

## FINANCIAL SERVICES ANTITRUST BULLETIN

### Key Themes

At the start of 2023, financial regulators and competition authorities grappled with challenges in the financial services sector caused by the rise in interest rates and concerns regarding banks such as Credit Suisse and Silicon Valley Bank. While these developments made the headlines, competition authorities continued to look at other areas of the financial services sector, such as payments, cash services, insurance and FinTech. The US Department of Justice Antitrust Division chief, Jonathan Kanter, highlighted financial services as a "massively important" sector where "concentration has grown". These comments were echoed by Gina Cass-Gottlieb, the chair of the Australian Competition and Consumer Commission ("ACCC"), who described financial services markets as "critically important".

This edition of the Clifford Chance Financial Services Antitrust Bulletin charts the following key themes derived from developments in early 2023 over the last quarter in Europe, North America, and the Asia Pacific region:

- **Banking mergers under the spotlight** – While many competition authorities have considered the acquisition of Credit Suisse by UBS, other major bank mergers continued to attract scrutiny from competition authorities. For example, in Australia, ANZ's acquisition of Suncorp is being reviewed.
- **Responses to rising interest rates considered** – In Europe, the UK Financial Conduct Authority has been monitoring and requesting information from banks regarding the extent to which they pass on rises in interest rates to savers and it has been reported that the Spanish competition authority has also considered this. In the Asia Pacific region, the ACCC will conduct an inquiry into the market for retail deposit products, whereas in Korea the competition authority has reportedly conducted on-site inspections of major banks following concerns on collusion on fees and interest rates.
- **The role of tech in financial services analysed** – Competition authorities continued to look at the role of technology within the financial ecosystem. The US Treasury Department warned that increased concentration in the market for cloud computing could harm the resilience of the financial sector, and the Japan Fair Trade Commission published a report on its FinTech survey.

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 in early 2023. If you would like to know more about the subjects covered, please refer to the list of contacts on page 13.

## **EUROPE**

### **UK**

#### **The CMA provisionally finds that 5 banks shared competitively sensitive information regarding UK government bonds**

On 24 May 2023, the Competition and Markets Authority ("CMA") provisionally [found](#) that traders from Citi, Deutsche Bank, HSBC, Morgan Stanley and the Royal Bank of Canada shared competitively sensitive information in one-to-one conversations in Bloomberg chatrooms. The CMA stated that this included details on pricing and other aspects on trading strategies. The CMA alleged that this concerned UK government bonds and occurred between 2009 and 2013.

#### **The CMA blocks Microsoft's acquisition of Activision Blizzard King with widespread ramifications for M&A deals across sectors**

On 26 April 2023, the CMA issued its final decision to [prohibit](#) the acquisition of Activision Blizzard King by Microsoft. The CMA rejected Microsoft's proposed behavioural remedy to address concerns regarding the cloud gaming market. In contrast, on 15 May 2023, the European Commission [cleared](#) the acquisition, subject to Microsoft's proposed remedies. This may have wider implications regarding divergence between competition authorities, reluctance to accept behavioural remedies and heightened concerns in dynamic markets.

#### **The UK government lays before Parliament the Digital Markets, Competition and Consumers Bill**

On 25 April 2023, the UK government published the [Digital Markets, Competition and Consumers Bill](#) and connected documents. If passed, the legislation will have a significant effect on mergers, market studies, market investigations, and cartel investigations. It will also grant new powers to the CMA's Digital Markets Unit to impose conduct requirements and pro-competition interventions for firms designated as having 'Strategic Market Status' ("**SMS**") in respect of specific digital activities. Under the proposed legislation, the CMA is required to consult the Financial Conduct Authority ("**FCA**") on proposals to exercise a regulatory digital markets function in an area the FCA would also have competition powers. The FCA is also able to make a recommendation to the CMA where they consider that the CMA should exercise a regulatory digital markets function, such as the opening of an SMS investigation, SMS designation, the imposition of a conduct requirement, and the making of a pro-competition intervention.

