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Global Competition Review is delighted to publish 2018 edition of *The European, Middle Eastern & African Antitrust Review*, one of a series of three special reports that have been conceived to deliver specialist intelligence and research to our readers – general counsel, government agencies and private practice lawyers – who must navigate the world's increasingly complex competition regimes.

Like its sister reports, *The Antitrust Review of the Americas* and *The Asia-Pacific Antitrust Review*, *The European, Middle Eastern & African Antitrust Review* provides an unparalleled annual update, from competition enforcers and leading practitioners, on key developments in the field.

In preparing this report, *Global Competition Review* has worked with leading competition lawyers and government officials. Their knowledge and experience – and above all their ability to put law and policy into context – give the report special value. We are grateful to all of the contributors and their firms for their time and commitment to the publication.

Although every effort has been made to ensure that all the matters of concern to readers are covered, competition law is a complex and fast-changing field of practice, and therefore specific legal advice should always be sought. Subscribers to *Global Competition Review* will receive regular updates on any changes to relevant laws over the coming year.

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European Union: Financial Services

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In recent years, the financial services sector has been subject to increased antitrust scrutiny in the EU. Perhaps surprisingly, this is very new.

Indeed, EU competition enforcement in the financial services sector had previously focused mainly on the areas of state aid and merger control – and not much else.

In state aid, the European Commission (Commission) has long used its powers in the financial services sector just like in any other. There was, naturally, a surge in cases generated by the financial crisis.[1] The restructuring or liquidation of around 117 European banks in the period 2007-2015 required policing and procedural innovation by the Commission,[2] but the substance was not new.

Similarly, the Commission has long exercised its merger control powers in the financial services sector. Some mergers between financial institutions arose out of the financial crisis and some raised novel issues, based not on a fear of excessive market power but on the failing and flailing firm theories as well as whether banks were too important to fail. Most recently, the Commission prohibited the latest attempt at a merger between Deutsche Börse and London Stock Exchange.[3]

Conversely, until after the financial crisis, there was not much to report on an EU antitrust enforcement front. The Commission had barely lifted the lid on antitrust infringements in financial services: the scrutiny of rogue traders and poorly managed institutions was essentially left to national financial regulators and newspapers. Indeed, until the early 1980s, some in the industry still held onto the hope that competition laws did not apply to banks. While the Commission always rejected that view,[4] as a matter of fact, prior to the financial crisis, there were few cartel investigations of note in the financial services sector.

This has changed – radically. Since 2011, the Commission has publicised the existence of eight antitrust investigations into the conduct of banks. There are certainly more still under the radar. Furthermore, the Commission has already imposed fines totalling more than €2 billion; and with at least three publicised investigations still on-going, more fines are expected.

There are also signs that private actions for damages in the EU are starting to flow. In October 2015, claimant firm, Quinn Emmanuel, announced its intention to bring private actions against a number of banks in the English High Court 'in anticipation of an infringement decision from the European Commission' in the *CDS Information Market* investigation. That investigation was subsequently closed due to a lack of evidence. In addition, it is reported that claimant firms are gearing up to issue LIBOR and FX-related private damages actions before the end of 2017.

One can debate at length the precise causes of this surge in antitrust enforcement activity, and why it did not occur sooner. However, aside from its coincidence with the financial crisis, one cannot ignore the influence of active enforcement by national financial regulators. Indeed, in this sector, conduct that infringes article 101 TFEU (article 101) will typically also infringe financial regulatory rules. As financial regulators started to probe concerted manipulation of the LIBOR fixing, it quickly became apparent that antitrust regulators would also need to act. Since then there has been a flurry of allegations and investigations by both financial and antitrust regulators across asset classes, including credit default swaps, interest rate derivatives, foreign exchange, precious metals and bonds.

In the current post-crisis scenario, banks, having paid out vast sums in fines, now have a heightened awareness of the importance of antitrust law compliance. Evidence of this can be seen in: more internal investigations with an antitrust angle; an increase in immunity applications and self-reporting to regulators; and a renewed interest in in-house training. Those are positive developments, which should help to improve the future conduct of employees.

