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# Electronic Payments in the European Market

Creating a Level Playing Field  
between Banks and Non-Banks

Jan A. Jans



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# ABBREVIATIONS

AISP	Account Information Service Provider
AML	Anti-Money Laundering
AML/CTF	Anti-Money Laundering and Counter Terrorist Financing
API	Application Programming Interface
AS-PSP	Account Servicing Payment Service Provider
ATM	Automated Teller Machine
B2B	Businesses to Business
Bank	Credit institution within the meaning of Article 4 of Regulation (EU) No 575/2013 on prudential requirements for Banks and investment firms
BIC	Bank Identifier Code
CDD	Customer Due Diligence
CJEU	The Court of Justice of the European Union
CNP	Card-Not-Present
Commission	The European Commission
CP	Card-Present
CPSS	Committee on Payment and Settlement Systems
DDoS	Distributed Denial of Service
DMA	Digital Markets Act
DORA	Digital Operational Resilience Act
DoS	Denial of Service
EBA	European Banking Authority
ECB	European Central Bank

EEA	European Economic Area, which consists of the 27 EU Member States plus Iceland, Lichtenstein and Norway
EMI	Electronic Money Institution
E-money	Electronic Money
EPC CT Rulebook	Rulebook developed by the European Payments Council for the SEPA Credit Transfer Scheme
EPC CT Scheme	Credit Transfer Scheme developed by the European Payments Council
EPC DD B2B Rulebook	Rulebook developed by the European Payments Council for the SEPA Direct Debit Business to Business Scheme
EPC DD B2B Scheme	SEPA Direct Debit Business to Business Scheme developed by the European Payments Council
EPC DD Core Rulebook	Rulebook developed by the European Payments Council for the SEPA Direct Debit Core Scheme
EPC DD Core Scheme	SEPA Core Direct Debit Scheme developed by the European Payments Council
EPC ICT Rulebook	Rulebook developed by the European Payments Council for the SEPA Instant Payments Scheme
EPC ICT Scheme	Instant Payments Scheme developed by the European Payments Council
EPC	European Payments Council
ESA	European Supervisory Authority
EU	European Union, which consists of the following 27 Member States: (i) Austria; (ii) Belgium; (iii) Bulgaria; (iv) Croatia; (v) Cyprus; (vi) Czech Republic; (vii) Denmark; (viii) Estonia; (ix) Finland; (x) France; (xi) Germany; (xii) Greece; (xiii) Hungary; (xiv) Ireland; (xv) Italy; (xvi) Latvia; (xvii) Lithuania; (xviii) Luxembourg; (xix) Malta; (xx) Netherlands; (xxi) Poland; (xxii) Portugal; (xxiii) Romania; (xxiv) Slovakia; (xxv) Slovenia; (xxvi) Spain; and (xxvii) Sweden
Euro area Member States	The Member States of the European Union that have adopted the euro as their currency. These Member States are: (i) Belgium; (ii) Croatia; (iii) Cyprus; (iv) Germany; (v)

	Estonia; (vi) Finland; (vii) France; (viii) Greece; (ix) Ireland; (x) Italy; (xi) Latvia; (xii) Lithuania; (xiii) Luxembourg; (xiv) Malta; (xv) the Netherlands; (xvi) Austria; (xvii) Portugal; (xviii) Slovenia; (xix) Slovakia; and (xx) Spain
E-wallet	Electronic Wallet
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FSB	The Financial Stability Board
Home CA	Competent Authority of the Home Member State
Host CA	Competent Authority of the Host Member State
IBAN	International Bank Account Number
ICT	Information and Communications Technology
IFR	Interchange Fee Regulation
IOSCO	International Organization of Securities Commission
ISO	International Organization for Standardization
LVPS	Large-value Payment System
MIF	Multilateral Interchange Fee
ML/TF	Money laundering and Terrorist Financing
NCA	National Competent Authority
NFC	Near Field Communication
Non-euro area Member States	The Member States of the European Union that have not adopted the euro as their currency. These Member States are: (i) Bulgaria; (ii) Czech Republic; (iii) Denmark; (iv) Hungary; (v) Poland; (vi) Romania; and (vii) Sweden
Non-SIPS	Non-Systemically Important Payment System
P2P	Person-to-Person
Payment	Electronic Payment
PI	Payment Institution
PIN	Personal Identification Number
PISP	Payment Initiation Service Provider
POS	Point-of-Sale
PSP	Payment Service Provider
PSU	Payment Service User
RTGS	Real-Time Gross Settlement
SCA	Strong Customer Authentication
SecuRe Pay	The European Forum on the Security of Retail Payments



