

FINANCIAL SERVICES ANTITRUST BULLETIN

Welcome to the Clifford Chance Financial Services Antitrust Bulletin. This provides an overview of developments relating to the application of competition law to the financial services sector each quarter.

KEY THEMES

When earlier this year, the head of Australia's Competition and Consumer Commission stated that it will be "engaging with the banking sector more than ever before", she could also have been expressing a global sentiment. Although the wave of competition and regulatory interventions arising from the financial crisis is coming to an end, technologies have transformed many financial markets and created new issues for competition authorities. These changes are accompanied by an evolution in competition policy frameworks, particularly in relation to digital markets. This edition of the Clifford Chance Financial Services Antitrust Bulletin charts the following key themes derived from developments over the last quarter in Europe, North America and the Asia Pacific region:

- **Focus on payment systems** - The UK's Payment Systems Regulator has announced two new market reviews and has published proposed remedies for an earlier market review of card acquiring services. Payment services have also been looked at by competition authorities in Australia, Germany, Netherlands, Italy and Japan.
- **M&A deals assessed** - Competition authorities in a number of jurisdictions have reviewed several M&A deals in the financial sector. Competition authorities have been particularly active in Spain and Italy in reviewing financial sector mergers as the trend of banking sector consolidation has continued.
- **BigTech entry into the financial services sector** - The US Consumer Financial Protection Bureau has expressed concerns about BigTech firms combining commercial and financial operations. The UK's Financial Conduct Authority has also stated that it will assess the competition risks and benefits from BigTech entry in financial services.
- **Access to cash under the spotlight** - The availability and terms of access to cash have been looked at in the Netherlands, Italy and Spain as the rise of electronic payments has reduced demand for ATM cash withdrawals. For example, the competition authority in the Netherlands approved an agreement between 23 organisations to safeguard the availability and accessibility of cash.

This regular bulletin is a digest of key antitrust developments in the financial services sector in the following regions:

- Asia Pacific
- Europe
- North America

This edition covers developments from 1st April 2022 – 30th June 2022. If you would like to know more about the subjects covered, please refer to the list of contacts on page 13.

EUROPE

UK

London Stock Exchange Group PLC / Quantile Group Limited merger inquiry

On 17 May 2022, the Competition and Markets Authority ("CMA"), [referred](#) the anticipated acquisition by London Stock Exchange Group PLC ("LSEG") of Quantile Group Limited ("Quantile") for an in-depth Phase II investigation. The CMA found that the merger could potentially harm competition in multilateral compression for over-the counter interest rate derivatives ("OTC IRDs") in the UK. Multilateral compression providers for OTC IRDs such as Quantile rely on cooperation by LSEG's clearing house, LCH, to implement their proposals for trades and must be approved by LCH as an Approved Compression Service Provider ("ACSP"). The CMA found that post-merger LSEG would have the ability and incentive to foreclose Quantile's rivals in the provision of multilateral compression for OTC IRDs. The CMA rejected LSEG's offering of commitments to approve ACSPs based on non-discriminatory criteria and not to apply discriminatory conditions to ACSPs. The CMA subsequently published an [Issues Statement](#) setting out its concerns as part of the Phase II investigation.

PSR's Card-Acquiring Market Review – Provisional Decision on Remedies

On 29 June 2022, the Payment Systems Regulator ("PSR") published its [Provisional Decision on Remedies](#) following its market review of card-acquiring services. The PSR proposed three remedies to be implemented through Specific Directions:

- **Greater transparency:** Summary boxes containing bespoke key price and non-price information for every merchant which can be used alongside new online quotation tools to help merchants compare prices and other service features more efficiently.
- **Greater engagement:** Trigger messages will be sent from providers to merchants to prompt them to shop around, re-negotiate their contract or switch provider.
- **The ability to change providers easily:** Contractual limits will be placed on Point of Sale ("POS") terminal contracts so that merchants are not discouraged from searching for and switching providers. These will include a maximum duration of 18 months on POS terminal lease and rental contracts, and a maximum one month notice after any renewal.