However, the full extent of antitrust enforcement by the Commission in this sector likely remains to be seen. Therefore, and as private litigation starts in earnest, the scrutiny of banks' past transgressions still has some way to run.

The remainder of this article provides an overview of the most important EU antitrust cases over time, describes the recent enforcement developments and trends, and outlines certain practical aspects that should be considered when dealing with antitrust cases in the financial services sector.

From the early 1980s to the early 2000s: the beginning of an era

In 1981, with its *Züchner* judgment, the Court of Justice had the opportunity to confirm, to the extent it was ever in doubt, that EU rules are fully applicable to the banking sector.[5] However, from the early 1980s to the early 2000s, the Commission's antitrust enforcement in the financial services sector remained fairly limited.

The Commission adopted its first prohibition decision in financial services – in relation to the insurance sector – in 1984.[6] That was followed, in 1992, by a cartel decision concerning an agreement on commissions payable under the Eurocheque system.[7] The Commission's next cartel decisions in the sector were not for another nine years: the first, in 2001, concerned agreements to fix commissions for the exchange of Eurozone currencies;[8] and the second, in 2002, concerned price-fixing agreements between a cartel of Austrian banks.[9]

The 2000s: focus on payment systems

From the late 1990s and for much of the 2000s, the Commission's antitrust enforcement activities focused on payment services providers, including Visa, MasterCard and Groupement des Cartes Bancaires. This culminated in a series of Commission decisions, some of which were appealed with varying degrees of success.

Visa

In 2001, the Commission issued a negative clearance decision to Visa in respect of certain provisions of Visa's international payment card

system, including a 'no-discrimination rule' that prohibited merchants from favouring cash payments. Subsequently, in 2002, Visa's multilateral interchange fee (MIF) arrangements on cross-border payments were exempted from prohibition under article 101(3) until 2007, after Visa agreed to reduce the fee levels.[10] The exemption expired on 31 December 2007, after which the Commission was free to re-examine Visa's system of MIFs.[11] In 2008, following expiry of the exemption, the Commission initiated formal proceedings against Visa, and it issued two statements of objections, the first in 2009 and the second in 2012, regarding various aspects of Visa's system of MIFs.[12] However, Visa managed to avoid the adoption of infringement decisions by offering commitments, in 2010 and 2014, to reduce further its MIFs on intra-EEA cross-border and national card payments. The Commission is seeking to close out this area of antitrust enforcement with an on-going investigation of MIFs on card payments between non-EEA cardholders and EEA-based merchants. In its 2017 Management Plan, the Commission confirmed its intention to continue that investigation.[13]

MasterCard

MasterCard faced similar Commission scrutiny of MIFs on cross-border MasterCard card payments in the 2000s. That scrutiny was somewhat delayed since MasterCard originally notified its arrangements to the Commission between 1992 and 1997 (under the old notification regime) and therefore benefited from an exemption.[14] In fact, it wasn't until MasterCard informed the Commission, on 25 July 2003, of its intention to bring an 'action for failure to act',[15] that the Commission proceeded to issue, in relation to the MIFs, a first statement of objections, in September 2003, a supplementary one in June 2006, and an infringement decision in 2007. That infringement decision was hotly contested until the Court of Justice issued its definitive view in 2014 that MasterCard's MIFs infringed article 101(1). As with Visa, the Commission is seeking to close out this area of antitrust enforcement with an on-going investigation of MIFs on card payments between non-EEA cardholders and EEA-based merchants, and has also confirmed its intention to continue that investigation in 2017.[16]

Groupement des Cartes Bancaires

The American card payment schemes were not the only ones under the spotlight. In 2007, Groupement des Cartes Bancaires was fined for the fees it charged to some issuing banks whose acquiring activities (i.e. recruiting merchants to accept the Cartes Bancaires payment card) did not meet certain thresholds. In 2014, the Commission's decision was the subject of a high profile reversal by the Court of Justice, which found that the General Court had incorrectly assessed whether the conduct amounted to a restriction of competition 'by object'.[17]

As the Commission focused its efforts on the scrutiny of payment systems providers, the activities of the banks were largely overlooked for much of the 2000s.

