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8 October 2015

Ms Toni Matulick
Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra
ACT 2600

Dear Ms Matulick,

Re: inquiry into the impairment of customer loans Questions on Notice

Thank you for your letter of 22 September 2015 in relation to six Questions on Notice from the Parliamentary Joint Committee on Corporations and Financial Services inquiry into impairment of customer loans.

We attach responses to Questions on Notice 1 to 4 and 6. To assist the Committee we have also provided further background information about Commonwealth Bank's purchase of Bankwest.

As discussed with the Committee Secretariat, Question on Notice 5 requires a manual process to reconstruct impairment levels at a point in time across a number of financial years. We commit to providing this information to the Committee as soon as practicable.

We categorically reject accusations that Commonwealth Bank manufactured customer defaults and was motivated to do so to reduce the purchase price of Bankwest.

We would be happy to provide whatever further information the Committee might find helpful to demonstrate the lack of substance to such allegations.

Yours sincerely,

David Cohen
Group Executive Group Corporate Affairs
Commonwealth Bank of Australia

Introduction

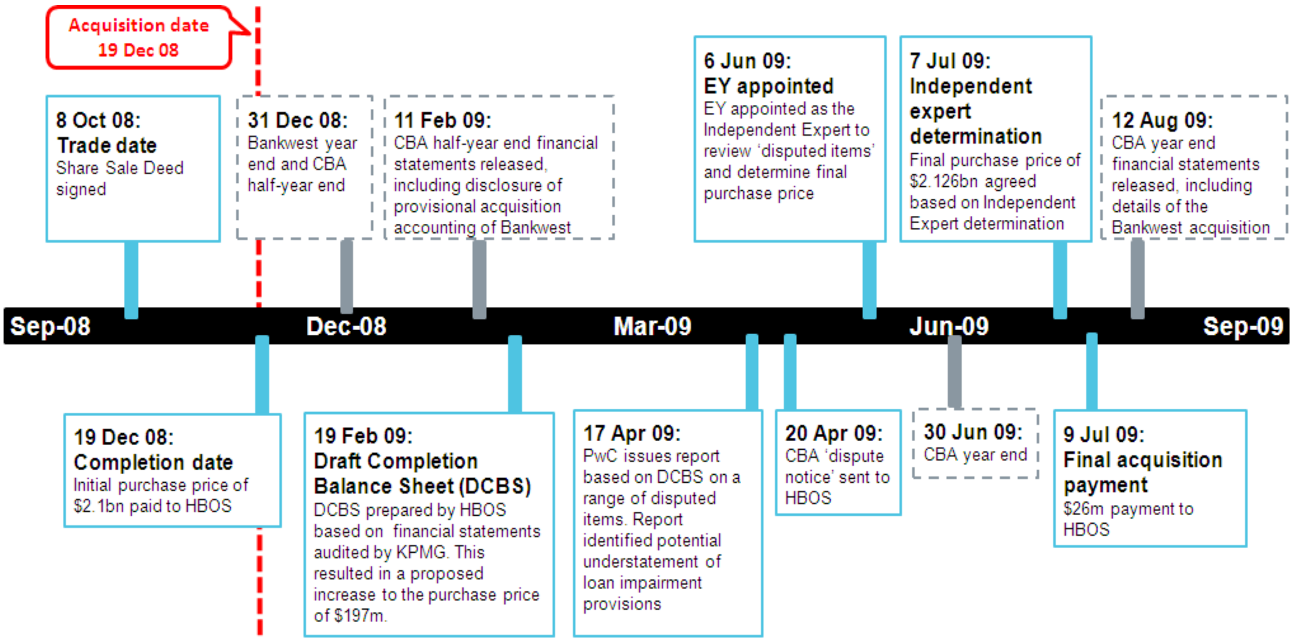
For the Committee's benefit we have outlined the key background information concerning Commonwealth Bank's purchase of Bankwest.

Bankwest acquisition and purchase price adjustments

On 8 October 2008, Commonwealth Bank entered into a Share Sale Deed with HBOS Australia and HBOS plc, which set an initial purchase price of $2,100 million.

The initial purchase price could only be varied via the price adjustment mechanism set out in the Share Sale Deed. There were no other agreements between HBOS and the Commonwealth Bank that could vary the purchase price. Price adjustment mechanisms are commonly used in acquisitions across all industry sectors as often there is a delay between signing the share sale agreement and when control ultimately passes during which time the value of the business acquired can vary.

Set out below is a brief timeline to show how the purchase price was finalised for the Bankwest acquisition.



The price adjustment mechanism required the preparation of a Draft Completion Balance Sheet (DCBS) by HBOS as at 19 December 2008. The DCBS was audited by KPMG. Commonwealth Bank did not have the ability to, nor did it, set the level of impairment provisions held in connection with the Bankwest loan portfolio. HBOS was solely responsible for setting the level of provisions against Bankwest's loan portfolio included in the DCBS.