This follows the publication of the PSR's [Final Report](#) in November 2021 which identified that small and medium sized merchants could make savings by shopping around or negotiating with their current supplier but do not do so. However, the PSR did not find any evidence that the supply of card-acquiring services does not work well for the largest merchants with annual card turnover above £50 million.

PSR announces details of its plans for two market reviews focusing on card fees

On 21 June 2022, the PSR published its plans for carrying out two market reviews focusing on card fees:

- **Market review of card scheme and processing fees.** The PSR will carry out a market review of the scheme and processing fees associated with Mastercard and Visa following its finding in the card-acquiring market review

that fees paid by acquirers increased between 2014 – 2018. The PSR published draft [Terms of Reference](#) for the market review that were open for consultation until 2 August 2022.

- **Market review of UK-EEA consumer cross-border interchange fees.** The PSR will carry out a market review into interchange fees applicable to consumer card transactions on Mastercard and Visa branded cards between the UK and EEA. This follows changes to the regulatory regime for UK-EEA transactions following the UK's departure from the European Union. The PSR published draft [Terms of Reference](#) for the market review that were open for consultation until 2 August 2022.

PSR fines four banks for treating consumer cards as commercial cards

The PSR [found](#) that National Westminster Bank Plc, Royal Bank of Scotland Plc, Ulster Bank Ltd and Coutts & Company overcharged interchange fees on credit cards. It considered that the four banks had incorrectly treated a number of cards as being 'commercial' cards when they should have been treated as 'consumer' cards. This meant that fees charged by these banks were not capped, as required by the Interchange Fee Regulation, and were set at too high a level. The PSR fined the banks £1.82 million and ensured those who were overcharged were refunded.

Future Oversight of Open Banking – Joint statement by HM Treasury, FCA, PSR and CMA

On 24 May 2022, HM Treasury, the CMA, the Financial Conduct Authority ("FCA") and the PSR published a [joint statement](#) that outlines plans for oversight of a new entity to succeed the Open Banking Implementation Entity. Open Banking enables consumers and small and medium sized business to share their data with trusted third parties who are then able to provide them with applications and services. It also enables them to initiate payments directly from their payment accounts to another bank account without the use of cards. Open Banking was initiated in 2017 as part of a package of remedies by the CMA following a market investigation into retail banking services.

CMA investigation into suspected anti-competitive arrangements in financial services sector continuing

The CMA [stated](#) in April 2022 that it is continuing to investigate certain, as yet unspecified, suspected anti-competitive arrangements in the financial services sector under Chapter I of the Competition Act 1998. The CMA launched the investigation in November 2018 and will continue the investigation, despite the FCA having concurrent powers to enforce competition law in the financial services sector.

Digital markets regime

On 7 April 2022, the FCA published its [Business Plan](#) setting out the work it will do over the following 12 months, including a focus on promoting competition. It stated that the FCA will work with the Government and stakeholders on the new pro-competitive regime for digital markets. The FCA is expected to have a formal route to raise competition concerns with the Digital Markets Unit and will identify the competition risk and benefits from BigTech entry in financial services to inform its future work. It will also publish a joint discussion paper with the Bank of England on artificial intelligence in financial services as part of its work to promote competition.

European Commission

S&P Global/IHS Markit merger - Implementation of the commitments

On 24 May 2022, the European Commission issued a [decision](#) approving Morningstar as the purchaser of S&P's leveraged loan market intelligence and 100 index family business pursuant to the commitments agreed in October 2021 for clearance of the S&P Global/IHS Markit merger.

Slovak cash-services joint venture cleared

On 26 April 2022, the European Commission [approved](#) the creation of a joint venture between commercial banks in Slovakia including Všeobecná úverová banka, a.s., Slovenská sporiteľňa, a.s., Tatra banka, a.s., 365.bank, a.s., and Československá obchodná banka, a.s.. The joint venture will be active in the area of cash services, in particular in cash handling and cash in transit in Slovakia. The Commission concluded that the proposed transaction would raise no competition concerns, given that a number of alternative providers of cash services would remain in the market after the merger.

