

Labor Senators' Dissenting Report

Competition in the Banking Sector

Labor members agree with ongoing concerns regarding the concentration of the banking sector and the market power held by the big four banks. We believe there is value in encouraging competition to maintain downward pressure on fees and charges, and promote continual innovation in products and services. It seems clear also that the 'four pillars policy' of not allowing the big four to merge unless there is evidence of increased competition has proved its merit over a range of financial cycles.

In light of recent mergers and acquisitions in the banking sector it is apparent that government should review policies to promote vigorous competition. The government should be vigilant that the barriers for new entrants are as low as possible within regulatory guidelines. In developing policies the government should also ensure that all participants in the contemporary financial environment are allowed to compete vigorously.

An example of a policy initiative to promote competition is the support the Government has directed the Australian Office of Financial Management to provide to the residential mortgage-backed securities market. Issuance of these securities has been an important means of funding for home loan lenders competing with the major banks, but the market had dried up following the global financial crisis.¹

Labor members are extremely concerned about the implications of the remaining majority report recommendations. We believe that the requirement of more reporting by regulators will not result in increased competition in the sector, but will add costs to financial institutions which will then be passed on to their customers.

Alternatively we believe that stimulating competition by adopting measures to encourage new entrants into the market is a better approach than the addition of more onerous reporting requirements.

During the Senate inquiry the Australian Bankers' Association were questioned regarding measures the Government or industry could undertake to foster more competition in the financial service sector:

If there were any restrictions or impediments on banks coming into the market, they really are the province of governments these days. There are no obvious things that the banks do to impede entry at all. It is the government which imposes, if you like, licensing on banks.²

1 The measures are discussed more fully in the committee's report, *Government measures to address confidence concerns in the financial sector - The Financial Claims Scheme and the Guarantee Scheme for Large Deposits and Wholesale Funding*.

2 Mr Nicholas Hossack, *Proof Committee Hansard*, 12 March 2009, p 4.

However this was later qualified when asked specifically what regulations the Government should relax in order to encourage further entrants into the market:

I suppose the irony is that the regulations that are in place are all soundly placed. If you want to operate a bank or certainly a deposit-taking institution, there are very good reasons as to why you should be prudentially sound and meet APRA's prudential standards, which it requires. You need that [but] that could be a difficult exercise for someone wanting to come into the market.³

This highlights the delicate balance that is needed to ensure stability and security for our financial sector but not discourage vibrant competition through over regulation.

Recommendation 1

The government should examine all possible opportunities to foster new competitors in the banking industry. The government should monitor regulation of the financial services market to ensure it achieves stability and security for the sector but does not impose any unnecessary barriers to entry for possible new entrants.

Member owned financial institutions

The committee also received evidence about the critical role that mutual or member-owned financial intermediaries play in delivering competition and consumer choice in the banking sector. Credit unions and mutual banking societies are ADIs registered by APRA and have more than 4.5 million members and the third largest share of deposits in the Australian market behind the Commonwealth and Westpac.⁴

Labor Senators are disappointed that the majority report does not address any of the issues raised by member-owned financial intermediaries in their submissions to the inquiry.

Labor Senators recognise that mutual financial institutions play a vital and important role in Australia's financial sector. We also agree with calls from the sector that regulatory compliance costs should not force smaller competitors out of the marketplace.

Recommendation 2

Given the vital role that mutual financial institutions contribute to competition in the financial sector, the Government should engage with the mutual ADI sector to ensure legislation and regulation is consistent with assisting the sector to

3 Mr Nicholas Hossack, *Proof Committee Hansard*, 12 March 2009, p 5.

4 Abacus, *Submission 18*, p 1.

continue to grow and remain on a competitive and even playing field with the "big four" banks.

Increased transparency of the ACCC

Labor Senators do not agree with the position put to the inquiry by Choice and the subsequent majority report recommendation that the ACCC should publish all research and submissions in regards to their merger inquiries.

The ACCC are a regulator and as such should be able to conduct their investigations in a manner than will not jeopardise the eventual outcomes of such investigations. A requirement that all submissions, market inquiries and information gathered in the course of an inquiry into a proposed merger be publicly available, would draw an ongoing commentary that would seriously hamper the ability of the regulator to make independent evidence based judgements. The ACCC gave the following evidence in their opening remarks to the committee:

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.⁵

Labor Senators believe that given the nature of bank merger investigations, any submissions containing commercial in confident material would be accompanied with a request of confidentiality. This means that the submissions available for public scrutiny would only reflect a part of the evidence garnered by the investigation and would therefore be misleading.

ACCC, APRA and the Reserve Bank – Joint Annual Report

Labor Senators are concerned that additional reporting to Parliament by the ACCC, APRA and the Reserve Bank on competition in the retail banking market and the provision of affordable banking facilities to those on low incomes will increase the reporting burden of financial institutions.

5 Mr Tim Grimwade, *Proof Committee Hansard*, 13 March 2009, p 19.

It is difficult to comprehend how the regulators would be able to report on these matters without financial institutions compiling and submitting the relevant data. Labor Senators believe that this would require additional resources in a sector that already has significant reporting requirements. If this had the unintended consequence of financial institutions raising fees or charges to customers this would be a serious adverse outcome. Despite the majority report noting in the recommendation that care should be taken "not to increase unduly the reporting burden on financial institutions" Labor Senators are concerned this would be an unrealistic expectation.

Furthermore although further reporting would provide additional transparency on the issue of competition in the sector, it would do nothing to address high market concentration or attract new entrants into the financial services market.

