

## FINANCIAL SERVICES ANTITRUST BULLETIN

### Key Themes

Competition authorities continued to closely scrutinise the financial services sector at a time when legislators and financial regulators proposed major reforms designed to facilitate competition. This included looking at the responses of financial services firms to rising interest rates, threats of climate change and developments in technologies. Competition law concerns around IPOs arose again in Japan, where it was considered whether the pricing decisions of a lead underwriter could lead to an infringement under competition legislation.

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

- **Cooperation on sustainability** – Several financial institutions pulled out of alliances convened by the Global Financial Alliance for Net Zero due to allegations of antitrust infringements, leading the Net Zero Insurance Alliance to update its rules. The US House Judiciary Committee expanded its ESG inquiry relating to this activity. This contrasts with the approach of several competition authorities in the UK, EU, Japan and Australia that have sought to be more permissive regarding initiatives to support sustainability.
- **New financial regulations seeking to improve competition** – The European Commission announced a major package of reforms to the regulation of payment services and financial services data. The Australian government released draft legislation to facilitate competitive outcomes in the provision of clearing and settlement services for Australia's financial markets.
- **Continued scrutiny of "Big Tech" in financial services** – Competition authorities and regulators announced initiatives that will lead to continued scrutiny of "Big Tech" in the financial services sector in the future. The UK Financial Conduct Authority announced a Call for Input into the role of "Big Tech" in financial services. Meanwhile, the European Commission launched a tender process for a Market Study on Competition in Online Payment Services which will identify tools to prevent the market from tipping in favour of "Big Tech" and incumbents.
- **Insurers face enforcement action over alleged anticompetitive agreements** – Enforcement action has been taken in China, Japan and Korea in separate cases concerning allegations of collusion between insurers.

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 focuses on developments from the second quarter 2023 while including some more recent updates. If you would like to know more about the subjects covered, please refer to the list of contacts on page 16.

## EUROPE

### UK

#### **FCA writes to insurers calling on them to ensure that they provide fair value to customers**

On 20 September 2023, the Financial Conduct Authority ("FCA") wrote to CEOs in [retail insurance](#), [wholesale insurance](#), [life insurance](#) and [funeral plans](#) calling on them to ensure that they provide fair value to customers, emphasising responsibilities under the Consumer Duty. The FCA also identified specific concerns regarding whether Guaranteed Asset Protection products are providing fair value to customers. GAP insurance is an add-on to motor insurance. It covers the difference between a vehicle's purchase price and its current market value.

#### **FCA publishes Update Report on Wholesale Data Market Study**

On 31 August, the FCA [published](#) its Update Report for the Wholesale Data Market Study. The Update Report included emerging themes concerning benchmarks, credit ratings data and market data vendor services. The FCA will explore further: whether customers can and do switch between suppliers; the characteristics of contracts and licensing terms of suppliers; and what options are available to improve competition if it identifies harms. The FCA proposed not to refer any of the markets in scope of the study to the CMA through a market investigation reference.

#### **CMA reviewing concurrency arranging, including with FCA and PSR**

On 24 August 2023, the Competition and Markets Authority ("CMA") [announced](#) that it was reviewing the concurrency framework in which responsibility for the promotion of competition in regulated sectors is shared between the sector regulators and the CMA. This includes the concurrency arrangements with the FCA and the Payment Systems Regulator ("PSR"). The CMA requested responses to its call for inputs by 20 October 2023 and intends to report on its conclusions in Spring 2024.

#### **FCA sets out 14-point action plan on cash savings**

On 31 July 2023, the FCA [published](#) a 14-point action plan to ensure banks and building societies are passing on interest rate rises to savers appropriately, that they are communicating with customers effectively and offering appropriate savings rates. This includes actions which the FCA intends to take and its expectation of firms. The FCA also [published](#) its report on the Cash Savings Market Review. This followed the FCA [summoning](#) chief executives of Natwest, Barclays, HSBC and Lloyds to discuss the pricing of cash savings, and the communication of rates to customers. Nikhil Rathi, Chief Executive of the FCA, [wrote](#) in April 2023 to Harriett Baldwin MP, Chair of the Treasury Select Committee, on competition in the retail banking market. The FCA, together with the Information Commissioner's Office, also [wrote](#) to UK Finance and the Building Societies Association clarifying that savings

providers can inform their customers of the best rates available to them, even where they have objected to direct marketing.

