



Konkurrenceretlig Nyhedsoversigt nr. 82 / dækkende 18. juni 2023 - 18. juli 2023

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1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Konkurrence- og Forbrugerstyrelsen indstiller en konkurrencesag mod BEC Financial Technologies. Datacentralen har blandt andet halveret sin udtrædelsesgodtgørelse, så de konkurrencemæssige betænkeligheder er fjernet. Konkurrencerådet greb i marts ind i en parallel sag mod Bankdata.

Konkurrence- og Forbrugerstyrelsen lukker en konkurrencesag, hvor styrelsen har haft konkurrencemæssige betænkeligheder i relation til BEC's vilkår for medlemmers udtrædelse af BEC.

BEC har 25. april 2023 ændret sine vedtægter, så foreningens udtrædelsesgodtgørelse blandt andet sættes ned fra 5 til 2,5 års omsætning.

Vedtægtsændringen imødegår de konkurrencemæssige betænkeligheder, som Konkurrence- og Forbrugerstyrelsen har haft. Betænkelighederne gik blandt andet på, at udtrædelsesgodtgørelsen kunne begrænse konkurrencen ved at afholde pengeinstitutterne fra at forlade BEC til fordel for konkurrerende leverandører. Datacentralerne kan således have været begrænset i at konkurrere fuldt ud om at have den bedste pris, kvalitet eller være de dygtigste til at innovere. Styrelsen har ikke taget stilling til, om BEC har overtrådt konkurrenceloven.

BEC Financial Technologies er en datacentral, som leverer totale it-løsninger til sine medlemmer. Selskabet er ejet af 18 danske pengeinstitutter, der samtidig er medlemmer af og kunder hos selskabet.

I marts 2023 godkendte Konkurrencerådet et tilsagn fra Bankdata, som blandt andet forpligtede Bankdata til at halvere sin udtrædelsesgodtgørelse. Samtidig opfordrede Konkurrencerådet de øvrige datacentraler til at genoverveje deres vedtægter.

[Læs mere](#)

Dato: 06.07.2023

Konkurrence- og Forbrugerstyrelsen modtog den 5. juli 2023 en forenklet anmeldelse af en fusion mellem Zeppelin Danmark A/S ("Zeppelin") og CP ApS ("CP").

Transaktionen medfører, at Zeppelin erhverver 100 pct. af anparterne i CP. Zeppelin erhverver dermed enekontrol over CP.

[Læs mere](#)

Dato: 06.07.2023

Konkurrence- og Forbrugerstyrelsen modtog den 27. juni 2023 en forenklet anmeldelse af en fusion mellem Sparekassen Danmark og Totalbanken A/S ("Totalbanken"), samt Sparekassen Danmarks erhvervelse af enekontrol over Stonehenge Fondsmæglerskab A/S ("Stonehenge").

Ved transaktionen foretages en selskabsretlig fusion af Sparekassen Danmark og Totalbanken med Sparekassen Danmark som fortsættende selskab. Parterne ejer hver især minoritetsandele i Stonehenge før fusionen. Som følge af den forøgede ejerandel i Stonehenge erhverver Sparekassen Danmark negativ enekontrol over Stonehenge ved transaktionen.

[Læs mere](#)

Dato: 30.06.2023

Konkurrence- og Forbrugerstyrelsen modtog den 13. juni 2023 en forenklet anmeldelse af fusion, hvor Nordic Climate Group AB's erhverver enekontrol over SA-AL Køleteknik ApS.

Transaktionen indebærer, at Nordic Climate Group AB, via et nyoprettet selskab Nordic Climate Group Denmark A/S, erhverver enekontrol over SA-AL Køleteknik ApS.

[Læs mere](#)

Dato: 22.06.2023



Nyt fra Konkurrencerådet

Faste priser på Autobutlers platform.

Konkurrencerådet har afgjort, at Autobutler har overtrådt konkurrencelovens forbud mod konkurrencebegrænsende aftaler. Rådet påbyder virksomheden at ophøre med adfærden og afstå fra lignende adfærd fremover.

Autobutler driver en udbudsportal på nettet, hvor bilejere, der skal have repareret eller vedligeholdt deres bil, kan indhente tilbud fra forskellige værksteder.

Autobutler har haft aftaler om faste priser på en række bestemte ydelser med flere hundrede værksteder. Aftalerne har været indgået i bestemte perioder i tidsrummet fra minimum marts 2016 til oktober 2021. Det gælder mindst ni forskellige ydelser: Aircondition service med eller uden rens, basisservice, biltjek, bremse, hjulskifte med eller uden dækopbevaring, olieskift og synstjek.

Det enkelte værksted har kunnet vælge, om det ville være med på den faste pris i en bestemt periode og tilmelde sig hos Autobutler. Det har svækket den indbyrdes konkurrence mellem værkstederne og kan have betydet, at forbrugerne har betalt en højere pris, end de ellers ville have gjort.

I januar 2021 modtog Konkurrence- og Forbrugerstyrelsen en henvendelse fra en bilejer, der havde modtaget 10 enslydende tilbud i forbindelse med en forespørgsel på Autobutlers platform. Efterfølgende har Konkurrence- og Forbrugerstyrelsen gennemført en kontrolundersøgelse hos Autobutler, hvor styrelsen blandt andet bevissikrede Autobutlers database med oplysninger om alle bud givet i en periode på over ti år. Styrelsen har dermed kunnet identificere de bud, som er givet med faste priser.