European Commission accepts commitments by Insurance Ireland to ensure fair and non-discriminatory access to its data sharing platform

On 30 June 2022, the European Commission [accepted the commitments](#) offered by Insurance Ireland to resolve concerns about third party access to its data sharing platform. In May 2019, the Commission launched an investigation into Insurance Ireland, an association of Irish insurers, to assess whether conditions to access its Insurance Link data pooling system restricted competition in the Irish motor vehicle insurance market.

Following the issuance of a Statement of Objections in June 2021, Insurance Ireland subsequently offered commitments including an obligation to make access to the information exchange system independent from membership to the association. Insurance Ireland also agreed to make the access criteria to Insurance Link fair, objective, transparent and non-discriminatory, applying them uniformly to all applicants from Ireland and other Member States.

European Commission sends Statement of Objections to Apple over practices regarding Apple Pay

On 2 May 2022, the European Commission announced that it had [issued Apple with a Statement of Objections](#) regarding Apple Pay. This outlined the Commission's preliminary view that Apple abused its dominant position in markets for mobile wallets on iOS devices by limiting access by third party developers to technology used for contactless payments (Near-Field Communication technology).

Clearance of the Banco Português de Fomento recapitalisation

On 11 April 2022, the European Commission [approved](#) Banco Português de Fomento's recapitalisation. This increase in share capital by EUR 250 million will be entirely funded through the Recovery and Resilience Facility and aims at developing the Portuguese economy, particularly small and medium enterprises affected by the Coronavirus pandemic. The Commission cleared the notified recapitalisation, highlighting that it will facilitate the development of certain economic activities, while not adversely affecting the trading conditions to an extent contrary to the common interest.

Germany

Bundeskartellamt has no objections to the further development of the giropay online payment system after initial plans for an exclusivity agreement were given up

The Bundeskartellamt [stated](#) that it had no objections to the development of the giropay payment system envisaged by Deutsche Kreditwirtschaft (the German Banking Industry Committee). Although the Bundeskartellamt had concerns about the parties' initial plans for an exclusivity clause, it had no concerns after the plans for an exclusivity clause were removed. This follows an earlier review into the combination of the giropay, paydirekt and Kwitt systems under the joint brand name giropay.

Italy

Italian Competition Authority clears several mergers

The Italian Competition Authority ("ICA") cleared several mergers in the financial sector, including: Banco Popolare BPM's [acquisition](#) of 81% of BPM Vita's share capital; Poste Paye's [acquisition](#) of LIS Holding; CVC's [acquisition](#) of RGI; Accenture's [acquisition](#) of a series of businesses of Banca Nazionale del Lavoro; and BPER Banca's [acquisition](#) of Banca Carige.

Antitrust investigation into price comparison services

On 11 May 2022, the ICA [opened an investigation](#) alleging that some leading Italian companies providing price comparison services had been exchanging sensitive information with insurance companies on the market for the direct sale of car insurance policies since at least 2012. Such companies include, among others, 6Sicuro S.p.A., CercAssicurazioni.it S.r.l., Facile.it Broker di assicurazioni S.p.A., Allianz Direct S.p.A. and Prima Assicurazioni S.p.A.

Italian Competition Authority brings proceedings against Bancomat

On 1 December 2020, the ICA [initiated proceedings](#) against Bancomat, a company active in the management of the withdrawal and payment networks Bancomat and PagoBancomat and the related payment cards. The ICA considers competition could be harmed by Bancomat abolishing the interchange fee and making the customer pay the commission for a cash-withdrawal service directly to the bank hosting the ATM. On 20 April 2022, the closing of the proceedings was extended to 31 October 2022.

Commitments offered by Mastercard relating to contactless payments

On 7 June 2022, Mastercard [presented a set of commitments](#) to the ICA relating to its *double-tap* system mandate for contactless payments with *co-badged* payment cards (*i.e.*, cards that operate more than one payment network). In the ICA's opinion, the mandate precluded the POS systems from accepting *single taps* from such payment cards making them less attractive. Therefore, the ICA alleged that the Mastercard mandate could constitute an abuse of dominant position, in possible violation of Article 102 TFEU. The proceedings will be closed by 31 December 2022.