### **Antitrust class action concerning car financing charges**

On 21 July 2023, claims were filed at the Competition Appeal Tribunal alleging that a "network of anticompetitive agreements" between car finance providers and car dealers led to higher interest rates being charged to consumers. The claims are being brought as opt-out collective actions against Lloyds Banking Group (through Black Horse Ltd), MotoNovo Finance and Santander UK.

### **FCA publishes Feedback Statement on the potential competition impacts of "Big Tech" entry into retail financial services**

On 12 July 2023, the FCA published a [Feedback Statement](#) on the potential competition impacts of "Big Tech" entry into retail financial services, following publication of its Discussion Paper on the subject in October 2022. The FCA proposed three actions as part of its next steps. Firstly, it will launch a Call for Input from "Big Tech" firms by the end of 2023, looking at the role of data sharing asymmetry between "Big Tech" firms and financial services firms. Secondly, the FCA will review its supervisory approach for "Big Tech" firms to improve how it monitors "Big Tech" activities within and outside its regulatory perimeter. Thirdly, the FCA will work with the UK Government and the Digital Markets Unit as the Digital Markets, Competition and Consumers Bill passes through Parliament. As part of this, it will publish a memorandum of understanding with the DMU which will set out how it will implement the regulatory coordination provisions in the Bill.

### **Call for Input launched for Future of Payments Review**

On 11 July 2023, HM Treasury published a [Call for Input](#) seeking views from stakeholders to inform the Future of Payments Review. The Future of Payments Review will report on how payments are likely to be made in the future, and the steps needed to successfully deliver world-leading retail payments. The Review will focus on individuals and businesses making and receiving retail payments. It will make recommendations for the government, financial services regulators and industry in autumn 2023.

### **The Bank of England adopts the latest global financial messaging standard for CHAPS**

On 19 June 2023, the Bank of England [updated](#) the Clearing House Automated Payment System ("CHAPS"), a bank-to-bank settlement system, to ISO 20022, the latest global financial messaging standard. The standard will provide for an increased amount of data to be sent with payments, such as invoice numbers. The upgrade will assist the Bank to improve resilience, competition and innovation in the payments sector. Many major jurisdictions have or are intending to implement ISO 20022 in the coming years, leading to the potential to enhance cross-border payments. Pay.UK's New Payments Architecture, which will replace the UK's Faster Payments system, will also use ISO 20022.

### **CAT pauses lawsuits brought by the CICC against Mastercard and Visa**

On 8 June 2023, the Competition Appeal Tribunal ("CAT") decided to [pause the four class-action lawsuits](#) proposed by the special purpose vehicle, Commercial and Interregional Card Claims ("CICC"), against Mastercard and Visa. The CAT reached this decision due to several concerns, including

incoherence of the exact class being represented. Instead, the CAT granted CICC's legal team eight weeks to revise its lawsuits. 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 parallel "opt-out" and "opt-in" proceedings.

### **Joint Regulatory Oversight Committee releases suggestions for next stage of open banking**

Following the April 2023 publication by the Joint Regulatory Oversight Committee ("JROC") of a report setting out its recommendations and aims for the future of open banking, JROC [announced](#) in June 2023 its work programme to take the recommendations forward. Open banking is a government-backed initiative, enabling financial data to be shared between banks and third-party service providers in a secure manner. JROC, which is made up of the CMA, the FCA and the PSR, was established in March 2022 to supervise the development of open banking beyond the extent of the CMA's open banking remedies. The programme involves working groups to consider variable recurring payments and a future open banking entity. Open Banking Limited will lead and coordinate on other key workstreams, including levelling up availability and performance, and developing proposals for dispute purposes.

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

On 24 May 2023, the 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 of trading strategies. The CMA alleged that this concerned UK government bonds and occurred between 2009 and 2013.

### **CMA and sector regulators to review concurrency arrangements**

On 10 May 2023, the CMA stated in its [annual concurrency report](#) that it will review the overall operation of the concurrency arrangements and the extent to which the overall objectives of the concurrency regime, and the promotion of competition in the regulated sector, have been achieved. The CMA highlighted that next year will mark 10 years since the enhanced concurrency arrangements introduced by the Enterprise and Regulatory Reform Act 2013 came into force.

### **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 FCA on proposals to exercise a regulatory digital markets function in an area within which the FCA would also have competition powers. The FCA is also able to make a recommendation to

the CMA where it considers 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.

