



Konkurrenceretlig Nyhedsoversigt nr. 77 / dækkende 6. december 2022 - 16. januar 2023

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1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Konkurrence- og Forbrugerstyrelsen modtog den 10. januar 2023 en forenklet anmeldelse af en fusion mellem Equinor ASA og BeGreen Solar ApS ("BeGreen").

Transaktionen medfører, at Equinor ASA erhverver 100 pct. af aktiekapitalen i BeGreen gennem Equinor Solar Power AS. Dermed erhverver Equinor ASA enekontrol over BeGreen.

[Læs mere](#)

Dato: 11.01.2023

Konkurrence- og Forbrugerstyrelsen modtog den 5. januar 2023 en forenklet anmeldelse af en fusion mellem HydraSpecma A/S og Ymer Renewable AB.

Transaktionen vedrører Aktieselskabet Schouw & Co.'s erhvervelse af 100 pct. af aktiekapitalen i Ymer Renewable AB – via førstnævntes datterselskab HydraSpecma A/S. HydraSpecma A/S erhverver således enekontrol over Ymer Renewable AB.

[Læs mere](#)

Dato: 10.01.2023

Konkurrence- og Forbrugerstyrelsen modtog den 6. januar 2023 en forenklet anmeldelse af en fusion mellem fonde rådgivet af Agilitas Private Equity LLP's ("Agilitas") og NNIT A/S' forretningsenhed inden for IT-infrastruktur outsourcing ("NNIT IO").

Ved transaktionen erhverver fonde rådgivet af Agilitas, via New Nordic IT BidCo ApS, 100 pct. af aktierne i NNIT IO. Efter transaktionen vil Agilitas have enekontrol over NNIT IO.

[Læs mere](#)

Dato: 10.01.2023

Konkurrence- og Forbrugerstyrelsen har godkendt, at Ahlsell Danmark ApS overtager Sanistål A/S. Styrelsen overtog kontrollen med fusionen fra EU's konkurrencemyndighed sidst i oktober.

Konkurrence- og Forbrugerstyrelsen har som uafhængig konkurrencemyndighed godkendt, at Ahlsell Danmark ApS' enekontrol med Sanistål A/S. Parterne anmeldte oprindelig fusionen til EU-Kommissionen, som sidst i oktober henviste den til behandling hos den danske konkurrencemyndighed.

Godkendelsen sker uden yderligere indgreb. Ahlsell Danmark er kontrolleret af en kapitalfond, som også har en kontrollerende ejerandel i den landsdækkende byggemarkedskæde, STARK Danmark. Sanistål, STARK og Ahlsell har aktiviteter inden for detailsalg af installationsartikler, værktøj og byggematerialer til professionelle kunder samt engrossalg af artikler til varme, ventilation og aircondition (såkaldte HVAC-artikler).

På de 19 geografiske områder, hvor fusionen med størst sandsynlighed kunne hæmme konkurrencen, har Konkurrence- og Forbrugerstyrelsen foretaget omfattende markedsundersøgelser. Styrelsen har blandt andet holdt møder med centrale aktører og indhentet svar fra cirka 3.000 respondenter i en spørgeskemaundersøgelse.

I afgørelsen har styrelsen lagt vægt på, at:

- Ahlsell og Sanistål har forskellige forretnings- og kundefokus, og at kunder og konkurrenter har bekræftet dette,
- konkurrencepresset mellem selskaberne på nationale og lokale markeder var relativt begrænset inden fusionen, og
- det er relativt let for kunderne at skifte til andre leverandører, herunder andre nationale og lokale byggemarkeder og specialforhandlere samt online forhandlere.

[Læs mere](#)

Dato: 20.12.2022

**Konkurrence- og Forbrugerstyrelsen modtog den 28. november 2022 en almindelig anmeldelse af Handelsselskabet af NCG 2 A/S' erhvervelse af enekontrol over Autonorden A/S.**

Transaktionen indebærer, at Handelsselskabet af NCG 2 A/S ("Handelsselskabet") erhverver samtlige aktiver, aktiviteter og rettigheder tilhørende Autonorden A/S ("Autonorden") med undtagelse af IT-software. Med transaktionen erhverver Terminalen A/S ("Terminalen") derved enekontrol over Autonorden ved køb af aktiverne i Autonorden via Handelsselskabet.

[Læs mere](#)

Dato: 20.12.2022

Konkurrence- og Forbrugerstyrelsen modtog den 7. december 2022 en forenklet anmeldelse af fusion mellem Findos Investor GmbH ("Findos") og Nordiq A/S ("Nordiq").

Transaktionen medfører, at Findos erhverver 100 pct. af aktiekapitalen i Nordiq igennem Norbert 33 FIII Holding GmbH og Norbert 33 SC FIII Holding GmbH ("Norbert Fonden"). Dermed erhverver Findos enekontrol over Nordiq.

[Læs mere](#)

Dato: 16.12.2022

Konkurrence- og Forbrugerstyrelsen modtog den 30. november 2022 en forenklet anmeldelse af fusionen mellem emagine Consulting A/S ("emagine") og Peak Consulting Group A/S ("Peak").

Transaktionen medfører, at emagine erhverver enekontrol over Peak, da emagine erhverver 95 pct. af aktierne i Peak.

[Læs mere](#)

Dato: 07.12.2022

Konkurrence- og Forbrugerstyrelsen modtog den 30. november 2022 en forenklet anmeldelse af en fusion mellem HG Danmark ApS og Holding af 12. februar 2009 ApS og dets datterselskaber C. Møllmann & CO A/S, 2Komp Industrilakering ApS, Nielsen & Kromann A/S og Farvesalg ApS.

Fusionen indebærer, at HG Danmark ApS overtager 100 % af anpartskapitalen i Holding af 12. februar 2009 ApS, hvorfor der er tale om erhvervelse af enekontrol.

[Læs mere](#)

Dato: 06.12.2022

Nyt fra Konkurrencerådet

Fra 2024 kan Divisionsforeningen sælge superligarettigheder samlet til én aktør. Konkurrencerådet har givet Divisionsforeningen en midlertidig, delvis dispensation i forbindelse med det kommende udbud af salget af medierettighederne til Superligaen.

Superligaklubberne sælger i fællesskab – via Divisionsforeningen – medierettighederne til Superligaen. I 2007 forpligtede Divisionsforeningen sig til at opfylde en række tilsagn, så salgsprocessen ikke begrænser konkurrencen om rettighederne.

Tilsagnene blev revideret i 2014, og Konkurrencerådet giver nu Divisionsforeningen en midlertidig, delvis dispensation fra tilsagnet. Blandt andet gives i forbindelse med det næste udbud dispensation for kravet om, at visningen af superligakampene skal fordeles på mindst to aktører.

Dispensationen skyldes primært, at forbrugerne i dag har bedre muligheder for selv at vælge, hvad de vil betale for at se. Mange distributører giver i dag forbrugerne mulighed for frit at vælge tv-kanaler. Desuden har beboere i boligforeninger fået frit valg af tv-distributør og -pakke, så de ikke længere behøver at følge foreningens valg. Herudover har kanaludbydere nu – via streamingtjenester – direkte adgang til forbrugerne uden om distributørerne, hvilket ligeledes giver forbrugerne flere valgmuligheder.

Superligaen spiller dog fortsat en væsentlig rolle for forbrugerne som helhed og for nogle forbrugere i særdeleshed, mens Champions League og til dels Premier League også ser ud til at have stor betydning. Konkurrence- og Forbrugerstyrelsen vil derfor senere evaluere, hvilken betydning dispensationen har haft for konkurrencen på markedet og for forbrugerne.

I forbindelse med sagen har Konkurrence- og Forbrugerstyrelsen foretaget omfattende undersøgelser blandt kanaludbydere, distributører og forbrugere, herunder af forbrugernes præferencer for Superligaen, Premier League og Champions League.



Det Juridiske Fakultet

Divisionsforeningen anmodede i juni 2021 Konkurrence- og Forbrugerstyrelsen om ændring af tilsagnsaftalen og forenkling af reglerne for udbudsproceduren.

Divisionsforeningen kan i dispensationsperioden vælge at sælge medierettighederne til Superligaen til én aktør i fire løbende sæsoner for perioden startende i 2024. Der vil fortsat være en såkaldt trustee tilknyttet udbudsprocessen for at sikre, at salget af medierettighederne sker i et åbent udbud på lige, gennemsigtige og ikke-diskriminerende vilkår.