From 2011 to date: antitrust enforcement gains momentum

What happened next caused a sea change in perceptions of the Commission's antitrust enforcement activities in financial services. As a consequence, investigations into the conduct of banks, in particular investment banks, are now seen as front and centre of the Commission's agenda.

In the six years since 2011, the Commission has announced, or there have been reports of, eight cartel investigations involving banks, across a range of asset classes, including: credit default swaps (CDS); interest rate derivatives (IRD); foreign exchange (FX); precious metals; and supra-national, sub-sovereign and agency (SSA) bonds. So far, the Commission has only reached a conclusion in its CDS and IRD investigations,[18] but it has already imposed fines totalling more than €2 billion, with €466 million the largest individual fine. The Commission's decisions to close its CDS Clearing investigation and CDS Information Market proceedings against the banks, in both cases due to a lack of evidence, shows that not all investigations identify wrongdoing. Nevertheless, with at least three investigations still on the go, more significant fines are expected. The genesis for this surge in enforcement activity was both the financial crisis and the exposure by national financial regulators that traders from multiple banks were involved in the concerted manipulation of LIBOR, a global benchmark for short-term interest rates.[19]

The CDS cases

The first Commission investigations concerned CDS Clearing and CDS Information Market:

CDS Clearing[20]

It is unclear what prompted the Commission's CDS Clearing investigation. That investigation was first announced in April 2011, but is understood to have started as early as 2009. The Commission announced that it was investigating whether the terms of certain agreements between ICE's CDS clearinghouse, ICE Clear, and nine banks prevented other clearing houses from entering the market and/or discriminated against other banks. It is perhaps no coincidence that CDS and central clearing of CDS were, at the time, at the centre of the political and economic debate over what caused the financial crisis. Ultimately, the Commission found no evidence of an infringement and closed its proceedings against ICE Clear and the banks in December 2015, although the Commission had already suspended its investigation in 2012.

CDS Information Market[21]

In April 2011, the Commission also announced an investigation into CDS Information Market, which, according to the press release, concerned a possible concerted refusal by 16 banks to provide CDS price data to information service providers other than Markit. However, by July 2013, the Commission's theory of harm had changed to one in which the banks, together with Markit and ISDA, were alleged to have foreclosed entry to the market for exchange-traded unfunded credit derivatives. Those allegations brought the Commission's case in line with parallel proceedings by the US Department of Justice (DOJ), which commenced in 2009 but went dormant in 2011. Rather than take action, the DOJ was perhaps content to let a class action brought in the US against the banks play out. It did so in spectacular fashion, with the defendant banks agreeing to settle the claim, without admitting liability, for a reported total amount of US$1.87 billion.[22] This encouraged claimant firm, Quinn Emmanuel, to issue a press release in October 2015 announcing its intention to bring equivalent claims against the banks in the English High Court.[23] In parallel, the Commission persisted with its case, and issued a statement of objections in July 2013 against Markit, ISDA and 13 banks – including Bank of America, Barclays, Bear Stearns, BNP Paribas, Citigroup, Crédit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Morgan Stanley, RBS and UBS. However, the Commission closed proceedings against the banks in December 2015, after the oral hearing, due to a lack of evidence.[24] In July 2016, the Commission accepted

commitments from Markit and ISDA aimed at facilitating access to their respective IP and data for exchange trading purposes.[25]

As such, the first exchanges between the Commission and the banks were in an area of investment banking that did not hit the headlines in quite the same way as allegations of concerted manipulation of LIBOR would.

The LIBOR investigations

In 2008, certain industry observers and academics first noted that several large international banks were underreporting LIBOR rates. Subsequently, financial regulators, including the DOJ, the US Commodity Futures Trading Commission (CFTC) and the UK's Financial Services Authority (FSA), launched probes over allegations of manipulation of LIBOR benchmark interest rates. These regulators did much of the early running, and were the first to impose fines for LIBOR manipulation. In June 2012, Barclays paid fines to these three regulators for a total of US$453 million.