## European Commission

### CJEU ruling on contractual terms in loan agreements

In *Arkadiusz Szczęśniak v Bank M. SA.*, the Court of Justice of the European Union ("CJEU") [ruled](#) that if a loan agreement between a bank and a borrower is deemed to be invalid from the outset due to unfair contractual terms (abusive clauses), the bank cannot require compensation from the consumer exceeding the return of the capital disbursed and the payment of statutory default interest. The judgment is in line with the position expressed by the President of the Polish Competition Authority ("OCCP") and the opinion issued in February by the Advocate General of the CJEU.

### Commission clears several transactions in the insurance and asset management sectors

On 16 June 2023, the European Commission (the "**Commission**") [announced](#) that it had approved the acquisition of RBC Investor Services Bank SA ("**RBC IS Bank**"), RBC Offshore Fund Managers Limited ("**RBC Channel Islands**") and certain assets and liabilities of the UK branch of RBC Investor Services Trust ("**RBC UK Transferring Business**") by CACEIS, a subsidiary of Crédit Agricole. RBC IS Bank, RBC Channel Islands and RBC UK Transferring Business make up the European asset management business of the Royal Bank of Canada and its associated Malaysian subsidiary, which provides back-office asset management services. CACEIS offers banking, insurance and asset management services. The Commission found the deal raised no competition concerns, given the moderate combined market position of the companies and existing competitive pressure from other suppliers.

On 8 May 2023, the Commission [announced](#) that it had approved the acquisition of GACM España, S.A.U. ("**GACM Spain**") by AXA Seguros Generales, S.A. de Seguros y Reaseguros ("**AXA Seguros Generales**"). Both companies provide insurance products across Spain and hospital services in Barcelona and Cantabria. The Commission concluded that the proposed acquisition did not raise competition concerns, given the companies' moderate combined market positions resulting from the transaction and the very limited vertical links between the companies' activities.

### Commission tenders a market study into online payments in the EEA

On 26 June 2023, the Commission [tendered](#) a market study that will explore the level of competition in the online payment transactions sector. The study will collect information regarding the business volumes of the main operators of online payments in the EEA for a variety of segments and payment types (e.g., mobile wallets, payment cards, bank transfers and instant payments). The study aims also to provide an analysis of competitive constraints and practices that are potentially harmful to a competitive online payments sector, notably by analysing the impact of "Big Tech" payment solutions in the EEA. It seeks to identify tools to help this market from tipping in favour of "Big Tech" or incumbents. The call for tenders closes on 15 September 2023.

The tender follows the Commission sending a [Statement of Objections](#) to Apple more than a year ago over its practices concerning Apple Pay. The

Commission's preliminary view is that Apple may have abused its dominant position in markets for mobile wallets on iOS devices by limiting access to Near-Field Communication ("NFC") technology, thereby favouring its own Apple Pay. The case is still ongoing.

### **Single currency package proposed by Commission**

On 28 June 2023, the Commission [announced](#) that it has adopted two proposals within a 'single currency package': (i) a [proposal](#) for the establishment of a legal framework for a digital euro; and (ii) a [proposal](#) to protect the legal-tender status of euro banknotes and coins. These proposals aim to ensure that both cash and digital payment options are protected and available for EU citizens.

The proposal establishing a legal framework for a potential digital euro intends to provide persons and businesses with the option to pay digitally via a form of public money in the euro area (on top of current private options). Among other things, the measures would mean that: banks and other payment service providers would distribute the digital euro, including providing users in Europe with a free digital euro account and free transactions; the digital euro would be able to be used for both online and offline transactions; and economic operators (except microenterprises) would be required to accept the digital euro as a means of payment.

The second proposal on the legal tender of euro banknotes and coins follows a Commission [recommendation](#) and codifies a CJEU court [judgment](#) that sets out the principles of legal tender, including that it entails the mandatory acceptance of cash. Among other things, the proposal would require Member States to monitor cash acceptance and access levels within their territories. The European Parliament and Council will now debate the proposals.

### **Commission publishes proposals for updated rules on payment services and access and use of financial data**

On 28 June 2023, the Commission [announced](#) that it has adopted two legislative proposals: (i) a proposal to update rules on payment services; and (ii) a proposal to establish rules and rights for the access and use of financial data.