Baggrunden for de oprindelige tilsagn er, at det fælles salg af medierettighederne som udgangspunkt er omfattet af forbuddet i konkurrencelovens mod konkurrencebegrænsende aftaler. Divisionsforeningens tilsagn forpligter foreningen til at overholde en række krav i forbindelse med salg af medierettighederne og fjerner de konkurrencemæssige betæneligheder ved, at konkurrerende fodboldklubber går sammen om fælles salg af rettigheder.

[Læs mere](#)

Dato: 21.12.2022

Nyt fra Konkurrenceankenævnet

Intet nyt.

Nyt fra domstolene

Civilretlige afgørelser

Intet nyt.

Afgørelser om bøder

Intet nyt.

Lovforslag i høring

Intet nyt.

Ny lovgivning

Intet nyt.

Nyt fra Ankestyrelsen

Intet nyt.

Andet

Intet nyt.



2 | EUROPÆISK OG INTERNATIONALT RET

Nyt fra Kommissionen

Antitrust

Commission accepts commitments by Amazon barring it from using marketplace seller data, and ensuring equal access to Buy Box and Prime.

The European Commission has made commitments offered by Amazon legally binding under EU antitrust rules. Amazon's commitments address the Commission's competition concerns over Amazon's use of non-public marketplace seller data and over a possible bias in granting to sellers access to its Buy Box and its Prime programme.

To address the Commission's competition concerns in relation to both investigations, Amazon initially offered the following commitments:

- To address the data use concern, Amazon proposed to commit:
not to use non-public data relating to, or derived from, the independent sellers' activities on its marketplace, for its retail business. This applies to both Amazon's automated tools and employees that could cross-use the data from Amazon Marketplace, for retail decisions;
not to use such data for the purposes of selling branded goods as well as its private label products.
- To address the Buy Box concern, Amazon proposed to commit to:
treat all sellers equally when ranking the offers for the purposes of the selection of the Buy Box winner;
display a second competing offer to the Buy Box winner if there is a second offer from a different seller that is sufficiently differentiated from the first one on price and/or delivery. Both offers will display the same descriptive information and provide the same purchasing experience.
- To address the Prime concerns Amazon proposed to commit to:
set non-discriminatory conditions and criteria for the qualification of marketplace sellers and offers to Prime;
allow Prime sellers to freely choose any carrier for their logistics and delivery services and negotiate terms directly with the carrier of their choice;
not use any information obtained through Prime about the terms and performance of third-party carriers, for its own logistics services.

[Læs mere](#)

Dato: 20.12.2022

Commission sends Statement of Objections to Meta over abusive practices benefiting Facebook Marketplace.

The European Commission has informed Meta of its preliminary view that the company breached EU antitrust rules by distorting competition in the markets for online classified ads. The Commission takes issue with Meta tying its online classified ads service, Facebook Marketplace, to its personal social network, Facebook. The Commission is also concerned that Meta is imposing unfair trading conditions on Facebook Marketplace's competitors for its own benefit.

[Læs mere](#)

Dato: 19.12.2022

Cartels

Intet nyt.

Mergers

Commission opens in-depth investigation into the proposed acquisition of VMware by Broadcom.

The European Commission has opened an in-depth investigation to assess, under the EU Merger Regulation, the proposed acquisition of VMware by Broadcom. The Commission is particularly concerned that the transaction would allow Broadcom to restrict competition in the market for certain hardware components which interoperate with VMware's software.

[Læs mere](#)

Dato: 20.12.2022

**The Commission adopts a Statement of Objections outlining measures to unwind Illumina's blocked acquisition of GRAIL.**

The European Commission has sent a Statement of Objections to Illumina and GRAIL informing them of the restorative measures it intends to adopt under the EU Merger Regulation, following the Commission's decision to prohibit the implemented acquisition of GRAIL by Illumina.

On 6 September 2022, the Commission prohibited the acquisition of GRAIL by Illumina over concerns that the merger would have stifled innovation and reduced choice in the emerging market for blood-based early cancer detection tests.

Pending the Commission's review, in August 2021, Illumina had already completed its acquisition of GRAIL. Therefore, Illumina has to unwind the acquisition to give the Commission's prohibition decision its full effect.

[Læs mere](#)

Dato: 05.12.2022

State Aid**Commission approves EUR 119.3 million French restructuring aid for Air Austral and EUR 17.5 million compensation for damage suffered as a result of the coronavirus pandemic.**

The European Commission, pursuant to the EU rules on State aid, has authorised France's plan to pay (i) restructuring aid of EUR 119.3 million to enable the airline Air Austral to return to viability; and (ii) EUR 17.5 million in aid to compensate the company for damage suffered as a result of the coronavirus pandemic between 17 March and 30 June 2020.

[Læs mere](#)

Dato: 05.01.2023

Commission approves €3 billion Polish scheme to support companies active in the Polish gas market in the context of Russia's war against Ukraine.

The European Commission has approved a €3 billion Polish scheme to support companies active in the Polish gas market in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis Framework, adopted by the Commission on 23 March 2022 and amended on 20 July 2022 and on 28 October 2022, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU'), recognising that the EU economy is experiencing a serious disturbance.

[Læs mere](#)

Dato: 22.12.2022

Commission approves €12 million Cypriot scheme under the Recovery and Resilience Facility to support access to high-speed broadband services.

The European Commission has approved, under EU State aid rules, a €12 million Cypriot voucher scheme, made available in part through the Recovery and Resilience Facility ('RRF'), to help households access high-speed broadband services. The scheme is aimed at fostering the digitalisation of the country and will also contribute to the EU's strategic objectives relating to the digital transition.

[Læs mere](#)

Dato: 21.12.2022

Commission approves €1.8 billion German scheme to roll out high power charging infrastructure for electric vehicles.

The European Commission has approved, under EU State aid rules, a €1.8 billion German scheme to support the roll out of high power charging ('HPC') infrastructure for electric vehicles. The measure contributes to the achievement of the objectives of the Commission's European Green Deal and 'Fit for 55' package.

[Læs mere](#)

Dato: 14.12.2022

Commission adopts new rules for agriculture, forestry and fishery and aquaculture sectors.

The European Commission has adopted today revised State aid rules for the agricultural, forestry and fishery and aquaculture sectors. The revised rules align State aid with the EU strategic priorities, in particular the Common Agricultural Policy (CAP), the Common Fisheries Policy (CFP), as well as to the European Green Deal.

The Commission has also decided to prolong for one year the validity of its so-called Fishery 'de minimis' Regulation.



The new State aid rules part of the package adopted today are:

- The revised Agricultural Block Exemption Regulation ('ABER') and Fishery Block Exemption Regulation ('FIBER'), which declare specific categories of aid compatible with EU State aid rules and exempt them from the requirement of prior notification to and approval by the Commission, provided that they fulfil certain conditions. This enables Member States to quickly provide aid, where conditions limiting the distortion of competition in the Single Market are met. The rules laid down in the ABER and the FIBER are complementary to those set out in the Guidelines applicable to the agricultural, forestry and fishery sectors, which set the conditions under which the Commission assesses whether State aid measures that are not block-exempted are compatible with the Single Market.
- The new Guidelines for State aid to the agricultural and forestry sectors and in rural areas ('Agricultural Guidelines'), and the new Guidelines for State aid in the fishery and aquaculture sector ('Fisheries Guidelines'), which reflect recent Commission's case experience as well as the current EU strategic priorities, in particular the Common Agricultural Policy ('CAP'), the European Maritime, Fisheries and Aquaculture Fund ('EMFAF') and the European Green Deal, as well as the Farm to Fork Strategy and the Biodiversity Strategy.

[Læs mere](#)

Dato: 14.12.2022

Commission adopts revised State aid rules for broadband networks.

The European Commission has adopted a revised Communication on State aid for broadband networks ('Broadband Guidelines'). The revised Broadband Guidelines set out the rules under which the Commission will assess State aid measures notified by Member States to support the deployment and take-up of broadband networks in the EU. The new rules contribute to the EU's strategic objectives of ensuring gigabit connectivity for everyone and 5G coverage everywhere by the end of the decade, which is essential to achieve the digital transition of the Union. The new Guidelines will enter into force the day following their publication in the Official Journal of the European Union, which is expected in January 2023.

[Læs mere](#)

Dato: 12.12.2022

Andet

Commission Guidelines on the application of the exclusion from Article 101 TFEU for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation 1308/2013. Sustainability agreements in agriculture – guidelines on the antitrust exclusion.

These guidelines aim to explain the conditions for applying Article 210a of Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products¹ (the 'CMO Regulation'), which was introduced by Regulation (EU) 2021/21172 ('Article 210a'). (2) Article 210a was introduced as part of the 2021 reform of the Common Agricultural Policy ('CAP'), to support the transition to a sustainable EU food system.