There followed three LIBOR-related investigations by the Commission (the IRD investigations), which were an early sign of the now common theme of parallel financial regulatory and antitrust investigations into the same or related conduct.

The Commission's IRD investigations were all prompted by immunity applicants, and were announced over a period of 14 months starting with Euro IRDs in October 2011, Yen IRDs in March 2012 and Swiss Franc IRDs in February 2013. All three investigations have resulted in fines, in most cases pursuant to the Commission's settlement procedure.[26]

Euro IRDs[27]

Barclays Bank was the whistle-blower. In December 2013, following settlement discussions, the Commission imposed fines totalling €824 million[28] against four banks – Barclays, Deutsche Bank, Société Générale and RBS – for discussions between traders at those banks about their EURIBOR submissions and trading and pricing strategies. Crédit Agricole, HSBC and JP Morgan refused to settle, and in December 2016, the Commission issued a decision imposing fines of €485 million on those three banks.[29] All three banks have since appealed the Commission's decision to the EU General Court.[30]

Yen IRDs[31]

UBS was the whistle-blower. In December 2013, following settlement discussions, the Commission imposed fines totalling €670 million against five banks and one broker – UBS, RBS, Deutsche Bank, JP Morgan, Citibank and broker RP Martin – for discussions between traders at those banks about their Japanese Yen LIBOR submissions and trading positions. ICAP did not reach a settlement with the Commission, and was fined €15 million in February 2015.[32] ICAP appealed the Commission's decision to the EU General Court, and is awaiting judgment, following the hearing in January 2017.[33]

Swiss Franc IRDs[34]

RBS was the whistle-blower. In October 2014, following settlement discussions, the Commission imposed fines totalling €94 million against four banks – RBS, JP Morgan, Crédit Suisse and UBS – for agreements to quote wider bid-offer spreads to the market on certain categories of Swiss Franc IRDs, whilst maintaining narrower bid-offer spreads as between themselves, and exchanging competitively sensitive information concerning trading positions and intended prices for future Swiss Franc LIBOR submissions.[35]

Proliferation of antitrust investigations

This early activity made the banks all too aware of the risks and costs of non-compliance with antitrust laws. It is quite likely that the Commission investigations that have followed, including *FX*, *Precious Metals* and, most recently, *Sovereign, Supra-national and Agency (SSA) bonds*, were prompted by immunity applications brought about by that heightened awareness within the banking community. In any event, the Commission appears to have developed an appetite for investigations into the conduct of investment banks. Most recently, in its Management Plan 2017, the Commission signalled its intention to take a closer look at loan syndication, and is launching a market study.[36]

FX

In October 2013, former Commissioner Joaquin Almunia announced that the Commission had opened a preliminary investigation into the possible manipulation by traders at multiple banks of foreign exchange rates. The banks under investigation are understood to include at least Barclays, Bank of America, Citibank, Deutsche Bank, JP Morgan, RBS and UBS. It is likely that the investigation will mirror the allegations of WEKO, the Swiss antitrust authority, which is investigating:

> *the exchange of confidential information, the general coordination of transactions with other participants at agreed price levels, co-ordinated actions to influence the* WM/Reuters *fix as well as the co-ordination of the sale and purchase of currencies in relation to certain third parties.*

However, there have been few outward signs of progress by the Commission, and the investigation continues.

Precious Metals

The Commission has not formally announced an investigation into precious metals. However, in August 2015, in response to press enquiries, the Commission confirmed the existence of an investigation into alleged anticompetitive behaviour in precious metals spot trading.[37] However, as with FX, there have been few outward signs of progress by the Commission in the investigation.

SSA bonds

The Commission has not formally announced an investigation into SSA bonds. However, press reports have speculated about the existence of such an investigation in light of a questionnaire sent by the Commission to a number of market participants with regard to the SSA bond market.[38] It appears that among the banks involved are Bank of America, Crédit Suisse, Crédit Agricole and Nomura.