The first [proposal](#) would amend the current Payment Services Directive ("PSD3") and also establish a [Payment Services Regulation](#). Among other things, the package would: (i) allow payment service providers to share fraud-related information between themselves, in order to combat payment fraud; and (ii) allow non-bank payment service providers (e.g., fintech firms) to access all EU payment systems and secure their rights to a bank account.

The second [proposal](#) would establish rights and obligations to manage customer financial data sharing beyond payment accounts. In particular, it would include an obligation for financial institutions and other users that hold customer financial data to make this data available to customers and other data users (e.g., other financial institutions or fintech firms) in an accessible format. The European Parliament and Council will now debate the proposals.

## **France**

### **French Competition Authority clears several transactions in the insurance and asset management sectors**

On 17 May 2023, the French Competition Authority ("**French CA**") [authorised](#) the acquisition of Ageas France by La Mutuelle d'Épargne, de Retraite et de Prévoyance Carac. Both companies are active in the insurance sector, and the French CA concluded that the transaction would not harm competition in the relevant markets. On 6 June 2023, the French CA also [approved](#) at phase 1 the acquisition of La Financière de l'Échiquier, a company providing asset management services, by La Banque Postale Asset Management, a subsidiary of the La Banque Postale group, in line with La Banque Postale's aim to diversify and develop its growth strategies both in France and abroad. Finally, on 12 June 2023, the French CA [approved](#) at phase 1 the acquisition by the group SMA of CCR Re, the reinsurance branch of the French state-owned insurance company CCR (the Groupe Caisse Centrale de Réassurance).

### **French Competition Authority implements new leniency procedure for the first time**

On 12 April 2023, the French CA [sanctioned](#) several companies of the Bureau van Dijk group ("**BvD**") and Ellisphere, both active in the marketing of subscriptions to databases containing information about companies (including financial data), for their roles in price fixing and customer allocation practices, infringing Articles 101(1) TFEU and L. 420-1 of the French Commercial Code. BvD, alongside Ellisphere, was alleged to have implemented these practices in the sector of the sale of subscriptions to economic intelligence over a period of more than 30 years. Moody's Corporation, the parent company of BvD since 2017, flagged these cartel practices to the authority via a request for leniency. The disclosure and cooperation with the French CA have resulted in BvD and Moody's Corporation avoiding any financial penalties. Ellisphere, which did not contest the French CA's objections, benefited from the settlement procedure and was fined EUR 3.5 million for its role in the concerted practices. This is the first decision to implement the new leniency procedure resulting from [law no. 2020-1508](#) of 3 December 2020.

### **The Commercial Chamber of the Court of Cassation rejects the French Competition Authority's appeal in relation to interchange fees dispute**

On 28 June 2023, the Commercial Chamber of the Court of Cassation (the highest court in the French judiciary) delivered a [judgment](#) rejecting the French CA's appeal in a long-running dispute regarding the FCA's 2010 decision to impose a EUR 385 million fine on 10 major French banks for an agreement to fix interchange fees for the exchange of image-cheques. The FCA had principally alleged that the Paris Court of Appeal: (i) was incorrect in its refusal to classify the interbank agreement as a restriction of competition by object, particularly criticising its reasoning that the FCA's concerns were based on "mere presumptions"; and (ii) failed to examine and analyse the effects of the practices on the setting of prices and the autonomous decision-making ability of the banks. The Court of Cassation fully rejected the appeal, and found that the Paris Court of Appeal was correct in concluding that interchange fees for the exchange of image-cheques did not distort, restrict or prevent normal competition between banks either by its object or effect. It also noted that the Paris Court of Appeal had legally justified its decision, and its analysis and decision-making were in line with established case-law.

## Italy

### Anima acquires Castello

On 18 April 2023, the Italian Competition Authority ("**ICA**") [cleared](#) the acquisition of control over Castello SGR S.p.A. ("**Castello**") by Anima Holding S.p.A. ("**Anima**"). Anima pursued the acquisition to consolidate its position in alternative funds through its entry into the real estate asset class.

Anima is the holding company of the Anima Group, which is active in the asset management sector through its subsidiaries. In particular, Anima is active in the management of individual assets, mutual funds and open-ended pension funds. Castello is an asset management company focused on the management of closed-end real estate investment funds, reserved for qualified investors, mainly concerning real estate for residential and commercial use located in Italy.