#### **FCA CEO writes to Treasury Select Committee on competition in the retail banking market and interest rates**

On 12 April 2023, Nikhil Rathi, Chief Executive of the FCA, [wrote](#) to Harriett Baldwin MP, Chair of the Treasury Select Committee, on competition in the retail banking market. He stated that the FCA has been monitoring the speed and extent of firms' pass-through to their savings products following increases in the base interest rate. It has challenged and sought further information from some outlier firms in this regard. The FCA is open to revisiting proposals on a Single Easy Access Rate policy or considering other more onerous interventions if it concludes that potential 'loyalty penalty' harms have not been adequately mitigated. The FCA sees the new Consumer Duty, which comes into effect on 31 July 2023, as a key tool to address these issues due its fair value requirement.

#### **CMA writes to Auden Group Ltd and Shelby Finance Ltd regarding breaches of the Payday Lending Order**

On 31 March 2023, the CMA sent [Auden Group Ltd](#) and [Shelby Finance Ltd](#) letters regarding alleged breaches of Part 4 of the [Payday Lending Market Investigation Order 2015](#). The breaches concern alleged failure to send out summaries of borrowing statements or notifications that these summaries were available. While the CMA stated that it will not take further enforcement action at this time, it will record the breaches on its public register and closely monitor future compliance.

### **CAT orders CICC I to disclose the names of claimant merchants in their case against Visa and Mastercard**

On 3 March 2023, the Competition Appeal Tribunal ("CAT") [ordered](#) Commercial and Interregional Card Claims I Limited ("CICC I") to disclose the identities of the claimant merchants it was bringing its claims on behalf of. The identities had been withheld from a previously submitted Table, with potential defendants Visa and Mastercard concerned that some of these claimants may already have agreed a settlement with them. The claim relates to the Multilateral Interchange Fee applicable to inter-regional transactions concluded at merchants located in the European Economic Area ("EEA") with consumer debit, credit and prepaid cards issued by an issuer located outside the EEA. It also concerns the Multilateral Interchange Fees applicable to commercial card transactions in the UK and EEA. There are both parallel "opt-out" and "opt-in" proceedings.

### **FCA publishes its Findings Report in relation to the Wholesale Trade Data Review**

On 1 March 2023, the FCA published the [Findings Report](#) in its Trade Data Review. The FCA concluded that:

- trade data is a 'must-have' for many users of trade data such as brokers and investment banks;
- these users of trade data often purchase all available data in order to ensure they can remain competitive;
- the larger trading sources are the main source of data and have a high level of market coverage which smaller venues cannot provide;
- it is difficult for users to compare prices and monitor overall expenditure due to complicated licensing design and contract terms; and
- freely distributed delayed data is not always made available in such a way that users can access it directly easily.

The FCA recommended working with government to develop consolidated tapes which would collect data across the market and disseminate them in a single feed and the launch of the Wholesale Data Market Study.

### **FCA launches the Wholesale Data Market Study**

On 2 March 2023, the FCA [launched](#) its Wholesale Data Market Study. The study will look into whether the markets for benchmarks, credit ratings data, and market data vendor services are working well. The market study will explore six key themes: (i) barriers to entry; (ii) network effects, as market data vendors may be operating in two-sided markets; (iii) vertical integration, such as data generators being data vendors; (iv) suppliers' commercial practices, such as complex and opaque licence conditions; (v) the behaviour of data users, such as their ability to switch providers; and (vi) incentives for innovation, including the role of intellectual property rights. The FCA has explained that if it finds evidence of competition concerns in one or more of these markets, it will consider the most appropriate way to address these concerns, including rule changes, as part of the upcoming adoption of retained EU law and wider influencing of international standards.

### **CMA publishes draft guidance on environmental sustainability agreements**

On 28 February 2023, the CMA launched a [consultation](#) on draft guidance on environmental sustainability agreements. The purpose of the draft guidance is to provide guidance on the application of the competition rules to agreements between competitors or potential competitors in relation to environmental sustainability. The draft guidance refers to "an agreement not to provide support such as financing or insurance to fossil fuel producers" as an example of "climate change agreements" – a subset of environmental sustainability agreements for which the CMA considers a more permissive approach to assessing consumer benefits should be taken.

### **PSR publishes papers as part of its card scheme and processing fees market review**

On 23 February 2023, the Payment Systems Regulator ("PSR") published two papers as part of its [card scheme and processing fees market review](#). The first paper is a [call for evidence](#) on initial stakeholder feedback the PSR has received on the competitive constraints that Mastercard and Visa face when setting such fees. The second document is a [working paper](#) which sets out the PSR's proposed approach to analysing the profitability of UK scheme and processing services, and sets out initial analysis of Mastercard and Visa's UK businesses.