Konkurrencerådet har afgjort, at Autobutlers aftaler har været egnet til at begrænse konkurrencen. Konkurrencerådet har samtidig besluttet, at Konkurrence- og Forbrugerstyrelsen skal fortsætte sagen med henblik på bødeudstedelse.

[Læs mere](#)

Dato: 28.06.2023

Konkurrencerådet har godkendt, at Semler Mobility Retail A/S' overtager Car Holding A/S.

Konkurrencerådet har godkendt, at Semler Mobility Retail A/S, der er en del af den danske bilkoncern Semler Gruppen, overtager Car Holding A/S, herunder selskaberne Autohuset Glostrup A/S, Autohuset Glostrup-Valby A/S, Autohuset Frederikssund A/S, Autohuset Ringsted A/S og Kronborg Auto A/S.

Begge selskaber sælger gennem deres forhandlere personbiler og lette erhvervskøretøjer. Desuden driver de værksteder autoriseret af bilmærkerne Volkswagen, Audi, Škoda og Seat.

Det har været nødvendigt at undersøge fusionens betydning for markederne nærmere, herunder om den kunne hæmme konkurrencen i et nærområde, særligt omkring Helsingør.

Konkurrence- og Forbrugerstyrelsens markedsundersøgelse har dog vist, at fusionen ikke vil hæmme konkurrencen betydeligt. Det skyldes blandt andet:

- at kunderne har mulighed for at vælge flere andre autoriserede værksteder inden for de relevante bilmærker såvel som en lang række uafhængige værksteder.
- at kunderne er villige til at køre længere efter et værksted, hvis priserne stiger.
- at andre autoriserede værksteder kan udføre de samme reparations- og vedligeholdelsesydelse. Det samme gælder stort set for de uafhængige værksteder, som har erfaring med de fleste ydelser.
- at store erhvervskunder med rammeaftaler også efter fusionen har flere alternativer, og at rammeaftalerne typisk ikke er mærkespecifikke.

[Læs mere](#)

Dato: 28.06.2023

Nyt fra Konkurrenceankenævnet

Intet nyt.



Nyt fra domstolene

Civilretlige afgørelser

Intet nyt.

Afgørelser om bøder

Intet nyt.

Lovforslag i høring

Forslag til Lov om håndhævelse af Europa-Parlamentets og Rådets forordning om et indre marked for digitale tjenester.

Formålet med lovforslaget er at supplere Europa-Parlamentets og Rådets forordning (EU) 2022/2065 af 19. oktober 2022 om et indre marked for digitale tjenester og om ændring af direktiv 2000/31/EF (i det følgende benævnt "DSA-forordningen"), hvor dette er påkrævet for at sikre nødvendige og tilstrækkelige gennemførelsesforanstaltninger så vidt angår tilsyn og håndhævelse.

Lovforslaget indeholder bestemmelser om udpegning af uafhængige tilsynsmyndigheder - såkaldte kompetente myndigheder og en koordinator for digitale tjenester.

Lovforslaget tillægger tilsynsmyndighederne de undersøgelses- og håndhævelsesbeføjelser, der fremgår af DSA-forordningen.

Lovforslaget indeholder endvidere bestemmelser om bødestraf for overtrædelse af DSA-forordningen, den foreslåede lov eller regler fastsat i medfør af loven.

Endelig indeholder lovforslaget bestemmelser om tilsynsmyndighedernes mulighed for at vedtage administrative bødeforelæg, regulering i adgang til aktindsigt efter offentlighedsloven og forvaltningsloven, begrænsninger i oplysningspligt og indsigtsret efter databeskyttelsesforordningen, visse bestemmelser om anvendelse af digital kommunikation samt krav til myndigheders påbud overfor formidlingstjenester omfattet af det danske tilsyn.

[Læs mere](#)

Dato: 30.06.2023

Ny lovgivning

Intet nyt.

Nyt fra Ankestyrelsen

Tilsynsudtalelse om Thisted Kommunes salg af et tidligere plejehjem.

Ankestyrelsen vurderer, at Thisted Kommune ikke havde hjemmel i udbudsbekendtgørelsens § 6, stk. 2, til at sælge den omhandlede ejendom til en tilbudsgiver, der ikke havde afgivet det højeste bud. Styrelsen lægger vægt på, at kommunen ikke derved varetog en saglig kommunal interesse.

Ankestyrelsen finder desuden, at kommunen ved salget ikke levede op til forpligtelsen til at sikre sig varetagelsen af en saglig kommunal interesse, f.eks. ved en aftale om at køber forpligtede sig til en bestemt anvendelse.

Ud fra de foreliggende oplysninger er det Ankestyrelsens opfattelse, at Thisted Kommune kan have solgt ejendommen til en pris under markedsprisen. Derved kan kommunen have lidt et tab, ligesom der kan være ydet støtte til køberen.

De foreliggende oplysninger er ikke tilstrækkelige til, at Ankestyrelsen kan vurdere, om kommunen er påført et tab som en påregnelig følge af beslutningen om at sælge ejendommen til næsthøjstbydende.



Ankestyrelsen beder kommunalbestyrelsen i Thisted Kommune om inden to måneder at oplyse, hvad denne udtalelse giver kommunalbestyrelsen anledning til. Styrelsen beder særligt kommunalbestyrelsen redegøre for, hvad markedsprisen for ejendommen må antages at have været på salgstidspunktet.

