



Konkurrenceretlig Nyhedsoversigt nr. 78 / dækkende 16. januar 2023 - 15. februar 2023

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1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Konkurrence- og Forbrugerstyrelsen modtog den 6. februar 2023 en forenklet anmeldelse af en fusion mellem Shell Petroleum N.V og NGF Denmark Holding ApS, herunder dets helejede datterselskab Nature Energy Biogas A/S.

Shell Petroleum N.V. overtager således Nature Energy Biogas A/S.

[Læs mere](#)

Dato: 07.02.2023

Konkurrence- og Forbrugerstyrelsen modtog den 11. januar 2023 en forenklet anmeldelse af Core Sustainability Capital A/S, ScanEs ApS og Kirk Kapital A/S erhvervelse af fælleskontrol med Scanmetals A/S.

Fusionen finder sted ved, at Core Sustainability Capital A/S, Kirk Kapital A/S og ScanEs ApS på basis af en aktieoverdragelsesaftale hver især erhverver 33,33 pct. af aktierne i Scanmetals A/S. Fusionen udgør en erhvervelse af fælleskontrol efter konkurrencelovens § 12 a, stk. 1, nr. 2, idet der er tale om, at Core Sustainability Capital A/S, Kirk Kapital A/S og ScanEs ApS i fællesskab opnår kontrol med Scanmetals A/S.

[Læs mere](#)

Dato: 16.01.2023

Konkurrence- og Forbrugerstyrelsen modtog den 6. januar 2023 en forenklet anmeldelse af EQT Infrastructure V's erhvervelse af enekontrol over ForSea AB.

Der er tale om en erhvervelse af enekontrol, jf. konkurrencelovens § 12 a, stk. 1, nr. 2, idet EQT Infrastructure V (indirekte gennem Nordic Ferry Infrastructure Holding AS) erhverver alle aktier i ForSea AB.

[Læs mere](#)

Dato: 12.01.2023

Nyt fra Konkurrencerådet

Intet nyt.

Nyt fra Konkurrenceankenævnet

Konkurrenceankenævnet har stadfæstet Konkurrence- og Forbrugerstyrelsens afgørelse om afslag på aktindsigt i en række henvendelser, som ikke indgik i sagen vedrørende en kontrolundersøgelse hos den konkrete virksomhed.

Konkurrenceankenævnet finder, at det meddelte afslag på aktindsigt ikke afskærer ØnskeBørn fra at varetage sine interesser under konkurrencesagen ved styrelsen og den hertil relaterede retssag ved- rørende spørgsmålet om "out of scope". Der lægges herved vægt på navnlig den omfattende redegørelse for sagsbehandlingen, der er givet af Konkurrence- og Forbrugerstyrelsen, den omstændighed, at ØnskeBørn har fået aktindsigt i de 2 henvendelser, hvor virksomheden er omtalt, og at ingen af de 16 henvendelser efter det oplyste er indgået i grundlaget for Retten i Glostrups kendelse af 20. november 2020 om kontrolundersøgelse hos ØnskeBørn.

Af de nævnte grunde, og da det i øvrigt for nævnet anførte, herunder bemærkningerne vedrørende muligheden for ekstrahering, ikke kan føre til et andet resultat, stadfæster Konkurrenceankenævnet Konkurrence- og Forbrugerstyrelsens afgørelse af 14. juli 2022.

[Læs mere](#)

Dato: 22.12.2022



Nyt fra domstolene

Civilretlige afgørelser

Intet nyt.

Afgørelser om bøder

Pia Valsted og Nye Visioner v/Jens Schmidt har erkendt, at de har overtrådt konkurrenceloven ved at indgå i aftaler om priser og kundedeling i regi af forretningskonceptet Nye Visioner. Konkurrencerådet har tidligere udstedt bøder til 10 andre virksomheder i samme sagskompleks.

Pia Valsted (tidligere Nye Visioner v/Pia Valsted) og Nye Visioner v/Jens Schmidt har erkendt at have overtrådt konkurrencelovens forbud mod konkurrencebegrænsende aftaler. Overtrædelserne har fundet sted i henholdsvis 6 år og i hvert fald 9 måneder.

Virksomhederne kan pålægges en bøde for overtrædelserne. Bøden kan imidlertid ikke overstige 10 pct. af virksomhedernes omsætning i det år, der går forud for tilkendegivelsen, og da parterne ikke har haft en omsætning i det for bøden relevante regnskabsår, er bøderne i begge tilfælde fastsat til nul kroner.

[Læs mere](#)

Dato: 26.01.2023

Nye Visioner v/Jens Schmidt og Pia Valsted har erkendt, at de har overtrådt konkurrenceloven ved at indgå i aftaler om priser og kundedeling i regi af forretningskonceptet Nye Visioner.

Pia Valsted (tidligere Nye Visioner v/Pia Valsted) og Nye Visioner v/Jens Schmidt har erkendt at have overtrådt konkurrencelovens forbud mod konkurrencebegrænsende aftaler. Overtrædelserne har fundet sted i henholdsvis 6 år og i hvert fald 9 måneder.

[Læs mere](#)

Dato: 17.01.2023

Fem virksomheder har erkendt, at de har overtrådt konkurrenceloven ved at indgå i aftaler om priser og kundedeling i regi af forretningskonceptet Nye Visioner. Nye Visioner v/Stina Duevang har accepteret en bøde på 48.000 kr. Overtrædelserne har fundet sted i perioden fra maj 2020 til april 2021.

Virksomhederne betaler bøder på mellem 6.000 og 64.000 kroner for at have indgået aftaler om priser og deling af kunder i regi af forretningskonceptet Nye Visioner. Forskellen på størrelsen af bøderne skyldes blandt andet, at de afhænger af virksomhedernes omsætning. Overtrædelserne er sket i perioder, som strækker sig fra knap et år til godt fem år.

Forretningskonceptet Nye Visioner udbyder blandt andet kurser inden for personlig planlægning og effektivitet, mødeledelse, stressforløb og chefrætningsforløb. Udvikleren af Nye Visioner stiller mod provision konceptet til rådighed for en række virksomheder, som herefter bliver partnervirksomheder i Nye Visioner.

[Læs mere](#)

Dato: 05.01.2023

Fem virksomheder har erkendt, at de har overtrådt konkurrenceloven ved at indgå i aftaler om priser og kundedeling i regi af forretningskonceptet Nye Visioner. Nye Visioner v/Bjarke Elbert har accepteret en bøde på 39.000 kr. Overtrædelserne har fundet sted i perioden fra juni 2019 til april 2021.

[Læs mere](#)

Dato: 28.12.2022



Fem virksomheder har erkendt, at de har overtrådt konkurrenceloven ved at indgå i aftaler om priser og kundedeling i regi af forretningskonceptet Nye Visioner. Nye Visioner v/ Dorthe Ribergaard Vinther har accepteret bøden på 31.000 kr. Overtrædelsen har fundet sted i perioden fra juni 2019 til maj 2021.

[Læs mere](#)

Dato: 21.12.2022

Fem virksomheder har erkendt, at de har overtrådt konkurrenceloven ved at indgå i aftaler om priser og kundedeling i regi af forretningskonceptet Nye Visioner. Nye Visioner v/Pia Ulsing har accepteret en bøde på 6.000 kr. Overtrædelsen har fundet sted i perioden fra januar 2016 til maj 2021.

[Læs mere](#)

Dato: 21.12.2022

Fem virksomheder har erkendt, at de har overtrådt konkurrenceloven ved at indgå i aftaler om priser og kundedeling i regi af forretningskonceptet Nye Visioner. Nye Visioner v/Jens Dahlsgaard har accepteret bøden på 64.000 kr. Overtrædelsen har fundet sted i perioden fra januar 2016 til april 2021.

[Læs mere](#)

Dato: 09.12.2022

Lovforslag i høring

Intet nyt.

Ny lovgivning

L 21 Forslag til lov om adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser.

Formålet med lovforslaget er at bidrage til, at der på EU- plan, og på nationalt plan, findes en effektiv og virkningsfuld processuel ordning for anlæggelse af gruppesøgsmål om påbud og genopretning, der er tilgængelig for forbrugere i alle medlemsstater. Lovforslaget gennemfører et EU-direktiv om adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser.

Et gruppesøgsmål er kendetegnet ved, at søgsmålet berører en flerhed af personer, og at en repræsentant for denne gruppe - og ikke de enkelte forbrugere - anses som part i søgsmålet. I bestemte tilfælde vil der med den foreslåede lov kunne føres "gruppesøgsmål", uden at der er individuelle forbrugere, der har tilmeldt sig søgsmålet.

