Konkurrenceretlig Nyhedsoversigt nr. 80 / dækkende 14. marts 2023 - 11. maj 2023

Indhold

1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Konkurrence- og Forbrugerstyrelsen modtog den 1. maj 2023 en forenklet anmeldelse af MS2 Invest ApS' erhvervelse af enekontrol over DC-Supply A/S.
MS2 Invest ApS gennem DCS Invest A/S, der er 100 pct. ejet og enekontrolleret af MS2 Invest ApS, erhverver 100 pct. af aktierne i DC-Supply A/S og dermed efter transaktionens gennemførelse vil opnå enekontrol med DC-Supply A/S.
Læs mere
Dato: 08.05.2023

Konkurrence- og Forbrugerstyrelsen modtog den 27. april 2023 en forenklet anmeldelse af en fusion mellem Dentsu Group Inc. og Tag.
Transaktionen medfører, at Dentsu Group Inc. erhverver 100 pct. af aktierne i seks enheder af Tag; Taylor James Ltd, Wertheimer Germany GmbH, Tag Worldwide Holding Limited, Tag Worldwide (Canada) Holdings Inc., Tag Worldwide (USA) Inc. og Tag Worldwide Asia Limited. Herudover erhverver Dentsu Group Inc. aktiver fra Tag Worldwide (Netherlands) B.V. Dentsu Group Inc. erhverver enekontrol over de nævnte enheder og aktiver.
Læs mere
Dato: 02.05.2023

Konkurrence- og Forbrugerstyrelsen modtog den 26. april 2023 en forenklet anmeldelse af Ortsa Holdco AB's (ejet af fondene Verdane Idun I (D) AB og Verdane Idun I (E) AB) (herefter "Verdane Idun I") erhvervelse af fælleskontrol over Re-Match Holding A/S ("Re-Match") sammen med en eksisterende aktionær i Re-Match, Nordic Alpha Partners (herefter "NAP").
Verdane Idun I og NAP vil opnå fælleskontrol over Re-Match (joint venture selskabet), således at både Verdane Idun I og NAP opnår en række veto-rettigheder over beslutninger af afgørende betydning for Re-Matchs forretningsstrategi.
Læs mere
Dato: 28.04.2023

Konkurrence- og Forbrugerstyrelsen modtog den 21. april 2023 en forenklet anmeldelse af fusion mellem CC BidCo III ApS c/o CataCap Management A/S ("CataCap") og NLM Vantinge A/S ("NLM").
Transaktionen medfører, at CataCap erhverver 100 pct. af aktiekapitalen i NLM. Efter fusionen geninvesterer sælgerne i NLM, hvormed sælgerne i NLM vil erhverve 20 pct. af NLM. CataCap vil dermed eje 80 pct. og have enekontrol over NLM efter fusionen.
Læs mere
Dato: 28.04.2023

Konkurrence- og Forbrugerstyrelsen modtog den 10. marts 2023 en forenklet anmeldelse af Polaris Private Equity V K/S' erhvervelse af aktiver og forpligtelser vedrørende DXC Technology Danmark A/S, DXC Technology Norge AS og DXC Technology Sverige AB.
Ved indgåelsen af en aktivoverdragelsesaftale vil Polaris Private Equity V (herefter "Polaris") efter transaktionens gennemførelse opnå kontrol med visse af aktiverne, identificeret som "Eclipse"-rapporteringsenheden (herefter "Target"), fra DXC Technology Danmark A/S, DXC Technology Norge AS, og DXC Technology Sverige AB (herefter "DXC Technologies").
Læs mere
Dato: 16.03.2023

Konkurrence- og Forbrugerstyrelsen modtog den 10. marts 2023 en forenklet anmeldelse af en fusion mellem JKS A/S ("JKS") og AktivPersonale A/S ("AktivPersonale").
Transaktionen medfører, at JKS overtager 100 pct. af aktiekapitalen i AktivPersonale. JKS erhverver dermed enekontrol over AktivPersonale.
Læs mere
Dato: 15.03.2023

Konkurrence- og Forbrugerstyrelsen modtog den 6. marts 2023 en forenklet anmeldelse af FSN Capital GP VI Limiteds erhvervelse af enekontrol over John Jensen A/S, Kjellerup Group A/S, EL-Team Fyn A/S, Blikkenslagerfirmaet Jesper Hansen ApS, MH Elektric A/S, Byens VVS og Blik Odense ApS, A-Comfort ApS, GL VVS A/S, Alvent A/S, WeCon A/S og Chvvs A/S.
Ved transaktionernes gennemførsel erhverver FSN Capital GP VI Limited gennem Faxe BidCo ApS enekontrol over John Jensen A/S, Kjellerup Group A/S, EL-Team Fyn A/S, Blikkenslagerfirmaet Jesper Hansen ApS, MH Elektric A/S, Byens VVS og Blik Odense ApS, A-Comfort ApS, GL VVS A/S, Alvent A/S, WeCon A/S og Chvvs A/S. Med transaktionerne oprettes et landsdækkende netværk af installatørvirksomheder under navnet InstallatørGruppen.
Læs mere
Dato: 15.03.2023

Nyt fra Konkurrencerådet

Konkurrencerådet har godkendt tilsagn fra Foreningen Bankdata, som blandt andet indebærer, at datacentralen skal nedsætte udtrædelsesgodtgørelsen for de pengeinstitutter, der er medlem af foreningen. Det sker, efter Konkurrence- og Forbrugerstyrelsen har haft betænkeligheder ved, om Bankdatas hidtidige vilkår begrænsede konkurrencen.
Foreningen Bankdata har forpligtet sig til at ændre sine vedtægter ved at afgive tilsagn, som Konkurrencerådet har godkendt. Konkurrencerådet har afgjort, at tilsagnet imødekommer de konkurrencemæssige betænkeligheder, som konkurrencemyndighederne har haft. Rådet har ikke taget stilling til, om Foreningen Bankdata har overtrådt konkurrencereglerne.

Foreningen Bankdata er en datacentral, der leverer totale it-løsninger til sine medlemmer, som i dag består af otte danske pengeinstitutter.

Med tilsagnet har Foreningen Bankdata forpligtet sig til at sætte medlemmernes udtrædelsesgodtgørelse ned fra 5 års omsætning med foreningen til maksimalt 2,5 års omsætning. Der er tale om meget store beløb og dermed en væsentlig reduktion af medlemmernes skifteomkostninger.

Konkurrence- og Forbrugerstyrelsen har haft betænkeligheder ved udtrædelsesgodtgørelsen, fordi den kan have begrænset konkurrencen ved at afholde pengeinstitutterne fra at forlade Foreningen Bankdata til fordel for en konkurrerende leverandør. Det kan have medført, at datacentralerne ikke har konkurreret fuldt ud om at have den bedste pris, kvalitet eller være de dygtigste til at innovere.
Læs mere
Dato: 29.03.2023

Nyt fra Konkurrenceankenævnet

Intet nyt.

Nyt fra domstolene

Civilretlige afgørelser

Konkurrencemyndighedernes afgørelser om Deutz AG og Diesel Motor Nordic A/S' overtrædelse af konkurrencereglerne ophævet – UfR 2023.2369 Ø.
Østre Landsret har den 27. februar 2023 afsagt dom i en sag om prøvelse af Konkurrencerådets afgørelse, som er stadfæstet af Konkurrenceankenævnet, om, at Deutz AG misbrugte en dominerende stilling, og at Deutz AG og DMN overtrådte forbuddet mod konkurrencebegrænsende aftaler i forbindelse med et DSB-udbud i 2010. Landsretten har ophævet konkurrencemyndighedernes afgørelser og hjemvist sagerne til fornyet behandling ved Konkurrencerådet. Landretten fandt, at grundlaget for Konkurrencerådets markedsafgrænsning og vurdering af spørgsmålet om dominerende stilling var så mangelfuldt, at der var grundlag for at ophæve og hjemvise den del af Konkurrencerådets afgørelse, som angik Deutz AG's misbrug af en dominerende stilling, jf. konkurrencelovens § 11 og TEUF artikel 102. Endvidere fandt landsretten, at det som følge af den mangelfulde markedsafgrænsning ikke var godtgjort, at markedsandelstærsklen i den dagældende vertikale gruppefritagelsesforordning var overskredet og dermed, at den adfærd, som Konkurrencerådet havde anset for at udgøre ulovlige konkurrencebegrænsninger, jf. konkurrencelovens § 6

og TEUF artikel 101, ikke var fritaget efter forordningen. Også den del af Konkurrencerådets afgørelse, som angik en ulovlig konkurrencebegrænsende aftale, blev derfor ophævet og hjemvist til fornyet behandling ved Konkurrencerådet.
Læs mere
Dato: 27.02.2023

Afgørelser om bøder

Broste Copenhagen har accepteret at betale en bøde på seks millioner kroner for at have deltaget i et kartel, hvor der blev koordineret priser med en konkurrent.
Interiørvirksomheden Broste Copenhagen, der blandt andet producerer og distribuerer lys, bordservice og dekorative genstande til boligen, har erkendt at have overtrådt konkurrenceloven. Virksomheden betaler derfor en bøde på seks millioner kroner for at have koordineret priser med en konkurrent i januar og juli 2021, herunder indførelsen af et Covid-19-relateret fragttillæg.

Bøden er udstedt af Konkurrencerådet. Ved fastsættelsen af bødens størrelse er der lagt vægt på overtrædelsens grovhed og varighed samt størrelsen af koncernens globale omsætning. Det har været en formildende omstændighed, at Broste Copenhagen har gjort en aktiv indsats for, at alle relevante medarbejdere skal overholde konkurrenceloven.

På den baggrund har Konkurrencerådet fastsat bødestørrelsen til 7,5 millioner kroner. Der er dog givet 1,5 millioner kroner i rabat, fordi Broste Copenhagen har medvirket til sagens opklaring.

Konkurrence- og Forbrugerstyrelsen undersøger fortsat, om der er grundlag for en konkurrencesag mod den konkurrerende virksomhed.
Læs mere
Dato: 19.04.2023

Lovforslag i høring

Høring af udkast til bekendtgørelse om godkendelse af myndigheders og organisationers adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser.
Bekendtgørelsen forventes at træde i kraft den 25. juni 2023.

Udkastet til bekendtgørelse er en udmøntning af lov om adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser – lov nr. 406 af 25. april 2023 – som blev vedtaget den 25. april 2023. Loven træder i kraft den 25. juni 2023.

Med udkastet til bekendtgørelse foreslås det bl.a., at fastsætte nærmere regler om myndigheders og organisationers anmodning om at blive godkendt til at anlægge gruppesøgsmål, herunder hvilket it- system anmodning kan ske igennem.

Udkastet til bekendtgørelse indeholder derudover nærmere regler om størrelse på gebyr samt betaling heraf.
Læs mere
Dato: 09.05.2023

Ny lovgivning

Lov om adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser.
Formålet med loven er at bidrage til, at der på EU- plan, og på nationalt plan, findes en effektiv og virknings- fuld processuel ordning for anlæggelse af gruppesøgsmål om påbud og genopretning, der er tilgængelig for forbrugere i alle medlemsstater. Loven 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 loven 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 opnået få adgang til erstatning, hvis en virksomhed har overtrådt de regler, som direktivet omfatter.

Loven 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.

Loven 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: Stadfæstet.
Læs mere
Dato: 20.04.2023

Nyt fra Ankestyrelsen

En kommunes aftale om at ændre en forkøbsret til en række ejendomme.
Ankestyrelsen fandt ikke grundlag for at antage, at Frederiksberg Kommune ville handle økonomisk uforsvarligt ved at indgå en aftale med en boligfond om at ændre en forkøbsret til en række ejendomme ejet af fonden.
Læs mere
Dato: 14.02.2023

En kommunes mulighed for at drive ladestandere til eget brug i et aktieselskab.
En kommune ønskede at etablere og drive ladestandere til brug for kommunens egne elbiler i et selskab med begrænset ansvar. Selskabet var 100 procent ejet af kommunen.

Ankestyrelsen vurderede, at kommunen ikke kunne etablere og drive ladestandere til brug for kommunens egne biler i et selskab med begrænset ansvar og samtidig bevare rådigheden over selskabet.
Læs mere
Dato: 24.02.2023

En borgmesters medvirken i indslag på kommunens tv-kanal.
Ifølge en artikel havde borgmesteren i Ishøj Kommune medvirket i langt flere indslag på kommunens tv-kanal TV Ishøj end de andre medlemmer af byrådet. Det fremgik også, at borgmesteren havde udlagt sin egen politik og andre partiers politik på kanalen.

Kommunen oplyste, at den ville udarbejde retningslinjer i forbindelse med, at driften af tv-kanalen var ophørt. Kommunen ville i stedet lægge videoer ud på kommunens YouTube-kanal. Af et notat fremgik det, at forvaltningen skal være partipolitisk neutral og ikke må yde partipolitisk bistand til byrådsmedlemmerne.

På den baggrund gjorde Ankestyrelsen ikke mere i sagen.
Læs mere
Dato: 28.02.2023

En borgmesters medvirken i en video.
En borgmester havde medvirket i en video fra en restaurant.

Ankestyrelsen vurderede, at borgmesteren havde reklameret for restauranten.

Kommunen havde derfor ydet indirekte støtte til restauranten i strid med kommunalfuldmagtsreglerne.
Læs mere
Dato: 28.02.2023

En kommunens udlejning af et areal til cafédrift.
Høje-Taastrup Kommune havde bedt Ankestyrelsen om at vurdere, om kommunen kunne udleje et areal i Kvarterhuset til en privat, der ville drive en café.