### ICA fines flatexDEGIRO for unfair commercial practices

On 18 April 2023, the ICA [concluded](#) that flatexDEGIRO Bank AG ("**Degiro**") had carried out two separate unfair commercial practices in violation of the Italian Consumer Code, including:

- (i) the presentation of unclear information in relation to the products and services offered through the dissemination of messages on its website and advertising campaigns promoting its investment services; and
- (ii) the pre-setting of the 'Auto FX' option for currency conversion in case of investment in foreign currency, inducing the client to unconsciously make a choice that could prove to be less advantageous than the manual conversion mode.

The ICA imposed a fine on Degiro of EUR 4 million (this being the sum of EUR 1.5 million for practice (i) and a sanction equal to EUR 2.5 million for practice (ii)).

### ICA accepts commitments from Intesa Sanpaolo

On 4 April 2023, the ICA accepted and made binding commitments proposed by Intesa Sanpaolo S.p.A. to conclude (without ascertaining any infringement) the proceedings opened in relation to failure to disclose the method of calculating the length of the technical grace periods in first-time home loans.

In the ICA's view, this practice could have induced consumers to take commercial decisions that they would not otherwise have taken, such as purchasing the loan or setting a different date for the conclusion of the loan agreement, in order to accrue a shorter technical grace period with the resulting payment of lower interest charges.

The commitments submitted by Intesa Sanpaolo included, inter alia:

- (i) the alignment of the technical grace period interest rate to the rate applied to the amortisation of the loan for floating-rate mortgages;
- (ii) to reduce the technical grace period to a maximum of 31 days, for both fixed and floating -rate mortgages and variable-rate loans; and
- (iii) to update the pre-contractual documentation of all mortgages.



## Poland

### Charges brought by OCCP against Assay

The OCCP has brought [charges of infringement](#) of collective consumer rights against Assay Management and its subsidiary, Assay ASI, which offers "investment promissory notes", as well as members of Assay Group's management board.

The OCCP alleged that the information provided to consumers may be misleading as to the certainty of future financial benefits from an investment in Assay ASI's promissory note arrangement, which does not in fact provide a guarantee of the profits declared by the company. Similarly, assurances that Assay Group's activities are subject to supervision by the Polish Financial Supervision Authority ("**PFSA**") may suggest that the promoted 'promissory note' offering is also subject to such supervision, which is untrue.

## Spain

### CNMC declares the file on the granting of ICO COVID loans closed

During the COVID-19 pandemic, the Spanish government approved the creation of a special line of guarantees to secure loans from financial institutions to SMEs in order to help solve the exceptional lack of liquidity. From April 2020, the Spanish National Markets and Competition Commission ("**CNMC**") began to receive complaints from SMEs, alleging that banks were using these ICO-backed loans to require firms to take out additional products (mainly life insurance, but also other insurance and products) and to refinance pre-existing debts. The CNMC then launched an extensive investigation analysing these practices from the perspective of distortion of free competition by unfair acts (Article 3 of the Spanish Competition Act). After a long period of investigation, the CNMC [concluded](#) on 26 June 2023 that the elements necessary to prove an infringement had not been established. The decision includes a dissenting opinion.

### CNMC calls for tools to intervene on the remuneration of bank deposits

The president of the CNMC, Cani Fernández, in the context of the Spanish general election campaign, called on political parties to follow in the footsteps of the UK and Germany and put in place the [necessary resources](#) that would allow the authority to monitor the market and to act in cases of possible tacit collusion in sectors such as banking.

### ADFC formation put on hold

The [draft law](#) that would have created the Independent Administrative Authority for the Defence of the Financial Customer ("**ADFC**") was put on hold due to upcoming general elections and the dissolution of the Spanish Parliament.

The draft law envisaged the creation of a centralised system for the resolution of disputes between financial institutions and their customers. Particularly, for complaints below EUR 20,000, the ADFC would have enjoyed full autonomy and independence, and its resolutions would have been fully binding.

## NORTH AMERICA

### US

#### **Congressional inquiry into collusive ESG initiatives**

On 6 July 2023, the [US House Judiciary Committee](#) expanded its ongoing "inquiry into the sufficiency of existing antitrust laws to address collusive agreements to promote and adopt progressive environmental, social, and governance (ESG) goals" by issuing additional requests for documents and information from several entities it stated were involved with ESG initiatives. In letters sent to BlackRock, Vanguard, State Street, the Glasgow Financial Alliance for Net Zero ("**GFANZ**") and the Net Zero Asset Managers initiative ("**NZAM**"), the Committee requested all documents and communications over the past four years relating to each recipient's "decarbonization and net zero emissions targets and commitments" and how those targets and commitments "affect output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil". The letters mentioned several means by which asset managers might have advanced ESG goals, including "setting investment policies", "making investment decisions" and "sponsoring, supporting, opposing, or voting for directors and stockholder proposals". In a press release accompanying the letters, the Committee said it was investigating the recipients' "apparently coordinated agreement to 'decarbonize' assets under management and reduce emissions to net zero—with potentially harmful effects on Americans' freedom and economic well-being".