Ankestyrelsen beder desuden kommunalbestyrelsen redegøre for, om kommunen har lidt et tab ved salget. Kommunalbestyrelsen bedes i den forbindelse inddrage det forhold, at kommunen havde modtaget et højere bud. Kommunalbestyrelsen bedes desuden redegøre for betydningen af oplysningen om, at kommunen ved salget sparede tomgangsomsomkostninger og herunder, om et salg til højstbydende tilsvarende ville have sparet kommunen for tomgangsomsomkostninger.

Når kommunalbestyrelsens bemærkninger foreligger, vil Ankestyrelsen vurdere, om der er anledning til at foretage videre.

[Læs mere](#)

Dato: 22.05.2023

Andet

Intet nyt.

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust

Commission decides to refer ESTONIA to the Court of Justice of the European Union for failing to transpose ECN+ Directive.

The Commission decided to refer Estonia to the Court of Justice of the European Union for failing to fully transpose the ECN+ Directive (Directive (EU) 2019/1) into national legislation.

The ECN+ Directive empowers national competition authorities to be more effective enforcers of EU antitrust rules by providing them with the necessary guarantees of independence, resources and the appropriate fining and enforcement tools, such as decision-making powers, effective leniency programmes and mechanisms for mutual assistance.

Member States had to adopt and publish the necessary measures to ensure the full transposition of the ECN+ Directive by 4 February 2021. To date, Estonia has not communicated to the Commission any transposition measures. Therefore, the Commission has decided to refer Estonia to the Court of Justice of the EU.

The Commission will continue to verify that Member States have adopted all the necessary measures to transpose the ECN+ Directive.

[Læs mere](#)

Dato: 14.07.2023

Commission seeks feedback on commitments offered by Renfe over possible anticompetitive practices in online rail ticketing in Spain.

The European Commission invites comments on commitments offered by Renfe to address competition concerns over its alleged refusal to supply full content and real-time data to rival ticketing platforms operating in the Spanish online passenger rail ticket distribution market.

The Commission's investigation:



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. Renfe competes with third-party ticketing platforms, which are companies providing online ticketing services to customers through apps or websites (i.e. online travel agencies). These platforms need to have access to Renfe's full content and real time data to tailor their offers to the customers' needs.

On 28 April 2023, the Commission opened a formal investigation over 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) full real-time data related to its passenger rail transport services.

The Commission preliminarily found that Renfe is dominant in the Spanish markets for: (i) passenger rail transport services, where it operates as a passenger rail carrier; and (ii) online distribution of passenger rail tickets, where Renfe operates via its website, apps and mobility platform (i.e. dōcō).

According to the Commission's preliminary assessment, Renfe may have abused its dominant position in breach of Article 102 of the Treaty on the Functioning of the European Union ('TFEU') by refusing to provide to third-party ticketing platforms access to the full content and real-time data that it displays on its own digital channels. This refusal may have affected third-party ticketing platforms' ability to create their own product, to innovate and to effectively compete in the online distribution of passenger rail tickets.

[Læs mere](#)

Dato: 26.06.2023

Cartels

Intet nyt.

Mergers

Commission fines Illumina and GRAIL for implementing their acquisition without prior merger control approval.

The European Commission has fined Illumina and GRAIL approximately €432 million and €1,000 respectively, for implementing their proposed merger before approval by the Commission, in breach of EU merger control rules.

[Læs mere](#)

Dato: 12.07.2023

Commission clears acquisition of VMware by Broadcom, subject to conditions.

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of VMware by Broadcom. The approval is conditional upon full compliance with the commitments offered by Broadcom.

To address the Commission's competition concerns in the worldwide market for the supply of FC HBAs, Broadcom offered the following comprehensive access and interoperability commitments to Marvell and to any potential future entrant:

- Guaranteed access to the interoperability Application Programming Interfaces as well as to the materials, tools and technical support necessary for the development and certification of third-party FC HBAs. It also committed to ensuring (i) their interoperability with VMware's server virtualisation software; and (ii), third parties' access to this information at the same time as Broadcom.
- Guaranteed access to the source code for all of Broadcom's current and future FC HBA drivers through an irrevocable open source license. This would allow Marvell and any potential entrant to ensure interoperability with VMware's server virtualisation software and allow them to reuse and modify Broadcom's drivers for its own use.

Furthermore, Broadcom committed to implementing an organisational separation between the team working on Broadcom's FC HBAs and the team in charge of third-party certification and technical support. It also committed to ensuring protection of confidential information of Marvell and any potential entrant obtained in the context of the interoperability and certification processes.

[Læs mere](#)

Dato: 12.07.2023

**Commission opens in-depth investigation into the proposed acquisition of iRobot by Amazon.**

The European Commission has opened an in-depth investigation to assess, under the EU Merger Regulation, the proposed acquisition of iRobot by Amazon. The Commission is concerned that the transaction would allow Amazon to restrict competition in the market for robot vacuum cleaners ('RVCs') and to strengthen its position as online marketplace provider.

Commission clears Advent's acquisition of GfK subject to conditions.

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of GfK by Advent. The approval is conditional upon full compliance with the commitments offered by Advent.

To address the Commission's competition concerns, Advent offered to:

- Divest GfK's global consumer panel services business, with the exclusion of its operations in Russia (in order to facilitate the execution of the divestiture). This will enable any purchaser to run the divested businesses as a viable competitive force in the respective markets on a lasting basis.
- Provide transition services to the purchaser following the divestment, such as rebranding, access to IT services or access to support functions, for a transitional period of up to one year, which may be extended by up to two additional years.