SEPA	Single Euro Payments Area
SIPS	Systemically Important Payment System
SIRA	Systematic Integrity Risk Analysis
TIPS	Target Instant Payments Settlement System
TPP	Third Party Payment Service Provider

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# Introduction: Banks and Non-Banks in the European Market for Payments

## 1.1 GENERAL INTRODUCTION

Credit institutions ('**Banks**') have traditionally played a role in the circulation of money (bank notes and coins). In the fourteenth century, Italian merchant bankers first started offering services whereby money was received in a particular currency in a particular place and paid out in another place in another currency.<sup>1</sup> These merchant bankers settled their payment obligations in a manner very similar to the interbank clearing and settlement systems that we use today.<sup>2</sup> Making a payment did not immediately result in the transfer of money between merchant bankers. Instead, net positions between merchant bankers were calculated after a certain period and were subsequently settled by means of cash payment. These merchant bankers are generally regarded as the predecessors of Banks as we know them today.

In times when cash served as the most important means of payment in society, this was a role assigned to the private sector, under the preconditions and requirements defined by the public authorities.<sup>3</sup> In fact, this

<sup>1</sup> See Geva (2011, p. 356).

<sup>2</sup> Ibid.

<sup>3</sup> Including the requirement of close supervision of institutions involved in the circulation of money.

classic role of Banks also gave rise to a new role for Banks, in which means of payment in the form of somewhat more abstract concepts, such as checks, exchange letters, letters of credit and other alternatives to cash, played a more important role in society, especially when large payments were involved. Banks played an important intermediary role as a provider of assurance that such means of payment represented value, for example by guaranteeing the cover of the alternative means of payment as used by their customers.

Since the nineties of the last century, Banks have developed a large variety of different electronic payment (**'Payment'**) solutions, which involve payment products that enable payment service users (**'PSUs'**) to transfer funds electronically, i.e., by means of book-entries in non-physical accounts.<sup>4</sup> For Payment products, Banks used to be responsible for the execution of all relevant steps in the transaction process, such as the authorisation, clearing and settlement of payment transactions.<sup>5</sup>

The more or less logical consequence of the rise of Payment solutions has been that in recent decades Banks have played a prominent role in this area and have therefore also been able to build up an almost monopolistic position in the development and establishment of systems, infrastructure, payment methods and means that were highly interoperable within the banking community, but whose functions were of very limited use outside the banking environment. The role of Banks in this field, which has grown almost organically based on the foundations of the organisation of the (traditional) payment systems over the last centuries, has started to become subject to challenge in recent decades. Amongst others because Non-Banks that intended to compete with Banks in the market for Payments were forced to adhere to the rules and regulations that were developed by Banks and to apply the Banks' technical communication standards.

The question is increasingly being asked whether the position of the Banks does not stand in the way of fair market forces for products and services in the field of Payments, both in terms of the functionality of those products and services and the price setting thereof. The fundamental question is, amongst other things, to what extent this monopolistic role of Banks has resulted in innovation in the field of

<sup>4</sup> See Euro Banking Association (2017, p. 7).

<sup>5</sup> As was the case with cash payments.

Payments being held back, whether the interests of customers of the financial industry have not been unnecessarily neglected as a result, and whether the opening of the market could not lead to a better balance between the interests of PSUs. In addition, the interests of fair pricing, optimal service to PSU needs and the application of innovation could be better served by a more open market than by retaining the monopolistic role of the Banks in the field of Payments, traditionally accepted by society and the authorities.

During the nineties of the last century, anti-competitive behaviour by Banks was only scrutinised under the European and national competition law frameworks. Until the adoption of Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions ('EMD')<sup>6</sup> in 2000 and Directive 2007/64/EC on payment services in the internal market ('PSD')<sup>7</sup> in 2007, there was no European legislative framework focussing on Non-Bank competition from a financial services regulatory perspective. Absent a European legislative framework on market access by Non-Banks, Non-Banks that intended to enter the market for Payments were often compelled to apply for a banking licence. Since the licence requirements for Banks are disproportionately cumbersome for payment service providers ('PSPs') that do not obtain repayable funds from the public nor offer other regulated services than payment services, Non-Banks were facing substantial barriers to enter the market for Payments.