The Share Sale Deed[1] required the DCBS (including the loan impairment provision) and proposed adjustments to be determined in accordance with:

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[1] Clause 5, Clause 10 and Schedule 6 of the Share Sale Deed dated 8 October 2008. See also Part A Section 3 of Ernst & Young's Expert Determination Report dated 7 July 2009.

- Bankwest's accounting and credit policies at 31 December 2007; and
- The requirements of International Financial Reporting Standards (IFRS) including consideration only of events or facts that occurred up to 19 February 2009 that identified an impairment that already existed at 19 December 2008.

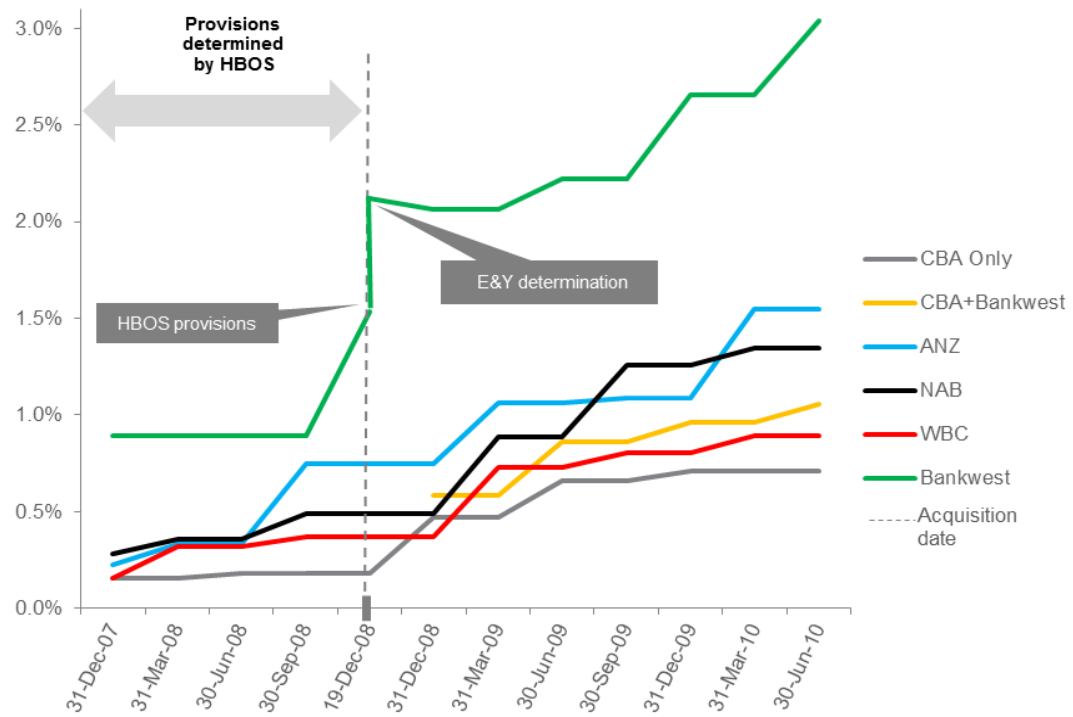
This meant that in determining any adjustments to the loan impairment provisions, any information that was available at 19 February 2009 was evaluated to determine whether it identified a credit condition that existed at 19 December 2008 and should have been incorporated in provision estimates in line with Bankwest's accounting policies at the time. Any information available after this date was disregarded.

Preparation of the DCBS coincided with the height of the Global Financial Crisis. At this time, the credit profiles of a number of customers were changing rapidly due to challenging economic conditions and declining property prices (in particular development properties).

Bankwest appeared slow to reflect these changes in loan impairment provisions and also held lower impairment provisions relative to peer banks prior to acquisition. At the same time, the industry as a whole had commenced increasing loan impairment provisions to respond to changing conditions.

The following graph demonstrates that Bankwest's impaired assets were higher than peer banks (both before and after Commonwealth Bank's acquisition), implying a riskier portfolio compared to peers. HBOS revised the impaired assets upwards as part of the DCBS. The Independent Expert, also identified further assets that were classified as impaired as at 19 December 2008.

<u>Gross impaired assets as a % of gross loans and advances</u>[2]