These commitments fully address the competition concerns identified by the Commission. They remove the overlaps existing between NielsenIQ's and GfK's activities in the German and Italian markets for consumer panel services as well as the possibility for NielsenIQ to foreclose competitors in the markets for (i) retail measurement services for fast moving consumer goods and (ii) consumer panel services.

[Læs mere](#)

Dato: 04.07.2023

Commission sends Orange and MasMovil Statement of Objections over their proposed joint venture in Spain.

The European Commission has informed Orange and MasMovil of its preliminary view that their proposed joint venture may reduce competition in the retail supply of mobile and fixed internet services as well as of multiple-play bundles in Spain.

Orange and MasMovil are the second and fourth largest providers of retail mobile and fixed internet 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 network operators' infrastructure to offer mobile and fixed telecoms services to consumers.

[Læs mere](#)

Dato: 27.06.2023

State Aid**Commission approves modification of Dutch scheme to reduce greenhouse gas emissions.**

The European Commission has approved, under EU State aid rules, the modification of a Dutch scheme to reduce greenhouse gas emissions. The scheme will further contribute to achieving the Netherlands' energy and climate targets and the EU's strategic objectives relating to the European Green Deal.

The Netherlands notified the Commission of its plans to modify its Stimulerende Duurzame Energieproductie ('SDE++') scheme approved by the Commission in December 2020 (SA.53525) and amended in December 2021 (SA.100461). The modified scheme will run until 31 December 2025.

The SDE++ support scheme, with an overall budget of €30 billion, will contribute to the Netherlands' efforts to reduce its greenhouse gas emissions by 55 % by 2030 and to achieve climate neutrality by 2050, compared to 1990 levels.

The scheme supports a wide range of projects with different technological approaches, including projects based on renewable electricity and heat, low carbon and renewable gas, including hydrogen, and transport fuels.

The Netherlands made several amendments to the existing scheme. In particular, these amendments will guarantee a certain budget for supporting projects in areas where decarbonisation is currently relatively expensive but that offer promising green potential. A minimum budget of €750 million will be allocated in 2023 to projects in each of the following areas:

1. low-temperature heat, including geothermal, heat pumps and solar thermal;
2. high-temperature heat, including mainly electrification options for industry via heat pumps and electric boilers; and
3. molecules, which includes hydrogen production via electrolysis, production of biomethane, and advanced renewable transport fuels.



In addition, the scheme is amended to cover also (i) air water heat pumps for heating buildings, and (ii) the possible future electrification of offshore platforms.

[Læs mere](#)

Dato: 10.07.2023

Commission prolongs the possibility to grant operating aid to certain regional airports.

The European Commission has prolonged the possibility of granting operating aid to certain regional airports under the 2014 Guidelines on State aid to airports and airlines until 4 April 2027. The rest of the Guidelines remains applicable, without further changes.

The 2014 Guidelines on State aid to airports and airlines allow Member States to grant, subject to certain conditions, operating aid to regional airports with less than 3 million passengers a year, with a view to becoming cost-covering. The Guidelines set a ten-year transition period during which such aid can be declared compatible with the internal market. The transition period was set to expire on 4 April 2024.

The Guidelines also allow Member States to grant operating aid under a more favourable regime (i.e. with higher aid intensities) to airports with up to 700,000 passengers per year, which face more difficulties in becoming cost-covering. This possibility, initially foreseen for 5 years, had been extended in 2018 until the end of the transition period, in April 2024.

Since the adoption of the Guidelines in 2014, the European aviation sector has faced a major crisis as a result of the coronavirus pandemic and the health and travel restrictions adopted to contain its spread. The energy crisis that followed Russia's war of aggression against Ukraine further impacted the sector, notably by significantly increasing the energy costs of airport operators. In particular, regional airports have been facing lower revenues and higher costs, which had an adverse impact on their profitability. This could lead to closures of certain regional airports, which in turn may negatively affect connectivity across the EU.

In view of these exceptional circumstances, the Commission has decided to prolong by three years the transition period during which Member States can grant aid to cover the operating costs of regional airports, until 4 April 2027. This will allow Member States to support regional airports to become cost covering and profitable. The specific regime for airports with annual passenger traffic of up to 700,000 passengers is also extended until 4 April 2027.

[Læs mere](#)

Dato: 07.07.2023

Commission approves €350 million Spanish scheme under Recovery and Resilience Facility for developing electricity storage facilities.

The European Commission has approved, under EU State aid rules, a €350 million Spanish scheme, made available through the Recovery and Resilience Facility ('RRF'), to support the construction and operation of electricity storage facilities. The measure contributes to achievement of the European Green Deal targets, while helping to reduce dependence on Russian fossil fuels and fast forward the green transition in line with the REPowerEU Plan.

The scheme notified by Spain, with an estimated budget of up to €350 million, will be fully funded through the RRF following the Commission's positive assessment of the Spanish Recovery and Resilience Plan and its adoption by the Council.

The scheme, which will run until June 2026, aims to: (i) increase the share of renewable energy sources in the Spanish electricity system; (ii) decrease the deliberate reduction in renewable electricity generation at times of overproduction; and (iii) support the secure operation of the Spanish electricity system.

Under the scheme, the aid will take the form of investment grants for the construction of electricity storage facilities, with a joint capacity of approximately 1000 MW connected to the transmission or distribution network. The maximum amount of aid per beneficiary will be €50 million.

