

FINANCIAL SERVICES ANTITRUST BULLETIN

Key Themes

The financial services sector continued to make headlines for the competition law community in the final quarter of 2022. From mergers between banks to mergers between cash services providers, "Big Tech" firms to individual traders, competition law has had a major impact across the sector. 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:

- **Major retail banking mergers will be reviewed** – In Australia, the competition authority will review ANZ's proposed acquisition of Suncorp Bank. In Canada, the competition authority will assess the Royal Bank of Canada's proposed acquisition of HSBC Canada. This will involve a detailed analysis of retail banking markets in these jurisdictions as the parties are substantial players in these markets.
- **Payments in focus** – The payments sector has continued to attract the attention of competition authorities in the context of mergers, market reviews and anti-competitive agreements. In particular, the Italian Competition Authority prohibited Bancomat's proposed remuneration system for cash-withdrawal services. In the UK, the Payment Services Regulator announced the Terms of Reference for market reviews for card scheme fees and cross-border interchange fees. In the US, the Federal Trade Commission reached a consent agreement with Mastercard in relation to debit card payments.
- **Regulatory environment in flux** – Regulators and legislators in several jurisdictions are exploring changes to the regulatory environment that would impact competition. For example, the UK government has proposed major changes to financial regulation in the "Edinburgh Reforms", including a new secondary objective for the FCA of "competitiveness". The European Commission has announced an extensive set of regulatory proposals in its work program for 2023. In Australia and China there have been proposals regarding new roles and powers for financial regulators which could impact competition.
- **Financial market trading under the spotlight** – Competition authorities and courts have looked at the activities of financial market traders. European Commissioner Vestager emphasised that "citizens need to be able to trust that financial institutions do not implement practices that restrict competition in bonds trading markets", following the issuance of a statement of objections against Deutsche Bank and Rabobank. Separately, Morgan Stanley and RBC stated in SEC filings that they were engaging with the UK Competition and Markets Authority in relation to a financial

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 focusses on developments from 1st October 2022 – 31st December 2022. If you would like to know more about the subjects covered, please refer to the list of contacts on page 15.

services probe. The European Court of Justice also dismissed an appeal by HSBC in relation to the manipulated of benchmarks.

EUROPE

UK

CMA receives complaint on Wise's price comparison webpages

On 27 January 2023, the Competition and Markets Authority ("**CMA**") [received](#) a complaint from Atlantic Money over allegations of anti-competitive behaviour on price comparison webpages owned by Wise. Wise operates a price comparison page on its own website, listing transfer fees and exchange rates of its rivals (including high street banks and money transfer specialists, such as Western Union). Atlantic Money considers that its removal from Wise's price comparison page and the denial of entry to other price comparison websites owned by Wise was anti-competitive and could lead to higher fees for consumers.

FCA issues statement of objections to three money transfer firms

On 25 January 2023, the Financial Conduct Authority ("**FCA**") [issued](#) a statement of objections to three money transfer firms for allegedly fixing prices charged to customers in Glasgow for transferring money from the UK to Pakistan in 2017. The firms allegedly coordinated the exchange rate offered to consumers converting Pound Sterling to Pakistani Rupees when transferring funds to Pakistan, and fixed the level of a flat rate transaction fee charged to consumers making transfers from the UK to Pakistan. As a result, the FCA provisionally found that consumers in Glasgow may have been overcharged when sending money to Pakistan.

Joint statement on the future of Open Banking

On 16 December 2022, HM Treasury ("**HMT**"), the CMA, the FCA and the Payment Services Regulator ("**PSR**") published a [joint statement](#) from the Joint Regulatory Oversight Committee ("**Joint Committee**") on the future of UK Open Banking. The Joint Committee was established in March 2022 to develop the vision of Open Banking and to make recommendations on designing a future Open Banking entity ("**Future Entity**").

Under the current model, an [Open Banking Implementation Entity](#) ("**OBIE**") prepares software standards and industry guidelines on Open Banking and is overseen by the CMA. A new interim regulatory state will be created, in which the Joint Committee and the CMA will oversee the Future Entity, before a long-term regulatory framework for Open Banking is established.

The Joint Committee will set out its recommendations on the design of the Future Entity and the vision of Open Banking in the first quarter of 2023. The CMA is also expected to publish a roadmap on the development of Open Banking.

