



Konkurrenceretlig Nyhedsoversigt nr. 81 / dækkende 12. maj 2023 - 17. juni 2023

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- Journal of Antitrust Enforcement
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- Competition Law & Policy Debate
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- Competition Law Journal
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- Andre udenlandske artikler

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## 1 | DANSK RET

### Nyt fra Konkurrence- og Forbrugerstyrelsen

#### **Konkurrence- og Forbrugerstyrelsen modtog den 7. juni 2023 en forenklet anmeldelse af en fusion mellem Karvil Biler A/S og A/S Preben Mortensen biler.**

Fusionen har karakter af en aktivoverdragelse, som gennemføres ved, at Karvil Biler A/S og A/S Preben Mortensen Biler indgår en aktivoverdragelsesaftale, i henhold til hvilken A/S Preben Mortensen afhænder og Karvil Biler A/S erhverver aktiviteterne samt overtager de hertil knyttede forpligtelser og rettigheder.

[Læs mere](#)

Dato: 16.06.2023

#### **Konkurrence- og Forbrugerstyrelsen modtog den 12. juni 2023 en forenklet anmeldelse af Hornsyld Købmandsgaard A/S køb af grovare-aktiviteter fra Overgaard Gods A/S.**

Transaktionen indebærer, at Hornsyld Købmandsgaard A/S gennem en aktivoverdragelse køber og erhverver enekontrol over Overgaard Gods agro-forretningen.

[Læs mere](#)

Dato: 13.06.2023

#### **Konkurrence- og Forbrugerstyrelsen modtog den 9. juni 2023 en forenklet anmeldelse af Pensionskassen for Sygeplejersker og Lægesekretærer, Pensionskassen for Sundhedsfaglige, Pensionskassen for Farmakonomer og Pensionskassen for Socialrådgivere, Socialpædagoger og Kontorpersonale ("Pensionskasserne") via PKA A/S og A. Enggaard Holding A/S' ("A. Enggaard") etablering af P/S PKAE Ejendom ("PKAE") som et selvstændigt fungerende joint venture.**

Der er tale om en fusion i henhold til konkurrencelovens § 12 a, stk. 1, nr. 2, jf. stk. 2, idet Pensionskasserne via PKA A/S og A. Enggaard har til hensigt, at PKAE fremadrettet skal agere i markedet som en selvstændig virksomhed, der varetager en erhvervsvirksomheds samlede funktioner.

[Læs mere](#)

Dato: 13.06.2023

#### **Konkurrence- og Forbrugerstyrelsen modtog den 30. maj 2023 en forenklet anmeldelse af en fusion mellem Dampskibsselskabet Norden A/S og Thorco Projects A/S.**

Transaktionen medfører, at Dampskibsselskabet Norden A/S erhverver alle aktiver i Thorco Projects A/S. Dampskibsselskabet Norden A/S vil således erhverve enekontrol over Thorco Projects A/S.

[Læs mere](#)

Dato: 12.06.2023

#### **Konkurrence- og Forbrugerstyrelsen modtog den 6. juni 2023 en forenklet anmeldelse af et joint venture mellem mt industry recycling GmbH og Wilhelmsen Ships Services Pte, Ltd.**

Joint venture vil blive stiftet i Singapore og være ejet i fællesskab af mt industry recycling GmbH og Wilhelmsens Ships Service Pte. Ltd. Ifølge parterne skal joint venture producere 3D printede produkter til brug i off-shore og den civile maritime industri, bl.a. reservedele til diverse udstyr ombord på skibe og i havne, og joint venture vil dermed være aktivt på markedet for additiv fremstilling og relaterede ingeniørtjenester til off-shore og den civile maritime industri.

[Læs mere](#)

Dato: 09.06.2023

#### **Konkurrence- og Forbrugerstyrelsen modtog den 12. maj 2023 en forenklet anmeldelse af Gjensidige Forsikring ASA's ("Gjensidige") erhvervelse af enekontrol over Sønderjysk Forsikring G/S' ("Sønderjysk Forsikring") Erhvervsportefølje ("Erhvervsporteføljen").**

Transaktionen indebærer, at Gjensidige erhverver enekontrol over Sønderjysk Forsikrings Erhvervsportefølje.

[Læs mere](#)

Dato: 22.05.2023



### **Konkurrence- og Forbrugerstyrelsen modtog den 3. maj 2023 en forenklet anmeldelse af en fusion mellem Polaris Private Equity V K/S ("Polaris"), Sealing System A/S ("Sealing System") og Lead Robotics Scandinavia A/S ("Lead Robotics").**

Transaktionen medfører, at Polaris erhverver 100 pct. af aktiekapitalen i hhv. Sealing System og Lead Robotics gennem BidCo B af 17. januar 2023. Efter transaktionen reinvesterer sælgerne, hvorefter Polaris fortsat vil have en kontrollerende andel af aktiekapitalen i Sealing System og Lead Robotics. Polaris vil dermed erhverve enekontrol over Sealing System og Lead Robotics.

[Læs mere](#)

Dato: 15.05.2023

### **Konkurrence- og Forbrugerstyrelsen modtog den 2. maj 2023 en forenklet anmeldelse af en fusion mellem P. Christensen A/S og Poul Rasmussen Bilcenter Århus A/S (herefter Poul Rasmussen).**

Transaktionen indebærer, at P. Christensen A/S overtager 100 pct. af aktierne i Poul Rasmussen Bilcenter Århus A/S. P. Christensen A/S' erhverver dermed enekontrol over Poul Rasmussen.

[Læs mere](#)

Dato: 11.05.2023

## **Nyt fra Konkurrencerådet**

Intet nyt.

## **Nyt fra Konkurrenceankenævnet**

### **Konkurrenceankenævnet har stadfæstet Konkurrence- og Forbrugerstyrelsens afgørelse om, at en anmeldt fusion ikke kunne anses som automatisk godkendt i medfør af konkurrencelovens § 12 d, stk. 6.**

NDI Group A/S og Euromaster Danmark A/S har påklaget Konkurrence- og Forbrugerstyrelsens afgørelse af 23. januar 2023 om, at fristen i konkurrencelovens § 12 d, stk. 1, ikke er overskredet, og at fusionen mellem NDI Group A/S og Euromaster Danmark A/S dermed ikke er at betragte som automatisk godkendt i henhold til konkurrencelovens § 12 d, stk. 6. NDI Group A/S og Euromaster Danmark A/S fremsendte endelig fusionsanmeldelse til Konkurrence- og Forbrugerstyrelsen fredag den 11. november 2022, kl. 19.18. Konkurrence- og Forbrugerstyrelsen meddelte fredag den 25. november 2022, at anmeldelsen var fuldstændig at regne fra mandag den 14. november 2022, og at afgørelsen om godkendelse eller beslutning om særskilt undersøgelse således skulle træffes senest mandag den 19. december 2022. Den 19. december meddelte Konkurrence- og Forbrugerstyrelsen, at der var truffet beslutning om særskilt undersøgelse. NDI Group A/S og Euromaster Danmark A/S meddelte den 23. december, at de anså meddelelsen om særskilt undersøgelse for meddelt 26 hverdage efter modtagelsen af fuldstændig fusionsanmeldelse, og at de derfor anså fusionen for godkendt efter konkurrencelovens § 12 d, stk. 6.

NDI Group A/S og Euromaster Danmark A/S klagede den 6. marts 2023 over Konkurrence- og Forbrugerstyrelsens afgørelse af 23. januar 2023 til Konkurrenceankenævnet.

Konkurrenceankenævnet har stadfæstet Konkurrence- og Forbrugerstyrelsens afgørelse.

