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STANDING COMMITTEE ON ECONOMICS

Reference: Aspects of bank mergers

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**SENATE STANDING COMMITTEE ON
ECONOMICS**

Friday, 13 March 2009

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Bushby, Cameron, Furner, Joyce, Pratt and Xenophon

Substitute members: (As per most recent Senate Notice Paper)

Participating members: Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Bushby, Cameron, Eggleston, Furner, Hurley and Pratt

Terms of reference for the inquiry:

To inquire into and report on:

- (a) the economic, social and employment impacts of the recent mergers among Australian banks;
- (b) the measures available to enforce the conditions on the Westpac Banking Corporation/St George Bank Limited merger and any conditions placed on future bank mergers;
- (c) the capacity for the Australian Competition and Consumer Commission to enforce divestiture in the banking sector if it finds insufficient competition;
- (d) the adequacy of section 50 of the *Trade Practices Act 1974* in preventing further concentration of the Australian banking sector, with specific reference to the merits of a 'public benefit' assessment for mergers;
- (e) the impact of mergers on consumer choice;
- (f) the extent to which Australian banks have 'off-shored' services such as credit card and loan processing, information technology, finance and payroll functions;
- (g) the impact 'off-shoring' has on employment for Australians; and
- (h) alternative approaches to applying section 50 of the *Trade Practices Act 1974* in respect of future mergers, with a focus on alternative approaches to measuring competition.

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Committee met at 9.02 am

CHAIR (Senator Hurley)—I declare open the second hearing of the Senate Economics Committee inquiring into aspects of bank mergers. On 24 November 2008, the Senate referred to us a range of matters relating to bank mergers and the practice of offshoring jobs. The committee is due to report by 17 September 2009. This inquiry will investigate the economic, social and employment impacts of the recent mergers among Australian banks, with particular focus on the Westpac-St George merger. The inquiry will also investigate the sufficiency of the measures available to enforce any conditions placed on merger parties by the Treasurer, the ACCC's power to force divestiture and its methods for measuring competition, and the adequacy of section 50 of the Trade Practices Act in preventing further concentration in the banking sector, with particular reference to the merits of a public benefit test. The inquiry will also investigate the extent to which Australia's banks have offshored office services and the impact of this practice on employment for Australians.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time. A witness called to answer a question for the first time should state their full name and the capacity in which they appear, and witnesses should speak clearly and into the microphones to assist Hansard to record proceedings. Mobile phones should be switched off.

[9.05 am]

BENNETT, Mr James, Senior Policy and Research Officer, Finance Sector Union

BLACKMORE, Ms Linda, Member, Finance Sector Union

BOURKE, Ms Carmel, Member, Finance Sector Union

CARTER, Mr Leon, National Secretary, Finance Sector Union

GORDON, Ms Carol, National President, Finance Sector Union

HARVEY, Ms Elizabeth, Member, Finance Sector Union

MASSON, Mr Rod, Director, Policy and Communications, Finance Sector Union

WILKINS, Mr Mark, Member, Finance Sector Union

CHAIR—I welcome representatives of the Finance Sector Union. Do you wish to make an opening statement?

Mr Carter—Thank you, Madam Chair. We appreciate the opportunity to appear before the inquiry and also the fact that you have given us some extended time to appear. You have a copy of our submission, so we do not intend to read it or speak to it at length, because we think it stands on its own feet. The delegation that is before you today is predominantly made up of finance sector workers. The reason that we have brought such a delegation to appear before you today is that we believe that listening to their experiences of being finance sector workers will give you a firsthand account of what the actual human costs are of issues like mergers and offshoring, and also give you an opportunity to hear about what is actually happening in the industry. It is an industry that receives a lot of coverage and there is a lot of speculation and a lot of debate about it, and we think it is very important that the workers' voices be heard in relation to the very serious issues that are confronting our industry.

We believe that, once you hear from the people who work in the industry, you will see that there is a need for action on issues such as mergers and offshoring. We are very supportive of the Senate in creating this inquiry and we wait with bated breath for the outcomes, because ours is an industry that needs action. We have, in some ways, been protected from the worst ravages of the global financial crisis, but it is still having a major impact in this country. Our banks are predominantly still very profitable, very stable, but there are systemic issues such as mergers and acquisitions, such as offshoring, that need the attention of the parliament, and we congratulate you that this inquiry is going forward.

In terms of issues such as mergers, what I will do is very briefly go through some key points that we think need to be taken into account when we look at what actions need to happen, and then I will hand over to each of the workers to provide you with a very brief statement about what their experiences are in the industry, particularly as it relates to mergers and offshoring.

When we look at mergers, say the Westpac and St George merger, some of the key points that we would make to the inquiry are that at the moment the Treasurer has imposed conditions on that merger. But there is no proper process to monitor whether those conditions are met, there is no formal process through which that is independently monitored and, even more importantly from our point of view, there is no enforcement capacity at the moment, including penalties if those conditions are not adhered to. If mergers are to happen—and we certainly do not believe that they should—and conditions are to be imposed, we think it is absolutely critical that those conditions are monitored very rigorously and, where they are breached, action is taken.

The other point that we would make in terms of mergers is that currently whether a merger proposal goes ahead or not is assessed primarily through a very narrow competition analysis: the act talking about whether it substantially lessens competition. We would say that that is far too narrow an assessment that needs to be made about whether a merger proceeds. The public interest test that is applied in, we would say, a far too broad sense at the moment, does not take into account the employment issues—about whether people will lose jobs; about whether the merged entity is going to increase the number of jobs that it sends overseas.

We would argue that there needs to be a much more vigorous public interest test that takes into account employment and other community issues. We cannot, in our view, allow the determination about whether a merger proceeds or not to be seen through the very narrow prism, especially the way it is written at the moment, of competition, and we would argue that that needs to be much broader. We do not have a firm view about where that should be applied and who should apply it—whether it is the ACCC, whether it is Treasury—but what we do say is that that public interest test must be much more vigorously applied and take into account employment issues.

In terms of offshoring, the key points that we would make to you all are primarily around disclosure for a start. If a financial institution has offshored work, they should be legally obliged to explain to their customers, the consumers at large, where that work is being processed, so if you are speaking to a representative of one of the banks, you should know where that person is speaking from.

The banks in this country spend an inordinate amount of money and time hiding where that work is processed, who you are speaking to, and some of the stories that you will hear from the workers from the industry will demonstrate how that happens, and we would say that it is not honest. It is not being honest with the consumers about what is happening. How does a consumer make a genuinely informed choice about which bank should have their business if they do not even understand where that work is being done?

The second point we would make is that, before any personal or banking data is sent overseas, that should require the express written permission of the consumer. It should not just be an accidental thing. You should, in full knowledge, know where that information is being sent.

The third point we would make about offshoring is that the Australian government, the Australian taxpayer, is currently providing a great deal of support to Australian banks, and we would argue that that support should be conditional. In terms of the stuff that we are talking about today, we would say that, if the Australian taxpayer is going to help Australian banks, one of the conditions should be the immediate cessation of offshoring. If we are going to put money

into banks and help them out, then they should be doing every single thing within their power to minimise job losses, especially given how profitable they remain.

I would now like to hand over to each of the workers to provide you with a very brief statement about their experiences, and then we will all be very happy to take any questions.

CHAIR—Thank you.

Ms Blackmore—Good morning, Madam Chair and senators. I am a current employee of St George Bank-Westpac in the contact centre at Parramatta. I will mention that this is an award-winning contact centre. Why not? We are world winners. Part of the conditions that were placed on the merger was to do with the retaining of the branch networks, ATMs et cetera, in a corporate presence in Kogarah. Nothing was ever mentioned about the call centres, of which Westpac have approximately five and St George-BankSA have three currently in this country.

At the contact centre where I work in Parramatta, probably for the last six months or so we have no longer been employing full-time staff. Everybody that is coming through now is a temp, which leaves us a bit out in the air as to the future of our jobs and what is going to happen. It is a given that, as part of the merger, some of the services that overlapped would be incorporated. The major impact with staff, of course, is morale. The on-flow effect to our customers is that they are getting a lower level of service. There is uncertainty on the floor. I do not know what else to say about that. That is what is going on at the moment. We are all worried. We know that our jobs are probably going to go very soon.

Mr Wilkins—I would firstly like to thank the FSU and the Senate for allowing me to speak today. I have been employed on a full-time basis by the National Australia Bank for the last 15 years, five of those years in branches and financial services centres and business banking centres, and the last 10 at our lending services centre in Queensland. My current position at Lending Services Queensland is as a personal banking assistant in our sales fulfilment department. My duties include pre-processing of loan applications to ensure bankers' submissions are adherent to policy and procedure; preparing documentation such as loan contracts, mortgages and releases; and providing breakthrough customer service to bankers to ensure delivery of documentation is both timely and efficient.