Hensigten med lovforslaget er at øge forbrugerbeskyttelsesniveauet ved at indføre mulighed for, at godkendte myndigheder og organisationer, der repræsenterer forbrugernes interesser, kan anlægge og føre to nye typer af gruppesøgsmål mod erhvervsdrivende om henholdsvis påbud, forbud og genopretning. Det vil betyde, at forbrugere fx kan opnå at få adgang til erstatning, hvis en virksomhed har overtrådt de regler, som direktivet omfatter.

Lovforslaget indeholder krav til de myndigheder og organisationer, som ønsker at blive godkendt til at føre gruppesøgsmål. Myndigheder og organisationer skal anmode om at blive godkendt og opfylde en række betingelser.

Lovforslaget vil betyde, at de godkendte myndigheder og organisationer kan anlægge nationale gruppesøgsmål ved domstolene her i landet. På samme måde vil myndigheder og organisationer, der er godkendt i andre medlemsstater, kunne anlægge grænseoverskridende gruppesøgsmål her i landet, hvis der er mulighed herfor efter reglerne om værneting.

Status: 1. beh./Henvist til udvalg.

[Læs mere](#)

Dato: 25.01.2023



Nyt fra Ankestyrelsen

Intet nyt.

Andet

Intet nyt.

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust

Intet nyt.

Cartels

Intet nyt.

Mergers

Commission opens in-depth investigation into the proposed acquisition of Inmarsat by Viasat.

The European Commission has opened an in-depth investigation to assess, under the EU Merger Regulation, the proposed acquisition of Inmarsat by Viasat. The Commission is concerned that the transaction may allow Viasat to reduce competition in the market for the supply of broadband in-flight connectivity ('IFC') services to commercial airlines.

Viasat and Inmarsat are providers of satellite-based communication services. Viasat owns and operates four geostationary earth orbit ('GEO') satellites and Inmarsat owns and operates fifteen GEO satellites. Both companies are close competitors and rely on capacity from their own GEO satellites to provide services in the nascent market for the supply of broadband IFC services to commercial airlines in the European Economic Area ('EEA') and globally.

[Læs mere](#)

Dato: 13.02.2023

Commission clears creation of a joint venture by Deutsche Telekom, Orange, Telefónica and Vodafone.

The European Commission has approved unconditionally, under the EU Merger Regulation, the creation of a joint venture by Deutsche Telekom AG Orange SA, Telefónica S.A. and Vodafone Group plc. The Commission concluded that the transaction would raise no competition concerns in the European Economic Area ('EEA').

The joint venture will offer a platform to support brands and publishers' digital marketing and advertising activities in France, Germany, Italy, Spain and the UK. Subject to the user's consent, the joint venture will generate a unique digital code derived from the user's mobile or fixed network subscription. Such code will allow brands and publishers to recognize users on their websites or applications on a pseudonymous basis, group them under different categories and tailor their content to specific users' groups.

[Læs mere](#)

Dato: 10.02.2023

Commission clears the acquisition of MBCC by Sika, subject to conditions.

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of MBCC by Sika. The approval is conditional on the divestiture of MBCC's global chemical admixture business.

Sika and MBCC are key innovators and global leaders in the development and supply of chemical admixtures and construction materials. The development of new polymers and new formulations of chemical admixtures play a key role in the concrete industry, in particular to address sustainability challenges, such as bio-based admixtures.

[Læs mere](#)

Dato: 08.02.2023



State Aid

Commission approves €2.08 billion French measure to support offshore wind energy generation.

France notified to the Commission its intention to support the construction and the operation of a floating offshore wind farm in the sea off the coast of the South of Brittany. The aid measure, which will run for a period of 20 years starting of the operation of the wind farm in 2028, will have a total maximum budget of €2.08 billion.

The beneficiary of this measure will be selected through a transparent and non-discriminatory bidding process, where bidders will compete mainly on the basis of the amount of aid per MW of installed capacity. The beneficiary is planned to be designated in the second semester of 2023.

The aid will be granted in the form of a monthly variable premium under the model of a two-way Contract for Difference. The variable premium will be calculated by comparing a reference price, determined in the tender offer of the beneficiary ("pay as bid"), and the market price for electricity. When the market price is below the reference price, the beneficiary will be entitled to receive payments equal to the difference between the two prices. However, when the market price is above the reference price, the beneficiary will have to pay the difference between the two prices to the French authorities.

[Læs mere](#)

Dato: 13.02.2023

Commission approves €1.36 billion Greek scheme to compensate energy-intensive companies for indirect emission costs.

The scheme notified by Greece, with a total estimated budget of €1.36 billion, will cover part of the higher electricity prices arising from the impact of carbon prices on electricity generation costs (so-called 'indirect emission costs') incurred between 2021 and 2030. The support measure is aimed at reducing the risk of 'carbon leakage', where companies relocate their production to countries outside the EU with less ambitious climate policies, resulting in increased greenhouse gas emissions globally.

The measure will benefit companies active in sectors at risk of carbon leakage listed in Annex I to the Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2021 ('ETS State aid Guidelines'). Those sectors face significant electricity costs and are particularly exposed to international competition.

The compensation will be granted to eligible companies through a partial refund of the indirect emission costs incurred in the previous year. The final payment will be made in 2031. In view of the necessary time to prepare the measure and the exceptional circumstances related to the current energy crisis, the deadline for the aid payments for year 2021 is 30 April 2023.

The maximum aid amount per beneficiary will be equal to 75 % of the indirect emission costs incurred. However, in some instances, the maximum aid amount can be higher to limit the remaining indirect emission costs incurred to 1.5 % of the company's gross value added. The aid amount is calculated based on electricity consumption efficiency benchmarks, which ensure that the beneficiaries are encouraged to save energy.

In order to qualify for compensation, beneficiaries will have to either (i) implement certain energy audit recommendations, (ii) cover at least 30% of their electricity consumption with renewable energy sources, or (iii) invest at least 50 % of the aid amount in projects leading to substantial reductions of the installation's greenhouse gas emissions. Beneficiaries will have to comply with one of those obligations within three years from the granting of the aid.

[Læs mere](#)

Dato: 07.02.2023

Commission approves €1.5 billion French scheme to support protection against the insolvency of travel organisers.

France notified to the Commission its plans to set up a State guarantee fund with a budget of €1.5 billion (the 'Fund'). The Fund will cover insurers and other guarantors in the event of insolvencies of travel organisers.

The scheme is aimed at ensuring an adequate insolvency insurance that is sufficient to (i) refund travellers for any payment for services that were not provided because of the organiser's insolvency, and (ii) finance the travellers' repatriation if needed. Such protection of travellers is required under the EU Package Travel Directive.



Under the scheme, insurers will pass-on 75% of their premiums to the Fund, which in turn would cover 75% of the potential losses, up to the overall maximum amount of €1.5 billion. In addition, insurers will be compensated for the operating costs of providing the insolvency protection.

The measure is open to all insurers and other guarantors that offer insolvency protection to travel organisers. In order to benefit from the scheme, insurers and other guarantors must be legally authorised to operate in France and must provide insolvency protection to travel organisers registered with the French tourism development agency. The scheme will run until 31 December 2023.

[Læs mere](#)

Dato: 06.02.2023

Commission consults Member States on proposal for a Temporary Crisis and Transition Framework.

The European Commission has sent to Member States for consultation a draft proposal to transform the State aid Temporary Crisis Framework into a Temporary Crisis and Transition Framework to facilitate and accelerate Europe's green transition. This proposal is part of the Green Deal Industrial Plan, also presented today – in particular, it contributes to its second pillar aiming at ensuring faster access to funding for companies operating in the EU.

Today's proposal for a Temporary Crisis and Transition Framework aims to boost investments for a faster roll-out of renewable energies as well as to support the decarbonisation of the industry and the production of equipment necessary for the net-zero transition, while preserving the integrity and level playing field on the Single Market.