[Læs mere](#)

Dato: 30.05.2023

## **Nyt fra domstolene**

### **Civilretlige afgørelser**

**Østre Landsret har afgjort, at Clear Channel Danmark og AFA JCDecaux har overtrådt konkurrenceloven ved at have koordineret rabatter via skriftlige aftaler og samordnet praksis. Retten fastslår, at det også var ulovligt, da virksomhederne fortsatte adfærden, efter deres skriftlige aftaler udløb.**

Om perioden uden skriftlige aftaler skriver Østre Landsret i dommen:

"Landsretten finder på den nævnte baggrund, at der ikke er grundlag for at tilsidesætte Konkurrenceankenævnets vurdering, hvorefter de tidligere indgåede skriftlige aftaler, herunder særligt 2010-aftalen, uanset at de formelt var ophørt, fortsat havde virkninger efter 2010, idet de førte til en fortsat samordning mellem AFA og CCDK af medieprovision, sikkerhedsstillelse og informationsgodtgørelse, der havde samme resultat som tilsigtet med 2010-aftalen."



Østre Landsret har afgjort, at de to outdoor-medieudbydere Clear Channel Danmark og AFA JCDecaux har overtrådt konkurrenceloven ved at indgå ulovlige aftaler og samordne deres praksis om fælles rabatsatser for salg af reklameplads i outdoor-medier. Outdoor-medier omfatter eksempelvis billboards og reklamestandere i bybilledet, blandt andet ved busstoppesteder, supermarkeder, butikcentre, tog og lufthavne.

Sagen vedrører to perioder, hvor virksomhederne i den første periode fra 5. september 2008 til 31. december 2010 havde indgået skriftlige aftaler om fælles rabatsatser for medieprovision, sikkerhedsstilling og informationsgodtgørelse. Herefter fortsatte virksomhederne imidlertid i en periode fra 1. januar 2011 til 21. april 2015 med at anvende de tidligere aftalte rabatsatser.

For begge perioder har Østre Landsret afgjort, at virksomhederne i strid med konkurrenceloven har indgået en ulovlig koordinering af fælles rabatsatser for salg af reklameplads i outdoor-medier.

Oprindelig afgjorde Konkurrencerådet i december 2018, at virksomhederne i begge perioder havde overtrådt konkurrenceloven. Rådets afgørelse blev i 2019 stadfæstet i Konkurrenceankenævnet, hvorefter virksomhederne ankede sagen til Sø- og Handelsretten. Sø- og Handelsretten afgjorde, at de kun havde overtrådt konkurrencereglerne i perioden, hvor der forelå skriftlige aftaler. Herefter ankede Konkurrencerådet Sø- og Handelsrettens domme over virksomhederne til Østre Landsret. Det er de ankesager, der nu er faldet dom i fra Østre Landsret.

[Læs mere](#)

Dato: 19.05.2023

### Afgørelser om bøder

Intet nyt.

## Lovforslag i høring

### Forslag til Lov om beføjelser i forhold til Europa-Parlamentets og Rådets forordning om digitale markeder.

Loven har til formål at give Konkurrence- og Forbrugerstyrelsen beføjelser til at understøtte Europa-Kommissionen med at sikre tilstrækkelig og effektiv håndhævelse af Europa-Parlamentets og Rådets forordning om digitale markeder. Forordningen har til formål at sikre åbenhed og retfærdighed for markederne i den digitale sektor, hvor erhvervsbrugere og slutbrugere af centrale platformstjenester benytter tjenester, som udbydes af gatekeepere. Lovforslaget giver Konkurrence- og Forbrugerstyrelsen kompetence og undersøgelsesbeføjelser til - på eget initiativ - at foretage undersøgelser af såkaldte gatekeeperes eventuelle manglende overholdelse af forordningens forpligtelser i Danmark. Derudover fastlægger lovforslaget, at Konkurrence- og Forbrugerstyrelsen er den kompetente myndighed i Danmark, der kan anmode Europa-Kommissionen om at indlede markedsundersøgelser i henhold til forordningen.

[Læs mere](#)

Dato: 22.05.2023

## Ny lovgivning

Intet nyt.

## Nyt fra Ankestyrelsen

### En kommunes køb og videresalg af jord med vilkår om skovrejsning.

Randers Kommune havde bedt Ankestyrelsen vurdere, om kommunen kunne købe jordarealer med henblik på at sælge disse videre med tinglyst vilkår om, at jordarealet kun måtte anvendes til at rejse skov. Ankestyrelsen vurderede på det foreliggende grundlag, at kommunens ønskede dispositioner ikke ville være i strid med kommunalfuldmagtsreglerne.

[Læs mere](#)

Dato: 02.05.2023

**Københavns Kommunes medfinansiering af landstrømanlæg til krydstogtskibe.**

Københavns Kommune havde bedt Ankestyrelsen om en udtalelse om, hvorvidt det ville være lovligt efter kommunalfuldmagtsreglerne, at kommunen medfinansierede By & Havn I/S' etablering af landstrømanlæg til krydstogtskibe i Københavns Havn. Ankestyrelsen vurderede på baggrund af sagens oplysninger, at det var lovligt.

[Læs mere](#)

Dato: 26.04.2023

**Andet**

Intet nyt.

## 2 | EUROPÆISK OG INTERNATIONAL RET

**Nyt fra Kommissionen****Antitrust****Commission sends Statement of Objections to Google over abusive practices in online advertising technology.**

The European Commission has informed Google of its preliminary view that the company breached EU antitrust rules by distorting competition in the advertising technology industry ('adtech'). The Commission takes issue with Google favouring its own online display advertising technology services to the detriment of competing providers of advertising technology services, advertisers and online publishers.

[Læs mere](#)

Dato: 14.06.2023

**Commission carries out unannounced inspections in the synthetic turf sector.**

The European Commission is carrying out unannounced inspections at the premises of companies active in the synthetic turf industry in several Member States.

The Commission has concerns that the inspected companies 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')).

Synthetic turf is artificial grass used for different applications that replicates the appearance and function of natural grass. The investigation concerns synthetic turf for sports use.

[Læs mere](#)

Dato: 07.06.2023

**Commission adopts new Horizontal Block Exemption Regulations and Horizontal Guidelines.**

The European Commission has today adopted revised Horizontal Block Exemption Regulations on Research and Development ('R&D') and Specialisation agreements ('HBERs'), accompanied by revised Horizontal Guidelines, following a thorough evaluation and review of the current rules. The revised HBERs and Guidelines provide businesses with clearer and up-to-date guidance to help them assess the compatibility of their horizontal cooperation agreements with EU competition rules. The new HBERs will enter into force on 1 July 2023, while the Guidelines will do so following their publication in the Official Journal of the EU.

[Læs mere](#)

Dato: 01.06.2023

**Cartels**

Intet nyt.



## Mergers

### **Commission clears acquisition of Lagardère by Vivendi, subject to conditions.**

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Lagardère by Vivendi. The Commission's decision is conditional upon full compliance with the commitments offered by Vivendi.

The decision follows an in-depth investigation of the proposed acquisition. Vivendi and Lagardère are two large French multi-media groups. In particular, Vivendi (via Editis) and Lagardère (via Hachette) are leading players in book publishing in French-speaking countries of the European Union. Both companies are active throughout the book value chain, from the acquisition of publishing rights to the marketing, distribution and sale of books to retailers. The two groups are also both involved in other media activities, such as press and live entertainment in France. Lagardère is also active in the radio sector and Vivendi in audio-visual production.

[Læs mere](#)

Dato: 09.06.2023

### **Commission sends Booking Statement of Objections over proposed acquisition of eTraveli.**

The European Commission has informed Booking Holdings ('Booking') of its preliminary view that its proposed acquisition of Flugo Group Holdings AB ('eTraveli') may allow Booking to strengthen its position on the market for hotel online travel agencies ('OTAs') in the European Economic Area ('EEA').

Booking and eTraveli are both active in the provision of OTA services, respectively focusing on hotel OTA and flight OTA services. Booking is also active in the market of metasearch services ('MSS') mainly through its price comparison platform KAYAK.

