

ACM's view on innovation in the payments sector

How do we get the best deal?

Speech by Cateautje Hijmans van den Bergh, Member of the Board of The Netherlands Authority for Consumers and Markets (ACM) at ESB's Conversation with Regulators on Innovation in Payment Services, 18 January 2018 in The Hague

1. Let me begin by thanking ESB for this opportunity to present ACM's views on innovation in the payments sector. Innovation is important. For one thing, because it can make the life of a consumer, such as myself, easier. Paying with an app is now second-nature. And like many of you, it took me very little time to get accustomed to the innovation of contactless payments. So I didn't even blink anymore when I was confronted with a charity collecting box which had exactly that option. In fact, I have a vision of myself in years to come, standing in a lecture theatre, trying to explain to students what money used to be.
2. I want to give you my views on the challenges for supervisors when dealing with innovation in the payments sector. Now, you are busy people, with attractive mobile phones in your hands, so I am going to keep it simple. I am going to talk about competition, cooperation and consumers. And why we need all three to make innovation in the financial sector a real success.
3. But let me start by introducing myself and ACM. I joined ACM on January 1st 2017. My background is financial, having worked in several financial markets: banking, consulting, pensions and asset management. ACM is a multi-functional authority, with competition, consumer and also regulatory powers. ACM's mission is to provide options and opportunities for business and consumers. In other words, we ensure fair competition between businesses, while protecting consumer interests and creating consumer welfare. And this focus on the welfare of the consumer is a crucial aspect of ACM's strategy. To fulfil our mission in the financial sector, we frequently engage with financial regulators and policy makers. Our objective is to ensure that the value of competition and the benefits that competition can bring to the market are not forgotten when making policies for, for example,

financial stability and privacy.

4. The mandates of DNB and AFM do not include a competition objective. In 2016 the Dutch Minister of Finance sent a letter to the Dutch House of Representatives in which he explains this. The Minister expects that the addition of a competition objective would complicate achieving the primary objectives, especially financial stability and consumer protection. According to the Minister, requiring DNB and AFM to take competition into account could detract attention from prudential supervision and consumer protection. The Minister also mentions that the Netherlands already has a competition authority (ACM) with competition as its primary objective. So, it is clear that ACM has a role to play in this sector.
5. ACM has three main tasks in the financial sector. First and foremost, ACM enforces the competition law. Second, ACM enforces a small number of specific regulations in the payments sector. These include the supervision of specific sections in the European Interchange Fees Regulation and PSD Directive. We also have a few consumer protection tasks, such as supervising the surcharging rules. But for the most part, consumer protection in the financial sector is a task of our colleagues at the AFM.
6. ACM's third task is more diverse, but can be summarised as advocacy. This involves giving direction and advice to market parties and policy makers to stimulate competition and innovation to the benefit of consumers. As Director-General Laitenberger of DG Competition recently stated, what we want to promote is "responsible innovation": innovation which is aligned with the needs and values of society. I liked this point by Laitenberger because of course, as we all know only too well, we have also seen examples of 'bad' innovation in the financial sector. I do not need to remind you of the poorly understood and poorly designed financial products that contributed to the financial crisis.
7. I said in the beginning that I wanted to talk to you about competition, cooperation and consumers. And why we need all three to let innovation in the payments sector really thrive. But there's a question that we need to answer first: is there actually a problem when it

comes to innovation in the payments sector? Many times, I hear that paying in the Netherlands is already very cheap, safe and fast. So why then, does ACM feel the need to intervene? Let me try to explain this by drawing two extreme scenarios. Let's call them the light and the dark side. First, there is the light side. Payments are very fast, cheap and completely secure. Barriers to entry and innovation do not exist. Every consumer and every merchant can confidently choose whichever payment provider he or she likes. And then there's the dark side. Payment infrastructures are inefficient and do not allow interoperability between different providers. Innovation is concentrated within a few major companies that have a quiet life together. Consumers fear that switching to other providers will compromise their privacy. And so they stick with their old services and suppliers.

8. Of course, these are extremes. The reality is that the balance in market forces determines which side, light or dark, will become dominant. You have probably already guessed what side ACM is on. So no need for me to describe ACM with another Star Wars metaphor.
9. Back to my three 'c's': competition, cooperation and consumers. As a board member of the competition authority, it will not surprise you that I first want to stress the importance of a truly competitive market. Innovation thrives when there is healthy competition, or there is at least a competitive threat. Unfortunately, well-functioning markets cannot be taken for granted. This is also the case for financial markets. Complex and intrusive regulations, like we sometimes see in financial markets, tend to have a dampening effect on competition. And high entry barriers for new challengers cause large parts of the financial sector to stay in the hands of a few big firms. These are all factors that move us towards a darker region. That is why ACM takes the tasks that I mentioned earlier very serious.
10. This brings me to the second 'c': cooperation. Policy makers are trying to reach a large number of objectives in the financial sector at the same time. The financial crisis served to focus priorities on financial stability and integrity. Now that financial systems are recovering, the importance of competition is receiving more attention. The financial system needs to be

stable, safe for consumers, sustainable, competitive, etc. As a result, European and national regulations often introduce supervisory tasks for more than one regulator. This creates coordination challenges and the risk of less transparency for market parties. The PSD2 is a good example. The Dutch implementation has resulted in 4 different regulators being allotted different regulatory tasks. Each with its own mandate and objectives. If every regulator were to start bombarding the market with new regulations, creating new obstacles for entry and innovation, this would certainly move us towards the dark side.