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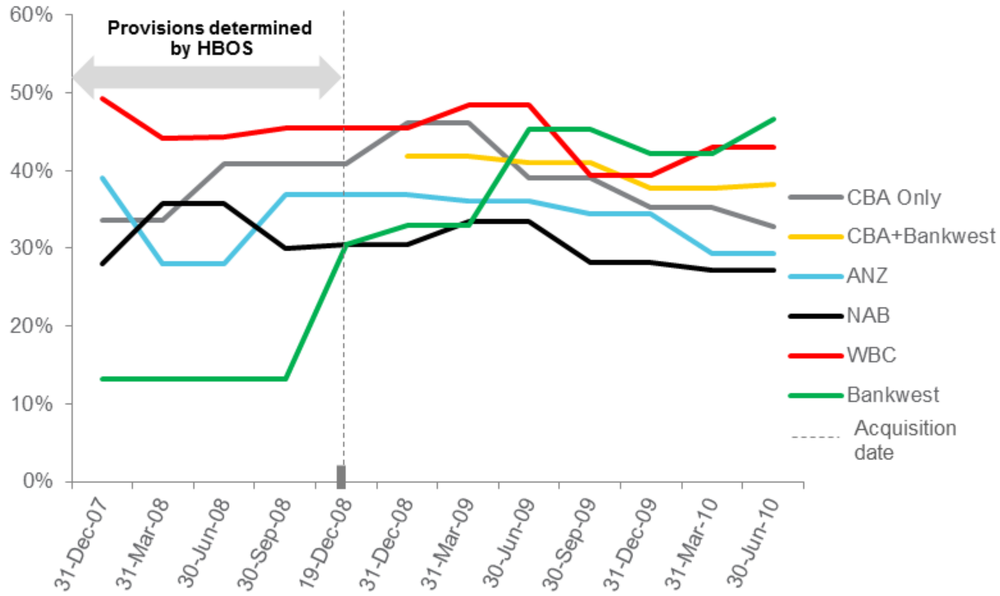
[2] Compiled from the entities' respective financial statements across the periods and the Expert Determination Report dated 7 July 2009. At 30 June 2009, Bankwest aligned its definition of Impaired Assets to the Commonwealth Bank, and reduced the Impaired Asset balance at 31 December 2008 by $423 million. For consistency the equivalent reclassification has been applied to 19 December 2008 Impaired Asset balance.

Despite Bankwest having the highest level of impaired assets, its provisioning levels on these impaired assets were much lower than peer banks at acquisition date, as shown below.

Total provisions for impaired assets as a % of gross impaired assets[3]



Due to concerns around Bankwest provision levels, Commonwealth Bank engaged PwC to assist in assessing the price adjustments proposed by HBOS. PwC concluded that the loan impairment provisions in the DCBS relative to Bankwest's peers were understated in the range of $119.7 million to $232.4 million (net of tax)[4]. (Refer to page 2 of the PwC letter contained in Appendix 1 which confirms the scope of work performed and findings in relation to the DCBS.) Accordingly, Commonwealth Bank disputed the loan impairment provisions in the DCBS and HBOS and Commonwealth Bank referred the disputed items to Ernst & Young as the Independent Expert to make a final determination of the provisions and other matters. Ernst & Young determined an increase in the final provisions of $156.5 million, bringing total final provisions to $630.2 million. Together with other adjusted items, Ernst & Young determined a final purchase price of $2,126.1 million.

As per the Share Sale Deed, the determination by the Independent Expert was binding and final on Commonwealth Bank and HBOS. That is, no further recourse could be taken by either party to amend the purchase price further, and nor did it change.

History of Bankwest loan losses after acquisition date

Both Bankwest and the Commonwealth Bank have continuing obligations under the Corporations Act 2001 to ensure that their financial statements comply with accounting standards and present a true and fair view of their financial position and results. This

[3] Compiled from the entities' respective financial statements across the periods and the Expert Determination Report dated 7 July 2009. At 30 June 2009, Bankwest aligned its definition of Impaired Assets to the Commonwealth Bank, and reduced the Impaired Asset balance at 31 December 2008 by $423 million. For consistency the equivalent reclassification has been applied to 19 December 2008 Impaired Asset balance.

[4] Gross of tax, the provisions were understated in the range of $171 million to $332 million.

includes an obligation to evaluate the adequacy of loan loss provisions for accounting purposes under Australian Accounting Standard AASB 139.

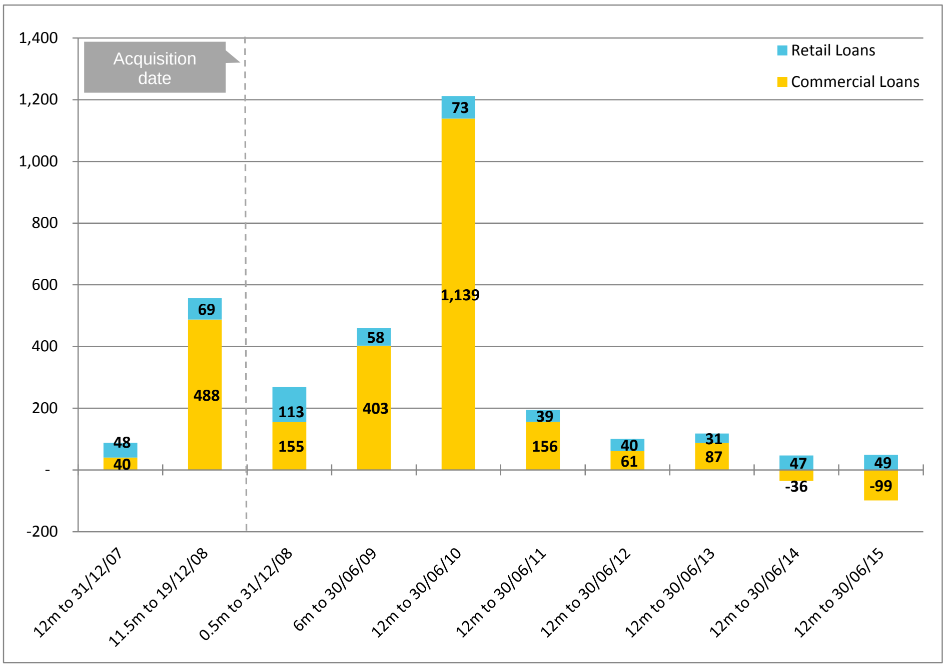
In recognition that the Commonwealth Bank believed that the loan book was over-valued, further loan provisions of $268 million were recognised in the Bankwest statutory accounts at 31 December 2008. The portfolio continued to deteriorate through to 30 June 2009, leading to a further loan impairment expense of $460 million being recognised for the six month period. This had no impact on the purchase price paid, and was recorded in Bankwest's post acquisition income statement.