[Læs mere](#)

Dato: 09.06.2023

### **Commission clears Viasat's acquisition of Inmarsat.**

The European Commission has approved unconditionally, under the EU Merger Regulation, the proposed acquisition of Inmarsat by Viasat. The Commission concluded that the merger would not raise competition concerns in the European Economic Area ('EEA') or any substantial part of it.

The decision follows an in-depth investigation of the proposed acquisition of Inmarsat by Viasat. Both companies are providers of 'two-way' satellite-based communication services. Viasat owns and operates four geostationary earth orbit ('GEO') satellites and Inmarsat owns and operates fifteen GEO satellites. Inmarsat and Viasat use capacity from their own GEO satellites to provide services in the nascent market for the supply of broadband in-flight connectivity ('IFC') services to commercial airlines in the EEA and globally. In addition to providing satellite capacity to third party satellite service providers worldwide, both companies provide satellite services to customers across a range of other industry segments, including in the maritime, energy, government, and business aviation sectors, where overlaps are limited.

[Læs mere](#)

Dato: 25.05.2023

### **Commission approves the merger between Credit Suisse and UBS.**

The European Commission has approved unconditionally, under the EU Merger Regulation, the merger between Credit Suisse and UBS. The Commission concluded that the transaction would not raise competition concerns in the European Economic Area ('EEA').

UBS and Credit Suisse are both global multinational investment banks and financial services companies. In the EEA, the companies' activities overlap in wealth and asset management as well as in investment banking.

[Læs mere](#)

Dato: 25.05.2023

### **Commission sends Korean Air Statement of Objections over proposed acquisition of Asiana.**

The European Commission has informed Korean Air of its preliminary view that its proposed acquisition of Asiana may restrict competition in the markets for passenger and cargo air transport services between the European Economic Area ('EEA') and South Korea.

Korean Air and Asiana are respectively the first and second largest airlines in South Korea. They operate a network of domestic and short-haul routes in Asia as well as long-haul routes between South Korea and the rest of the world.

[Læs mere](#)





Dato: 17.05.2023

**Commission clears acquisition of OMV Slovenija by MOL, subject to conditions.**

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of OMV Slovenija by MOL. The approval is conditional on the divestiture of 39 fuel stations in Slovenia to the Shell Group.

The decision follows an in-depth investigation of the proposed acquisition of OMV Slovenija by MOL. MOL and OMV Slovenija are, respectively, the third and second largest retail fuel suppliers in Slovenia, right after Petrol (i.e. the national leading motor fuel retailer).

[Læs mere](#)

Dato: 17.05.2023

**Commission clears acquisition of Activision Blizzard by Microsoft, subject to conditions.**

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Activision Blizzard ('Activision') by Microsoft. The approval is conditional on full compliance with the commitments offered by Microsoft. The commitments fully address the competition concerns identified by the Commission and represent a significant improvement for cloud gaming as compared to the current situation.

[Læs mere](#)

Dato: 15.05.2023

**State Aid**

**Commission approves €680 million Spanish scheme under the Recovery and Resilience Facility to support roll out of 5G mobile networks in rural areas.**

The European Commission has approved, under EU State aid rules, a €680 million Spanish scheme made available through the Recovery and Resilience Facility ('RRF') to roll out equipment and infrastructure for high-performing 5G standalone networks in underserved rural areas. The measure is part of Spain's strategy to address the needs of citizens and businesses in the context of the digitalisation of the country. The scheme also contributes to the EU's strategic objectives relating to the digital transition.

[Læs mere](#)

Dato: 15.06.2023

**Commission approves up to €8.1 billion of public support by fourteen Member States for an Important Project of Common European Interest in microelectronics and communication technologies.**

The Commission has approved, under EU State aid rules, an Important Project of Common European Interest ('IPCEI') to support research, innovation and the first industrial deployment of microelectronics and communication technologies across the value chain.

The project, called "IPCEI ME/CT", was jointly prepared and notified by fourteen Member States: Austria, Czechia, Finland, France, Germany, Greece, Ireland, Italy, Malta, the Netherlands, Poland, Romania, Slovakia and Spain.

The Member States will provide up to €8.1 billion in public funding, which is expected to unlock additional €13.7 billion in private investments. As part of this IPCEI, 56 companies, including small and medium-sized enterprises ('SMEs') and start-ups, will undertake 68 projects.

[Læs mere](#)

Dato: 08.06.2023

**Commission approves €1 billion Polish scheme to support agricultural producers in the context of Russia's war against Ukraine.**

The European Commission has approved an approximately €1 billion (PLN 4.7 billion) Polish scheme to support the liquidity of agricultural producers 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: 23.05.2023

**Commission approves €1.3 billion Polish scheme to support agricultural producers' payments of insurance premiums to cover adverse climatic events.**

The European Commission has approved, under EU State aid rules, a €1.3 billion Polish scheme to support agricultural producers to pay insurance premiums covering the risk of damage to certain vegetable products and livestock species. The measure contributes to the achievement of the objectives of the Common Agricultural Policy by helping preserve stable incomes for agricultural producers.

[Læs mere](#)

Dato: 16.05.2023

**Commission approves Danish measures to support new export and investment fund.**

The European Commission has approved, under EU State aid rules, Danish measures to set-up Denmark's Export and Investment Fund ('the Fund'), with a total estimated value of over €4 billion. The Fund aims at supporting economic development, competitiveness, innovation and growth for Danish companies.

[Læs mere](#)

Dato: 12.05.2023

**Commission approves €837 million Spanish scheme to support the production of batteries for electric and connected vehicles to foster the transition to a net-zero economy.**

The European Commission has approved a €837 million Spanish scheme to support the production of batteries for the industrial chain of electric and connected vehicles 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: 11.05.2023

**Andet**

Intet nyt.

## Nyt fra EU-domstolen

**Domme****[C-50/21](#) - Prestige and Limousine.**

Præjudiciel forelæggelse – artikel 49 TEUF – artikel 107, stk. 1, TEUF – tjenesteydelser med udlejning af personbiler med chauffør – tilladelsesordning, som ud over en licens til at levere tjenesteydelser i byer og mellem byer på hele det nationale område indebærer udstedelse af en yderligere driftslicens for at kunne levere bymæssige transporttjenester i et storbyområde – antallet af licenser til levering af tjenesteydelser med udlejning af personbiler med chauffør begrænses til en tredjedel af antallet af taxalicenser.

- 1) Artikel 107, stk. 1, i traktaten om Den Europæiske Unions funktionsmåde skal fortolkes således, at denne bestemmelse ikke er til hinder for en lovgivning, som finder anvendelse på et byområde, hvorved det for det første bestemmes, at der kræves en specifik licens til levering af tjenesteydelser med udlejning af personbiler med chauffør i dette byområde ud over den fornødne nationale licens til levering af tjenesteydelser med udlejning af personbiler med chauffør i og mellem byer, og for det andet at antallet af licenser til levering af disse tjenesteydelser er begrænset til en tredjedel af de taxalicenser, der udstedes til nævnte byområde, for så vidt som disse foranstaltninger ikke omfatter anvendelsen af statsmidler i denne bestemmelses forstand.
- 2) Artikel 49 TEUF er ikke til hinder for en lovgivning, som finder anvendelse på et byområde, hvorved det bestemmes, at der kræves en specifik licens til levering af tjenesteydelser med udlejning af personbiler med chauffør i dette byområde ud over den fornødne nationale licens til levering af tjenesteydelser med udlejning af personbiler med chauffør i og mellem byer, såfremt denne specifikke licens bygger på objektive kriterier, der ikke er udtryk for forskelsbehandling, og på kendte forhold, som udelukker enhver vilkårlighed, og som ikke gentager en kontrol, der allerede er blevet udført inden for rammerne af en procedure for nationale licenser, men som opfylder de særlige behov for dette byområde.