[Læs mere](#)

Dato: 2023

Nyt fra EU-domstolen

Domme

[C-23/22 - Caxamar](#)

Præjudiciel forelæggelse – statsstøtte – forordning (EU) nr. 651/2014 – fritagelse for visse kategorier af støtte, der er forenelige med det indre marked – retningslinjer for statsstøtte med regionalt sigte – anvendelsesområde – ikke omfattet – fiskeri- og akvakultursektoren – sektoren for forarbejdning og afsætning af landbrugsprodukter – begrebet »landbrugsprodukter« – forordning (EU) nr. 1379/2013 – den fælles markedsordning for fiskevarer og akvakulturprodukter – bilag I – forarbejdning af fiskevarer og akvakulturprodukter – saltet, frosset og afsaltet torsk.

Artikel 1 og artikel 2, nr. 10) og 11), i Kommissionens forordning (EU) nr. 651/2014 af 17. juni 2014 om visse kategorier af støttes forenelighed med det indre marked i henhold til artikel 107 [TEUF] og 108 [TEUF] og retningslinjerne for statsstøtte med regionalt sigte for 2014-2020, sammenholdt med artikel 2 og artikel 5, litra a) og d), i samt bilag I til Europa-Parlamentets og Rådets forordning (EU) nr. 1379/2013 af 11. december 2013 om den fælles markedsordning for fiskevarer og akvakulturprodukter, om ændring af Rådets forordning (EF) nr. 1184/2006 og (EF) nr. 1224/2009 og om



ophævelse af Rådets forordning (EF) nr. 104/2000, skal fortolkes således, at en aktivitet, der består i forarbejdning af fiskerivarer og akvakulturprodukter, såsom produktion af saltet torsk, frosset torsk og afsaltet torsk, ikke udgør forarbejdning af landbrugsprodukter, som er udelukket fra anvendelsesområdet for forordning nr. 651/2014 i henhold til denne forordnings artikel 1, stk. 3, litra c), men en aktivitet, der henhører under fiskeri- og akvakultursektoren, som er udelukket fra anvendelsesområdet for den nævnte forordning i henhold til dennes artikel 1, stk. 3, litra a).

[Læs mere](#)

Dato: 15.12.2022

[C-470/20 - Veejaam og Espo](#)

Præjudiciel forelæggelse – statsstøtte – støtte til vedvarende energi – retningslinjer for statsstøtte til miljøbeskyttelse og energi 2014-2020 – den tilskyndende virkning af støtte, hvorom der er ansøgt, efter at arbejdet på det pågældende projekt er påbegyndt – artikel 108, stk. 3, TEUF – underretningspligt – konsekvenser af tilsidesættelsen af anmeldelsespligten.

1) Punkt 49 og 50 i retningslinjerne for statsstøtte til miljøbeskyttelse og energi 2014-2020

skal fortolkes således, at

disse punkter ikke er til hinder for en national lovgivning, der indfører en støtteordning for vedvarende energi, som giver støtteansøgeren mulighed for at opnå udbetaling heraf, selv om ansøgningen er blevet indgivet, efter at arbejdet på det pågældende projekt er påbegyndt.

2) Retningslinjerne for statsstøtte til miljøbeskyttelse og energi 2014-2020

skal fortolkes således, at

en statsstøtte kan have en tilskyndelsesvirkning, hvis den investering, som en økonomisk aktør har foretaget for at tage højde for en ændring i betingelserne for opnåelse af en miljøtilladelse, idet sidstnævnte er nødvendig for denne aktørs aktivitet, sandsynligvis ikke ville have fundet sted uden udbetaling af den pågældende støtte.

3) Artikel 1, litra b) og c), i Rådets forordning (EU) 2015/1589 af 13. juli 2015 om fastlæggelse af regler for

anvendelsen af artikel 108 i traktaten om Den Europæiske Unions funktionsmåde

skal fortolkes således, at

en eksisterende støtteordning, hvis forenelighed med det indre marked er blevet fastslået ved en afgørelse fra Europa-Kommissionen, skal kvalificeres som »ny støtte« som omhandlet i denne forordnings artikel 1, litra c), såfremt denne ordning anvendes efter den dato, som den pågældende medlemsstat havde meddelt Kommissionen som slutdato for anvendelsen af den nævnte ordning i forbindelse med den procedure for vurderingen af støtten, som blev afsluttet ved den nævnte afgørelse.

4) Artikel 108, stk. 3, TEUF

skal fortolkes således, at

denne bestemmelse ikke er til hinder for, at en økonomisk operatørs ansøgning om udbetaling af statsstøtte, som er blevet gennemført i strid med den i artikel 108, stk. 3, TEUF, fastsatte anmeldelsespligt, imødekommes, dels for tiden før Kommissionens afgørelse, hvorved den nævnte støtte erklæres forenelig med det indre marked, dels, når den nævnte operatør har ansøgt om støtten på et tidspunkt, hvor denne støtte var ulovlig, idet den ikke er blevet anmeldt til denne institution, hvorimod den investering, som støtten er forbundet med, fandt sted på et tidspunkt, hvor den nævnte ordning var lovlig, idet dens forenelighed med det indre marked er blevet fastslået ved en afgørelse fra Kommissionen, forudsat at støttemodtageren i begge disse situationer betaler renter af eventuelt modtagne beløb for den periode, hvor støtten anses for ulovlig.

[Læs mere](#)

Dato: 15.12.2022

[T-702/21 - Ekobulkos mod Kommissionen](#)

Statsstøtte – produktion af elektricitet fra vedvarende energikilder – klage – passivitetssøgsmål – opfordring til at handle – formaliteten – pligt til at handle – foreligger ikke.

[Læs mere](#)

Dato: 21.12.2022

[T-525/21 - E. Breuninger mod Kommissionen](#)

Annulationssøgsmål – statsstøtte – paraplyordning, der har til formål at indføre en forbundsstatslig kompensationsordning i Tyskland for tab som følge af afgørelser om nedlukning – afgørelse om ikke at gøre indsigelse – foranstaltning til at afhjælpe skader, der er forårsaget af naturkatastrofer eller andre usædvanlige begivenheder – manglende søgsmålsinteresse – afvisning.



[Læs mere](#)

Dato: 21.12.2022

[T-306/21](#) - Falke mod Kommissionen

Statsstøtte – rammeordning for inddrivelse af hjælp til dækning af faste omkostninger, der ikke er dækket, som led i covid-19-pandemien, i Tyskland – afgørelse om ikke at gøre indsigelse – midlertidige rammebestemmelser for statsstøtte – individuel undersøgelse af den anmeldte støtteordning – foranstaltning, der kan afhjælpe en alvorlig forstyrrelse i en medlemsstats økonomi – proportionalitet.

[Læs mere](#)

Dato: 21.12.2022

[T-260/21](#) - E. Breuninger mod Kommissionen

Statsstøtte – rammeordning for inddrivelse af hjælp til dækning af faste omkostninger, der ikke er dækket, som led i covid-19-pandemien, i Tyskland – afgørelse om ikke at gøre indsigelse – midlertidige rammebestemmelser for statsstøtte – individuel undersøgelse af den anmeldte støtteordning – foranstaltning, der kan afhjælpe en alvorlig forstyrrelse i en medlemsstats økonomi – proportionalitet.

[Læs mere](#)

Dato: 21.12.2022

[T-130/21](#) - CCPL m.fl. mod Kommissionen

Konkurrence – karteller – fødevareremballage til detailhandelen – afgørelse om ændring af en bødes størrelse – metode til beregning af bøden – tilregning af den ulovlige adfærd – retningslinjerne for beregning af bøder af 2006 – bødeloft – proportionalitet – ligebehandling – betalingsvæne.

[Læs mere](#)

Dato: 07.12.2022

[T-626/20](#) - Landwärme mod Kommissionen

Statsstøtte – markedet for biogas – afgiftsfritagelser, der kompenserer for meromkostningerne ved produktionen – afgørelser om ikke at gøre indsigelse – annullationssøgsmål – søgsmålsinteresse – formaliteten – manglende indledning af den formelle undersøgelsesprocedure – alvorlige vanskeligheder – artikel 108, stk. 2, og artikel 108, stk. 3, TEUF – artikel 4, stk. 3, og artikel 4, stk. 4, i forordning (EU) 2015/1589 – retningslinjer for statsstøtte til miljøbeskyttelse og energi 2014-2020 – kumulation af støtte – statsstøtte ydet af flere medlemsstater – importeret biogas – princippet om forbud mod forskelsbehandling – artikel 110 TEUF.