In April last year, I was advised that my position was to be outsourced to India sometime in 2009. That date was confirmed in December last year to be 25 March this year, which is in a week and a half's time. As of that date, my whole sales fulfilment department will have been retrenched by the NAB. The role that is to be performed by an overseas counterpart will be paid one-tenth of my salary in India. By June this year, Lending Services Queensland will dramatically shrink from 300 employees to 60, and there are further reviews taking place at the moment. That number is certainly going to reduce by the end of the year.

In recent weeks I have seen firsthand the problems the bank is already having with lending services in Jaipur in India. There is a lack of customer service in comparison to our centre and there are also language and communication barriers that have become apparent. I can understand employers cutting jobs due to the global meltdown, but to cut jobs by offshoring is avoidable, unethical and un-Australian. I urge the federal government to act immediately to halt any further job losses due to offshoring in all possible sectors of the economy. If this is not done,

unemployment and social security payments will continue to rise and income and payroll taxes will fall.

Finally, Barack Obama said in his acceptance of the Democratic presidential nomination that he will stop giving tax breaks to companies that ship jobs overseas and will start giving them to companies 'that create good jobs right here in America'. Maybe we can adopt a similar approach in Australia. Thank you.

Ms Bourke—Madam Chair and senators, up until 27 February I worked for Westpac Bank. My role was cash balancing, which is balancing all the cash that comes into and goes out of the branches every day. We had 700 branches. Our jobs were offshored. They took over completely on 6 March. The way that I have seen it, it certainly has not been working. We have had a lot of complaints. We have a language barrier. We have all sorts of problems. Westpac are not interested in doing anything to alleviate that problem. The staff morale is very bad. More people are going to be retrenched at the end of this month. I find it very upsetting to see these things happen and I am here today to talk to you and let you know exactly what is happening out there in the workplace.

Ms Harvey—Good morning, Madam Chair and senators. I work for the National Australia Bank as well. I work in the same centre as Mark and I am a team leader of one of the teams that will remain. The only reason that we, and the few other teams that are left, are remaining is because we physically need the security packets of the customers, so the only reason that the bank is not offshoring us is that they have not found a way to do so.

When they announced this to us a year ago, I was very upset because I thought, 'This is the tip of the iceberg.' The National Australia Bank is not the only bank or company that is doing it. The simple fact of the matter is that well over 200 jobs are going in Queensland, more in New South Wales and more in Victoria, and jobs have already gone in Western Australia and South Australia. We are probably looking at pretty close to 1,000 jobs that are going.

I just worry about the future of Australia. I am a mother of four children and I want my children to grow up and be able to contribute to society and get jobs in Australia with Australian companies that provide services to Australians. The decision makers in the major corporations are only ever motivated by profit. They do not care about the human factor and there is a human factor involved. The permanent members that have gone have got payouts, so the decision makers think that they have satisfied their requirements by meeting the financial needs, but there is a huge emotional factor involved.

I can see that a lot of the people that have gone have been very upset because they have worked for the bank for years and shown a lot of loyalty and in the end that loyalty was not returned. I do not think the corporations are going to do anything unless the government makes them, so I would hope that there is some outcome from this inquiry. Thank you for your time.

Ms Gordon—Senator Hurley and senators: thank you for making the time available for us to appear here today. I am a career bank officer with continuity of service over 22 years and five different employers, from the Launceston Bank for Savings to the Commonwealth Bank. I am currently employed by Bendigo Bank in business lending.

I want to speak to two basic items today. The first is the personal impact of takeovers and the second is the business case around takeovers. In respect of the personal impact, I have got two very strong memories that stick out most from the four mergers I was subjected to—or ‘takeovers’, as they really are, more accurately. The first one is that when the announcement was made that Tasmania Bank was going to be taken over by the SBT, stakeholders were briefed late in the previous day and it was supposed to be that that announcement was embargoed with media overnight. That embargo was broken and most of our staff found out that we were being sold to someone else in a newsflash about nine o’clock that night. I turned up to work the next morning to a branch that was full of people who looked shell-shocked. They looked ashen-faced. They looked like they had been kicked in the guts and, I can tell you, that is exactly what it felt like.

Another merger on, we had been sold off to Colonial. Before we even knew what jobs we had under the Colonial structure, we found out that Colonial was being bought out by CBA, so no matter what people were feeling not knowing what jobs they had under Colonial, it was doubled when they realised that they were going to get maybe a job in the Colonial structure and then have to go through the same thing again in six months time with the CBA.

You think you are over this. This has happened to me over a period of 15 years and it has been in excess of five years since the last one. You do think you are over it but, in terms of having to work on the submission that the FSU has lodged, it all comes back again. You forget the angst and the grief and the sense of betrayal. The night that I worked on the submission for this, I was still awake at 3 am and I was not a lot better the next day. There is a human cost to this. We are not just collateral damage.

As an industry workforce, we are committed. We do provide good customer service. We are professional, and the community in general thinks well of bank workers, even if it does not particularly think well of banks. Despite having gone through so many takeovers, everyone I have ever worked with has always, still, in that environment, focused on the service delivered to the customer. Our commitment has always been to our clients and to our workmates, even if the commitment of our employers was not to us.

The second thing I would like to speak to is the business case around mergers and takeovers. Every takeover I have been subjected to has lost business. I struggle to see how it lines up with the argument that mergers and takeovers provide economies of scale and processing efficiencies when you have a large portion of your business walk out the door. When Trust Bank was bought out by Colonial, then CBA, we had an enormous amount of clients say, ‘Well, if I wanted to bank with the CBA, I would already have been with them,’ and they leave—over a period of time, because it takes a fair bit of effort to change banks. It is bad enough if you just do transaction banking, but if you have tied up with loans or you have business lending and you have got credit cards and you have got direct entries going in and out of your account, it is a serious amount of work to do this.

Everyone here who works in the industry will have stories and can give you examples of how we have been through changes as a result of mergers and takeovers that have been a backward step in terms of processes, procedures and the range of products available to clients. I will give you a couple of examples of that. When Colonial took over, they reissued Colonial ATM cards to the entire customer base from Trust Bank, but unfortunately they were not linked up to the

giroPost network, and their response was simply, 'Oh well, you'll have to go to a branch.' This is fine if you live in a metropolitan centre, but not everyone does, and it is fine to talk about customer service and then turn around and do something like that.

The other completely stupid thing that was done was that we had a workforce of about 80 in a locally based processing area that was back office and document control and title control and things like that. They made all those people redundant. They brought in, I think, 20 casuals with no banking experience to oversee the process of sending all those loan documents and property titles up to wherever they were going in Colonial's structure. As part of this process they lost a lot of those titles. Then it got to the point in Hobart where local lawyers were really basically spitting the goo about the amount of time that it was taking to get discharges through from us. Colonial had the temerity to say that this was because some of the business lending staff in Trust Bank actually kept personal files and took stuff home with them. It has been years since that happened and I am still absolutely gobsmacked that it did. It was an insult to everyone who ever worked in the organisation.

I am a business analyst. I get the need for businesses to make profit. I understand that there is a need to return funds to shareholders for making their investment, because I cannot lend to a business that is not making a profit. So I get the need for profit. But I have got to say, in terms of the four major banks in this country, how much do you really need and at what cost do you need to increase it? And do not even get me started on executive salaries, because that is not what we are here for.

Customers who choose regional banks and credit unions and building societies rather than the four major banks have already made an informed decision about what business they will support, what business they will go to, what qualities they look for in their financial provider. Every time one of those regional banks gets sucked up by one of the four major banks, that choice to the consumer contracts further. We are rapidly approaching a point where we are going to have four homogeneous big four banks who badge themselves differently, essentially all operate the same way and offer nothing different. Most of the clients that come from other banks to the organisation that I work for do so on the basis of service and quite often on the basis of lower fees.

The last thing I want to say, with apologies to Henry Ford, is that we are going to end up with a position where you can have any bank you like, so long as it is black. Thank you.

Mr Carter—Thank you for the opportunity to allow all of the workers here to make a statement. So far, by our count—and we believe it is a conservative estimate—over 4,900 jobs have been offshored out of the Australian finance industry. Where is the dividend going? They say it is about reducing costs; they say it is about saving money. It is not being passed on to the consumer. Bank fees are not coming down. They are not passing on the full extent of interest rate reductions. We can certainly tell you it is not being passed on in wages. So where is the dividend going? If it is genuinely, as they say, about cost reduction, where is that saving going? It is certainly not being passed on to the workers or to the consumers.

Senator CAMERON—Many would be interested in the answer to that.