As unexpected losses continued to emerge from the Bankwest commercial loan portfolio, it was decided that a thorough review needed to be undertaken of loans, including ensuring that current independent valuations were obtained to reflect the deteriorating property market. This was conducted as part of Project Magellan, which commenced in April 2010 and resulted in a significant increase in loan impairment expense. The purpose of Project Magellan was to evaluate the adequacy of loan impairment expense for accounting purposes. This is confirmed on page 4 of the PwC letter in Appendix 1.

PwC in its role as external auditor performed procedures over the loan impairment provisions booked as part of Project Magellan and stated "*the provisions had been calculated in accordance with Australian Accounting Standards and were considered appropriate in the context of the financial statements of Bankwest as a whole.*" Refer to page 4 of the PwC letter contained in Appendix 1 which confirms the scope of work performed and findings in relation to Project Magellan.

The following graph shows the total loan impairment expense recognised in Bankwest statutory accounts split between the commercial and retail portfolios.

Bankwest loan impairment expense

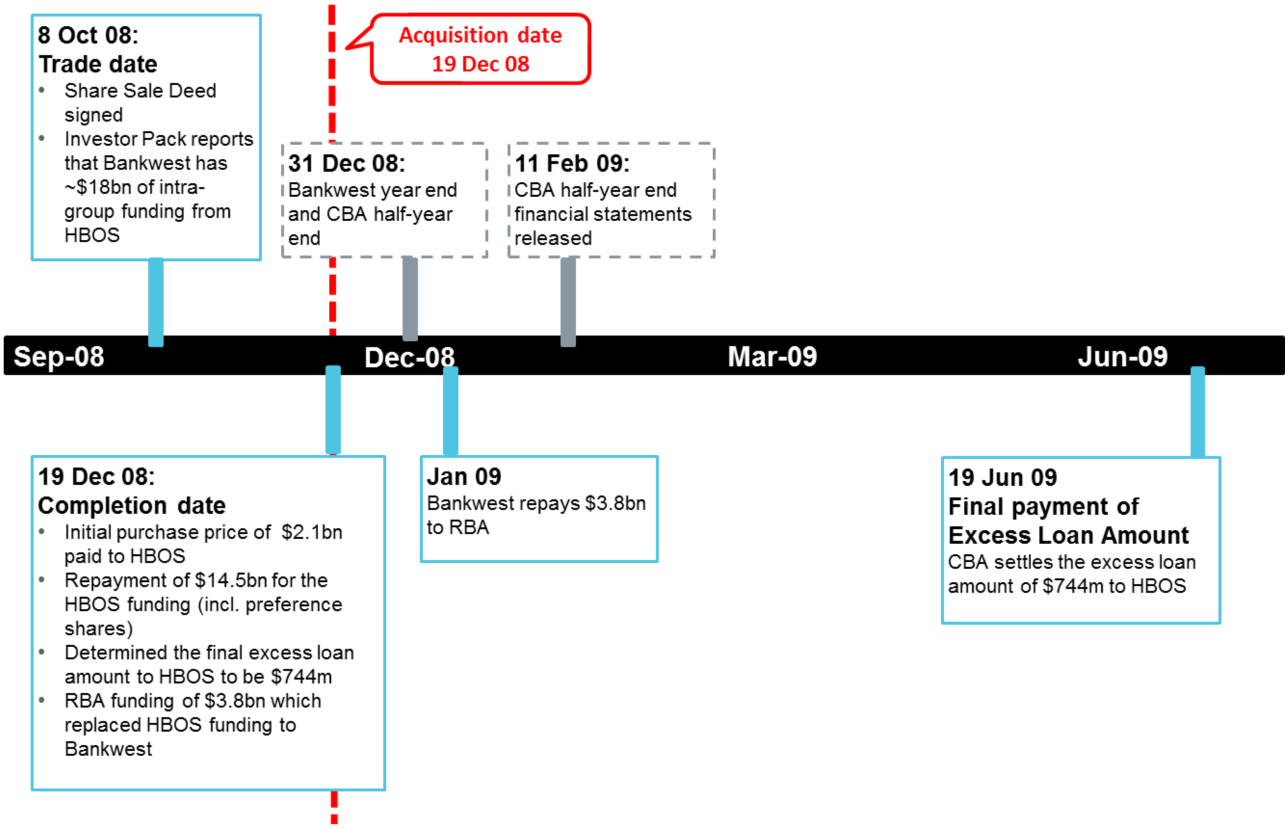


A significant portion of the loan impairment expense incurred from the acquisition date to 30 June 2010 relates to the impairment of the pre-acquisition commercial loan portfolio. A split of the loan impairment expense between the pre and post-acquisition Bankwest loan portfolio will be provided to the Committee in conjunction with the response to Question 5.

The impairment expense recognised throughout these periods could not and did not impact the purchase price paid to HBOS and was required to reflect the correct value of the loan portfolio in accordance with International Financial Reporting Standards (IFRS).

Funding of Bankwest acquisition

The timeline below shows the funding arrangements for the Bankwest acquisition.



Upon signing the Share Sale Deed (8 October 2008), the Commonwealth Bank estimated that Bankwest's intragroup funding could be as high as $18,000 million, as mentioned in the Investor Pack of the same date. This was determined based on the September 2008 unaudited Bankwest trial balance.

In the Share Sale Deed,[5] the parties agreed any amount owing by a Bankwest group company to the HBOS group would be paid in full by that Bankwest group company up to $14.5 billion on 19 December 2008, with any amounts in excess of this to be repaid on 19 June 2009.

The cash flows that occurred on 19 December 2008 are as follows:

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[5] See clause 12 of Share Sale Deed dated 8 October 2008.

	19 Dec 2008 $ million
Initial purchase price for acquisition of Bankwest share capital	**2,100**
Repayment of HBOS funding to Bankwest	
Bankwest subordinated liabilities	1,025
Bankwest intragroup funding	12,958
Redemption of redeemable preference shares	530
Payment for intragroup debt	**14,513**

By 19 December 2008, Bankwest had borrowed $3,751 million from the Reserve Bank of Australia (RBA) (excluding interest) and used these funds to repay a portion of its intragroup funding with HBOS prior to completion.