#### **Top US antitrust enforcer signals increased competition enforcement in banking sector**

In a speech on 20 June 2023, Assistant Attorney General Jonathan Kanter, the head of the Antitrust Division of the US Department of Justice ("**DOJ**"), [laid out](#) the DOJ's priorities for enforcement in the banking sector. Kanter opined that "[t]he time is indeed ripe for us to re-examine how we assess bank mergers under the statutory framework that Congress has enacted", noting that the DOJ and banking agencies issued the current Bank Merger Guidelines in 1995. The Division is "modernizing its approach to investigating and reporting on the full range of competitive factors involved in a bank merger", Kanter said, to better consider "today's market realities and the many dimensions of competition in the modern banking sector", such as "fees, interest rates, branch locations, product variety, network effects, interoperability, and customer service". The DOJ's analysis will consider "concentration levels across a wide range of appropriate metrics and not just local deposits and branch overlaps" and will evaluate "the risk of coordination and multi-market contacts with other banks". Kanter acknowledged that it had become "custom" for the DOJ to negotiate "remedies agreements with parties" in banking mergers, but he also stated that the Division was "reorienting" that role "to focus on providing our advisory opinion as required by the statute".

#### **US FTC issues order requiring provision of customer identification information to competitors to process debit payments**

On 30 May 2023, the US Federal Trade Commission ("**FTC**") [finalised a consent order](#) requiring Mastercard to provide competing debit payment networks with customer account information necessary for processing debit payments. This addressed the FTC's allegation that Mastercard had required merchants to route e-commerce payments made with debit cards saved in e-

wallets through Mastercard's own payment network for processing. The agency alleged that this practice violated provisions of the 2010 Dodd-Frank Act known as the Durbin Amendment and its implementing rule, Regulation II, which require banks to enable at least two unaffiliated networks on every debit card and prohibit payment card networks from blocking merchants from using other networks. The FTC's final order included a prior-notice provision requiring the company to provide 60 days' advance written notice to the agency before launching a new product or service related to the initiation of electronic debit transactions.

### **US DOJ's Antitrust Division weighs in on securities regulation proposal**

In response to several proposals announced by the US Securities and Exchange Commission ("**SEC**") in December 2022 and January 2023, the Antitrust Division [sent a letter](#) on 11 April 2023 to the SEC providing input on how the proposals on securities regulation might affect competition. The proposed rules include a best-execution requirement for broker-dealers as well as an auction structure for retail trading. The DOJ considered that the proposed rules had "the potential to bring greater transparency and competition to the nation's securities markets". The DOJ warned, however, that the agency "should account for potential interactions between the Proposed Rules" and "ensure that the final rules, taken together, preserve the benefits to competition identified by the SEC in each of the rules' proposals". The DOJ's letter serves as an example of interagency communications responsive to President Biden's vision for a "whole-of-government effort" laid out in his Executive Order on Promoting Competition in the American Economy issued 9 July 2021.

## **ASIA PACIFIC**

### **Australia**

#### **Linfox Armaguard Pty Ltd and Prosegur Australia Holding Pty Ltd – merger authorisation**

On [13 June 2023](#), the Australian Competition and Consumer Commission ("**ACCC**") granted authorisation to the merger of Linfox Armaguard Pty Ltd ("**Armaguard**") and Prosegur Australia Holdings Limited ("**Prosegur**")(together "**Merged Entity**"), subject to commitments enshrined in a court-enforceable undertaking (the "**Undertaking**"). The parties applied for merger authorisation to merge their cash distribution and management services ("**CIT services**"), device monitoring and maintenance, and ATM services businesses in Australia (the "**Transaction**"). Importantly, the ACCC noted that Armaguard and Prosegur were the two largest providers of CIT services in Australia, which are predominantly provided to banks, retailers and independent ATM operators.