Therefore, while some banks have already had fines imposed, there may be more fines to come. However, as the experience of the *CDS* cases shows, the Commission does not, by opening an investigation, prejudge the outcome. In addition, whilst the existence of these investigations is known or suspected, there are certainly more investigations under the radar. As such, the steady flow of antitrust investigations involving banks may still have some way to go.

Parallel financial regulatory and antitrust investigations

In addition to a general proliferation in antitrust investigations by the Commission, it is notable that investigations in this sector will often involve parallel financial regulatory investigations. The main reason is that conduct that breaches antitrust laws, will typically also breach financial regulatory laws.

That is understood to be so with many of the cases mentioned above. As already mentioned, the *LIBOR* scandal saw probes by financial regulators, including the DOJ, the CFTC and the FSA. In FX, alongside the antitrust investigations, the UK's Financial Conduct Authority (FCA), the German financial regulator (Bafin), and the Swiss financial regulator (Finma), have also launched their own investigations. In *Precious Metals*, financial regulators in Europe, such as Bafin,[39] and in the US, such as the fraud section of the DOJ[40] and the CFTC,[41] have been conducting investigations into similar conduct. Likewise, financial regulators including the FCA are investigating suspected manipulation of trading in SSA bonds.[42]

The interplay between antitrust law and financial regulation in this setting is perhaps most clearly demonstrated by the dual role of the Financial Conduct Authority (FCA). The FCA (and its predecessor, the FSA) has long been the main financial regulator in the UK. In addition, in 2015, the FCA was given concurrent powers (alongside the UK Competition and Markets Authority) to enforce competition laws in the UK, and it is already exercising those powers.[43] At the same time, the FCA updated its financial regulatory reporting rules, to include an obligation on 'authorised firms' under Principle 11 to report to the FCA 'as soon as the authorised firm becomes aware, or has information which reasonably suggests, that a significant infringement of any applicable competition law has, or may have, occurred'. This obligation to report suspected antitrust infringements to the FCA is in stark contrast to the situation in most other industries, in which no such obligation to self-report misconduct applies. As a consquence, where a firm self-reports a suspected antitrust infringement, the decision to apply for leniency in the UK – and possibly therefore other jurisdictions – is almost an automatic choice, given the FCA's concurrent competition law powers. This increases the likelihood of more antitrust investigations to come, and in parallel more financial regulatory investigations.

Parallel investigations, concerning the same or related conduct, are therefore a recurrent theme that advisers must be alive to.

Private actions for damages

Lastly, an increasingly important area of EU antitrust law enforcement, particularly following the adoption of the Damages Directive,[44] is private actions for damages.

In payment services, MasterCard and Visa are currently facing multi-billion pound claims in the English High Court and the UK Competition Appeal Tribunal in relation to the MIFs, including only the second UK opt-out class action, *Merricks v MasterCard*. Some have already resulted in judgments, with mixed results. In *Sainsbury's v MasterCard*, the UK Competition Appeal Tribunal found for the claimants. However, in *Arcadia v MasterCard*, the High Court found in favour of the defendant, in an apparent departure from the reasoning in the European Commission's 2007 infringement decision.

However, the banks have not yet faced a wave of private litigation in the EU. This in part reflects the fact that, so far, only the IRD investigations have resulted in fines. In the wake of the US$1.87 billion settlement of the US CDS class action, claimant firm, Quinn Emmanuel, announced its intention to bring equivalent actions against the banks in the English High Court. Those actions have not yet materialised, possibly as a result of the Commission's decision to close proceedings against the banks and to accept commitments from Market and ISDA. However, it is a forerunner of what to expect in the near future. Indeed, it is widely reported that private claimants plan to issue *LIBOR* and *FX*-related claims in the English High Court this year.

Notes

1 See Laitenberger, From bail out to bail-in: laying foundations for a restructured banking sector in Europe, 25 January 2016, available at: http://ec.europa.eu/competition/speeches/index_theme_23.html.

2 State aid rules were updated through six 'Crisis Communications' and with the advent of the Banking Union supplemented by the Bank Recovery and Resolution Directive (BRRD).

