

Competition law and banking regulation: solving the conflicts

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Research: **solutions framework** for actions serving **banking regulatory interests**, that may be blocked by **competition law**

BANK REGULATORY INTERESTS	COMPETITION LAW	CONFLICTS
<p>MARKET IMPERFECTION REMEDIES</p> <ul style="list-style-type: none"> Financial stability •Contagion risk Real economy/Payment system •Negative externalities: risks for society Information asymmetry/Bounded ratio •Unsatisfied demand, unsuited purchases Efficiency (Payments) •Transaction costs too high <p>POLITICAL JUSTIFICATIONS</p> <ul style="list-style-type: none"> Consumer protection •It is needed to protect weaker parties. Paternalism Universal access •All citizens have to be 'included' Crime prevention 	<p>INTERESTS</p> <ul style="list-style-type: none"> Economic welfare •Subordinated to EU goal, i.e. well-being of citizens Single market (EU) •Rare. An improper goal for competition law? <p>RULES</p> <ul style="list-style-type: none"> Cartel prohibition; 2-steps analysis: <ul style="list-style-type: none"> A. Restriction of competition is prohibited B. Exemption if 4 conditions are met: <ol style="list-style-type: none"> 1. 'Welfare surplus'; 2. For consumers; 3. Proportionality test; 4. No competition elimination. Abuse of dominance prohibition Merger control rules 	<p>SELF REGULATION ↔ CARTEL PROHIBITION</p> <ul style="list-style-type: none"> •Agreement on credit provision to prevent overindebtedness •Limits diversity of loans = violation of cartel prohibition •Example: Dutch code for mortgages •Question: does the cartel prohibition block this code? <p>EMERGENCY TAKEOVER ↔ MERGER CONTROL</p> <ul style="list-style-type: none"> •Takeover to rescue failing bank, financial stability •Large combined market share = merger rules prohibit takeover •Example: Lloyds acquires HBOS (2008, UK) •Question: should merger rules block emergency takeovers?

SOLUTIONS FRAMEWORK (Cartel prohibition, exemption condition 1)

1. **Restriction of competition?**
 - What is definition of 'competition'?
 - Counterfactual analysis
 - Yes = Step 2
- ➔
2. **Balancing pro's & cons**
 - Market imperfection remedy? Step 3A
 - Political justification? Step 3B
- ➔
- 3A. **Balancing market imp. remedies**
 - Check for welfare surplus
 - All welfare increases; not just productive & innovative efficiencies
- ➔
- 3B. **Balancing political justifications**
 - Allowed under cartel prohibition? Yes: well-being is underlying goal
 - What is a genuine public interest?
 - No common denominator, no surplus calculation
 - Need for guidance for courts and authorities