[Læs mere](#)

Dato: 21.12.2022

Forslag til afgørelse

[C-124/21 P](#) - International Skating Union mod Kommissionen

Appel – konkurrence – regelsæt indført af et sportsforbund, der udøver beføjelse til at fastsætte regler sideløbende med økonomisk aktivitet – regler om tilladelse til konkurrencer, atleters deltagelse heri og afgørelse af tvister ved voldgift – artikel 101, stk. 1, TEUF – konkurrencebegrænsende formål – berettigelse.

[Læs mere](#)

Dato: 15.12.2022

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.



Andet internationalt nyt

AAI Issues 2022 Impact Report: Highlights AAI's Leadership in Promoting Vigorous Antitrust Enforcement and Competition Policy.

The American Antitrust Institute has issued its 2022 Impact Report. The report highlights AAI's work in 2022 to strengthen and invigorate enforcement of the antitrust laws and to support comprehensive competition policy. Over the past year, AAI's progressive research, education, and advocacy programs once again produced some of the most respected, cited, and talked-about analysis. The report details how AAI's work positively impacts the consumers, workers, and businesses that are at risk from the harmful exercise of market power. Looking forward to 2023, AAI will work to continue expanding its resources, networks, and impact to serve the public interest.

[Læs mere](#)

Dato: 02.01.2023

3 | LITTERATUR (DK)

Artikler fra UfR

Intet nyt.

Nye publikationer fra Erhvervsministeriet

Intet nyt.

Artikler fra Juristen

Intet nyt.

Artikler fra Erhvervsjuridisk Tidsskrift

Intet nyt.

Artikler fra Revision og Regnskabsvæsen

Intet nyt.

Artikler fra EU og Menneskeret

Intet nyt.

Konkurrenceretlige emner

Intet nyt.

Anden dansk og nordisk litteratur

Intet nyt.



4 | LITTERATUR (UK)

Artikler fra European Competition Law Review

Volume 44, Issue 2, 2023

Big Tech remedies - recent antitrust case law and legislative developments. Forfattere: Thomas Hoehn, Justin Menezes og Alison Young.

Reviews developments in UK and EU merger and antitrust remedies for Big Tech platforms, including case law involving digital markets, significant legislative and policy developments, and the resource implications of the more interventionist approach.

A sustainable future: how can control of monopoly power play a part? Part II. Using competition law to tackle unsustainable practices as abuses of monopoly power. Forfattere: Simon Holmes og Michelle Meagher.

This, the second part of a three-part article on how competition policy can help prevent monopoly power from hampering a sustainable future, examines how TFEU art.102 might be utilised more effectively to combat unsustainable practices. (See E.C.L.R. 2023, 44(1), 16-26 for Pt 1 of this article).

Sustainability and EU merger control. Forfatter: Emanuela Lecchi.

Examines sustainability's role in EU merger control under Regulation 139/2004, including the impact of mergers on sustainability, relevant sustainability considerations when assessing mergers, and how environmental agency tools measuring sustainability could be adopted by competition authorities.

Regulating foreign subsidies: legal implications under EU competition law. Forfatter: Konstantina Sideri.

Discusses the scope of the EU's draft Regulation on foreign subsidies distorting the internal market, and examines its definition of a "foreign subsidy", its distortions and balancing test, its investigative tools and potential redressive measures, and the remaining issues needing clarification.

Czech Republic: anti-competitive practices – infringement. Forfatter: Tomas Fiala.

Notes the Czech Competition Office ruling in Z-TRADE sro, imposing a fine of approximately EUR 714,000 on a supplier of candles and aroma products for resale price maintenance, representing the Office's first recognition of a compliance programme's mitigating effect when calculating fines.

Denmark: anti-competitive practices – infringement. Forfatter: Jens Munk Plum.

Notes a 26 October 2022 ruling of the Danish Competition Council, which found that non-solicitation clauses concluded by two companies amounted to illegal customer allocation agreements. Details key features of the investigations involved.

Finland: competition – judgment. Forfattere: Anna Kuusniemi-Laine, Maarit Taurula og Jenna Puschmann.

Notes the Finnish Market Court ruling in Finnish Energy Authority v Gasum Oy, quashing penalty payments imposed on a natural gas provider for alleged cross-subsidisation and breach of the unbundling rules on the basis that no express breach of national law or Directive 2003/55 could be identified.

Finland: mergers - merger control. Forfattere: Anna Kuusniemi-Laine, Maarit Taurula og Jenna Puschmann

Notes Finnish legislative reforms, effective from 1 January 2023, concerning the information requirements associated with notifiable transactions under the country's merger control regime.

France: mergers - merger control. Forfattere: Emmanuel Reille og Philip Olszewski.

Notes the French Competition Authority ruling in Altice, fining the parent company of the communications operator SFR a total of EUR 75 million for failure to comply with previous commitments it gave in respect of the earlier merger between the companies, and to clear existing penalty payments.

Hong Kong: anti-competitive practices – legislation. Forfattere: Sandra Marco Colino og Emanuela Lecchi.

Notes the Hong Kong Competition Commission's July 2022 renewal of the block exemption order for vessel sharing agreements concluded between shipping companies, which exempts such companies from the rules governing anti-competitive agreements.

**Hong Kong: anti-competitive practices – judgment. Forfattere: Sandra Marco Colino og Emanuela Lecchi.**

Notes the Hong Kong Competition Tribunal ruling in Gray Line / Tak How, fining the participants in a travel services cartel following their settlement with the Hong Kong Competition Commission under its co-operation and settlement policy. Details the factors considered when setting the fines.

Portugal: anti-competitive practices – infringement. Forfattere: Claudia Coutinho da Costa og Guilherme Oliveira e Costa.

Notes the Portuguese Competition Authority's September and October 2022 settlements with Instituto de Telemedicina and Consultorio de Tomografia Computorizada following investigations into cartel activity in the teleradiology services sector. Details the bid-rigging involved, and the fines imposed.

Portugal: anti-competitive practices – investigation. Forfattere: Claudia Coutinho da Costa og Guilherme Oliveira e Costa.

Notes simultaneous dawn raids by the Portuguese Competition Authority and the Spanish National Competition and Markets Commission in October 2022 on the Spanish premises of an intermediary company in the wood chip business, to investigate alleged market sharing and information exchange agreements.

Portugal: anti-competitive practices – enforcement. Forfattere: Claudia Coutinho da Costa og Guilherme Oliveira e Costa.

Notes the Portuguese Competition Authority's September 2022 launch of an enforcement tool to allow companies or persons to report anti-competitive practices by using anonymous and encrypted communications, following implementation of Directive 2019/1937 (Whistleblowing Directive).

Portugal: mergers - merger control procedure Claudia Coutinho da Costa og Guilherme Oliveira e Costa.

Notes the Portuguese Competition Authority (PCA) ruling in Santa Casa da Misericórdia de Lisboa, fining a hospital management company EUR 2.5 million for gun-jumping in a merger transaction, and highlights the PCA's November 2022 public consultation on its Best Practices Guide on Gun Jumping.

Portugal: anti-competitive practices - infringement - hub and spoke agreement. Forfattere: Claudia Coutinho da Costa og Guilherme Oliveira e Costa.

Notes the Portuguese Competition Authority decision in Auchan / Modelo Continente / Pingo Doce / Active Brands, fining three supermarket chains and their supplier of wines and spirits a total of EUR 5.6 million for hub and spoke practices over eight years, the ninth such retail food market case.

Spain: anti-competitive practices - judgment - restrictive business practices. Forfatter: Pedro Callol.

Notes the Spanish Supreme Court decision in Distribuidora Internacional de Alimentación SA on whether the conditions of distribution contracts in the food supply chain should be treated as sensitive commercial information and whether their disclosure to a legal adviser or consultant was unlawful.

Spain: anti-competitive practices - judgment - restrictive business practices. Forfatter: Pedro Callol.

Notes the Spanish High Court decision in Ilustre Consejo General de Colegios Oficiales de Odontólogos y Estomatólogos on whether antitrust proceedings against the dentists' professional association, resumed following a breach of the right to be heard, were time-barred.

Sweden: anti-competitive practices - decision – infringement. Forfattere: Stefan Pervan Lindeborg og Vilma Odengard.

Notes the Swedish Competition Authority's imposition on 20 October 2022 of fines on two operators for collusive tendering in a mobility transport services public procurement, the first exercise of fine-making powers acquired in March 2021. Highlights the authority's approach to calculating the fine.

Sweden: anti-competitive practices - investigation Stefan Pervan Lindeborg og Vilma Odengard.

Notes the closure of the Swedish Competition Authority investigation into alleged anti-competitive conduct by the Nasdaq stock exchange relating to the secondary listing of shares, following the company's decision to postpone the measure for two years, or until a review of relevant legislation.

