

Financial Services and competition law : An overview of EU and national case law

Anticompetitive practices, Abuse of dominance, Concerted practices, Foreword, Judicial review, Reform, New State aid, Market economy investor, European Competition Network, Market inquiry, Financial services

Note from the Editors : although the e-Competitions editors are doing their best to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database cannot be guaranteed. The present foreword seeks to provide readers with a view of the existing trends based primarily on cases reported in e-Competitions. Readers are welcome to bring any other relevant cases to the attention of the editors.

Greg Olsen, Peter Malone, e-Competitions | N° 68263, www.concurrences.com

I. Introduction

As we begin to emerge from the global financial crisis, it is worth reflecting on the legacy of governmental and regulatory intervention within the European Union. In particular, the scale of State support has been enormous. Between 1 October 2008 and 1 October 2013, the European Commission adopted more than 400 decisions authorising State aid to the financial sector. In the period 2008 to 2012, the Commission authorised capital support of €591.9 billion, which represented 4.6% of EU GDP in 2012. In addition, state guarantees on private banking liabilities reached €835.8 billion in 2009 [1].

While economic and financial challenges remain, a relative degree of stability has now returned to financial markets. We are no longer faced with the prospect of widespread bank failures across Europe. Banks face fewer problems raising capital and businesses are starting to see the benefits of increased lending. However, many banks are subject to constraints imposed under restructuring plans and the sector generally remains subject to intense scrutiny from the competition authorities.

A number of high-profile and complex EU cases are ongoing. In particular :

- The Commission is still dealing with a number of State aid cases that emerged during the crisis and this work will continue for some time.
- At the end of 2013, the Commission issued its first cartel decisions in the financial services sector since the crisis, imposing total fines of around €1.7 billion in relation to Euro-based and Yen-based interest rate derivatives respectively. The matter continues in relation to those parties that did not agree to a settlement.

-
- A major Article 101 TFEU investigation is also continuing in relation to credit default swap information in relation to which the Commission is considering allegations of exclusionary conduct by industry participants. A Statement of Objections was issued by the Commission in July 2013 and hearings were held with the parties in May 2014.
 - In October 2013, Commissioner Almunia stated that the Commission is also conducting a preliminary investigation into possible collusion in relation to foreign-exchange currency rates.
 - Finally, in the area of payment systems, a new Interchange Regulation is pending and the Commission is continuing an investigation into inter-regional fees and cross-border acquiring. The CJEU's judgment on MasterCard's appeal of the Commission's prohibition of its intra-EEA default interchange fees is also imminent and will impact upon pending merchant damages litigation in the UK and elsewhere.

In the UK, the competition authorities are also applying their powers to conduct industry-wide market studies and market investigations to review aspects of the financial services sector against a backdrop of changing market conditions stimulated in part by the financial crisis. This includes a current programme of work on retail banking and a market investigation reference into payday lending by the UK Competition & Markets Authority as well as separate reviews of cash savings, insurance add-on products, payday lending and annuities by the UK Financial Conduct Authority.

In addition to these specific matters, the European Commission and European Parliament are working with Member State governments and the European Central Bank to redesign the rules governing the European financial sector and to deepen the single market of financial services. Regulators are naturally determined to implement policies that will hopefully prevent many of the disruptions experienced in recent years. Three key initiatives that will affect competition are the Markets in Financial Instruments Regulation ("MIFIR"), the proposed Banking Union and measures to ring-fence retail banking from investment banking.

- MIFIR was proposed by the European Commission in 2011 and is designed to make exchanged-traded derivatives more transparent and contestable and to facilitate new entry. The proposal complements the Markets in Financial Instruments Directive ("MIFID") which was adopted in 2007 and which helped to increase transparency in the relevant markets. The MIFIR proposal is currently being debated by the European Council and European Parliament and is expected to enter into force soon.

- In 2012, the European Commission proposed a Banking Union, under which the ECB will assume the supervision of all significant banks in the Eurozone area. The measure should also facilitate the further integration of the single market in financial services.

- On 29 January 2014, the European Commission published new proposals to stop Europe's bigger banks from engaging in proprietary trading [2]. There has been a perception that the combination of proprietary trading and deposit-taking in single "universal" banks may have contributed to the instability experienced during the financial crisis. The new rules would therefore give supervisors the power to require the largest banks to separate certain perceived risky trading activities from their deposit-taking business if the pursuit of such activities is deemed to compromise financial stability. The EU proposals reflect similar ring-fencing proposals in the United Kingdom [3] • and the

United States [4].