Bankwest repaid the RBA funding amount in January 2009 and increased its funding from Commonwealth Bank.

The excess funding amount between HBOS and Bankwest was determined to be $744 million. In accordance with the Share Sale Deed, $744 million was settled with HBOS on 19 June 2009.

No further payments were made to HBOS in relation to funding commitments. A summary of the aggregate funding settled by the Commonwealth Bank as part of the transactions is as follows:

Aggregate funding settled by Commonwealth Bank		**$ million**
19 Dec 08	HBOS intragroup debt	14,513
Jan 09	Repayment of RBA funding (including interest)	3,770
19 Jun 09	Excess funding payable to HBOS	744
Total funding repaid		**19,027**

An additional amount of $12 million was excluded from the excess funding amount and offset against a receivable from HBOS upon winding-up of Bankwest's pre-existing securitisation arrangements. This was substantively concluded between Bankwest and HBOS in July 2011 and settled in 2014, and had no connection whatsoever with impaired loans generally or any other matter related to the price adjustment provisions of the Share Sale Deed.

Our specific responses to your questions are outlined on the following pages.

Question 1. The net price adjustment attributable to impaired loans in the July 2009 expert determination, separated from other matters included in the overall price adjustment

The Independent Expert, Ernst & Young, determined that the final adjusted purchase price should be $2,126.1 million. This represented a $26.1 million increase from the initial purchase price of $2,100 million. The purchase price was adjusted for various items, including loan impairment provisions. The Independent Expert determined that Bankwest's individually assessed provision on specific disputed loans should be increased by $106.5 million[6] and Bankwest's collective provision should be increased by $50.0 million[7], equating to $156.5 million before tax and capital impacts to reflect the need for higher loan impairment provisions as at 19 December 2008.

The Independent Expert was not asked to calculate the net price adjustment attributable to impaired loans, separated from other matters. Commonwealth Bank has recalculated this allocation below. After considering tax and capital impacts the net purchase price adjustment attributable to impaired loans was $134.9 million. This was the only net price adjustment attributable to 'impaired loans'[8].

The various price adjustments are summarised below:

	$ million
Initial purchase price	**2,100.0**
Price adjustments based on draft completion balance sheet prepared by HBOS, audited by KPMG	196.8
Final price adjustment determined by the Independent Expert: • In relation to the loan impairment provision • Other items	 (134.9) (35.8)
Final (binding) purchase price	**2,126.1**

No further adjustments could be made to the final purchase price, once it was determined by the Independent Expert. PwC in its role as external auditor performed procedures in relation to the final purchase price and identified no errors. In addition, PwC states it was not aware of any other agreement relevant to determining the purchase price of the acquisition. Refer to page 3 of the PwC letter contained in Appendix 1.