### **Strategic Working Group publishes final report on Open Banking**

On 15 February 2023, the Strategic Working Group ("SWG") published its [final report](#) on the future development of Open Banking in the UK ("**Final Report**"). The SWG was convened by the FCA and PSR, as co-chairs of the Joint Regulatory Oversight Committee ("**Joint Committee**"), to help shape the future of Open Banking.

The objectives of the SWG are to: (i) collate views from stakeholders for the preparation of a strategic roadmap for the development of Open Banking; (ii) provide the Joint Committee with stakeholders' views on a future Open Banking entity ("**Future Entity**"); and (iii) advise the Joint Committee on what activities the Future Entity should undertake.

### **CMA receives complaint on Wise's price comparison webpages**

On 27 January 2023, the 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 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.

## HM Treasury begins review of Payment Services Regulations

On 13 January 2023, HM Treasury ("HMT") commenced a [review and call for evidence](#) on the Payment Services Regulations 2017. In its review, HMT considered that:

- payment services regulators have fostered a strong, innovative and competitive UK payment sector that is globally recognised;
- the regulators have not gone far enough in isolation, for example in the UK's work to foster competition via Open Banking; and
- there are several key areas where the current regulatory framework for payments is not working as well as it could.

As part of its call for evidence, HMT have asked for stakeholder comments on whether the regulatory framework for payment services initiation providers and account information service providers sufficiently supports growth in the sector and competition.

## European Commission

### European Commission approves the UBS / Credit Suisse merger, following the grant of a derogation from the standstill obligation

On 25 May 2023, the European Commission [announced](#) that it had unconditionally approved the merger between Credit Suisse and UBS under EU merger rules, after concluding that the transaction would not raise competition concerns in the EEA. In particular, it found that the merged entity will continue facing significant competitive pressure from a wide range of competitors in the EEA markets where the activities of Credit Suisse and UBS overlap, including several major global banks, specialist providers and local players.

The transaction was [notified](#) to the Commission on 26 April 2023. The notification followed the Commission's decision of 4 April 2023, where it [granted](#) a derogation from the suspension obligation under EU merger rules to UBS with regards to the proposed acquisition.

Under the EU Merger Regulation, an EU notifiable merger cannot be implemented until it has been cleared by the Commission. That said, the Commission may grant a derogation to such rule, if certain requirements are met. In practice, however, this happens only in exceptional circumstances; since 1990, approximately 2.5% of all transactions have benefited from the derogation. These circumstances have included where there is evidence that suspension of a transaction could cause financial distress to the target, and the Commission opted to grant several derogations as part of its response to the 2008 financial crisis.

More details on the Commission's decisions will be covered in the next edition, following their publication.

### European Commission adopts proposal to reform the EU's bank crisis management and deposit insurance framework

On 18 April 2023, the European Commission [announced](#) that it had adopted a proposal to amend the EU's existing bank crisis management and deposit insurance ("CMDI") framework, with a focus on medium-sized and smaller banks. The proposal would introduce reforms to the Bank Recovery and Resolution Directive ("BRRD"), the Single Resolution Mechanism Regulation ("SRMR"), and the Deposit Guarantee Schemes Directive ("DGSD"), which were the subject of public and targeted stakeholder consultation in 2021. The proposal aims to: (i) preserve financial stability and protect taxpayers' money through the use of deposit guarantee schemes, resolution funds and other industry-funded safety nets; (ii)

shield the real economy from the impact of bank failure by enabling authorities to employ the resolution mechanism; and (iii) ensure better protection for depositors, including by extending deposit protection to client funds (e.g. by investment companies). The legislative reform package will now be discussed by the European Parliament and the Council.

The European Commission also stated its intention to re-assess the European Deposit Insurance Scheme ("EDIS") after the CDMI reform, which was previously adopted by the Commission in November 2015 but has since remained under negotiation among European institutions. The EDIS aims to complement the CDMI framework and increase the resilience of the European banking market against bank insolvencies through gradual EU-wide pooling of national guarantee schemes.