Netherlands

Protocol of the Netherlands Central Bank and the Netherlands Competition Authority on concentrations in the financial sector in crisis situations

The Netherlands Central Bank [announced](#) that it had entered into a new agreement with the Netherlands Authority for Consumers and Markets ("ACM") on 22 April 2022. This Protocol applies where supervisory authorities forge a concentration between financial institutions in order to respond to a financial crisis. This replaces earlier protocols from 2017 and 2011.

Netherlands Competition Authority is positive about agreements to keep cash affordable and accessible

In April 2022, the ACM stated that an agreement between 23 organisations to safeguard the availability and accessibility of cash was not contrary to competition rules. The [Cash Covenant](#) was signed by major banks, the Dutch Payments Association, consumer representatives, providers of cash services and the Netherlands Central Bank. It states that the rates for withdrawing and depositing money may not increase until 31 July 2023. It also has provisions on the minimum availability of ATM and acceptance of cash. The ACM considered that the Cash Covenant had no major consequences for competition and contributed to an important social goal of maintaining cash availability in the context of an increase in electronic payments.

Netherlands Competition Authority starts investigation into Google's app payment rules

Following a series of complaints from dating apps, the ACM [launched an investigation](#) into the conditions that Google sets in its Google Play Store. According to the complaints received by the regulator, the providers of the apps are not allowed to use any other payment system than that of Google, which may amount to a distortion of competition. According to the ACM, Google is accused of prohibiting all references to other payment methods within the app shop for Android, the operating system of Google. The regulator will investigate whether these complaints are well-founded and whether they provide sufficient grounds for a follow-up investigation into a possible abuse of power by Google. Developers have previously complained about the conditions that Apple imposed on dating apps in its App Store. This resulted in fines of up to EUR 50 million for Apple.

Poland

Polish Competition Authority questions the fee calculation mechanism used by the insurance company UNIQA

On 6 June 2022, the Polish Competition Authority (the "OCCP") imposed a fine of over PLN 10 million (approximately EUR 2.2 million) on the insurance company UNIQA (formerly AXA Życie TU S.A.). The OCCP questioned the mechanism used for calculating distribution and allocation fees in life insurance contracts with insurance capital funds offered between December 2015 and May 2019. The initial fees, intended to cover costs related to acquisition, advertising, brokers' commissions, and preparation of contracts were designed to discourage consumers from terminating their contracts in the first years of their term. At the same time the company charged several other fees, such as administration, transaction, management, or insurance risk fees.

In addition to payment of the fine UNIQA must inform consumers about the OCCP's decision and its effects, i.e. that the disputed clauses are to be treated as non-existent.

Polish Competition Authority investigates fee changes for deposits of foreign securities introduced by mBank Brokerage

On 27 June 2022, the OCCP announced that it opened an investigation into the practices of Dom Maklerski mBanku S.A. ("mBank Brokerage") related to a new fee schedule effective as of 1 July 2022. The OCCP received complaints that mBank Brokerage substantially lowered the value of foreign financial instruments (from PLN 500 000 to PLN 10 000) subject to deposit fees. In addition, in the case of closing the account at mBank consumers will be charged additional fees. A fee of 0.95% of the value of foreign securities will be charged for transferring them to another broker.

The OCCP will verify whether mBank Brokerage had the right to unilaterally amend the agreements entered into with consumers and whether it allows consumers to terminate them free of charge

Spain

Spanish government bans making certain loans conditional on contracting other products

In May 2022, the Spanish government [banned](#) banks from making the granting of loans from the Official Credit Institute ("ICO") conditional on the contracting of insurance or other products or services. This follows the National Markets and Competition Commission ("CNMC") initiating disciplinary proceedings against four banks for possible anti-competitive practices in the marketing of ICO Covid-19 credit lines. It was alleged that the banks had made the granting of ICO Covid-19 credit lines conditional on customers purchasing other financial products.