Ankestyrelsen vurderede, at det var lovligt efter kommunalfuldmagtsreglerne.
Læs mere

En kommunes model for tildeling af støtte til selvejende haller.
En kommune havde skrevet til Ankestyrelsen om lovligheden af kommunens model for tildeling af støtte til selvejende haller. Repræsentanter for to haller havde også skrevet til Ankestyrelsen.

Ankestyrelsen vurderede, at de tildelingskriterier, som kommunen anvendte for tildeling af tilskud til selvejende haller, var i overensstemmelse med kommunalfuldmagten.

Det var Ankestyrelsens opfattelse, at implementeringsplanen ikke var i strid med lighedsgrundsætningen.

Ankestyrelsen fandt desuden ikke grundlag for at tilsidesætte kommunens vurdering af behovet for en implementeringsperiode for udligning af tilskuddene til hallerne.
Læs mere
Dato: 10.03.2023

Andet

Intet nyt.

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust

Commission opens investigation into possible anticompetitive practices by Renfe in online rail ticketing.
The European Commission has opened a formal investigation to assess whether Renfe may have abused its dominant position in the Spanish passenger rail transport market by refusing to supply all its content and real-time data to rival ticketing platforms.

Renfe is the Spanish state-owned rail incumbent operator. Renfe sells its tickets offline and online either (i) directly via its websites and apps (i.e. Renfe and Cercanías) and mobility platform (i.e. dōcō); or (ii) indirectly through third-party ticketing platforms. Third-party ticketing platforms are companies that provide online ticketing services to customers through apps or websites (i.e. online travel agencies).

The Commission has concerns that Renfe may have restricted competition in the Spanish market for online rail ticketing services by refusing to provide third-party ticketing platforms with: (i) full content concerning its range of tickets, discounts and features; and (ii) real time data (pre-journey, on-journey or post-journey) related to its passenger rail transport services.

Renfe currently offers its content and real-time data on its own websites and apps, but may have refused to directly provide access to all such information to the third-party ticketing platforms. Third-party ticketing platforms display offers from different rail carriers and provide customers with online searching, comparison, booking and payment services. These platforms need to have access to Renfe's full content and real time data to tailor their offers to the customers' needs.

The Commission is concerned that Renfe's alleged refusal to supply this content and real-time data may prevent the platforms from competing with Renfe's own direct digital channels to the detriment of consumers. If proven, the behaviour under investigation may breach EU competition rules, which prohibit the abuse of a dominant position (Article 102 of the Treaty on the Functioning of the European Union ('TFEU')).
Læs mere
Dato: 28.04.2023

Commission confirms unannounced inspections in the fashion sector.
On 18 April 2023, the European Commission has started unannounced inspections at the premises of companies active in the fashion industry in several Member States. In parallel, the Commission has sent out formal requests for information to companies active in the same sector.

The Commission has concerns that the companies concerned may have violated EU antitrust rules that prohibit cartels and restrictive business practices including certain horizontal and vertical restrictions (Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the European Economic Area Agreement). The Commission officials were accompanied by their counterparts from the relevant national competition authorities of the Member States where the inspections were carried out.
Læs mere
Dato: 18.04.2023

Commission prolongs Motor Vehicle Block Exemption Regulation and updates the Supplementary Guidelines.
The European Commission has prolonged the Motor Vehicle Block Exemption Regulation ('MVBER') for five years, meaning that it will now be applicable until 31 May 2028. It has also updated the Supplementary Guidelines for the sector. The revised Guidelines will help companies in the automotive sector assess the compatibility of their vertical agreements with EU competition rules, while ensuring that aftermarket operators, including garages, continue to have access to vehicle-generated data necessary for repair and maintenance.

Main changes:

The MVBER was set to expire on 31 May 2023. The Regulation adopted today will prolong it until 31 May 2028. This limited prolongation will allow the Commission to react in a timely manner to possible market changes, such as those resulting from vehicle digitalisation, electrification and new mobility patterns.
Læs mere
Dato: 17.04.2023

Commission announces Guidelines on exclusionary abuses and amends Guidance on enforcement priorities.
The European Commission has launched a Call for Evidence seeking feedback on the adoption of Guidelines on exclusionary abuses of dominance. In parallel, it has published a Communication (and Annex) amending its 2008 Guidance on enforcement priorities concerning exclusionary abuses.

This is the first major policy initiative in the area of abuse of dominance rules (Article 102 of the Treaty on the Functioning of the European Union, 'TFEU') since 2008. It seeks to ensure that abuse of dominance rules are clear, effective and applied vigorously to the benefit of European consumers and the economy at large.

The Guidelines on exclusionary abuses:

Article 102 TFEU is one of the few areas of European competition law where no Guidelines clarify its application. However, its enforcement is key to ensuring that competition works effectively and that consumers can reap the benefits

of competitive markets. The Commission has therefore published a Call for Evidence with a view to adopt Guidelines on the application of Article 102 TFEU to exclusionary conduct.

The initiative aims at reflecting the EU courts' case law as well as the extensive experience gained by the Commission in the enforcement of Article 102 TFEU. The Guidelines will aim at increasing legal certainty to the benefit of consumers, businesses and national competition authorities and courts.

All interested third parties have four weeks to comment on the Call for Evidence. The Commission plans to publish a draft of the Guidelines for public consultation by mid-2024, so as to adopt them in 2025. Upon their adoption, the Commission will withdraw the 2008 Guidance on enforcement priorities, as amended by today's Communication.
Læs mere
Dato: 27.03.2023

Commission carries out unannounced inspections in the energy drinks sector.
On 20 March 2023, the European Commission has started unannounced inspections at the premises of a company active in the energy drinks sector in various Member States.

The Commission has concerns that the inspected company may have violated EU antitrust rules that prohibit cartels and restrictive business practices (Article 101 of the Treaty of the Functioning of the European Union ('TFEU') and Article 53 of the European Economic Area Agreement ('EEA')). The inspected company may also have violated EU antitrust rules that prohibit abuses of a dominant position (Article 102 of the TFEU and Article 54 of the EEA).
Læs mere
Dato: 21.03.2023

Cartels

Intet nyt.

Mergers

Commission clears Hydro's acquisition of Alumetal.
The European Commission has approved unconditionally, under the EU Merger Regulation, the proposed acquisition of Alumetal by Norsk Hydro. The Commission concluded that the merger would not raise competition concerns in the European Economic Area ('EEA'), notably for green aluminium foundry alloys. The European Commission has approved unconditionally, under the EU Merger Regulation, the proposed acquisition of Alumetal by Norsk Hydro. The Commission concluded that the merger would not raise competition concerns in the European Economic Area ('EEA'), notably for green aluminium foundry alloys.
Læs mere
Dato: 04.05.2023

Commission further cuts red tape for merging businesses.
The European Commission has today adopted a package to further simplify its procedures for reviewing concentrations under the EU Merger Regulation. The package includes: (i) a revised Merger Implementing Regulation ('Implementing Regulation'), (ii) a Notice on Simplified Procedure ('Notice'), and (iii) a Communication on the transmission of documents ('Communication').

The package is expected to bring significant benefits for businesses and advisers in terms of preparatory work and related costs. It aims to simplify and expand the scope of the Commission's review process of unproblematic mergers ('simplified cases'). It also seeks to reduce the amount of information required for notifying transactions in all cases and to optimise the transmission of documents. As such, today's package contributes to achieving the Commission's objective to reduce reporting requirements by 25%, as announced in its Communication on Long-term competitiveness of the EU. The new rules will be applicable as of 1 September 2023.
Læs mere
Dato: 20.04.2023

Commission sends Broadcom Statement of Objections over proposed acquisition of VMware.
The European Commission has informed Broadcom of its preliminary view that its proposed acquisition of VMware may restrict competition in the market for certain hardware components which interoperate with VMware's virtualisation software.

Broadcom is a hardware company that offers, among other products, Network Interface Cards ('NICs'), Fibre Channel Host-Bus Adapters ('FC HBAs') and storage adapters. Broadcom is the leading supplier of such products worldwide. It has recently started expanding into software markets, mainly for security and mainframe applications. VMware is the global leading supplier of server virtualisation software in the on-premises and private cloud environments which interoperates with a wide range of hardware, including FC HBAs and storage adapters. The companies' portfolios are largely complementary.
Læs mere
Dato: 12.04.2023

Commission opens in-depth investigation into the proposed transaction between Orange and MasMovil.
The European Commission has opened an in-depth investigation to assess, under the EU Merger Regulation, the proposed creation of a joint venture by Orange and MasMovil. The Commission is concerned that the transaction may reduce competition in the retail supply of mobile and fixed broadband services as well as of multiple-play bundles in Spain.

Orange and MasMovil are the second and fourth largest operators active at retail and wholesale level for fixed broadband and mobile services in Spain. There are in total four mobile network operators active in Spain, i.e. Telefónica, Vodafone, Orange, and MasMovil. There are also several mobile and fixed virtual network operators which use the network operators' infrastructure to offer mobile and fixed telecoms services to their consumers.
Læs mere
Dato: 03.04.2023

Commission clears acquisition of Photomath by Google.
The European Commission has approved unconditionally, under the EU Merger Regulation, the proposed acquisition of Photomath, Inc. ('Photomath') by Google LLC ('Google'). The Commission concluded that the transaction would raise no competition concerns in the European Economic Area ('EEA').

Google is a technology company active in a wide range of product areas, including online search, app store services and several online homework and study help tools. Photomath owns an online homework and study help app that uses a smartphone's camera to scan and solve maths problems.
Læs mere
Dato: 28.03.2023

Commission clears the acquisition of VOO and Brutélé by Orange, subject to conditions.
The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of VOO and Brutélé by Orange. The approval is conditional on full compliance with a commitments package offered by Orange.

Orange is a provider of retail mobile and fixed telecommunication services in Belgium, based on its own mobile and third party fixed networks. VOO and Brutélé together are leading providers of retail fixed and mobile telecommunication services, based on their own fixed and third party mobile networks. Orange is the second biggest mobile provider in Belgium, while VOO and Brutélé together are the second biggest provider of fixed telecommunication services in the areas covered by their fixed networks.
Læs mere
Dato: 20.03.2023

Commission clears acquisition of Borealis NITRO by AGROFERT.
The European Commission has approved unconditionally, under the EU Merger Regulation, the acquisition of the nitrogen business of Borealis AG ('Borealis NITRO') by AGROFERT Group ('AGROFERT'). The Commission concluded that the transaction would raise no competition concerns in the European Economic Area ('EEA').

Borealis AG and AGROFERT are both active in the agricultural and chemical sectors. They compete in the production and sale of nitrogen fertilizers, AdBlue liquid and other technical nitrogen products.
Læs mere
Dato: 13.03.2023

State Aid

Commission approves €1.47 billion Dutch schemes to reduce nitrogen deposition on nature conservation areas.
The European Commission has approved, under EU State aid rules, two Dutch schemes with a total budget of around €1.47 billion to reduce nitrogen deposition on nature conservation areas. The measures will contribute to the EU's strategic objectives relating to the European Green Deal.
Læs mere
Dato: 02.05.2023

Commission approves French measure to support STMicroelectronics and GlobalFoundries to set up new microchips plant.
The European Commission has approved, under EU State aid rules, a French aid measure to support STMicroelectronics ('ST') and GlobalFoundries ('GF') in the construction and operation of a new microchips manufacturing facility in France. The measure will strengthen Europe's security of supply, resilience and digital sovereignty in semiconductor technologies, in line with the objectives set out in the European Chips Act Communication. The measure will also contribute to achieving both the digital and green transition.
Læs mere
Dato: 28.04.2023

Commission approves prolonged and amended Spanish and Portuguese measure to lower electricity prices amid energy crisis.
The European Commission has approved, under State aid rules, the prolongation and amendments of a Spanish and Portuguese measure aimed at reducing the wholesale electricity prices in the Iberian market ('MIBEL') by lowering the input costs of fossil fuel-fired power stations.

The amended measure, which will be in place until 31 December 2023, was approved under Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU'), recognising that the Spanish and Portuguese economies are still experiencing a serious disturbance.
Læs mere
Dato: 25.04.2023

2022 Scoreboard shows that in 2021 State aid levels remained high to tackle economic effects of the pandemic.
The annual State Aid Scoreboard provides a comprehensive overview of EU State aid expenditure based on the reports provided by the Member States. Today, the European Commission publishes the 2022 State Aid Scoreboard, relates to State aid expenditure in 2021. The 2022 edition shows the important contribution of State Aid policy in enabling Member States to continue to support companies in the difficult economic context brought about by the coronavirus pandemic, while preserving the level-playing-field in the Single Market.
Læs mere
Dato: 24.04.2023

Commission opens in-depth investigation into Romanian support measures in favour of Blue Air.
The European Commission has opened an in-depth investigation to assess whether certain Romanian support measures in favour of the airline Blue Air Aviation ('Blue Air') are in line with EU State aid rules.

The Romanian airline Blue Air has been experiencing financial difficulties since 2019. In March 2020, as other companies active in the aviation sector, it was seriously hit by the coronavirus pandemic. Since November 2022, Blue Air is not operating as the Romanian authorities suspended temporarily its operating license due to its financial situation.
Læs mere
Dato: 17.04.2023

Commission approves €1.4 billion Dutch scheme to support energy-intensive companies in the context of Russia's war against Ukraine.
The European Commission has approved a €1.4 billion Dutch scheme to support energy-intensive small and medium-sized enterprises ('SMEs') facing increased energy costs in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to foster support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.