3) Artikel 49 TEUF er til hinder for en lovgivning, som finder anvendelse på et byområde, hvorved antallet af licenser til levering af tjenesteydelser med udlejning af personbiler med chauffør begrænses til en tredjedel af de taxalicenser, som udstedes til dette byområde, når det hverken er godtgjort, at denne foranstaltning på en sammenhængende og systematisk måde kan sikre virkeliggørelsen af målene om god forvaltning af transport, trafik og det offentlige rum i dette byområde samt miljøbeskyttelse, eller at foranstaltningen ikke går videre end nødvendigt for at nå disse mål.

[Læs mere](#)

Dato: 08.06.2023

#### **[T-268/21](#) - Ryanair mod Kommissionen (Italie ; régime d'aide ; COVID-19).**

Statsstøtte – det italienske marked for lufttransport – ordning for kompensation til luftfartsselskaber med licens udstedt af de italienske myndigheder – afgørelse om ikke at gøre indsigelse – støtte, hvis formål er at afhjælpe skader, der er forårsaget af en usædvanlig begivenhed – begrundelsespligt.

[Læs mere](#)

Dato: 24.05.2023

#### **[T-79/21](#) - Ryanair og Airport Marketing Services mod Kommissionen.**

Statsstøtte – aftaler indgået med luftfartsselskabet Ryanair og dets datterselskab Airport Marketing Services – markedsførings tjenester – afgørelse, hvorved støtten erklæres uforenelig med det indre marked og anordnes tilbagesøgt – fordel – kriteriet om et faktisk behov – artikel 41 og 47 i chartret om grundlæggende rettigheder – retten til aktindsigt – ret til at blive hørt.

[Læs mere](#)

Dato: 14.06.2023

#### **[T-585/20](#) - Polwax mod Kommissionen.**

Konkurrence – fusioner – det forudgående marked for råparaffin – det efterfølgende marked for paraffinvoks – afgørelse, hvorved en fusion erklæres forenelig med det indre marked og EØS-aftalen – ingen tilsagn vedrørende leveringen af råparaffin – vertikale virkninger – afskærmning af markedet for input.

[Læs mere](#)

Dato: 14.06.2023

#### **[T-321/20](#) - enercity mod Kommissionen.**

Konkurrence – fusioner – det tyske elektricitetsmarked – afgørelse, der erklærer fusionen forenelig med det indre marked – annullationssøgsmål – manglende søgsmålskompetence – ingen aktiv deltagelse – afvisning.

[Læs mere](#)

Dato: 17.05.2023

### **Forslag til afgørelse**

#### **[C-831/21 P](#) - Fachverband Spielhallen og LM mod Kommissionen.**

Appel – statsstøtte – begrebet støtte – fordel – selektiv karakter – skattemæssig behandling af offentlige kasinooperatører i Tyskland – Kommissionens afvisning af en klage – fælles undersøgelse.

[Læs mere](#)

Dato: 25.05.2023

#### **[C-457/21 P](#) - Kommissionen mod Amazon.com m.fl.**

Appel – statsstøtte – indrømmelse af en fordelagtig afregningspris – selektiv skattefordel – fastlæggelse af referenceordningen – OECD-retningslinjer for afregningspriser som referenceordning – Domstolens binding til den af Kommissionen og Retten valgte referenceordning – vurdering af den rigtige afregningspris – afgrænsning af vurderingen af faktiske omstændigheder og bedømmelsen af retsspørgsmål – reduceret prøvelsesstandard ved vurderingen af nationale skattemyndigheders muligvis forkerte anvendelse af skattelovgivningen – forudgående skatteafgørelser.

[Læs mere](#)

Dato: 08.06.2023

### **Kendelse**

Intet nyt.



### Andet nyt fra EU-domstolen

Intet nyt.

## Andet internationalt nyt

### **The Office of Rail and Road (ORR) has today launched a market study into railway station catering.**

Railway stations are commercially attractive locations for retailers. Conservative estimates suggests that passenger spending is well in excess of £1 billion per annum and, as rail passenger numbers recover from the COVID-19 pandemic, we expect this to be reflected in footfall at rail station retail outlets.

We want to make sure that the market is working as well as possible for passengers. As part of its study to understand potential issues, including barriers for new entrants, ORR has started to gather intelligence on the structure of the market, the effectiveness of competition and outcomes for consumers. ORR has therefore invited submissions from interested parties on the issues raised in the two documents it has published.

The Statement of Scope and Market Study Notice documents include further details on the subject matter of this study and timing.

[Læs mere](#)

Dato: 16.06.2023

## 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 7 (vol.44) 2023

**China's new legal framework for vertical price restraints: aspirations and limitations. Forfatter: Sandra Marco Colino.**

Evaluates China's revised competition regime governing vertical price fixing (VPF) and resale price maintenance, and compares its approach with those of the EU and US. Details key features of the new regime, highlights concerns over its standards of proof and suggests alternative reform proposals.

**Still debatable, yet inevitable - increasing antitrust focus on labour markets and adapting to the new normal.**

**Forfatter: Dr Gönenç Gürkaynak, Esq.**

Discusses the growing global application of antitrust principles to anti-competitive agreements in labour markets, despite a lack of harmonised rules. Reviews the diverse approaches in jurisdictions such as the EU, the US and Turkey, and suggests future steps to establish a regulatory framework.

**The abuse of economic dependence "digitalization": the Italian novella in context. Forfatter: Dr Vittorio Bachelet.**

Evaluates Italy's revised rules on abuse of economic dominance, to improve global enforcement and increase corporate protection against abuse by digital platforms. Compares the approaches of other Member States, including Germany, and the EU position under Regulation 2022/1925 (Digital Markets Act).

**Pricing algorithms: algorithmic discrimination and collusive practices under EU competition law. Forfatter: Fatma Ceren Morbel.**

Examines the growing corporate use of online pricing algorithms, and the competition concerns under TFEU art.101 surrounding their use to facilitate collusion and discriminatory practices. Presents price fixing scenarios involving algorithms, and suggests regulatory reforms to reduce such dangers.

**Bulgaria: anti-competitive practices - infringement (Case Comment). Forfatter: Anton Dinev.**

Notes the ruling of the Bulgarian Commission for the Protection of Competition in Veolia Energy Varna EAD, imposing a fine of over EUR 422,000 on a vertically integrated supplier of thermal energy for an abuse of its dominant position involving a non-price strategy to exclude competitors.

**Canada: anti-competitive practices - restrictive business practices. Forfatter: Kaeleigh Kuzma.**

Notes the Canadian Commissioner of Competition's consent agreement with Isologic Innovative Radiopharmaceuticals Ltd, addressing concerns over a potential abuse of dominance arising from its contracting practices in the radiopharmaceutical supply market, including its use of exclusivity clauses.

**Czech Republic: anti-competitive practices - decision (Case Comment). Forfatter: Tomáš Fiala.**

Notes the Czech Competition Office ruling in Beryko sro / Witty sro, fining an electronics distribution company around EUR 1 million for participating in a price-fixing, information exchange and customer allocation cartel. Notes the 100% reduction in Witty's fine under a leniency programme.

**Denmark: anti-competitive practices - decision (Case Comment). Forfatter: Jens Munk Plum.**

Notes the Danish Competition Council ruling in Association Bankdata finding a clause in the articles of association of an IT solutions provider requiring members wishing to leave the association to pay a termination fee to be potentially anti-competitive, and accepting commitments to reduce the fee.

**Estonia: anti-competitive practices – decision. Forfatter: Triinu Järviste.**

Notes the Estonian Competition Authority's June 2022 publication of guidance clarifying the competition law requirements for joint tenders, following an earlier ruling in which it found a joint public tender by 11 companies for the road transport of round timber to be anti-competitive.

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

Notes *Traficos Manuel Ferrer SL v Daimler AG (C-312/21)* (ECJ) on whether, in private antitrust damages actions, Directive 2014/104 prevented application of a national costs rule that if the claim were upheld in part, each party would bear its own and half the common costs.

