition. For example, the role of competition would receive a higher degree of scrutiny than the Opposition would like. The Opposition has a forlorn hope that the interests of the finance industry and the public can somehow be reconciled whilst leaving their traditional allies on the finance industry in charge of the show. Further I am sceptical about the motives of the Opposition. I suspect that if it was in government it would be singing a different tune.