

FINANCIAL SERVICES ANTITRUST BULLETIN

Since Q2 2024, competition authorities across the world have continued to closely scrutinise the financial services sector. 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:

Financial services consolidation – This period has seen significant M&A activity due to consolidation of financial services firms across jurisdictions. For instance, in the European Union, the European Commission approved the creation of a joint venture between Worldline and Crédit Agricole, combining their merchant acquiring and acceptance services. In France, the Autorité de la concurrence cleared several acquisitions in the banking and insurance sectors, including Cinven's acquisition of Finaxi and CNP Assurances' acquisition of LMG Assurances SA. Similarly, in Germany, the Federal Cartel Office cleared KKR's acquisition of FGS Global, a consultancy firm.

Insurance remains in focus – Competition authorities in multiple jurisdictions have assessed competition in the insurance sector. In the UK, the Financial Conduct Authority is monitoring the pure protection market. In Spain, the competition regulator continues its work on the private health insurance market.

Digital wallets and contactless payments under scrutiny – With the rise in digital wallet usage, regulators in the UK and the EU are scrutinising tech companies such as Apple, Google and PayPal. The investigations focus on how these wallets affect consumer choices and competition among payment systems. Notably, Apple has made commitments to allow third-party access to its NFC technology to address antitrust concerns.

Fines on the rise – Competition authorities globally have intensified their enforcement actions, resulting in significant fines in the sector. The Court of Justice of the European Union upheld fines against Crédit Agricole and Credit Suisse for their involvement in a bond cartel, amounting to EUR11.9 million and EUR3.9 million, respectively. Similarly, the Portuguese Competition Authority's EUR225 million fine against 14 banks for anti-competitive information exchange was upheld. In Poland, LoanMe faced a fine of over approx. EUR100,000 for misleading consumers, while PayPal received a record fine of approx. EUR25 million for abusive clauses in user agreements. In China, Sumscope was fined 2% of its annual turnover for monopolizing financial data products.

Key issues

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 since Q2 2024. If you would like to know more about the subjects covered, please refer to the list of contacts on page 16.

EUROPE

UK

FCA announces work into pure protection market

On 28 August 2024, the Financial Conduct Authority ("**FCA**") [announced its intention](#) to launch a market study on how pure protection insurance products are sold in the UK following concerns that competition is not working well in the market. The FCA will focus primarily on the sale of four specific types of products: term assurance, critical illness cover, income protection insurance and whole of life insurance. The FCA is concerned that the current design of commission arrangements may incentivize firms not to deliver good outcomes to policyholders, and that some products provide poor value. To understand this market, the FCA will examine consumer engagement and the competitive constraints on insurers and intermediaries, and potential conflicts of interest in the structure of commission. The FCA intends to launch this market study later in the financial year 2024/25.

CMA clears the acquisition of Virgin Money by Nationwide

On 19 July 2024, the Competition and Markets Authority ("**CMA**") unconditionally [approved](#) Nationwide Building Society's acquisition of Virgin Money UK PLC at Phase 1. The CMA looked at whether the proposed transaction would lead to competition concerns in the supply of owner-occupied mortgages, buy-to-let mortgages and/or credit cards. The CMA found that the parties were not particularly close competitors, and a number of other players would continue exerting sufficient competitive constraints on the parties following the transaction.

Apple Pay, Google Pay, PayPal come under FCA and PSR scrutiny

On 15 July 2024, the FCA and the Payment Service Regulator ("**PSR**") [launched calls for information](#) to feed into a consultation on digital wallets in July of this year, which closed on 13 September. Following the rapid growth in the use of digital wallets, providers such as Apple, Google and PayPal are facing scrutiny from UK regulators as they become increasingly important to how consumers pay. In particular, the FCA and the PSR are interested in identifying the range of benefits digital wallets bring to their users, how they impact consumers' choices, and the implications for competition between payment systems. The regulators are considering the feedback provided and are expected to provide an update by Q1 2025.

CAT upholds defences raised by Mastercard in Merricks v Mastercard

In a [judgment](#) handed down on 19 June 2024, the Competition Appeal Tribunal ("**CAT**") upheld limited defences raised by Mastercard in relation to the ongoing £14 billion class action claim headed by Walter Merricks. This follows previous decisions by the CAT that the level of fees charged on Mastercard credit card transactions between 1992 and 2009 had infringed competition law. Mastercard submitted that in so far as the claims are governed by English law, claims related to infringements occurring before 20 June 1997 were time-barred due to the expiration of the six-year limitation period. Although the Tribunal upheld this defence, a subsequent permission to appeal was granted to Merricks on 30 July.