### **CJEU rules that Spanish consumers' cartel suit against Deutsche Bank was not time-barred**

On 6 March 2023, the Court of Justice of the European Union ("CJEU") ruled in favour of two Spanish consumers in a dispute with Deutsche Bank over whether they were in time to bring a damages claim in 2020 stemming from the Euribor cartel.

In its [Order](#), the CJEU recited recent case law whereby the clock to bring a claim starts ticking from the moment the European Commission's summary decision is published in the Official Journal. "Such an approach is not affected by the fact that QJ and IP are consumers" said the CJEU.

### **European Commission approves €1.6 billion measure by Romania to set up new investment and development bank**

On 31 January 2023, the European Commission [approved](#) a €1.6 billion measure to set up the Romanian Investment and Development Bank (the "**Bank**"). The Commission assessed the measure under EU State aid rules. It took the view that the aid was compatible with Article 107(3)(c) TFEU as the Bank's establishment contributes to the development of certain economic activities, without adversely affect trading conditions.

The Bank will, amongst other things, facilitate access to finance (particularly for SMEs), ensure access to funding for economically viable infrastructure projects and act to catalyse private investment, and support the process of access to, and use of, Union funding. It will be established as a fully state-owned entity, with the Ministry of Finance as its shareholder, and will act under the supervision of the National Bank of Romania.

The Commission's decision will be covered in the next edition.

### **Visa discloses European Commission preliminary investigation into incentive agreements**

On 27 January 2023, Visa noted in its Form 10-Q, [filed](#) with the US Securities and Exchange Commission, that the European Commission opened a preliminary investigation into Visa's incentive agreements with clients. No further information on the nature of the probe is publicly available yet. Visa has previously been the subject of EU scrutiny over interchange fees.

## **Germany**

### **Bundeskartellamt initiates proceedings against PayPal**

On 23 January 2023, the Bundeskartellamt [initiated proceedings](#) against PayPal (Europe) for applying clauses that could restrict competition and violate the

prohibition of abuse of a dominant position. According to the Bundeskartellamt, PayPal is the leading online payment scheme in Germany and its online payment services are comparatively expensive. The proceedings focus on certain rules and clauses in PayPal's terms and conditions under which merchants are not allowed to offer their goods and services at lower prices if customers choose a payment method cheaper than PayPal's. Further, the Bundeskartellamt considers that sellers are prevented from expressing a preference for payment methods other than PayPal: *"If merchants are prevented from taking into account the differences in costs of various payment methods by imposing surcharges or granting discounts, it is more difficult for other and new payment schemes to compete successfully in terms of price and quality or to enter the market in the first place"* (Andreas Mundt, President of the Bundeskartellamt).

## Italy

### **Italian telematic insurance and automotive services sectors acquisition cleared**

On 21 March 2023, the Italian Competition Authority ("ICA") cleared the [acquisition](#) of sole control by Targa Telematics S.p.A. over Viasat Group S.p.A., the Italian holding company of the Viasat Group, which is active in the development and provision of telematics services and systems for the insurance and automotive sectors in Europe, Latin America and China.

## Poland

### **The Polish Competition Authority imposes a fine on Raiffeisen Bank for unlawfully unilaterally amending mortgage loan agreements with consumers**

On 22 March 2023, the Polish Office of Competition and Consumer Protection ("OCCP") [announced](#) that it has imposed a fine of over PLN 3.1 million on Raiffeisen Bank. In November 2018, Raiffeisen Bank Polska ("RBP") was demerged. The so-called core business, comprised of savings and current accounts, was taken over by Bank BGŻ BNP Paribas (currently BNP Paribas Bank Polska). The mortgage business stayed with the Raiffeisen Bank International ("RBI") branch in Poland.

RBI sent letters to borrowers saying that after the demerger, two new accounts opened with RBI would be appropriate to service the loans: one in the currency of the loan to repay the instalments (with the customer having to convert them at the current exchange rate by themselves), and the other in the Polish currency to pay insurance premiums and other fees. This created confusion among consumers and resulted in delays in the repayment of instalments and, in some cases, the opening of debt collection proceedings against borrowers. By making unilateral changes to the mortgage loan agreements (without the consent of consumers given in writing) the OCCP found that RBI violated collective consumer interests.