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

Notes the merger control statistics released by the Finnish Competition and Consumer Authority, giving information on issues including the number of notifications made in the first quarter of 2023, processing times, and the duration of pre-notification discussions.

**Finland: state aid - state aid data. Forfatter: Maarit Taurula.**

Notes the April 2023 launch by the Finnish Ministry of Economic Affairs and Employment of a public search service for Finnish state aid data. Details the range of information available, the potential users of the service and its main goals, including to increase transparency.

**Germany: mergers - merger control (Case Comment). Forfatter: Oliver Haas.**

Notes the German Federal Cartel Office ruling in *Landliebe / Tuffi / Theo Mueller Group*, clearing a merger involving manufacturers of dairy products, but departing from its standard approach by accepting commitments which exceeded those necessary, and structuring them as conditions subsequent.

**Ireland: anti-competitive practices – enforcement. Forfatter: Dr Vincent J.G. Power SC.**

Notes the March 2023 publication by the Irish Competition and Consumer Protection Commission of a statement on its treatment of seized material that is subject to legal professional privilege or privacy claims. Details its aims and its guidance on relevant powers of search, seizure and retention.

**Netherlands: competition – legislation. Forfatter: Jotte Mulder.**

**Notes Dutch proposals to strengthen the investigatory and supervisory powers of the Authority for Consumers and Markets to ensure compliance with Regulation 2022/1925 (Digital Markets Act), particularly to ensure that gatekeepers in the digital market fulfil their legal responsibilities.**

**Netherlands: mergers - merger control (Case Comment). Forfatter: Jotte Mulder.**

Notes the Dutch Competition Authority ruling in *RTL Group SA / Talpa Network BV*, prohibiting a proposed merger in the media sector following a second phase review, on the ground that it would create a dominant undertaking and impede competition, notwithstanding the commitments given by the parties.

**Romania: mergers - merger control (Case Comment). Forfatter: Cristina de Jonge.**

Notes the Romanian Competition Council ruling in *Automobile Bavaria SRL / AB Immo Timisoara SRL / XCars Store SRL / AMG Estates SRL* approving a partial merger in the car sales and parts sector on the basis that no serious barriers to competition were raised, despite horizontal overlaps.

**Romania: mergers - merger control (Case Comment). Forfatter: Cristina de Jonge.**

Notes the Romanian Competition Council ruling in *Paval Holding SRL / CA IMMO Group*, approving a sole control takeover of the Romanian corporate assets of a group active in the market for leasing modern office buildings, on the basis that no serious barriers to competition were created.

**Slovenia: anti-competitive practices – judgments. Forfatter: Eva Škufca.**

Discusses the revised procedural rules applicable to the Slovenian Competition Protection Agency when conducting antitrust proceedings, and their interpretation by the courts in several cases clarifying the scope of an investigated body's duty to co-operate with the Agency.



### **South Africa: mergers - merger control Richardt Van Rensburg.**

Examines the changing approach of the South African Competition Commission to public interest assessments of proposed mergers under the Competition Act 1998 s.12A, specifically with regard to whether they will increase ownership levels by historically disadvantaged persons (HDP) and workers.

### **Turkiye: mergers - merger control (Case Comment). Forfatter: Gönenç Gürkaynak, Esq.**

Notes the Turkish Competition Board ruling in ENI SpA / NewCo, unconditionally approving a merger in the gas pipeline sector on the basis that it would not substantially reduce effective competition. Details the investigation into whether horizontal or vertical overlaps existed.

### **US: anti-competitive practices – enforcement. Forfatter: Anthony P. Badaracco.**

Notes the increased efforts of the US Department of Justice to enforce the prohibition on corporate officers and directors concurrently serving on competitors' boards under the Clayton Act 1914 s.8. Details the purpose of the rule and the size thresholds above which the prohibition applies.

## **Artikler fra European Competition Journal**

**Vol. 19, Issue 2, August 2023**

### **The antitrust privacy dilemma. Forfatter: Carugati, Christophe.**

Antitrust cases related to privacy are on the agenda of many competition authorities, including Europe and the United States. Antitrust and privacy is thus "one of the big topics of the year", as stated by the former President of the French competition authority. While some antitrust cases concern a reduction in privacy protection, others concern an increase in privacy protection. In other words, user privacy can decrease or increase due to alleged anticompetitive practices. An antitrust privacy dilemma? From a law and economics standpoint, the paper solves this dilemma and proposes a new way of resolving antitrust cases related to privacy. Section 2 analyses the dilemma. It proposes an analytical framework. Section 3 proposes a new way of resolving cases. It suggests a coordinated participative approach with competition and non-competition regulators and stakeholders to address competition and privacy concerns with tailored remedies to what is necessary without eliminating pro-privacy effects.

### **From monocle to spectacles: competition for data and "data ecosystem building". Forfatter: van de Waerdt, Peter J.**

"Data ecosystem" companies on the digital market are unique in that they attain market power through their combination of personal data across many markets. Due to strong network effects of personal data, exploited on a conglomerate level, competition has moved beyond competition on the market and even beyond competition for the market: there is now competition for data. Consequently, we must reconsider not only the traditional concept of market power and market definition, but even the competitive analysis of alleged abuses. Therefore, the Commission's singular focus on anti-competitive foreclosure does not do justice to the complex competitive effects of data ecosystems' conduct. Only by fundamentally integrating competitive assessment with personal data protection can we understand data ecosystems and their role in the digital landscape. In order to fully capture the anti-competitive effects and harm done to consumer welfare, we must consider "data ecosystem building" as its own theory of harm.

### **Big tech's acquisition challenge to EU merger control. Forfattere: Hutchinson, Christophe Samuel; Treščáková, Diana; Berdnikova, Anna Alexandrovna; Samorodeskii, Dmitry Sergeevich; Lobanov, Dmitry Igorevich og Semtsiva, Stanislava Igorevna.**

In recent years, there has been a tidal wave of merger filings involving large digital firms acquiring low turnover but high value start-ups. The vast majority of those transactions have flown under the radar of EU and National Competition Authorities and, among the few which have been reviewed, none has been blocked. Competition scholars wonder whether there has been a systematic bias towards under-enforcement against acquisitions of start-ups by already dominant tech firms. Some Member States are calling for a reform of the EU merger control's notification system and an adaptation of the substantive test to effectively address cases of potentially predatory acquisitions.

### **Methods of relevant product market delineation in antitrust cases: a critical survey. Forfatter: Oikonomou, Aikaterina.**

The main purpose of this study is to properly identify the relevant product markets in the Greek milk sector. For this reason, we rely on several quantitative techniques to draw robust findings regarding relevant product market delineation. The empirical analysis reveals that there is a single relevant product market for milk in the Greek territory. This means



that the market participants can easily create their own distribution network (non-blocking industry). The findings of this study support that the market segments in the Greek milk sector are highly fragmented and there are several competitors in the industry. Moreover, competition intensity in the Greek milk sector between brands guarantees that effective competition cannot be hindered by possible anti-competitive behaviour of the market participants.

**Who (and why) gets cited by the Commission? The role and quality of expert knowledge in Google antitrust saga. Forfatter: Mazur, Joanna.**

The aim of this article is to examine the role that expert knowledge plays in the Commission's decisions concerning digital economy. I propose a typology of functions served by these types of sources based on an analysis of references in the Commission's decisions against Google: first, providing evidence about the history of technological development and the changes on digital markets; second, explaining the way digital technologies and markets work; third, justifying authoritative claims about digital technologies and digital markets' characteristics; and fourth, illustrating the story with data on the usage of digital technologies and the shape of digital markets. While these types of sources are important in building "the body of evidence" which helps the Commission to tell the story of competition harm in the area of digital economy, there are situations in which their quality raises concerns in the light of the requirements for evidence.