Mr Carter—I think that would be very good, yes, Senator Cameron, and I think, too, predominantly to shareholders, which are more often institutional investors rather than the mum and dad shareholders that we often hear about. We are all more than happy to answer any questions that you may have. Thank you for your time.

CHAIR—Thank you all for telling your stories here today. We had some evidence last night that there are no contact or call centres overseas from any of the banking groups in Australia and that it is the IT and data that is offshored and the evidence we heard was that a large part of that was because of the skills shortage. What you have told us today indicates that that is not the case and that it is driven by cost.

Mr Carter—It is true to say that at the moment none of the contact call centres have gone, but we would say that that decision has been imposed on them, to be honest. We have opposed it. There is a very strong reaction from any of the public and the customers about sending contact call centres over. But it is also this notion that it is just the lower end jobs and the processing jobs that are going overseas. These are the jobs that are critical to making the front end of the banking structure work. Whilst it is true to say that the contact call centres have not gone, we are in no way confident that that will not happen at some point if they are allowed to proceed as they are at the moment.

Once upon a time when we would attend the bank AGMs they would say, 'It's about efficiency. It's about changing service.' At the last few AGMs that we have attended, they stand up there and, without any shame, say, 'It's now about cost.' If they can get it done cheaper somewhere else, why wouldn't they get it done cheaper? And that is going to apply to contact call centres.

CHAIR—From the point of view of government regulation and so on, unless there is a case to be made for the financial industry—and I do not believe that you are making a special case—if the government is to act to stop work being taken offshore, it needs to be across the board. That is a difficult thing to do. There are many other organisations in Australia—telecommunications, for example—where a lot of the work is offshored. You have given us in your submission quite a few recommendations, but is there any way that you believe the government or regulators can act to try to prevent offshoring of jobs?

Mr Carter—I might let Rod talk about the technical side, but, on that notion of a special case, the only thing that I would say sets finance aside at the moment is that it is getting much more support from the federal government, whether it is bank guarantees, whether it is a range of other policy interventions which are supporting the operation of the banks. We cannot imagine the federal government giving that sort of money to Toyota and then saying, 'We don't mind if you take the assembly line over to China.' So we would argue that if they are going to give access to taxpayers' money, and support and policy interventions, then this industry, which remains highly profitable, should have conditions attached to it. How do you do that in a regulatory framework where you have got the whole economy offshoring? I am not speaking for all of the other unions, but I am sure we would love, right across the economy, for offshoring to be stopped. Rod, do you want to talk about some of the technical stuff that they can do?

Mr Masson—Thanks, yes. We work closely with other services unions, and those that are in the telecommunications industry are also a party to the policy that is part of our submission that

goes to some of the legislative matters that we would urge government to consider. Part of that is, obviously, the right to know, which we think at least brings this issue out into the open so that consumers can make informed decisions about where they do their business and who they do their business with.

We have looked at tax incentives or, potentially, disincentives if a company is sending work or jobs offshore. That was mentioned by Mark in regard to the Obama administration and their movements at the moment. Another issue is government procurement. We think government needs to have a look at its procurement policies and consider carefully who it is contracting to and ensure that those companies and service providers are maintaining jobs here in Australia. More broadly, the government has a fundamental role to play in industry planning. One of the things that is very lacking in our industry, and perhaps in many others, is an overall industry plan: where our industries are heading and how we are going to get there; what investment is being made into skills development; what investment into jobs.

It is no accident that India is where it is in terms of its BPO—business processing operations. It has long made plans with government to secure those types of jobs, and its plan is not about simply getting the low-level processing jobs. Its plan is to eventually move right up to PhD and doctorate level work and ensure that it moves to India. Ireland, similarly, has had plans about attracting financial services.

These things do not happen by accident. The market, left to its own devices, will not come up with the solutions, so government has a role in assisting industries, along with other stakeholders, in developing those industry plans that will drive forward Australia's capacity in areas like financial services, telecommunications and other areas where offshoring is occurring.

CHAIR—Thank you.

Senator EGGLESTON—I was interested in Carol Gordon's comment about customer choice: that the people who chose smaller banks and building societies did so for the reason that they got a different service. I must say that in my case that was true. I used to bank with the Town and Country Building Society in Western Australia because I got better deals and was very upset when they went to another bank and were taken over and I found that all my conditions changed. So there is a lot to be said for that.

What are you implying? We were told last night that we have now got 11 banks and four majors. Are there any significant differences between the terms and conditions of loans and so on or are they all the same sort of vanilla Australian bank terms and conditions?

Ms Gordon—Do you mean in terms of—

Senator EGGLESTON—Customer service.

Ms Gordon—what the four majors offer compared to second-tier banks?

Senator EGGLESTON—Or have we lost the differences?

Ms Gordon—Part of my job is comparing competitors' products with our products and the four major banks' products. Every one tweaks a little bit. They will muck around with an ongoing fee or the up-front fee or they will shave an extra 0.1 per cent off a rate or something like that. There is no fabulously sexy product that one of them offers that the other three do not, in my experience, and the minute anyone comes up with a new version of something, the others just copy it anyway.

Product development takes a substantial amount of time. There is a lot of legislation to be complied with as part of it, so product development is time-consuming as much as anything else. But, yes, they are all pretty well variations on a theme and, to be honest, everyone in the entire industry has got a similar suite of products. The difference comes in the pricing and the services attached to it.

Mr Carter—One example that we have used often is the St George Bank. They did that ad a few years ago where the guy is at a barbecue and he says, 'I work for a bank,' and everybody sort of stops in shock-horror, and he says, 'It's all right, I work for St George.' They branded themselves very differently and prided themselves on a very different customer experience when compared with the other four—not to be too unkind—but at the moment if you walk into a branch of the big four it is sort of, 'Do you want fries with that?' You might go in there to deposit some money and you walk out there thinking, 'What the hell was that all about? I got sold a new credit card and all of those other things.' But St George, for example, was very different and prided itself very much on that different customer service model. When we were at the extraordinary meeting that voted, unfortunately, to accept the merger with Westpac, hundreds of shareholders stood up and said, 'I don't want the service that we stand for at St George being swallowed up by the big red W.' There are differences, but the bigger the big four get, obviously the less competition there is. Size does matter in the industry.

Senator EGGLESTON—Is it fair to say that in the past there were greater choices and more variation?

Mr Carter—Absolutely.

Senator EGGLESTON—And mergers have certainly reduced the numbers of differences between the bank products offered?

Mr Carter—Absolutely. For example, you had a whole credit union community, which is contracting very quickly at the moment. It is very difficult for a new player to enter our industry. It is not as if they can just start up. There are reputation issues and all of those sorts of things. So it is very difficult to break out of that mould and, as there are fewer competitors with the big four, the less likely that is to occur.

Senator EGGLESTON—I would like to ask you about online e-banking and e-banking technology. What do you see in the future in terms of the growth of e-banking? Will that lead to even more contraction of the number of physical banks and loss of jobs, do you think? I am leading you a bit, but they are questions that I would like to have answered from your point of view and on the record in *Hansard*.

Mr Carter—Absolutely. There is no doubt that there is going to be a continuation of the growth in the amount of banking that is done online and through that sort of e-commerce notion. More and more, we are seeing the big four talk to each other about how they can consolidate their back office processing, so share those services, and we have no doubt that once they share them, once they get them together in this country, it will be much easier for them to shift them overseas. We have seen that in some other industries.

There are two problems with that approach from a business model point of view. You have got one part of the bank at the moment saying, 'Where are all of the customers that we are trying to sell to? They're all online,' and there is a bit of a tension between them at the moment. You have got one group who want to sell products and cannot get to them any more because they are all online; I think most people are becoming fairly adept at ignoring the flashier stuff on websites.

But the other thing that they are doing now is starting to charge more fees for that internet banking. Once upon a time their drive was, 'Don't come into the branch. That costs us more money. Get the hell out. Do it online. It's all free.' Now that they have shifted a whole group of the community online, they can start charging fees. You look at the ATM fees, which is just another form of electronic banking. What they will do is push more and more customers online and they will make it harder and harder to get into bank branches. There is no doubt that that will increase, and it will lessen competition because it is a very expensive business to run that sort of electronic banking, and the more people who get onto electronic banking, the harder it will be for the smaller players to catch up. If you look at the services that Members Equity and some of the credit unions provide online, they are not as fully-fledged as the banks because they cost a lot of money.

There is no doubt that they are going to push more people that way. They will charge them higher and higher fees as they do that. It will drive people out of the branches. There is no doubt that the more they consolidate the electronic stuff the easier it is to go overseas. No-one has been even pretending any more that their long-term plans are not about sending those jobs overseas where they can be done, as Mark said, for a tenth of the cost.

Senator EGGLESTON—Thank you.