Læs mere
Dato: 13.04.2023

Commission approves €1 billion Hungarian scheme to support companies facing increased energy costs in the context of Russia's war against Ukraine.
The European Commission has approved a €1 billion (approximately HUF 379 billion) Hungarian scheme to support companies facing increased energy costs in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.
Læs mere
Dato: 13.04.2023

Commission approves €158 million Polish measure to support LOTOS Green H2 in the production of renewable hydrogen.
The European Commission has approved, under EU State aid rules, a €158 million Polish measure to support LOTOS Green H2 sp. z o.o, a special purpose vehicle ultimately owned by PKN Orlen SA, in the production of renewable hydrogen to be used in the refinery production processes. The measure will contribute to the achievement of the EU Hydrogen Strategy and the European Green Deal targets, while helping end dependence on Russian fossil fuels and fast forward the green transition in line with the REPowerEU Plan.
Læs mere
Dato: 12.04.2023

Commission updates guidance for measures to support the green transition.
The European Commission has published an updated State aid guiding templates to assist Member States in designing measures, which will be included in their national Recovery and Resilience Plans (‘RRPs'), in line with EU State aid rules. In particular, the updated technical documents will help Member States design measures that further contribute to the implementation of the European Green Deal, while helping to end the dependence on Russian fossil fuels and fast forward the green transition as set out in the REPowerEU Plan.
Læs mere
Dato: 04.04.2023

Commission approves €3.5 billion French scheme to support small companies in the context of Russia's war against Ukraine.
The European Commission has approved a €3.5 billion French scheme to support small and medium-sized enterprises (‘SMEs') and microenterprises in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.
Læs mere
Dato: 04.04.2023

Commission approves €2 billion Austrian support to Wien Energie in the context of Russia's war against Ukraine.
The European Commission has approved a €2 billion Austrian measure to support the energy supplier Wien Energie GmbH in the context of Russia's war against Ukraine. The measure was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.
Læs mere
Dato: 04.04.2023

Commission approves €450 million Italian scheme to support the production of renewable hydrogen to foster the transition to a net-zero economy.
The European Commission has approved a €450 million Italian scheme to support the production of renewable hydrogen with the aim to foster the transition to a net-zero economy, in line with the Green Deal Industrial Plan. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.
Læs mere
Dato: 03.04.2023

Commission approves €1 billion Finnish scheme to support companies in the context of Russia's war against Ukraine.
The European Commission has approved a €1 billion Finnish scheme to support companies in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.
Læs mere
Dato: 23.03.2023

Commission approves €650 million Slovenian scheme to support companies facing increased energy costs in context of Russia's war against Ukraine.
The European Commission has approved a €650 million Slovenian scheme to support companies facing increased energy costs in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.
Læs mere
Dato: 16.03.2023

Andet

Intet nyt.

Nyt fra EU-domstolen

Domme

C-70/22 – Viagogo.
Præjudiciel forelæggelse – elektronisk handel – direktiv 2000/31/EF – artikel 1 – anvendelsesområde – artikel 2, litra c) – begrebet »etableret tjenesteyder« – artikel 3, stk. 1 – levering af informationssamfundstjenester foretaget af en tjenesteyder, der er etableret på en medlemsstats område – selskab etableret på Det Schweiziske Forbunds område – ikke anvendelig ratione personae – artikel 56 TEUF – aftale mellem Det Europæiske Fællesskab og dets medlemsstater på den ene side og Det Schweiziske Forbund på den anden side om fri bevægelighed for personer – anvendelsesområde – forbud mod begrænsninger for grænseoverskridende tjenesteydelser, hvis varighed ikke overstiger 90 dage pr. kalenderår – levering af tjenesteydelser i Italien i mere end 90 dage – ikke anvendelig ratione personae – artikel 102 TEUF – forelæggelsesafgørelsen indeholder ingen oplysninger, som gør det muligt at fastlægge en forbindelse mellem tvisten i hovedsagen og et eventuelt misbrug af dominerende stilling – afvisning.
Læs mere
Dato: 27.04.2023

C-815/21 P - Amazon.com m.fl. mod Kommissionen.
Appel – konkurrence – artikel 102 TEUF – misbrug af dominerende stilling – onlinesalg – forordning (EF) nr. 773/2004 – artikel 2, stk. 1 – Europa-Kommissionens afgørelse om at indlede en undersøgelse – undersøgelsens territoriale

anvendelsesområde – udelukkelse af Italien – kompetencefordeling mellem Kommissionen og medlemsstaternes konkurrencemyndigheder – forordning (EF) nr. 1/2003 – artikel 11, stk. 6 – de nationale konkurrencemyndigheder mister deres kompetence – beskyttelse mod procedurer, der gennemføres parallelt af medlemsstaternes konkurrencemyndigheder og Kommissionen – annullationssøgsmål – retsakt, der ikke kan anfægtes – retsakt, der ikke har retsvirkninger i forhold til tredjeparter – forberedende akt – afvisning.
Læs mere
Dato: 20.04.2023

C-25/21 - Repsol Comercial de Productos Petrolíferos.
Præjudiciel forelæggelse – konkurrence – vertikale konkurrencebegrænsninger – artikel 101, stk. 1 og 2, TEUF – effektivitetsprincippet – forordning (EF) nr. 1/2003 – artikel 2 – direktiv 2014/104/EU – artikel 9, stk. 1 – bindende virkning af endelige afgørelser fra de nationale konkurrencemyndigheder, hvorved der konstateres en overtrædelse af konkurrencereglerne – tidsmæssig og materiel anvendelse – erstatnings- og ugyldighedssøgsmål vedrørende overtrædelser af EU-rettens konkurrenceregler.
Læs mere
Dato: 20.04.2023

C-449/21 - Towercast.
Præjudiciel forelæggelse – konkurrence – kontrol med fusioner og virksomhedsovertagelser – forordning (EF) nr. 139/2004 – artikel 21, stk. 1 – udelukkende anvendelse af denne forordning på transaktioner, der er omfattet af begrebet »fusion« – rækkevidde – fusion, som ikke har fællesskabsdimension, som ligger under de tærskler for obligatorisk forudgående kontrol, der er fastsat i en medlemsstats lovgivning, og som ikke har givet anledning til en henvisning til Europa-Kommissionen – denne medlemsstats konkurrencemyndigheders kontrol af en sådan transaktion i lyset af artikel 102 TEUF – lovlighed.

Artikel 21, stk. 1, i Rådets forordning (EF) nr. 139/2004 af 20. januar 2004 om kontrol med fusioner og virksomhedsovertagelser skal fortolkes således, at denne bestemmelse ikke er til hinder for, at en virksomhedsfusion, som ikke har fællesskabsdimension som omhandlet i den denne forordnings artikel 1, som ligger under de tærskler for obligatorisk forudgående kontrol, der er fastsat i national ret, og som ikke har givet anledning til en henvisning til Europa-Kommissionen i henhold til nævnte forordnings artikel 22, af en medlemsstats konkurrencemyndighed anses for at udgøre et misbrug af dominerende stilling, der er forbudt i henhold til artikel 102 TEUF, henset til konkurrencestrukturen på et nationalt marked.
Læs mere
Dato: 16.03.2023

C-339/21 - Colt Technology Services m.fl.
Præjudiciel forelæggelse – elektroniske kommunikationsnet og -tjenester – direktiv (EU) 2018/1972 – artikel 13 – vilkår knyttet til en generel tilladelse – bilag I, del A, punkt 4 – kompetente nationale myndigheders mulighed for lovlig aflytning – artikel 3 – overordnede mål – nationale regler om refusion af omkostninger i forbindelse med aflytningsaktiviteter, som er pålagt telekommunikationsoperatørerne at udføre af de judicielle myndigheder – ingen mekanisme for fuld refusion – princippet om forbud mod forskelsbehandling, proportionalitetsprincippet og gennemsigtighedsprincippet.

Artikel 13 i Europa-Parlamentets og Rådets direktiv (EU) 2018/1972 af 11. december 2018 om oprettelse af en europæisk kodeks for elektronisk kommunikation, sammenholdt med artikel 3 heri, og bilag I, del A, punkt 4, til direktivet skal fortolkes således, at disse bestemmelser ikke er til hinder for en national lovgivning, som ikke kræver, at der ydes fuld refusion af de omkostninger, der faktisk er afholdt af udbydere af elektroniske kommunikationstjenester, når disse muliggør de kompetente nationale myndigheders lovlige aflytning af elektronisk kommunikation, forudsat at den pågældende nationale lovgivning er ikkediskriminerende, forholdsmæssigt afpasset og transparent.
Læs mere
Dato: 16.03.2023

C-127/21 P - American Airlines mod Kommissionen.
Appel – forordning (EF) nr. 139/2004 – fusioner og virksomhedsovertagelser – luftfartsmarkedet – transaktion, der erklæres forenelig med det indre marked – tilsagn afgivet af fusionsparterne – afgørelse, hvorved der indrømmes hævdvundne rettigheder – begrebet »passende brug.
Læs mere
Dato: 16.03.2023

T-142/21 - Wizz Air Hungary mod Kommissionen () og aide au sauvetage).
Statsstøtte – det rumænske marked for lufttransport – støtte, som Rumænien har indrømmet Blue Air i forbindelse med covid-19-pandemien – redningsstøtte til Blue Air – lån garanteret af den rumænske stat – afgørelse om ikke at gøre indsigelse – annullationssøgsmål – støtte, hvis formål er at afhjælpe skader, der er forårsaget af en usædvanlig begivenhed – artikel 107, stk. 2, litra b), TEUF – opgørelse af skaden – årsagsforbindelse – støttemodtagerens allerede bestående økonomiske vanskeligheder – hensyntagen til undgåelige omkostninger – rammebestemmelser for statsstøtte til redning og omstrukturering af kriseramte ikke-finansielle virksomheder – artikel 107, stk. 3, litra c), TEUF – støttens bidrag til et formål af fælles interesse – redningsstøtten er en engangsstøtte – princippet om forbud mod forskelsbehandling – fri udveksling af tjenesteydelser – etableringsfrihed – begrundelsespligt.
Læs mere
Dato: 29.03.2023

Forslag til afgørelse

C-454/21 P - Engie Global LNG Holding m.fl. mod Kommissionen.
Appel – statsstøtteregler – foranstaltning iværksat af Storhertugdømmet Luxembourg til fordel for Engie – selektiv fordel – fastlæggelse af referencerammen – vurderingskriterium for en selektiv fordel inden for skatte- og afgiftsretten – fejlagtig retsanvendelse til fordel for den skattepligtige person som en selektiv fordel – lempelse for udbytte og skjult udlodning af overskud – uskrevet korrespondensprincip – Kommissionens fortolkning af national lovgivning – fejlagtig anvendelse af en generel bestemmelse om forhindring af misbrug som en selektiv fordel.
Læs mere
Dato: 04.05.2023

C-746/21 P - Altice Group Lux mod Kommissionen.
Appel – konkurrence – kontrol med fusioner og virksomhedsovertagelser – forordning (EF) nr. 139/2004 – artikel 4, stk. 1 – krav om forudgående anmeldelse – artikel 7, stk. 1 – udsættelsespligten – artikel 14, stk. 2 – afgørelse om pålæggelse af bøder for manglende anmeldelse og for gennemførelse af en fusion, før den er blevet erklæret forenelig med det indre marked – proportionalitetsprincippet – forkert gengivelse af faktiske omstændigheder.
Læs mere
Dato: 27.04.2023

C-11/22 - Est Wind Power.
Præjudiciel forelæggelse – statsstøtte – støtte til vedvarende energi – retningslinjer for statsstøtte til miljøbeskyttelse og energi 2014-2020 – punkt 19, (44) og punkt 126, fodnote 66 – opførelse af en vindmøllepark – begrebet »national tilladelse til at gennemføre et investeringsprojekt« – begrebet »projektets påbegyndelse.