### **The Polish Competition Authority imposes a fine on Deutsche Bank Polska for unilaterally amending abusive clauses in loan agreements with consumers**

On 20 March 2023, the OCCP [announced](#) that it had imposed a fine of over PLN 5.7 million and an obligation to reimburse consumers for the fees charged for issuing loan repayment record certificates on Deutsche Bank.

In August 2020, the OCCP determined that the amended clauses were abusive. As a consequence, they were not binding on consumers, and charging the fees as

well as unilateral amendments to abusive clauses were prohibited. Despite this, the Bank unilaterally amended them.

According to the OCCP, the Bank misled consumers by disseminating false information regarding the amendments, as consumers may not have been aware that the prohibited clauses and the amendments were not binding on them.

## Spain

### **CNMC authorises the acquisition of sole control by SAREB of FAB**

On 21 February 2023, the Spanish public limited company Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria ("**SAREB**"), which is dedicated to the assistance of the restructuring of the Spanish financial sector, acquired exclusive control over Fondo de Activos Bancarios ("**FAB**"), the Spanish banking asset fund created by SAREB in 2019. The Spanish National Commission on Markets and Competition ("**CNMC**") [authorised the transaction at Phase I](#) on the basis that it merely entails a change in the nature of SAREB's control over FAB - from joint to sole control - returning to the situation prior to Vårde's acquisition of joint control in FAB in 2020.

### **Adicae asks the CNMC to intervene in alleged "oligopolistic behaviour of the banks" in mortgages**

On 6 February 2023, the Association for the Defence of Consumers and Users of Banks, Savings Banks and Insurance Companies ("**Adicae**") [requested](#) that the CNMC immediately intervene regarding the alleged "*oligopolistic behaviour of the banks imposing differentials on variable interest mortgages and setting an abusive price on fixed interest mortgages*". Separately, there have been [reports](#) that the CNMC is monitoring the profitability of Spanish banks compared with their competitors as interest rates for deposits have risen more slowly in Spain than in other Eurozone economies.

## The Netherlands

### **Credit card companies collectively take action against hidden subscriptions**

The Dutch Authority for Consumers and Markets ("**ACM**") worked with the European Commission to encourage credit card companies to [undertake measures to protect consumers from hidden subscriptions](#). According to the ACM, online businesses are using manipulative techniques that result in customers agreeing to unwanted subscriptions whilst they believe them to be a one-time offer. In particular, the ACM considers that information about recurring payments is often omitted or buried in the small print. Some payment network processors will require their merchants to clearly display applicable subscription fees in the payment window where credit card information is submitted by consumers, and require merchants to send reminders before the first subscription payment is deducted.

## NORTH AMERICA

### US

### **US Federal Reserve Board of Governors approves UBS Group AG's acquisition of the US subsidiaries of Credit Suisse Group AG**

On 14 April 2023, the US Federal Reserve Board of Governors ("**Fed**") approved UBS Group AG's acquisition of the US subsidiaries of Credit Suisse Group AG. Approval from the Fed was required under Section 163(b) of the Dodd-Frank Act,

which requires a bank holding company with total consolidated assets exceeding a statutory threshold to obtain review for a banking acquisition of a target with assets exceeding a separate threshold. The Fed stated that UBS had committed to giving the central bank a plan for combining its US operations with Credit Suisse's US operations, ultimately leading to only one US intermediate holding company.

### **US [FTC challenges proposed merger](#) of companies in mortgage finance space**

On 9 March 2023, the US Federal Trade Commission ("FTC") [issued an administrative complaint](#) to block the attempted merger of Intercontinental Exchange, Inc. ("ICE") and Black Knight, Inc. ("**Black Knight**"), two companies that provide technology for use in mortgage markets. The complaint alleges harm to four distinct product markets related to mortgage loan origination. The FTC describes ICE as "the nation's largest provider of home mortgage loan origination systems and other key lender software tools" and Black Knight as ICE's "top competitor"; the FTC says that the deal will "reduce lenders' choices for tools necessary to generate and service mortgages" and "allow ICE to raise costs to lenders, which would then be passed to homebuyers." The parties had agreed to divest certain assets to a third party prior to the FTC's complaint. The FTC stated in its complaint that this divestiture would "not fix the acquisition's anticompetitive effects" and that the parties "cannot meet their burden of showing that the proposed remedy will restore competition."