The projects will be selected through transparent and non-discriminatory bidding processes. The award of the contracts to the selected projects should take place before the end of 2024. The storage facilities should enter operation by the end of 2026 (except for pumped hydro storage, which may enter operation by the end of 2030).

[Læs mere](#)

Dato: 07.07.2023

**Commission opens in-depth investigation into €1 billion Danish and Swedish support measure to recapitalise SAS in context of coronavirus pandemic.**

The European Commission has opened an in-depth investigation to assess whether a Danish and Swedish recapitalisation measure of approximately €1 billion (SEK 11 billion) in favour of SAS AB ('SAS') is in line with EU State aid rules. The measure was initially approved on 17 August 2020 by the Commission under the State aid COVID Temporary Framework, but subsequently annulled by the judgment of the General Court of 10 May 2023.

On 11 August 2020, Denmark and Sweden notified to the Commission a recapitalisation measure of approximately €1 billion (SEK 11 billion) in favour of SAS. The recapitalisation by the two Member States comprises:

- Around SEK 2 billion (approximately €194 million) equity participation through the subscription of new shares, shared between Denmark and Sweden;
- Up to around SEK 3 billion (approximately €292 million) equity participation through the subscription and underwriting of new shares in a rights issue, shared between Denmark and Sweden; and,
- SEK 6 billion (approximately €583 million) newly issued State hybrid notes with the features of an equity instrument non-convertible into shares, of which SEK 2.5 billion (approximately €243 million) is allocated to Sweden and SEK 3.5 billion (approximately €340 million) is allocated to Denmark.

On 17 August 2020, the Commission approved the recapitalisation measure notified by Denmark and Sweden. The Commission found the measure to be compatible with EU State aid rules, in particular with Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU') and the conditions set out in the COVID Temporary Framework.

In its judgment of 10 May 2023, the General Court annulled the 2020 Commission's decision. The General Court considered that the recapitalisation measure granted to SAS did not meet one of the conditions set out in the COVID Temporary Framework. In particular, it ruled that the Commission failed to require the inclusion of a step-up mechanism (or an alternative mechanism with the same effect as a step-up mechanism) to ensure that Denmark and Sweden would receive a sufficient remuneration for their investment and that SAS would have incentives to buy back the shares acquired by Denmark and Sweden as soon as possible.

Following the General Court's judgment, the Commission will now carry out a more in-depth investigation in order to assess further the recapitalisation measure. The Commission aims at adopting a final decision on this case in the coming months.

At this stage, the Commission takes the preliminary view that the recapitalisation measure is in line with Article 107(3)(b) TFEU and the conditions set out in the COVID Temporary Framework, with the exception of the absence of a step-up mechanism (or an alternative mechanism with the same effect as a step-up mechanism).

The opening of an in-depth investigation gives Denmark and Sweden, as well as interested third parties, the opportunity to submit comments. It does not prejudice in any way the outcome of the investigation.

[Læs mere](#)

Dato: 04.07.2023

Commission approves €280 million Belgian measure to support ArcelorMittal decarbonise its steel production.

The European Commission has approved, under EU State aid rules, a €280 million Belgian measure to support ArcelorMittal Belgium ('ArcelorMittal') in partially decarbonising its steel production processes. The measure will contribute to the achievement of the EU Hydrogen Strategy, the European Green Deal and the Green Deal Industrial Plan targets, while helping to end dependence on Russian fossil fuels and fast forward the green transition in line with the REPowerEU Plan.

Belgium notified to the Commission a €280 million measure to support ArcelorMittal's project aimed to partially decarbonise its steel production in Ghent, where it operates two blast furnaces producing liquid hot metal from a mixture of iron ore, coke and limestone.

The aid, which will take the form of a direct grant and a soft loan, will support the construction of a direct reduction iron plant. Together with a new electric arc furnace, the plant will substitute one of the two existing blast furnaces. Natural gas, initially used in the energy* mix, will be gradually phased out of the steel production processes. Ultimately, the plant will be operated using renewable hydrogen and only complemented by low-carbon hydrogen if there is not sufficient renewable hydrogen available.



The plant is envisioned to start operating in 2026 and it is expected to produce 2.3 million tonnes of low-carbon direct reduced iron per year. Once completed, the project is expected to avoid the release of above 50 million tonnes of carbon dioxide. ArcelorMittal has committed to disseminate the technical know-how gained through the project.

[Læs mere](#)

Dato: 22.06.2023

Commission approves €1.1 billion Hungarian scheme to support electricity storage facilities to foster the transition to a net-zero economy.

The European Commission has approved a €1.1 billion (approximately HUF 436 billion) Hungarian scheme to support electricity storage facilities to foster the transition to a net-zero economy. 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 in the context of Russia's war against Ukraine. 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.

Hungary notified to the Commission, under the Temporary Crisis and Transition Framework, a Hungarian scheme to support the installation of at least 800 MW/1600 MWh of new electricity storage facilities. The scheme aims at enhancing the flexibility of the Hungarian electricity system by supporting storage investments to facilitate smooth integration of high capacity of variable renewable energy sources in the Hungarian electricity system.

The measure will be open to companies active in the energy sector in Hungary, with the exception of financial institutions. It will also be open to cross-border participation (i.e. storage facilities in neighboring Member States), within the limits of available transmission capacity and taking into account the share of renewables in the energy mix of neighbouring Member States. All storage technologies will be eligible.