The European Commission and regulators in a number of jurisdictions are thus proposing dramatic changes to the regulatory environment for financial services. The full details of these proposals have yet to be agreed and it will be some time before the exact requirements of the new regulatory landscape are known.

In the sections that follow, we outline recent case-law and regulatory initiatives.

State Aid

Although the scale of national interventions in the banking sector has declined, there are still ongoing cases that originated in the financial crisis. Throughout the crisis, the Commission adopted various temporary frameworks. The key principles of the Commission's policy were a) burden-sharing between the banks, bond-holders, shareholders, and Member-State governments, b) a limitation on the activities of recipient banks and a withdrawal from "riskier" investment banking activities, and c) conditions to the aid that would preserve competition in the relevant markets. This final condition included a ban on acquisitions for a specified period of time. The Commission's decisions have given rise to a number of points on appeal before the European courts, as outlined below :

- During the height of the financial crisis in 2008, the Dutch bank ING received an emergency investment of €10 billion from the Dutch Government. In addition, a cash flow swap was applied, as a second aid measure, to the impaired assets of a portfolio of securities backed by residential mortgages in the United States, the value of which had declined significantly during the financial crisis. On 12 May 2009, the Dutch Government notified the Commission of the proposed aid package. The Dutch Government subsequently changed the terms under which the aid was to be repaid by ING. On 18 November 2009, the Commission cleared the injection of €10 billion and the cash flow swap, but found that the terms of repayment constituted additional aid of €2 billion [5]. The Dutch Government appealed the decision to the General Court and argued that the Commission had failed to apply correctly the private investor test. The General Court issued its decision on 2 March 2012 [6] found that the Commission had erred in not applying the "private investor test" to the repayment terms. The Commission appealed the decision to the CJEU and argued that the private investor test was inapplicable in the circumstances as a private investor would never have found itself in a situation in which it would have been able to provide aid to ING. On 3 April 2014, the CJEU confirmed the partial annulment of the Commission's decision [7] and held that the decisive test was whether the amendment to the terms of the capital injection satisfied an economic rationality test, so that a private investor might also be in a position to accept such an amendment, in particular by increasing the prospects of obtaining repayment of that injection. The CJEU therefore found that the General Court was right to annul that relevant section of the decision.
- On 8 April 2014, the General Court upheld a European Commission decision which prohibited ABN Amro from making any further acquisitions for a period of 3 years [8]. In October 2008, the Dutch Government injected emergency funding into ABN Amro. The bank was suffering significant write-downs on the value of its loan portfolios following the collapse of the U.S. residential housing market. The Commission cleared the aid package in April 2011 but made it a condition of the clearance that ABN Amro would be prohibited from making any acquisitions for a period of 3 years.

On appeal, the General Court found that the restriction was a reasonable and measured response to the distortions created by the aid granted to ABN Amro.

- The Commission's insistence on adequate burden sharing was illustrated in the NordLB case [9]. On 22 August 2013, the European Commission announced that it had approved changes to the restructuring plan of ailing German lender, Nord LB. The Commission approved an initial restructuring plan in July 2012. The Commission's approval was conditional on an acquisition ban for the years 2012 and 2013 and a coupon ban, under which Nord LB was prohibited from paying coupons on hybrid debt instruments unless it was legally obliged to do so and was able to pay the coupon directly from profits earned. It subsequently became apparent, however, that Nord LB had changed some of the terms of the restructuring plan without informing the Commission. In particular, the payment of coupons became independent from the payment of the dividend and the Bank undertook to pay the coupon whenever it generated sufficient high profits. The Commission's viewed this change as a violation of the burden-sharing principles of its first clearance decision. The Commission therefore re-opened its examination of the case and requested further structural changes from Nord LB. The bank offered to make "additional divestments" and to extend the "acquisition ban by a year and a half, until end-2016." The Commission viewed these commitments as sufficient to avoid a revocation of its earlier approval.
- On 2 September 2013, the European Commission announced that it had approved the restructuring plan of Banco Comercial Português ("BCP") [10]. Under the terms of the plan, BCP agreed to reduce the size of its branch network and reduce staffing numbers. The Commission found that the conditions attached to the State aid approval required an adequate contribution by the bank and its owners to the cost of the restructuring. The Commission also found that the plan would ensure that BCP would survive in the long-term as a smaller but more profitable bank and that competition in the relevant markets would be maintained.