HM Treasury announces Edinburgh Reforms including new competitiveness objective for the FCA

On 9 December 2022, the UK government [announced](#) the "Edinburgh Reforms", a package of over 30 measures to reform financial services regulation to drive growth and competitiveness in the UK financial services sector. The Financial Services and Markets Act 2000 currently includes an operational objective to promote effective competition in the interests of consumers. As part of the reform package, this will be supplemented by the Financial Services and Markets Bill which will introduce a secondary objective for the FCA to facilitate, subject to aligning with relevant international standards, the international competitiveness of the UK economy (including in particular the financial services sector). The

Edinburgh Reforms also include changes to ring-fencing rules and a new remit letter for the FCA.

PSR fines Barclays for alleged non-compliance with the Interchange Fee Regulation ("IFR")

On 1 December 2022, the PSR made a [preliminary assessment](#) that Barclays Bank PLC did not provide retailers with full information about the costs of card services it supplied, as required by Article 12 IFR. This meant that retailers allegedly were not fully aware of the fees they were paying to Barclays. As a result, retailers allegedly could not effectively compare prices of card services, look for cheaper deals or negotiate deals with Barclays. The PSR considered that the bank failed to comply with the IFR from December 2015 to December 2018. The PSR fined Barclays £8.4 million and required that full information required by the IFR is available to all retailers who use Barclays' card payment processing services.

Court of Appeal dismisses Mastercard's appeal of CAT decision on class size

On 29 November 2022, the UK Court of Appeal issued its [judgment](#) dismissing Mastercard's appeal of the Competition Appeal Tribunal's ("CAT") Order dated 9 March 2022, in the context of claims for damages in respect of Mastercard's multilateral interchange fees. The appeal concerned the determination of the "domicile date" for class members in collective proceedings. The court considered that claimants who died between September 2016 and August 2021 can be included in the consumer class pursuing the claim.

FCA publishes market study interim report on credit information

On 22 November 2022, the FCA published an [Interim Report and Discussion Paper](#) on its Credit Information Market Study. In its Interim Report, the FCA found that the following aspects of the credit information market are not working well:

- governance arrangements set up to oversee the sharing of consumer information appear slow to responding to emerging issues in a coordinated way;
- there are significant differences between the credit information held by the three largest credit reference agencies;
- the market is concentrated with high barriers to entry; and
- consumer understanding of credit information is relatively low, with issues in accessing and disputing credit information.

The FCA is seeking views from stakeholders on potential remedies in the form of a package of industry-led changes, supported by regulatory intervention. The FCA has asked for comments on the Interim Report by 24 February 2023 and aims to publish its final report in the third quarter of 2023.

CAT refuses Mastercard's application to appeal Umbrella Proceedings Order

On 10 November 2022, the CAT [refused](#) Mastercard's application for permission to appeal the extent of disclosure and witness evidence which would be appropriate to deal with the issue of merchant pass on in the [Umbrella Proceedings Order](#) issued by the CAT in July 2022. The Umbrella Proceedings Order groups various proceedings against Mastercard and Visa in relation to multilateral interchange fees.

Morgan Stanley and RBC in dialogue with the CMA over financial services probe

On 2 November 2022, the CMA published its [case timetable](#) for its investigation into suspected anti-competitive arrangements in the financial services sector. Morgan Stanley stated in an [SEC Filing](#) that it is engaging with the CMA on its investigation, in particular on Morgan Stanley's activities with certain liquid fixed income products between 2009 and 2012. Similarly, RBC Europe Limited stated in an [SEC Filing](#) that it is also engaging with the CMA in its investigation of alleged anti-competitive arrangements in the financial services sector between 2009 and 2013. HSBC also stated in an [SEC Filing](#) that it is subject to an investigation by the CMA relating to certain UK-based fixed income products and related financial instruments. The CMA is expected to give a further update on the investigation in Spring 2023.

PSR publishes final Terms of Reference for upcoming market reviews

On 27 October 2022, following stakeholder consultations, the PSR published its final Terms of Reference for its upcoming market reviews on [card scheme and processing fees](#) and [UK-EEA consumer cross-border interchange fees](#). Additionally, the PSR published on 16 December 2022 a [working paper](#) outlining its current understanding of how recent changes in UK-EEA card-not-present cross-border interchange fees may be affecting UK service users. The PSR expects to publish its interim findings on both market reviews towards the end of 2023 and final reports (with any proposed remedies) in 2024.

PSR publishes final decision on card-acquiring market remedies

On 6 October 2022, the PSR issued its [Final Decision on Remedies](#) following its market review of card-acquiring services. The final remedies include:

- **summary boxes** with key price and non-price information, sent individually to each business and shown prominently in their online accounts;
- **online quotation tool** to make comparisons with different providers online;
- **trigger messages** prompting businesses to shop around the market and/or switch; and
- **18 month maximum duration** for Point of Sale ("POS") terminal leases and rental contracts, with a monthly rolling contract thereafter.