### **US judge rules that private lawsuit to break up Charles Schwab and TD Ameritrade can go forward**

On 24 February 2023, plaintiffs challenging the merger of Charles Schwab and TD Ameritrade won a victory, when the federal judge overseeing the case [denied the defendants' motion](#) to dismiss the complaint. The merger was completed in 2020 and closed without being challenged by US authorities. The plaintiffs are seeking to represent a class of retail investors and obtain both damages and equitable relief, including a complete divestiture of TD Ameritrade from the merged entity. The plaintiffs have alleged that the merger, by combining the two companies' retail brokerage operations, has harmed and will harm competition in the market for "retail order flow," leading to "less money from trades through rebates or price improvements," "increased transaction costs, including through being traded against by market makers using retail customers' own data," and reduced transparency, control, and choice over the handling of plaintiffs' trades. In denying the defendants' motion, the judge found that the complaint had plausibly alleged that "the Retail Order Flow Market is a distinct submarket of the larger market for brokerage services," such as brokerage services that charge a commission.

### **New hire by US Department of Justice signals increased scrutiny of bank merger enforcement in 2023**

In January 2023, it was reported that the Antitrust Division of the US Department of Justice ("**Antitrust Division**" or "**DOJ**") had [hired Jeremy Kress](#), a vocal critic of consolidation in the financial sector, as counsel. Kress is the author of a 2022 law review article entitled "[Reviving Bank Antitrust](#)" that argues that "policymakers have neglected bank antitrust law for the past forty years and thereby encouraged excessive consolidation in the banking sector and the broader economy." Kress's paper calls for several measures for regulators to take in evaluating bank mergers, including reducing merger review thresholds and considering the effects of common ownership of banks by institutional investors. The paper advises regulators to consider both price and non-price harms to competition, with harms outside of the "consumer welfare" paradigm including "market distortions created by the 'too-big-to-fail' subsidy" (such as the ability to borrow at lower rates than

smaller entrants), "impairments in product quality likely to stem from a bank merger" (including impairments to branch access, customer service, and consumer privacy), and "macroeconomic resilience." Antitrust Division chief Jonathan Kanter cited Kress's paper in a [January 2023 speech](#), stating that "[u]nderenforcement of antitrust laws has led to competition challenges across our economy" and naming financial services as a "massively important" sector where "concentration has grown." Kress [joins](#) the Antitrust Division in the final months before the anticipated release of a new set of Bank Merger Guidelines, which are expected to be released in early 2023 around the same time that the DOJ and FTC jointly release new Horizontal Merger Guidelines.

### **US agencies look at relationship between financial sector and cloud computing competition**

On 8 February 2023, the United States Department of the Treasury ( "**Treasury**" ) issued a [new report](#) which warns that increased concentration in the market for cloud computing could harm the resilience of the financial sector. The report describes the Infrastructure as a Service ("**IaaS**") market as being particularly concentrated, stating that "[a]nalysts have identified three dominant CSPs, with some estimates placing the top three CSPs (Cloud Service Providers) with over 66 percent of the total worldwide market share in IaaS."

The US Federal Trade Commission ("**FTC**") cited the Treasury's report in issuing a [Request for Information](#) on 22 March 2023 on "the business practices of cloud computing providers." The FTC's announcement stated that "[o]utages from large cloud providers have the potential for widespread impact, due to the fact that many large parts of the economy are reliant on them," and pointed to the Treasury's report as "highlight[ing] concerns from financial institutions about the potential 'cascading impact across the broader financial sector' from vulnerabilities or incidents at a major cloud provider."

## **ASIA PACIFIC**

### **Australia**

#### **ACCC releases preliminary views and invites submissions on ANZ's proposed acquisition of Suncorp Bank**

On 4 April 2023, the Australian Competition and Consumer Commission ("**ACCC**") released a statement of preliminary views on ANZ Banking Group's ("**ANZ**") proposed acquisition of Suncorp Group's banking arm.

The ACCC's preliminary view is that the information currently before it is insufficient to substantiate the nature, likelihood, and extent of the claimed public benefits, including ANZ's estimates of future synergies that will be achieved and claims regarding public commitments to investment in Queensland or improvements in prudential stability arising from the proposed transaction.

The ACCC has invited submissions on the key issues. Under the current statutory timeframe, the ACCC must issue a determination in relation to the application for merger authorisation by 12 June 2023.