- On 27 November 2013, the European Commission approved aid provided by the Italian State to Banca Monte dei Paschi di Siena S.p.A. ("MPS") [11]. Under the aid package, the Italian Government provided a recapitalisation of €3.9 billion as well as a state guarantee of €13 billion. The aid was provided on the condition that MPS raised at least €2.5 billion of capital from the private markets and redeemed the full value of the state bonds within 5 years. The Commission found that the 5-year restructuring plan would allow the bank to become independently viable in the long term without the need for further state support. A key part of the bank's viability plan was a reduced exposure to sovereign debt instruments and a reduction of the bank's overall balance sheet by 25%.

The Commission has thus developed a consistent framework for its assessment of crisis-related aid measures. Of course, once the Commission has imposed remedial measures, the matter is far from closed, as illustrated in the case of Lloyds and RBS in the UK. Both banks were major casualties of the financial crisis and both required significant cash injections from the UK Government. As part of its approval of the aid measures, the Commission ordered that Lloyds [12] and RBS [13] each divest a significant number of branches in their retail network to restore competition in the UK retail sector.

The divestiture process for each bank has been a long-running affair. Both banks struggled to find purchasers for their branches. Lloyds has only recently established TSB [14] as a separate entity which will eventually be floated on the stock market and RBS has yet to launch the new Williams & Glyn bank [15]. On 19 June 2013, the Chancellor of the Exchequer, George Osborne, asked the OFT

to review the impact that the Lloyds and RBS divestitures will have on competition in the relevant markets [16]. On 11 September 2013, the OFT published its conclusions and found that for the Lloyds divestiture, a strengthened balance sheet and improved IT systems were required to give the divested entity a chance of success. For the RBS divestiture, the OFT found that the divested entity should constitute a credible SME bank, especially for businesses with a turnover of between £1 million and £25 million [17]. On 13 May 2014, the Commission announced its approval of changes reducing the scope of the Lloyds divestment and extending the deadline for divestment until the end of 2015 [18].

Policy makers contemplate that further recapitalisations of European banks may be required in future on a pan-European basis. Klaus Regling, the head of the European Stability Mechanism ("ESM"), announced on 20 June 2013 that the ESM will be ready to invest capital directly into banks by mid-2014. The European Commission and Member States are also currently discussing the final outlines of the proposed Single Resolution Fund which would be used to wind up failed lenders. The proposed fund would pool together money raised from bank levies in the 17 member states of the eurozone. The funds would then be used to pay for any bank resolution requirements.

The effect of bank recapitalisations to date on market concentration levels has yet to be seen. In many jurisdictions, concentrations levels in the banking sector have risen. In a speech in February 2014, Gert-Jan Koopman, an official from the European Commission, suggested however that high concentration levels in certain national markets following the financial crisis may only be a "transitional problem" that will be solved by the entry of new banks.

Mergers

Throughout the financial crisis, certain governments facilitated mergers in the interests of ensuring the stability of the banking sector [19]. The Irish government took the additional step of introducing new legislation to exempt certain mergers in the banking sector from the normal merger control rules [20]. The Belgian Government's acquisition of Dexia was cleared by the Commission on 21 February 2013 [21]. The case is one of the rare instances in which the Commission granted a derogation from the suspension obligation provided for in Article 7(1) of the Merger Regulation. The Commission found that there were de minimis overlaps between the Parties and that Dexia sa/nv was not acquiring new business and was being closed over time.

The Greek banking sector was hit particularly hard by the financial crisis. Since September 2011, the Hellenic Competition Commission has cleared 12 mergers and acquisitions in the financial sector. Two of these deals were cleared with remedies [22]. In a recent speech in Athens, Dimitris Loukas, the Vice-Chairman of the Hellenic Competition Commission stated that *"the competitive landscape has changed significantly since the failed merger of NBG - Eurobank. Following the gradual disappearance of the smaller and niche banks, it is now clear that we may have reached the limit from a competition law perspective [23]."*