To stimulate sound competition between Banks and Non-Banks, it is of paramount importance to have a profound European legal framework supportive of Non-Bank participation. The European legislature considers in particular the reduction of market entry barriers for Non-Banks to be a *condicio sine qua non* for increasing Non-Bank participation and enhancing competition between Banks and Non-Banks in the field of Payments. The line of thinking is that with lower barriers to market entry, Non-Banks are better positioned to enter the market and start offering Payment solutions that PSUs consider to be a substitute of the Payment solutions offered by Banks.

<sup>6</sup> Directive 2000/46/EC of 18 September 2000 "on the taking up, pursuit of and prudential supervision of the business of electronic money institutions", OJ L 275, 27.10.2000, pp. 39–43.

<sup>7</sup> Directive 2007/64/EC of 13 November 2007 "on payment services in the internal market amending (...)", OJ L 319, 5.12.2007, pp. 1–36.

## 1.2 THE RISE OF FINTECHS AND BIGTECHS

Since the 2010s, the pace of technological innovation has accelerated considerably, creating new business opportunities for PSPs. Amongst others, the introduction of mobile technologies, such as near field communication (‘NFC’)<sup>8</sup> and quick response (QR) codes<sup>9</sup> have had a significant impact on the direction in which the Payment market has developed.<sup>10</sup> With technological innovation, customer behaviour and customer expectations *vis-à-vis* PSPs have also changed. Nowadays, PSUs demand 24/7 availability, fast, cheap and secure Payment products.<sup>11</sup> Further to the offering of low-cost Payment products, maximising customer convenience has become a requisite for PSPs that wish to strengthen their competitive position.<sup>12</sup> To stay ahead of the competition, the overall focus of PSPs has generally shifted from a product-centred approach towards a customer-centred approach, whereby the term ‘frictionless payment experience’ has become the new buzzword.

Nowadays, technology focussed service providers such as FinTechs and BigTechs are taking the Payments market by storm. The Financial Stability Board (‘FSB’) defines ‘FinTech’ as *‘technology enabled financial innovation that could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services’*.<sup>13</sup> Notable FinTechs that offer payment services in the European market include Adyen, Nexi, Klarna and Monzo. BigTechs are *‘large technology companies with extensive established customer networks’*.<sup>14</sup> Well-known BigTechs that are

<sup>8</sup> NFC technology is used by *inter alia* Apple Pay, Google Pay and Payconiq.

<sup>9</sup> QR code technology is used by *inter alia* Google Pay, Apple Pay, Samsung Pay and Payconiq.

<sup>10</sup> See OXERA (2020, p. 23).

<sup>11</sup> See EBA (2019, p. 11).

<sup>12</sup> See ACM (2020, p. 43).

<sup>13</sup> See FSB (2019a, p. 1).

<sup>14</sup> See FSB (2019b, p. 3).

active in the Payments market are Facebook<sup>15</sup>, Google<sup>16</sup>, Alipay<sup>17</sup> and Amazon.<sup>18</sup> Certain BigTechs, such as Apple, operate in the Payments market as a technical service provider and are therefore not licensed as a PSP.<sup>19</sup>

Market entrance by FinTechs and BigTechs increases competition and can therefore offer social welfare benefits such as: (i) a reduction in the costs of payment services for PSUs; and (ii) a positive stimulus for innovation in the Payments market.<sup>20</sup> However, one must not neglect the fact that FinTechs and BigTechs can also stifle innovation and competition if they are too big. An example of a BigTech that appears to have such effect because of its dominant market position is Apple. Banks cannot offer electronic wallet ('E-wallet') solutions other than Apple Pay to PSUs that use an iOS device instead of an android smartphone. Incumbent Banks and Non-Banks face competitive challenges as a result of FinTech and BigTechs entering the market. Especially BigTechs seem to be an immediate competitive threat for incumbent PSPs since BigTechs can provide (payment) services at a large scale during the start-up phase using their high investment capacity, extensive technological knowledge and well-developed client network.<sup>21</sup> The business operations of Non-Banks are generally smaller and less complex than the business operations of Banks and Banks are often hindered by the legacy of their automated platforms and technical infrastructures developed in decades. As a result, incumbent Non-Banks are more flexible and can therefore more easily adapt to the changing competitive environment, which gives them a competitive edge over Banks.<sup>22</sup> Indeed, Banks have developed different strategies to cope with the changing environment than Non-Banks. Whereas Non-Banks

<sup>15</sup> In 2018, Facebook Payments International Limited obtained a licence to operate as an EMI from the Central Bank of Ireland (Ireland).