Det foreslås, at Domstolen besvarer de præjudicielle spørgsmål, som Tallinna Halduskohus (forvaltningsdomstolen i Tallinn, Estland) har forelagt, således:
»1) Punkt 19 (44) i retningslinjerne for statsstøtte til miljøbeskyttelse og energi 2014-2020
skal fortolkes således, at
det første alternativ under begrebet »projektets påbegyndelse«, nemlig »påbegyndelsen af arbejdet på investeringsprojektet«, skal fortolkes således, at dette ikke betegner påbegyndelsen af arbejdet, uanset hvilket investeringsprojekt det er forbundet med, men kun betegner påbegyndelsen af arbejdet med opførelse af de vindmøller, hvormed der skal produceres energi fra vedvarende energikilder.
2) Retningslinjerne for statsstøtte til miljøbeskyttelse og energi 2014-2020
skal fortolkes således, at
– begrebet »national tilladelse til at gennemføre et investeringsprojekt« skal defineres i lyset af den nationale lovgivning og samtidig være i overensstemmelse med de afgørelser, som Europa-Kommissionen har vedtaget på statsstøtteområdet
– såfremt gennemførelsen af et investeringsprojekt indebærer, at der skal udføres arbejde, hvortil der kræves en byggetilladelse, kan den »nationale tilladelse til at gennemføre et investeringsprojekt« kun være en byggetilladelse, dvs. en endelig tilladelse, i henhold til hvilken arbejdet udføres.«
Læs mere
Dato: 23.03.2023

C-508/21 P - Kommissionen mod Dansk Erhverv.
Appel – statsstøtte – salg af drikkevarer i ikke-genanvendelig emballage i grænsebutikker i Tyskland til dansk og svensk bosatte – klage – fritagelse for forpligtelsen til at opkræve pant på ikke-genanvendelig emballage på betingelse af, at

indholdet indtages uden for Tyskland – manglende momsopkrævning af pant – manglende bødepålæggelse – Kommissionens afgørelse om ikke at gøre indsigelse – fravær af støtte – direktiv 94/62/EF – alvorlige vanskeligheder.
Læs mere
Dato: 16.03.2023

C-209/21 P - Ryanair mod Kommissionen.
Appel – statsstøtte – Sverige – covid-19 – lånegarantier med henblik på at støtte luftfartsselskaberne – Europa-Kommissionens afgørelse om ikke at gøre indsigelser.
Læs mere
Dato: 16.03.2023

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

Draft guidance on environmental sustainability agreements.
The CMA is consulting on draft guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements between businesses operating at the same level of the supply chain.
Læs mere
Dato: 28.02.2023

Access to Data and Algorithms: For an Effective DMA and DSA Implementation.
In 2022, EU policy makers adopted landmark pieces of legislation, notably the Digital Markets Act ('DMA') and the Digital Services Act ('DSA'). These regulations are key pillars of the European Digital Strategy, under which other proposals, such as the Data Act and AI Act, are currently being negotiated in the European institutions.

This new CERRE report, authored by Laura Edelson (New York University), Inge Graef (Tilburg University), and Filippo Lancieri (ETH Zurich) takes stock of the 54 algorithmic transparency and data sharing obligations that are present in the DMA and DSA, develops a seven-step test which can help all parties consider specific data-sharing requests and implement data access provisions, and identifies what principles should guide the balancing of potential conflicts between data access and privacy, IP rights, and rule of law, among others.

This framework is illustrated through three case studies: access to online advertisement databases (Article 39 of the DSA), access to data for vetted researchers (Article 40(4) of the DSA), and sharing of click and query data between search engines (Article 6(11) of the DMA).

In addition to the above algorithmic transparency and data-sharing obligations in the DMA and DSA, this report also looks at obligations relating to transparency and data access in the European Commission's AI and Data Act proposals which are currently being negotiated.

Faced with complex legislation, this report proposes specific categories and variables which help to rationalise transparency and data-sharing obligations, even in forthcoming legislation, and which help to facilitate potential discussions around conflicts and harmonisations between different rules which overlap across digital markets.
Læs mere
Dato: 16.03.2023

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

Issue 6 (vol.44) 2023

Re-levelling the playing field - the treatment of online retail under the new EU and UK competition law regimes for vertical agreements. Forfatter: Becket McGrath.
Examines changes to the treatment of online sales under June 2022 revisions to the UK's vertical block exemption (VBE) regime, and by EU Regulation 2022/720. Discusses the background to the reforms, including the EU review of its VBE rules, the main amendments, and their likely impact.

Online sales restrictions under the new vertical agreements block exemption: an economic perspective. Forfatter: Stephen Dnes.
Examines how the EU's vertical agreement block exemption under Regulation 2022/720 approaches online sales restrictions. Discusses its retention of highly technical restrictions, its treatment of inter-brand competition, and whether a more evidence-based policy would be more appropriate.

Retail price parity: do we have European consensus at last, or will divergence continue? Forfatter: Sam Parry.
Examines the EU approach to price parity (most favoured nation) clauses under Regulation 2022/720, and considers, with reference to the disagreements of German competition authorities and the UK approach to such clauses, whether a broad consensus is emerging or whether further divergence is likely.

The new VBER viewed from the perspective of the United Kingdom, Switzerland, and Turkey. Forfatter: Pim Jansen.
Examines the EU's revised vertical block exemption regime under Regulation 2022/720 and its accompanying guidelines. Compares its approach to issues such as parity clauses, dual distribution agreements and territorial restrictions with the regimes applicable in the UK, Turkey and Switzerland.

Healthcare, Quality Concerns and Competition Law - A Systematic Approach (Publication Review). Forfatter: Theodosia Stavroulaki.

Canada: mergers - merger control (Case Comment). Forfatter: Kaeleigh Kuzma.
Notes the Canadian Competition Bureau ruling in Sika AG / MBCC Group, involving a consent agreement following concerns that a merger between developers of chemical admixtures and construction materials would cause a substantial lessening of competition. Details the divestiture commitments involved.

Canada: anti-competitive practices - restrictive business practices (Case Comment). Forfatter: Kaeleigh Kuzma.
Notes the Canadian Competition Bureau ruling in BPR Infrastructure Inc, reflecting a settlement agreement by the Public Prosecution Service and imposition of a CAD 485,000 fine on an engineering firm for participating in collusive bidding for municipal infrastructure contracts.

Denmark: anti-competitive practices - judgment (Case Comment). Forfatter: Jens Munk Plum.
Notes the Danish Eastern High Court decision in Re Deutz AG on whether a Danish Competition Council finding that a diesel engine manufacturer abused its dominant position by refusing to supply spare parts was based on a flawed market definition analysis and should be remitted for reconsideration.

European Union: anti-competitive practices - judgment (Case Comment). Forfatter: Prof. Bruce Wardhaugh.
Notes Unilever Italia Mkt Operations Srl v Autorita Garante della Concorrenza e del Mercato (C-680/20) (ECJ) on whether distributors selling ice cream outside private homes acted as a single economic entity, and whether exclusivity clauses needed an exclusionary effect to be an abuse of dominance.

France: anti-competitive practices - judgment (Case Comment). Forfatter: Emmanuel Reille.
Notes the Paris Court of Appeal ruling in Novartis / Roche / Genentech annulling a EUR 444 million fine imposed on pharmaceutical companies by the French Competition Authority for their alleged collective abuse of dominance. Details the facts of the case and the grounds for allowing the appeal.

Hong Kong: anti-competitive practices – investigation. Forfatter: Sandra Marco Colino.
Notes the Hong Kong Competition Commission's participation in a dawn raid with police on a number of premises of wholesale fish suppliers in the Aberdeen Fish Market to investigate an alleged price-fixing cartel and other anti-competitive practices including group boycotts.

Malta: mergers - merger control (Case Comment). Forfatter: Adriana Brincat Scicluna.
Notes the Maltese Office for Competition ruling in Rimorchiatori Mediterranei SpA / MSC Mediterranean Shipping Co SA, clearing a merger involving harbour towing services of general economic interest in Maltese ports, on the grounds that no substantial lessening of competition would result.

Portugal: anti-competitive practices - judgment (Case Comment). Forfatter: Ricardo Filipe Costa.
Notes the Lisbon Court of Appeal ruling in Re MEO, reducing by EUR 14 million a EUR 84 million fine imposed on a mobile telecommunications operator by the Portuguese Competition Authority for alleged anti-competitive practices including price fixing agreements. Details the grounds for the reduction.

Portugal: anti-competitive practices - infringement (Case Comment). Forfatter: Ricardo Filipe Costa.
Notes the Portuguese Competition Authority ruling in Cabelte - Cabos Electricos e Telefonicos SA / Quintas & Quintas - Condutores Electricos SA / Solidal - Condutores Electricos SA, fining companies in the power cable transmission sector over EUR 2 million for involvement in a bid rigging agreement.

Portugal: anti-competitive practices - enforcement (Case Comment). Forfatter: Pedro Gil Marques.
Notes the Portuguese Court of Competition, Regulation and Supervision ruling in Ius Omnibus v Melia Hotels International, ordering a hotel group to grant access to confidential documents needed to prove a consumer's right to damages against it for a competition law violation.

Portugal: competition governance - national competition authority. Forfatter: Rita Prates.
Notes the March 2023 appointment of Nuno Cunha Rodrigues as the Portuguese Competition Authority's new President. Details his academic and professional background, his areas of expertise, and his key priorities, including combating anti-competitive conduct in the digital economy.

Romania: mergers - merger control (Case Comment). Forfatter: Cristina de Jonge.
Notes the Romanian Competition Council ruling in Med Life SA / Medici's SRL / Micro-Medic SRL, and its grounds for approving a merger between private healthcare providers. Notes the council's ongoing investigation of Med Life SA's takeover of the Provita Diagnosis and Treatment Center.

Romania: anti-competitive practices - infringement (Case Comment). Forfatter: Cristina de Jonge.
Notes the Romanian Competition Council ruling in Aon Romania Broker de Asigurare SRL / Assicurazioni Generali SpA UK Branch / Generali Romania Asigurare SA / Omniasig Vienna Insurance Group SA imposing fines of around EUR 3 million on insurance companies and brokers for anti-competitive practices.

South Africa: competition - market inquiry. Forfatter: Natalia Lopes.
Notes the draft terms of reference of the South African Competition Commission's market inquiry into distribution of media content on digital platforms, including its public interest and competition elements, its approach to generative artificial intelligence, and the areas excluded from its scope.

Sweden: foreign direct investment - legislative proposal. Forfatter: Stefan Perván Lindeborg.
Notes key aspects of Sweden's draft legislative proposal for screening foreign investments posing national security risks, including the role of the Inspection Authority, the notification duties, and the screening mechanism. Considers its compatibility with international investment agreements.

Turkiye: mergers - merger control (Case Comment). Forfatter: Gönenç Gürkaynak, Esq.
Notes the Turkish Competition Board ruling in Advent International Corp / Lanxess AG / Koninklijke DSM NV, unconditionally approving a merger involving the high-performance materials sector. Details key features of the competition concerns addressed, including horizontal and vertical overlaps.

United Kingdom: anti-competitive practices – consultation. Forfatter: Josh Kennion.
Notes the Competition and Markets Authority's publication of draft guidance on how the prohibition on concerted practices in the Competition Act 1998 Ch.1 applies to environmental sustainability agreements (ESA). Details its approach to three categories of ESAs.

US: mergers - merger control. Forfatter: Anthony P. Badaracco.
Notes the US Federal Trade Commission's annual adjustment of financial thresholds triggering pre-merger reporting duties under the Hart-Scott-Rodino Antitrust Improvements Act 1976, applicable to transactions closing on 27 February 2023, and its revision of fee-determining and filing fee thresholds.

Issue 5 (vol.44) 2023

Data access under the Data Act - new momentum for the IoT market (and beyond)? Forfatter: Dr Moritz Holm-Hadulla.
Reflects on the draft Regulation on harmonised rules on fair access to and use of data (Data Act), highlighting the importance of data access rights in the internet of things. Evaluates key proposals on issues such as users' data access rights and third parties' derivative data access rights.

Concept of dominance in the digital age. Forfatter: Dr Lukas Solek.
Discusses, using past precedents involving dominance under TFEU art.102, possible factors taken into account by Regulation 2022/1925 when designating market participants as gatekeepers, including vertical integration, data-driven advantages, and control over business users' access to private users.

Self-preferencing and the concept of abuse of dominance: much ado about nothing? Forfatter: Michael Tagliavini.
Proposes a framework for competition authorities to evaluate whether self-preferencing is an abuse of dominance under TFEU art.102. Suggests why it should be seen as a constructive refusal to deal and applies the framework to Google LLC (formerly Google Inc) v European Commission (T-612/17 R) (GC).

Discussion on the notion of competition as a subject of state interventionism. Forfatter: Tomasz Zielenkiewicz MA, M.Sc. CLEF, LL.M., PhD.
Examines the meaning of "competition" from both procedural and structural perspectives, highlighting the law and economics approach, traditional understanding of competition, the relevance of interaction between the market actors involved, and the market conditions that permit competition to exist.

Private enforcement of competition law in regulated industries - a comment on "DB Station & Service AG" (Case Comment). Forfatter: Torsten Körber.
Discusses DB Station & Service AG v ODEG Ostdeutsche Eisenbahn GmbH (C-721/20) (ECJ) on whether domestic courts could only review the fairness of regulated railway infrastructure charges in competition law proceedings under TFEU art.102 after the relevant regulatory body had reached its decision.

Canon/Toshiba judgment: does warehousing structure mean gun-jumping? (Case Comment). Forfatter: Jacques Buhart.
Comments on Canon Inc v European Commission (T-609/19) (GC), upholding fines of EUR 28 million for gun-jumping, and details the court's approach to whether two-step transactions should be seen as a single concentration, and whether two-step "warehousing" structures could breach the standstill duty.

Economic Analysis in EU Competition Policy: Recent Trends at the National and EU Leve (Publication Review). Forfatter: Pier Luigi Parcu (ed.).

Australia: anti-competitive practices – investigation. Forfatter: Dr Sven Gallasch.
Notes the Australian Competition and Consumer Commission's instigation of proceedings in the Australian Federal Court against Qteq Ltd and its chairman for alleged anti-competitive practices in the oil and gas service industry, including attempts to induce competitors to engage in cartel conduct.

Bulgaria: anti-competitive agreements - investigation (Case Comment). Forfatter: Anton Dinev.
Notes the Bulgarian Commission for the Protection of Competition ruling in Nikon Europe BV, accepting binding commitments following an investigation into whether a selective distribution system for semi-professional cameras and their after-sale repair constituted restrictive business practices.

Czech Republic: sector inquiry - inquiry report. Forfatter: Tomáš Fiala.
Notes the Czech Competition Office's February 2023 publication of its preliminary findings in a sectoral inquiry into the distribution of pharmaceuticals in the jurisdiction between 2018 and 2020, particularly how direct distribution systems affect competition.