Antitrust Investigations

While the financial crisis has eased, close scrutiny of conduct within the financial sector has persisted. One of the most high-profile competition law cases in recent years was the European Commission's investigation into the alleged manipulation of the Euribor [24] and Yen-Libor [25]

interest rate benchmarks. A number of other competition authorities around the world also investigated the alleged collusion. On 4 December 2013, the Commission announced [26] that it had fined 8 banks a total of €1.71 billion for their participation in the cartels [27]. Four of these institutions participated in a cartel relating to interest rate derivatives denominated in the euro currency. Six of the institutions participated in one or more bilateral cartels relating to interest rate derivatives denominated in Japanese yen. The case was a "hybrid" settlement and HSBC, JPMorgan and Crédit Agricole continue to dispute the Commission's findings. It is also notable that the immunity applicant in the yen interest rate derivative case, UBS, managed to avoid a fine of €2.5 billion, which would have been by far the highest individual cartel fine imposed to date.

In October 2013, Joaquín Almunia announced that the Commission had opened a preliminary investigation into the possible manipulation of foreign-exchange rates by several banks. The investigation by the European Commission followed a similar investigation that was opened previously by the Swiss financial regulator. The New Zealand Commerce Commission has also confirmed that it is conducting an investigation into alleged manipulation in the relevant markets [28]. A number of banks have confirmed their involvement in the various probes and the case continues [29].

Credit default swaps have also come under scrutiny from the competition regulators. On 1 July 2013, 13 investment banks, a sector association, and data-provider Markit received a Statement of Objections from the European Commission [30]. The European Commission alleged that the 13 banks, operating via the International Swaps and Derivatives Association, ordered Markit not to grant data licenses to exchanges that traded credit default swaps. The Commission alleged that this prohibition was designed to stifle the emergence of exchanged-based trading of credit default swaps and to protect the "over-the-counter" market for the trade of credit default swaps.

Credit cards and payment systems are still an area of focus for competition authorities. On 9 April 2013, the European Commission announced [31] that it had opened formal proceedings to investigate whether MasterCard's default interchange fees (i.e., fees paid between banks on card transactions) applicable to inter-regional transactions and certain other practices may be hindering competition in the EEA. In particular, the Commission is investigating the effect of a) interchange fees in relation to payments made by cardholders from non EEA countries, [32] b) rules on "cross-border acquiring", and c) related business rules or practices of MasterCard which are relevant to the Commission's competition concerns (such as the "honour all cards rule", a scheme rule essential to the operation of an effective four-party system under which a merchant must accept all MasterCard branded cards irrespective of the issuing bank).

The Commission's case against MasterCard needs to be considered against the backdrop of the pending decision from the CJEU on the application of Article 101 TFEU to MasterCard's intra-EEA cross-border default interchange fee arrangements. These arrangements were the subject of a prohibition decision issued by the Commission in 2007 and subsequently upheld by the General Court [33]. More recently, on 26 February 2014, the Commission issued a decision accepting commitments from Visa Europe in relation, inter alia, to the level of its default interchange fees applicable to cross-border and domestic transactions in 10 EEA countries with effect from 2015 [34].

It is also relevant that a draft Interchange Regulation is in the final stages of the legislative process. Under the terms of the draft legislation, interchange fees under four-party payment schemes within

the EEA would be capped at 0.3% of the transaction value for credit cards and 0.2% for debit cards. Article 7 of the draft Regulation also provides for the separation of card scheme and processing activities within the EEA.

Enforcement activity in relation to cards and payments systems is also occurring at the Member State level. For example, on 19 February 2014, the Italian Competition Authority opened an investigation against the BANCORMAT consortium of banks [35] for its decision to set the multilateral interchange fees in relation to payment services provided by third operators [36]. In the Netherlands, MasterCard agreed to lower its domestic default interchange rate to 0.3% [37]. On 20 September 2013, the French Competition Authority also announced that it had secured a reduction of the main multilateral exchange fees on domestic card transactions [38]. On 21 November 2013, the Polish Court of Competition and Consumer Protection confirmed an earlier decision of the Polish Office of Competition and Consumer protection which found that certain interchange fee agreements restrict competition [39].