Senator PRATT—Thank you for sharing your personal stories with us. It is not always easy to rock up to a parliamentary inquiry and do something like that, but it does make a big difference to us. With respect to offshoring, I note that Bankwest, in being taken over by the Commonwealth, as a brand, they seem to do less offshoring than other companies, but perhaps that is starting to change, whereas you have, I think, the ANZ that perhaps does quite a substantial level of offshoring and has a reasonable level of investments overseas. When you have got one brand that is doing a lot of offshoring, how much pressure is that going to put on other brands in relation to their cost base, when it is compared to the imperative to protect their reputation, because people do not generally like a high level of offshoring?

Mr Masson—In response, there are a couple of things we would want to say about that. One is that there is no great imagination amongst our banking fraternity, or there is no great initiative to be different or to be new. This is part of the problem when we have ongoing mergers that lose competitors that may want to differentiate themselves. So you are right in the sense that it becomes a bit of a follow-the-leader process and they do tend to feel the competitive pressures,

or they look and think, 'What are they up to? We must get on board that bandwagon,' perhaps in some instances without really thinking and fleshing out what that may mean in terms of reputation and the longer term strategy that they wish to develop.

That is indeed so with the shedding of jobs, which we are seeing at the moment across the industry. They all tend to follow each other. If one goes for 1,000 the next one will one-up them by another half a thousand. So that is a problem within itself and it does create a tension where they all want to follow the leader. The other matter—and it has been addressed here today—is about the issue of making sure that this is out and it is public knowledge. It is only by doing that that you create the competitive pressure the other way by being able to hold up someone like a Commonwealth Bank who does not undertake offshoring at this point and say, 'Actually, here's the alternative,' and allowing consumers then to make that decision. But at the moment, as has been expressed very well by the people here, the banks are attempting to hide the fact that they have offshored. The people who work in some of the processing environments in the back office areas are the ones that interface with the work being done offshore, not the customers.

Senator PRATT—So they are hiding behind the fact that banking customers such as myself are not the ones talking to people overseas on the telephone.

Mr Masson—Yes.

Senator PRATT—Therefore, the implication of that is: 'We're not offshoring in a way that affects customers.'

Mr Masson—In fact, they are specifically directed not to inform consumers that the work is being done offshore.

Senator BUSHBY—Thank you for coming along today. As Senator Pratt said, I am sure we all appreciate the personal stories that you have brought and put before the committee. Ms Gordon, you might be interested to know that in the early eighties I actually worked at the Launceston Bank for Savings for two years myself. I think I might even have, at the time, had to be a member of the FSU, or its equivalent in those days.

Mr Carter—Well done! That's good stuff!

Senator BUSHBY—You would be interested that I have also been a member of the BLF and a number of other unions. I am interested in exploring the competition aspect a little bit. I do not want to move away from the personal aspects that you have brought, but there are other issues that are relevant to the terms of reference. Ms Gordon, you were talking about how we are heading towards a situation of homogeneity in banking where all banks will be black. We heard evidence last night from Treasury that there are over 150 approved deposit-taking institutions in Australia and that there are high levels of competition in financial services. They went through statistics of how many were offering home loans and how many were offering all sorts of different services that are available in the financial sector. Other than business banking, it did sound like there were quite a range in most areas.

We also heard evidence that the smaller institutions—that is, those outside the big four—have actually, over the last 10 years or so, been taking market share from the big banks, which all

sounded very good to me in terms of competition in the financial services industry. What is the Financial Sector Union's perspective on that? Do you have a different view? Ms Gordon was saying that it was all collapsing down to some extent. Treasury are telling us in their Treasury fashion that there is a whole range out there. What do you make of Treasury's comments about the level of competition that does exist and where we are heading at the moment?

Mr Masson—A better measure is where consumers actually do their banking.

Senator BUSHBY—Yes.

Mr Masson—In recent times the so-called flight to quality is a classic example of what occurs when you have four dominant players and they are able to control the market to such an extent. In home loans and in deposits, it has been particularly evident that consumers are feeling the need for security and are moving back to them. So they completely dominate the market when you start to break down the number of accounts that they hold, as compared to the range of different providers that Treasury might be talking about. The other point that is interesting, while we are here talking about mergers, is that, whilst you might have those competitors in a very small and probably localised or niche market, as soon as they reach any sort of volume they are immediately snapped up. This is the problem.

Senator BUSHBY—I can see that trend.

Mr Masson—Yes. The difficulty is that, as Leon was talking about—particularly if you look at St George—it took from the 1930s or 1940s, I think, for St George as a building society to create a brand and a differentiation to attract the customers, to grow to a scale that then began to be genuinely competitive with the big players and, as soon as it hit a particular mark, it was then bought. It is going to take an awful long time for another competitor to grow to that sort of volume in terms of attracting customers and providing that level of competition.

Mr Carter—In Victoria, when Westpac bought Bank of Melbourne, the Bank of Melbourne, a bit like St George, had a very different marketing position about customer service, and customers left Bank of Melbourne in droves and predominantly went to places like Bendigo. If you look at Bendigo's creation and explosion in Victoria, you can almost see, as they walk out of Bank of Melbourne's door, they are walking into Bendigo Bank's door. So that is some of the movement. What we have seen through the crisis, and if you look at their ads at the moment, it is all about stability. It is about, 'Come home and do your banking with the big four.' There might be lots of opportunities, as Treasury said, to bank with different people, but that is not the reality. That business is now flooding back through the doors. If you talk to the people in the industry, the targets around deposits and home loans, are all coming back to the big four.

Senator BUSHBY—I agree with you. The crisis has fundamentally changed everything. Up until mid to late last year, it appeared that consumers were making choices: where Colonial Bank gets taken over by the Commonwealth Bank, which has just taken over Trust Bank, people do walk out the door. They say, as you said, 'Well, if I wanted to bank with the Colonial Bank. I would have been there in the first place,' and so they have gone elsewhere. You get the second-tier banks or institutions that build up in size until they are taken over, but then people move away and start going somewhere else.

Mr Carter—Absolutely. Yes.

Senator BUSHBY—So in a sense it was working in a circuitous sort of way, but the crisis has intervened to some extent. I asked Treasury last night—and I will ask the ACCC people when they come on—whether, in considering the issues around a proposed merger, the financial crisis will have an impact in what they actually look at, particularly in terms of the lessening of competition because of the flight to quality and the fact that people are moving back to the big banks. Will that have an impact on their consideration of the overall impact on the market of mergers? The Treasury guy said it would. They also pointed out that there were other consequences of the crisis, and that may mean that some of the smaller players become less viable and it may be to the advantage of the market for them to merge with somebody else to avoid job losses and other problems that might flow.

Mr Masson—Just taking up that point, the clear examples here, in line with what you have just stated, are Westpac-St George v CBA-Bankwest. Bankwest was owned by the UK bank HBOS, the Halifax Bank of Scotland, and they are obviously in terrible trouble. As a result, there are different circumstances perhaps surrounding how that must be considered. I will let the ACCC respond to how they go through that process.

Whilst people may not have seen the types of problems that were coming in its entirety with the GFC, that should still have been a factor round the Westpac-St George decision. We argue that one of the problems with the ACCC signing off on that merger would be that they would have a whole series of different players then lining up and knocking on their door. As it turns out, this has not played out yet and we have not seen the full consequences of it, but we have no doubt that someone will be knocking on the door about Suncorp at some point.

Bendigo-Adelaide may well be in the sights of one of the big four as we speak. So we think that that will occur. We are not sure that the scope of what is provided to the ACCC allows them to think beyond what is in section 50 of the Trade Practices Act. We are not anticompetitive. I would hate you to think we are standing here saying, ‘No competition! Far from it: we are pro competition. We support four pillars and regional banks for that reason. But one of the things that we are trying to address is the need for a broader analysis of the impact of mergers as opposed to that very thin process at the moment of substantial lessening of competition.

We would like to see it broadened out so that there are far more things taken into account, particularly, as you say, local market factors—where people might want to go; why they bank with other organisations; the employment and community impacts—and be able to have a look at all of those types of matters as part of the assessment.

Senator BUSHBY—Just to make sure that I am not misquoted, what you are saying is true in terms of what I said. My main issue there is also the lack of competition. The lack of competition is bad for society, for social reasons and for the flow-on consequences. But I am interested in exploring with the ACCC—and as I asked Treasury last night—whether the fact that people will not be walking out of the big banks and into other banks to the same extent after a merger, given the current circumstances, will be a factor that they will look at when they are considering the impact on competition.

While we are talking about the global financial situation, you do talk about the big banks being profitable. I agree that the results that have come out most recently still show that they are making reasonably healthy profits in the overall context of things. But a lot of banks around the world are not and Australia has fared fairly well out of this. The taxpayer support of those banks that you refer to has not resulted in hand-in-pocket yet. It has probably provided a windfall—we heard this last night as well—to the government, through premiums paid on the various guarantees, of maybe up to half a billion dollars.