Firms are required to implement the POS terminal leases/contracts since January 2023 and the remedies on trigger measures and summary boxes from July 2023.

CMA clears London Stock Exchange Group PLC / Quantile Group Limited merger

On 26 October 2022, the CMA [cleared](#) the anticipated acquisition by London Stock Exchange Group PLC ("LSEG") of Quantile Group Limited ("Quantile") (together, the "**Merged Entity**") following an in-depth Phase II investigation. At Phase I, the CMA considered that the merger could potentially harm competition in multilateral compression for over-the-counter interest rate derivatives ("**OTC IRDs**") in the UK. In its Final Report for the Phase II review, the CMA found that post-merger LSEG would have the ability to foreclose Quantile's rivals in the provision of multilateral compression for OTC IRDs, but it would not have the incentive to do so. This was due to the relatively small revenues associated with multilateral compression services relative to LSEG's other services for the same customers post-merger. Further, customers could switch both their clearing business and other types of business away from the Merged Entity in response to any foreclosure attempts. The CMA therefore concluded that the merger may not be expected to result in a substantial lessening of competition as a result of vertical effects in the supply of multilateral compression services for OTC IRDs in the UK.

FCA explores potential competition impacts of "Big Tech" entry and expansion in retail financial services

On 25 October 2022, the FCA published a [Discussion Paper](#) on "Big Tech" entry into retail financial services, focussing on payments, deposits, consumer credit and insurance. For each sub-sector the FCA considered scenarios in which "Big Tech" firms could expand in the future, along with potential benefits and concerns regarding competition. Although the FCA is not proposing regulatory changes at this stage, it plans to publish a Feedback Statement in the first half of 2023 setting out its response to the feedback received from industry participants. See our [client briefing](#) for more details.

Joint discussion paper on the role of artificial intelligence in financial services

On 11 October 2022, the FCA, the Bank of England ("**BoE**") and the Prudential Regulation Authority ("**PRA**") published a joint [Discussion Paper](#) on the role of AI in financial services. In particular, the BoE and PRA are interested in exploring the safe and responsible adoption of AI in financial services through policy and regulation. They note that AI may have substantial benefits for competition in financial services by enabling consumers to access, assess and act on information more effectively. One example cited is Open Banking, which allows third parties to access consumers' transaction data and offer tailored financial products. The FCA, BoE and PRA also consider that AI could be used to implement or facilitate harmful strategic behaviour such as collusion, or create market features that hinder competition such as the high barriers to entry in a business obtaining and developing AI.

European Commission

ECJ dismisses HSBC's EURIBOR appeal, raising questions on General Court's assessment regarding the presumption of innocence principle

On 12 January 2023, the Court of Justice of the European Union ("**ECJ**") [dismissed](#) HSBC's appeal against the EU's General Court judgment in relation to the landmark [Euribor decision](#), which saw seven banks fined for manipulating the Euro Interbank Offered Rate ("**EURIBOR**") and Euro Overnight Index Average ("**EONIA**") interbank reference rates between 2005 and 2008. Separate legal challenges brought by JPMorgan Chase and Crédit Agricole had previously been put on hold pending the outcome of the HSBC appeal.

In September 2019, the General Court upheld the European Commission's decision, confirming that HSBC's behaviour infringed competition law. However, the General Court annulled the fine imposed on the bank, ruling that the European Commission failed to provide a "sufficient explanation" of how it calculated this sanction. In its appeal against the General Court's ruling, HSBC argued that the adoption of the settlement decision infringed the presumption of innocence, stating that the procedure followed by the European Commission "undoubtedly" caused their liability to be prejudged.

The ECJ ruled that the General Court failed to correctly assess the extent to which the European Commission's settlement procedure breached the presumption of innocence principle. Further, the General Court erred in law by not properly assessing whether the exchanges had pro-competitive effects, especially since those exchanges had been raised by HSBC in order to question the characterisation of their behaviour as a by-object restriction. The ECJ confirmed

the European Commission's and General Court's findings that HSBC participated in the cartel at issue, breaching competition law.

European Commission puts forward measures to develop the Capital Markets Union

On 7 December 2022, the European Commission [proposed](#) a package of six legislative measures intended to develop EU clearing services, corporate insolvency and listing rules as part of the EU Capital Markets Union. The new rules aim to encourage greater use of EU based central counterparties, harmonise disparate insolvency regimes across EU Member States, and simplify existing listing processes, particularly for SMEs. The six respective legislative proposals are currently under the review of the European Parliament and Council.