Spanish Congress evaluates the adoption of measures to regulate the price of ATM cash withdrawal services

The CNMC stated it was working on a report on the cost of cash withdrawals, which was expected to be presented to the Spanish Congress in July 2022. The report would be used by Congress as the basis for action to improve financial inclusion and encourage competition regarding cash withdrawals. The contents of the report will be discussed in the next edition of the Financial Services Antitrust Bulletin.

CNMC clears multiple deals in the financial sector

The CNMC [authorised](#) the acquisition by BBVA of a portfolio consisting of 659 branches and three buildings leased by the financial institution from Merlin Properties for an amount of 2 billion euros. Separately, the CNMC [approved](#) the purchase of a 50.01% of Seguros El Corte Inglés by Mutua Madrileña. The CNMC also [cleared](#) a Bancassurance agreement between Unicaja Banco and Santalucía following a Phase 1 investigation.

NORTH AMERICA

US

US Consumer Financial Protection Bureau chief warns about US BigTech firms commingling finance and commerce operations

The US Consumer Financial Protection Bureau is investigating potential competitive issues at the intersection of finance and commerce, according to Bureau Director Rohit Chopra. On 26 April 2022, Director Chopra [spoke before the US Senate Banking Committee](#) and expressed concerns about the US consumer finance ecosystem, in particular BigTech consumer-payment systems and the "outsized influence . . . such dominant tech conglomerates [have] over the financial services ecosystem." In the Director's words, the United States and its "consumer-finance ecosystem" are "lurching toward a consolidated market structure where finance and commerce co-mingle fuelled by uncontrolled flows of consumer data," which "is the market structure that has emerged in China." He described Tencent's WeChat Pay and Ant Group's AliPay, two China-based mobile payment systems, as "super-apps" that "have access to an extraordinary set of data about consumers and businesses, including financial businesses that they may compete with." The Director stated that the agency is studying these issues as part of its "inquiry into BigTech's entry into consumer payments in the US" and that it has issued orders to Amazon, Apple, Block, Google, Meta Platforms, and PayPal to aid its inquiry.

Retail investors seek damages and equitable relief from Charles Schwab's acquisition of TD Ameritrade

On 2 June 2022, a group of retail investors brought [federal antitrust claims](#) in response to the merger of retail brokerages Charles Schwab and TD Ameritrade, a merger that closed in October 2020 without objection from federal antitrust authorities. While acknowledging that the merged entity and its predecessors operated on a "zero commission" basis, the complaint argued that investors were still harmed by the loss of competition between the two brokerages such as by reduced price transparency and reduced retail investor choice. The plaintiffs have demanded damages and injunctive relief and seek to represent a class of all who traded equity or equity options through Charles Schwab or TD Ameritrade since the merger.

Potential TD Bank acquisition of First Horizon draws scrutiny from members of Congress

Multiple members of Congress, led by US Senator Elizabeth Warren, [wrote to the Office of the Comptroller of the Currency](#) requesting that it "block any merger until TD Bank is held responsible for its abusive practices." The 14 June 2022 letter, which notes that TD Bank is seeking the Comptroller's approval to acquire First Horizon, cited a report about "unchecked fraud and abuse at TD Bank" related to reported "fake account and overdraft fee abuses." The letter warned that "[i]f the merger were approved, it would make TD Bank the sixth-largest lender in the U.S., without demanding any accountability for its abusive practices."

US appeals court affirms forex trader's price-fixing conviction

On 2 May 2022, the United States Court of Appeals for the Second Circuit [affirmed the conviction](#) under federal antitrust law of Akshay Aiyer, a former trader of foreign currencies. The government had alleged that the defendant had committed a per se violation of the Sherman Act by conspiring to fix foreign exchange transactions. The Second Circuit rejected the defendant's argument that the trial court should have determined ahead of trial whether the standard that applied to the alleged trading activity was the per se rule or the rule of reason; although the defendant had moved to dismiss the indictment before trial by proffering evidence of procompetitive effects from his conduct, the Second Circuit held that the trial court was entitled to ignore this evidence before trial and allow the government to prosecute the case under a per se rule, as alleged. The court also rejected the

defendant's contention that the government was required to prove that the defendant knew his actions would have anticompetitive effects.