Denmark: competition - sale of football broadcasting rights (Case Comment). Forfatter: Jens Munk Plum.
Notes the Danish Competition Council ruling in Danish Superliga, granting a temporary exemption to a football league, allowing it to remove a "no single buyer" requirement imposed on the sale of its football broadcasting rights, despite competition concerns, in order to reflect market changes.

EU: anti-competitive practices - judgment (Case Comment). Forfatter: Prof. Bruce Wardhaugh.
Notes HSBC Holdings plc v European Commission (C-883/19 P) (ECJ), and its approach to whether the Commission erred in its evaluation of HSBC's conduct regarding participation in the Euribor Interbank Reference Rates cartel, and whether the conduct was mischaracterised as infringement by object.

Finland: anti-competitive practices – enforcement. Forfatter: Maarit Taurula.
Notes the Finnish Competition and Consumer Authority's adoption of new statistical techniques when screening for cartels, which will initially be applied to public procurement cases. Details the findings of earlier tests of such techniques, and considers their likely impact.

Finland: mergers - merger control. Forfatter: Maarit Taurula.
Notes the withdrawal of a merger notification given to the Finnish Competition and Consumer Authority (FCCA) concerning a proposed acquisition in the telecommunications infrastructure services sector, following the launch of an in-depth FCCA investigation.

France: anti-competitive practices - decision (Case Comment). Forfatter: Emmanuel Reille.
Notes the French Competition Authority (FCA) ruling in Interflora, clarifying whether the FCA had jurisdiction to review injunctions it had previously imposed in earlier penalty decisions concerning infringements of competition law.

Hong Kong: anti-competitive practices - investigation (Case Comment). Forfatter: Sandra Marco Colino.
Notes the Hong Kong Competition Commission ruling in ATAL Building Services Engineering Ltd, involving a settlement with a company which admitted anti-competitive practices, including cartel activity in the air conditioning market, and the likely imposition of a record HKD 150 million fine.

Ireland: mergers - merger control. Forfatter: Dr Vincent J.G. Power SC.
Highlights the January 2023 publication of the Irish Competition and Consumer Protection Commission's annual review of merger control in Ireland during 2022, and details its key features, including the number of notified transactions and determinations, and the economic sectors most involved.

Romania: anti-competitive practices - infringement (Case Comment). Forfatter: Cristina de Jonge.
Notes the 2022 ruling of the Romanian Competition Council imposing fines of around EUR 26 million on 65 undertakings in the automotive repair and maintenance services market and the Association of the Concessionaires Dacia, Renault, Nissan, for price co-ordination and restrictive business practices.

Romania: mergers - merger control (Case Comment). Forfatter: Cristina de Jonge.
Notes the Romanian Competition Council (RCC) ruling in NewOpCo Hungary KFT / Cargill Takarmany ZRT, approving the partial acquisition of a company in the pet food sector. Details the main competition concerns investigated by the RCC, and its main findings.

Sweden: anti-competitive practices - judgment (Case Comment). Forfatter: Stefan Perván Lindeborg.
Notes the Swedish Competition Authority's first exercise of the fining powers granted by Directive 2019/1 to impose fines on two tenderers for unlawful co-operation in procurement proceedings for mobility transportation services, and the Patent and Market Court's dismissal of a subsequent appeal.

Sweden: competition – legislation. Forfatter: Stefan Perván Lindeborg.
Notes the Swedish Competition Authority's publication of two notices giving guidance on the prohibition on late payments introduced by the Swedish Unfair Trading Practices Act 2021, including clarification of the position if the payment period expires during a weekend or public holiday.

Turkiye: anti-competitive practices - decision (Case Comment). Forfatter: Gönenç Gürkaynak, Esq.
Notes the Turkish Competition Board ruling in Transorient Uluslararasi Tasimacilik ve Ticaret AS / Tunaset Biofarma Lojistik Hizmetleri AS fining two undertakings providing temperature- and time-sensitive logistics services for cartel activities and non-compete clauses.

UK: anti-competitive practices - judgment (Case Comment). Forfatter: Nivi Balaji.
Notes Bayerische Motoren Werke AG v Competition and Markets Authority (CAT) clarifying whether notices sent by the Competition and Markets Authority under the Competition Act 1998 s.26 to foreign parent companies with no UK connection had extraterritorial effect, or were ineffective.

US: anti-competitive practices - proposed federal rules. Forfatter: Anthony P. Badaracco.
Notes January 2023 proposals by the US Federal Trade Commission to prohibit the majority of non-compete agreements for US workers. Details key features of the broad proposal, its potential impact, and the likelihood of a future challenge to its constitutional validity.

Artikler fra European Competition Journal

May2023, Vol. 19 Issue 1

The DMA in the broader regulatory landscape of the EU: an institutional perspective. Forfatter: Beems, Belle.
The recently adopted Digital Markets Act (henceforth: DMA) addresses the behaviour of so-called gatekeepers by imposing a list of prohibitions and obligations on these platforms. Despite the potential of the initiative, it remains questionable how the DMA fits in the regulatory landscape. The DMA is – at least formally – not a competition law instrument but also differs from sector-specific regulation. This begs the question of how the DMA fits in the broader regulatory context. This paper aims to address this issue by assessing to what extent the DMA is different from "traditional" competition law and sector-specific regulation respectively. The unclarities regarding the position of the DMA in the broader regulatory context result in various difficulties, amongst others relating to the institutional set-up. The second part of this paper addresses these institutional difficulties resulting from the concurrent application of the DMA and "traditional" EU competition law.

Virtual assistants as gatekeepers for consumption? – how information intermediaries shape competition. Forfatter: Noskova, Victoriia.
In July 2022 the European Council gave final approval to new regulation of digital markets. This specifically addresses the main concerns raised by the business behaviour of operators of core services in their gatekeeping positions. The list of core services was extended during revisions. In this article, I address the question of whether the inclusion of virtual assistants into the list of core services was the right decision. Overall, this paper argues that (i) virtual assistants as gatekeepers for consumption should be listed among core services, (ii) some of the Digital Markets Act's obligations need to be adopted to fit the specifics of virtual assistants, (iii) there are two relevant dimensions of power which should be considered in competition policy and regulation analysis: market power on virtual assistants' market and the ecosystem of related markets (cross-market integration criterion), (iv) the growth of new gatekeepers should be prevented, among other means by stricter merger control.

What does the Digital Markets Act harmonize? – exploring interactions between the DMA and national competition laws. Forfatter: van den Boom, Jasper.
This article focuses on the interactions between the Digital Markets Act (DMA) and the laws and competition frameworks of Member States. Specifically, the article sets out three different interpretations on the text of articles 1 (5) and (6) of the DMA, which govern interactions between the DMA and national law and competition policy. The article identifies a narrow, broader, and broadest interpretation of the legal interests protected under the DMA. Each interpretation creates different harmonization effects. The article argues that the narrow and broader interpretations allow for significant divergence between national rules, creating the risk of regulatory fragmentation. The broadest interpretation would allow competition authorities and courts to weigh the interests protected in the DMA against national interests and create greater convergence of laws and competition policy in the Digital Single Market. The article also proposes ways forward for the implementation and enforcement of the DMA and national competition laws.

An inverse analysis of the digital markets act: applying the Ne bis in idem principle to enforcement. Forfatter: Ribera Martínez, Alba.
On 18 July 2022, the Council gave its final approval of the Digital Market Act's final text. Notwithstanding the amendments following the initial proposal published by the European Commission on 15 December 2020, the main objectives of the DMA have remained untouched and separate from the objectives pursued by competition rules. In the interim, the Court of Justice of the European Union (CJEU) issued its preliminary rulings on the bpost and Nordzucker cases, with particularly relevant consequences concerning the application of the double jeopardy principle. The potential remedies and obligations imposed on the main digital platforms both under Articles 5 to 7 of the DMA and under competition law rules will overlap and create a risk of incoherent enforcement, especially on the side of the European Commission. Against this background, the paper strives to draw out the narrow enforcement gap left for competition authorities. In addition, the paper highlights a number of alternatives open to competition authorities when enforcing competition law rules on digital markets, namely the segmentation of its enforcement efforts depending on the type of service concerned in each case.

Fitting the Digital Markets Act in the existing legal framework: the myth of the "without prejudice" clause. Forfatter: Bania, Konstantina.
The Digital Markets Act (DMA), an EU Regulation establishing obligations for gatekeeper platforms in order to protect fairness and contestability in digital markets, will soon start to apply. In addition to the DMA, other (EU and national) instruments regulate platform conduct. Though the DMA explicitly provides that it will apply without prejudice to those

other instruments, it is doubted whether it will merely complement them. In certain cases, the DMA may qualify as lex specialis, thereby prevailing over other regulations. In other cases, based on the principle of supremacy, the DMA may override national instruments that pursue legitimate interests other than fairness and contestability. There may also be occasions where the DMA may render certain tools devoid of purpose when this was not the intention of the legislator. In all the above cases, the DMA would not complement (but could possibly endanger) the effectiveness of the existing regime. Given the avalanche of legislative proposals for platforms, addressing potential conflicts between the DMA and other rules is essential to protect legal certainty and to ensure that the regulatory regime that governs harmful platform conduct reaches its full potential.

Dissonance in the European competition law regime of insufficient individual rivalry: the New Competition Tool as a glimmer of hope. Forfatter: Lampecco, Nora.
The CK Telecoms judgement shed the light on the difficulties to apprehend unilateral effects, aka insufficient individual rivalry, in the context of a merger. This paper examines the overall European competition law framework applicable to these effects. After underlining the difficulties related to their apprehension by the competition authorities, the adequacy of the solely ex ante-based European competition regime will be assessed as well as the use of the New Competition Tool as an option to solve the identified drawbacks.

Artikler fra Journal of Competition Law and Economics

Volume 19, Issue 1, March 2023.

Mergers, Acquisitions and Merger Control in an Algorithmic Pricing World. Forfatter: Michael David Coutts.
This paper considers whether pricing algorithms present novel issues that existing merger control frameworks and practices are inadequate to address, particularly in relation to pre-merger disclosure of pricing algorithms and the suitability of current tests and remedies for addressing coordinated effects. Through a comparative and critical analysis of the merger control regimes and practices of the European Union, United Kingdom, and Australia, this paper finds that whilst such regimes and practices are broadly adequate for dealing with algorithmic transactions, there are nonetheless potential areas for improvement. Disclosure of a pricing algorithm may contravene prohibitions on the sharing of competitively sensitive information. As such, merger parties may need to rethink aspects of their usual due diligence procedures. Pricing algorithms may also increase the potential for coordinated effects to arise in some markets that would ordinarily have been considered too complex, asymmetric, opaque, or insufficiently concentrated for tacit coordination to occur, or be used to retaliate more effectively against deviations from a coordinated equilibrium, or to raise the height of barriers to entry. Competition authorities may therefore need to amend their standard approach to investigating and assessing coordinated effects, as well as their traditional approach to remedies.

Active Choice vs. Inertia? An Exploratory Assessment of the European Microsoft Case's Choice Screen. Forfatter: Omar Vasquez Duque.
In January 2009, the European Commission accused Microsoft of extending its monopoly from the operating system market to the browsers market by preinstalling Internet Explorer (IE) and setting it as the users' default. Microsoft settled the case agreeing to display a choice screen to its users located in the European Economic Area, Croatia, and Switzerland, whose default web browser was Internet Explorer. The remedy would allow Microsoft's users to freely choose whatever internet browser they preferred. After March 2010, IE's market share did go down in the EEA, Croatia, and Switzerland. It seems straightforward to attribute IE's decline to the choice screen itself. However, when considering other developed jurisdictions as a comparison group, the impact of the choice screen on IE's market share is negligible (roughly, between 1.4 and 2 percent). This finding invites us to assess the potential causes of default effects and the effectiveness of strategies that analysts, policymakers, and enforcers have assumed to be effective. This work argues that the theory of harm and the remedies that may address consumers' inertia should be re-examined. Primarily, which types of consumers may stick to default applications, whether choice screens may change the users' preferences after they have familiarized themselves with an experience good, whether choice screens have so far facilitated the development of competing applications, as well as the reach of choice screens.

Platform-Based Business Models and Financial Inclusion: Policy Trade-Offs and Approaches. Forfattere: Karen Croxson, Jon Frost, Leonardo Gambacorta og Tommaso Valletti.
Three types of digital platforms are expanding in financial services: (i) fintech entrants; (ii) big tech firms; and (iii) increasingly, incumbent financial institutions with platform-based business models. These platforms can dramatically lower costs and thereby aid financial inclusion—but these same features can give rise to digital monopolies and oligopolies. Digital platforms operate in multisided markets and rely crucially on big data. This leads to specific network effects, returns to scale and scope, and policy trade-offs. To reap the benefits of platforms while mitigating risks, policy

makers can: (i) apply existing financial, antitrust and privacy regulations, (ii) adapt old and adopt new regulations, combining an activity and entity-based approach, and/or (iii) provide new public infrastructures, such as digital identity and retail fast payment systems. These public infrastructures, as well as ex ante competition rules and data portability, are particularly promising. Yet to achieve their policy goals, central banks and financial regulators need to coordinate with competition and data protection authorities.