European Commission sends Statement of Objections to Deutsche Bank and Rabobank over Euro-denominated bonds trading cartel

On 6 December 2022, the European Commission [announced](#) that it had sent a Statement of Objections informing Deutsche Bank and Rabobank of its concerns that, between 2005 and 2016, the banks exchanged commercially sensitive information mainly through emails and online chatroom communications. It is alleged that this information was used by the banks to facilitate the collusive coordination of pricing and trading strategies when trading Euro-denominated bonds. The European Commission initially explored the possibility of a settlement with the banks involved but decided to discontinue the discussions towards such settlement due to lack of progress.

This is the third investigation by the European Commission concerning alleged bond trading cartels, following fines imposed in [April 2021](#) on three investment banks that had participated in a US Dollar-denominated bonds trading cartel, and in [May 2021](#) on seven investment banks found to be part of a separate European Government Bonds trading cartel.

European Commission proposes to accelerate the rollout of instant payments in euro

On 26 October 2022, the European Commission [announced](#) that it had adopted a legislative proposal amending the 2012 Regulation on Single Euro Payments with regard to instant credit transfers in Euros. The proposed Regulation aims to remove barriers that prevent or slow instant payments and the roll out of associated benefits in Member States. Based on this proposal, providers of euro denominated transfers must offer an instant option, which cannot be subject to fees in excess of those charged for non-instant transfers.

European Commission publishes its Work Programme for 2023 including reforms to financial regulation

On 18 October 2022, the European Commission [adopted](#) its work programme for 2023, which emphasises the Commission's intention to facilitate retail investment, improve data access in financial services with an initiative for a framework on open finance, and revise the Payment Services Directive, aiming at ensuring easier and safer use of online payment services by protecting users against fraud and abuse.

The programme outlines multiple legislative proposals related to financial services, including:

- Regulation amending the Central Securities Depositories Regulation;
- Directive on Corporate Sustainability Due Diligence;
- Regulation amending the Markets in Financial Instruments Regulation;
- Directive amending the MiFID II Directive;
- Regulation amending the Regulation on European Long-Term Investment Funds;

- Directive amending the Alternative Investment Fund Managers Directive and UCITS Directive;
- Regulation amending the Capital Requirements Regulation; and
- Directive on Consumer Credits.

Revised Vipps and MobilePay merger approved by the Commission

The proposed acquisition of Vipps and MobilePay payment services providers by Danske Bank and a consortium of Norwegian banks (including DNB Bank ASA, SpareBank 1 Betaling, Eika VBB, and Balder Betaling) was [refiled](#) on 16 September 2022, after OP Financial Group of Finland and Pivo withdrew from the transaction.

On 24 October 2022, the European Commission [approved](#) the refiled merger, concluding that the revised transaction presents no competition concerns as the merging companies were unlikely to compete with each other in Norway (Vipps), Denmark and Finland (MobilePay) without the merger. The consolidated entity will continue to compete with OP Financial Group-owned Pivo in the mobile payment services sector.

Arranging membership of group insurance policy falls within scope of IMD and IDD

On 29 September 2022, the ECJ gave a [preliminary ruling](#) under Article 267 TFEU, following a reference from the Bundesgerichtshof (German Federal Court of Justice), concerning the definitions of "insurance intermediary" and "insurance distribution" under the Insurance Mediation Directive (2002/92/EC) and the Insurance Distribution Directive ((EU) 2016/97).

The defendant in the main proceedings offered customers voluntary membership of a group insurance policy to which it had subscribed previously with an insurance company, where the membership entitles these customers to insurance benefits. The ECJ, following the opinion of Advocate General Szpunar, ruled that the concept of "insurance intermediary" and, therefore, that of "insurance distributor", should be interpreted broadly, as encompassing any legal person arranging membership of a group insurance policy.

Germany

Joint venture by Münchener Rück AG and Hannover Rück SE cleared

Re-insurers Münchener Rück AG and Hannover Rück SE [notified](#) a joint venture to the German Federal Cartel Office ("FCO"). According to public sources, the joint venture's purpose is to make selective investments in alternative asset classes in the capital investments sector. It also focuses on improving the diversification in a joint portfolio, a spokesperson said. The joint venture was notified to the FCO on 24 October 2022 (ref. B9-89/22) and was cleared by the FCO within Phase I on 14 November 2022.