Turkiye: mergers – decision. Forfattere: Gonenc Gurkaynak, Eda Duru og Betül Bas Comlekci.

Notes the Turkish Competition Board ruling in Baker Hughes Co / Saudi Arabian Industrial Investments Co, unconditionally approving a merger involving a greenfield joint venture between an oilfield services company and a strategic industrial investment firm. Details the investigation involved.

**UK: subsidy control – legislation. Forfattere: Nissim Massarano og Dani Rabinowitz.**

Notes the commencement of the Subsidy Control Act 2022 on 4 January 2023, requiring the Competition and Markets Authority's Subsidy Advice Unit to be notified of certain UK subsidies. Details the background to the Act, its streamlined subsidy schemes, and how its regime differs from that of the EU.

US: anti-competitive practices - enforcement Anthony P. Badaracco og Ashley Repp.

Notes a US decision of 31 October 2022 in *United States v Vito* in which the owner of an asphalt company pleaded guilty to attempted criminal monopolisation under the Sherman Act 1890 s.2. Discusses its significance as the first such conviction for over 40 years, and the sentencing recommendations.

Artikler fra European Competition Journal

Volume 18, Issue 3, December 2022

Restoring the promise of competition: ex ante pro-competitive regulation of FRAND access to SEPs. Forfatter: Philip Marsden.

Overseeing digital gatekeepers through ex post competition law is too slow and too complicated to prevent serious exclusionary and exploitative harm. To provide greater contestability and fairness in digital markets, new European laws introduce complementary ex ante pro-competitive regulation. Differing forms of intellectual property innovation are crucial for the increasing digitization of markets, particularly involving the Internet of Things. When intellectual property "gatekeepers" thwart willing implementers' access to standards by seeking injunctions, ex post competition law enforcement is too slow and complicated to prevent serious exclusionary and exploitative harm. Ex ante regulation could ensure re-instatement of the pro-competitive promise of FRAND access that ensures fair, contestable and innovative markets.

Ensuring contestability and fairness in digital markets through regulation: a comparative analysis of the EU, UK and US approaches. Forfatter: Thomas Tombal.

In a society where individuals increasingly spend time on the internet, large online platforms have become, for many, unavoidable actors. As it is increasingly argued that competition policy alone cannot address all the systemic problems that they create in digital markets where quick reactions are indispensable, there seems to be a consensus across the globe that legislative action must be taken against a specific sub-set of these large online platforms in order to foster contestability and fairness. This contribution aims to analyse how the EU, UK and US legislators intend to do so through regulation. First, the scope of the digital platforms that would be subject to these regulatory initiatives, and the potential discrepancies in this regard, will be clarified. Then, the general approach and options taken in each of these jurisdictions to address this dependence issue will be outlined. Finally, the main discrepancies between these different approaches will be summarized.

The case against green antitrust. Forfatter: Cento Veljanovski.

The case for a greener antitrust is weak and flawed. It is largely abstract, hypothetical, legalistic, somewhat emotive and lacks supporting evidence. Its proponents claim that the European Commission's enforcement of Article 101 TFEU blocks efficient industry-initiated cooperation to improve sustainability. But as is shown, this more permissive approach will lead to increased market power, supra-competitive prices and greater industry profits, and is unlikely to achieve greater investment in and the faster adoption of green technologies than competition.

The new sustainability exemption according to § 2(1) Austrian Cartel Act and its relationship with Article 101 TFEU – European spearhead or born to fail? Forfatter: Bernadette Zelger.

The Austrian legislator, together with the adaptations to be made in order to implement the ECN+ Directive, decided to include into national law, i.e. § 2(1) Austrian Cartel Act serving as corresponding rule to Article 101(3) TFEU, a sustainability exemption from the prohibition on cartels as stipulated in § 1 Austrian Cartel Act being the Austrian counterpart to Article 101(1) TFEU. Hence, in light of Regulation 1/2003 it arguably made a bold decision as the adoption of such exemption into national law is anything but uncontroversial. Moreover, also its compatibility with Article 101(3) TFEU is not clear-cut, as the inclusion of aspects other than economic ones, i.e. environmental and sustainability considerations, in the assessment of exemptions at the European level has been subject to debate ever since. This article shall shed light on the issues emanating from this new sustainability exemption and its relationship with the given EU legal framework.

**Sustainable development in the EU – which state of play in competition law? Forfatter: Idris Abdelkhalek.**

Sustainable development is today a guiding objective of the EU. This article therefore analyses if and how it can be integrated in competition law and more specifically in the antitrust rules of art. 101 TFEU. This paper first explains the legal background of sustainable development, its economic, social and environmental dimensions on the international scene and highlights its enshrinement in the EU treaties. It then focuses on its environmental dimension and identifies three routes to integration in EU competition law: (i) the agreements not restricting competition while protecting the environment; (ii) the objective necessity route whereby agreements whose restrictions on competition are objectively justified and proportionate make them fall outside of the scope of art. 101 TFEU; (iii) and the exemption route of art. 101 (3) TFEU. This article analyses each of these routes and puts forward the legal points requiring clarifications or modifications in this regard.

Cost structures, innovation and welfare in monopoly. Forfatter: Suryaprakash Mishra.

This paper, concerning cost structures and innovation in monopoly and the resulting welfare, has counter-intuitive results. We consider linear demand and two cases of cost structures namely constant marginal cost (henceforth CMC) and increasing marginal cost (henceforth IMC) in monopoly, and show that innovation is rewarding in both situations. From the regulator's perspective, in absence of any innovation or in case of equal innovation in both cases, a monopolist with an IMC may be preferred as against the one with a CMC.

Tackling gatekeepers' self-preferencing practices. Forfattere: Christophe Samuel Hutchinson og Diana Treščáková.

"Self-preferencing" refers to a conduct of a large provider of core platform services which consists in favouring one's own products and services over those offered by competitors on the same platform. Drawing on the experience acquired through its various antitrust investigations into the conducts of Big Tech, the European Commission, in its "proposal for the Digital Market Act", has put forward the concept of "gatekeeper". If adopted, this regulatory instrument which aims at ensuring fairness and transparency in the EU digital markets, would enable the Commission to qualify as such any large core platform service on the basis of narrowly defined objectives criteria and submit it to a set of prohibitions and obligations. By opting for such an approach, the Commission would be able to switch from an ex-post assessment of a gatekeepers' self-preferencing practices to an ex-ante one.

The role of contract structure for damage quantification: pitfalls and solutions. Forfattere: Florian Deuflhard og Robert Lauer.

Damage quantification in antitrust cases typically revolves around overcharge and pass-on estimation. In vertical industry structures, both measures crucially depend on contract structure, with linear and two-part tariffs being the most common contract types. While most of the damages literature focuses on linear contracts, two-part tariffs are mostly neglected. We discuss implications of tariff structure for damage quantification, highlight common pitfalls and propose practical solutions in damage assessment when two-part tariffs are present.

Super-dominant and super-problematic? The degree of dominance in the Google Shopping judgement. Forfattere: Alessia Sophia D'Amico og Baskaran Balasingham.

In the Google Shopping judgment, the General Court refers to Google's super-dominance and with it its stronger obligation not to allow its behaviour to impair effective competition. The concept of super-dominance suggests that certain conduct could breach Article 102 TFEU only when adopted by super-dominant undertakings, but it remains uncertain how exactly it contributes to finding an abuse. The aim of this paper is to analyze the Google Shopping judgment in relation to the concept of super-dominance. We explore how the concept has evolved in the case-law and what role it has played when establishing an abuse of dominance and analyze whether reliance on super-dominance in the case law is consistent with the effects-based approach. Finally, we examine how Google Shopping fits with the evolution of super-dominance in the case law and the effects-based approach and what it means for the regulation of digital gatekeepers going forward.

Exclusionary innovation in the European Commission's decisions against Google. Forfatter: Baskaran Balasingham.

Exclusionary innovation poses a bigger threat to competition in digital platform markets than in other innovation markets given the relevance of data-driven network effects as well as the strong incentive and ability of digital platforms to pursue an envelopment strategy. This paper advocates a theory of harm called "platform-wide exclusionary innovation" which applies to conduct that plausibly creates short-term consumer benefit but is more likely to foreclose rivals and therefore reduce technological progress in the long run. This theory of harm can help to explain Google's conduct that the European Commission condemned in its three decisions against Google between 2017 and 2019. Due to interconnections between Google's practices in the three cases this article assesses whether they may be considered jointly for the purpose of finding of an infringement of Article 102 TFEU or under the proposed Digital Markets Act.