**Auto cartels and the challenges they pose in private enforcement: scania cartel case. Forfattere: Khani Saatlou, Aydin Mehdi og Tajarlou, Reza.**

So far, there have been several studies conducted on the subject of automotive cartels, and the majority of the studies you see focus exclusively on cartels. Collusion in the automotive industry was relatively uncommon in the past. However, due to the increasing level of competition in this industry, auto manufacturers are increasingly colluding in a number of areas to survive. The Scania cartel case provided us with a clearer understanding of the phenomenon of automotive cartels, as well as how EU competition law is applied to cartel member's violations and how the European Commission approaches complex infringements. Due to this case, it becomes apparent that there are many legal loopholes within the private enforcement sector, and that victims also face a number of challenges when seeking damages from auto manufacturers.

**Chicago, Harvard, Freiburg, or considerations for Single Market integration? Analysis of theoretical and ideational insights underpinning the European Commission's merger control with exponential random graph models. Forfatter: Bartalevich, Dzmitry.**

The European Commission has central authority over the European Union's merger control. It is therefore responsible for making important merger decisions that are bound to affect vast markets and EU and non-EU market players, with significant implications for wider economic, political, and societal segments. These decisions are often informed by theoretical and ideational insights from various schools of competition analysis and economic theories, or they are guided by non-economic objectives. This article analyzes merger cases cleared under the current European Union Merger Regulation (EUMR) in an attempt to reveal whether the following insights underpin the Commission's merger control: the Chicago School, Harvard School, Freiburg School, and considerations for Single Market integration. The analysis is conducted by employing an exponential random graph model (ERGM) approach.

**Antitrust shrugged? Boycotts, content moderation, and free speech cartels. Forfatter: Polański, Jan.**

Antitrust and free speech may seem to have little in common. Yet, they may start interacting more often as Big Tech undertakings might have incentives to coordinate their content moderation policies and collectively suppress unwanted information. Such coordination might be desirable, but in some cases it may lead to antitrust and free speech concerns. Against this backdrop, the article attempts to provide a framework to analyse this type of cases from the point of view of European Union competition law. It identifies five types of agreements that may be entered into by undertakings and provides outlines on possible ways of approaching them. It concludes that while content moderation is often seen as a free speech issue, antitrust should not shrug off such concerns as out of its scope. Yet, it also suggests that these types of cases are not straightforward and that both more research and vigilance on the part of antitrust authorities might be advisable.





## Artikler fra Journal of Competition Law and Economics

Volume 19, Issue 2, June 2023

### **Does Enforcement of the Cartel Prohibition in Healthcare Reflect Public and Political Attitudes Towards Competition? A Longitudinal Study From the Netherlands. Forfattere: Wouter van der Schors og Marco Varkevisser.**

In market-based healthcare systems, due to the high and increasing degree of integration between healthcare providers and purchasers, the enforcement of the cartel prohibition is both important and ever more complex. Competition authorities operate independently, but their approach to enforcement may be influenced by the public and political context. Within the setting of the Dutch healthcare system, we study how the cartel prohibition was enforced between 2004 and 2020 and focus on whether a relationship with public and political attitudes towards competition in healthcare can be observed. Using both qualitative and sentiment analyses, we assessed 38 formal and informal documents issued by the competition authority, 126 written parliamentary questions and almost 1,500 newspaper articles. Our findings reveal that during the first half of the study period (2004–2012), ex-post punitive formal enforcement of violations of the cartel prohibition, such as market-sharing and price-fixing agreements, predominated. During the second half of the study period (2012–2020); however, the competition authority's focus seems to have shifted toward providing ex-ante informal guidance. We clearly observe negative public and political attitudes towards competition in healthcare as well as a distinct shift in enforcement of the cartel prohibition in Dutch health care. However, we are not able to test for a causal relationship between both observations.

### **Rivals' Exit and Vertical Merger Evaluation. Forfattere: Javier D Donna og Pedro Pereira.**

We discuss a subset of vertical mergers, where the exercise of market power and the efficiencies enabled by a vertical merger reduce rivals' profits, making rivals' exit a potentially serious concern. Rivals' exit can fundamentally alter the welfare analysis of vertical mergers due to the reduction in product variety to consumers and the reduction in the number of competitors that would otherwise exert downward pricing pressure. An exit-inducing vertical merger might reduce welfare even if it is a welfare-enhancing merger absent exit. We present a theoretical framework to analyze vertical mergers that focuses on the possibility and consequences of exit, discuss the antitrust implications for merger evaluation, and provide examples. We argue that the possibility of rivals' exit should be an integral part of the analysis of vertical mergers.

### **Competitive Neutrality: OECD Recommendations and the Australian Experience. Forfattere: Rhonda L Smith, Deborah Healey og Xue Bai.**

The OECD in May 2021 adopted a recommendation that governments "ensure competitive neutrality to the maximum extent practicable and unless overriding Public Policy Objectives require otherwise." This article discusses practical issues surrounding the formal implementation of competitive neutrality in a jurisdiction, using the well-established Australian framework as an exemplar. It illustrates the strengths and weaknesses of the Australian system and provides guidance to other jurisdictions in formulating their approaches to implementing the Recommendation. It demonstrates that implementation of competitive neutrality at a practical level is a complex exercise, which demands both strategic vision and detailed planning.

### **Modelling the Diffusion of the Deterrent Effects of Competition Policy. Forfattere: Adriaan Dierx, Fabienne Ilzkovitz, Beatrice Pataracchia og Filippo Pericoli.**

Through its competition policy interventions, the European Commission not only addresses infringements of EU competition law by the firms directly involved but also deters possible future anticompetitive behaviour by these firms and other market players. The present paper associates deterrence with the diffusion of information about the competition authority's interventions to market players. In the mixed-influence diffusion model developed below, competition policy interventions act as an external signal sent to market players. Interactions between market players, in particular through legal counsels and law firms, further propagate the interventions' deterrent effects. The focus of the model simulations is on interventions by the European Commission. The parameters of the mixed-influence diffusion model are calibrated using survey-based information on the order of magnitude of the deterrent effects of competition policy interventions and an assessment of the reputation of the European Commission as an enforcer of EU competition rules. On this basis, estimates of the deterrent effect of each individual intervention by the European Commission can be obtained. In addition, the sensitivity of the deterrent effects of competition policy interventions to the reputation of the competition authority and to the importance of interactions between market participants is analysed.

**The Cartel Trial: Issues of Dishonesty and Jury Nullification. Forfatter: Andreas Stephan.**

The case of R v Stringer and Dean provides a unique insight into issues of dishonesty and possible jury nullification in offences designed to control corporate misbehaviour. The jury were unconvinced of the defendants' dishonest state of mind in the first (and to date only) case to be tried under the UK's cartel offence. This was despite no attempt being made to dispute the existence of the cartel or present evidence in their defence. The paper asks whether the trial highlights flaws in the concept of dishonesty or reflects a broader problem of jury nullification in offences relating to corporate misconduct. It concludes that although dishonesty is unpredictable and can be easily challenged in the context of business misconduct, there is also a significant danger that juries question the legitimacy of treating cartels and other forms of business misconduct as crime, regardless of how an offence is designed.

**Antitrust Economics of Cryptocurrency Mining. Forfattere: Florian Deuflhard og C-Philipp Heller.**

The development of blockchain-based applications, to date mostly virtual currencies, touches many areas of law and economics. The most well-known applications of public blockchains rely on Proof of Work as a consensus mechanism in which miners compete to solve a cryptographic puzzle. We argue that economic tools for market definition may be adapted to delineate relevant cryptocurrency mining markets. Antitrust law can help to prevent network attacks and exclusion of transactions with lower fees by large miners. When multiple blockchains are part of the same market, the role of network effects in securing the leading position of more established cryptocurrencies can potentially lead to exclusionary behaviour.

## Artikler fra Journal of Antitrust Enforcement

Intet nyt.

## Artikler fra Competition Policy Brief

Intet nyt.

## Artikler fra Competition Merger Brief

Intet nyt.