Proposed amendments:

The Commission is consulting Member States on possible amendments aimed at:

- Further facilitating the roll-out of renewable energy and decarbonising the industry by including the possibility to: (i) support the deployment of all renewable energy sources; (ii) grant aid for less mature technologies, such as renewable hydrogen, without a competitive bidding, provided that certain safeguards to ensure the proportionality of public support are in place; and (iii) incentivise investments leading to a significant reduction of emissions by including higher aid ceilings and simplified aid calculations (as an example, the aid would simply be determined as a share of investment costs).
- Supporting investments in the production of strategic equipment necessary for the net-zero transition, in order to accelerate the transition to a net-zero economy and overcome the current energy crisis. In particular, the Commission is proposing to address the productive investment gap in sectors strategic for the green transition. This comes in the context of global challenges posing a threat of new investments in these sectors being diverted in favour of third countries outside Europe. In particular, the Commission proposes to allow support from Member States for the production of batteries, solar panels, wind turbines, heat-pumps, electrolyzers and carbon capture usage and storage as well as the related critical raw materials necessary for the production of such equipment. For projects that take place in disadvantaged regions in the EU (where the GDP per capita is below 75% of the EU average) or which involve an investment in several Member States, and for which support in third country is available, further proportionate aid would be allowed to match the level of support offered in third countries, up to what is necessary to enable the investment to be made in Europe.

These new provisions would be in place until 31 December 2025.

Member States now have the possibility to comment on the Commission's draft proposal. The Commission intends to adopt the Temporary Crisis and Transition Framework in the coming weeks, taking into account the feedback received from the Member States.

[Læs mere](#)

Dato: 01.02.2023

Commission approves €600 million Slovak scheme to support its economy in the context of Russia's war against Ukraine.

Slovakia notified to the Commission, under the Temporary Crisis Framework, a €600 million scheme to support its economy in the context of Russia's war against Ukraine.

Under this measure, the aid will take the form of direct grants to support companies affected by the severe increases in natural gas and electricity prices.



The measure will be open to all sectors except the financial one.

The Commission found that the Slovak scheme is in line with the conditions set out in the Temporary Crisis Framework. In particular, the individual aid amount will not exceed 50% of the eligible costs or the maximum aid ceiling of €4 million. For beneficiaries qualifying as energy-intensive businesses, the overall aid per beneficiary will not exceed 80% of the eligible costs or the maximum aid ceiling of €150 million. In addition, the aid will be granted no later than 31 December 2023.

The Commission concluded that the Slovak scheme is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Crisis Framework.

[Læs mere](#)

Dato: 31.01.2023

Commission approves €104 million Croatian scheme to support energy-intensive companies.

Croatia notified the Commission of its intention to introduce a €104 million scheme to support energy-intensive companies. In particular, Croatia plans to reduce for those companies a levy on electricity consumption, which finances the deployment of renewable energy sources in Croatia ('RES levy'). Paying the full amount of the RES levy increases (i) the risk that certain energy-intensive companies relocate their activities to locations outside the EU with less ambitious climate policies, as well as (ii) the electricity costs of energy-intensive companies, thereby discouraging the electrification of their production processes.

The scheme, which will run until 31 December 2028, will be open to companies active in sectors listed in Annex I to the Guidelines on State aid for climate, environmental protection and energy 2022 ('CEEAG'). Those sectors rely heavily on electricity and are exposed to international trade. Beneficiaries will need to consume at least 500 MWh per year. Under the scheme, the reduction in the RES levy will not exceed 75% and it will depend on the electro-intensity of the beneficiary (i.e. the greater the electro-intensity, the higher the reduction). The applicable reduction may not result in a levy below 0.5 EUR/MWh.

Beneficiaries will have to conduct an energy audit and to either (i) perform certain energy efficiency investments, (ii) invest in projects leading to substantial reductions of their greenhouse gas emissions, or (iii) cover at least 60% of their electricity consumption with renewable energy sources.

Croatia has also established a transitional plan to progressively phase-out the RES levy reduction for energy-intensive companies that paid reduced RES levies in 2020 or 2021 but are no longer eligible under the new scheme.

[Læs mere](#)

Dato: 31.01.2023

Commission approves €1.6 billion Romania measure to capitalise new investment and development bank.

Romania notified to the Commission its plans to set-up of a national development bank with initial capital of up to €1.6 billion (RON 7.9 billion). The Bank will be established as a fully State-owned entity, with the Ministry of Finance as its shareholder, and will act under the supervision of the National Bank of Romania.

The aid will take the form of: (i) a capital injection of up to €608 million, out of which €10 million are estimated to be received in 2024 under the Recovery and Resilience Facility, (ii) a €1.4 million grant, and (iii) State guarantees worth €992 million.

The Bank will be entrusted with addressing market failures and supporting economic development and investment opportunities. It will intervene to ensure access to financing in areas where there is insufficient availability in the market, with a focus on providing funding to small and medium sized companies, including micro-enterprises and start-ups. The Bank may also support infrastructure projects aiming at improving productivity in the Romanian economy, as these projects usually require long-term financing that is difficult to secure on the market.

The Bank may also make use of financing provided under EU financial instruments, such as the InvestEU programme, by channelling that financing to eligible companies and projects. In this way, the Bank will support investments of strategic importance to the European Union.

[Læs mere](#)

Dato: 31.01.2023

**Commission approves €21 million Polish scheme to compensate tourism sector for damages suffered due to restrictive measures at the Polish-Belarusian border.**

On 2 September 2021, Poland declared the state of emergency in a part of the Podlaskie and Lubelskie provinces, covering a strip of around 3 kilometre length along the EU's external border with Belarus. In this context, Poland adopted a set of restrictive measures, including the prohibition for tourists to stay in the restricted area. These measures were taken in response to the exceptional situation triggered by the Lukashenko regime to undermine the EU's security. His targeted actions at EU's external borders included attempts to provoke an increase in irregular migration towards the EU. The prohibition for tourists to stay in the restricted area was in place until the end of June 2022.

Poland notified to the Commission its plan to adopt a €21 million (PLN 100 million) scheme to compensate the tourism sector for the losses incurred between September 2021 and June 2022.

Under the scheme, the aid will take the form of direct grants. The scheme will be open to companies in the tourism sector active in the restricted area, including hotels, restaurants and tour operators.

In order to qualify for the aid, beneficiaries must show that their sales decreased by at least 25 % compared those achieved between September 2018 and June 2019. The compensation will cover a fraction of the beneficiary's costs (i.e. all costs minus depreciation and amortisation costs) corresponding to its loss of turnover. The aid will be capped at 65% of the beneficiary's average monthly profit calculated over the three months preceding the prohibition for tourists.

Poland expects that up to 100 companies will benefit from the scheme.

[Læs mere](#)

Dato: 26.01.2023

Commission approves €100 million Austrian measure to reduce electricity consumption in the context of Russia's war against Ukraine.

Austria notified to the Commission, under the Temporary Crisis Framework, a €100 million measure to reduce peak electricity consumption between January and March 2023. The measure provides financial support to achieve the consumption reduction target set by Regulation (EU) 2022/1854 and moderate electricity prices.

The aid will be allocated through a competitive bidding process, which is open to all ways to achieve additional consumption reduction, such as shifting consumption off-peak and electricity storage. The eligibility criteria for participation in the bidding process will be transparent, objective and non-discriminatory.

Projects will be selected based on the lowest unit cost of additional consumption reduction. The measure features safeguards to avoid overcompensation of beneficiaries. Those include a requirement for the beneficiaries to forecast their electricity consumption before they know whether they will be required to reduce it, a dynamic price cap for bids, and a requirement to ensure a minimum number of participants in each tender. Furthermore, safeguards will be in place to ensure competition between electricity consumers and aggregators and the proper functioning of the electricity market. The Commission found that the Austrian scheme is in line with the conditions set out in the Temporary Crisis Framework. In particular, (i) remuneration will be granted to each beneficiary based on the actual additional consumption reduction achieved; and (ii) only the additional consumption reduction taking place within the period of application of Regulation (EU) 2022/1854 or by 31 December 2023 will be compensated.

The Commission concluded that the Austrian scheme is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Crisis Framework.

[Læs mere](#)

Dato: 19.01.2023

Commission opens in-depth investigation into French support measures in favour of Fret SNCF.

The European Commission has opened an in-depth investigation to assess whether certain French support measures in favour of Fret SNCF are in line with EU State aid rules.

The beneficiary of the measures is Fret SNCF SAS, a wholly owned subsidiary of the French railway operator SNCF SA ('SNCF'). Fret SNCF has been constantly loss-making, except in 2021. In the period from 2007 to 2019, its losses were continuously covered by its parent company SNCF through intra-group cash advances, which constitute State resources because of shareholding and control by the State.

[Læs mere](#)



Dato: 18.01.2023

Commission approves €1.1 billion Danish scheme to support roll-out of carbon capture and storage technologies.