<sup>16</sup> In 2018, Google Payment Lithuania UAB obtained a licence to operate as an EMI from the Lietu-vos Bankas (Lithuania).

<sup>17</sup> In 2018, Alipay (Europe) Limited S.A. obtained a licence to operate as an EMI from the Commission de Surveillance du Secteur Financier (Luxembourg).

<sup>18</sup> In 2010, Amazon Payments Europe S.C.A. obtained a licence to operate as an EMI from the Commission de Surveillance du Secteur Financier (Luxembourg).

<sup>19</sup> See ACM (2020, p. 5).

<sup>20</sup> See FSB (2019b, p. 22).

<sup>21</sup> See FSB (2019a, p. 1).

<sup>22</sup> See EBA (2019, p. 3).



seem to focus primarily on innovating their own product offering, Banks more often choose to partner with FinTechs and BigTechs to develop new technologies or jointly offer payment solutions.<sup>23</sup> Such arrangements, which are called horizontal cooperation agreements under the European competition law framework, are according to **Article 101 of the Treaty on the Functioning of the European Union** ('TFEU')<sup>24</sup> allowed from a competition law perspective provided that they do not restrict competition.<sup>25</sup> An alternative strategy often applied by Banks is to invest in FinTechs via venture capital funds or direct acquisitions.<sup>26</sup>

With these market dynamics, it is as important as ever to have a better understanding of the elements of the European financial services regulatory framework for the Payments market that contribute to the level playing field between Banks and Non-Banks in the field of Payments.

### 1.3 THE IMPORTANCE OF HAVING A LEVEL PLAYING FIELD BETWEEN BANKS AND NON-BANKS

#### 1.3.1 *The Main Policy Objectives of the European Legislature*

Since the early 2000s, the European legislature has adopted numerous directives and regulations to establish an internal market for Payments. Most of these directives and regulations contain both activity- and entity-based rules. Activity based rules involve legal requirements that apply to all types of PSPs conducting a certain activity whereas entity-based rules provide for different legal requirements for different types of PSPs (i.e., regardless of the type of activity conducted by these PSPs).

<sup>23</sup> An example of a Payment solution that is offered by a BigTech in collaboration with Banks is Apple Pay. Apple pay is a bank-led solution, which means that the bank is responsible for: (i) the authentication of the payment transaction; and (ii) the transfer of funds.

<sup>24</sup> Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012).

<sup>25</sup> According to **Paragraph 42 of the Guidelines on Horizontal Agreements**, the degree of market power required for an infringement under **Article 101 TFEU** is less than the degree of market power required for having a dominant position within the meaning of **Article 102 TFEU**.

<sup>26</sup> Direct acquisitions are generally not the preferred option because it requires the Bank to keep the FinTech on its balance sheet. This brings the FinTech within the scope of inter alia the Bank's consolidated supervision requirement.

One of the main objectives of public policy is to enhance social welfare.<sup>27</sup> In the market for Payments, public policy contributes to this objective, amongst others, by promoting a competitive market. In general, having a competitive Payments market enhances social welfare by increasing the variety of available Payment solutions and decreasing the average costs charged for these solutions.

In order to establish a European Payments market that enhances social welfare, the European legislature developed a financial services regulatory framework containing legal requirements that can be divided into six different categories, each of them pursuing their own intermediate objectives. The first intermediate objective is the facilitation of market access by Non-Banks that intend to provide payment services. With the adoption of PSD in 2007, a separate licensing regime has been introduced for payment institutions ('PIs') to boost market entrance by Non-Banks. The second intermediate objective involves the safeguarding of the security of the Payments market. To ensure the security of the Payments market, each participant in the payment chain must take responsibility for guaranteeing the safety of their involvement in the execution process. For this purpose, Directive (EU) 2015/2366 on payment services in the internal market ('PSD2')<sup>28</sup> PSD2 contains rules on security related requirements and the allocation of these requirements between the participants in the payment chain. The third intermediate objective is the safeguarding of the integrity of the Payments market. When providing payment services, PSPs are exposed to different (integrity) risks, such as the risk of being used for money laundering and terrorist financing ('ML/TF') purposes. A legislative framework on the prevention of ML/TF has been adopted by the European legislature to minimise the ML/TF risk exposures of PSPs. The fourth intermediate objective involves the enhancement of PSU protection in case of an unauthorised or erroneous Payment. In the financial services regulatory framework, PSU protection is, amongst others, ensured by providing clear rules on the allocation of rights and obligations between PSPs and PSUs in case of unauthorised or erroneous Payments. The fifth intermediate objective involves allowing Non-Banks access to payment systems. The European legislature considers payment system access to be essential for Non-Banks in order to compete with Banks on an equal footing. However, the European legislature should