So at this stage the government measures are not costing the taxpayer; they are probably giving the taxpayer a windfall. But, nonetheless, there is always the risk that there will be a need to do something. Where I am going with this is that a lot of the recommendations that you make may actually cost the banks in terms of their bottom line. If things continue to deteriorate and the banks in Australia do find it tougher, then what you are asking may be counterproductive and may lead to situations where the banks become less viable or less stable, which will have a lot of flow-on consequences for Australians across the board, but particularly for members of your organisation.

Mr Masson—Could you be a little more specific about where you think our recommendations will cost the banks? Are there specific areas?

Senator BUSHBY—The obvious one—and do not take this as me supporting the banks offshoring because I do not necessarily do that—is requiring, in return for the support that the government is giving through the guarantees, that they do not offshore. You said yourself, and I think Mr Wilkins said, that your job will be replaced by somebody who will be earning one-tenth. Obviously, that is going to cost the banks less. Once again, I do not want this to be taken as me supporting offshoring, but in terms of a numerical analysis, requiring banks not to offshore will increase their costs.

Therefore, if the banks are facing tougher times as a result of the crisis, which may well play out, they will ultimately have the choice of going to the taxpayer and saying, ‘Underwrite us or we will cut costs.’ If they cannot cut costs, or if their costs are being increased, then it may force the bank guarantee to be called on or otherwise affect their viability.

Mr Masson—I will make the response quick: it will not increase their costs, it will hold their costs as they are. They seek offshoring to decrease costs, so it will not increase costs. The other thing that is not factored into this debate is the impact on the efficiency and productivity that is occurring as a result of the offshoring. These organisations are not allowing the time and putting effort into training the third parties that are accepting this work.

All of these people here could attest to the backlog of work that occurs as a consequence and that you then end up with not only more people working offshore to try to deal with the matter but also another group here trying to solve all of the issues. We do not know—and we would love to be a part of some sort of audit or evaluation process—but it is our view that there may not be the efficiencies that they claim. There is certainly the wage arbitrage, there is no doubt about that, but whether or not in an overall sense the efficiency is actually gained is still up for debate.

Senator BUSHBY—I do not have the answer to that.

Senator FURNER—I note you have a survey in your submissions, conducted by McNair in January, in respect of the Westpac-St George merger. Are you able to supply the details of the Q and A on that at all, so we can get a better understanding of what that—

Mr Masson—Yes, absolutely.

Senator FURNER—That is an issue that I intend to raise with the ACCC regarding a survey that CHOICE mentions in respect to 240 householder customers that were surveyed about the merger. Were you privy to that information at all?

Mr Carter—We did not get the details on that.

Senator FURNER—Not on yours, but the one that CHOICE refers to. It was not conducted by CHOICE. It was conducted by the ACCC, I understand.

Mr Masson—No.

Mr Carter—We are more than happy to provide details about our poll. One of the things we say in the submission is that we supported the ACCC's notion of doing that polling, but we think it is ridiculous that, having done that poll, it is then kept secret.

Senator FURNER—Regarding data security, I listened with great interest to Mr Wilkins' version of his employment of data preparation and that work going overseas. Last night we questioned the Commonwealth on what happens in circumstances where personal data protection may be leaked or provided. Their response was, 'They have laws over there,' albeit in their defence they could not sustain any credible comparison with the laws we have in Australia on privacy. Are you aware of any breaches of privacy, or of any data that has been leaked, as a result of offshoring?

Mr Carter—We are not aware of wholesale leaking of data. There have been a number of events that have been brought to our attention which we have tried to deal with, but the key dilemma is that they are a third party provider. If it is one of the banks that is offshored to another company in India, it is a third party, so you do not only have the problems about it being another country's set of laws but you also have a third party that you are not in direct control of. A number of stories have been brought to our attention, which we have endeavoured to deal with through the industry, about serious breaches of protocols and whether lists have been on-sold to other parties. We are not aware of that, to that extent, but there are procedures that are in place at the moment overseas which do not adhere to the same procedures that we have here. There are, clearly, processing gaps. So there is an issue about the security of that data and the processing, beyond just the efficiency of it.

Senator FURNER—Okay, thanks.

Senator CAMERON—I have a number of questions but we have run out of time so I will put these questions on notice. The first question is in terms of Bangalore. ABA say that it is a centre of excellence and actually helps productivity and job growth in Australia. I would like you to give some consideration to that comment. Actually, could you go to the ABA's submission and

comment on that issue from that submission? In that submission they also say that their estimate of offshoring is 3,200, compared to your 4,009. Could you give me some comment on that?

Could you also comment on the ABA's view that there is a skill shortage and that they need to use Bangalore because of that skill shortage? Could you give me a view as to whether you think we could end up with a virtual banking system in Australia, and could you give me a view on executive salaries—these bonuses, share options, golden handshakes, golden hellos, golden parachutes? Can you tell me how that improves productivity, how it improves consumption and how it improves the overall banking sector, and why there is no succession planning being done in the banks; why they need to go overseas to get some of these cowboys in here to run the banking system?

Mr Masson—We would be happy to do that.

CHAIR—Quite a lot of homework for you to do. I am sorry about that.

Mr Carter—Homework that we are very happy to do.

CHAIR—Excellent. We may also contact you for some kind of response, as we take evidence from other parties, and you are welcome to respond to—

Mr Carter—We would appreciate that.

CHAIR—any evidence that we get during the inquiry. We have a reasonable amount of time to get through this, so we want to make, obviously, a considered report on it. Thank you then.

Mr Bennett—Could I maybe put something on the record and ask senators to note. We obviously had concerns around what we felt was the approach that Treasury were intending to take with the monitoring of the conditions on the Westpac-St George merger. I guess, as we have said in our submissions, we got a very short response at the end of January, effectively saying that Westpac would write to us every six months. We wrote back immediately saying, 'And what else?' given that, as you would be aware, the FSU is actually named in the conditions as one of the parties to be involved.

We have not had a response from Treasury yet. I sent another email a week ago and I got a response saying, 'We will respond to you shortly.' There are a number of concerns about this. Firstly, they have had these responsibilities since October so I am concerned if they do not have a particularly detailed approach that they are working on already. Secondly, I am aware that they gave evidence to you last night and, obviously, we do not know what they said, but I would hope that there was some discussion around enforcement of the conditions. But they still have not responded to us, so I have concerns there which I just wanted you to note.

CHAIR—Yes. We may well follow that up during the course of the inquiry.

Mr Bennett—Thank you.

CHAIR—Thank you everyone for coming here today.

Mr Carter—Thank you for your time.

CHAIR—It has been very valuable. The committee has a private meeting that we need to conduct so we would ask everyone to leave the room temporarily.

Proceedings suspended from 10.06 am to 10.29 am

GRIMWADE, Mr Tim, Acting Executive General Manager, Mergers and Acquisitions Group, Australian Competition and Consumer Commission

HOLLAND, Mr Tim, General Manager, Merger Investigations Branch, Australian Competition and Consumer Commission

WING, Mr Anthony, General Manager, Transport and General Prices Oversight, Australian Competition and Consumer Commission

WOOD, Ms Danielle, Director, Mergers and Asset Sales Branch, Australian Competition and Consumer Commission

CHAIR—I welcome representatives of the ACCC. I remind members of the committee that the Senate has resolved that officials shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions to superior officers or to a minister. This resolution prohibits only asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Do you have an opening statement that you wish to make?

Mr Grimwade—We are here to answer your questions, but I would like to note that there are a number of submissions that make reference to suggestions, issues and recommendations that pertain to the ACCC. If it is possible, I would not mind having the opportunity to comment on those, perhaps at the end of the questioning, if your questions do not give us an opportunity to address those issues.

CHAIR—With the agreement of the committee, why don't we do it now, because one focus of our questions would be your response to those suggestions?

Mr Grimwade—Sure. The first issue I would like to address is in relation to some recommendations made by CHOICE and the Finance Sector Union. They relate to the merger review process of the commission and, in particular, a recommendation or a suggestion that the commission make public submissions that are made to the commission in a merger review process, subject to some caveat for reasonable confidentiality requests.

CHAIR—I think it was 'unless there is any pressing reason', or something of that nature.

Mr Grimwade—Something to that effect. This might go to Senator Furner's questions in relation to a survey that we can get to down the track. I would like to comment that the success and the reputation of the commission's informal merger review process is critically dependent on the ability of merger parties and interested parties being able to submit their views to us in confidence. We have a policy in the informal merger review process that we do not reveal any communications made to us, to the extent that they are confidential. There are a number of reasons for this. One is that often information that is put to us does contain commercially sensitive information—that is obvious. But we often have people talking to us who are concerned about possible retribution by merger parties, we have people talking to us who might be subject to influence by merger parties or other parties if their submissions or identities are

known, and we have a general policy that submissions made to us in that process are confidential.