The Law and Economics of Tying in Digital Platforms: Comparing Tencent and Android. Forfattere: Qian Wu og Niels J Philipsen.
Tying has become a common practice in digital platforms. It may generate both pro-competitive effects and anti-competitive effects, which makes it difficult to distinguish between lawful and unlawful tying practices. The cases of Tencent and Android both involve tying conducts, but interestingly, the cases have different outcomes. This article explores reasons for these different case outcomes from a comparative law and economics perspective. By assessing the facts and legal rulings in Tencent and Android, we find that the different case outcomes result, on the one hand, from the different case facts, and on the other hand, from the different approaches used by the EU Commission and the Chinese Supreme People's Court. The Court scores better in terms of ensuring legal certainty; nevertheless, it may face difficulties when it has to apply economic analysis. The Commission seemingly uses more economics, but the application is not full-fledged, as it disregards important case facts when assessing competition foreclosure, and employs asymmetric legal tests and evidence standards for anti/pro-competitive effects of tying. From a law and economics perspective, we provide suggestions for China and the EU, taking the recent Anti-Monopoly Guidelines on Platforms in China and the forthcoming Digital Markets Act in the EU into account.

Minimum Efficient Scale, Competition on the Merits, and The Special Responsibility of a Dominant Undertaking. Forfattere: Xingyu Yan og Hans Vedder.
As a leading model of law on abuse of dominance, Article 102 TFEU hosts two notoriously vague concepts: competition on the merits and the special responsibility of a dominant undertaking. The former could mislead abuse assessments into an illusion of inherent impropriety, while the latter is susceptible to expansive interpretations that undermine the pivotal role of dominance. We propose a test centred on the concept of minimum efficient scale, which has been seriously overlooked or even mischaracterized under Article 102, to complement the as-efficient-competitor rationale. This test clarifies—with respect to exclusionary conduct—competition on the merits in a purely efficiency-based way and gives content to the special responsibility concept. It is compatible with the case law and can be operationalized vis-à-vis digital platform markets to tackle practices such as self-preferencing. It shows potential in enhancing the robustness of ex post antitrust when ex ante regulation has become the more popular recourse.

Regulatory Convergence Between U.S. Antitrust Law and EU Competition Law in International Air Transport—Taking Stock. Forfatter: Antigoni Lykotrafiti.
This article takes stock of the regulatory convergence between US antitrust law and EU competition law in the field of international air transport. The analysis draws a distinction between domestic aviation and international aviation and sets the boundaries of regulatory convergence in international air transportation. Through a comparative analysis of the decisional practice of the U.S. Department of Transportation and the European Commission, it identifies instances of regulatory convergence in: (i) the definition of the relevant market in international airline alliance cases, (ii) the remedies imposed to immunize international airline alliances, and (iii) the duration of the antitrust immunity. It further identifies an instance of legislative convergence in the area of fair competition in international air transport. The analysis addresses the future of regulatory convergence in the post-Covid 19 era and emphasizes the role of the competition authorities in safeguarding consumer welfare.

Delineating Zero-Price Markets with Network Effects: An Analysis of Free Messenger Services. Forfattere: Akihiro Nakamura og Takanori Ida.
Billions of users worldwide utilize digital zero-price services every day. This study proposes a market definition method for digital zero-price services, using the messenger service as an example. We employ the small but significant nontransitory increase in cost test, which is an improved version of the small but significant nontransitory increase in price test, and conduct conjoint analysis while considering the network effect, a characteristic of digital services. Our results show that the price elasticity of demand is 0.628 and the critical markup ratio is 1.492–1.542 when only the price effect is considered. When the direct network effect is considered, the price elasticity of demand is 1.728 and the critical markup ratio is 0.479–0.529. Furthermore, when considering a two-sided market with indirect network effects, the price elasticity of demand is 2.162 and the critical markup ratio is 0.363–0.413. Thus, the price elasticity of demand for free messenger services is higher when the network effects and two-sided markets are considered.

Artikler fra Journal of Antitrust Enforcement

Volume 11, Issue 1, March 2023

What is fair and efficient in the face of climate change? Forfatter: Martijn Snoep.
Competition law shouldn't stand in the way of genuine colloboration between competitors to reduce negative externalities, like the emission of greenhouse gases. Competition authorities around the world can play a role by giving guidance. In doing so, they should neither stick to orthodoxy not become naïve.

Antitrust and Innovation Competition. Forfatter: Daniel F Spulber.
Innovation competition presents challenges for antitrust law and enforcement policy. Innovation has generated changes in the nature of competition as firms introduce new transaction techniques, product designs, and production processes. Innovation competition is driving the 'Business Revolution' in retail, wholesale, manufacturing, services, and financial technology. Transaction innovation in online platforms and multi-sided markets has raised antitrust concerns about anticompetitive conduct, vertical restraints, consumer privacy, and barriers to entrepreneurship. The article argues that although antitrust policy makers recognize the importance of innovation competition, they need to update their economic frameworks. Antitrust policy makers need to move beyond traditional analysis based on the twin frameworks of perfect competition and imperfect competition. The article provides an introduction to the emerging Economics of Technology & Innovation and examines some implications for antitrust policy. First, antitrust policy should shift its focus from price competition without technological change to address non-price aspects of innovation competition. Secondly, antitrust policy should apply economic analysis that recognizes the critical role of Intellectual Property and technology standards in innovation competition. Thirdly, antitrust policy toward horizontal and vertical mergers should consider developments in the economic analysis of innovation competition.

The effects of competition law on inequality—an incidental by-product or a path for societal change? Forfattere: Ariel Ezrachi, Amit Zac og Christopher Decker.
Rising economic inequality presents society with unprecedented challenges. Direct instruments designed to address these worrying trends have often under performed. As a result, we find ourselves on a potentially dangerous and downward path. In this article we explore whether, in parallel to other efforts to mitigate the rise of inequality, there can be a role for competition law in the quest to reduce the widening inequality gap. We begin by outlining the possible relationship between competition law enforcement, market power, and economic inequality. We supplement the theoretical discussion with a review of empirical analysis of these linkages. We look at macro and micro data and emphasize the role of labour compensation as a key mechanism which links competition law enforcement, competition dynamics, and economic inequality. We then reflect on the policy implications and possible means to utilize competition enforcement in a manner that could reduce economic inequality.

The competition for India's antitrust jurisdiction: Competition Commission versus sectoral regulators. Forfatter: Madhavi Singh.
A string of judgments by Indian courts have downgraded the Competition Commission of India's position in the adjudicatory hierarchy by requiring it to await the findings of sectoral regulators before initiating its own investigation. This article argues that the reasons advanced for deferring the Commission's jurisdiction are erroneous. Further, the judicial test for deferral of the Commission's jurisdiction is fraught with deficiencies and would inordinately delay or de facto divest the Commission of its jurisdiction. Some recent cases are trying to break away from this trend. One final battle though remains to be fought. With the emergence of competition issues in data protection and privacy related cases and the imminent establishment of data regulator(s) in India, the Commission will soon have an opportunity to push courts to re-examine and re-interpret existing judicial principles and reclaim its relative position in the adjudicatory hierarchy.

DMA begins. Forfatter: Giuseppe Colangelo.
The article provides an overview of the critical aspects of the DMA to investigate whether the European Union will effectively benefit from a first-mover advantage. Section II illustrates the main features of the DMA highlighting some mismatches between its declared justification and the way in which the new Regulation will be effectively applied. Section III questions the coherency of an intervention that ostensibly disregard the ecosystem-based approach, even if it was intended to address the specific issues related to the fact that the competition in the digital economy is increasingly a competition among ecosystems.

Do DMA obligations for gatekeepers create entitlements for business users? Forfatter: Oles Andriychuk.
This article begins by conceptualizing the inner logic of the DMA as an embodiment of the broader regulatory trend towards a pro-competition regime for digital markets. It then puts forward in a thesis whereby the nature of DMA

obligations is punitive, not restorative. Articulating this argument requires a cursory caveat to the theory of rights. Finally, it develops in, the reason why undertakings' rights are indeed violated and require redress in instances of infringement of ex-post competition law, and not in instances of non-compliance with the DMA and highlights the shortcomings and missed opportunities associated with the wrong emphasis on the substantive rules in current DMA discussions.

Third-generation competition law. Forfatter: Adrian Kuenzler.
This note outlines three key areas of transformation that competition law has gone through in the past few decades and considers the direction it should take from here. The idea is to juxtapose the role of ex ante regulation with ex post competition law interventions in getting to grips with novel types of harms that the digital economy has brought about and that increasingly pertain to consumers, the market, and society as a whole.

Artikler fra Competition Policy Brief

Intet nyt.

Artikler fra Competition Merger Brief

Intet nyt.

Artikler fra Journal of European Competition Law and Practice

Volume 14, Issue 1, January 2023.

Merger Control in Chile: Echoes from the EU. Forfatter: Francisca Levin Visic.
While scrutinising the effects of a merger in a particular market is, most of the time, a local—rather than a global—exercise, merger control regulations worldwide are increasingly convergent. And such convergence does not only mirror methods of economic analysis, but also on how roles and tasks are allocated to institutions within the regime. Indeed, it is often seen that the institutional design of more mature merger control systems is being emulated by developing antitrust jurisdictions. A fact that can be explained through a process of international policy diffusion, whereby countries 'learn' from other countries' experiences. And not only broad policy choices—but best practices, proceedings, and legal tests—are being borrowed and adapted to fit into new regulatory settings.

The European Union merger control (EUMC) regime has served as a reference throughout up-and-coming antitrust regimes worldwide. Chile and its recently implemented merger control is illustrative of a system that has been notably inspired on the EUMC. Three aspects exemplify such extraterritorial influence: the regime's institutional design, the legal test, and the scope and intensity of judicial review.

Luxembourg Confidential: Keeping (Business) Secrets before the General Court of the European Union. Forfatter: Charlotte Emin.
Key Points:

- In order to keep their business secrets secret in the course of proceedings before the General Court, main parties can turn to requests for confidential treatment, applications for omission of data, in camera hearings and confidentiality undertakings.
- Confidentiality treatment before the General Court can, however, lead to procedural complications and become a case within the case, requiring the General Court's attention before it can even proceed to examine the merits of the case.
- Because confidentiality remains a derogation from the adversarial and public nature of the judicial proceedings, even confidential information may be disclosed if deemed necessary for effective judicial protection.
- Over the years, the General Court has adopted an increasingly pragmatic approach where the task of defining the scope of confidentiality falls mainly on the parties.

The Growing Legacy of Intel. Forfattere: Dirk Auer og Lazar Radic.
Key Points:

- Starting with the *Intel* ruling, the European judiciary has slowly crafted a coherent framework for Article 102 enforcement.

- However, doubts persist concerning the exact scope of *Intel* and whether it is truly the lodestar that some make it out to be.
- It is arguably still unclear whether 'non-price' conduct, such as self-preferencing, should be assessed under the general framework laid out in *Intel*, which concerned price-rebate schemes.
- With this in mind, the upcoming *Google Shopping* ruling will likely be the bellwether that reveals the true legacy of *Intel* and the future direction of European competition law.

Balancing the Complainant's Right to Be Heard with the Commission's Discretion to Accept Commitments in Antitrust Proceedings—An Example Coming from the Gas Sector: Cases T-399/19 and T-616/18 Polskie Górnictwo Naftowe i Gazownictwo. Forfattere: Charlotte Breuvart og Philippe Laconte.
Judgements of 2 February 2022, Polskie Górnictwo Naftowe i Gazownictwo S.A. v Commission, T-399/19, EU:T:2022:44 and Polskie Górnictwo Naftowe i Gazownictwo S.A. v Commission, T-616/18, EU:T:2022:43.

The General Court of the European Union found that (i) the European Commission breached the complainant's rights to be heard and informed by rejecting its Article 7 formal complaint on the basis of a ground not expressly provided in the Commission's letter communicating its intent to reject the complaint (Case T-399/19), but (ii) upheld the Commission's approval of Article 9 commitments, even if these did not address all competition concerns set out in a preliminary assessment (Case T-616/18).

CJEU Revisits Its Case-Law to Find Damages Can Be Claimed Before National Courts for Air Freight Cartel, Also During the Transitional Period: Case C-819/19 Stichting Cartel Compensation. Forfatter: Claire Simpson.
Judgment of 11 November 2021, Stichting Cartel Compensation and Equilib Netherlands BV v Koninklijke Luchtvaart Maatschappij NV and Others, C-819/19, EU:C:2021:904.

National courts have jurisdiction to apply Article 101 TFEU and Article 53 EEA in actions for damages for infringements prior to the entry into force of Regulation 1/2003 and during the transitional regimes of Articles 104 and 105 TFEU and of Article 55 EEA.

Breaching Merger Commitments: The Repsol Case (Spain). Forfatter: Claudia López del Villar.
Key Points:

- Between 2018 and 2019, the Spanish Competition Authority (CNMC) opened three infringement proceedings against Repsol for failure to comply with commitments that it entered into as part of the conditional clearance of its acquisition of Petrocat. In 2021, the CNMC issued an infringement decision against Repsol for breaching the commitment to acquire a minimum annual volume of supplies from third-party operators in 2015, and of the obligation to report the acquired volume of supplies to the CNMC. In its decision, the CNMC concluded that in order to find an infringement, it was not necessary for there to have been an effect in the market, but merely an infringement of a binding decision by a public authority.
- Infringement decisions for breaching commitments acquired in merger decisions are not uncommon in Spain, as opposed to the European Commission's practice, which has, to date, never fined any company for breaching merger commitments and recently closed the only infringement procedure initiated in this regard.