CMA finds that Nationwide provided incorrect information to PPI customers

On 16 May 2024, the CMA [found](#) that Nationwide was in breach of Article 4 of the Payment Protection Insurance ("PPI") Market Investigation Order 2011. Nationwide provided incorrect information on a field of their annual review statements to 131 consumers between April 2012 and December 2023. As of March 2024, Nationwide had withdrawn all PPI products. The CMA did not consider it appropriate to take formal enforcement action.

European Union

Crédit Agricole and Credit Suisse lose challenge against European Commission's decision on participation in a bond cartel

On 6 November 2024, the Court of Justice of the European Union ("CJEU") [dismissed](#) the challenges brought by Crédit Suisse and Crédit Agricole against the European Commission's ("**Commission**") decision to impose EUR11.9 million and EUR3.9 million fines, respectively, for their participation in a cartel in respect of supra-sovereign bonds, sovereign bonds and public agency bonds denominated in US dollars ("**SSA Bonds**"). The infringement consisted of entering into an agreement on trading and pricing strategies and exchanging commercially sensitive market information relating to their current or future activities (prices of bids or offers, trading positions, strategy and behaviour of identified clients). Those exchanges took place via chat rooms on the internet, via discussions by electronic means, and by telephone.

The CJEU upheld the Commission's findings, concluding that the conduct of the banks had an anti-competitive object and therefore it did not have to demonstrate its effect on competition. The CJEU also agreed with the Commission's methodology for calculating the fine, which was based not on turnover, as is usually the case, but on a proxy for that turnover calculated on the basis of the notional amounts of the SSA bonds after adjustments.

Commission conducts dawn-raids in the financial derivatives sector

On 23 September 2024, the Commission [announced](#) that it had carried out inspections over possible breaches of EU antitrust rules at the premises of companies active in the financial services sector in two Member States. The products concerned by the inspections are financial derivatives. Deutsche Boerse and Nasdaq confirmed that they have been dawn-raided and that they were cooperating with the Commission.

CJEU upholds EUR225 million fine on Portuguese banks

On 29 July 2024, the CJEU [delivered](#) its judgment on the Portuguese Competition Authority (the "**Portuguese CA**") fine of EUR225 million against 14 banks for participating in an anti-competitive information exchange relating to home loans, consumer credit and corporate lending. The banks had appealed the Portuguese CA's decision, and the Portuguese court made a request for a preliminary ruling by the CJEU on whether information exchange amounted to a restriction of competition "by object".

The CJEU concluded that a standalone exchange of information between competitors may constitute a restriction of competition by object, depending on the information exchanged and the economic context. This could, in particular, be the case where the information exchanged is confidential and strategic, revealing the future conduct of a competitor on the relevant market. It will now be up to the Portuguese court to determine whether this was the case in relation to the information exchange at issue.

Commission makes commitments offered by Apple on contactless payments legally binding

On 11 July 2024, the Commission [accepted](#) the commitments offered by Apple to address competition concerns over access to Near-Field Communication ("NFC") 'tap and go' technology, which is used to make contactless payments with mobile devices.

In its investigation, the Commission concluded that Apple abused its dominant position by refusing to grant access to NFC on iOS to competing mobile wallet developers, reserving such access to Apple Pay. The Commission stated that this strategy had an exclusionary effect and led to less innovation and choice for iPhone mobile wallets users.

To address the Commission's concerns, Apple offered a number of [commitments](#), including: (i) allowing third-party mobile wallet and payment services providers to access NFC functionality on iPhones free of charge, without having to use Apple Pay or Apple Wallet; (ii) applying fair, objective, transparent and non-discriminatory procedure and eligibility criteria to grant NFC access; (iii) enabling users to set Host Card Emulation ("HCE") payment apps as their default app which allows consumers to securely store payment credentials and complete transactions without relying on an in-device secure element; (iv) allowing HCE providers to access iOS functionalities and authentication tools, such as Touch ID, Face ID and device passcode; and (v) establishing a monitoring mechanism and separate dispute settlement system to allow for independent review of Apple's decisions restricting access.

In early 2024, the Commission market-tested Apple's commitments. In light of the outcome, Apple amended its initial proposal, including additional commitments to, for example: (i) allow HCE payment apps at other terminals, such as merchants; (ii) remove the requirement for mobile wallet developers to have a licence as a Payment Service Provider; (iii) allow developers to pre-build payment apps for third-party wallet providers; (iv) update the HCE architecture to comply with evolving industry standards used by Apple Pay; and (v) shorten deadlines for resolving disputes.

The Commission decided that Apple's final commitments would address its competition concerns making them legally binding on Apple for a period of 10 years. If Apple fails to honour such commitments, the Commission may impose a fine of up to 10% of its total annual turnover, or a periodic penalty payment of 5% of its daily turnover for every day of non-compliance.