On 20 November 2013, the Hungarian Competition Authority announced that it had fined 11 financial institutions a total of €31.6 million for their agreement to coordinate how they handled their respective customers' repayment of debts denominated in foreign currency [40]. In the years preceding the financial crisis, a large number of Hungarian citizens purchased mortgage products denominated in foreign currency. Shortly after the onset of the crisis, several foreign currencies (in particular, the Swiss Franc) increased dramatically in value relative to the Hungarian Forint. This currency movement created significant financial difficulties for mortgage holders who now faced the prospect of repaying their foreign-currency denominated loans with a significantly weakened currency. To remedy the financial distress, the Hungarian Government announced currency controls for a limited period of time during which mortgage holders could repay their foreign denominated borrowings at fixed interest rates. Any losses were to be borne by the financial institution that originally sold the mortgage product. A number of financial institutions coordinated their response to this initiative. The competition authority considered their action to be a violation of both Hungarian competition law and Article 101 TFEU.

Market studies / investigations

The structure of the retail banking sector has been a focus of recent and ongoing attention for competition authorities in the UK. On 13 July 2012, the UK Office of Fair Trading ("OFT") opened a market study to examine how the personal current account ("PCA") market has evolved since an earlier assessment undertaken in 2008. On 25 January 2013, the OFT published its findings [41]. Although the OFT considered that many changes were still required to tackle ongoing competition concerns, it noted that there had been some specific improvements in the sector. Specifically, the OFT estimated that consumers saved up to £928 million per year from the fall in unauthorised overdraft charges between 2007 and 2011. The OFT also recognised that significant changes to the structure of the market could be expected with the divestment of branches by RBS and Lloyds. The OFT made various recommendations to PCA providers, mainly on transparency and the switching process. The OFT did not, however, refer the sector for an in-depth second stage review by the UK Competition Commission.

On 19 June 2013, the OFT announced that it had opened a market study on competition in banking for small and medium-sized businesses [42]. On 11 March 2014, the OFT published an update [43]

on its work and stated that provisional competition concerns persisted in relation to concentration levels, barriers to entry, access to key information, the high cost of accessing payment systems, the high cost of IT systems, the need for a broad branch network, and some banks' conduct in relation to the release of existing security over loan products. The new Competition & Markets Authority, which was established on 1 April 2014 as the single successor to both the OFT and the Competition Commission, will continue the investigation. The CMA is also currently conducting an update of the OFT's earlier review of PCAs [44]. It is expected to announce its provisional findings in the summer of 2014. On 14 August 2013, the UK Competition Commission released an issues statement outlining certain potential concerns in the sector for payday lending products followed by update papers in August 2013 [45] and January 2014 [46]. It provisionally identified a) impediments to customers' ability to search for and identify the best product and switch accordingly and b) barriers to entry and expansion. The CMA will continue this investigation while at the same time, the UK Financial Conduct Authority ("FCA") is presently also undertaking a thematic review of the sector.

In September 2013, the FCA opened a market study into the UK cash savings market [47], its first market study since recently acquiring a competition objective. The FCA's study is ongoing but is focussed in particular on switching rates and "teaser rates" which end shortly after a customer joins a particular bank.

Competition authorities in other jurisdictions have also been very active in the area of retail banking. The Swedish Competition Authority recently put forward a number of proposals to facilitate switching for retail banking customers and to decrease the "lock-in" experienced by customers, in particular in relation to mortgages [48]. On 20 December 2013, the Dutch Competition Authority published a report which examined whether switching rates were disproportionately low for mortgage holders who had experienced a decline in their income or the value of their house. The Authority found that switching was low but that homeowners are generally not worse off with their existing banks. The Authority found that alternative banks were understandably reluctant to take on borrowers who were struggling to make repayments and that competition in the market was not distorted [49].

Antitrust Litigation

In addition to the significant investigation being undertaken by the European Commission and other national competition authorities, there are certain notable civil actions in national courts relating to payment cards and derivative contracts.

While MasterCard's appeal against the Commission's 2007 decision prohibiting its EEA intra-regional default interchange fee rates is pending before the CJEU, the company faces a number of national damages proceedings in the UK, Italy and Belgium. The cases concern claims by merchants, such as Sainsbury's, Asda, Morrison's and Next (in the UK), seeking compensation for an alleged overcharge in the merchant service charges (derived in large part from the interchange fees). The national litigation relates not only to cross-border interchange rates, which were the subject-matter of the Commission's decision, but also seek to apply the findings of the Commission's decision to domestic interchange fee arrangements (which cover the vast bulk of transactions).