**Article 102 TFEU to the rescue: filling the legal gaps of the airport slot regulation. Forfatter: Tuvana Aras.**

The present article analyses the competition issues that arise from the legal gaps of the Slot Regulation (95/93/EC). Although the Slot Regulation targets a just allocation system, allowing market access for all airlines, the augmenting number of congested airports in the European Union makes it hard to attribute slots to newcomers. The gaps of the Slot Regulation have led to problematic conducts such as 'slot hoarding' as incumbent carriers are aware of the financial and operational importance of these slots, and of their scarcity. The gaps have also allowed dominant airlines to engage in secondary slot trading under secretive and potentially anti-competitive terms, which may have an impact on the competitiveness of the market. The article examines the applicability of Article 102 TFEU to airlines that may abuse their dominance created by the number of slots they have under the essential facilities doctrine and the margin squeeze theory.

Artikler fra Journal of Competition Law and Economics

Volume 18, Issue 4, December 2022

Bank Consolidation, Interest Rates, and Risk: A Post-Merger Analysis Based on Loan-Level Data from the Corporate Sector. Forfattere: Steffen Juranek, Øivind A Nilsen og Simen A Ulsaker.

In this paper, we analyze the bank merger between DnB and Gjensidige Bank in 2003, ranked by market share as number one and number three in the Norwegian bank market. Focusing on loans to firms, our difference-in-differences analysis shows no increase of concentration of new loans. The concentration in affected markets (markets where both merging parties were present) developed similar to unaffected markets. Moreover, the interest rate tended to be lower in the affected markets relative to unaffected markets, but this relationship is weak and not statistically significant. The merger also affected the riskiness of loans only marginally. These weak effects could be the result of efficiency gains in the form of lower costs being pass-through to customers, and the increased market power (and consequently higher interest rates) canceled each other out. The remedial measures imposed by the Norwegian Competition Authority on the two merging parties are also likely to explain some of the modest effects of the merger. The weak effects are largely coincident with international literature showing the effects of mergers and acquisitions in the banking sector to be modest.

A Coat of Many Colours—New Concepts and Metrics of Economic Power in Competition Law and Economics. Forfattere: Ioannis Lianos og Bruno Carballa-Smichowski.

The digital economy has brought new business models that rely on zero-price markets and multi-sided platforms nested in business ecosystems. The traditional concept of market power used by competition authorities cannot engage with this new reality in which (economic) power manifests beyond price and output within a relevant market. These developments have culminated in multiple recent calls for a more multidimensional concept of power. Consequently, suggestions over new concepts of power triggering antitrust/regulatory intervention, such as 'strategic market status', 'conglomerate market power', 'intermediation power', 'structuring digital platforms', or 'gatekeepers' have proliferated to complete, or even substitute, the archetypical concept of market or monopoly power in competition law. However, a theoretical framework for this multidimensional concept of power that can set the basis for new metrics is missing. This article makes three contributions in that direction. First, we conceptualize different forms of (economic) power that go beyond competition within a single relevant market in terms of competition law and economics. Second, we propose new metrics to measure two forms of power: panopticon power and power based on differential dependency between value co-creators. Third, we test the latter and show how they could reduce false positives and false negatives when assessing dominance.

Formalism in Competition Law. Forfatter: Justin Lindeboom.

This article analyzes the meaning and role of formalism in competition law. Drawing on general legal theory and philosophy, this article conceives of formalism as decision-making constrained by rules, whereby rules exclude considerations from the decision-making process. It analyzes the degree to which per se rules and the rule of reason in U.S. antitrust law and the category of "by object" restrictions in EU competition law involve formalistic reasoning. It subsequently discusses the relationship between "legal form" and "anticompetitive effects" and the debate on "form-based" versus "effects-based" approaches to competition law. It concludes that "effects-based" approaches to competition law typically involve formalistic legal rules, thus deconstructing the well-known form-effect dichotomy. Finally, this article analyzes the normative relationship between formalism, type 1 and 2 errors, and legal certainty, and argues that this relationship is fundamentally shaped by beliefs about institutional competence and the allocation of decisional jurisdiction. The article concludes by arguing against pejorative conceptions of "formalistic" and "form-based"



competition law. Competition law, like law in general, is inherently formalistic, albeit to a limited degree. Rather than the empty dichotomy of “form” versus “effect,” the central question in competition law is to which formalism it ought to be committed.

Fine-tuning the Ex Ante Approach to Regulating Data Combination Practices. Forfattere: Xingyu Yan og Huaiwen He.

Antitrust in digital markets is gravitating towards ex ante regulation. This is prompted by growing concerns for user data exploitation and rival foreclosure on the part of big tech platforms. One particular area embodying such concerns pertains to data combination practices—more specifically, within-conglomerate data sharing, where data collection is scaled up in digital ecosystems and monetized through avenues such as attention brokerage. A recent effort to address such concerns is Article 5(a) of the Digital Markets Act proposal, which imposes a proscriptive obligation on gatekeeper platforms. This article rationalizes this ex ante approach to tackling exploitative data combination and highlights the need for further ex ante competition-enhancing measures that deal with the markets dominated by gatekeepers. Two directions are worth exploring: ecosystems compatibility and data as labour. Both underscore the importance of end users’ right to data portability.

Competition Law Enforcement and Household Inequality in the United Kingdom. Forfattere: Christopher Decker, Amit Zac, Carola Casti, Amédée von Moltke og Ariel Ezrachi.

Using a comprehensive database of all the decisions made under European and U.K. competition laws over the 15-year period to 2020, alongside households’ consumption and market data, we estimate the level and distribution of the savings from enforcement across the United Kingdom. We find that competition law enforcement generated greater proportional savings for lower- and average-income households relative to the wealthiest households. Our estimations indicate average savings of 2.5 percent of the annual household budget for the lowest-income households, 2.1 percent for the average household, and 1.8 percent for the highest-income household. While proportionally greater savings for lower- and average-income households from competition law are observed in most years, in some years, higher-income households saved more. Our results bring to light the variables that affect the distribution of savings. Among them are the enforcement tool applied, the sectors in which enforcement action took place, and the enforcement body. We further illustrate how the public enforcement of competition law affects economic disparity and could potentially be used in a more structured, transparent, and systematic way to address societal concerns about increasing inequality.

The Competitive Effects of China’s Legal Data Regime. Forfattere: Tamar Giladi Shtub og Michal S Gal.

The global race for data-based technological superiority is on. In a world where “data are the new oil,” data-based comparative advantages may affect not only competition between firms but also the balance of power among jurisdictions. In the past two decades, China has made important strides in gaining such advantages. Some of China’s comparative advantages are natural. For example, its population size creates unparalleled potential for harvesting data. Some are cultural, such as the traditionally low significance of Western-style privacy concerns. This research focuses on a third, often overlooked, source: comparative advantages created by China’s data regime—the system of policies, laws, regulations, and practices that govern or influence the data value chain. The article provides a detailed outline of China’s data regime and offers analysis of its possible competitive effects on China and on other jurisdictions. This analysis also provides a wider context for understanding China’s recent competition law actions against Chinese technology giants, after years of extremely lax policy. Indeed, as this article shows, to fully understand China’s actions, it is necessary to consider not only its competition law enforcement but also other ways in which the government is involved in the data value chain.

Artikler fra Journal of Antitrust Enforcement

Intet nyt.

Artikler fra Competition Policy Brief

Intet nyt.

Artikler fra Competition Merger Brief

Intet nyt.



Artikler fra Journal of European Competition Law and Practice

Volume 13, Issue 7, October 2022

Are Competition Officials Abandoning Competition Principles. Forfattere: Maureen K Ohlhausen og John M Taladay.

Key Points:

Enforcers have universally agreed that competition laws should protect competition rather than competitors, rely on sound economics and evidence, protect due process, tailor remedies to the underlying harm, and avoid discrimination on non-competition grounds.

While competition officials have a duty to safeguard these principles, examination of new regulatory proposals aimed at platform markets (including those in the EU, US and Germany) shows that they may be failing to do so.

Competition officials should insist that competition-related regulatory proposals fully respect fundamental principles before endorsing proposals that threaten to advance political, social engineering or industrial policy objectives.

An Insurmountably High Standard for Damage Claims against the EU? Case T-834/17, UPS v Commission. Forfattere: Isabel Rooms og Ariti Skarpa.

The dismissal of UPS' damage action by the General Court reiterates the high standard of proof applicants must meet in seeking compensation from the EU institutions for breaches of EU law, particularly in the field of competition law where the EU enjoys a wide margin of discretion in its decision-making.

Vertical Agreements: Tilting Information Exchanges in Dual Distribution Scenarios (Denmark). Forfattere: Martin André Dittmer og Kristian Helge Straton-Andersen.