Commission's investigation into EEX's proposed acquisition of Nasdaq Power withdrawn

On 26 June 2024, EEX [abandoned](#) its proposed acquisition of Nasdaq Power. Despite the fact that the transaction did not meet the EU merger control notification thresholds, the Commission called it in for review under Article 22 of the EU Merger Regulation ("EUMR") following the request of Denmark, Finland, Sweden and Norway. In particular, the Commission claimed that the acquisition would have had a potentially significant effect on Nordic energy markets, where Nasdaq and EEX are the only two providers of exchange trading and subsequent settlement services for Nordic power contracts.

The parties' decision to abandon the transaction preceded the Illumina/Grail judgment on 3 September 2024, whereby the CJEU ruled that the Commission does not have jurisdiction to review mergers that are referred to it by EU member states under Article 22 EUMR in circumstances where the merger does not meet the EUMR notification thresholds and does not meet

the criteria for review under any national merger control rules of the EU member states.

Commission approves Worldline / Crédit Agricole joint venture

On 4 March 2024, the Commission [published](#) its decision approving the creation of a joint venture between Worldline and Crédit Agricole in the sector of merchant electronic payments services in France. The transaction combines Crédit Agricole's merchant acquiring services in France with Worldline's acceptance services across the EEA.

In assessing the transaction, the Commission concluded that the joint venture's ability to collect acceptance data would not result in a competitive advantage that would make it harder for other players to compete on the sector and ultimately foreclose them. The Commission also stated that the transaction was unlikely to lead to a co-ordination of the competitive behaviour of the parties given that (i) the geographical focus of the parties differs, (ii) only Worldline offers acquiring processing services to third parties, and (iii) the parties have agreed sufficient safeguards to prevent undue information sharing, e.g., by adopting guidelines on information barriers.

France

French Competition Authority clears several banking and insurance acquisitions

The Autorité de la concurrence (the French Competition Authority, "**French CA**"), granted Phase 1 clearances to the following financial services acquisitions:

- On 30 September 2024, the French CA [cleared](#) Cinven's acquisition of sole control of Finaxi and its subsidiaries.
- On 17 September 2024, the French CA [authorized](#) CNP Assurances' acquisition of sole control of LMG Assurances SA and Flex Conseil et Services.
- On 11 July 2024, the French CA [cleared](#) the acquisition of sole control of Galian Assurances by SMABTP.
- On 9 July 2024, the French CA [authorized](#) the BBVA group's acquisition of sole control of Banco de Sabadell.
- On 8 July 2024, the French CA [cleared](#) the acquisition of sole control of the Eres Group by Eurazeo.
- On 10 June 2024, the French CA [authorized](#) Crystal's acquisition of sole control of Primonial Ingénierie et Développement.
- On 19 March 2024, the French CA [cleared](#) the affiliation of La France Mutualiste to the mutual insurance group Malakoff Humanis.
- On 14 March 2024, the French CA [authorized](#) the KKR group's acquisition of sole control of DLPK.

Germany

Clearance of proposed acquisition of consultancy firm FGS Global by financial investor KKR

On 3 September 2024, the Federal Cartel Office ("**FCO**") cleared investment company KKR's acquisition of the majority of shares in, and sole control of, FGS Global, following an earlier acquisition of a minority share in FGS Global

in 2023. FGS Global is a US-based consultancy firm with subsidiaries in Germany. Its main business activity is advising large corporations on particularly transaction and financial communications, e.g., in M&A transactions. The FCO did not have any concerns as there were no overlaps or any competition problems expected, with many different players in both providing and seeking consultancy services.

FCO survey of commercial online payment recipients

As part of an ongoing investigation into PayPal (Europe), the FCO is launching a survey of commercial recipients of online payments, including online retailers, direct selling manufacturers, marketplace and app store operators, as well as numerous small companies representing the large group of small commercial customers of payment services. The subject of the investigation is, inter alia, PayPal's market position and the economic significance of the contractual provisions in question (press release, 30 September 2024, in German only).

By way of background, in January 2023, the FCO initiated proceedings against PayPal (Europe) for applying clauses in its terms and conditions that in the FCO's view might restrict competition and violate the prohibition of abuse of a dominant position. The rules and clauses under investigation, in particular "Rules about surcharging" and the "Presentation of PayPal", do not allow merchants to offer their goods and services at lower prices if customers choose a payment method cheaper than PayPal's. Further, PayPal's rules also do not allow sellers to express a preference for payment methods other than PayPal. The case is ongoing.

No objections to merger between Barmenia and Gothaer

On 18 March 2024, the FCO cleared plans between Barmenia Versicherungen A.G. ("**Barmenia**") and Gothaer Versicherungsbank VVaG ("**Gothaer**") to create a joint venture. Although this will be one of the largest mergers in the German insurance markets in recent years, the FCO does not expect this concentration to seriously affect competition.