Monitoring and enforcing conditions

Labor Senators share the concerns of the full committee regarding the enforcement of conditions set by the Treasurer when approving a bank merger. Labor Senators agree there is also merit in the application of monetary penalties for banks failing to comply with the conditions.

However we do not agree with the recommendation to nominate a unit within Treasury or APRA for the purposes of monitoring, verifying and imposing penalties. Given the conditions are set by the Treasurer it is appropriate that Treasury monitor them.

Currently Treasury monitor not only conditions imposed upon banks by the Treasurer but also monitor the financial sector more broadly. At a public hearing in Canberra Mr. James Murphy from Treasury said the following:

As a matter of policy, in Treasury we are continually monitoring the delivery of financial services to the community. My colleagues can talk to you and explain to you how we do that. Recently, in the life of this government, there have been issues relating to switching that has enabled individuals to switch from one bank account to another. The government has been strong in trying to ensure that the majors fully pass on interest rate cuts or to the greatest extent possible. The government is also engaged in moral suasion and putting forward into the marketplace issues relating especially to bank fees.⁶

Treasury consider a well functioning financial sector to be a part of their core business:

The goal of policy in this area and the goal of this government and the previous government are, in effect, to have a well-functioning financial services market. You might ask, 'How would you define that?' and we

6 Mr James Murphy, *Proof Committee Hansard*, 12 March 2009, p 26.

would say, 'It is vibrant, it is dynamic, it is competitive, and it has been diverse.'⁷

It is difficult to see how nominating a unit within Treasury to monitor and verify conditions placed on banks in the event of a merger would result in more scrutiny than is currently already being undertaken.

Furthermore whilst the committee heard evidence from consumer groups that expressed concern banks may not be complying with conditions, we did not receive any clear evidence of examples where this has actually occurred. In fact the Australian Bankers' Association explained the process by which conditions are monitored in their submission to the inquiry.

Given the conditions formed part of the Treasurer's approvals, the conditions are publicly documented, and the banks themselves have committed to them, there is, in the ABA's view, no realistic scenario in which the conditions will not be fully met.

Furthermore, the conditions documented in the Treasurer's media [release] are worded specifically enough to easily evaluate whether or not they have been achieved, particularly those relating to ATM and branch numbers, maintenance of brands, and availability of ATM networks to customers of the acquired entity.

Where the conditions relate to human resource management, there is less specificity but the role of the Financial Sector Union (FSU), media and bank reputations will ensure staffing changes, redeployment, retraining and general assistance to affected staff will be managed appropriately, meeting the Treasurer's obligations and the intent of those obligations.

The ABA understands both the Commonwealth Bank and Westpac have established internal controls and reporting arrangements with the Government to ensure the conditions are met in the same way as legal obligations are met.⁸

Labor members believe that the current scrutiny by Treasury of conditions set by the Treasurer and the broader operation of the financial services market generally is sufficient and that the nomination of a specific unit is unnecessary.

Employment and offshoring

Labor Senators are extremely disappointed that the majority committee report provided no committee view on employment and 'offshoring' as a result of bank mergers. This is despite estimates being provided to the committee that more than

7 Mr James Murphy, *Proof Committee Hansard*, 12 March 2009, p 26.

8 Australian Bankers' Association, *Submission 14*, p 9.

4,900 jobs have been offshored from the Australian finance industry.⁹ It appears that 'back office' jobs are particularly vulnerable to offshoring after a bank merger.

Labor Senators welcome the recent conditions applied to the Commonwealth Bank and BankWest mergers to assist employees by the Treasurer.

- a) CBA will maximise internal redeployment opportunities available for affected staff, support external job placement where employee redundancies occur, and ensure that staff affected by the acquisition have timely access to their full entitlements under CBA or BankWest (as applicable) retrenchment arrangements;
- b) CBA will work through the implications for employees as quickly and sensitively as possible, in consultation with employees, the Finance Sector Union and other affected stakeholders; and
- c) CBA will provide specialist resources to assist staff affected by the acquisition.

Labor Senators also note similar conditions were required by the Treasurer for the Westpac and St. George merger with the additional requirement that the banks:

- d) work with consumer advocates and community stakeholders to minimise community concerns about the merger and its impact on customers and the community, and address any concerns as sensitively and quickly as possible.

Labor Senators note with concern evidence given to the committee by consumer organisations that despite this condition being in place contact did not occur until some six months after the merger. For this reason we concur with the majority report that monetary penalties be considered by the Government if Treasury monitoring demonstrates a failure to comply with conditions imposed on the merger.

The majority report also notes submissions that called for increased transparency in the location of banking call centres. Legislation in France requires call centres to disclose their location so that customers can be informed what services have been offshored when dealing with their financial institution. Labor Senators note that currently no Australian banks have offshored their customer call centres at this stage.

The committee also heard concerns that some 'back office' offshoring involved customer information being handled in locations that may not have as stringent privacy legislation as Australia. The scope of this inquiry was not sufficient to fully appreciate the depth of this issue however Labor Senators believe it is reasonable that financial institutions should be transparent in their dealings with customers – in particular when it involves either their personal information or customer service provision.

9 Mr Leon Carter, National Secretary, Finance Sector Union, *Committee Hansard*, 13 March 2009, p 7.

Recommendation 3

The Government should consider legislation to require banks to disclose in their annual reports if any customer service call centres are located overseas to increase transparency of offshoring. The Government should also consider legislation to require financial institutions to disclose in their annual report if any customer information is handled offshore.

**Senator Annette Hurley
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