The EFTA Court's Judgment in Telenor: A Missed Opportunity to Clarify the Scope of Product Aggregation under the Margin Squeeze Test. Forfattere: Henrik Nordling og Alida Masvie Hovland.
Key Points:

- The EFTA Court upholds the largest individual fine issued by the EFTA Surveillance Authority for abuse of dominance.
- Highlights the difficulties with regards to product aggregation and its nexus with market definition.
- Confirms the possibility of a narrow margin squeeze based on a product-by-product approach at the retail level, rejecting the inclusion of products outside of the relevant downstream product market.
- Validates the EFTA Surveillance Authority's inclusion of all tariffs applied during the relevant time period when applying the margin squeeze test.

Digital Platforms Regulation: An Innovation-Centric View of the EU's Digital Markets Act. Forfattere: Carmelo Cennamo, Tobias Kretschmer, Panos Constantinides, Cristina Alaimo og Juan Santaló.
Key Points:

- We conceptualise innovation as new interactions being created by the digital platform, in contrast to coordination which facilitates existing interactions or market transactions.

- We apply this framework to the DMA to assess two of the most contentious practices: self-preferencing and data-sharing.
- We show that these practices differ hugely in the extent to which they replace existing interactions (little to negative innovation effect), sustain existing interactions (moderate, positive innovation effect), or trigger new interactions (large, positive innovation spillovers).
- We thus derive that the business model agnostic approach to digital platforms taken in the DMA risks treating practices that increase the value created by an interaction equally to those that simply shift the distribution of value.

Survey—Competition Law Enforcement in the Fashion and Luxury Sector. Forfattere: Francesco Carloni, Michael Hofmann, Stefano Prinzivalli Castelli, Vittoriana Todisco, Covadonga Corell Peréz de Rada.
Key Points:

- Following the growth of the online sales channel, competition authorities enhanced their scrutiny of the fashion and luxury industry in particular with regard to vertical agreements.
- Competition law enforcement has also recently focused on horizontal agreements and the European Commission has carried out several unannounced inspections around Europe, followed by the French Competition Authority at national level.
- The new Vertical Block Exemption Regulation and its accompanying Vertical Guidelines bring increased legal certainty and welcome changes to the fashion and luxury industry.
- The European Commission has taken various legislative actions to encourage companies to pursue sustainability objectives which particularly concern the fashion and luxury industry.
- Abusive conduct did not give rise to significant cases in the fashion and luxury sector but there is increasing enforcement action with regard to the abuse of economic dependence in certain EU Member States.
- The fashion and luxury sector has been undergoing consolidation and attracted several mergers and acquisitions.

Artikler fra World Competition

Intet nyt.

Artikler fra Antitrust Law Journal

Intet nyt.

Artikler fra Antitrust Bulletin

Volume 68, Issue 2, June 2023.

Analyzing Competition in the Online Economy. Forfattere:: Glass, Victor og Tardiff, Timothy.
Since economic analysis of the workings of the online economy is in its early stages, detecting anticompetitive behavior remains challenging. There have been some insights from models that explain how two-sided markets work, but the practical uses of these models are limited thus far. More research is necessary on the definition and operations of platforms of different sizes and with different objectives, for example, the identification of data clustering and flows related to product clustering and information production and the relationships between data, information, and innovation. Furthermore, corporate culture, which can produce cultural clashes within an organization, may influence both (anti)competitive behavior and innovation. The cultural issue becomes even more complex when evaluating whether a merger would result in both innovation and the abuse of market power. This paper develops an overview of the technology and operations of the online economy as a start toward informing competition and antitrust policy. We present a technical overview that becomes a starting point for understanding potential areas of excessive market power. We also examine market dynamics from the large platforms' points of view to understand where they believe the online economy is heading.

What Is an Antitrust Problem, Anyway? Toward Antitrust Unlimited. Forfatter: Mehra, Salil K.
What is it we talk about when we talk about antitrust? Frequently, a call for antitrust action at the frontier of the field is met by the response that the issue in question is "not an antitrust problem." Things we were told pre-2020 were not

"antitrust problems," it ran the gamut from "patent holdup" and forcing a buyer to take an unwanted product to fake news and privacy breaches. Surprisingly, however, "antitrust problem" is not a well-defined term. As this has been pointed out, U.S. antitrust law as it exists today does not punish all ends that injure consumer welfare—for example, it is explicitly legal to possess a monopoly, and to use it to restrict output and charge monopoly prices. Nor does antitrust punish all means that injure consumer welfare—fraud and deception can injure consumer welfare, but without more they are not actionable under the antitrust laws. Post-2020, we find ourselves in an era in which policymakers are asking, not without some pushback, whether economic inequality, racial disparities, and decades of falling or stagnant wages can and should be addressed as problems by antitrust law. To define "antitrust problem," we must consider what antitrust is ultimately supposed to protect: the benefits for Americans of a national economic system based on market competition. Displacing such a system, and thereby depriving consumers of the benefits of such a system, is at the heart of what antitrust was designed to accomplish—even if contemporary antitrust doctrine paints in much narrower brushstrokes.

The Flawed Analysis Underlying Calls for Antitrust Reform: An Assessment of Lina Khan's Amazon's Antitrust Paradox. Forfattere: Atkinson, Robert og Ward, Michael R.
In her law journal article Amazon's Antitrust Paradox, Lina Khan argued, using Amazon as an example, that current antitrust doctrine cannot identify certain types of anticompetitive conduct in platform and data-driven markets and, consequently, reforming antitrust is necessary to correct these deficiencies. Khan's analysis of Amazon's conduct and the conclusions she drew from it are flawed because she ignored or misapplied the economics of two-sided markets, mischaracterized competitive conditions, and did not consider the pro-competitive effects of Amazon's conduct. In this article, we review the economics of two-sided markets and then assess Khan's analysis of alleged predation in e-books and in the online sale of diapers, as well as alleged anticompetitive implications of Amazon's vertical integration into logistics and its use of data. A careful assessment of Amazon's conduct does not support Khan's conclusion that antitrust reform is necessary because she has not demonstrated that Amazon's conduct is anticompetitive.

The Friction Paradox: Intermediaries, Competition, and Efficiency. Forfatter: Orbach, Barak.
Commentators sometimes say that the elimination of impediments to trade—namely, market friction—tends to expand trade and foster competition. This casual assumption is known to be erroneous. Antitrust law recognizes that restraints of trade—which are forms of market friction—are often pro-competitive and frequently have both pro- and anticompetitive effects. Accordingly, antitrust law prohibits unreasonable restraints of trade, but not all restraints of trade. Trust-busting advocates promote a different approach to market friction. They argue that the antitrust laws intend to maintain fragmented industries and favor small businesses. This approach, which has been embraced by the antitrust agencies in recent years, implies that high-friction markets are more competitive than low-friction markets. It is an expression of a phenomenon that can be called the " friction paradox ": the elimination of market friction is desirable until this goal is accomplished. Notable examples of the friction paradox include hostility toward new generations of market intermediaries, such as supermarkets, chain stores, department stores, big-box stores, digital platforms, and digital ecosystems. This article observes that antipathy for large intermediaries results in a willingness to sacrifice the core benefits of competition—low prices, convenience, efficiency, and innovation. It, therefore, argues that antitrust expressions of the friction paradox place competition policy at war with itself.

Populist Antitrust: The Case of FTC v. Facebook. Forfatter: Hazlett, Thomas W.
A novel theory of antitrust law may be tested in the case of Federal Trade Commission (FTC) v. Facebook. It focuses on how pricing might be monopolistic even when the goods delivered to end users are zero-priced. While there is considerable political momentum behind a regulatory push to toughen antitrust sanctions on digital platforms in general and Facebook in particular, the economic theory behind the Government's antitrust case is shown to be uncompelling. That does not mean it will necessarily be rejected by a given court, but the chances of the case succeeding and then surviving the full gamut of appeals is low. However, that predicted outcome may well calibrate the considerable space between the existing legal equilibrium and an emerging electoral policy equilibrium. If so, the expected outcome may well fuel the populist movement pushing legislation to fundamentally alter the antitrust statutes.

Understanding the Digital Markets Act. Forfatter: Bostoen, Friso.
In September 2022, the European Union (EU) legislature adopted the Digital Markets Act (DMA)—a landmark piece of regulation with the potential to transform the digital economy in Europe and beyond. Even after adoption, however, questions remain about its stated goals, underlying assumptions, scope, obligations, and eventual effectiveness. This article examines these questions using EU competition law not as a touchstone but as a reference point. First, the DMA's goals of "fairness" and "contestability" can be more accurately restated as the protection of intra-platform and the promotion of inter-platform competition. Second, the DMA is based on the idea that the enforcement of the abuse of dominance provision, Article 102 Treaty on the Functioning of the European Union (TFEU), is ineffective both procedurally (due to lengthy investigations and remedial issues) and substantively (due to the difficulty of establishing dominance and abuse)—two assumptions that must be tested by examining competition law's track record. Third, the

scope of the DMA is built around the concept of "gatekeepers," which are in turn defined based on turnover, market capitalization, and active users. Is this an application of the resurgent "big is bad" ideology or a proxy for market power? Fourth, the DMA imposes a list of dos and don'ts on gatekeepers, many of which are inspired by past or ongoing antitrust investigations. Does this experience justify the far-reaching obligations and if so, are they sufficiently flexible to allow for procompetitive gatekeeper conduct? Finally, the DMA is based on the idea that large online platforms have not continued to deliver the desired innovation outcomes and have reaped more than their fair share of the rewards from the innovation they brought. This assumption is tested by a historical look at Apple's App Store—the most important innovation platform to arise in the digital economy.

A Consumer Divided Cannot Stand. Forfatter: Ghosh, Shubha.
Should product disparagement give rise to an antitrust claim of monopolization or attempted monopolization? Majority of the courts have said no while some scholars are skeptical of these decisions. This article examines how conflicting visions of the consumer inform this debate. The conventional wisdom is that antitrust claims should adopt the principle of consumer welfare maximization with the assumption of the rational consumer, protected by product disparagement laws independent of antitrust. But if the consumer is not rational, the application of the consumer welfare standard needs to be re-examined. Specifically, product disparagement and antitrust claims are not independent or separable. This article examines the implications of the consumer division and examines both the consumer welfare assumption of conventional antitrust and its neo-Brandeisian critiques.

Thirteen Sets of Observations/Recommendations Pertinent to the Revision of the DOJ/FTC (M&A) Guidelines. Forfatter: Markovits, Richard S.
This Article provides recommendations both for improving the accuracy of applications of the Sherman Act and Clayton Act to mergers and acquisitions (M&A)s and for creating morally-desirable (M&A) policies. It defines the specific-anticompetitive-intent and lessening-competition tests of illegality that current U.S. antitrust law applies to (M&A)s; explains why neither classical economic markets nor antitrust markets can be defined non-arbitrarily, and why it is therefore inaccurate and unconstitutional to use market-oriented approaches to analyzing the illegality of (M&A)s under current U.S. antitrust law; outlines appropriate non-market-oriented protocols for determining the illegality of (M&A)s under the Sherman and Clayton Acts—whether the (M or A) was motivated by specific anticompetitive intent or would tend to lessen competition; delineates the liberal conception of justice and various egalitarian conceptions of the moral good and argues that in the U.S. those moral norms should be used to evaluate antitrust policies; outlines the protocol that is economically efficient to use to predict the economic efficiency of particular (M or A)s or particular (M&A) policies; and considers the relevance of the economic efficiency and competitive impact of any (M or A) or any (M&A)-focused antitrust policy for its moral desirability.

Volume 68, Issue 1, March 2023.

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. Forfattere: 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. Authors: 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: 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

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Artikler fra Competition Law Scholars Forum

Intet nyt.

Artikler fra Journal of Regulatory Economics

Volume 63, issue 1-2, April 2023.

Employing gain-sharing regulation to promote forward contracting in the electricity sector. Forfattere: David P. Brown og David E. M. Sappington.
We examine the reductions in electricity procurement costs that can be secured when gain-sharing regulation is employed to induce a regulated load serving entity (LSE) to undertake forward contracting despite associated political risk. We identify arguably plausible conditions under which a modest degree of gain sharing can induce an LSE to undertake forward contracting that substantially reduces the LSE's procurement costs, to the benefit of retail consumers.

One size fits all? The differential impact of federal regulation on early-stage entrepreneurial activity across US states. Forfatter: John A. Dove.
Numerous studies evaluate how a jurisdiction's institutional and specifically regulatory environment impact firm formation and entrepreneurial activity. This study adds to this by employing a dataset measuring the differential impact that federal regulations have on industries across US states. Specifically, the paper addresses how such differences affect several facets of early-stage entrepreneurial activity, including an index measure of early-stage entrepreneurship, opportunity entrepreneurship, job creation at startup, and new firm survival rates all derived from the Kauffman Index of Entrepreneurial Activity. Overall, the results suggest that early-stage entrepreneurial activity tends to be negatively correlated with a relatively more burdensome federal regulatory environment. While the channels do not indicate an effect through new firm formation or firm survival rates, both opportunity entrepreneurship and job formation are negatively and significantly affected. Implications are discussed.