<sup>27</sup> See BIS (2021, p. 5).

not strive to establish Non-Bank payment system access at all costs. If in a particular situation the objective of achieving Non-Bank payment system access is at odds with the objective of ensuring financial stability of the Payments market, imposing restrictions on payment system access by Non-Banks for the benefit of enhancing financial market stability would be beneficial to social welfare. The sixth intermediate objective covers collaboration between competing PSPs to develop standards for the Payments market that reflect the interests of both Banks and Non-Banks. In order to stimulate efficient processing of Payments, it is essential that PSPs develop standards that are used by all PSPs for communicating with each other and exchanging information. The development of such standards requires collaboration between competing PSPs.

The above-mentioned intermediate objectives are addressed in different directives and/or regulations. For example, PSD2 on payment services in the internal market (**'PSD2'**)<sup>28</sup> covers legal requirements on enhancing competition by Non-Banks and consumer protection but does not so much focus on addressing intermediate objectives such as safeguarding market integrity (e.g., addressing ML/TF risk exposures). In general, there does not appear to be a hierarchy between these intermediate objectives from the perspective of the European legislature.

Regulations are directly applicable in every Member State and come into effect after they are adopted by the European parliament and Council, or if it concerns delegated regulations by the Commission. Directives must be implemented into the local laws of each of the Member States in order to take effect. Based on the duty of consistent interpretation, Member States are obliged to interpret national law consistently with European law. However, it is in principle for each Member State to determine how it ensures compliance with the legal requirements imposed by directives. Ultimately, the Court of Justice of the European Union (**'CJEU'**) is responsible for determining how a particular legal provision of EU law must be interpreted.<sup>29</sup>

At the European level, an important role has been assigned to the European Banking Authority (**'EBA'**) in relation to Payments. One of the

<sup>28</sup> Directive (EU) 2015/2366 of 25 November 2015 "on payment services in the internal market, amending (...)", OJ L 337, 23.12.2015, pp. 35–127.

<sup>29</sup> This means that national deviations may be set aside in case of an incorrect interpretation.

main objectives of the EBA is to contribute to the consistent interpretation of the European Payments framework. Although it is ultimately the CJEU that determines how European law provisions must be interpreted, **Article 8(1)(b) EBA Regulation**<sup>30</sup> enables the EBA to contribute to the consistent application of the European Payments framework by developing and issuing amongst others: (i) regulatory technical standards within the meaning of **Article 10(1) EBA Regulation**; (ii) implementing technical standards within the meaning of **Article 15 EBA Regulation**; (iii) guidelines and recommendations within the meaning of **Article 16 EBA Regulation**; and (iv) opinions within the meaning of **Article 16a EBA Regulation**. Regulatory technical standards and implementing technical standards must be endorsed by the Commission in order to be legally binding and directly applicable. Guidelines, recommendations and opinions are not legally binding. However, **Article 16(3) EBA Regulation** requires that National Competent Authorities ('NCAs') and PSPs make every effort to comply with EBA guidelines and recommendations. The content of standards, guidelines, recommendations and opinions must always be within the boundaries of the legislative framework for Payments as referred to in **Article 1(2) EBA Regulation**<sup>31</sup>, being: (i) PSD2; (ii) Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions ('EMD2')<sup>32</sup>; and (iii) Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features ('PAD').<sup>33</sup> These directives contain several provisions providing the EBA with a legal basis to develop such standards, guidelines, recommendations and opinions on specific topics covered by these directives. However, this legal framework appears to be at odds

<sup>30</sup> Regulation (EU) 1093/2010 of 24 November 2010 "establishing a European Supervisory Authority (European Banking Authority), amending (...)", OJ L 331, 15.12.2010, pp. 12-47.

<sup>31</sup> Regulation (EU) 2019/2175 of 18 December 2019 "amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), (...)", OJ L 334, 27.12.2019, pp. 1-145, Recital 5.