Italy

The Italian Competition Authority prohibits Bancomat's new remuneration system for cash-withdrawal services

On 30 November 2022, the Italian Competition Authority ("ICA") concluded the proceedings against Bancomat S.p.A, by [ascertaining a violation of Article 101 TFEU](#) in relation to a proposed amendment to the remuneration system for cash-withdrawal services. Bancomat proposed a new remuneration model to the ICA whereby the interchange fees currently associated with Bancomat withdrawals would be eliminated, so that the fees would have been set by and paid to the bank hosting the ATM rather than to the bank issuing the card from which the withdrawal

is made. The ICA prohibited Bancomat from implementing such a model alleging that it would lead to:

- an increase in average withdrawal fees charged;
- the weakening of competition between banks;
- the elimination of a competitive constraint, i.e. the possibility for banks of changing withdrawal fees for their customers, to the detriment of smaller banks; and
- increased incentives for collusion by banks participating in the Bancomat circuit.

Bancomat argued that the proposed remuneration model could be exempted under Article 101(3) TFEU but the ICA considered that it did not provide sufficient evidence to satisfy the requirements for exemption. The ICA did not sanction Bancomat as the anti-competitive conduct had not yet been implemented, but only been voluntarily proposed to the ICA on the company's own initiative.

Italian insurance sector acquisition cleared

On 30 November 2022, the ICA cleared the acquisition of exclusive control by Poste Vita S.p.A., a wholly owned subsidiary of Poste Italiane S.p.A., active in the financial and insurance services sector (in particular, in life and non-life insurance businesses) over Net Insurance S.p.A., an Italian provider of non-life insurance products and reinsurance.

The ICA clears acquisitions by Banco di Desio e della Brianza and Nexi of some business units from BPER Group

On 22 November and 13 December 2022 respectively, the ICA cleared the acquisition by Banco Desio e della Brianza S.p.A. of 48 branches across several Italian regions and the acquisition by Nexi S.p.A. of a business unit, consisting of (i) a set of assets and liabilities related to the provision of acquiring services, i.e. merchants' agreements for card payments, and (ii) 100% of the share capital of Numera Sistemi e Informatica S.p.A., both from the BPER Banca Group.

The ICA accepts commitments proposed by Mastercard Europe SA in relation to its double-tap system mandate for contactless payments

On 11 October 2022, the ICA [accepted](#) the integrated set of commitments submitted by Mastercard Europe SA on 30 August 2022. The ICA considered that the commitments removed the concerns raised by the ICA in relation to the company's new mandate on double-tap system for contactless payments with co-badged payment cards.

The ICA therefore concluded the proceedings initiated against Mastercard on 7 June 2022 for a possible abuse of dominant position without reaching a conclusion regarding an infringement of competition law.

Poland

The Polish Competition Authority files charges against four banks for the unlawful refusal to refund unauthorised payment transactions

On 21 November 2022, the Polish Competition Authority ("OCCP") [announced](#) that it brought charges against four banks for failing to reimburse customers for unauthorised payment transactions within the statutory deadline. These include Bank Pocztowy S.A., ING Bank Śląski, Nest Bank and Santander Consumer Bank. This is in addition to the charges brought against five other financial institutions for similar conduct.

According to the OCCP, the contested practices include refusal to reimburse money that disappeared from consumers' accounts without their consent within the statutory deadline. The OCCP also alleged that the banks replied to consumers' complaints related to these practices in a misleading manner and the terms and conditions applied to consumer contracts were misleading.

The Polish Competition Authority files charges against Santander Bank Polska

On 5 October 2022, the OCCP announced that it had brought charges against Santander Bank Polska S.A. ("**Santander Bank**") for failure to reimburse the fees collected from consumers in case of full early repayment of a mortgage loan. The OCCP found that Santander Bank received numerous complaints from consumers who repaid the mortgage loans early. Borrowers requested a pro rata reimbursement of costs charged in connection with granting of the loan, including commissions. In May 2022, the OCCP initiated 17 explanatory proceedings against banks based on consumer signals concerning similar problems.

Spain

The Spanish National Competition Authority ("CNMC") endorses the creation of the Independent Administrative Authority for the Defence of the Financial Customer ("ADFC")

On 4 November 2022, the CNMC [published](#) its report on the draft bill for the creation of the ADFC. At present, the resolution of financial disputes is divided between three state national bodies – the Bank of Spain, the National Securities Market Commission and the Directorate General for Insurance and Pension Funds. However, the draft bill envisages the creation of a centralised system for the resolution of disputes between financial institutions and their customers. For complaints below €20,000, the ADFC will have full autonomy and independence, and its resolutions will be binding. The CNMC has recommended that the draft bill includes the obligation for the new authority to inform the CNMC about any conduct capable of constituting an administrative infringement from a competition law perspective.