Having said that, we have been trying for about four years to enhance the transparency of our processes. Indeed, following on from the Dawson committee, we have now enacted a process where we issue public competition assessments, which are comprehensive statements of our reasons for major merger matters, where we try to explain as best we can, without compromising the confidential submissions put to us, the reasons for our decisions. If merger parties or interested parties had any doubt as to the commission's ability or willingness to maintain confidentiality, we are of the view that the informal merger clearance process would really be of no use to them. It has been a very successful process. It allows us to be efficient, responsive and effective in blocking anticompetitive mergers before they happen, or clearing mergers that are not anticompetitive before they happen.

Senator FURNER—On that point of confidentiality, at no stage did I or anyone on the committee request the names of the recipients of the survey. Naturally, you would be in a position to provide the detailed summary of the outcome of that, without disclosing the recipients.

Mr Grimwade—If I could perhaps make some remarks about the survey, because it is quite important that it is not seen for what it appears to have been portrayed as. I regret now that it was called 'a survey', because really it was a mechanism by which we were trying to get consumers and small businesses to engage with us in our usual market inquiry process. So instead of sending out 250 letters to consumers with a list of questions, we devised a survey with a number of questions and opportunities for them to make comments online. It was made quite clear at the beginning of the survey that, 'Your submissions will be protected. We will not disclose them. They will be treated as confidential, as is any other market inquiry.' We appreciated that this so-called survey was going to be biased. Those who would self-select into giving us their responses had a reason to engage with us on the merger.

We had never intended to portray it as a survey from which you could infer to the general population some empirical findings. Rather, it was like any other market inquiry that we make of consumers and business, merger parties, unions, industry representatives, government and so forth. It was designed really to give us a better idea of the sorts of issues that we should be focusing on as we progressed our inquiries and, indeed, the sorts of questions that we should be asking the merger parties and the sorts of documents that we should be requesting from the merger parties.

We did remark upon what was beneficial from the survey in our public statement. One of those issues was, for instance, that we found that consumers largely used bank branches for transaction accounts. So we pursued that line of inquiry with the banks and we examined their confidential information that they were able to give us to reinforce a finding that, for transaction accounts, the market in which we examined the competition effects was local, whereas we found other markets—home loans, wealth planning, insurance and some others—were national markets. So it did no more than that.

There were two concerns about us being requested to release or reveal the surveys. One was my first point—that we have a general policy to protect information that is confidential,

particularly when we say at the outset, 'The information you're providing us will be kept confidential.' Secondly, we were concerned that the survey might be misrepresented by those who obtained it to infer some general findings across the community, which was never its intention. I should say that there is nothing stopping anyone who makes a submission to the commission from publishing or publicising their submission themselves, but as a policy we do not do that.

CHAIR—I think that is precisely the FSU's point. They are saying that they often publish their own submission. I guess they are encouraging the ACCC to ask if other groups would be prepared to have their submissions published, so it would not be a matter of breaching confidentiality. But, if people were happy to have their submission published, then they should be published.

Mr Grimwade—Yes. Section 50 is a law of general application and our process has a set of enshrined principles that we apply across every industry sector. If you are going to make a particular position in relation to encouraging people to make public their submissions, that is something you would have to do across every merger.

CHAIR—Yes.

Mr Grimwade—I would advocate against that. One of the real benefits of our process is that people trust implicitly that we will not reveal anything that comes to us, to the extent that it will compromise whatever view that we are getting to. The point I would make in respect of that is that in some cases it is not necessarily in an interested party's interest to publish their views at a particular point in time, when that interested party might actually be subject to some influence by a merger party down the track. So if we end up having a problem and wishing to take it to court, it might be that that party is not prepared to become a witness. There are all sorts of factors, I think, that impinge on a policy that does not advocate for us protecting confidentiality completely.

CHAIR—Please then, Mr Grimwade, continue on.

Mr Grimwade—This is probably a smaller point but I will make it anyway for the record: there was a criticism by CHOICE that we had used double standards or a contradictory approach in our public competition assessment because we made broad reference to the survey but did not release the survey to CHOICE or publicise the submissions. Our view is that that was a completely consistent approach to take. As I said from the outset, we try to be as transparent and comprehensive in our reasons as possible and, to the extent we can do that without compromising confidentiality or revealing confidential information, we will do so. That was the first issue I was going to raise.

There are one or two others I will just remark upon. I think the Finance Sector Union, and maybe CHOICE as well, made some reference or recommendation that the commission be responsible for monitoring and enforcing conditions that the Treasurer might impose under the Financial Services Shareholding Act. Our view is that that might confuse the commission's independent role in terms of its competition enforcement and review of the merger, or any merger that comes before it. We have a process where we might reach a view that we will impose our own conditions, and we think it might be inconsistent and inappropriate for us to

then be monitoring and enforcing a set of potentially separate and potentially inconsistent conditions that we were not involved in making. So I just make that point.

The third issue that I would not mind remarking upon—and it was raised just before by the Finance Sector Union and it is also in their submission, and you might wish to ask more about this down the track—is that section 50 be subject to a different test. It was not quite clear in the submission whether this would only apply to bank mergers or whether it would apply generally, but there would be some public benefit assessment which would include, I think in their words, a social audit. Our view is that that, if my understanding of what they are proposing is correct, would really turn section 50 on its head because at present, and for many years—and I mean it is consistent internationally in merger law—section 50 prohibits substantially anticompetitive mergers.

In Australia it is possible that an anticompetitive merger can be authorised if that anticompetitive merger is in the net public interest, net public benefit. But it seems to me that what is being proposed is that, even if a merger is not anticompetitive—it might be competitively neutral, it might be pro competitive—there would still need to be some public benefit assessment or social audit conducted, and the commission would be put in a position where it might seek to oppose or have to require conditions to be attached to that conceivably pro-competitive merger because it did not pass some social audit.

We would not advocate that as an appropriate amendment to section 50. I would also add that, if the proposal was in respect of banking mergers, there already is a separate public interest test applied to banking mergers and it is done under the Financial Services Shareholding Act, under the Treasurer's national interest test.

CHAIR—And when is that done in the process?

Mr Grimwade—I am not an expert on this, but I believe it comes after any decision by the commission. I am not exactly sure of the timing, but it was referred to before. It is in relation to the sorts of conditions that the Treasurer might impose in respect of a particular merger, and I think that in Westpac-St George there were a number of conditions that were imposed by the Treasurer under the national interest test. I think that is correct.

CHAIR—I am sorry, I still do not have that clear. So there is a merger proposal, it is considered and—

Mr Grimwade—Sorry. My point is that section 50 stands alone as a competition provision and a competition test and that is the way the commission deals with it. In bank mergers, separate to the commission's involvement, there is a test where national interest considerations are had regard to under a separate act by the Treasurer, and the Treasurer can impose conditions under that act. It is completely divorced from our involvement. But what I am saying is that it is not true to say that there is no public interest test applied to bank mergers, because there is.

CHAIR—Okay. So if there is a bank merger consideration, the Treasurer can separately look at that public interest test under a different act. I am interested to know how they impinge on each other; where in the process.

Mr Grimwade—They do not impinge on each other. To be completely correct, I believe it is a national interest test rather than a public interest test.

CHAIR—If the Treasurer separately finds that it is not in the national interest to do something, but under section 50 it is approved, how is that reconciled?

Mr Grimwade—You should probably verify this with Treasury, but my understanding is that the Treasurer could override, just as I think the Foreign Investment Review Board can override, any informal position that the commission might have in respect of a merger under those respective pieces of legislation.

The commission's decision in respect of a merger is taken under what is called an informal review process. There is actually no statutory requirement or prescription of a process by which the commission is to clear a merger. It is something that has evolved and it has evolved because we do not have any requirement on companies to come and notify us of mergers before they happen. So we have essentially constructed a system which incentivises parties to come to us before they merge to seek a view, and in many cases they will get a degree of comfort from our position that we will not intervene. In some cases we will say, 'Yes, we have a problem and we will intervene if you go ahead,' but in the end we actually have to make our case in court. We cannot prevent a merger from happening without having to go to court and make our case. So if we, for instance, clear a merger but subsequently it might be in breach of some other piece of legislation, then so be it.

CHAIR—Okay, I understand. The FSU also, in relation to that section 50, suggested a period for public consultation as part of the process.