<sup>32</sup> Directive 2009/110/EC of 16 September 2009 "on the taking up, pursuit and prudential supervision of the business of electronic money institutions (...)", OJ L 267, 10.10.2009, pp. 7-17.

<sup>33</sup> Directive 2014/92/EU of 23 July 2014 "on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features", OJ L 257, 28.8.2014, pp. 214-246.

with the catch all provision of **Article 1(3) EBA Regulation**, which states that the EBA shall also act in the field of activities of PSPs in relation to issues not directly covered in the directives mentioned in **Article 1(3) EBA Regulation** provided that such involvement is considered necessary to ensure the effective and consistent application of these directives (e.g., matters of corporate governance). Given that there is no hierarchy between directives and regulations from a European law perspective, this contradiction creates uncertainty as to the mandate of the EBA with regard to the issuing of standards, guidelines, recommendations and opinions on Payments related topics.

Further to the issuing of standards, guidelines, recommendations and opinions, the EBA also contributes to the consistent interpretation of the European Payments framework by investigating differences in supervision by NCAs.<sup>34</sup> In case an NCA has not applied, or incorrectly applied the provisions of PSD2, EMD2 or the PAD,<sup>35</sup> **Article 17(2) EBA Regulation** allows that the EBA can at its own volition<sup>36</sup> or upon request of an NCA, the European Parliament, the Council, the Commission or the Banking Stakeholder Group investigate an alleged breach or non-application by an NCA of EU law.<sup>37</sup> For this purpose, the EBA has established rules of procedure containing criteria that are taken into account when the EBA receives a request to initiate an investigation.<sup>38</sup> Since **Article 17(2) EBA Regulation** allows the EBA discretion as to whether or not it will pursue investigations based on information received from a natural or legal person regarding an alleged breach or non-application of EU law by an NCA, these rules of procedure also clarify under what conditions the EBA may decide to close a particular case without opening an investigation.<sup>39</sup> In the recently published

<sup>34</sup> See Gortsos and Lagaria (2020, p. 6).

<sup>35</sup> Or any of the directives or regulations based on these acts.

<sup>36</sup> Where relevant, based on information provided by legal- or natural persons.

<sup>37</sup> The EBA may, not later than 2 months from initiating its investigation address a recommendation to the NCA on the action required for the NCA to comply with EU law. If these recommendations are not followed, this can lead to infringement procedure by the Commission.

<sup>38</sup> See EBA (2020).

<sup>39</sup> European Court of Justice. (2016). Case C-577/15 P, *SV Capital OU v EBA* (EU:C:2016:947), paragraph 46.

proposal for a regulation on payment services (**‘PSR Proposal’**),<sup>40</sup> the Commission suggests to amend the EBA Regulation to allow the EBA the authority to temporarily prohibit or restrict the offering of certain payment services, payment instruments or electronic money (**‘E-money’**) products if these potentially harm consumers or threaten the functioning and integrity of financial markets.<sup>41</sup> According to **Article 104(2) PSR Proposal** such decision can only be taken provided that all of the following conditions are fulfilled: (i) it involves a significant number of PSUs or E-money holders or a threat to the functioning, integrity or stability of the Payments or E-money market; (ii) these threats are not addressed by the applicable legislative framework; and (iii) no (adequate) action has been taken by the NCA(s) to address the threat.

### *1.3.2 A Level Playing Field Between Banks and Non-Banks*

To create a Payments market in which a variety of different Payment solutions are offered at a price that is not too distant from the price that would be charged in a perfectly competitive market (where price equals marginal costs), there needs to be sound competition between Banks and Non-Banks. Having a so-called ‘level playing field’ between Banks and Non-Banks in the market for Payments is a requisite for achieving such sound competition.

There is no consensus as to the definition of a level playing field at present. The Cambridge dictionary defines a level playing field as *‘a situation in which everyone has the same chance of succeeding’*.<sup>42</sup> This definition seems to suggest that a level playing field is a market situation whereby PSPs sharing similar characteristics are subject to the same rules and requirements and, as a result thereof, have the same starting position for competing with each other.

In legal literature, the concept of a ‘level playing field’ is mostly described as a measure for having relatively low barriers to market entry for Non-Banks. In general, a level playing field is believed to exist if different types of PSPs are subject to market entry requirements that

<sup>40</sup> See Commission (2023).

<sup>41</sup> PSR Proposal, Recital 140.

<sup>42</sup> See Cambridge Dictionary (n.d.).