The ACCC considered that despite being behavioural in nature, the Undertaking ensured that the Transaction would result in a sufficient public benefit by reducing uncertainty over price and non-price terms for both competing CIT suppliers and customers of CIT services throughout the term of the Undertaking. Notably, it was considered that the Undertaking would increase the public benefit associated with avoiding the likely dislocation costs, uncertainty and customer impacts associated with the exit of one of the applicants.

### **ACCC denies authorisation for ANZ's proposed acquisition of Suncorp Bank**

On 4 August 2023, the ACCC [decided](#) not to grant authorisation to ANZ regarding its proposed acquisition of Suncorp. The ACCC considered that Australia's retail banking sector is an established oligopoly, in which the four major banks collectively hold 72% of banking system assets. The ACCC was not satisfied that the transaction would not be likely to substantially lessen competition, given its conclusions on the markets for home loans, SME banking and agribusiness banking. It also considered that the public benefits would not outweigh the public detriments.

### **ACCC establishes National Anti-Scam Centre**

The Australian Government has allocated AUD [58 million](#) to the ACCC to establish the National Anti-Scam Centre ("**NASC**"), which was launched on 1 July 2023. In the first year of operation, the NASC will work closely with the Australian Securities and Investments Commission in delivering its scam website takedown service and support the Australian Communications and Media Authority to continue its work in combating telecommunications scams. The ACCC has indicated that it will spend AUD 44 million on a technology build to enable the NASC to:

- (i) receive a report of a scam from any institution (private or government) and centralise this intelligence; and
- (ii) distribute data to organisations as required, including banks, to freeze an account, telcos to block a call, and digital platforms to take down a website or account.

The remaining funding will be used to resource the NASC to deliver "fusion cells, provide education and communications activities in collaboration with the private sector and support the ongoing data analysis, intelligence fathering, and disruption".

### **Competition in the provision of clearing and settlement services**

The Australian government has released draft legislation [amending](#) the Corporations Act 2001, the Competition and Consumer Act 2010 and the Australian Securities and Investments Commission ("**ASIC**") Act 2001 to facilitate competitive outcomes in the provision of clearing and settlement ("**CS**") services for Australia's financial markets.

The draft legislation provides ASIC with powers to implement and enforce requirements for a monopoly provider of CS services to operate in a way that achieves competitive outcomes and ensure safe and effective competition in clearing and/or settlement should a competitor emerge. It also provides the ACCC with the power to conduct binding arbitration to resolve disputes regarding access to CS services.

The government is currently considering submissions on the draft legislation as part of the consultation process.

## **China**

### **SAMR fines local insurer cartel**

On 2 June 2023, the State Administration of Market Regulation ("**SAMR**") [announced](#) that its local bureau in Chongqing City had imposed fines on eight local branches of national insurers for collusion. According to the final

decisions published by SAMR on 19 June 2023, the local branches attended several meetings annually from 2014 to 2017 and agreed on the prices, scope and other terms of certain accident insurance policies tailored for students in the Ba Nan District of Chongqing City. These branches also agreed on the allocation of schools among themselves within the district. Notably, the meetings were organised by an insurance agency indirectly delegated by the local government in 2014 for the student accident insurance programmes in this district.

SAMR's local bureau in Chongqing City found that the local branches reached and implemented horizontal agreements, including price-fixing and market division, that harmed competition in the student accident insurance market of the Ba Nan District of Chongqing City. Each local branch involved was fined 1 per cent of its 2016 turnover, with illegal gains confiscated. The decisions were based on the prior version of PRC Anti-Monopoly Law, given the time of the violations. SAMR highlighted this case as one of the achievements of the 2023 antitrust campaign targeting sectors that relate to people's livelihoods.

## New Zealand

### Big Four Australian banks face probe by New Zealand Commerce Commission ("NZCC")

In late [June 2023](#), the New Zealand government announced a year-long inquiry into competition between banks in New Zealand. New Zealand's four largest banks (ANZ Bank New Zealand, ASB Bank, Bank of New Zealand and Westpac New Zealand) are all owned by Australia's "Big Four" banks (ANZ, Westpac, Commonwealth Bank and National Australia Bank).

A KPMG report in March found that banks in New Zealand increased net profit by NZD 1 billion (AUD 900 million), or 17 per cent, last year to NZD 7.18 billion, buoyed by the Reserve Bank of New Zealand's higher cash rate. It also found the net interest margin, a key profitability driver, increased to 2.10 per cent from 1.97 per cent, furthering concerns that the banks may be increasing margins on products for customers that are already facing increased cost pressures.