The scheme notified by Denmark, with a total budget of around €1.1 billion (DKK 8.1 billion), aims at promoting the roll-out of CCS technologies used to reduce carbon dioxide ('CO₂') emissions that are released in the atmosphere and achieve deeper decarbonisation of industrial processes. The measure will support CCS as a viable and effective tool to mitigate climate change. This is expected to increase investor confidence in the CCS-technology, reduce costs for future application of CCS technologies and thereby facilitate the development of a commercial CCS market in Denmark.

Under the scheme, the aid will be awarded through a competitive tendering procedure to be concluded in 2023. The tender will be open to companies active in any industrial sectors, including the waste and energy sectors. Under a 20-year contract, the beneficiary will capture and store an annual minimum of 0.4 million tonnes of CO₂ as from 2026. The aid will cover the difference between the estimated total costs of capturing and storing a tonne of CO₂ over the lifetime of the contract and the return expected by the beneficiary. The maximum amount of aid will be equal to €54.9 million per year (DKK 408.4 million), adjusted to inflation.

The scheme will contribute to Denmark's efforts reduce its greenhouse gas emissions by 70% by 2030 compared to the 1990 level. It will also help Denmark and the EU meet their objective of achieving climate neutrality by 2050. The scheme is expected to enable the capture and storage of a minimum of 0.4 million tonnes of CO₂ per year and 8 million tonnes of CO₂ over the total 20-year period of the contract.

[Læs mere](#)

Dato: 12.01.2023

Andet

Kommissionens vejledning om anvendelsen af den henvisningsmekanisme, som er fastlagt i fusionsforordningens artikel 22, på visse kategorier af sager.

Formålet med dette dokument er at give praktisk vejledning vedrørende Kommissionens tilgang til anvendelsen af den henvisningsmekanisme, der er fastlagt i artikel 22 i Rådets forordning (EF) nr. 139/2004 af 20. januar 2004 om kontrol med fusioner og virksomhedsovertagelser («fusionsforordningen»). Målet er at lette og præcisere dens anvendelse i visse kategorier af relevante sager.

Dette dokument supplerer i sådanne sager vejledningen i Kommissionens meddelelse om henvisning af fusioner, som indeholder generel vejledning om det overordnede henvisningssystem, der er indført ved fusionsforordningens artikel 4, stk. 4 og 5, og artikel 9 og 22.

Formålet med dokumentet er begrænset til at give generel vejledning om hensigtsmæssigheden i at henvise bestemte kategorier af sager efter fusionsforordningens artikel 22: Medlemsstaterne og Kommissionen har fortsat en betydelig skønsmargen med hensyn til beslutningen om, hvorvidt de vil henvise sager henholdsvis acceptere henvisninger. Kommissionen kan til enhver tid revidere denne vejledning i lyset af den fremtidige udvikling. Den kan også beslutte at konsolidere indholdet af denne vejledning i meddelelsen om henvisning af fusioner på baggrund af erfaringerne med anvendelsen af den reviderede tilgang til henvisninger efter artikel 22.

[Læs mere](#)

Dato: 31.03.2021

Nyt fra EU-domstolen

Domme

[C-284/21 P](#) - Kommissionen mod Braesch m.fl.

Appel – statsstøtte – artikel 107 TEUF og 108 TEUF – omstrukturingsstøtte – banksektoren – indledende undersøgelsesfase – afgørelse, hvorved støtten erklæres forenelig med det indre marked – omstrukturingsplan – tilsagn afgivet af den pågældende medlemsstat – byrdefordelingsforanstaltninger – konvertering af efterstillede fordringer til egenkapital – indehavere af obligationer – annullationssøgsmål – formaliteten – artikel 263, stk. 4, TEUF – søgsmålskompetence – fysisk eller juridisk person, der er umiddelbart og individuelt berørt – tilsidesættelse af de interesserede parter proceduremæssige rettigheder – undladelse af at indlede den formelle undersøgelsesprocedure – artikel 108, stk. 2, TEUF – begrebet »interesserede parter« – forordning (EU) 2015/1589 – artikel 1, litra h) – begrebet



»interesserede parter« – nationale foranstaltninger, som Europa-Kommissionen har taget i betragtning – afvisning af sagen.

[Læs mere](#)

Dato: 31.01.2023

C-680/20 - Unilever Italia Mkt. Operations

Præjudiciel forelæggelse – konkurrence – artikel 102 TEUF – dominerende stilling – producent tilregnes sine distributørers handlinger – kontraktforhold mellem producenten og distributørerne – begrebet »økonomisk enhed« – anvendelsesområde – misbrug – eksklusivitetsbetingelse – nødvendigheden af at påvise virkningerne på markedet.

Artikel 102 TEUF skal fortolkes således, at den adfærd, som udvises af distributører, der er en del af distributionsnettet for varer eller tjenesteydelser for en producent, der indtager en dominerende stilling, kan tilregnes denne producent, hvis det godtgøres, at denne adfærd ikke er blevet udvist selvstændigt af de pågældende distributører, men er en del af en politik, som ensidigt er blevet besluttet af denne producent og gennemføres gennem de pågældende distributører.

Artikel 102 TEUF skal fortolkes således, at en konkurrencemyndighed, når der foreligger eksklusivitetsbetingelser i distributionsaftaler, ved afgørelsen af, om der foreligger misbrug af dominerende stilling, principielt på baggrund af alle de relevante omstændigheder, og henset til bl.a. de økonomiske analyser, som den dominerende virksomhed i givet fald har fremlagt med hensyn til den pågældende adfærds manglende evne til at udelukke lige så effektive konkurrenter som denne, skal godtgøre, at disse betingelser er egnede til at begrænse konkurrencen. Anvendelsen af en test med hensyn til »den lige så effektive konkurrent« er fakultativ. Hvis resultaterne af en sådan test imidlertid fremlægges af den pågældende virksomhed under den administrative procedure, er konkurrencemyndigheden forpligtet til at undersøge dens bevisværdi.

[Læs mere](#)

Dato: 19.01.2023

C-649/20 P - Spanien mod Kommissionen

Appel – statsstøtte – artikel 107, stk. 1, TEUF – skatteordning for finansielle leasingaftaler vedrørende erhvervelse af skibe (den spanske leasingbeskatningsordning) – betingelsen om selektivitet – begrundelsespligt – princippet om beskyttelse af den berettigede forventning – retssikkerhedsprincippet – tilbagesøgning af støtte.

[Læs mere](#)

Dato: 02.02.2023

Forslag til afgørelse

C-320/21 P - Ryanair mod Kommissionen

Appel – statsstøtte – artikel 107, stk. 2, litra b), TEUF – Sverige – covid-19 – offentlig garanti for en revolverende kreditfacilitet – Europa-Kommissionens afgørelse om ikke at gøre indsigelser.

[Læs mere](#)

Dato: 26.01.2023

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

Competition in the Mobile Application Ecosystem - Department of Commerce.

Our review suggests that the mobile app store model has provided a range of benefits to both app developers and users, but has also created conditions of competition that are suboptimal. The policies that Apple and Google have in place in their own mobile app stores have created unnecessary barriers and costs for app developers, ranging from fees for access to functional restrictions that favor some apps over others. These obstacles impose costs on firms and organizations offering new technology: apps lack features, development and roll-out costs are higher, customer relations are damaged, and many apps fail to reach a large number of users.



In addition, the structure of the ecosystem has made possible the extraction of disproportionate returns by the operating system owners, yielding an outsized economic share for the platform owners as opposed to other parts of the ecosystem. The incentive structures created by the current policies and practices of Apple and Google leave any alternative distribution models with significant disadvantages and limited functionality. It is challenging for other firms to compete in the mobile ecosystem for both distribution mechanisms (e.g., mobile app stores and web browsers, as discussed below) and amongst apps.

Above all, these setbacks mean that app developers and alternative mobile app stores are not afforded the opportunity to compete on a fair playing field— whether with each other or with the products and services offered by the gatekeepers. All of these factors translate to potential losses for consumers: prices that are inflated due to the fees collected by gatekeepers, innovation that is hampered by policy decisions to limit access to smartphone capabilities, and the loss of choice of apps that are not featured or even accessible for smartphone users.

[Læs mere](#)

Dato: Februar 2023

Draft guidance on Horizontal Agreements - CMA.

The CMA is consulting on draft guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements. The CMA is seeking responses by 8 March 2023.

The Competition Act 1998 (CA98) prohibits agreements between businesses that restrict competition in the UK (unless they meet the conditions for exemption in section 9(1) of the CA98 or are otherwise excluded). This is known as the Chapter I prohibition. An agreement can be exempt from the Chapter I prohibition if it creates sufficient benefits to outweigh any anti-competitive effects. A 'block exemption' exempts whole categories of agreements on the basis that agreements within the category would be likely to be treated as exempt if they were assessed individually. If an agreement meets the conditions set out in a block exemption, it is automatically exempt.