As a result of the merger, Barmenia and Gothaer will become two of Germany's larger insurance companies. However, their share of the various insurance markets will remain at a level that, according to the FCO, is unproblematic from a competition perspective. This also applies to the companies' main areas of activity, such as private health insurance and non-life insurance. The FCO did not see any substantial competition concerns, taking into account that there are various competitors active in the relevant insurance markets in Germany, some of which are significantly larger than the parties.

Italy

Eurizon Capital Real Asset SGR S.p.A. and Megrani S.r.l. secure joint control over Germani S.p.A.

On 17 September 2024, the Italian Competition Authority ("**Italian CA**") [approved](#) the acquisition of joint control over Germani S.p.A. by Eurizon Capital Real Asset SGR S.p.A. ("**ECRA**") and Megrani S.r.l., which is the indirect controlling entity of Germani prior to the transaction.

ECRA is an alternative investments and private markets company controlled by Eurizon Capital, which is part of the Intesa Sanpaolo Group. Megrani is the parent company of a group active, inter alia, in the transportation of waste, technical gases and fuels.

The integration into a major Italian banking group will allow Germani to benefit from Intesa Sanpaolo's resources and long-term vision while continuing to benefit from Megrani's control and expertise to grow and improve its position in the waste management and transportation sectors.

The Italian CA concluded that the transaction would not significantly affect competition in the relevant markets and therefore approved the transaction without opening a Phase 2 investigation.

Abuse of dominant position: the Italian CA approves the revised commitments submitted by Autostrade per l'Italia on reimbursement of toll payment cards

On 3 September 2024, the Italian CA [accepted](#) the request for revision of the commitments submitted by Autostrade per l'Italia S.p.A. ("ASPI") in 2007 to address the concerns raised by the Italian CA with respect to a potential abuse of a dominant position.

In particular, the contested conduct concerned ASPI's refusal to reimburse the "Viacard" cards (i.e. prepaid cards specifically intended for the electronic payment of motorway tolls) that had not been used, or used only partially, during their period of validity.

ASPI had originally committed to remove expiration dates from its cards and launch a specific information campaign regarding this initiative. However, in view of its intention to completely withdraw the Viacards, ASPI submitted to the Italian CA a revised set of commitments in July detailing how it intends to manage the phase-out.

The Italian CA considered that the measures connected to ASPI's decision to dismiss the Viacards were appropriate – thereby making them formally binding – as, inter alia, they guaranteed consumers an adequate period of time for both any residual use of the Viacard cards at toll stations and any requests for reimbursement, and provided a wide range of options for submitting such requests (including ASPI's website, app, email and telephone).

BCC Pay S.p.A. acquires Banco BPM S.p.A.'s e-money branch and Tecmarket Servizi S.p.A.

On 21 May 2024, the Italian CA approved BCC Pay S.p.A.'s – recently renamed Numia S.p.A. – acquisition of sole control over [Banco BPM S.p.A.'s e-money branch](#) and [Tecmarket Servizi S.p.A.](#), aiming to expand its presence in the financial services and electronic payments sectors.

Numia S.p.A. operates in several sectors including merchant acquiring activities at wholesale level, card issuing and card personalization services. The acquisition of Banco BPM S.p.A.'s e-money branch includes, among other things, the transfer of customer contracts related to card issuing and merchant acquiring activities as well as existing supply contracts with third parties concerning card issuing services and IT supply services. Tecmarket Servizi S.p.A. specializes in the distribution of POS terminals and provides technological services related to the merchant acquiring activities of Banco BPM's e-money branch.

The transaction is part of BCC Pay's strategic growth path following its acquisition by FSI SGR S.p.A – which has recently secured sole control over Bancomat S.p.A., Italy's main debit card systems operator – aimed at introducing a new key player within the e-money market.

The Italian CA concluded that transaction is not expected to significantly affect competition, given the limited market shares and strong competition within the relevant markets.

Netherlands

Dutch banks permitted to collaborate on sustainability reports

On 15 August 2024, the Dutch Authority for Consumers and Markets ("**ACM**") [announced](#) that Dutch banks are permitted to collaborate on their sustainability reports. The ACM has informally assessed the cooperation in accordance with its policy rule with regard to ACM's oversight over sustainability agreements ("*Beleidsregel Duurzaamheidsafspraken*"). The primary objective of this collaboration is to enhance the comparability of these reports, thereby enabling investors to make more sustainable choices. The ACM has determined that there are no negative consequences arising from this collaboration, as it does not involve the exchange of any competitively sensitive information.