[6] Disputed item 2 per Part E *Bankwest Excess Capital Calculations* per the Independent Expert's report (page 120)
[7] Disputed item 3 per Part E *Bankwest Excess Capital Calculations* per the Independent Expert's report (page 120)
[8] Under accounting standards, provisions comprise both individual and collective loan impairment provisions. We have interpreted your question as the net price adjustment attributed to both these provisions.

Purchase price adjustments as determined by Ernst & Young in the Expert Determination Report, provided in answer to question 2, (data extracted from Part D, Expert Determination Report (page 118))

	HBOS draft completion balance sheet $ million	Independent Expert		
		Loan impairment adjustments $ million	Other adjustments $ million	Final adjustments $ million
Initial purchase price	**2,100.0**			**2,100.0**
Adjustments: **1. Bankwest excess capital calculation**	157.3	(134.9)	(21.8)	0.6
2. St. Andrews movement in net assets	22.4	(0.0)	(14.0)	8.4
3. HBOSGS movement in net assets	17.1	0.0	0.0	17.1
Total adjustments to initial purchase price	**196.8**	**(134.9)**	**(35.8)**	**26.1**
Final purchase price	**2,296.8**	**(134.9)**	**(35.8)**	**2,126.1**

Question 2. A copy of the July 2009 expert determination by Ernst and Young

Ernst & Young prepared its Report in response to a referral under the Share Sale Deed by Commonwealth Bank and HBOS of 13 disputed items in the draft completion balance sheet as at 19 December 2008. The process resulting in the referral is explained in paragraphs 1.12 – 1.20 of the Expert Determination Report (pages 2 - 4).

A summary of Ernst & Young's opinions on each of the disputed items appears in Part B of the Expert Determination Report (pages 10 - 11). Two items were relevant to impaired loans:

Brief description	Summary of findings	Detailed findings
Individual provisions and impairment losses on loans and advances (item 2)	Provisions for impairment losses on loans and advances should be increased by $106.5 million	Paragraphs 2.1 to 2.179 of the Expert Determination Report (pages 16 – 65)
Group collective provisions and impairment losses on loans and advances (item 3)	Collective provisions should be increased by $50 million	Paragraphs 3.1 to 3.55 of the Expert Determination Report (pages 66 – 78)

As outlined in Question 1, the Independent Expert was not asked to calculate the net price adjustment attributable to impaired loans, separated from other matters.

As noted, taken together with the findings for the other disputed items, Ernst & Young determined an adjusted purchase price of $2,126.1 million. This was an increase of $26.1 million from the amount Commonwealth Bank paid at completion of the Bankwest acquisition. Commonwealth Bank made this payment on 9 July 2009. Ernst & Young's calculation of the adjusted purchase price appears is Part D of the Report (page 118).

Question 3. For loans established prior to 19 December 2008, details of any other periods for review or reassessment of loans or price adjustments or changes to funding provisions that occurred in addition to the loans considered in the July 2009 expert determination.

There were no other periods for review or reassessment of loans or price adjustments that occurred in addition to the loans considered in the July 2009 expert determination[9].

Furthermore, there were no other agreements entered into between the Commonwealth Bank and HBOS that varied the purchase price subsequent to the Independent Expert's determination. Herbert Smith Freehills and PwC have also confirmed that they are not aware of any other agreement relevant to determining the purchase price of the acquisition. Refer to page 3 of the PwC letter dated 2 October 2015 contained in Appendix 1 and the Herbert Smith Freehills letter dated 6 October 2015 contained in Appendix 2.

Funding for the acquisition has been described in the introduction and question 4.

[9] We have assumed that the Committee is not referring to Project Magellan which was unrelated to the BankWest purchase price

Question 4. Details of any payments to the Bankwest vendors agreed in the sale deed that did not proceed

There were no payments detailed in the Share Sale Deed that did not proceed.

A detailed explanation of the funding arrangements for the Bankwest acquisition is outlined in the introduction to this letter.

Question 6. In your submission you noted that the Commonwealth Bank has responded to the clawback allegations in a variety of forums, including the Senate Economics Committee inquiry into the post-GFC banking sector. You also noted two court cases in which the allegations were considered. However, the clawback allegations continue to be put to the committee in large numbers. Therefore the committee would like to extend an invitation to the Commonwealth Bank to provide any further evidence to substantiate that the alleged clawback did not occur.

We are aware that allegations around claw back provisions continue to circulate, but mere repetition of these allegations does not make them true.

We also note that while we provided verdicts from two relevant court cases in our submission, that other cases have addressed these matters. For example:

James Woodward Neale v Bank of Western Australia Ltd in the Supreme Court of New South Wales

The judge concluded:

"The evidence does not establish that things did not go well because of anything that can be blamed on Bankwest."