The purpose of the draft guidance under consultation is to explain how the CMA applies the Chapter I prohibition to common types of agreements between actual and potential competitors (referred to as 'horizontal agreements').

The guidance also describes the application of the Specialisation Agreements Block Exemption Order 2022 and the Research and Development Block Exemption Order 2022, which came into force on 1 January 2023, and is intended to help businesses assess horizontal agreements to establish whether they fall within the scope of these block exemptions.

[Læs mere](#)

Dato: 25.01.2023

3 | LITTERATUR (DK)

Artikler fra UfR

U.2023B.20/1 Bogomtale - Søren Sandfeld Jakobsen (red.), Christian Bergqvist & Christian Fröhlich: Teleretten.

1. udgave af denne håndbog i den teleretlige regulering udkom i 2014 (anmeldt af Palle Bo Madsen i U.2014B.291). Siden da har telereguleringen været i konstant udvikling med en række nye regler, både EU-retlige og nationale. Navnlig EU's såkaldte telekodeks fra 2018, der samler størsteparten af de eksisterende direktiver i ét direktiv og moderniserer og reviderer reguleringen, har ført til omfattende nationale regelændringer. Siden 1.-udgaven er Christian Fröhlich indtrådt i stedet for Søren Johansen. Redaktionen er sluttet primo juni 2022. Bogens omfang er vokset med 64 sider.

[Læs mere](#)

Dato: 07.02.2023

Nye publikationer fra Erhvervsministeriet

Intet nyt.



Artikler fra Juristen

Intet nyt.

Artikler fra Erhvervsjuridisk Tidsskrift

Intet nyt.

Artikler fra Revision og Regnskabsvæsen

RR.1.2023.34: EU lukker gabet for tredjelandes statsstøtte. Forfattere: Nina Theodora Vester-Andersen, Frederik Jakobsen.

Der er vedtaget en ny EU-forordning om udenlandske subsidier, der fordrejer det indre marked ("Forordningen"). Det udgør seneste skud på stammen af kontrol med virksomhedsopkøb, der allerede tæller FDI og fusionskontrol. Forordningen indfører nye værktøjer til at kontrollere investeringer fra virksomheder, som har modtaget konkurrencefordrejende subsidier fra tredjelande ("tredjelandssøttede virksomheder"). Kommissionen får med Forordningen følgende tre overordnede nye beføjelser:

- i. Tilladelseskrav ved større opkøb af europæiske virksomheder foretaget af tredjelandssøttede virksomheder.
- ii. Tilladelseskrav ved tilbud på større offentlige EU-udbud afgivet af tredjelandssøttede virksomheder.
- iii. Adgang til at iværksætte undersøgelse af potentielle konkurrencefordrejende udenlandske subsidier på eget initiativ.

Forordningen skal udfylde et hidtidigt lovgivningsmæssigt tomrum for statsstøtte ydet af lande uden for EU. Statsstøtte til virksomheder kan potentielt fordreje konkurrencen, og derfor er støtte ydet af medlemsstater underlagt EU's statsstøttekontrol. Derimod findes der ingen tilsvarende ordning for støtte ydet af lande uden for EU. På dette punkt er europæisk forankrede virksomheder altså stillet ringere end tilsvarende virksomheder forankret i et tredjeland, som udøver økonomisk aktivitet inden for EU.

[Læs mere](#)

Dato: 31.01.2023

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 3, 2023

Anti-competitive discrimination by digital platforms. Forfatter: Wolf Sauter.

Examines how EU law on anti-competitive discrimination is interpreted in respect of abuses of dominance by digital platforms. Reviews the economics of price discrimination, the varieties applied by digital platforms, and the approach in cases such as Google LLC v European Commission (T-604/18) (GC). Commission decisional practice on state aid for large regional development projects Phedon Nicolaidis E.C.L.R. 2023, 44(3), 98-105 Abstract: Reviews Commission decisions concerning regional state aid for major investment projects between 2014 and 2021, highlighting a range of potential good practices, and key errors which Member States should avoid when designing state aid measures.

On the need of a (genuinely) more economic approach in European state aid control in times of economic uncertainty. Forfatter: Jakub Kociubiński.

Suggests why the current EU method of assessing the competitive effect of state aid measures is unsuitable to the post COVID-19 landscape, and why a more rigorous economic analysis is legally and economically necessary. Proposes reforms to the current interpretative approach to assessing such aid.

Merger control beyond merger thresholds and the multiplication of ex ante merger notification obligations.

Forfatter: Pedro Callol.

Reviews the trend for some mergers to be questioned by competition authorities despite not meeting any of the relevant EU merger control thresholds, and the potential implications. Details the lessons of Illumina Inc v European Commission (T-227/21) (GC), and the implications for foreign investment.

Canada: mergers - merger control - completed acquisition - grain handling (Case Comment). Forfatter: Kaeleigh Kuzma.

Notes the Canadian Competition Tribunal decision in Parrish & Heimbecker Ltd / Louis Dreyfus Co Canada ULC, rejecting an application for divestiture of a grain elevator following an acquisition. Considers the product and geographic market definitions, competitive effect and efficiencies defence.

Czech Republic: competition - legislation - significant market power in agricultural food product supply chains.

Forfatter: Tomáš Fiala.

Notes 1 January 2023 reforms to the Czech Republic's Act on Significant Market Power, harmonising its provisions with Directive 2019/633 and protecting food suppliers from unfair practices by supermarkets. Details the revised definition of "significant market power" and the list of unfair practices.

European Union: anti-competitive practices - judgment - restrictive business practices (Case Comment).

Forfatter: Prof. Bruce Wardhaugh.

Notes Google LLC v European Commission (T-604/18) (GC) on the lawfulness of practices relating to a search engine's use on a particular smart device, including tying through pre-installation, advertising revenue sharing and "anti-forking". Considers issues for the right of defence and fines.

European Union: anti-competitive practices - judgment (Case Comment). Forfatter: Prof. Bruce Wardhaugh.

Notes AC v PACCAR Inc (C-163/21) (ECJ) on whether the provisions of Directive 2014/104 requiring disclosure of documents, may also require the creation of documents that do not yet exist. Details the court's approach to the proportionality requirement, and the case's relevance to damages claims.

Finland: mergers - merger control. Forfatter: Maarit Taurula.

Notes the withdrawal by the Finnish energy company Helen Oy and the heat pump supplier LampoYkkonen Oy of their merger notification relating to a joint venture for geothermal and heat pump systems, owing to long notification times by the Finnish Competition and Consumer Authority.

**Finland: mergers - merger control. Forfatter: Maarit Taurula.**

Notes Finland's proposed reforms to its competition law regime, including lowering the merger notification thresholds to transactions in which the parties' aggregate combined Finnish turnover exceeds EUR 100 million. Considers the implications of the changes.

France: anti-competitive practices - infringement - abuse of dominant position (Case Comment). Forfatter: Emmanuel Reille.

Notes the French Competition Authority decision in Essilor International SAS / EssilorLuxottica SA, fining a company and its parent a total of EUR 81 million for abusing a dominant position in the French wholesale distribution market for corrective lenses by restricting online sales.

Germany: mergers - merger control - judgment (Case Comment). Forfatter: Dr Ingo Klauß.

Notes the ruling in Oberlandesgericht (Dusseldorf) (Kustomer), giving guidance on the application of the transaction value threshold in merger control situations, and the requirements for a target company's "substantial domestic operations". Highlights the likelihood of an appeal.

Hong Kong: anti-competitive practices - restrictive business practices (Case Comment). Forfatter: Sandra Marco Colino

Notes the Hong Kong Competition Commission ruling in Cartel Motors Ltd / Dah Chong Hong Holdings Ltd / Inchcape International Holdings Ltd / Kam Lung Motor Group Ltd / Motor Image (HK) Ltd / Sime Darby Motor Group (HK) Ltd / Vang lek Holdings Ltd, accepting commitments from seven car dealerships.

Hong Kong: anti-competitive practices – enforcement. Forfatter: Sandra Marco Colino.

Notes the Hong Kong Competition Commission's September 2022 publication of a revised Leniency Policy for Individuals Engaged in Cartel Conduct, and details the two types of leniency now available.

Hong Kong: anti-competitive practices - restrictive business practices. Forfatter: Sandra Marco Colino.