3 See Commission press release of 29 March 2017: http://europa.eu/rapid/press-release_IP-17-789_en.htm.

4 This was made clear in the Commission's Second Report on Competition Policy, where it is stated that 'the Commission's basic principle is that the Treaty's rules of competition and the implementing regulations are of general application'. The Report is available at: http://ec.europa.eu/competition/publications/annual_report/ar_1972_en.pdf.

5 Judgment of the Court of 14 July 1981, *Gerhard Züchner v Bayerische Vereinsbank AG*, Case 172/80. The judgment, a preliminary ruling on a reference from a German court, concerned a concerted practice between German banks on certain fees charged to customers.

6 Commission Decision of 5 December 1984 in Case IV/30.307, *Fire insurance*.

7 Commission Decision of 25 March 1992 in Case IV/30.717-A, *Eurocheque: Helsinki Agreement*.

8 Commission Decision of 11 December 2001 in Case COMP/37.919, *German banks*.

9 Commission Decision of 11 June 2002 in Case COMP/36.571, *Austrian banks*.

10 Commission Decision of 24 July 2002 in Case COMP/29.373, *Visa International — Multilateral Interchange Fee.*

11 See MEMO/08/170. In the same years, the Commission also investigated Visa in relation to issues of access. This led to a prohibition decision for refusing, without objective justification, to admit Morgan Stanley as a Visa member from 2000 to 2006 – Commission Decision of 3 October 2007 in Case COMP/37.860, *Morgan Stanley Dean Witter/Visa*.

12 In particular, the first SO concerned all MIFs set directly by Visa in the EEA for point of sales transactions with consumer debit cards, which applied to all cross-border transactions in the EEA, as well as to domestic transactions in certain EU member states. The second supplementary statement of objections related to MIFs set by Visa for transactions with consumer credit cards in the EEA, which applied to all cross-border transactions in the EEA, as well as to domestic transactions in certain EU member states.

13 Commission – Management Plan 2017 – DG Competition, at page 11: https://ec.europa.eu/info/sites/info/files/file_import/management-plan-comp-2017_en_0.pdf.

14 Commission Decision of 19 December 2007 in Case COMP/34.579, *MasterCard.*

15 The action for failure to act pursuant to article 265 TFEU provides that the applicant may initiate proceedings where the institution failed to adopt an act.

16 Commission – Management Plan 2017 – DG Competition, at page 11: https://ec.europa.eu/info/sites/info/files/file_import/management-plan-comp-2017_en_0.pdf

17 In particular, according to the Court of Justice, by explaining the reasons why the measures at stake were capable of impeding competition from new entrants in the market, the General Court had assessed the potential effects of those measures, and not their object. See Judgment of the Court of 11 September 2014 in Case C-67/13 P, *Groupement des cartes bancaires v European Commission*. The case is now pending before the General Court.