Participation in the collaboration is voluntary. Banks must base their joint interpretation of ESG criteria on objective sources, which will be listed in a data scheme to ensure transparency. Additionally, each bank must still prepare its own reports and independently decide which ESG criteria to report on.

ACM report highlights lack of competition in Dutch savings market

On 28 May 2024, the ACM [published a report](#) on the functioning of the Dutch savings market. One of its conclusions was that low savings rates for consumers are caused by a lack of competition between banks. The study reveals that the three major Dutch banks (ABN AMRO, ING, and Rabobank) represent the vast majority of the savings market. While the ACM did not find any indication of an illegal agreement, it considers it possible that there may be 'tacit co-ordination' between these three banks. The ACM also identified concerns relating to high switching costs, resulting in few consumers switching to a different bank that offers higher rates.

To address these issues, the ACM has offered three recommendations to the Dutch legislator for boosting competition in the savings market: (i) increase transparency in the banks' provision of information, (ii) prohibit the tying of checking and savings products, and (iii) create a mandatory switching service for banks. These recommendations mainly focus on lowering barriers to switching for consumers.

Poland

LoanMe fined for irregular loan settlement practices and misleading consumers

On 22 July 2024, the Office of Competition and Consumer Protection ("**OCCP**") announced the result of its investigation into LoanMe. The loans company faced scrutiny from the OCCP due to irregularities in its loan settlement practices, particularly concerning early repayment.

Consumers reported issues with LoanMe's refinancing mechanism, known as rollover, which resulted in high non-interest charges and significant outstanding debt. According to the Consumer Credit Act, financial institutions must reimburse consumers for a proportionate share of fees and commissions if a loan is repaid early. However, LoanMe refused to reimburse consumers

who repaid their loans early, which misled them into believing that such reimbursements were not required.

Additionally, LoanMe engaged in a practice where loans were alternately refinanced with another company without explicit consumer requests. This led to consumers incurring high non-interest costs (which exceeded regulatory limits) and falling into a debt spiral.

As a result, the OCCP imposed a fine of over PLN550,000 (~ EUR100,000). The decision is subject to appeal.

Unprecedented fine imposed on PayPal for abusive clauses in user agreements

On 15 July 2024, the President of the OCCP announced the imposition of a record fine of around PLN106 million (~ EUR25 million) following the OCCP's [investigation](#) into PayPal's user agreement. The investigation was in relation to clauses listing 34 forbidden user activities and a catalogue of severe sanctions. Among them were provisions stating that the user could be punished for trying to use a blocked account or for violating any law, statute, ordinance or regulation. PayPal could block the user's money at any time and at its discretion in an amount as high, and for a period as long, as it determined. The OCCP questioned the open catalogue of sanctions and their arbitrariness. In the OCCP's view, the violation of any provision in any country entitled PayPal to impose sanctions without predefined terms. This could even result in depriving users of access to the money accumulated in the PayPal account for an indefinite period. The decision is subject to appeal.

Spain

CNMC soon to publish report following public consultation on the private health insurance market

On 4 June 2024, the Comisión Nacional de los Mercados y la Competencia ("CNMC") [initiated](#) a public consultation into the private health insurance market to analyse aspects including concentration in the offer levels and the relationship between insurance companies and health service providers. The public consultation closed on 26 May 2023 and the final report from the CNMC is expected to be released within the next few months.

BVA requests merger control clearance of its proposed acquisition of Bank Sabadell

On 31 May 2024, the BBVA notified its [proposed acquisition](#) of sole control over Bank Sabadell. On 18 June 2024, the CNMC's president, Cani Fernández, stated in its presentation at the XLI Seminar of the Association of Economic Information Journalists that the CNMC has requested further information from the parties to the takeover bid to evaluate whether the merger will receive Phase 1 clearance. On 12 November 2024, the CNMC decided to [assess](#) the proposed merger at Phase 2.

Agreement between the CNMC and the Bank of Spain

On 30 May 2024, the CNMC and the Bank of Spain signed an agreement to provide researchers with access to the microdata available at the CNMC through the secure infrastructure of the Bank of Spain's Data Laboratory ("BELab"). In this regard, micro-databases are a valuable source of information on the behaviour of economic agents, and their exploitation allows for a deeper understanding of markets' realities.

NORTH AMERICA

USA

US federal agencies update guidelines for banking mergers

On 17 September 2024, the US Department of Justice ("**DOJ**") [announced](#) its withdrawal from the 1995 Bank Merger Guidelines. The announcement stated that the 2023 Merger Guidelines, issued jointly between the DOJ and the US Federal Trade Commission, "remain [the DOJ's] sole and authoritative statement across all industries". The DOJ also [released an addendum](#) to the announcement with commentary identifying the "portions of the 2023 Merger Guidelines that the DOJ considers to be frequently relevant when evaluating the competitive consequences of a bank merger", both in exercising its law enforcement authority under the antitrust laws and in formulating a report to federal banking agencies.