Notes the September 2022 commencement of a Hong Kong Competition Commission action against Tien Chu (Hong Kong) Co Ltd for allegedly imposing a minimum resale price maintenance mechanism on monosodium glutamate distributors. Details key aspects of the conduct involved, and the remedies sought.

Ireland: mergers - merger control (Case Comment). Forfatter: Dr Vincent J.G. Power SC.

Notes the Irish Competition and Consumer Protection Commission ruling in Uniphar PLC / Navi, prohibiting a proposed merger in the pharmaceutical sector on the basis it would result in a substantial lessening of competition. Details the issues that might be raised on appeal.

Portugal: mergers - merger control. Forfatter: Nuno Carolo dos Santos.

Notes the Portuguese Competition Authority's launch of an in-depth investigation into the proposed acquisition of the surgical devices manufacturer MI Tech Co by a subsidiary of the American Boston Scientific Corp. Details the potential competition concerns in the medical devices market.

Portugal: anti-competitive practices - investigation - restrictive business practices - national market for clinical analyses. Forfatter: Nuno Carolo dos Santos.

Highlights the Portuguese Competition Authority's ongoing investigation into allegations of anti-competitive practices including price fixing and no-poach agreements by seven laboratories conducting clinical analyses such as COVID-19 tests. Details the progress of the investigation to date.

Portugal: anti-competitive practices - investigation - restrictive business practices - wholesale distribution (Case Comment). Forfatter: Nuno Carolo dos Santos.

Notes the Portuguese Competition Authority's settlement of its investigation into alleged anti-competitive practices by a nutritional supplement supplier, involving resale price maintenance with vertical restraints in wholesale distribution markets. Details the reduced fine of EUR 1.26 million.

Portugal: anti-competitive practices - investigation - procurement of teleradiology services. Forfatter: Nuno Carolo dos Santos.

Notes the Portuguese Competition Authority's November 2022 statement of objections against three providers of teleradiology services, alleging their potential involvement in public procurement bid rigging in the healthcare sector. Details key features of the investigation to date.

**Portugal: anti-competitive practices – investigation. Forfatter: Nuno Carrolo dos Santos.**

Notes the Portuguese Competition Authority's November 2022 statement of objections against three companies involved in the supply of extra-high voltage cables, for alleged anti-competitive practices, including collusive tendering in public procurement. Details the progress of the investigation.

Spain: anti-competitive practices – investigation. Forfatter: Pedro Callol.

Notes the Spanish National Competition and Markets Commission's investigation of Booking.com BV, the travel fare aggregator and metasearch engine, for alleged anti-competitive conduct involving abuse of a dominant position when providing hotel intermediation services by online travel agencies.

Spain: anti-competitive practices - judgment (Case Comment). Forfatter: Pedro Callol.

Notes two rulings of the Superior Court of Justice of Catalonia, holding that in competition law proceedings the duration and scope of any ban on contracting with the public sector can be decided by the Spanish National Competition and Markets Commission without involving the Ministry of Finance.

Spain: anti-competitive practices - infringement (Case Comment). Forfatter: Pedro Callol.

Notes the Spanish National Competition and Markets Commission ruling in Merck Sharp, fining a pharmaceutical company EUR 39 million for abuse of a dominant position involving the adoption of delaying tactics to prevent the market entry of a rival to its vaginal ring anti-conceptive product.

Türkiye: mergers - decision (Case Comment). Forfatter: Gönenç Gürkaynak.

Notes the Turkish Competition Board ruling in Marti Ileri Teknoloji AS / Mobilite Teknoloji Cozumleri AS on whether gun-jumping had occurred by breaching a suspension requirement and concluding an unauthorised concentration and intra-group transaction.

Artikler fra European Competition Journal

Intet nyt.

Artikler fra Journal of Competition Law and Economics

Intet nyt.

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 8, December 2022

Narrow Price Parity Clauses: Beyond Booking.com (Germany). Forfattere: Rupprecht Podszun og Tristan Rohner.

Key Points:

The German Federal Court of Justice clearly positions itself against narrow price parity clauses. An exemption according to Article 101 (3) TFEU is likely to be ruled out in most cases.

The doctrine of ancillary restraints, limiting the application of Article 101 (1) TFEU, cannot be invoked in cases of free riding.

A referral to the ECJ is not made despite differing views on narrow price parity clauses throughout Europe.

The Federal Cartel Office presented an elaborate empirical study and impact analysis which shows that free-rider effects hardly occur to any significant extent, making it harder to argue for an exemption.

Sustainability Agreements in the European Commission's Draft Horizontal Guidelines. Forfattere: Roman Inderst og Stefan Thomas.

Key Points:

The European Commission has published its Draft Horizontal Guidelines (DHG), which include an assessment of 'sustainability agreements'. The dedicated paragraphs enlarge the scope for the consideration of sustainability benefits.

We review the various ways how such an extended consideration of sustainability benefits can take place, such as the introduction of safe harbours for certain sustainability agreements or the introduction of the concept of 'collective benefits'. In its balancing of effects, the DHG still remain firmly grounded in a consumer welfare analysis.

We discuss possible problems that may arise from the broad conception of sustainability, notably in combination with the acknowledgement of 'collective benefits'. We propose an alternative.

Joint and Several Liability For Fines in Undertakings With Varying Configurations in EU Competition Law. Forfatter: Petre Alexandru Biolan.

Key Points:

Settled EU case law established that several entities constituting an undertaking must be regarded as jointly and severally liable for the resulting fine.

The case law has generally rejected the idea that a fine imposed on an undertaking is indivisible between its members. Different factors such as duration and other individual circumstances may lead to differences between the maximum amounts of the fine for which each member could be held jointly and severally liable.

Joint and several liability for fines between the members of an undertaking reflects the varying configuration of the undertaking during the infringement period.

Turkish Competition Authority's First Hub-and-Spoke Cartel Decision. Forfattere: Emin Köksal og Şahin Ardiyok.

Key Points:

The Turkish Competition Authority (TCA) found that five grocery retailers and a cooking oil supplier had participated in a 'hub-and-spoke' cartel in breach of Article 4 of the Turkish Act on the Protection of Competition (the equivalent of Article 101 TFEU).

This article unpacks the TCA's first hub-and-spoke cartel decision. We also provide some analysis that may inform the readers about the economic background of the decision.



The decision is also noteworthy in reflecting the TCA's approach to rising inflation stemming from the COVID-19 pandemic.

The Rise of Participative Regulation in Digital Markets. Forfatter: Vikas Kathuria.

Key Points:

This paper analyses participative regulation, a hitherto unprecedented form of regulatory tool, where the regulator participates with the regulated firm at the stage of crafting obligations to attain set objectives.

The EU, the USA, and the UK—three jurisdictions that have taken steps towards regulating digital markets—have incorporated, albeit to varying degrees, participative regulation.

The paper explains the reasons behind the rise of this regulatory innovation, and offers suggestions to improve the same, to assist jurisdictions that are drafting regulations for digital markets.

Consumer Antitrust Private Enforcement in Europe. Forfatter: Miguel Sousa Ferro.

Key Points:

Although B2B litigation is on the rise and has had multiples successes, European consumers have never yet been compensated, in any meaningful number, for any anticompetitive infringement, and EU and (most) national policy makers are not acting to alter this *status quo*.

The UK, Portugal and the Netherlands (and possibly Slovenia, Norway and, less so, Bulgaria) are the only countries which could be on their way to achieving that goal, thanks to opt-out and third-party funding or *quota litis*.

Spain and, less so, Italy have shown that there are various paths for consumer redress for large damage, but still encompassing only a small percentage of injured individuals.

EU General Court Upholds Commission Gun-Jumping Decision: Altice Europe NV v Commission. Forfatter: Jay Modrall.

Judgement of 22 September 2021, *Altice Europe NV v Commission*, Case T-425/18, EU:T:2021:607. The General Court upheld the European Commission's decision finding that Altice Europe infringed the European Union Merger Regulation's prohibition against implementing a notifiable transaction before notification and approval.

Redefining the Ne Bis in Idem Principle in EU Competition Law: bpost and Nordzucker. Forfatter: Michael Mayr.

Judgments of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, and *Nordzucker*, C-151/20, EU:C:2022:203. Duplicate proceedings or penalties are only permissible under the *ne bis in idem* principle when the two proceedings pursue distinct or complementary objectives of public interest and the duplicate proceedings or penalties can be justified under a strict version of the principle of proportionality.