#### **Linfox Armaguard Pty Ltd and Prosegur Australia Holding Pty Ltd submit response to the ACCC**

On 9 March 2023, Linfox Armaguard Pty Ltd ("**Armaguard**") and Prosegur Australia Holdings Limited ("**Prosegur**") submitted a response to the Australian Competition and Consumer Commission's ("**ACCC**") statement of preliminary views on Armaguard's proposed acquisition of certain assets of Prosegur, which included a court-enforceable undertaking to the ACCC.

The proposed undertaking is behavioural in nature and would place ongoing obligations on the merged Armaguard and Prosegur entity in relation to price, service offerings, national coverage, ongoing supply of cash-in-transit ("CIT") services to independent ATM deployers and third-party access to cash centres. It also includes a complaint handling process and mechanism for independent audit and self-reporting to the ACCC and Reserve Bank of Australia regarding the merged entity's compliance with the proposed undertaking. The proposed undertaking would remain in place until it is either varied or withdrawn with the ACCC's approval. The parties submitted a revised proposed undertaking on 1 May 2023. Under the current [timeline](#), the ACCC is due to provide its determination by 14 June 2023.

### **ACCC directed to conduct retail deposits inquiry**

On 14 February 2023, the Treasurer directed the ACCC to conduct an inquiry into the market for retail deposit products supplied by authorised deposit-taking institutions. It includes how banks set interest rates, as well as other terms and conditions.

As the cash rate target set by the Reserve Bank of Australia has increased from 0.1% to 3.35%, in most cases banks have fully passed through the cash rate target increases to their home loan interest rates. However, the increases in interest rates on deposit products appear to have typically been smaller and less consistent. In many cases, banks have only applied increases in the cash rate to some of their deposit products, often with conditions attached. The [ACCC has indicated](#) that it will "examine the extent to which consumers can benefit from shopping around and switching, and what other barriers are stopping consumers from seeking a better return on their savings".

The ACCC must provide the Treasurer with a report on the inquiry by 1 December 2023.

## **India**

### **Indian court asks CCI to rule on jurisdiction in debenture trustee cartel probe**

On 21 February 2023, the Bombay High Court [directed](#) the Competition Commission of India ("CCI") to decide on its jurisdiction over an investigation into the alleged cartel conducts of debenture trustees. Under Indian law, companies raising debt are obliged to appoint a debenture trustee to protect the interests of investors, while the debenture trustees charge a fee from such companies. In December 2021, the CCI initiated the investigation, alleging that the Trustees' Association of India ("TAI") substantially increased the fees charged by debenture trustees and set a price floor for member entities. TAI and the debenture trustee arms of several banks then challenged the CCI's investigation and argued that the Securities and Exchange Board of India ("SEBI"), as the sectoral regulator, should have exclusive jurisdiction over the case. SEBI, however, submitted an affidavit to the Bombay High Court in November 2022 and recognised the CCI's jurisdiction. Although the Bombay High Court has directed the CCI to decide on its jurisdiction over the case, other contentions shall be left open until the CCI decides that it has sufficient jurisdiction.

## **South Korea**

### **KFTC raids banks for alleged collusion on fees and interest rates**

On 27 February 2023, the Korean Fair Trade Commission ("KFTC") reportedly conducted on-site inspections of certain major South Korean banks, including Shinhan Bank, KB Kookmin Bank, KEB Hana Bank, Woori Bank, Nonghyup Bank and Industrial Bank of Korea. The inspections were aimed at determining whether the banks colluded on fees and interest rates charged to customers.

## Japan

### **JFTC publishes report on their survey of FinTech-based services**

On 1 March 2023, the Japan Fair Trade Commission ("JFTC") [published](#) a report on its survey of FinTech-based services. The JFTC conducted the survey to improve the competitive environment in the field of FinTech-based services, thereby encouraging innovation and enhancing user convenience. The report focused on online household account provisioning services, and cashless payments using QR codes. Following the abolition of interbank fees by Zengin-Net (a system in Japan for online processing of domestic exchange transactions between financial institutions) in October 2021, most banks in Japan have been reducing their transfer fees. The report therefore considered that efforts to promote cashless payments have made steady progress. The report calls on banks and relevant operators to continue to review and implement measures to promote competition in the FinTech sector.

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