On the same day, the Federal Deposit Insurance Corporation ("**FDIC**") and Office of the Comptroller of the Currency ("**OCC**") each issued updated guidance on bank mergers, pursuant to their respective oversight roles. The FDIC's board [issued a final statement of policy](#) on bank mergers, with notable aspects including additional scrutiny of the evaluation of financial stability for transactions resulting in an institution with USD100 billion or more in total assets; the setting of a standard that a proposed merger should result in less financial risk than the risk posed by the involved institutions on a standalone basis; an expectation of public hearings for mergers resulting in an institution with over USD50 billion in total assets; and a statement that the agency will consider how a proposed merger would affect concentration in not only deposits but also specific products or customer segments, such as small business or residential loan originations, or activities requiring specialized expertise. The OCC [issued a final rule](#) on bank mergers that, among other substantive changes from the office's previous guidance, removes procedures for expedited review of mergers.

US federal Court of Appeals affirms dismissal of stock-trading restriction conspiracy allegations

In a decision issued 26 June 2024, the United States Court of Appeals for the Eleventh Circuit [affirmed the dismissal](#) by a federal district court of antitrust claims brought by retail investors against retail brokerage firm Robinhood and its market maker Citadel. The suits came in the wake of a series of stock trading restrictions by Robinhood and other brokerages in January 2021 in response to market volatility. Plaintiffs alleged that Robinhood implemented these restrictions pursuant to a conspiracy with Citadel. The appellate panel agreed with the district court that the alleged agreement had not been plausibly alleged to violate the federal antitrust laws as an unreasonable restraint of trade; specifically, the panel held that plaintiffs had failed to properly allege anticompetitive harm to any relevant market, including the brokerage market in which Robinhood competed and in which the plaintiffs had not properly alleged any effects across the market.

Federal district court approves motion to add claims in cryptocurrency price manipulation case

On 26 June 2024, a New York federal court allowed claims by cryptocommodity purchasers alleging a conspiracy to manipulate the price of certain cryptocurrencies to proceed, [finding](#) that the claims were viable under federal antitrust and securities laws. As alleged by the plaintiffs, cryptocurrency issuer Tether and cryptocurrency trading platform Bitfinex

worked in concert to artificially increase the price of certain cryptocurrencies, with Tether issuing and transferring to Bitfinex significant quantities of the stablecoin USDT while concealing that the coin was unbacked by any corresponding US dollar collateral and that Tether and Bitfinex were not independent. The amended complaint alleges that the defendants exchanged the "secretly debased" USDT for other "cryptocommodities" or actual U.S. dollars, increasing the prices of other cryptocommodities and causing plaintiffs to pay an artificially inflated amount. In an opinion granting a motion by the putative class plaintiffs to amend their claims, the court held that plaintiffs' amended complaint contained sufficiently pleaded claims of market manipulation under the Commodities Exchange Act and restraint of trade and monopolization of the cryptocommodities market under the Sherman Act, allowing the case to move forward.

US House Judiciary Committee releases report alleging collusion related to environmental, social and governance factors

On 11 June 2024, the US House Judiciary Committee, led by a Republican Party majority, [released an interim report](#) arising from its ongoing investigation on the use of Environmental, Social, and Governance ("ESG") factors by financial institutions. The Committee's report, titled "Climate Control: Exposing the Decarbonization collusion in Environmental, Social, and Governance Investing", stated that the Committee had "obtained evidence that a 'climate cartel' of left-wing environmental activists and major financial institutions has colluded to force American companies to 'decarbonize' and reach 'net zero'". The Committee stated that it would continue to "examine the adequacy and enforcement of current antitrust laws to determine whether legislative reforms are necessary to protect competition in the American economy". The Democratic staff of the Judiciary Committee [released](#) its own [report](#) on the same day, stating that "[i]nvestor-led ESG initiatives respond to a genuine demand from investors for greater transparency into public companies' exposure to climate change" and "[t]he evidence produced in this investigation undermines, rather than supports, theories of potential antitrust liability for these ESG initiatives".

APAC

Japan

The Japan Fair Trade Commission investigated Visa's Japan office for suspected antitrust breach by engaging in unfair trade practices

On 17 July 2024, the Japan Fair Trade Commission ("JFTC") conducted an on-site investigation of Visa Worldwide Japan, a Japanese subsidiary of the U.S. company, Visa Inc., for alleged violation of the Antimonopoly Act (unfair trade practices). It was alleged that Visa Worldwide Japan had informed companies issuing credit cards in Japan that Visa Worldwide Japan would increase interchange fees between companies if they did not use the credit reference system provided by Visa Worldwide Japan.