DOJ scrutiny of credit-ratings methodology spurs reconsideration

On 29 April 2022, the US Department of Justice ("DOJ") [responded](#) to a request for comment by credit ratings agency S&P Global. The credit ratings agency had [requested feedback](#) on its proposed changes to its methodology for "determining the rating inputs of bonds and loans, reinsurance counterparties and deposits with credit institutions." The DOJ noted that, under the proposed change, S&P Global would "automatically lower its ratings for assets in insurance company investment portfolios rated solely by S&P's competitors," which could discourage companies from using competitors of S&P or invest in assets rated by S&P's competitors. The DOJ said that S&P should consider whether the proposed changes would raise concerns that the Sherman Act had been violated. S&P Global responded by announcing that it would withdraw its proposed approach due to the comments it received and stating that it planned to issue a modified request for comment that would incorporate any proposed changes.

SIBOR litigation reaches preliminary settlement

An investor class action based in a New York federal court involving nineteen of the world's largest financial institutions [appears to be reaching a resolution](#). In several settlements reached in May 2022, the defendants agreed to pay an aggregate of approximately \$155 million to resolve allegations of an interbank conspiracy to manipulate Singapore interest rate benchmarks. The banks were accused of rigging the Singapore Interbank Offered Rate ("SIBOR") and the Singapore Swap Offered Rate ("SOR") from at least 2007 through 2011. The settlements are preliminary and await approval from the district judge overseeing the case. Most of the funds from the settlement would go to a proposed class of investors in derivatives linked to the rates. The hedge funds listed in the original complaint were defunct and did not legally exist when the case was first filed, and the district court had dismissed the case in 2019 for lack of a proper plaintiff; however, the Second Circuit revived the suit in 2021, finding that at least one of the current plaintiffs was properly prosecuting the claims of the dissolved funds.

ASIA PACIFIC

Australia

ACCC announces 2022/2023 priorities in regulating the financial services sector

On 31 May 2022, in a [speech](#) delivered at the Australian Financial Review Banking Summit, the current Australian Competition and Consumer Commission ("ACCC") Chair Gina Cass-Gottlieb identified that the ACCC's 2022/2023 priorities of enforcement, payment services and digital platforms, scam disruption and promotion of competition and consumer choice through the Consumer Data Right ("CDR")¹ means the ACCC will be engaging with the banking sector "more than ever before" in 2022/23.

The ACCC Chair also made note of the comprehensive redesign of payments regulation for the first time in 25 years following the Farrell Review and the Reserve Bank of Australia's Review of Retail Payments Regulation, in response to

¹ "CDR" also referred to as "Open Banking" was introduced on 1 July 2019 to allow customers to compare and switch between financial products more easily, by affording consumers the right to product data and to share with unaffiliated third-parties financial information.

the emergence of new services and competitors in the payments ecosystem such as payment gateways and aggregators, mobile wallet providers, and use of cryptocurrencies.

ACCC brings action against Mastercard for alleged misuse of market power in the supply of debit card services

On 30 May 2022, the ACCC instituted Australian Federal Court proceedings against Mastercard Asia/Pacific Pte Ltd and Mastercard Asia/Pacific (Australia) Pty Ltd (together, Mastercard). The ACCC has taken issue with Mastercard allegedly entering into agreements with a number of major retail businesses, giving those businesses discounted rates for Mastercard credit card transactions, on the condition that the businesses committed to processing all or most of their Mastercard-efpos (electronic funds transfer at point of sale) debit card transactions via Mastercard rather than the efpos network.

The ACCC alleged that as a result of the conduct, businesses likely did not receive the full benefit of the increased competition from the Reserve Bank of Australia's ("RBA") "least cost routing" initiative of 2017, whereby the RBA permitted businesses to choose the lowest-cost network to process transactions. Under the *Payments System (Regulation) Act 1998* (Cth), the RBA was granted authority to regulate any payment system as part of its mandate to promote competition and efficiency.