The storage projects to be supported under the scheme will be selected through a competitive bidding process. The award of the grant contracts to the selected projects is planned to take place before the end of 2024.

The aid will be granted in two cumulative forms: (i) an investment grant, which will be paid during the construction phase of the supported projects; and (ii) support in the form of a two-way contract for difference ("CfD") to be paid annually during the 10 first years of the operations phase of the supported projects.

The investment grant will be partly financed by the Recovery and Resilience Facility, and partly by the Modernisation Fund, while the 10-year annual support will be financed through a levy.

The Commission found that the Hungarian scheme is in line with the conditions set out in the Temporary Crisis and Transition Framework. In particular, (i) the scheme will be open to all storage technologies; (ii) the aid will be granted through a competitive bidding process; (iii) the aid will be granted before 31 December 2025; and (iv) the storage facilities will have to be completed and put in operation within 36 months from the signing of the contract.

The Commission concluded that the Hungarian scheme is necessary, appropriate and proportionate to accelerate the green transition and facilitate the development of certain economic activities, which are of importance for the implementation of the REPower EU Plan and the Green Deal Industrial Plan, in line with Article 107(3)(c) Treaty on the Functioning of the European Union and the conditions set out in the Temporary Crisis and Transition Framework.

On this basis, the Commission approved the aid measure under EU State aid rules.

[Læs mere](#)

Dato: 21.06.2023

Commission approves €718 million Czech scheme to support companies in the heat sector in the context of Russia's war against Ukraine.

The European Commission has approved an approximately €718 million (CZK 17 billion) Czech scheme to support companies affected by increased heat 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.



Czechia notified to the Commission, under the Temporary Crisis and Transition Framework, an approximately €718 million (CZK 17 billion) scheme to support companies affected by increased heat energy costs in the context of Russia's war against Ukraine.

Under the scheme, the public support will consist in limited amounts of aid in the form of rebates. Heat energy producers can apply for support based on the increase of production costs recorded in the eligible period from 1 February 2022 to 31 December 2023, compared to the reference period from 1 January 2021 to 31 December 2021. The support will then be fully channelled to the eligible beneficiaries, who will benefit from reduced payments for heat energy. The scheme will run until the end of 2023.

The Commission found that the Czech scheme is in line with the conditions set out in the Temporary Crisis and Transition Framework. In particular, the aid (i) will not exceed €2 million per beneficiary; and (ii) will be granted no later than 31 December 2023.

In addition, the public support will come subject to conditions to limit undue distortions of competition between suppliers, including safeguards aimed at ensuring that the advantages of the measure are passed on to the final beneficiaries. The Commission concluded that the Czech scheme is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Crisis and Transition Framework.

On this basis, the Commission approved the aid measure under EU State aid rules.

[Læs mere](#)

Dato: 19.06.2023

Andet

Intet nyt.

Nyt fra EU-domstolen

Domme

[C-313/22](#) – ACHILLEION.

Præjudiciel forelæggelse – strukturfonde – Den Europæiske Fond for Regionaludvikling (EFRU) – medfinansiering – forordning (EF) nr. 1260/1999 – artikel 30, stk. 4, og artikel 39, stk. 1 – varigheden af investeringsoperationer – »væsentlig ændring« af en medfinansieret investeringsoperation – tilbagesøgning af støtte, hvis den virksomhed, der er genstand for operationen, overdrages – betydningen af de særlige omstændigheder i forbindelse med denne overdragelse.

Artikel 30, stk. 4, i Rådets forordning (EF) nr. 1260/1999 af 21. juni 1999 om vedtagelse af generelle bestemmelser for strukturfondene skal fortolkes således, at

- overdragelsen af en virksomhed, som er genstand for en investeringsoperation, der medfinansieres af Den Europæiske Unions strukturfonde, kan udgøre en »væsentlig ændring« af denne operation som omhandlet i denne bestemmelse, hvilket det tilkommer den forelæggende ret at efterprøve under hensyntagen til samtlige faktiske og retlige omstændigheder i sagen og i lyset af betingelserne i nævnte bestemmelse
- denne bestemmelse er til hinder for en national lovgivning, som pålægger modtageren af en støtte udbetalt i forbindelse med en investeringsoperation, der er medfinansieret af Unionens strukturfonde, en forpligtelse til, uden undtagelse, i en periode på fem år fra vedtagelsen af afgørelsen om færdiggørelsen af denne investering ikke at overdrage en virksomhed, der er genstand for denne operation, idet vedkommende ellers kan pålægges en finansiel korrektion med hel eller delvis tilbagesøgning af denne støtte.

Artikel 30, stk. 4, og artikel 39, stk. 1, i forordning nr. 1260/1999, sammenholdt med artikel 17 i Den Europæiske Unions charter om grundlæggende rettigheder, skal fortolkes således, at der er anledning til at foretage de i denne artikel 39, stk. 1, fastsatte finansielle korrektioner, når overdragelsen af en virksomhed, som er genstand for en investeringsoperation, der er medfinansieret af Unionens strukturfonde, udgør en væsentlig ændring af denne operation som omhandlet i denne artikel 30, stk. 4.

[Læs mere](#)



Dato: 13.07.2023

C-211/22 - Super Bock Bebidas.