The JFTC conducted a post-clearance verification in relation to the concentration of The Daishi Bank, Ltd. and The Hokuetsu Bank, Ltd.

On 5 July 2024, the JFTC [released a report](#) in relation to its post-clearance verification of the concentration of The Daishi Bank, Ltd. and The Hokuetsu Bank, Ltd. It is unusual for the JFTC to conduct such post-clearance verifications.

The JFTC was able to conduct a post-clearance verification of this transaction given that less than two years had passed since the merger, making it possible to obtain the relevant data and understand changes made in the conditions of the loan agreements based on public sources. The JFTC explained that the post-clearance verification was conducted with the aim of obtaining useful suggestions that could contribute to the study of a more effective method for filing reviews. In the report, the JFTC concluded that, going forward, the necessity of economic analysis should be examined at an early stage of the filing analysis and, if deemed necessary, the JFTC will then actively conduct an economic analysis.

China

Chinese competition authority fines Sumscope for monopolizing financial data products

On 6 September 2024, Shanghai Municipal Administration for Market Regulation ("**Shanghai AMR**") released a decision imposing a fine of 2% of the annual turnover of Ningbo Sumscope Information Technology Co., Ltd. ("**Sumscope**") for its refusal to resell certain financial data to potential competitors and for unfair trading practices.

The Chinese financial data vendor processes and integrates real-time bond trading data generated in the course of voice brokerage ("**Voice Brokerage Bond Data**") of the six authorized money brokers in China, and offers full datasets encapsulating the real-time voice broking information of the bond market in China ("**Voice Brokerage Bond Datasets**"). Shanghai AMR found that the Voice Brokerage Bond Data of each of the six authorized money brokers in China are non-substitutable, essential inputs to Voice Brokerage Bond Datasets, constituting a standalone, upstream relevant product market. Since Sumscope is the exclusive distributor of the Voice Broking Bond Data of one of the authorized money brokers, Tullett Prebon SITICO (China) Ltd. ("**Tullett**"), Sumscope is recognized as the bottleneck to the provision of Voice Brokerage Bond Datasets.

Sumscope has been refusing to engage in bona fide negotiation with other financial data vendors for the supply of Tullett's Voice Broking Bond Data, thereby maintaining itself as the sole provider of Voice Brokerage Bond Datasets in China. The Shanghai AMR considers that there is no free-rider concern and underscores Sumscope's admission of the intent to preclude potential entry to the market for Voice Brokerage Bond Datasets. The Shanghai AMR also penalised Sumscope for bundling Voice Brokerage Bond Datasets of different types of bonds by imposing a minimum purchase amount.

Australia

Cash-in-transit industry at a crossroads

The cash-in-transit ("**CIT**") industry in Australia has undergone significant transformations in recent years, which have been marked by key regulatory and industry developments aimed at ensuring the sustainability and efficiency of cash distribution and management services. This follows the Australian Competition & Consumer Commission ("**ACCC**") granting [authorization](#) to the merger of Linfox Armaguard Pty Ltd and Prosegur Australia Holdings Limited in June 2023. Despite the merger of Armaguard and Prosegur, the combined entity still faces significant financial and operational challenges.

The industry's focus is now on ensuring that the wholesale cash distribution network remains accessible, while addressing the financial and operational challenges that persist. The Australian Treasurer has nevertheless indicated that cash will remain available around the country even if Armaguard goes into insolvency.

There have been two pivotal recent developments that will likely continue to shape the current landscape of the CIT industry in Australia:

- Industry collaboration on CIT arrangements – conduct authorization
 - On 27 May 2024, the ACCC issued [a final determination](#) granting authorization to the Australian Banking Association ("**ABA**") and other industry participants¹ to discuss and develop arrangements to facilitate ongoing access to cash across the Australian economy. This authorization followed concerns expressed by Armaguard following its merger with Prosegur the previous year, regarding the sustainability of the CIT industry in its current form. The ACCC's decision allowed for collaborative efforts, including discussions and exchanges of information between the applicants for the purpose of developing and evaluating urgent responses to support the viability of wholesale cash distribution and access to retail cash services in Australia, with the authorization extending until 31 October 2024.
 - The ACCC considered that the proposed conduct which is the subject of the authorization application was likely to result in a public benefit through supporting the development of solutions to address concerns about the ongoing sustainability of CIT services, and thereby supporting the ongoing supply of cash to banks, retailers and the community.
 - Notably, this authorization relates only to discussions and reaching in-principle agreements about any industry responses to support ongoing access to cash. The ABA has advised that before adopting and implementing any agreed industry responses it would seek a separate ACCC authorization for the proposed way forward, if required.
- Industry implementation of CIT arrangements – conduct authorization
 - On 27 June 2024, the ABA lodged an application for [authorization](#) with the ACCC, seeking to implement CIT arrangements proposed by major banks and key customers (together, the "**Funding Parties**"). The Funding Parties proposed to provide Armaguard with short-term financial assistance in the form of urgent financial support, to be paid monthly subject to compliance with certain conditions (including information and reporting conditions), while longer term solutions to support the viability of CIT services across metropolitan and rural towns can be considered. It is also proposed that the Funding Parties and Armaguard work collaboratively to improve the operational sustainability of Armaguard's CIT business by agreeing and implementing efficiencies in the CIT services provided by Armaguard to the Funding Parties (who are Armaguard's largest customers).
 - The ACCC granted authorisation on 12 September 2024, allowing the Funding Parties and Armaguard to engage in the proposed conduct until 30 June 2025. In assessing the proposed conduct, the ACCC