The inquiry will likely focus on whether barriers exist for new competitors looking to enter the market (or expand operations), the introduction of innovative products and services, and consumers' ability to switch between banks.

It is expected that the NZCC will release a preliminary issues paper in August 2023, with its final findings due in August 2024.

## Japan

### Japan Fair Trade Commission issues a caution to Mizuho Securities

On 13 April 2023, the Japan Fair Trade Commission ("JFTC") issued a [caution](#) to Mizuho Securities, one of the leading securities companies in Japan. The JFTC considered that, in the pricing of initial public offerings ("IPOs") between June 2020 and May 2021 where Mizuho Securities was the lead underwriter, it set an estimated offering price or a tentative price range which was lower than the price proposed by the company to be newly listed and requested that the company accept it. The JFTC found that although Mizuho Securities' conduct was not immediately deemed to be a violation of

the Antimonopoly Act, it may have led to a lower offering price being set unilaterally by the lead underwriter with strong bargaining power and unfairly disadvantage companies to be newly listed.

See our [blog](#) on the JFTC's report on potential antitrust law issues concerning IPOs in January 2022.

### **Allocation rates of credit card merchant fees between issuers and acquirers**

On 1 June 2023, JCB, an international payment brand based in Japan, [published](#) the allocation rates of credit card merchant fees between issuers and acquirers.

By way of background, on 8 April 2021, the JFTC published the results of a survey of credit card transactions following a publication promoting cashless payments to small and medium-sized shops made by the Ministry of Economy, Trade and Industry ("METI") on 22 March 2022. In this publication, it was stated that it is desirable for international payment brands to disclose the average rates of issuer fees in order to ensure fair competitive conditions amongst international brands and to increase transparency in the credit card market as a whole. The JFTC and METI have been working towards the disclosure of the average rates of issuer fees of international payment brands.

The publication of allocation rates by JCB is considered an initiative which contributes to improving transparency in the credit card market by clarifying some aspects of the fee structure for cashless payments.

### **Japan's Financial Services Agency issues reporting and collection order against four Japanese major insurance companies**

On 19 June 2023, it was reported that Japan's Financial Services Agency ("JFSA") had issued a reporting and collection order against four major Japanese insurance companies (Tokio Marine & Nichido Fire Insurance, Sompo Japan Insurance, Mitsui Sumitomo Insurance and Aioi Nissay Dowa Insurance) for allegedly colluding in setting fire insurance premiums for companies. These four insurance companies are suspected of sharing information in advance and then offering target companies high premiums.

## **South Korea**

### **KFTC enhances antitrust enforcement in the financial sector**

The Korea Fair Trade Commission ("KFTC") raided securities companies, insurers and banks in the second quarter of 2023 on suspicion of alleged collusion, after President Yoon Suk-yeol called for measures to effectively improve competition in the financial sector. In June 2023, KFTC reportedly initiated on-site inspections of Samsung Securities, Meritz Securities, Kiwoom Securities, NH Investment & Securities, KB Securities, the Korea Financial Investment Association and Mirae Asset Securities on suspicion of alleged collusive conduct in setting interest rates or commission rates of financial products.

In the same month, KFTC also reportedly [initiated investigations](#) against four commercial banks (KB Kookmin Bank, Shinhan Bank, Woori Bank and Hana Bank) to probe alleged collusion on setting loan rates and transaction fees.

Earlier in May 2023, KFTC raided non-life insurance firms (DB Insurance, Hyundai Marine & Fire Insurance, Meritz Fire & Marine Insurance and

Heungkuk Fire & Marine) over allegations that they colluded to deny claims for cataract-related medical treatment.

## **GLOBAL**

### **UN Environment Programme issues statement on the Net-Zero Insurance Alliance to address antitrust concerns**

On 5 July 2023, the UN Environment Programme issued a [statement](#) updating the policies of the Net-Zero Insurance Alliance ("**NZIA**"). It emphasised that each company that chooses to be a member of the NZIA unilaterally and independently decides on the steps on its path towards net zero. It asserted that NZIA membership does not involve any coordinated competitive conduct or exchanges of competitively sensitive information. Going forward, NZIA members will have no obligation to set or publish targets. The NZIA Target-Setting Protocol will serve as a voluntary best practice guide.

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