The Hugo Boss case is so far the pinnacle of the Danish Competition Council's present affinity for seeking and attacking horizontal aspects in otherwise vertical agreements. This makes it easier—indeed, in many instances at all possible—to challenge certain dealings between a supplier and its distributors. If these dealings were purely horizontal, they would be clearly impermissible. If they were purely vertical, they would be clearly permissible. When they are neither but a mixture, the Council tries to put the first label on them, conveniently ignoring the inherent complexities.

Key Points:

Hugo Boss communicated its future prices, rebates, and/or quantities to two of its independent retailers. Hugo Boss was itself active at the retail level, thereby competing with its retailers.

The Competition Council—upheld by a majority decision of the Competition Appeals Tribunal—found this was a horizontal concerted practice, which had as its object the restriction of competition. The Vertical Block Exemption Regulation did not apply.

The minority of the Tribunal dissented saying it was not possible to apply the practice for purely horizontal information exchanges to a mixed agreement.

The majority decision appears to be out of line with the approach in the Commission's new draft vertical block exemption regulation which now specifies that it applies in cases of information exchange in dual-distribution.

Competition and Digital Markets: State of Play in South Africa. Forfattere: John Oxenham, Michael-James Currie, Charl van der Merwe og Jacob Muller.

Key Points:

In September 2020, the South African Competition Commission published a Report on its study on 'Competition in the Digital Economy'. The Report provided the first indication from the SACC to regulate the digital economy separately from the traditional economy and sets out a roadmap for the SACC's enforcement and policy in relation to digital markets.



Since the Report, the SACC started implementing the recommendations in the Report by proposing changes to its small merger guidelines to require the mandatory notification of small mergers in digital markets, as a separate assessment from small mergers in the traditional economy. Furthermore, the SACC initiated a market inquiry into online intermediation platforms to ascertain whether there are features in the digital economy that distort or restrict competition.

This paper explores the SACC's enforcement initiatives and policy for competition in digital markets. Particularly, the paper seeks to address how the SACC intends to regulate these 'new markets' to achieve both its competition and broader public interest objectives and highlights concerns, which could be of use as the European Union ('EU') adopts and implements its digital markets rules and policies. In particular, this paper draws on parallels and highlights risks in so far as the use of non-traditional competition law tests and standards, in order to regulate concerns in digital markets, is concerned.

The Assessment of Substitution Through Event Studies—An Application to Supply-Side Substitution in Berlin's Rental Market. Forfattere: Tomaso Duso, Claus Michelsen, Maximilian Schaefer og Kevin D Tran.

Economic externalities caused by the platform economy are increasingly attracting regulatory attention. One such externality, which is particularly prominent in public debate, is the impact of the short-term rental platform Airbnb on the housing and rental markets. Globally, commentators and policy makers claim that Airbnb, by reducing the supply of long-term rentals, plays a key role in explaining rent increases, especially in those (parts of) cities that are particularly attractive to tourists.

Key Points:

To assess supply side substitution, one needs to evaluate to what extent a firm that is not yet present in the market but has capabilities to repurpose its production capacity constitutes a competitive constraint to firms operating in the focal market.

In practice, the empirical assessment is often difficult because any effects observed upon entry of repurposed capacity are not necessarily caused by said entry alone, but potentially also by the specific market conditions in the focal market (so called self-selection).

Policy interventions that affect entry decisions can alleviate such measurement concerns, as we show by assessing how regulations that limit the diffusion of Airbnb in Berlin affect the long-term rental market by repurposing short-term rentals. Supply side substitution between professional Airbnb hosts and the long-term rental market exists, but the stock of Airbnb apartments is not large enough to constitute a true competitive constraint.

Lundbeck, Slovak Telekom, Google Shopping and Aspen Commitments: A Survey of Developments at the Intersection Between Competition Law and IP Law in the Past Year. Forfattere: Sophie Lawrance, Edwin Bond, Matthew Hunt og James Batsford.

This Survey reviews EU competition law developments involving, or relevant to, intellectual property (IP) rights in the period from January 2021 to December 2021.

This period saw the first judgment by the highest EU court on an appeal against a European Commission (Commission) decision finding that patent settlement agreements in the pharmaceutical sector breached Article 101 of the Treaty on the Functioning of the European Union (TFEU).¹ The outcome closely followed last year's judgment on a preliminary reference from the UK court on a similar topic, and the Court of Justice of the European Union (CJEU) took the opportunity to apply a number of the principles established in that case.

Two other court cases—while not directly addressing IP—have important implications for cases concerning, for example, refusals to licence IP. Slovak Telekom (in the CJEU) and Google Shopping (in the General Court) both considered the limits of the Oscar Bronner (Bronner) line of case law, with Google Shopping also considering the essential facilities doctrine. In both cases, the Courts found ways to avoid applying Bronner in the particular circumstances of the respective cases.

Key Points:

In Lundbeck, the Court of Justice of the European Union (CJEU) applied principles established in the Generics UK in upholding a Commission patent settlement decision.



Both Slovak Telekom (judgment of the CJEU) and Google Shopping (judgment of the General Court) considered issues relating to access to infrastructure, applying principles relevant to IP owners.

A European Commission decision provided guidance on the excessive pricing of pharmaceuticals (Aspen Commitments).

Artikler fra World Competition

Volume 45, Issue 4, 2022

Abuse of Dominance in the Hong Kong Television Sector. Forfatter: Kelvin Hiu Fai Kwok.

This article critically evaluates legal developments in relation to the regulation of abuse of dominance in the Hong Kong television sector, focusing on the milestone case of Television Broadcasts Ltd (TVB). The TVB case was decided under the previous sectoral competition regime under the Broadcasting Ordinance (BO) and has since 2015 been replaced by the crosssector Competition Ordinance (CO). Nevertheless, the decisions of the Communications Authority (CA) and the Court of First Instance (CFI) in 2013 and 2016 respectively provided important insights on the application of the small but significant and non-transitory decrease in quality (SSNDQ) test in two-sided markets and the 'purpose/object' and 'effect' tests to exclusivity practices, and more generally, the analysis of abuse of buyer power in a labour market setting. Hong Kong competition authorities are likely to be confronted with similar issues as they gradually expand their enforcement activities into digital markets and abuse of market power scenarios beyond the broadcasting sector. The purpose of this article is to subject the TVB decisions, in respect of their analysis of market definition, market power, the abusive conduct, and the remedial aspect, to in-depth critique. It situates the issues in the broader context of the crosssector CO under which future cases of abuse of dominance in Hong Kong will be scrutinized.

Digital Platform Ecosystems and Conglomerate Mergers: A Review of the Brazilian Experience. Forfattere: Nicolo Zingales og Bruno Renzetti.

This article highlights some of the key challenges for the Brazilian merger control regime in dealing with mergers involving digital platform ecosystems (DPEs). After a quick introduction to DPEs, we illustrate how their market power may be strengthened through conglomerate mergers, and yet these concerns remain largely unaddressed in the current landscape for merger control in Brazil. The article is divided in four sections. First, we introduce the reader to the framework for merger control in Brazil. Second, we identify the possible theories of harm related to conglomerate merger, and elaborate on the way in which their application may be affected by the context of DPEs. Third, we conduct a review of previous mergers involving DPEs in Brazil, aiming to identify the theories of harm employed (and those that could have been explored) in each case. Fourth and finally, we summarize and results and suggest adaptation to merger control in Brazil, advancing proposals for a more consistent and predictable analysis.

Artikler fra Antitrust Law Journal

Intet nyt.

Artikler fra Antitrust Bulletin

Volume 67, Issue 4, December 2022

A Missed Opportunity: The European Union's New Powers over Digital Platforms. Forfattere: Davies, John. Meunier, Valérie. Calanchi, Gianmarco. Stenimachitis, Angelos.

The Digital Markets Act (DMA) in the European Union assumes that all large "core platform service" providers pose similar threats to competition and to fairness and thus imposes identical obligations on all of them. The alternative "New Competition Tool," that would have allowed the European Commission (EC) to conduct fact-intensive investigations of markets to design bespoke remedies, has been largely abandoned. The approach adopted contradicts the basic principle that competition policy should be concerned with evidence of adverse effects. The proponents of the adopted form of the DMA argue that ex ante action is required to forestall irreversible harm to competition, but that same logic also implies assessing the risk of harm from excessive regulation—and the DMA contains no mechanism to do so. Given the different underlying economics of different kinds of platform services, including the way some support digital ecosystems involving many firms, a different approach is needed. The EC missed the opportunity to introduce a market investigation tool. The rigid and static framework of the DMA seems like the wrong solution, given the economics of digital markets.