Visa is similarly facing legal action in the UK courts from 12 retailers. Visa estimates that the combined claims against its subsidiary entities, Visa Europe and Visa Inc., total approximately \$825

million. The claimants include Argos, Homebase, Wm Morrison Supermarkets, New Look, HMV, Arcadia Group, Debenhams, and Iceland Foods.

The worldwide investigations in interest rate manipulation are also triggering civil actions in the U.S. and Europe. Throughout 2011, a number of complaints were filed with Federal Courts in Illinois and New York alleging that several major financial institutions had colluded in the setting of the Libor rate. The complainants include mortgage providers, municipal authorities and several city councils. Several of the actions have since been consolidated in New York. In March 2013, District Judge Naomi Reice Buchwald dismissed the plaintiffs' antitrust claims as injury under the antitrust laws had not been demonstrated.

In Europe, the Libor investigations have also triggered a number of civil actions. For example, Deutsche Bank is currently engaged in legal proceedings with Unitech Global Ltd, an Indian property company, over certain loans that were tied to the interbank lending rate.

Conclusion

In summary, although the financial crisis has receded, competition authorities and other regulators continue to be very active in scrutinising activity in the financial services sector. It should not be expected that such sustained interest will ease in the foreseeable future and indeed, in certain jurisdictions such as the UK, a fundamental structural review of the area is ongoing. Coupled with this we are now witnessing the initiation in the UK and elsewhere of significant related private damages proceedings. The net result will no doubt be a significantly changed financial landscape.

[1] For further details on the measures taken by Member States during the financial crisis, please see the European Commission's State aid Scorecard, available at ec.europa.eu/competition/state_aid/scoreboard/financial_economic_crisis_aid_en.html.

[2] ec.europa.eu/internal_market/bank/structural-reform/index_en.htm

[3] In September 2011, the UK Independent Commission on Banking, chaired by Sir John Vickers, published its final report (the "Vickers Report"). The Vickers Report recommended the creation of a retail ring-fence that would separate retail banking from investment banking. In June 2011, the UK Chancellor of the Exchequer signalled his support for the conclusions of the Vickers Report and announced that the UK Government would bring forward legislation to implement the key recommendations. The Banking Reform Act received Royal Assent on 18 December 2013 and made a number of significant changes to the structure of the UK banking sector, including the introduction of a ring fence, entrusting the Prudential Regulation Authority with new powers to supervise the way in which banks separate their retail and investment activities, and granting preference to depositors if a bank enters insolvency.

[4] On 10 December 2013, the U.S. Securities and Exchange Commission, the U.S. Federal Reserve, Office of the Comptroller of the Currency, the U.S. Federal Deposit Insurance Corporation and the U.S. Commodity Futures Trading Commission jointly published final rules governing the implementation of the so-called "Volcker Rule." The key provisions prohibit certain banks from engaging in proprietary trading and investing in or sponsoring private investment funds. The general rule is subject to a number of specific exceptions.

[5] No C 10/2009 (ex N 138/2009) implemented by the Netherlands for ING's Illiquid Assets Back Facility and Restructuring Plan. The Commission's decision is available at ec.europa.eu/competition/state_aid/cases/230724/230724_1071446_207_1.pdf. See also [Koen Van de Castele, The European Commission approves a restructuring plan in favor of a Dutch bank \(ING\), 18 November 2009, e-Competitions Bulletin November 2009, Art. N° 37530](#)

[6] Case T-29/10 Kingdom of the Netherlands v. Commission and T-33/10 ING Groep NV v. Commission.

[7] Case 224/12 P Commission v. Kingdom of the Netherlands and ING Groep NV.

[8] T-319/11, ABN Amro Group v. Commission, available at ec.europa.eu/competition/state_aid/cases/230806/230806_1235915_338_2.pdf. See [Christophe Galand, Bruno Zanghellini, Koen Dierckx, Michele Lanotte, The European Commission conditionally approves the State aid package and the restructuring of leading Dutch financial services company \(ABN AMRO\), 5 April 2011, e-Competitions Bulletin April 2011, Art. N° 48013](#)

[9] State aid SA.34381 (2012/N) - Germany, Restructuring aid to Norddeutsche Landesbank AöR, available at ec.europa.eu/competition/state_aid/cases/243733/243733_1423719_237_2.pdf.

[10] The non-confidential version of the Commission's decision has not yet been released. The Commission's press release can be found at europa.eu/rapid/press-release_MEX-13-0902_en.htm.