## Artikler fra Journal of European Competition Law and Practice

Volume 14, Issue 3, April 2023

**Capabilities Checklist for Mergers with Nascent Competitors. Forfattere: Nicolas Petit og David Teece.****Protecting the Internal Market From Subsidisation With the EU State Aid Regime and the Foreign Subsidies Regulation: Two Sides of the Same Coin? Forfatter: Lena Hornkohl.**

Key Points:

- The Foreign Subsidies Regulation is meant to constitute a system for controlling third country subsidies equivalent to and is supposed to be inspired by EU State aid law.
- While some overlaps between the Foreign Subsidies Regulation and State aid law exist, the Foreign Subsidies Regulation largely departs from the concepts of State aid law, particularly regarding the legal test of distortions on the internal market, the balancing test, the procedures, and remedies.
- The approach taken with the Foreign Subsidies Regulation therefore does not create a level playing field on the internal market, causes frictions for international trade and hampers a distribution of subsidy control on the global level.

**Rights of Complainants Before the European Commission—a Critical Analysis. Forfattere: Malgorzata Kozak og Jacek Mainardi.**

Key Points:

- Handling of complaints remains one of the most vital issues in the management of the antitrust enforcement authority.



- The discretion of the authorities and their effectiveness should be balanced not only with the due process rights of incriminated undertakings but also with the fundamental rights of complainants, especially the right to the effective remedy.
- We reconstruct the standard of the right to effective remedy as prescribed by the Charter of Fundamental Rights and apply it to the context of the antitrust proceedings.
- We will draw conclusions relevant for the evaluation of the Regulation 1/2003.

**Extension of EU Legal Professional Privilege: Case C-694/20 Orde Van Vlaamse Balies. Forfattere: Enrico Salmini Sturli og Thibault Henry.**

The scope of communications covered by EU legal professional privilege has been significantly widened to include not only communications relating to current or future legal proceedings, but also general legal advice.

**A Restriction on the Commission's State Aid Enforcement in Fiscal Aid Cases: Fiat and Ireland V Commission. Forfatter: Tim Van Helfteren.**

The Court of Justice set aside the judgment of the General Court and annulled the Commission decision which found that Luxembourg granted State aid to Fiat, holding that the Commission failed to take into account the arm's length principle as incorporated in Luxembourg tax law when defining the reference system as part of its analysis concerning the existence of a selective advantage under Article 107(1) TFEU.

**Reform of Kosovo Competition Law: Closer to EU Competition Law. Forfatter: Gentjan Skara.**

Key Points:

- This article outlines the main changes introduced by Kosovo Competition Law as a result of Kosovo's aspiration to join the EU.
- This article analyses main aspects of the Kosovo Competition Law, which entered into force on 22 June 2022, and which aligns Kosovo's competition law with EU competition *acquis*.
- This article concludes that the Kosovo competition rules are much closer with the EU competition *acquis*; however, ensuring proper implementation remains a challenge.

**The Earlier the Better? Assessing Early Entry Agreements in the Pharmaceutical Sector. Forfattere: Alexandre Carbonnel og Connie Lee.**

Key Points:

- Agreements between originator companies and generic companies regarding generic entry are common in the pharmaceutical industry.
- Although antitrust scrutiny has so far mainly concerned reverse payment settlements arising in the context of patent disputes, recent research shows that even agreements allowing for early generic entry may, under specific circumstances, harm consumers.
- We discuss relevant factors for assessing the incentives of originators and generics to reach an early entry agreement and their effects on consumers.
- We also highlight the antitrust risk associated with early entry agreements and the theories of harm that may be defined in this context.

## Artikler fra World Competition

Volume 46, Issue 2, June 2023

**Is iFood Starving the Market? Antitrust Enforcement in the Market for Online Food Delivery in Brazil. Forfatter: Beatriz Kira.**

This article examines the decisions taken by the Brazilian Competition Authority, the Administrative Council for Economic Defence (CADE) in two antitrust cases related to the dominant food delivery platform iFood, one merger review and one investigation into exclusive dealing agreements. Through an in-depth examination of the case documents, this article uncovers the evolution in CADE's comprehension of the competition dynamics in multi-sided digital markets, while also revealing gaps and inadequacies in the authority's substantive and procedural antitrust enforcement. Based on the findings, the article draws lessons that can help strengthen the authority's approach to digital platform cases in the future. Firstly, CADE must adapt its steps of analysis and develop new theories of harms that are better tailored to the characteristics of multi-sided platforms. Secondly, CADE should conduct more rigorous merger reviews that take into account the wider impact of dominant platforms' business strategies on the ecosystem of players orbiting them. Thirdly,



the article highlights the importance of the authority building its capacities and expertise to detect competition problems from an early stage, design effective remedies, and ensure these remedies are enforced effectively. These recommendations underscore the significance of continuously updating the enforcement framework and enhancing the capabilities of the competition authority to keep pace with the rapidly evolving digital economy.

**Moderating Globalization: Is There a Role for Antitrust Law? A Comparison of the Relevance of Entry, Expansion and Imports in US and EU Merger Proceedings. Forfatter: Paul Friederiszick.**

This paper attempts to locate the issue of innovation and foreign entry, in particular new entrants from China, in recent US and EU merger decisions. In the first part, the paper examines to what extent US and EU authorities considered foreign entry in recent major merger decisions such as Bayer/Monsanto, Dow/DuPont and ChemChina/Syngenta. The outcome of this short analysis shows that the EU Commission has in recent years begun to accept the argument of foreign entry, in particular from China, as long as the market shares of the merging parties are not too high. The US has not explicitly discussed the question of foreign entry in the above-named decisions. However, in the case Whirlpool/Maytag the US authorities accepted, despite high market shares of the parties, the argument of foreign entry and approved the merger. With regards to innovation, entry into future product markets is not considered favourable to the merging parties by the EU Commission. 'Innovation competition' or early 'pipeline products' is rather used as an argument to demonstrate that the merging parties hold market power in product markets in the future. Based on the selected case law, the US authorities, by contrast, did recognize entry into future product markets as an argument in favour of the merging parties.

In its second part, the paper looks at the pros and cons of forming 'national champions' and discusses competition law enforcement in light of the numerous and politically powerful Chinese state-owned enterprises (SOEs).

**Anticompetitive Financial Leverage: In Search of a Theory of Harm. Forfatter: Paolo Siciliani.**

The corporate capital structure of firms has come under scrutiny by competition authorities lately, especially with respect to the role of financial investors such as private equity firms. The main concern seems to be that highly indebted firms are not only less resilient, but also, perhaps wilfully, less able to compete. However, a clear theory of anticompetitive harm underpinning competition law enforcement seems to be lacking. This article tries to fill this gap by first reviewing the extant theoretical and empirical literature on how debt affect firms' strategies and, thus, market outcomes. The general consensus is that a high level of debt induces a weakening of the competitive stance of the borrowing firm, which can be exploited by financially-unconstrained rivals. Therefore, the unilateral adoption of a high level of financial leverage is irrational unless it is reciprocated by rival firms. Ultimately, though, this theory of harm does not provide a robust basis for enforcement – on either an ex-ante basis under merger control, or ex-post basis under competition law – due to the existence of legitimate alternative explanations for the use of financial leverage.

**Responsive Competition Law Enforcement: Lessons from the Greek Competition Authority. Forfatter: Stavros Makris.**

According to the conventional view competition law differs from regulation in that it is applied ex post, through proscriptions, and in a 'crime-tort' fashion. From this angle, when competition enforcers intervene ex ante, in a prophylactic manner, and employ prescriptive tools, they inappropriately transform competition law into 'regulatory antitrust'. The present study challenges this view arguing that modern competition law intervention has moved beyond the crime-tort enforcement model and aspires to be 'responsive'. This means that modern enforcers intervene ex ante and ex post, use prescriptive and proscriptive tools, and impose restorative and prophylactic remedies to ensure that the law is applied effectively. The works of the Greek Competition Authority offer a case study to illustrate this point. This authority has been utilizing a plurality of tools and enforcement strategies to enhance compliance and deterrence, and apply the law responsively. However, enforcement that aspires to be responsive may create problems of over-enforcement or under-enforcement, be vulnerable to regulatory failures or undermine Rule-of-Law principles. For this reason, this study draws on responsive regulation theory to make fourteen recommendations on how to address these challenges and ensure truly responsive enforcement.