18 As noted below, certain aspects of the *CDS* and *IRD* investigations are ongoing.

19 As early as 2007, Barclays alerted UK and US regulators about its concerns that banks were submitting dishonestly low interbank rates.
20 Case COMP/39.730.
21 Case COMP/39.745.
22 See Bloomberg, 'Wall Street Banks to Settle CDS Lawsuit for $1.87 Billion', 11 September 2015, available at: www.bloomberg.com/news/articles/2015-09-11/wall-street-banks-reach-settlement-on-cds-lawsuit-lawyer-says.
23 See Quinn Emanuel and Fideres Capital Press Release, 'Investment banks to face multi-billion pound CDS claims in UK courts', 5 October 2015, available at: http://fideres.com/media/qe-fideres-press-release-european-cds-action-5oct2015.16.pdf.
24 See Commission Press Release of 4 December 2015: http://ec.europa.eu/competition/antitrust/cases/dec_docs/39745/39745_13719_14.pdf
25 See Commission Press Release of 20 July 2016: http://europa.eu/rapid/press-release_IP-16-2586_en.htm.
26 Pursuant to article 10a of Commission Regulation (EC) No. 773/2004.
27 Case COMP/39.914.
28 By decision of 6 April 2016, the Commission amended the fine for Société Générale. The amended fine was based on amended value of sales data provided by Société Générale in February 2016 after the bank realised that it had initially provided incorrect data to the Commission.
29 See Commission Press Release of 7 December 2016: http://europa.eu/rapid/press-release_IP-16-4304_en.htm.
30 *HSBC v Commission*, T-105/17; *JPMorgan Chase v Commission*, T-106/17; and *Credit Agricole v Commission, T-113/17*.
31 Case COMP/39.861
32 See Press Release IP/15/4104.
33 *ICAP v Commission*, T180/15
34 Case COMP/39.924
35 See Press Releases IP/14/1189 and IP/14/1190.
36 Commission – Management Plan 2017 – DG Competition, at page 11: https://ec.europa.eu/info/sites/info/files/file_import/management-plan-comp-2017_en_0.pdf.
37 See Reuters, 'EU antitrust regulators investigate precious metals trading', 25 August 2015 available at: www.reuters.com/article/eu-metals-antitrust-idUSL5N11033L20150825.
38 See Financial Times, 'EU probes suspected rigging of $1.5tn debt market', 9 February 2016, available at: www.ft.com/cms/s/0/04befd8a-cf35-11e5-92a1-c5e23ef99c77.html#axzz4BU0AYVwt.
39 See Bloomberg, 'Bafin Reviews Gold, Silver Pricing as Part of Libor Review', 27 November 2013, available at: www.bloomberg.com/news/articles/2013-11-27/bafin-reviews-gold-silver-pricing-as-part-of-libor-review.
40 See Bloomberg, 'US Precious-Metals Trade Probe Shifts From Antitrust to Fraud', 27 February 2016, available at: www.bloomberg.com/news/articles/2016-02-26/u-s-precious-metals-trade-probe-shifts-from-antitrust-to-fraud
41 See Reuters, 'Banks face scrutiny over pricing of precious metals: WSJ', 24 February 2015, available at: www.reuters.com/article/us-usa-banks-probe-idUSKBN0LS07P20150224.
42 See Bloomberg, 'U.K. Said to Open Probe Into Rigging of Agency-Bonds Market', 20 January 2016, available at: www.bloomberg.com/news/articles/2016-01-20/agency-bond-rigging-probe-said-to-expand-as-u-k-opens-inquiry-ijmri0ov.
43 The FCA reportedly has two investigations on-going: one relating to aviation insurance and reinsurance; and the other to fund management
44 Directive 2014/104/EU of 26 November 2014.

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Vincent Brophy practises EU and UK antitrust/competition law, representing clients in mergers, antitrust investigations and civil litigation relating to market power, agreements, cartels and concerted practices. Vincent also advises on EU business regulation, particularly in banking and financial services. He works in both English and French.

Appearing regularly before the European and national competition authorities and the European courts, Vincent has acted on some of the biggest mergers and most complex antitrust cases. He regularly publishes and is a member of the editorial board of the *European Competition Journal*.

Vincent has long been ranked in the key legal directories, including *The Legal 500 UK*, *Who's Who Legal: Competition* and *Chambers*, in which he is commended as a 'Class act ... client-focused, a very silky operator. Behind the smooth veneer is an excellent and tough legal mind.' He has won several awards for his client work. Most recently he led the Cadwalader team that won the *Global Competition Review* award for 2016 European Behavioural Matter of the Year for its representation of Deutsche Bank in the European Commission's investigation into the credit default swaps markets.

Tom Bainbridge
Cadwalader, Wickersham & Taft LLP

Recently promoted to special counsel, Tom has extensive experience of antitrust investigations in the financial services sector. He has been the lead associate on five such investigations in the last six years. Tom's work includes advising Deutsche Bank on its successful defence of the European Commission's antitrust investigation into credit default swaps, which was recognised by *GCR* as the 2016 European Behavioural Matter of the Year.

More broadly, Tom regularly represents clients in antitrust and merger proceedings before both the European Commission and the UK Competition and Markets Authority, and has in-depth experience of the investigative process. He has also successfully represented clients in appeals to the UK Competition Appeal Tribunal (*Durkan v OFT*) and the EU General Court (*MasterCard v Commission*).

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