Præjudiciel forelæggelse – konkurrence – konkurrencebegrænsende aftaler – artikel 101 TEUF – vertikale aftaler – minimumspriser for videresalg, som leverandøren har fastsat for sine forhandlere – begrebet »konkurrencebegrænsende formål« – begrebet »aftale« – bevis for samstemmende vilje mellem leverandøren og dennes forhandlere – praksis, som omfatter næsten hele en medlemsstats område – påvirkning af samhandelen mellem medlemsstaterne – forordning (EF) nr. 2790/1999 og (EU) nr. 330/2010 – alvorlig konkurrencebegrænsning.

Artikel 101, stk. 1, i traktaten om Den Europæiske Unions funktionsmåde skal fortolkes således, at konstateringen af, at en vertikal aftale om fastsættelse af minimumspriser for videresalg har et »konkurrencebegrænsende formål«, først kan ske, efter at det er afgjort, om denne aftale er tilstrækkelig skadelig for konkurrencen, henset til rækkevidden af dens bestemmelser, til de formål, den tilsigter at opfylde, samt til alle de forhold, der er kendetegnende for den økonomiske og retlige sammenhæng, hvori den indgår.

Artikel 101, stk. 1, TEUF skal fortolkes således, at der foreligger en »aftale« i denne bestemmelses forstand, når en leverandør pålægger forhandlerne minimumspriser for videresalg af de varer, som leverandøren markedsfører, for så vidt som leverandørens pålæggelse af disse priser og forhandlerenes overholdelse heraf afspejler parternes udtryk for en samstemmende vilje. Denne samstemmende vilje kan følge af såvel bestemmelserne i den pågældende forhandleraftale, når aftalen indeholder en udtrykkelig opfordring til at overholde minimumspriserne for videresalg eller i det mindste bemyndiger leverandøren til at pålægge sådanne priser, som af parternes adfærd, og navnlig om et eventuelt udtrykkeligt eller stiltiende samtykke fra forhandlerne til opfordringen til at overholde minimumspriserne for videresalg.

Artikel 101 TEUF, sammenholdt med effektivitetsprincippet, skal fortolkes således, at det ikke blot ved direkte beviser, men også med objektive og samstemmende indicier, hvoraf det kan udledes, at der foreligger en »aftale« som omhandlet i denne artikel mellem en leverandør og dennes forhandlere, kan godtgøres, at der foreligger en sådan aftale.

Artikel 101, stk. 1, TEUF skal fortolkes således, at den omstændighed, at en vertikal aftale om fastsættelse af minimumspriser for videresalg omfatter næsten hele, men ikke hele en medlemsstats område, ikke er til hinder for, at denne aftale kan påvirke samhandelen mellem medlemsstaterne.

[Læs mere](#)

Dato: 29.06.2023

C-73/22 P - Grupa Azoty m.fl. mod Kommissionen.

Appel – statsstøtte – retningslinjer for visse statsstøtteforanstaltninger som led i systemet for handel med kvoter for drivhusgasemissioner – støtteberettigede erhvervssektorer – udelukkelse af sektoren for fremstilling af gødningstoffer og nitrogenprodukter – annulationssøgsmål – formaliteten – fysiske og juridiske personers søgsmålsadgang – artikel 263, stk. 4, TEUF – betingelse om, at sagsøgeren skal være umiddelbart berørt.

[Læs mere](#)

Dato: 13.07.2023

Forslag til afgørelse

C-693/21 P - EDP España mod Naturgy Energy Group og Kommissionen.

Appel – statsstøtte – Spaniens vedtagelse af et miljømæssigt incitament for kulfyrede kraftværker – afgørelse om at indlede den formelle undersøgelsesprocedure – begrundelsespligt – annulationssøgsmål.

[Læs mere](#)

Dato: 13.07.2023

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.



Andet internationalt nyt

Draft: Merger Guidelines – U.S. Department of Justice and the Federal Trade Commission.

These Merger Guidelines explain how the Department of Justice and the Federal Trade Commission (the “Agencies”) identify potentially illegal mergers. They are designed to help the public, business community, practitioners, and courts understand the factors and frameworks the Agencies consider when investigating mergers.

[Læs mere](#)

Dato: 19.07.2023

ESA adopts revised guidelines on enforcement of State aid rules by national courts.

The revised guidelines provide direction and information for courts in Iceland, Liechtenstein and Norway when dealing with the enforcement of State aid rules at the national level. The enforcement guidelines will also serve as a source of information for third parties and national authorities.

The revised guidelines replace the previous guidelines on the matter, which were adopted in 2009. They correspond to the European Commission’s revised notice on the enforcement of EU State aid rules by national courts adopted on 23 July 2021.

The new guidelines include several new elements and adjustments, including:

- Clarity on the roles and competence between ESA and national courts.
- Incorporation of recent case-law from the EEA Courts.
- Additional tools for cooperation with national courts.
- Revision and updated references in light of the updated legal framework
- Updated practical guidance for national courts facing private claims concerning unlawful State aid.

The revised enforcement guidelines will take effect from 1 June 2023.

[Læs mere](#)

Dato: 31.05.2023

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 8 (vol.44) 2023

Unboxing the UK Digital Markets, Competition and Consumer. Forfatter: Bill Oles Andriychuk.

Evaluates the pro-competition regime of the Digital Markets, Competition and Consumers Bill 2022-23, including the requirements for designating undertakings as having strategic market status, and the emphasis on fairness and contestability. Suggests reforms to the countervailing benefits exemption.

The evolving case law on regional state aid. Forfatter: Phedon Nicolaides.

Reviews key lessons emerging from EU case law involving regional state aid, highlighting the principles used to assess aid's compatibility with the internal market, including the significance of its incentive effect and its proportionality. (See a companion article at E.C.L.R. 2023, 44(3), 98-105).