**A Paradigm Shift in Indian Competition Regime Vis-A-Vis Restructured Adjudicatory Institution. Forfattere: Minakshi Ghosh og Souvik Chatterji.**

In the recent past Indian government policy relating to the reform of the tribunals has raised debate amongst researchers, policy makers, judiciary and stake holders. However, this reform was never called for in respect of Indian competition law, despite many instances of discord between the relevant adjudicatory and regulatory bodies. Significant time and effort is required to develop an appropriate jurisdiction specific antitrust regime, which is distinct from that required in respect of other sectoral tribunals. Any structural reform pertaining to a developing competition jurisdiction can have a serious impact on its performance and the disposal rate of competition cases.



In this paper a substantial performance analysis has been carried out from the perspective of the pre and post restructured adjudicatory institution of competition regulatory body. Ultimately, it is concluded that the reform has resulted in a steady reduction in the performance of the Indian competition enforcement system, thus calling for reconsideration of the reestablishment of a dedicated competition law adjudicatory institution.

**Book Review: Healthcare, Quality Concerns and Competition Law: A Systematic Approach, Theodosia Stavroulaki. Hart Publishing, Oxford, England: 2023. Forfatter: Spencer Weber Waller.**

## Artikler fra Antitrust Law Journal

Volume 85, Issue 1

**MERGER ENFORCEMENT STATISTICS: 2001-2020. Forfattere: BILLMAN, LOGAN SALOP, STEVEN C.**

The article presents the discussion on merger enforcement data for 2001–2020 using a database created by the authors. Topics include goal of creating the database providing further information on merger enforcement informing the and spur additional analysis; and creating a concentration safe harbor as well as a critical HHI level for applying the structural presumption.

**ANTITRUST AND TRADEMARK SETTLEMENTS. Forfattere: HEMPHILL, C. SCOTT og HOVENKAMP, ERIK.**

The article presents the discussion on leading online platforms not charging a monetary fee to consumers. Topics include ads likely to confuse consumers about the source of a product are actionable as trademark infringement; and competitors attempting to invoke trademark law for justifying a restraint on competitive advertising.

**ENTRY AND MERGER ANALYSIS. Forfatter: KAPLOW, LOUIS.**

The article presents the discussion on economic analysis of horizontal mergers. Topics include guide research, formulate policy, and analyzing proposed mergers posing anticompetitive threats; and discouraging entry for buyout, raising total welfare boosting the incumbent monopolists expected profits while modestly reducing consumer welfare.

**ANTITRUST TIME TRAVEL: ENTRY & POTENTIAL COMPETITION. Forfattere: SULLIVAN, SEAN P. og HENRY C.**

The article presents the discussion on connections between competition in the past, present, and future through evidence. Topics include involving predictions about the future competitive significance of rivalries not in existence at the time of evaluation; and championing the ability of potential competition to curb market power abuses by trusts and industry incumbents.

**THE OVER-DETERRENCE RISKS OF PRICE SQUEEZE TESTS IN REGULATED INDUSTRIES. Forfatter: WEN-JEN TSAY.**

The article presents the discussion on Antitrust concerns. Topics include VIM renders the product or services of the downstream competitors unprofitable for the efficient competitors exit the downstream market; and regulated in the upstream market most notably the telecommunications industry and other newly liberalized networks such as gas, electrical, and postal services.

## Artikler fra Antitrust Bulletin

Intet nyt.

## Artikler fra Competition Law and Policy Debate

Intet nyt.

## Artikler fra Competition Law Scholars Forum

Intet nyt.



## Artikler fra Journal of Regulatory Economics

Intet nyt.

## Artikler fra International Review of Law and Economics

Intet nyt.

## Artikler fra Competition Law Journal

Intet nyt.

## Artikler fra European Competition and Regulatory Law Review

Intet nyt.

## Artikler fra Communications Law

Intet nyt.

## Artikler fra Computer and Telecommunications Law Review

### Issue 2 (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 Österreichische Post AG (Case Comment). Forfatter: Robyn B. Annetts.**

Comments on RW v Österreichische 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 2 (vol.16) 2023****A certified muddle: the costs of collective proceedings. Forfatter: Ed Coulson.**

Discusses the allocation of costs at the stage of certification of a collective proceedings order in a competition law case, reviews Competition Appeal Tribunal cases, and outlines five improvements which the tribunal could make.

**Silver bullet or rubber bullet? On torpedoes in competition litigation. Forfatter: Frank Kroes.**

Considers how competition defendants can use applications for declaratory relief to take advantage of the lis pendens rules and make sure that the claim has to be litigated in a favourable jurisdiction, and examines obstacles to using such applications successfully.

**Factual presumption that price-related anti-competitive information exchange leads to price increases facilitates cartel damages claims in Germany (Case Comment). Forfatter: Dr Tilman Makatsch.**

Comments on the German judgment in Bundesgerichtshof (Schlecker) on the factual presumption that an information exchange which infringed competition law caused a price increase, in private proceedings to enforce competition law.

**On procedural costs and estimates of harm in follow-on damages actions: the CJEU clarifies the rules in Traficos Manuel Ferrer SL v Daimler AG (Case Comment). Forfatter: Francesco Rizzuto.**

Comments on Traficos Manuel Ferrer SL v Daimler AG (C321/21) (ECJ) on costs in the national court in a private enforcement action following a finding of competition infringement by a truck cartel.

**India: imposition of penalty by CCI on Google for abuse of dominant position has been upheld by the appellate authority (Case Comment). Forfatter: Suchitra Chitale.**

Reports on Google's unsuccessful appeal against a finding of abuse of dominance in India for mobile operating systems, app store, web search and video hosting, and some of the remedies which Google was expected to implement.

**Arbitration/ADR: German Federal Constitutional Court finds that ISU's imposition of CAS arbitration obligation constitutes an abuse of dominance under German competition law (Case Comment). Forfatter: Gordon Blanke.**

Comments on the German judgment in Bundesverfassungsgericht (Pechstein v International Skating Union) (1 BvR 2103/16) on abuse of dominant position by an agreement between a sporting organisation and sportsperson which provided for Court of Arbitration for Sport (CAS) arbitration of any disputes without the right to a hearing in public.

## Andre udenlandske artikler

Intet nyt.

## 5 | NYT FRA KONKURRENCEGRUPPEN

**Post Danmark – More than just another serial infringer. Forfatter: Christian Bergqvist.**

New Paper out on Post Danmark: To members of the competition law community Post Danmark, the Danish Postal incumbent, should be a household name as the source of epic cases such as Post Danmark I and Post Danmark II. However, there are other and much deeper lessons to learn from Post Danmark's struggle to acclimate to a market void of special rights and remain compliant regarding Article 102. While tempting to label Post Danmark as a serial infringer, it is fundamentally a company that too late accepted letters as a dying business case and the unsustainability in viewing other services as marginal that could be priced accordingly. The drastic fall in letter volumes has made this untenable, explaining the company's eminent financial collapse and persistent clashes with competition law. Studies of Post Danmark's problematic relationship with competition law offer insight into the treatment of multi-product companies under competition law and the need to police their allocation of costs and the consequences of failing in this. The latter is not



only persistent infringements of Article 102 but also the eventual financial collapse of the company. By virtue of this, Post Danmark II might actually be the superior ruling over Post Danmark I, and not versa-versa as commonly voiced within the competition law community. Christian Bergqvist outlines this in a new paper that he will officially present at the forthcoming ASCOLA conference in Athens from 29 June to 2 July. Comments are welcome.

[Læs mere](#)

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