11. And then finally, consumers. Sometimes it seems that the consumer is overlooked in these matters. This is a big mistake, as all our efforts are, or should be, focused on providing consumers with the products and services that best serve their needs. Sure, fierce competition, abundant innovation and well-cooperating regulators are very nice to have. But all of this is obsolete if consumers are unable or unwilling to make use of these new products and providers. To move to the light side, consumers need to be confident that they can choose the product and provider that best meets their needs. They need to trust that their interests are well protected by regulations and regulators. And they need to trust themselves. Consumers need to have confidence that they can make an informed choice.
12. So, what does all this mean for the payments sector? How do we steer the forces of competition, cooperation and consumers to the light side? And what is ACM's role in this? I focus here on competition and cooperation.
13. First competition. As I mentioned before, paying in the Netherlands is cheap, fast and safe. It makes sense to build on the foundations that have been laid down. The Dutch payment infrastructure is reliable and secure. It is vital that measures continue to be in place to keep it that way. However, beyond that, market forces should do their work so everyone can benefit from a competitive and innovative sector.
14. ACM recently published a report on fintechs in the payments sector. We concluded that there is a real risk that banks will try to foreclose new entrants in the payments markets.

Now for some of you it may seem quite obvious that banks that face new competitors have incentives to foreclose them. However, in practice it is less straightforward. A risk of foreclosure only exists in specific circumstances. To find out exactly what those specific circumstances are, is precisely why we undertake these kinds of studies. Our conclusion was that the risk of foreclosure is especially relevant for front-end fintechs that need access to the account of consumers, the so-called PSD2 access-to-the-account.

15. The PSD2 aims to provide new fintechs with access to payment information of customers, after explicit consent of that customer. Our analysis shows that PSD2 does not completely take away the risk of foreclosure. Why? First, because the conditions under which access has to be provided may not be completely clear at this moment. Based on our experience with access regulation in other sectors, for example telecoms, we feel entitled and obliged to make that claim.
16. Another reason why PSD2 may not take away the foreclosure risk is that banks may be required to provide access free of charge. This could give them incentives to limit access or to ask very high prices for additional services.
17. You can find our Fintech report on our website. An English translation of the summary is also available.
18. Having regard to the conclusion of our Fintech report, we decided to start monitoring how banks handle requests for access from new entrants. We can do this in several ways. For example, we can request information from and interviews with banks and entrants. And if we uncover anti-competitive behaviour, then ACM has competition law powers, which we will not hesitate to use. Up to now we have only identified the risk of foreclosure. We are not accusing anyone of anti-competitive behaviour.
19. Another recent report, which ACM commissioned from Ernst&Young, investigated whether supervisory fees are an entry barrier for fintechs. These are the fees that financial

companies have to pay for DNB's and AFM's supervision. We decided to do this based on signals we received from market parties. Based on an international comparison and on interviews with relevant market players, the report concluded that supervisory costs are not a major barrier. So this is an example where further action of ACM is not warranted.

20. Then cooperation. Let me start with some reassurance. Our experience is that the objectives of the different regulators do not have to be conflicting and can even strengthen each other. For example, a competitive environment provides banks with the right incentives to be efficient and to have flexibility to adjust their business to new circumstances. Financial regulators value these qualities as it enhances the resilience and stability of the financial system. Cooperation between regulators is easy in those situations. However, when issues become politically charged or general interests are, or seem to be, conflicting, cooperation cannot be taken for granted. Regulators need to continue to invest in joint activities to make cooperation an intrinsic part of supervising financial markets.
21. I already mentioned our recently published Fintech report. One of the risks we saw there is that it is not clear which access conditions apply. This could give banks the opportunity to raise entry barriers, which is of course bad news for competition and innovation. That is why we recommended the involved regulators to work together to provide clarity where needed. And we need to bring the views of all parties to the table. All too often the incumbent view and lobby is very well organised, while the views of new entrants are diffused. The recent decision of the European Commission to allow access only through API's that are created by banks makes this even more important.
22. I think we have made some promising steps already. We are talking at different levels with our colleagues from DNB, AFM and AP about how we can coordinate our efforts on PSD2. Another way of cooperation is to share information. I am very glad that, at least for our supervision on the PSD2, this is now being arranged. We should really take steps to extend cooperation further. As we see in other states, information sharing makes supervision more

effective and can reduce the administrative burden on market players. The last thing I want to mention on this topic is that ACM has joined the InnovationHub of AFM and DNB. This means that fintechs have another way of reaching us. With their questions, but possibly also with interesting information for us.

23. And we may also learn from other states. Last week I read an article in the Financieel Dagblad that claimed a head-start for Great-Britain in the European payments market. By developing the 'open banking' concept, the British were able to provide clarity on rules and regulations much faster than the rest of Europe. We may learn something from the experiences in the UK. Although, of course I cannot foresee what will happen to the British head-start if Europe decides on different standards.
24. Let me conclude. I cannot stress enough that payments in the Netherlands are cheap, fast and safe. The challenge is to keep it that way, while giving plenty of room for competition and innovation. To paraphrase Johannes Laitenberger, who I mentioned earlier: the fact that a particular market situation may produce benefits to consumers does not mean that there could not be even more benefits if there was more competition. Because innovation does not stop, we should never stop demanding a better deal.
25. I am not sure where we currently are between the two extremes of the light and the dark side. But I do think we have a pretty good idea of what we need to do to steer in the right direction. And that involves at least three things. First, creating a regulatory and supervisory regime that provides room for real competition and thus innovation. Second, cooperation between supervisors to create clarity for all parties involved. And to create the right balance between the objectives that need to be reached. And finally, we need well-informed and confident consumers. And this might be the biggest challenge of all.
26. Thank you for your attention.