

**An evaluation of competition enforcement in the Dutch
financial markets**

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1. INTRODUCTION

In this contribution we aim to analyse the regulation of competition in the Dutch financial markets. We limit ourselves, and our contribution, to a selection of the most relevant developments in the characteristics of the Dutch financial markets and competition enforcement in relation to these markets. Our contribution should therefore not be viewed as a complete and extensive overview. Our analysis of competition enforcement in the financial sector in the Netherlands is highly influenced by the decisions and practice of both the Dutch Competition Authority ("**NMa**") and the European Commission. The Dutch financial markets are heavily affected by financial, economic and legal developments throughout the world, but more in particular by the European Union. In order not to analyse the Dutch financial sector in complete isolation from other influences, we will discuss, where appropriate, foreign developments which could be of interest to the Netherlands.

Throughout our contribution, we will refer to 'financial institutions'. This broad concept enables us to capture all institutions active in the widely defined markets of bank services, insurance and capital markets.

Financial markets have a special, possibly unique, place in the overall economy. The term 'system relevant' in relation to financial institutions is often heard in times of financial crises. If these 'system relevant' institutions fall into difficulties, it might provoke a collapse of the larger economy in which they act. Thus, not only would the financial system be in danger, but potentially the whole real economy as well. These system relevant financial institutions play an important intermediary role between on the one hand parties that invest and on the other hand parties that need external financing. They support economic activity.

Financial markets show some specific unique characteristics. An example is the price determinative influence of external, public institutions like the interest rate policy of central banks or the solvability standards which need to be adhered to. The first is a policy instrument and the latter is a form of financial regulatory supervision. Financial regulators are very active supervisors. Another characteristic of financial markets is the high level of necessary cooperation. Examples are payment systems, credit card systems and the joint determination and settlement of insurance risks by insurance providers.

The financial sector is by its nature a heavily regulated part of the economy. In the Netherlands, both the Financial Markets Authority ("**AFM**") and the Dutch Central Bank ("**DNB**") are financial regulators. In addition, the NMa enforces the Dutch and European competition rules. Major changes will come to pass in the financial sector due to the current financial crisis. The NMa will necessarily have to evaluate its role within the newly established market conditions. Our contribution will discuss the preferred path for the NMa to take going forward.

Our contribution is structured as follows. Like in almost any traditional competition law analysis, we start with the definition of the relevant markets in Chapter 2. This chapter will discuss the market for (i) banks, (ii) insurance and (iii) capital markets. Chapter 3 will discuss the relevant competition rules and institutional aspects that are to a large extent determinative for the regulation of competition in the Dutch financial markets. In the following chapters we provide a high level analysis of competition enforcement in the three distinguished relevant

markets. In each of these chapters we first analyse the most important merger control developments and we subsequently discuss the relevant enforcement of the classical competition rules that prohibits anticompetitive behaviour. Chapter 4 will cover the banking sector, Chapter 5 will cover the insurance sector and Chapter 6 will provide an overview of the capital markets sector. In light of the current financial crisis and the recent actions taken by the Netherlands and other Member States to counteract negative developments, we will provide an extensive analysis of the aid measures taken under the European State Aid rules. Finally, Chapter 8 provides a conclusion and offers some queries and insights in order to set out the preferable path for the NMa to take after the financial crisis in its enforcement activities in relation to the Dutch financial markets.