[11] SA.36175 MPS - Restructuring. The Commission's final decision is available at ec.europa.eu/competition/state_aid/cases/249091/249091_1518538_162_2.pdf.

[12] State aid No. N 428/2009 - United Kingdom, Restructuring of Lloyds Banking Group. The Commission's decision is available at ec.europa.eu/competition/state_aid/cases/232373/232373_1069315_136_2.pdf. See also [Koen Van de Castele, The European Commission endorses UK restructuring plan in favor of a UK bank \(Lloyds Banking Group\), 18 November 2009, e-Competitions Bulletin November 2009, Art. N° 37533](#)

[13] State aid No N 422/2009 and N 621/2009 - United Kingdom Restructuring of Royal Bank of Scotland following its recapitalisation by the State and its participation in the Asset Protection Scheme. The Commission's decision is available at ec.europa.eu/competition/state_aid/cases/232360/232360_1093292_148_2.pdf. See also [Koen Van de Castele, The European Commission approves State aid measures concerning the recapitalization of a UK bank \(Royal Bank of Scotland\), 14 December 2009, e-Competitions Bulletin December 2009, Art. N° 37542](#)

[14] On 9 September 2013, Lloyds Banking Group announced the creation of TSB, a new bank that has acquired 631 of Lloyds's branches across the UK. The new TSB bank will be floated on the stock exchange and sold to the public in 2014. The UK has also started the sale of its interest in Lloyds.

[15] On 27 September 2013, the Royal Bank of Scotland announced the creation of a new challenger bank, Williams & Glyn, which would acquire 314 of RBS's branches in the UK and be ultimately floated on the stock exchange and sold to the public as a separate entity.

[16] www.gov.uk/government/speech...

[17] www.gov.uk/government/upload...

[18] The Commission's press release may be found at <http://europa.eu/rapid/press-releas...>

[19] For example, the *Lloyds/HBOS* merger in the UK. The Office of Fair Trading's report to the Secretary of State for Business Enterprise and Regulatory Reform is available at http://oft.gov.uk/shared_oft/press_release_attachments/LLloydstsb.pdf

[20] Under section 7 of the Credit Institutions (Financial Support) Act 2008, where the Minister for Finance has formed the opinion that a proposed merger or acquisition involving a credit institution is necessary to maintain the financial stability of the State, that merger or acquisition must be notified to the Minister for Finance rather than to the Competition Authority.

[21] Case COMP/M.6812, SFPI/Dexia. The Commission's decision is available at <http://ec.europa.eu/competition/mer...>

[22] On 23 January 2012, the Competition Commission cleared the *Alpha/Eurobank* transaction with remedies. On 14 February 2013, the Competition Commission cleared the *Eurobank/National Bank of Greece* transaction with remedies.

[23] The speech is available at : <http://gr2014.eu/sites/default/file...%202014%20%28closing%20remarks%20-%20full%29.pdf>

[24] 39914 Euro interest rate derivatives (EIRD).

[25] 39861 Yen interest rate derivatives (YIRD).

[26] The Commission's decision is not yet public. The Commission's press release can be found at : europa.eu/rapid/press-release_IP-13-1208_en.htm. Commissioner Almunia also gave a speech on the same day in which he summarised some of the key facts of the case. See europa.eu/rapid/press-release_SPEECH-13-1020_en.htm.

[27] See [Article from European Competition Network Brief, The EU Commission fines banks € 1.71 billion for participating in cartels in the interest rate derivatives industry \(Barclays, Deutsche Bank, RBS and Société Générale\), 4 December 2013, e-Competitions Bulletin December 2013, Art. N° 62161](#)

[28] The Commerce Commission's press release is available at www.comcom.govt.nz/the-commi.... See also [New Zealand Commerce Commission, The New Zealand Commerce Commission confirms its investigation into possible manipulation of currency rates and possible influencing of benchmarks in foreign exchange markets \(FOREX\), 7 April 2014, e-Competitions Bulletin April 2014, Art. N° 65256](#)

[29] The investigations have also led to guidance being issued more generally on best practices in the industry. See e.g. [Australian Competition and Consumer Commission, The Australian Competition and Consumer Authority issues a draft determination proposing to grant authorisation](#)

[to make and give effect to a code of practice for traders of financial derivatives \(CFD Forum\), 2 April 2014, e-Competitions Bulletin April 2014, Art. N° 65137](#)