CNMC gains responsibility for monitoring compliance of credit institutions with new levy

The CNMC will [take on the responsibility](#) of monitoring the compliance of credit institutions with a new levy. The CNMC will ensure that credit institutions comply with their obligation not to pass-on the levy to customers. This follows the approval of the new law by the Spanish Senate's Plenary in a session held on 21 December 2022.

CNMC approves acquisitions of Sa Nostra Compañía de Seguros de Vida S.A. and EVO Payments Inc

On 19 October 2022, the CNMC [authorised](#) the acquisition of sole control of the insurance company Sa Nostra Compañía de Seguros de Vida by the universal bank CaixaBank. It also [authorised](#) the acquisition by Global Payments Inc. of EVO Payments Inc., valued at approximately \$4 billion.

NORTH AMERICA

US

US DOJ investigating Visa regarding its practices in the debit card market

In an [SEC filing](#), Visa disclosed that it is being investigated by the US Department of Justice's Antitrust Division ("**DOJ**") for its practices in the debit card market. The filing states that the investigation began in 2021 and that DOJ issued a further Civil Investigative Demand to Visa on 4 January 2023, seeking documents and information "focusing on U.S. debit and competition with other payment methods and networks."

US FTC targets competition in debit card payment networks

On 23 December 2022, the US Federal Trade Commission ("**FTC**") announced that it had reached a [consent order](#) with Mastercard intended to permit merchants to route debit card payments through the payment networks of Mastercard's competitors. The proposed order requires Mastercard to begin providing its competitors with customer account information necessary for those competitors to process debit payments. The FTC alleged that Mastercard's use of tokenisation technology in debit transactions had blocked the use of competing payment card networks and claimed that this violated provisions of the 2010 Dodd-Frank Act known as the Durbin Amendment. It considered that the proposed order would prevent the company from "taking any action to prevent competitors from providing their own payment token service or offer tokens on Mastercard-branded debit cards." The agency will decide whether to make the proposed order final after a period of public comment.

Foreign exchange price-fixing trial ends with jury verdict in defendant's favour

On 20 October 2022, in a private lawsuit alleging illegal collusion in the foreign currency exchange market, a jury returned a [verdict](#) in favour of Credit Suisse. The jury found that the plaintiffs had not met their burden to prove that Credit Suisse had knowingly participated in a conspiracy to manipulate prices in the foreign currency exchange market. The trial took place after 15 of the defendant banks reached settlements for a combined \$2.3 billion. The focus of the trial, which took place in the US District Court for the Southern District of New York, was a series of chat messages among foreign-exchange traders at competing banks from 2007 to 2013 discussing the "spreads" of various currency pairs being traded. A motion by the plaintiffs for a new trial is currently pending.

Dismissal of Yen LIBOR benchmark lawsuit upheld on appeal

On 18 October 2022, a US federal appellate court [refused](#) to revive a private lawsuit alleging a conspiracy among banks and brokers to manipulate benchmark rates. The lawsuit, brought by an individual who had traded Euroyen Tokyo Interbank Offered Rate ("**Euroyen TIBOR**") futures contracts, alleged that the defendants had conspired to give false Yen London Interbank Offered Rate ("**Yen-LIBOR**") submissions to the British Bankers' Association ("**BBA**"), thereby affecting the price of his Euroyen TIBOR futures. The US Court of Appeals for the Second Circuit affirmed the dismissal of the plaintiff's claims by the US District Court for the Southern District of New York, holding that the plaintiff had failed to allege the antitrust standing necessary to bring a private action under antitrust laws. In its opinion, the court stated that the plaintiff had not shown that he would be an "efficient enforcer of the antitrust laws," pointing to the lack of allegations that the plaintiff transacted directly with any defendant and the existence of more direct victims of the alleged conspiracy.

Canada

Competition Bureau to review proposed sale of HSBC Bank Canada to Royal Bank of Canada

On 29 November 2022, HSBC and the Royal Bank of Canada ("RBC") [announced](#) an agreement for the sale of HSBC Bank Canada ("HSBC Canada") to RBC, signaling HSBC's exit of its banking operations in Canada. The transaction is worth CAD 13.5 billion and is expected to complete in late 2023 (subject to regulatory approvals). On the same date the agreement was announced, the Department of Finance Canada released a [statement](#) that, among other things, the Canadian Competition Bureau would review the transaction under the Competition Act.