First criminal cartel sentence from Australian Federal Court

A recent judgment by Justice Abraham of the Federal Court of Australia is the first imposition of jail terms in a criminal cartel case in Australia for contravention of cartel provisions of the *Competition and Consumer Act 2010* (Cth) (Part IV, Division 1).

In April 2019, criminal charges were brought against a money transfer business (Vina Money) and five individuals. The accused operated separate money remittance businesses offering the service of transferring money from Australia to Vietnam. However, they agreed to fix their foreign exchange rates, rather than competing on price.

Four out of five individuals were initially sentenced to imprisonment (varying from 2.5 to 9 months), and the fifth individual pleaded not guilty to the offences and is due to appear for trial on 30 August 2022. A fine of AUD 1 million was imposed on Vina Money. However, the four individuals and Vina Money ultimately pleaded guilty to the offences and no contested hearing was required. Good character and low risks of re-offending were also identified factors in orders releasing the accused from terms of imprisonment.

China

China's amended Anti-Monopoly Law signals heightened scrutiny over mergers in the financial sector

On 24 June 2022, the final text of the amendments to China's Anti-Monopoly Law was published. The amended Anti-Monopoly Law, which entered into force on 1 August 2022, provides that the State Administration for Market Regulation ("SAMR") shall set up a classification system for its merger review and strengthen its focus of review on concentrations in important sectors that concern national strategies and people's living.

An earlier draft specified that mergers concerning financial sector, technology or media, are among the enforcement priorities of China merger control review. Although the final text replaces the enumeration with the term "sectors that concern national strategies", it is anticipated that mergers concerning the financial sector would in practice receive heightened scrutiny by SAMR.

India

PayU renews its merger filings over \$4.7 billion takeover of India's BillDesk

On 20 April 2022, PayU Payments filed a fresh [notification](#) with the Competition Commission of India ("CCI") for its proposed acquisition of local payment gateway provider BillDesk. The \$4.7 billion acquisition announced in August 2021 is the largest consolidation ever in the Indian fintech space. PayU Payments initially filed its notification with the CCI in December 2021. In February 2022, the CCI marked the first filing as "not valid" on its website and asked the merging parties to refile their application.

Japan

Credit card surcharges targeted in JFTC's credit-card survey

On 8 April 2022, the Japan Fair Trade Commission (the "JFTC") published the results of a survey of credit card transactions which they had been conducting since July 2021. The survey was conducted to assess the disclosure of standard interchange fee rates and to identify issues related to competition policy in the credit card market.

In the analysis of the survey results, the JFTC concluded that the actions mentioned below would be problematic under the Japanese Anti-monopoly Act if they occurred: (i) international brands jointly determining standard interchange fee rates; (ii) credit card issuers jointly deciding to use standard interchange fee rates set by international brands; or (iii) international brands and credit card issuers jointly determining standard interchange fee rates.

The JFTC concluded that it would be appropriate to disclose standard interchange fee rates in Japan for international brands that have established standard interchange fee rates. It considered that this disclosure would facilitate negotiations on credit card merchant fees between merchants and acquirers and competition among acquirers in the credit card merchant management markets in Japan. The JFTC will continue to closely monitor developments in the credit card market.

New Zealand

New Zealand passes new regulation on retail payment system

On 13 May 2022, the [Retail Payment System Act 2022](#) ("Act") was passed. The Act requires the nation's competition regulator, the Commerce Commission, to monitor the retail payment system and regulate designated retail payment networks. Under the Act, the Commission has powers to issue merchant surcharging standards for any network to ensure surcharges for payment services such as credit cards or contactless payments reflect the actual cost of providing that payment option. As to designated networks, the Commission has powers to determine how prices can be set or expressed, require greater transparency of certain information, and allow other participants to access aspects of the networks.

Mastercard and Visa have initially been ‘designated’ by the Act. Notably, the Act also sets an ‘initial pricing standard’ that limits their interchange fee for credit and debit transactions. The initial pricing standard for the Mastercard and Visa credit and debit networks will come into force on 13 November 2022 to allow for the Visa and Mastercard networks to implement fee changes.

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