

Building effective markets: Lessons from the Netherlands

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The topics to cover

- Kifid (2007)
 - > How does Kifid operate
 - > Some experiences to date
- WCAM (2005)
 - > How does WCAM operate
 - > Some experiences to date

Kifid: how does Kifid operate

Financial Disputes

- modest registration fee

- no mandatory legal representation

- no loser pays

- funded and supervised by the industry

Ombudsman:

- former judge

- non-binding recommendations

Kifid: How does Kifid operate

- Geschillen Commission
 - > Three members
 - > Financial expertise
 - > Binding ruling (with a few exceptions)
 - > Informal and Flexible procedure
 - > Very proactive Commission during oral hearing (fact finding, damage calculation etc)
 - > Aggregation of claims excluded/prohibited
 - > Appeal possible (Kifid Appeal Commission)

Kifid: experiences to date

- Ombudsman: doubts and concerns about his role
- Commission: overall positive, but

heavy case load and no formal aggregation options:

informal and flexible procedure then raises due process issues

Kifid just another specialized court??

The WCAM: how it operates

- Out of court settlement agreement (SA)
- A representative organization
- Parties contributing to a fund
- Petition Amsterdam Court of Appeal
- Case management conference
- Notification fairness hearing
- Fairness hearing, if SA approved
- Notification SA is approved
- Opt out period starts
- SA becomes binding to non-optouters

The WCAM: experiences to date

- DES (2006): 34.000 (+); € 38 million
- Dexia (2007): 300.000; € 1 billion
- Vie d'Or: 11.000; € 45 million
- Shell (2009): 500.000; \$ 352.6 million
- Vedior (2009): 2.000; € 4.25 million
- Converium (2012): 13.000; \$ 58.5 million

WCAM: experiences to date

- Shell and Convergium: securities litigation US
- DES: Dutch Supreme Court ruling (rainmaker)
- Vie d'Or + Dexia: collective actions, individual actions, political pressure, reputational concerns
- Vedior: no litigation, reputational concerns
- In all cases companies instigated the use of the WCAM
- In two cases industry felt settlement came too late
- One case resulted in stricter regulation on industry

BUT

- WCAM is not a one size fits all-answer
- A few collective settlements where parties preferred to not use the WCAM:
 - > Ahold and Unilever settlements
 - > Unit linked insurances
 - > World Online (prospectus liability)