ASIA PACIFIC

Australia

ANZ proposed acquisition of Suncorp Bank on merger authorisation register

On 2 December 2022, the Australian Competition and Consumer Commission ("ACCC") received an [application](#) from Australia and New Zealand Banking Group Limited ("ANZ") for merger authorisation in relation to its proposal to acquire Suncorp Bank. In its application, ANZ submits that the proposed acquisition would not substantially lessen competition in any of the following relevant national markets: supply of home loans, supply of deposit products, supply of credit cards and the supply of commercial banking products (including to agribusiness customers).

The ACCC issued its market inquiries letter on 12 December 2022 and sought public feedback on this transaction by 18 January 2023, with the proposed date for the ACCC's decision being 12 June 2023. Notably, ANZ provided an undertaking which was accepted by the ACCC on 9 December 2022 not to implement the transaction while the ACCC is considering its application.

The proposed transaction is also conditional on approval by the Australian Federal Treasurer Jim Chalmers under the *Financial Sector (Shareholdings) Act 1998* (Cth), and requires amendments to be made to the *State Financial Institutions and Metway Merger Act 1996* (Qld) by the Queensland government.

Linfox Armaguard Pty Ltd and Prosegur Australia Holding Pty Ltd on merger authorisation register

On 27 September 2022, the ACCC received an application for merger authorisation from Linfox Armaguard Pty Ltd ("Armaguard") in relation to its proposal to acquire certain assets of Prosegur Australia Holdings Limited ("Prosegur"). Armaguard and Prosegur are seeking authorisation to combine their cash distribution and management (cash-in-transit or "CIT" services), device monitoring and maintenance and ATM businesses in Australia.

The proposed transaction would combine the two largest suppliers of CIT services in Australia. The parties submitted that the proposed transaction would create a financially sustainable business with an efficient cost base which is able to invest in innovative, safe and efficient infrastructure and technology to support the availability of, and continued access to, cash in Australia on safe and secure terms. The parties noted the decline in cash usage and submitted that they have separately implemented extensive efficiency and improvement programs to reduce costs, including outsourcing services where it is cost effective to do so. However, because of the high fixed costs of providing CIT services and declining demand, the unit cost of supply of CIT services has increased significantly and the parties submitted that neither is able to operate a financially viable business providing cash-related services.

On 21 December 2022, the ACCC released a statement of preliminary views, indicating that *"while the ACCC considers there is a clear reduction in competition if Armaguard and Prosegur merge, the critical question is whether a reduction in competition would also soon occur without the transaction"*. The ACCC's determination date is 31 March 2023.

Digital Platform Services Inquiry fifth interim report – ACCC recommends new competition and consumer laws to regulate digital platforms

On 11 November 2022, the ACCC released its fifth interim report ("**Report**") as part of the five-year Digital Platform Services Inquiry. The ACCC has been considering the competition and consumer impacts of digital platforms since 2017 across 3 separate inquiries (Digital Platforms Inquiry, Digital Advertising Services Inquiry and the Digital Platform Services Inquiry). The two main recommendations made by the ACCC in this Report with respect to financial services in Australia include:

- **Near-field communication ("NFC")** – The ACCC recommended the introduction of mandatory service-specific codes of conduct for designated digital platforms to address competition harms, anti-competitive conduct, barriers to entry and unfair treatment of business users. Specifically, the ACCC has proposed the targeted obligation to improve hardware, software and systems interoperability, including allowing third parties to access NFC components.
- **Verification of advertisers of financial services and products** – The ACCC recommended that where platforms allow advertising of financial products and services (including crypto assets), they should take additional steps to verify the legitimacy of the advertiser and the product or service, which would, at a minimum, require platforms to check that a prospective advertiser of financial products and services holds an appropriate licence from the Australian Securities and Investments Commission.

Australian federal government to give Reserve Bank of Australia broader powers to regulate digital payment services

In mid-December 2022, the Australian Federal Government indicated its intention to introduce reforms in 2023 to give the Reserve Bank of Australia ("**RBA**") broader powers to regulate tech platforms offering digital payment services, also known as digital wallets, including those offered by Apple Pay, Google Pay and Samsung Pay.

Although a draft bill has not yet been tabled in Parliament, RBA governor Mr Lowe has indicated these new powers would allow the RBA to examine the rules Apple has created around access to the iPhone's NFC antenna. Currently, the iPhone's NFC antenna can only be used by Apple's digital wallet at a fee, with the concern from regulators and market participants being that this restriction stifles competition, resulting in higher fees.