**European Antitrust Enforcement in the Digital Era: How It Started, How It's Going, and the Risks Lying Ahead.****Forfatter: Kontosakou, Athena.**

The digitalization of economy, the proliferation of data collection, and the increased dependency of consumers on online services has brought about new ecosystems, new business models, and new, complex antitrust issues. Delineating the new remits of antitrust enforcement to tackle those issues is not an easy task. The present contribution discusses significant legislative and enforcement changes in Europe, both at Union and Member State level and identifies risks for the future of antitrust enforcement.

Toward a Coherent Approach to Market Power in the Digital Sector: Complexity, Growth through Acquisition, and Remedies. Forfatter: Moss, Diana L.

The Digital Business Ecosystem (DBE) model far surpasses other models and structures in its scope, scale, and complexity. DBEs feature unique economic, technological, business, and growth characteristics that increase their opacity to consumers, competition enforcers, and lawmakers. These include a range of market failures, the role of cloud computing in realizing the DBE value proposition, and growth through acquisition. The United States is making slow progress in addressing competition concerns in the digital sector. Legislative initiatives remain focused on the largest players, and there is little political appetite for a dedicated sector regulator to develop a system of non-discrimination "access" regulation. This article discusses the implications of the widening gap between the complexity and growth of DBEs, and policy responses to the market power problems they raise. The analysis recommends a more coherent approach centered on identifying policy tools—including antitrust, regulation, and privacy law—that are best suited to addressing the unique features of DBEs and that work in a complementary way.

Privacy and Competition: Discord or Harmony? Forfattere: Privacy and Competition: Discord or Harmony? Forfattere: Ohlhausen, Maureen K. Rossen, Ben.

Privacy and competition law pursue different goals that do not always align, but they can be harmonized under the right approach. Recent proposals in Congress, however, put privacy and competition values in direct conflict, likely at the expense of consumer privacy. Rather than diminishing consumer privacy and security through competition legislation, Congress should enact a comprehensive consumer privacy law that protects consumers while leveling the playing field for all competitors. This article addresses recent calls to regulate consumer privacy and the commercial use of data through competition law. First, we address the changing landscape of consumer privacy and calls for additional regulation. We then discuss recent proposals to use competition law to address issues stemming from widespread data collection and aggregation. Finally, we describe the collision course of antitrust and privacy in recent legislative proposals and offer an alternative path forward.

China's Antimonopoly Law Enforcement in the Digital Economy. Forfattere: Wang, Xiaoye. Gao, Yajie.

The year 2021 was the first remarkable year of Chinese anti-monopoly law enforcement in the digital economy. Against the macro backdrop of strengthening anti-monopoly and preventing the disorderly expansion of capital, China has closed high-profile cases and enacted relevant guiding documents, implying that competition in the digital economy is undergoing a revolution in China. However, with the strengthening anti-monopoly enforcement in the digital economy, China has also been confronted with new challenges. For example, how to make sure that the interconnectivity between platforms and data interoperability do not interfere with data security, personal privacy, and consumers' legitimate rights and interests? How to balance the curbing of almost unconstrained digital ecosystems and the enhancement of economic efficiency? With the emergence of digital giants, profound changes are taking place in the competitive relationships between various market participants, while the advantages and disadvantages of capital growth have become increasingly prominent. We propose competition authorities worldwide to learn from and cooperate with each other to solve monopolistic problems in the digital economy, considering it is a global matter.

Competition Enforcement in Digital Markets in China. Forfattere: Dai, Ken. Deng, Jet.

Compared with the size of China's digital market, competition enforcement in China in this area is relatively underexplored. It had been almost an entirely blank space until the end of 2020. This article summarizes the enforcement actions that have been taken to date, from few distant cases in which former authorities tentatively approached competition issues in this area, to more recent landmark cases in which more sophisticated analysis is provided and hefty fines are imposed. This article traces the enforcement history, thereby explaining the reasons of some China-featured situations, for example, a large amount of existing gun-jumping cases. It also studies some comparable enforcement decisions with a common issue, for example, dominance abuse in the digital market and a controversial topic in China—"choose one from two." Enforcement trends are also discussed to predict future development in this regard.

**Effective Merger Review: A Question for Australian Courts? Forfattere: Smith, Rhonda L. Healey, Deborah.**

There is increasing global concern about the effectiveness of merger control in competition law. Globally, concerns about rising market concentration and in particular, the effect of consolidation by digital platform businesses, have prompted numerous inquiries and articles exploring whether competition laws are effective in addressing concerns about their anticompetitive impact in relation to mergers. Australia's approach to merger control makes it an outlier in a number of ways. Its major approval procedure, informal clearance, is outside the scope of the Competition and Consumer Act 2010 (Cth). Formal decisions are generally heard in courts. Of note, under the current "likely substantial lessening of competition" test which became operative in 1993, the Australian Competition and Consumer Commission (ACCC) has not successfully proven in court that a merger would be likely to infringe the law. This article examines the methodology of Australian courts in applying this test, including the judicial approach to acceptance and assessment of economic and noneconomic evidence. It suggests approaches to enable consideration of the best evidence available. This analysis is in the context of amendments to the merger system recently proposed by the ACCC. We conclude that there are significant challenges in determining whether a merger is anticompetitive and that changes to the relevant methodology are necessary. This might be done by adopting the ACCC proposals or by a reconsideration of the merger factors and the approach to applying them.

Competition Law Enforcement in Digital Markets: The Brazilian Perspective on Unilateral Conducts. Forfattere: Pereira Neto, Caio Mário S. Pastore, Ricardo Ferreira. Paixão, Raissa.

Following an international trend, Brazil's National Competition Authority (NCA), the Administrative Council for Economic Defense (CADE), has been devoting more attention to potential anticompetitive conducts in the digital economy. This article discusses a set of cases involving unilateral conducts in the digital economy, assessing CADE's decision-making practice, enforcement challenges, and tools used. Building from CADE's case law, we single out some relevant aspects of the Brazilian experience, including (1) the cautious approach taken by CADE when evaluating effects of unilateral conducts in final decisions, (2) the use of interim measures to intervene in early stages of investigations, and (3) the use of settlements to reach quick solutions with negotiated remedies. A brief conclusion discusses possible future trends given the experience discussed in the article.

White Label: The Technological Illusion of Competition. Forfatter: Gabison, Garry A.

This article looks at the competition (or lack thereof) in the U.S. and EU financial service markets and how innovative companies have decided to enter the market. Over the years, many start-ups have ventured into financial services; however, they have faced heavy regulations. These regulations have led these companies to using a "white label" business model. This model has wide competition law implications: some good (e.g., more innovation at different levels of financial services) and some bad (e.g., innovative companies being bought out). These start-ups do not provide the competition first hoped while competition authorities and regulators often lag behind the technology to act and preserve competition before it is too late. This article makes some recommendations how the U.S. and EU competition authorities can learn from each other's mistakes.

Artikler fra Competition Law and Policy Debate

Intet nyt.

Artikler fra Competition Law Scholars Forum

Intet nyt.

Artikler fra Journal of Regulatory Economics

Intet nyt.

Artikler fra International Review of Law and Economics

Intet nyt.



Artikler fra Competition Law Journal

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Artikler fra European Competition and Regulatory Law Review

Volume 6, Number 4, 2022

Read articles on price signaling in Ireland and on whether there is a need for ex ante regulations in digital markets.

The country reports inform you about recent national developments from:

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In the latest issue of CoRe you can also read a case note on the judgment of the Court of Justice in C-721/20 DB Station & Service AG v ODEG Ostdeutsche Eisenbahn GmbH.

Artikler fra Communications Law

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Artikler fra Computer and Telecommunications Law Review

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Artikler fra Global Competition Litigation Review

Intet nyt.

Andre udenlandske artikler

Intet nyt.

5 | NYT FRA KONKURRENCEGRUPPEN

Konkurrenceretlige emner 2/2022 - Udvalgte juridiske kandidatafhandlinger.

Konkurrenceretlige Emner 2/2022 er udkommet med tre velbedømte specialer. Denne gang om Vurderingen af elimineringshensigt i sager om predatory pricing af Therese Knudsen, Digitale platformes dataindsamling – Et udnyttende misbrug? af Gudrun Jensdóttir Jelstrup Nolsøe samt Markedsafgrænsning for flersidede digitale platforme af Ida Juul Jensen og Caroline Høgskilde. Publikationen er støttet af Bech Bruun, advokatfirma, og kan hentes [her](#).

Syndicated Loans and Competition Law. Forfatter: Christian Bergqvist.

Christian Bergqvists artikel, Syndicated loans and competition law, er blevet nomineret til 2023 Antitrust Writing Awards, i kategorien bedste "Academic Articles – subcategory: Concerted Practices". Nominering og artiklen kan hentes [her](#).