In the judgments in *bpost* and *Nordzucker*, which were adopted on the same day, the Court redefines the scope and applicability of the *ne bis in idem* principle in EU competition law. Although *bpost* sets out the framework of the *ne bis in idem* principle, *Nordzucker* complements *bpost* by primarily addressing the question when two sets of facts are identical.

There's a New Kid in Town: The Foreign Subsidies Regulation. Forfatter: Eddy De Smijter.

On 14 December 2022, barely 19 months after the European Commission launched its proposal on this topic, the European Parliament and the Council signed the Foreign Subsidies Regulation (Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market [2022] OJ L330/1, 'FSR'). The speed of the legislative procedure shows that the European co-legislators were keen to enable the Commission to guard the level playing field in the EU Single Market, countering distortions created by undue subsidisation from non-EU States. That logic applies already for decades to controlling the State aid granted by EU Member States but will henceforth also apply with regard to monitoring and if need be, correcting the detrimental effects in the EU of subsidies granted by third countries.

Artikler fra World Competition

Intet nyt.



Artikler fra Antitrust Law Journal

Intet nyt.

Artikler fra Antitrust Bulletin

Volume 68, Issue 1, Marts 2022

Antitrust Litigation in the Protein Markets. Forfattere: Alderman, Brianna L. og Blair, Roger D.

Allegations of collusion are prevalent in many of the major protein markets including beef, chicken, eggs, pork, salmon, tuna, and turkey. The sources of collusion, however, are different across markets. For some markets, like chicken and pork, the collusion was allegedly facilitated through information exchanges using Agri Stats, a data collection and sharing service. In other markets, the collusion was facilitated among parties within the market. There are allegations of collusion in the input markets for some proteins, the output markets for others, and some like chicken and beef have allegations in both. While many of these cases are ongoing, there have been a few cases where settlements have been reached or the courts have decided on a verdict. This introduction provides a snapshot of the many articles in our symposium that specialize on one protein market or another. We provide a brief review of each case, as well as emphasize the importance of this research given how substantial the protein markets are in the U.S.

Information Sharing and Collusion: General Principles and the Agri Stats Experience. Forfattere: Sappington, David E. M. og Turner, Douglas C.

We review some central conclusions from the economics literature regarding the likely impact of information sharing by industry suppliers on consumer welfare. We also review the specific information sharing activities undertaken by Agri Stats. We conclude that although some elements of Agri Stats' activities may have had the potential to enhance consumer welfare, several elements of the activities reflect features of information sharing that the common wisdom suggests are relatively likely to harm consumers.

Monopsony Power and Coordination in the Broiler Industry. Forfatter: Ribeiro, Eduardo Pontual.

The production of broilers is a well-known example of integration of food processors with growers. Tournament contracts are the norm in the industry, where processors provide chicks, feed, and veterinary supplies to the growers. The industry has come under antitrust scrutiny on several cases where processors have allegedly colluded to exercise market power both in the input and in the output markets and unilaterally exercised monopsony power. This article discusses the possible role that the integration model of contracting with growers may have on the monopsony power and collusion in the input market. In the case of confirmed collusion at the input market, damage compensation may be due. We present formulae that may be used to calculate damages in a buyer cartel.

Ruffled Feathers: The Chicken Cartel in the United States. Forfatter: Li, Dong og Weisman, Dennis L.

Allegations of price-fixing by U.S. chicken suppliers in violation of Section 1 of the Sherman Act date back more than a half-century. The methods to facilitate this collusion have evolved over time from conference calls arranged by the National Broiler Marketing Association to more sophisticated methods of information sharing. Amid the highest rate of inflation in nearly forty years and persistent supply-chain bottlenecks as the country emerges from the pandemic, the chicken industry has been singled out by government officials for monopolistic pricing behavior. We examine the mechanism through which the "chicken cartel" was formed and sustained and its harmful effects on consumers. The analysis indicates that as early as 2008 a plan was hatched by U.S. chicken suppliers to collude in fixing the price of chicken. According to one complaint, this collusion, in concert with increased market concentration, raised chicken prices by approximately 50 percent. The associated consumer surplus losses are estimated at \$8 to \$10 billion annually with cumulative losses over the duration of the cartel ranging upward of \$100 billion. Numerous indictments have been handed down and settlements reached, both civil and criminal.

The Third Circuit's Scrambling of Precedent in Processed Eggs. Forfatter: Carstensen, Peter C.

In 2020, the Third Circuit upheld a judge's decision that the rule of reason applied to a conspiracy among egg producers to limit production of eggs by agreeing on how they engaged in production and the disposition of some eggs. A jury had found that the agreement existed and that its intent was to restrain production, but based on the instructions from the court, it also found that these restraints were "reasonable." On its face, this decision upends more than a century of case law holding that naked restraints of competition among competitors are illegal per se. One of the restraints involved an agreement to increase the size of the cages used for the hens laying eggs. The courts appear to have concluded that an agreement among competitors to increase cage size could be a lawful cartelistic conspiracy, despite the jury finding that



the intent was to restrict production. The jury instructions themselves conflated the issues of whether there was a conspiracy to restrain the production of eggs and the issue of whether the conspiracy had in fact caused any reduction in production. Hence, although the Court of Appeals decision provides defendants a basis to claim that any justification for collusion should be considered, the specifics of the case suggest that the jury may have found that the conspiracy was ineffective and so caused no harm. Such a conclusion would be consistent with existing law.

Meatpackers Feed on Fed Cattle. Forfatter: Alderman, Brianna L.

There are numerous accusations of collusion in protein markets throughout the United States. The cattle market is no exception. The four major meatpackers stand accused of acting in concert to lower the quantity of cattle purchased in the cash market for fed cattle. The plaintiffs in these cases allege that these meatpackers have purposefully depressed the price they pay to various cattle ranchers and feedlot operators. This article explores the allegations brought forth in one of these complaints, as well as the economic consequences resulting from the formation of a cartel in this market if a collusive agreement truly exists.

The Consumers' Beef about Beef Prices. Forfatter: Blair, Roger D.

There have been allegations that the dominant meatpackers have conspired to raise beef prices in violation of §1 of the Sherman Act. In this article, I examine the market structure and find it to be conducive to collusion, which may be tacit or overt. The article analyzes the allegations of collusion in a partial conspiracy model. The empirical evidence appears to be consistent with the implications of the theory. The article also considers evidentiary problems for the plaintiffs as well as the pursuit of private damages and public sanctions.

(Lack of) Competition, Coordination, and Information Sharing in the Pork Industry: United States, 2009–2020. Forfattere: Donna, Javier D. og Walsh, Anita N.

In 2020, an antitrust lawsuit was filed against the Pork Integrators alleging a §1 Sherman Act violation. At the center of the Lawsuit, there is an alleged exchange of atomistic information about the Pork integrators' operations using Agri Stats, Inc. as a clearinghouse. We use the Supreme Court benchmark in American Column & Lumber to discuss two questions that arise from the Lawsuit. The first is whether the association of Pork Integrators and Agri Stats, Inc., resulted in the restraint of interstate commerce, the main specific issue at stake in the pork Lawsuit. The second is whether information-exchange agreements using clearinghouses like Agri Stats, Inc., lessen competition and offend U.S. antitrust law, a more general issue beyond the pork Lawsuit. We find that there appears to be ample evidence in the Lawsuit to merit prosecution regarding both trade restraints and information-sharing agreements. We conclude by discussing the role of the Agencies in setting the standards in information-exchange agreements.

Swimming in Pools: Collusion in the Salmon Market. Forfattere: Asmat, Danial; Levenstein, Margaret C.; Suslow, Valerie Y. og Wang, Zhihan.

We study the events alleged in recent Norwegian salmon industry antitrust cases to explore the relationship between vertical integration, public price indexes, and collusion. The salmon market provides an intriguing opportunity to study these issues, as there was a vertical merger followed by a reformulation of the methodology by which prices were reported for a new price index. We explore whether the confluence of the merger and the creation of the Nasdaq price index is associated with evidence consistent with collusion. JEL codes: L13, L41, L42, Q22

Price-Fixing Allegations in the Canned Tuna Industry: A Look at the Data. Forfattere: Kim, Minhae; Miller, Nathan H.; Mansley, Ryan; Remer, Marc og Weinberg, Matthew C.

In December 2014, Thai Union, the parent company of Chicken of the Sea canned tuna announced that it had reached an agreement to acquire Bumble Bee tuna from Lion Capital. In the course of standard merger review, the Department of Justice subpoenaed the merging parties as well as the parent company of StarKist to investigate possible collusion among the major producers of canned tuna. This led to several class action lawsuits and a criminal conviction for price fixing. This paper describes how these firms were alleged to have colluded and uses retail scanner data to document how prices and promotional activity changed while the cartel was in operation. Avenues for future research are discussed.