Does an effective bankruptcy reform increases collateralized borrowing? Evidence from a quasi-natural experiment in India. Forfattere: Ranjeet Singh, Yogesh Chauhan og Nemiraja Jadiyappa.
This article analyses whether a credit ecosystem that enhances the recovery rate of default debt by providing a time-bound method to address insolvency impacts collateralized borrowing. To explore this, we utilize the adoption of the Insolvency and Bankruptcy Act 2016 as a quasi-natural experiment in India. Using a propensity score-matched difference-in-differences approach, our findings demonstrate an increase in secured debt for financially-distressed firms

more than non-distressed firms in the post-regulation period. In addition, we show that smaller and less profitable distressed firms experience the most aggressive response to secured debt.

Price freezes and gas pass-through: an estimation of the price impact of electricity market restructuring. Forfatter: Alexander Hill.
This article examines the impact of market restructuring on retail prices, using the restructuring of the electricity industry as a case study. Utilizing synthetic control as an estimation strategy, this paper finds retail competition reduced retail prices across all sectors by an average of $1.5/MWh, relative to their counterfactual outcome. On average, prices fell for residential and commercial users and rose for industrial users. The price differential is consistent with the enactment of price ceilings and increased pass-through of changes in the price of natural gas.

Artikler fra International Review of Law and Economics

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Artikler fra Competition Law Journal

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Artikler fra European Competition and Regulatory Law Review

Volume 7 (2023), Issue 1.

Effect on Trade Between Member States: What Is the Standard of Proof to Establish Grounds for Applying EU Law? Forfattere: Martin Milán Csirszki og András Tóth.
This article examines a judgment of the Supreme Court of Hungary (the Curia), in which the Curia called upon in connection with the effect on trade between Member States its holding that competition authorities – compared to other administrative authorities – are required to establish a higher standard of proof in order to draw a reasonable conclusion as to the existence of an infringement. It ruled that this would be in order to draw a reasonable conclusion as to the existence of an infringement. This requirement comes from the quasi-criminal nature of competition proceedings. In this declaration, from the context of the effect on trade between Member States, the Curia equated the applicable standard of proof to substantial competition law infringements with the criterion of applicable law, which only determines appropriate applications of EU competition law. In this article, we present the relevant parts of this case before scrutinising the related literature, legislation and case law. After presenting the case, we analyse the effects on trade between Member States, as well as the role of the market definition in establishing inter-state trade. Then, we turn our attention to questions related to proof and evidence in competition law, both in the context of substantial infringements of law and of the effects on trade between Member States. The Ziegler case points to the direction that these two cannot be equated. In the end, we sketch out the consequences arising from the Curia's judgment.

Regulating Zero-Rating in Europe Changes in the Regulatory Analysis of Zero-Rating by NRAs After the Judgments in C-34/20 Telekom Deutschland (throttling), C-5/20 Vodafone (tethering) and C-854/19 Vodafone (roaming). Forfattere: Dennis Brouwer og Michiel van Dijk.
This article analyses the changes in the regulatory analysis of zero-rating by national regulatory authorities in almost seven years of implementation of the European Union's Regulation on Open Internet Access. The European Court of Justice issued three landmark judgments in cases C-34/20 Telekom Deutschland (throttling), C-5/20 Vodafone (tethering) and C-854/19 Vodafone (roaming). The Court ruled that 'zero-tariff options', a form of zero-rating, violate the general obligation of providers of internet access services to treat traffic equally and without discrimination. The Court determined that these options fail to follow the stipulations of Article 3(3) of the Regulation on Open Internet Access. Prior to the judgments, the Open Internet Guidelines drafted by the Body of European Regulators for Electronic Communications (BEREC) recommended that national regulatory authorities should analyse zero-rating under Article 3(2) of the Regulation. BEREC recommended that they conduct a multi-factor analysis of the effects of zero-rating on the market. After the judgments, BEREC published updated guidelines stating that zero-rating as such is prohibited under Article 3(3), unless the zero-rating does not differentiate between applications based on user traffic. The authors argue that the judgments of the Court in conjunction with the updated Open Internet Guidelines provide NRAs and market actors with more legal certainty regarding the legality of zero-rating under the Regulation on Open Internet Access.

Electronic Evidence in EU Competition Procedures: The Need to Reconcile the Commission's Investigatory Powers with Procedural Defence and Data Protection Rights. Forfatter: Joana Fraga Nunes.
Technological progress has led to globalised access to all types of information, and one's digital traces are now everywhere. As such, electronic evidence has become an extremely important tool for investigations, yet it lacks a legal framework for its collection and processing. Specifically, the use of electronic evidence in EU competition procedures raises several legal challenges, considering i) the lack of a legal framework for the collection and processing of electronic evidence at the EU level, leading to legal uncertainty; ii) the absence of a harmonised EU procedural framework for the enforcement of EU competition law by Member States, resulting in varying levels of judicial protection and iii) the narrow application of defence and data protection rights in EU competition procedures in light of the said conflicting, but complementary, interests.

Bulgaria · Priorities of the Bulgarian Competition Protection Commission in 2023. Forfatter: Mariya Papazova.

Czech Republic · Compliance Programme as a New Mitigating Circumstance. Forfatter: Michal Petr.

The Netherlands · Developments in the Netherlands Regarding Sustainability Agreements. Forfatter: Tim Raats.

United Kingdom · Competition, Big Tech and Retail Financial Services – A Regulator's Discussion Paper. Forfatter: Kiran Desai.

Volvo and DAF Trucks: Towards a Uniform Interpretation and Application of the Damages Directive. Forfatter: Francesco Rizzuto.
This case note examines the important implications for private enforcement follow-on damages actions for infringements of EU competition law. In the Volvo and DAF Trucks ruling the CJEU has clarified a number of the key provisions of the Damages Directive that urgently required clarification given the pressures on national courts faced with increasing numbers of follow-on damages claims. It is significant ruling because it provides national courts with clear guidelines on the limitation periods and the essential information elements required by claimants for bringing actions, the temporal application of substantive and procedural provisions, as well as their definition, and confirmed that parties injured by a cartel do not have to prove the harm resulting from the infringement. Harm is presumed once an infringement as confirmed by public enforcers has taken place.

Case C-267/20 Volvo and DAF Trucks, Judgment of the Court of Justice of the European Union (First Chamber) of 22 June 2022

Sped-Pro v Commission: Beware of the Rule of Law. Forfatter: Rita Ferreira Gomes.
With its judgment of 9 February 2022, the General Court annulled a Decision of the European Commission rejecting an antitrust complaint submitted on the grounds of systemic or generalised deficiencies in the rule of law in one Member State. According to the judgment, there should be a limit to the principle of mutual trust and cooperation among Member States within the European Competition Network. This judgment created not only a precedent, but also a powerful protection tool to be used in the future to safeguard of the rule of law.

Case T-791/19 Sped-Pro v Commission, Judgment of the General Court (Tenth Chamber, Extended Composition) of 9 February 2022

Artikler fra Communications Law

Intet nyt.

Artikler fra Computer and Telecommunications Law Review

Issue 3 (vol.29) 2023

The challenges associated with deploying GDPR-compliant FRT systems (Facial Recognition) in public places (Case Report). Forfatter: Rohan Massey.
Discusses the letter issued by the Information Commissioner's Office to North Ayrshire Council raising concerns about the lawful basis for the council's use of facial recognition technology (FRT) in schools and the adequacy of its data protection impact assessment.

Automatic content recognition. Forfatter: Emily Flitterman.
Describes what automatic content recognition means, what it is used for, and outlines its benefits for marketing and advertising, and concerns regarding the extent of personal data collection and consumers' privacy.

EC computing, telecommunications and related measures. Forfattere: Quentin Archer, Hannah Schofield, 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, the Information Society, 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.

Issue 3 (vol.29) 2023

European patent system uncertain of the unitary effect of the unitary patent. Forfatter: Priya Singh.
Considers how the introduction of the long-awaited unitary patent system and Unified Patent Court in the EU will affect third country patent applicants.

Search engine liability for defamation: Duffy v Google(2). Forfatter: Barry Sookman.
Comments on the South Australian court ruling in Duffy v Google LLC on the search engine's duty to de-index snippets of defamatory allegations posted on third-party websites, and provide a "notice and stay down" process, despite its claim to be no more than an innocent distributor.

Every person has the right to know to whom their personal data have been disclosed - RW v Osterreichische Post AG (Case Comment). Forfatter: Robyn B. Annetts.
Comments on RW v Osterreichische Post AG (C-154/21) (ECJ) on the right of data subjects who make subject access requests to know to whom their data has been disclosed, either the recipient's actual identity or, if it is impossible to identify them, the categories of recipients.

Data trade in China: compliance observation and analysis. Forfatter: Prof. Dr. Hong Xue.
Discusses the regulation of commercial transfers of data under Chinese law, including personal data protection, cybersecurity and intellectual property protection, and the need to comply with international standards to facilitate cross-border trade.

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

Issue 1 (vol.16) 2023

"You can stand under my umbrella" says Competition Appeal Tribunal: a comment on the CAT's Umbrella Proceedings Practice Direction. Forfatter: Sarina Williams.
Considers the Competition Appeal Tribunal's Practice Direction on Umbrella Proceedings, published on 6 June 2022, for the separate hearing of host cases which raise ubiquitous issues.

Evidentiary, procedural and other lessons from competition appeals - a case study of the Competition Appeal Board poultry appeal case. Forfatter: Daren Shiau.
Considers the Singapore Competition Appeal Board decision in Gold Chic Poultry Supply Pte Ltd v Competition and Consumer Commission of Singapore on concerted practices, the role and powers of the Board, and leniency statements in evidence.

From bananas to complex pharmaceuticals: can the law on excessive pricing keep up? Forfatter: Lesley Hannah.
Reviews court cases and administrative decisions on alleged excessive pricing by dominant undertakings, involving medicines and a range of other products.

The private enforcement of EU competition law: a recent boost to follow-on damages actions? Professor Francesco Rizzuto.
Reviews recent ECJ cases on the private enforcement of EU competition law under Directive 2014/104 (Damages Directive), including its temporal application, the difference between procedural and substantive rules, and disclosure of evidence.

The protection of confidential information and disclosure in EU private enforcement of competition law. Forfatter: Lena Hornkohl.
Discusses the protection of confidentiality under Directive 2014/104 and Commission Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law.

Temporal applicability of the Cartel Damages Directive 2014/104/EU revisited - recent jurisprudential developments in Case C-163/21 – PACCAR. Forfatter: Nils Imgarten.
Comments on AC v PACCAR Inc (C-163/21) (ECJ) on an order requiring the defendant to gather and collate new evidence under Directive 2014/104 art.5, and applicability of the Directive ratio temporis.

Denmark: Eastern High Court issues judgment on disclosure of evidence under Damages Directive (Case Comment). Forfatter: Jens Munk Plum.
Notes the Danish High Court judgment in Discovery v Nuuday on the disclosure of evidence in proceedings for abuse of dominant position.

Germany: German Federal Supreme Court: presumption of damages also in "mere" information exchange cases (Case Comment). Forfatter: Volker Soyez.
Comments on the German judgment in Bundesgerichtshof (KZR 42/20) on damages for a retailer, Schlecker, affected by a drugstore products cartel which did not fix prices but did exchange information.

Germany: German Federal Supreme Court: cartelists are directly liable for sales of cartelised products through fully owned subsidiaries (Case Comment). Forfatter: Volker Soyez.
Notes the Bundesgerichtshof judgment of 28 June 2022 in a private enforcement action on liability for selling cartelised products by way of a subsidiary distributor.

Arbitration/ADR: German Federal Court of Justice confirms maximalist review of competition law awards (Case Comment). Forfatter: Gordon Blanke.
Comments on the German judgment in Bundesgerichtshof (Vogelsberger Basaltwerk GmbH & Co KG v Constantia Forst GmbH) (KZB 75/21) on the court's jurisdiction to review arbitral awards for compliance with German competition law.

Andre udenlandske artikler

Expert study by Brattle Group on "Efficiencies in telecommunication network cooperations and mergers".
Europe's digital infrastructure is undergoing a once-in-a-decade upgrade. At a time when citizens, businesses and political leaders acknowledge the critical importance of availability of digital services, Europe's telecom operators are at the peak of the 5G investment cycle. Concurrently, Europe is facing complex crises and uncertainty, but one item on the EU agenda is rooted: achieving the "2030 Digital Decade" targets.

A new expert study published by Brattle Group and commissioned by ETNO, titled "Efficiencies in Telecommunication Network Cooperations and Mergers" explores a wide range of efficiencies that could benefit European citizens and society. The efficiencies identified by Brattle Group go beyond merger proceedings (including efficiencies of cost, quality and infrastructure rollout) and explore further cooperation agreements and out-of-market efficiencies.
Læs mere
Dato: 11.10.2022

5 | NYT FRA KONKURRENCEGRUPPEN

Seminar on Google's Antitrust Issues in the U.S. and E.U.
Christian Bergqvist er taler ved en kommende paneldebat på Copenhagen Business School om Google's antitrust-udfordringer i USA og EU. Debattens omdrejningspunkt bliver Googles udfordringer med antitrust i EU, det amerikanske justitsministeriums seneste sag mod Google samt Google og Skandinavien. Christian Bergqvist vil gennemgå Google (angivelige) motiv for at monopolisere gratis tjenester og strategisk anvendelse af sit store økosystem. Andre talere er advokat Jonathan Rubin og advokat Jacob Pinborg, der vil gennemgå henholdsvis de amerikanske sager mod Google og en mulig dansk erstatningssag. Arrangementet vil foregå på engelsk.
Læs mere
Afholdelse: Onsdag d. 14.06.2023 fra kl. 15:00 til 16:30