And later,

"In my view, whatever obligation the bank had to render assistance to Mr Neale it gave, and then more".

In conclusion we refer again to the previous Senate Economics Committee inquiry into the post GFC banking inquiry which concluded:

"This committee is not a court. While the committee has questioned Bankwest about particular cases and has utilised evidence relating to specific disputes to support its findings, readers of this report should not expect to find the committee's judgment on individual cases."

However to the extent that the Committee was willing to reach a judgment it said:

"In examining the Bankwest issue, some individuals put forward the terms of the purchase agreement entered into by the CBA to acquire Bankwest as an explanation for what occurred. The committee notes these concerns but believes other factors such as the deterioration of the property market and general anxiety about the business and economic environment seem more significant based on the evidence available".

The facts around this matter have not changed since that time.

APPENDIX 1 PwC Letter dated 6 October 2015

APPENDIX 2 Herbert Smith Freehills Letter dated 6 October 2015

The Directors
c/o Ian Narev, Managing Director and CEO
Commonwealth Bank of Australia
Tower 1, Darling Park
201 Sussex Street
Sydney NSW 2000

6th October 2015

Dear Directors

Summary of work undertaken by PwC relating to the acquisition of Bank of Western Australia Limited and its controlled entities ("Bankwest"), St Andrew's Australia Pty Ltd and its controlled entities and HBOS Australia Group (Services) Pty Ltd, (together "the Group Companies") by Commonwealth Bank of Australia ("CBA") and Bankwest management's subsequent review of the Bankwest 'non-retail' loan portfolio under Project Magellan

Background

We understand Commonwealth Bank of Australia ("CBA") has been requested to provide a response to a question on notice by the Parliamentary Joint Committee on Corporations and Financial Services ("PJCFS") dated 22 September 2015 in connection with their *Inquiry into impairment of customer loans*.

In connection with this, CBA have asked us to summarise the work PwC undertook that relates to the acquisition of the Group Companies by CBA on 19 December 2008 and to Bankwest management's subsequent review of the Bankwest 'non-retail' loan portfolio under Project Magellan.

We have set out below a summary of the work we undertook and provide details in relation to the procedures we performed that we consider are relevant to the areas identified by the PJCFS in their request of 22 September 2015 for provision of further information. For the avoidance of doubt, the procedures outlined below are a summary of the work we undertook and are not an exhaustive list of all procedures or work we performed.

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Work undertaken by PwC related to the acquisition of the Group Companies by CBA on 19 December 2008

Review of the 31 December 2008 consolidated financial statements of CBA

As auditors of CBA, PwC undertook a review pursuant to ASRE2410 *Review of a Financial Report by the Independent Auditor of the Entity* of the consolidated financial statements of CBA for the 6 months ended 31 December 2008 ("31 December 2008 Review"). The 31 December 2008 Review conclusion dated 11 February 2009 was unqualified.

Note 14 *Acquisition of Controlled Entities* of the 31 December 2008 consolidated financial statements sets out the accounting for the acquisition of the Group Companies by CBA on 19 December 2008 using information available as at 11 February 2009. As at 11 February 2009, final diligence and review procedures envisaged by the Share Sale Deed as between CBA and HBOS dated 8 October 2008 ("Share Sale Deed") had not been completed.

The conclusion of such procedures by both parties to the Share Sale Deed was required in order to finalise the purchase price. Accordingly, and as required by AASB3 *Business Combinations,* the CBA consolidated financial statements for the half-year ended 31 December 2008 reflected provisional acquisition accounting as at 11 February 2009, as stated in note 1(a) of the 31 December 2008 consolidated financial statements of CBA.

Agreed-upon procedures over the completion accounts of the Group Companies for the period ended 19 December 2008 ("completion accounts")

CBA engaged PwC on 2 March 2009 to perform agreed-upon procedures in accordance with Australian Auditing Standards which required PwC to undertake specified procedures over the completion accounts of the Group Companies and the Adjusted Purchase Price Calculations attached to the completion accounts. The completion accounts and Adjusted Purchase Price Calculations were audited by KPMG, pursuant to clause 10.2 of the Share Sale Deed. The KPMG audit opinion on the completion accounts of the Group Companies and the Adjusted Purchase Price Calculations attached to the completion accounts, which was dated 19 February 2009, was unqualified.

Our agreed-upon procedures were performed solely to assist CBA in identifying matters indicating where the Adjusted Purchase Price for the Group Companies may have been overstated.

Our report was issued to CBA on 17 April 2009 and identified a number of matters for CBA's consideration, which included:

- a potential uplift in collective loan loss provisions of Bankwest (net of tax) of $119.7m-$232.4m.
- increases in risk weighted assets of $52.7m.