Artikler fra Competition Law and Policy Debate

Volume 7, Issue 3, 2022

The complexity and practical challenges of implementing the new DMA. Forfatter: Ief Daems.

Discusses the platforms to which Regulation 2022/1925 (Digital Markets Act (DMA)) applies and the implications for those designated as gatekeepers. Questions whether the DMA is as straightforward an enforcement tool as some had hoped.

The DMA and the role of economics. Forfattere: Neil Gallagher og Paulo Abecasis.

Explores, from an economic perspective, the pros and cons of removing economic considerations from the implementation of Regulation 2022/1925 (Digital Markets Act (DMA)) and instead defining "core platform services", and rules for "gatekeepers" which have no link with economic dominance.

Showcases and showstoppers: the DMA's impact on merger control in digital markets. Forfattere: Falk Schoning og Florian von Schreitter.

Evaluates the impact of two regulatory provisions of Regulation 2022/1925 (Digital Markets Act (DMA)) governing mergers and acquisitions activity by gatekeepers: the duty to inform the Commission of intended concentrations even if they are not notifiable under EU merger law; and the ability for the Commission to prohibit gatekeepers from conducting acquisitions in sectors where systemic non-compliance with the DMA is present.

The Digital Markets Act and the applicability of national competition law: s.19a of the German Competition Act (GWB). Forfatter: Sebastian Jungermann.

Analyses Regulation 2022/1925 (Digital Markets Act (DMA)) and the German Competition Act (GWB) s.19a, which makes provision for enforcement action against digital platforms. Notes key differences between the DMA and s.19a, and highlights several s.19a proceedings already pending.

Impact of digital market regulation to be felt on both sides of the Atlantic. Forfattere: Sonia K. Pfaffenroth og Matthew Tabas.

Reflects on the potential impact of Regulation 2022/1925 (Digital Markets Act) on the global digital economy and examines similar measures being proposed to regulate activities in the US currently governed by antitrust laws.

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

Volume 21, Issue 3, December 2022

Competition law at the 'cutting edge'. Forfatter: Sir Marcus Smith.

Competition practitioners are currently living in interesting times. These interesting times have rendered competition law increasingly complex and important. This article considers what the Competition Appeal Tribunal and practitioners can do to ensure that this important area of legal practice continues to flourish in serving the consumer, who should be the ultimate beneficiary of a well-functioning healthy competition regime.

**To take notes or not to take notes? The European Commission is walking a fine line between the interests of effectiveness and due process. Forfatter: Helene Andersson.**

The European Commission is a diligent enforcer of the EU competition rules, but has often been criticized for being too aggressive and for ensuring effective competition law enforcement at the expense of the parties' defence rights. The EU courts have often sided with the Commission, finding no violation of defence rights and signalling that the Commission respects these rights and manages to ensure a fair and balanced handling of competition investigations. However, recent judgments of the EU courts in Qualcomm, Optical Disk Drives and Google Android suggest that the winds are changing and that the bar has now been raised for the Commission. In these cases, the courts found the Commission's administrative procedure to be vitiated by procedural errors. In Qualcomm, this led the General Court to annul the Commission's decision in its entirety. Pursuing an enforcement policy with a one-eyed focus on efficiency and effectiveness may thus have devastating consequences, not only for the Commission but potentially also for the effective enforcement of the EU competition rules.

The National Security and Investment Act: emerging trends from the UK's First Interventions. Forfattere: Nigel Seay, Stephen Whitfield, Ingrid Hodgskiss og Rosamund Browne.

The National Security and Investment Act 2021 came into force on 4 January 2022 and gives the UK Government wide powers to scrutinize, and take measures against, business transactions on grounds of national security. In the first 10 months of the new regime, the Government intervened in 10 transactions, in some cases clearing the transaction subject to remedies and in others issuing a prohibition order. This article considers each of these transactions and identifies a number of emerging trends from the enforcement of the new regime, which applies both to UK and foreign investors.

Outcomes in successful competition appeals: remittal, finality and certainty. Forfattere: Nicole Kar og Helen Crossley.

This article examines ultimate outcomes in successful appeals in competition cases in the UK, including when a case must or may be remitted by the Competition Appeal Tribunal to the competition authority taking the original decision and the role of the Tribunal in giving directions about future conduct of the investigation.

The article contrasts the Tribunal's approach in appeals concerning mergers and market investigations under the Enterprise Act 2002 with its approach in appeals under the Competition Act 1998 where it has greater discretion to effectively replace the decision of the authority with its own decision rather than remit. It then considers the Tribunal's powers to influence the conduct of a case once remitted with respect to: (i) timing and process; (ii) remittal to the same decision makers or a reconstituted panel; and (iii) the substance of the remittal. It also considers how often a remittal results in a different decision by the authority.

Finally, it examines considerations relevant to remittal or substitution by the Tribunal of its own findings for those of the competition authority in merits appeals and a number of practical ways that the Competition and Markets Authority and the Tribunal could make the appeals process more final and promote resolution from a business perspective. This issue is topical in light of two recent remittals of merger prohibition decisions in *JD Sports/Footasylum* and *FNZ/GBST* and the second appeals brought by Pfizer and Flynn Pharma against the CMA's readopted antitrust decision in *Phenytoin*, following remittal after a successful first appeal.

Chilling CMA enforcement or deterring meritorious appeals? The UKSC's judgment in CMA v. Flynn Pharma & Pfizer. Forfattere: Sophie Lawrance og Edwin Bond.

On 25 May 2022 the UK Supreme Court gave judgment in *Competition and Markets Authority v. Flynn Pharma and Pfizer*, overturning a Court of Appeal ruling which had held that the Competition and Markets Authority should be protected against adverse costs awards in most appeals against CMA decisions. This article examines the background to the case, summarizes the Supreme Court's main findings and sets the judgment in its wider policy context, focusing in particular on recent debates about appropriate standards of review of competition authority decisions.

The rise of dark patterns: does competition law make it any brighter? Forfattere: Lirio Barros, Timo Klein Anastasia Shchepetova og Tim Hogg.

Dark patterns are deceptive online interface designs that may nudge users into making decisions that are in the interest of the online business at the expense of the user. This article considers the economics behind dark patterns: what are they, what can economics teach us regarding how they work, how is digitalization changing the economics behind dark patterns and to what extent can competition and consumer protection laws solve the problems that arise?



Artikler fra European Competition and Regulatory Law Review

Intet nyt.

Artikler fra Communications Law

Intet nyt.

Artikler fra Computer and Telecommunications Law Review

Volume 29, Issue 2, 2023

Protection of personal data by intermediaries and intermediary's liability of disclosure of personal data.

Forfatter: Shantanu Sahay.

Discusses the Indian High Court judgment in Neetu Singh v Telegram FZ LLC on online intermediaries' liability to disclose details of users who were suspected of online copyright infringement.

Directory enquiry services feel the knock-on effect of a subscriber's withdrawal of consent (Case Comment).

Forfatter: Rohan Massey.

Comments on Proximus NV v Gegevensbeschermingsautoriteit (C-129/21) (ECJ) on the obligation of the data controller of a directory enquiry service, when a data subject notified withdrawal of consent, to pass that information on to other data controllers and search engines.

The Metaverse in business. Forfatter: Mark Taylor.

Discusses the meaning of Metaverse technology and its potential use by businesses, for purposes including manufacturing, training and healthcare.

Legal design, artificial intelligence and insurance. Forfatter: Anthony Novaes.

Discusses the use of legal design to make legal documents, products and services available to end-users, with the aid of insurance and artificial intelligence.

EC computing, telecommunications and related measures. Forfattere: Hannah Schofield, Quentin Archer, Mary Foord-Weston og James Sharp.

Summarises the status of EC legislative measures on electronic communications, Directive 2002/22 (Telecoms Framework Directive), the Competitiveness and Innovation Framework Programme, electronic commerce, electronic signatures, network security, cybercrime, cybersecurity, technological development, telecommunications, broadcasting, satellite, intellectual property rights, data protection, and taxation.

US federal computing, telecommunications and related measures. Forfatter: David E. Halliday.

Summarises the status of US federal legislative measures on electronic commerce, cybercrime and security, the internet, the Information Society and e-government, intellectual property, telecommunications and broadcasting, data protection and privacy, taxation and outsourcing.

Artikler fra Global Competition Litigation Review

Intet nyt.

Andre udenlandske artikler

Intet nyt.



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