ACCC commences proceedings against Mastercard for alleged misuse of market power over debit card acceptance services

On 30 May 2022, the ACCC commenced proceedings in the Federal Court of Australia against Mastercard Asia/Pacific Pte Ltd and Mastercard Asia/Pacific (Australia) Pty Ltd (together "**Mastercard**"), alleging Mastercard misused its market power and engaged in exclusive dealing.

The ACCC alleged that between approximately November 2017 and November 2020, Mastercard gave more than 20 major retail businesses discounted rates for Mastercard credit card transactions, provided they committed to processing all or most of their Mastercard-efpos debit card transactions through Mastercard rather than the efpos network. On 28 November 2022, the Court listed the matter for hearing on liability on 8 July 2024.

China

China publishes Draft Financial Stability Law setting out increased cooperation between antitrust authorities and financial regulators

On 30 December 2022, the National People's Congress of China released for public consultation the [Draft Financial Stability Law](#) (the "**Draft Law**") which aims to establish comprehensive mechanisms to prevent, dissolve, and dispose of financial risks. Article 18 of the Draft Law specifically requires Chinese financial regulators to cooperate with Chinese antitrust authorities to enhance antitrust enforcement in the financial sector for the purpose of "promoting fair competition in the financial sector and protecting legitimate interests of customers". The consultation period for the Draft Law ended on 28 January 2023.

China commits to strengthening antitrust enforcement in the financial sector

On 14 December 2022, the chairman of the China Banking and Insurance Regulatory Commission released an [official statement](#) setting out key policy initiatives to enhance financial regulation in China. The statement encapsulates key challenges to the Chinese financial system, including, in particular, increasing risks associated with data security, competition, and stability of financial infrastructure incurred by expansion of digital platforms in the financial sector. The statement advocates prudential supervision on financial innovation and enhanced antitrust enforcement.

South Korea

Insurers face criminal prosecution for bid-rigging

On 22 December 2022, the Seoul Central District Prosecutors' Office indicted Samsung F&M Insurance, Hanwha General Insurance, and Meritz F&M Insurance and five executives of these insurers for bid-rigging in violation of South Korea's competition law. Public Company Insurance Consulting, an insurance agency, and its CEO, were also indicted for participating in the collusion. According to the prosecutors, in an annual tender requested by the state-run Korea Land & Housing Corporation to procure property insurance services in 2017, Samsung F&M Insurance acted as a "ghost bidder" and Hanwha General Insurance deliberately refused to participate in the bid pursuant to their agreement in allowing another unnamed bidder to win. It is also alleged that Samsung F&M Insurance, Hanwha General Insurance, and Meritz F&M Insurance intentionally refused to participate in another annual bid in 2018 to secure a win for the same unnamed bidder on the condition of secret sharing of insurance premiums, with Public Company Insurance Consulting acting on the winner's behalf.

KFTC prosecutes a financial company for illegally exercising voting rights in affiliated entities

On 15 December 2022, the Korea Fair Trade Commission ("**KFTC**") issued a decision to prosecute K-Cube Holdings, a financial and insurance arm of South Korea's tech giant Kakao over allegations of illegal exercise of voting rights in Kakao and Kakao Games at meetings in 2020 and 2021. Under the principle of

"separation of industrial and financial capital" of South Korea's competition law, a financial or insurance company belonging to an enterprise group subject to mutual investment regulations is prohibited from exercising its voting rights on shares of domestic affiliates acquired or owned by it. Kakao has been designated in 2019 as a business group subject to limitations on mutual investment. The KFTC considered K-Cube Holdings as a financial company subject to the voting rights restriction but not a general holding company defined by South Korea's competition law. The KFTC decided to refer the case to prosecutors for criminal investigation as a serious violation. An order prohibiting the exercise of voting rights was also imposed by the KFTC. K-Cube Holdings disputed the KFTC's view that it shall be deemed a financial company, stating that it is only a consumer of financial products that manages its assets in the same way that other companies do.

Japan

On 30 November, Visa, Mastercard and Union Pay [published](#) their interchange fee rates in Japan. This follows reports by the Japan Fair Trade Commission and the Ministry of Economy, Trade and Industry in the previous year stating that the three international brands should publish their interchange fees in Japan. This was intended to ensure fair competitive conditions between international brands in the credit card issuance market and increase the transparency of the credit card market as a whole.

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