[30] The Commission's press release is available at europa.eu/rapid/press-release_IP-13-630_en.htm?locale=en. Commissioner Almunia also gave a speech on 1 July 2013 in which he argued that the respondents "may have coordinated their behaviour in order to jointly prevent exchanges from entering the CDS market between 2006 and 2009." Commissioner Almunia presented the case as one part of the Commission's ongoing efforts to standardise the trade of certain derivative products and increase transparency. In particular, Commissioner Almunia highlighted the EMIR regulation which provides that standardised derivative contracts must be centrally cleared and the proposed MIFIR directive which would require these derivatives to be traded on transparent and organised trading platforms. The full text of the speech is available at europa.eu/rapid/press-release_SPEECH-13-593_en.htm?locale=en.

[31] europa.eu/rapid/press-release_IP-13-314_en.htm?locale=en

[32] For example, when a U.S. tourist uses his or her credit card to make a purchase at a merchant in the EEA. These fees are different to fees for cross-border or domestic transactions within the EEA.

[33] T-111/08 - MasterCard and Others v Commission. Judgment of the General Court (Seventh Chamber) of 24 May 2012.

[34] The Commission's press release is available at : <http://europa.eu/rapid/press-releas...>

[35] Consorzio BANCORMAT is an Italian consortium with which 594 operators are currently affiliated. The Italian Association of Banks and Poste Italiane S.p.A are among its members. The Consortium manages the BANCORMAT and PagoBANCORMAT payment card schemes and the applicable debit cards. The Consortium is the largest payment card scheme in Italy, with around 30 million issued debit cards (80% of the total debit cards in circulation in the year 2012) and 1.2 million acquiring devices (80% of the total devices active in the year 2012).

[36] See [Caterina Migani, The Italian Competition Authority opens an investigation against a consortium of Italian banks and other operators for a decision aimed at fixing multilateral interchange fees in bill payments \(Consorzio BANCORMAT\), 19 February 2014, e-Competitions Bulletin February 2014, Art. N° 64911](#)

[37] See [Netherlands Authority for Consumers and Markets, The Netherlands ACM decides not to take further action against credit card company following undertaken adjustment of the interbank tariffs for domestic credit-card payments \(MasterCard\), 24 February 2014, e-Competitions Bulletin February 2014, Art. N° 64156](#)

[38] See [Article from European Competition Network Brief, The French Competition Authority obtains significant reduction of main multilateral interchange fees on domestic card transactions \(MasterCard and Visa\), 20 September 2013, e-Competitions Bulletin September 2013, Art. N° 62160](#)

[39] See [Article from European Competition Network Brief, The Polish Court of Competition and Consumer Protection confirms the Competition authority's decision on multilateral interchange fees \(Visa and MasterCard\), 21 November 2013, e-Competitions Bulletin November 2013, Art.](#)

N° 62151.

[40] See [Hungarian Competition Authority](#), [The Hungarian Competition imposes fines on 11 financial institutions due to their concerted practice aimed at limiting the full prepayment of foreign currency loans \(Budapest Bank\)](#), 19 November 2013, e-Competitions Bulletin November 2013, Art. N° 60737

[41] www.ofc.gov.uk/shared_ofc/re...

[42] See [Article from European Competition Network Brief](#), [The UK OFT announces market study on competition in banking for small and medium-sized businesses](#), 19 June 2013, e-Competitions Bulletin June 2013, Art. N° 53392

[43] www.ofc.gov.uk/shared_ofc/ma...

[44] www.gov.uk/government/news/c...

[45] www.competition-commission.o...

[46] www.competition-commission.o...

[47] www.fca.org.uk/news/fca-to-c...

[48] See [Swedish Competition Authority](#), [The Swedish Competition Authority puts forward a number of proposals in order to make the regulatory framework more effective and decrease the lock-in effects for customers](#), 24 March 2014, e-Competitions Bulletin March 2014, Art. N° 64904

[49] See [Article from European Competition Network Brief](#), [The Netherlands Authority for Consumers and Markets publishes its study on the possibilities of switching banks for consumers who experienced a decrease of their income or value of their house](#), 20 December 2013, e-Competitions Bulletin December 2013, Art. N° 64353

Greg Olsen | Clifford Chance (London) | greg.olsen@cliffordchance.com

Peter Malone | Clifford Chance (London) | peter.malone@cliffordchance.com