¹ Including ABA Member Banks and other industry stakeholders such as large supermarkets, the Reserve Bank of Australia, Armaguard and Australia Post.

again appears to have focused on the interests of communities across Australia, particularly those in regional and remote areas.

ACCC opens misuse of market power investigation against Armaguard

In June 2024, it was reported that Armaguard is facing a new investigation by the ACCC, as it comes under intense scrutiny over its (albeit troubled) monopoly on cash transportation around the country. Armaguard has warned several times that the declining use of cash has made its business model unsustainable, raising serious concerns about people's ability to access bank notes and coins if it were to go insolvent.

Although the ACCC was already monitoring Armaguard's compliance with conditions contained in an Undertaking in connection with the merger, this development shows that the ACCC has the ability to and will carefully scrutinise conduct occurring in sensitive sectors on an ongoing basis. As such, recently merged entities need to ensure that they have effective compliance programmes in place. It remains to be seen what, if any, impact this investigation will have on the legitimacy of the conduct authorizations referred to above.

Australian government wants better deals for customers on banking products

In response to two ACCC inquiries², on 15 June 2024 the Australian Government [announced](#) that it is introducing several measures to help Australians secure better rates on mortgages and savings accounts. These initiatives aim to make it easier for customers to find and switch to the best deals. Key measures include:

- Requiring banks to notify customers of interest rate changes on transaction or savings accounts and enhancing disclosure requirements for basic deposit products.
- Mandating financial product comparison websites to disclose ranking determinants and financial relationships with product providers.
- Simplifying the loan-switching process by ensuring easy access to necessary exit forms.
- Collaborating with banks to improve customer notifications about bonus interest rate offers and the end of introductory lower interest rate periods, potentially developing industry standards.
- Tasking Treasury with exploring how behavioural economics and prompts can encourage consumers to switch to cheaper home loans and retail banking products.

Additionally, the Australian Government also announced a review into the challenges faced by small and medium-sized banks led by the Council of Financial Regulators in consultation with the ACCC.

The review will focus on the role small and medium sized banks play in providing competition in the sector, and the regulatory and market trends affecting them. It will assess how smaller banks source funding, including the role of covered bonds, and consider whether regulatory arrangements for new entrants can support additional competition in the sector.

² The ACCC's Inquiry into retail deposit products was completed in December 2023; its Inquiry into home loan pricing was completed in 2020.

ACCC v Mastercard debit card acceptance services litigation progresses

The ACCC instituted proceedings in the Federal Court of Australia in May 2022 alleging that Mastercard engaged in anti-competitive conduct by offering certain large merchants cheaper interchange rates for processing credit card payments if they agreed to process Mastercard-efpos debit card payments through the Mastercard network between 2017 and 2020. It is alleged that this conduct has the purpose of substantially lessening competition in the market for the supply of debit card acceptance services and therefore contravenes relevant conduct provisions of the Competition and Consumer Act 2010 (Cth).

The case was initially set to go to trial in July 2024 but has been pushed back due to various evidentiary issues and delays.

At hearings in May and August 2024, Mastercard questioned whether data and detailed statistics published by Australia's central bank compiled by third-party sources could be used as evidence, but subsequently failed to convince the Federal Court to dismiss such evidence on grounds that it would prejudice Mastercard on the basis that the ACCC was seeking judicial notice from the Court of conclusions that could be arrived at from the evidence.

It is understood that Mastercard and the ACCC are seeking to reach an agreed set of facts on this matter, which will then inform a joint report to be compiled by a group of expert economists. As such, the ACCC submitted that an expedited ruling on the use of third-party data was therefore important.

A further case management hearing is scheduled for December 2024 with a four-week trial due to commence on 24 March 2025.

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