Mr Grimwade—With informal merger reviews, in any public review of any significance, we engage in a very comprehensive degree of public consultation. I think what they were proposing was linked to their social audit proposal. I do not think they were being critical of the informal merger review process that happens. We will get into this, no doubt. But in the Westpac-St George merger and the Commonwealth Bank-Bankwest merger, we conducted some very extensive inquiries of a large array of interested people and companies, including getting very sensitive internal documents. For instance, in Westpac-St George, we obtained three years of their pricing committee documents of the merging parties to get a real sense of who they saw as their closest competitors and who they priced against.

CHAIR—In relation to the other issue that they raise, the noncompliance issue, you dealt with the issue about ACCC monitoring the conditions that Treasury put on, and you were talking about doing your own monitoring and compliance with the ACCC's conditions.

Mr Grimwade—If the commission has a competition concern with a particular merger, or if the commission is of the view that it is going to breach section 50; it is substantially anticompetitive, there are really three options for the merging parties. One is to just go ahead with it and then challenge us in court. The other is that we tell them, 'If you go ahead, we're going to challenge you in court,' and they walk away. The other is that they will come up with a series of undertakings whereby they seek to mitigate the anticompetitive concerns.

For instance, they might propose to divest some offending, overlapping businesses or assets. We have a process whereby we can accept those section 87B undertakings. In effect, they are conditions of us not objecting to a merger. It is somewhat irrelevant in respect of recent bank mergers because we cleared unconditionally the Westpac-St George merger and the Commonwealth Bank-Bankwest merger, but I was making the point that the commission does have a process whereby it can impose its own conditions that are directly relevant to the competition test.

CHAIR—Yes, I understand that. Given that we are looking at improving competition as well in this sector, how do you monitor that compliance? How would you monitor compliance with any such undertaking?

Mr Grimwade—We have instituted for some time in the mergers group a particular unit called the undertaking compliance unit. They are responsible for monitoring the obligations—and enforcing any breach of those obligations—of any section 87B undertaking given to us in a mergers context. So we have a system. There are a good number of staff in that unit, and we accept maybe half a dozen to a dozen undertakings a year. We try to have them structurally based rather than behaviourally based so we do not have to monitor them indefinitely; rather, there are certain actions that they have to undertake and we make sure that they have done what they are supposed to have done.

CHAIR—Where it is a divestiture of assets, I guess it is fairly clear-cut.

Mr Grimwade—Sometimes not that clear-cut.

CHAIR—I am trying to think of an example where it is a bit more difficult to assess that they have undertaken something. A divestiture is clear-cut but it might be, for example, that they will not do something else. If that happens, how do you then enforce? What actions can you take, given that the merger has already happened?

Mr Grimwade—I think it is section 87B(4) that prescribes how we can enforce a remedy. There is quite a wide variety of remedies that we can seek, and a court can basically give any order that it thinks is appropriate. In some cases—this is, again, something that happens internationally with other regulators—we would enshrine, usually in an undertaking, some default clause; so, if they fail to do something, then something else happens.

We could get a court order to enforce them to do what they promised to do and did not do. If there is a very substantive breach to an undertaking, in the occasional undertaking you could conceivably seek an order to unwind the original merger, but we have not really got to that point. There have been a few undertakings where we have had to go to court to enforce compliance but, by and large, the process is of negotiating and reaching an agreement, and the threat of enforcement and our monitoring capabilities tend to make those who have made promises to us to stick to those promises.

CHAIR—You made the point about not doing something for the financial services sector that you would not do across the board. Do you see any reason why the banking sector in particular deserves any separate treatment?

Mr Grimwade—That is more of a policy question. Parliament, I think, has already made that decision, because there is a separate act that prescribes a particular national interest test. But the point I was seeking to make was that section 50 is a section of general application and it should not be changed in any way to be different for one particular sector.

CHAIR—A lot of sectors are important to consumers and to business, and a lot depends on the way their business is conducted. Competition is very important and a range of services are very important so that there is choice, particularly where one group might refuse a loan or not be able to structure an appropriate loan. Given that we do have this policy of not dropping below the four pillars of the banking industry, is there any way that the ACCC views it in a special light?

Mr Grimwade—I think I understand the question. This is similar to what Senator Bushby was going to ask us. Are you asking us: do we have regard to competitive dynamics at a particular point in time or over the foreseeable future in making a decision?

CHAIR—Yes.

Mr Grimwade—Yes, absolutely; we do. Decisions we make now will have regard to what we foresee as being competitive dynamics and structure over the foreseeable future: the next one to two years. It is fair to say that any decision we make now will be made in a different context to a decision that we might have made in the middle of last year.

Senator PRATT—I note that in the Fels era there was an explicit policy in relation to regional banking and maintaining that regional balance, and there is talk that that policy direction is changing. I do not want you to break any rules as to what you can and cannot say about policy, but clearly there was a competitive dynamic change. At which point do you get an explicit direction in how you implement and review these things, where you say, ‘That’s how we used to deal with it. This is how we deal with it now,’ in response to those market dynamics?

Mr Grimwade—Firstly, there is no general policy and there is certainly no direction given to us in terms of how we ought to treat mergers: there is this one section of the act and it has been the same for many years. But the market structure will differ as the market changes and as competitors and competitive constraints change. I do not want to make comparisons between what was decided 12 years ago and what was decided a couple of months ago. As a general point, in recent times there was real potential—and this was happening—for regional banks to expand beyond a particular state. We have seen that in the last couple of years with Bankwest expanding, Bank of Queensland expanding, and Bendigo-Adelaide merging.

Things have changed now, and we can get to that later, but a decision last year in that context might be seen through a different prism than a decision, say, in 1997, where it might have been considered that there was a need to have a regional bank in each state.

Senator PRATT—It is quite a different prism, as we heard from the FSU. They gave evidence in terms of, ‘Yes, we had an era where we had regional banks growing but now that they have reached a certain size, they are targets for takeovers so the bigger banks can leverage off them to increase their market share.’ That seems to be the new dynamic. What you are saying

is that the prism through which you see that is the act, but then also staying on top of a sense of whatever those market dynamics are?

Mr Grimwade—That is right, and there is an additional factor, which is section 50. We apply section 50 on a case-by-case basis at the time, but there is a tipping point. There will be a tipping point, because the test is whether a merger has the effect of substantially lessening competition. Depending upon the environment and the constraints, and the threat of constraints, it is not conceivable that mergers can continue to occur, because there will be a point where a merger is going to substantially lessen competition, having regard to the environment that the merger is operating in at that time.

Senator EGGLESTON—Senator Bushby was going to ask you, I think, about the global economic crisis and how that would impact on your assessment of competition at the moment. In a way, you have answered that, but do you want to add anything to what you have just said?

Mr Grimwade—Yes. I would make the additional point that the global financial crisis has seen a vacation from Australia of some foreign lenders and a diminution in competition from, say, non-bank lenders and, importantly, a potential diminution in the threat of international competition. The structure of the market is a bit different now and we would have regard to the lessening of those constraints if and when another merger comes across our desks.

Senator EGGLESTON—I am interested in this idea of international competition specifically in relation to the growth of e-banking and electronic services. What is your view about the growth of electronic services in terms of electronic banking and preserving competition and access to international banks? As we said last night, you can apply for a personal loan at 2 am on a Thursday morning on the internet. You do not have to walk into a bank. You simply put your details on the internet and in due course it is approved or not.

Mr Grimwade—An important point to make from our perspective is that banks operate in a variety of different markets and in each of those markets there might be different competitors and differing competitive constraints. For instance, we have identified that in, say, transaction banking, for agricultural finance and equipment finance doing your banking in a branch is quite important, but there are other markets where having a branch available is not that important. So some markets, where you can conduct all of your banking electronically, might not be subject to the same competitive issues as some of the other markets we look at.

It is quite difficult to make a statement that banking is less competitive or more competitive, because each market is different really, and so in our examination of any merger we will dig down into each market and assess which markets are going to be affected by the competition. We could really only answer that question insofar as a particular merger is concerned. I am not an expert on e-banking as such, though.

Senator EGGLESTON—One of the other comments that was made this morning by Carol Gordon was that the conditions offered by banks for personal banking, transaction banking, are essentially the same and that there is really no competition. What are your criteria for competition? Would you agree that there is really no competition between the four major banks in terms of individual banking because the terms and conditions et cetera are essentially the same; it is one bland vanilla Australian banking system?

Mr Grimwade—I do not think it is correct to say that all the services and products that are provided are the same. It would be wrong to suggest that there is no competition between the four banks in the different markets. In a large number of instances, it is fair to say that when a new product is being launched other banks seek to match it, and there is a level of competing to that level of homogeneity in some instances, but we have found—and I am only really remarking on inquiries we have made in respect of two recent mergers—that the big banks have sought to distinguish themselves with particular products or services.