Statutory Audit of the 30 June 2009 consolidated financial statements of CBA

PwC undertook a statutory audit of the 30 June 2009 consolidated financial statements of CBA. The audit opinion in relation to these financial statements was signed on 12 August 2009. The period subject to audit included the date of acquisition of the Group Companies by CBA. The PwC audit opinion on the CBA consolidated financial statements for the period ended 30 June 2009 dated 12 August 2009 was unqualified.

Note 49 *Acquisition of Controlled Entities* to those financial statements sets out the accounting for the acquisition of the Group Companies. The amounts included in the CBA consolidated financial statements for the half-year ended 31 December 2008 that were provisional as at 11 February 2009 were adjusted in the financial statements for the year ended 30 June 2009 to complete the accounting for the acquisition, as required by AASB3 *Business Combinations*. The amounts subject to adjustment included the determination of the final purchase price of $2,126.1m in accordance with the Share Sale Deed which was based on a binding Expert Determination Report ("the Expert Determination Report") issued by Ernst & Young on 7 July 2009.

Our audit included procedures in relation to the determination of the aforementioned purchase price with reference to the requirements of the Share Sale Deed and the Expert Determination Report. We identified no errors in respect of these amounts. We were not aware of any other agreement relevant to determining the purchase price of the acquisition of the Group Companies.

Statutory audit of the 30 June 2010 Bankwest financial statements

PwC undertook a statutory audit of the 30 June 2010 financial statements of Bankwest. The PwC audit opinion on the Bankwest financial statements for the period ended 30 June 2010 dated 10 August 2010 was unqualified.

During the year ended 30 June 2010, PwC was informed that Bankwest management had performed a detailed review of its non-retail loan portfolio to identify additional Watch List, Troublesome, Impaired and account downgrades. This review by Bankwest management was called "Project Magellan". The scope of Project Magellan was higher risk non-retail customer files including targeting Property Finance, Aged Care and Pub sectors and a detailed review of security valuations greater than $5m or where security valuations were greater than 2 years old. This process included a review of approximately 1,100 files with the results, on a risk basis, extrapolated across the remaining portfolio. We understood the purpose of Project Magellan was to evaluate the adequacy of loan loss provisions for accounting purposes under AASB139 *Financial Instruments: Recognition and Measurement*.

In connection with our audit of the 30 June 2010 financial statements of Bankwest, PwC considered the results of Project Magellan and assessed the reasonableness of the resultant provision for loan losses as at 30 June 2010. Under AASB139 the measurement of provisions for impairment assesses the ability of the borrower to meet the original expected cash flows following a 'loss event'. Such assessment and loss events are not necessarily dependent upon the delinquency status of the loan. PwC performed procedures to conclude on the reasonableness of the results derived from Project Magellan and the impact on the provision for loan losses in the light of the information arising from this project.

The findings of our procedures were summarised in our closing Report to the Audit Committee of Bankwest in relation to our audit of the 30 June 2010 financial statements of Bankwest, dated 29 July 2010, and included:

- Project Magellan proposed a $451m increase in the allowance for loan losses.
- The Project Magellan process to review files for re-grades and security values was robust.
- Based on files subject to our review, the outcomes suggested a prudent and rigorous approach had been undertaken, erring on the downside, informed by recent (as at the date of our report) experiences.

In our view, the provisions had been calculated in accordance with Australian Accounting Standards and were considered appropriate in the context of the financial statements of Bankwest as a whole.

Yours faithfully,

Marcus Laithwaite
Partner

HERBERT
SMITH
FREEHILLS

6 October 2015

Ms T Matulick
Committee Secretary
Parliamentary Joint Committee on
Incorporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Matulick

Inquiry into the impairment of customer loans

We refer to the inquiry being conducted by the Parliamentary Joint Committee on Corporations and Financial Services (the **Committee**) regarding aspects of the acquisition by Commonwealth Bank of Australia (**CBA**) of BankWest in 2008. We are aware of the submission by Hall Partners Pty Ltd to the Committee and the allegations made in that submission that CBA used price adjustments in relation to the impaired loans to either reduce the purchase price or the amount of funding repaid to HBOS. We are also aware that CBA proposes to respond to that submission.

We have been asked by CBA to provide a letter to the Committee.

Freehills acted for CBA in relation to the BankWest acquisition. Our role included negotiating, on behalf of CBA, the Share Sale Deed that had been drafted by Clayton Utz, the law firm acting for HBOS. Our role also included assisting CBA in relation to the completion process on the transaction. We worked closely with the CBA team to set out and work through the detailed steps required to implement closing.

The Share Sale Deed contained purchase price adjustment mechanisms. In our experience, purchase price adjustment mechanisms are common in transactions such as these and the provisions that were in the Share Sale Deed were in our experience not unusual.

We are not aware of any other agreements entered into by CBA and HBOS that contained purchase price adjustment mechanisms relating to impaired loans.

Yours faithfully

Philippa Stone
Partner
Herbert Smith Freehills

Tony Damian
Partner
Herbert Smith Freehills

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