We have found that ANZ, for instance, has been seeking to try and distinguish itself from the customer service segment more so than the others. I think after the Commonwealth Bank-Bankwest merger, Bankwest is still running its Rate Tracker product, which is quite a distinctive product, and I am sure there are many other examples of distinctive services and products being offered by the banks. It is probably a question better put to the banks themselves, or Treasury.

Senator EGGLESTON—That is true. As you know, there is a time limit of three years on the existence of the independent entity of Bankwest. So, while they may have this product you have referred to, after three years in all probability they will not. In personal banking, the smaller banks, the provincial banks and the building societies offered a wider variety of innovative products than the big four do. The loss of various building societies has lessened the range of products available to the public, as a matter of fact, in personal banking.

Mr Grimwade—I think that is correct. If you look at Bankwest, we found that up until the middle of last year it was an extremely aggressive and innovative competitor. It had a quite different business model, it was very expansionary, it was a price leader, and it was obvious to us that the big banks saw it as a competitive threat. Unfortunately for competition, Bankwest suffered as a consequence of the impact of the GFC on its UK owner and we found quite convincingly, in our review of Commonwealth Bank-Bankwest, that without the merger Bankwest was not going to be the expansionary, innovative price leader that it had been. In fact, it was quite the opposite. It was, if anything, going to contract.

Senator EGGLESTON—I understand the rationale for it. Last night a comparison was made between Australia and Canada, and the Canadian and Australian banking systems—alone in the world almost—are not collapsing as they are in other countries. What comparisons do you make between Australia and Canada? Is there a body similar to yours in Canada overseeing competition between the banks?

Mr Grimwade—To be honest with you, I do not know anything about the Canadian banking system, but I do know that the Canadian Competition Bureau, which is our counterpart agency, has an act pretty similar to ours, and certainly its merger law is similar to ours—one of general application. I think it is based on a substantial lessening of competition test and is one of general application, but whether or not there are some specific banking laws that impact on competition or address competition in banking, I cannot answer that. I apologise for that.

Senator EGGLESTON—CHOICE said in their submission to us that they would like to see an investigation into compliance with merger conditions, particularly with reference to Westpac and St George and the Commonwealth and Bankwest mergers. Do you feel that is necessary? Are you happy with the compliance?

Mr Grimwade—That was the point I made initially. Those conditions are not the responsibility, nor do we think they should be the responsibility, of the commission because they are imposed by the Treasurer under a different test, not the test that we address and have expertise in. No, that is not something that we are responsible for.

Senator EGGLESTON—Fair enough. You did in fact cover that ground, I agree. Thank you very much.

CHAIR—Could I just read to you part of the FSU's submission to get your comment on it. This relates to the Commonwealth-Bankwest acquisition and the global financial crisis:

The FSU strongly believes that mergers between any of the four major banks and other medium size banks has flow on effects, namely increased pressure for the other big banks to also acquire 'second tier' banks. To a certain extent this was demonstrated by the Commonwealth Bank's acquisition of Bank West late last year. This merger was characterised as a "distressed sale" or "failing firm" scenario due to the global financial crisis; however we note and endorse the comments of former ACCC chairman Allan Fels who said that the larger banks should not be able to acquire their smaller competitors despite the global financial crisis and that he would be "concerned for competition" if the Commonwealth Bank was allowed to takeover Bank West given that the Government's guarantee on deposits had resolved concerns about smaller bank stability.

Mr Grimwade—If I can verbal Professor Fels a bit, I suspect the point that he was making is one that we would also consistently approach. That is, if a bank is failing or is in distress, you have to have regard to what the situation is going to be if the merger does not go ahead. If that bank is acquired by, say, another regional bank or an international competitor, you might end up with a pro-competitive outcome compared to a situation where it might be less than competitive—for instance, the Commonwealth Bank acquiring Bankwest.

Part of our inquiries in the Commonwealth-Bankwest matter were to see what would happen if Commonwealth did not buy Bankwest. What would be the situation? We spoke to every firm, every bank, that had expressed any interest in acquiring Bankwest—and that included international banks, all the Australian banks, others—and it was quite apparent from our inquiries that if Commonwealth Bank did not buy Bankwest no-one else was likely to buy it. Essentially, we concluded that without the acquisition HBOS UK and Lloyds would continue to run Bankwest, but not at all in the way Bankwest had previously been run. It would no longer be the price leader. It would no longer be a vigorous or effective competitor. That was the conclusion we reached.

When we look at any merger, we have to compare two scenarios: the scenario of the merger in the future and the scenario that is likely to exist without that merger. Sometimes, if it is a distressed or failing firm, we will have regard to, 'Where are those assets going to go? Are they going to go to some other competitor that might pick them up and generate a more pro-competitive outcome compared with the merger?' That is one of our inquiries.

CHAIR—If your finding was that Bankwest would have been allowed to continue but at a much lower level, not such an aggressive firm, that might have been so for the period of recession around the world but it might, after the recovery, have then taken off on a trajectory again where it was more aggressive.

Mr Grimwade—Certainly that would have been our hope but the evidence that we gathered was that that was just not a likely future scenario. Bankwest was not going to just remain there with its branches. Not only were expansion plans going to be eliminated but the bank was very likely to contract. It had a \$16 billion wholesale funding that it needed to return to its parent, which was then and is now in even more dire straits. Our finding was that it was not going to be a sustainable proposition that would turn around and become the effective and vigorous competitor that you suggested it might. We spoke to HBOS UK, and Lloyds as well, in terms of what their plans were, and the expansionary and price leadership strategies of Bankwest were very much determined by its parent company in the UK.

CHAIR—Thank you. Both CHOICE and the FSU recommended that the ACCC, together with the Reserve Bank, publish an annual report to parliament on retail banking competition. I am not asking you to comment on whether that is desirable or not, but is there any impediment to doing that kind of thing from your point of view, or any difficulty with that?

Mr Grimwade—I might ask Mr Wing to answer that question.

Mr Wing—We can clearly monitor anything that the minister formally directs us to. It would have to be consistent with our roles and functions under the act, and competition is clearly one of our functions under the act. Some of the other suggestions put forward in those submissions about things that we could monitor—for example, offshoring—would not really fall within our roles, functions or expertise, but it would be very much up to the minister, and obviously that is a policy question.

CHAIR—There would be no difficulty for you in producing such a report that talks about things like the number of providers and concentration ratios and so on? There would not be any difficulty in the ACCC doing that kind of thing?

Mr Wing—To the effect that they were relevant to competition, yes. I should probably point out that we deal with the competition aspects of the act with respect to the financial services sector. There is actually a carve-out and there is a specialist regulator, ASIC, which deals with general consumer protection and unconscionable conduct provisions in the financial services sector, but to the extent that the things that we are asked to monitor are part of the competition aspects, yes, we could do that if given a direction and, as I said, that would be a matter for the minister.

CHAIR—Is that kind of information available anywhere now? Is that generally published anywhere?

Mr Wing—I would not like to go through them point by point, but the Reserve Bank publishes bulletins and findings from time to time which survey statistics on the banking sector, so some of those things may be in the Reserve Bank's publications at the moment.

CHAIR—Any other questions? Senator Furner.

Senator FURNER—The FSU, in its submission, indicates that the merger between Westpac and St George will result in an estimated 5,000 job losses; Commonwealth and State Bank of

Victoria 8,000; Westpac-Bank of Melbourne 1,400; and Commonwealth-Colonial 4,500. Does the ACCC, when it is assessing a merger, consider job losses at all?

Mr Grimwade—No. The merger test under section 50 is directed at the effects on competition, and the foundation for this law and similar laws around the world is essentially that, in terms of assessing the competition of a merger, the focus is on the protection of the competitive process and how that can ensure the welfare of consumers. The commission does not have to have regard to job losses. In a sense, most mergers will have some adverse social impact, because most mergers are proposed because efficiencies can be gained through rationalisation and so forth.

Senator FURNER—Surely if there is a diminishment of jobs and the likelihood of offshoring of some of those jobs, that has an impact on consumers in terms of service and communication?

Mr Grimwade—Yes. There is one issue: that if a merger is anticompetitive and we would otherwise oppose it, there is a process by which we can allow a merger to occur if it is in the net public interest, but it is not a factor for us to have regard to in looking at whether or not a merger is going to substantially lessen competition. In fact, there are a range of factors set out in section 50 which are directed towards the competition effects, and they go to things like market concentration, barriers to entry, import competition, substitutable products and services, removal of a vigorous, effective competitor—those sorts of things. But there is no social impact criteria that one has regard to. Our view is that if there is a need for some social policy mechanism, that should be separate to section 50.

Senator FURNER—Thanks.

CHAIR—Thank you to the ACCC for coming in this morning. Thank you to Hansard and Broadcasting. The committee is adjourned.

Committee adjourned at 11.20 am