Economic analysis and empirical methods to assess competitive constraints for digital platforms/ecosystems.

Forfatter: Anne-Claire Hoyng, PhD.

Considers why traditional approaches to market definition in competition analyses involving digital platforms may prove inadequate, including the challenges posed by platforms' multi-sidedness. Suggests alternative empirical methods to assess their competitive constraints and formulate remedies.

Antitrust enforcement in Italy: recent trends and cases. Forfatter: Clara Beatrice Calini.

Reviews key trends in Italian competition law enforcement, highlighting significant decisions involving excessive pricing, bid-rigging, anti-cartel enforcement and actions against digital technology companies for data-related misconduct. Anticipates potential future developments.

Pay-for-delay - pharmaceutical patents in the competition law assessment. Forfatter: Alexander Hase.

Discusses, with reference to EU jurisprudence, the unanswered questions surrounding competition assessments of pay for delay agreements between pharmaceutical companies, involving whether a valid patent is held by the originator company, and whether the patent is infringed by the generic drugs.

Australia: mergers - merger decision (Case Comment). Forfatter: Dr Sven Gallasch.

Comments on the Australian Competition and Consumer Commission decision in Woolworths / SUPA IGA / Liquor Boss, opposing an independent supermarket's acquisition by the largest national chain. Notes the concentrated nature of the national grocery sector and the relevant non-price considerations.

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

Notes the Czech Competition Office decision in FAST CR as, fining a distributor of consumer electronics and other goods approximately EUR 1.28 million for resale price maintenance. Highlights the reduction granted for co-operation and the enforcement risks of maintaining such pricing restraints.

**Czech Republic: mergers - merger control (Case Comment). Forfatter: Tomáš Fiala.**

Notes the Czech Competition Office decision, and pending appeal, in XLCEE-Holding GmbH, fining an Austrian furniture chain almost EUR 1 million for failing to honour its commitment to sell off one regional outlet following its 2019 acquisition of two Czech retail and online sellers.

Finland: procurement - competitive tendering (Case Comment). Forfatter: Maarit Taurula.

Notes the Finnish Competition and Consumer Authority ruling in Vantaa / Kerava, proposing the imposition of fines of EUR 1,000 for procurement breaches involving an assessment of what constitutes an in-house entity, and arising from an in-house procurement conducted without competitive tendering.

Finland: competition – report. Forfatter: Maarit Taurula.

Notes a Finnish Competition and Consumer Authority research report on the organisation of passenger train services in the jurisdiction, and its recommendations for promoting competition in the market, including by requiring all future publicly subsidised transport to be put out to tender.

France: anti-competitive practices - infringement (Case Comment). Forfatter: Emmanuel Reille.

Notes the French Competition Authority decision in Arvitis Group, fining several companies in the group and two wholesale importers for maintaining exclusive import rights on Canard-Duchene champagne imports into French Guiana and Guadeloupe.

France: anti-competitive practices - judgment - enforcement (Case Comment). Forfatter: Emmanuel Reille.

Notes the Paris Court of Appeal decision in Logista France, annulling the requirement to communicate several electronic mailboxes which had not been downloaded during a dawn raid, and which the company had committed to communicate, considering the authorities' powers and company's right of defence.

Greece: anti-competitive practices - infringement (Case Comment). Forfatter: Professor Dimitris Tzouganatos.

Notes the Hellenic Competition Commission ruling in Graffiti Import and Trading of School Supplies and Giftware SA / Polo SA / Giovas SA, imposing fines on three organisations as part of a settlement procedure following an investigation into resale price maintenance in the school supplies sector.

Portugal: anti-competitive practices - infringement (Case Comment). Forfatter: Nuno Carrolo dos Santos.

Notes a Portuguese Competition Authority ruling of 21 April 2023 imposing fines on three supermarket chains and their common supplier for participation in a hub and spoke price fixing and information sharing cartel.

Portugal: anti-competitive practices - judgment (Case Comment) Forfatter: Nuno Carrolo dos Santos.

Notes the Portuguese Constitutional Court ruling in Super Bock v Portuguese Competition Authority, finding that evidence obtained during an unlawful dawn raid on the premises of a beverages producer suspected of collusive behaviour was invalid as the warrant was not issued by a "judicial authority".

South Africa: anti-competitive practices - judgment - jurisdiction (Case Comment). Forfatter: HB Senekal.

Notes the South African Competition Tribunal decision in Cape Gate Proprietary Ltd v Emfuleni Local Municipality on the competition authorities' jurisdiction to investigate complaints against government bodies subject to separate regulatory control, such as excessive pricing in the energy sector.

Spain: mergers - merger control (Case Comment). Forfatter: Pedro Callol.

Notes the Spanish National Competition and Markets Commission ruling in Xfera Moviles / Alma Telecom, imposing a EUR 1.5 million fine on a telecommunications operator for gun jumping with a merger in the fixed voice termination service market. Details its guidance on calculation of the fine.

Spain: mergers - merger control - decision (Case Comment). Forfatter: Pedro Callol.

Notes the Spanish National Competition and Markets Commission decision in Karnov / Thomson Reuters Espana / Wolters Kluwer Espana / Wolters Kluwer France, clearing an acquisition in the legal information sector subject to commitments precluding tying of products and author exclusivity arrangements.

Spain: mergers - merger control (Case Comment). Forfatter: Pedro Callol.

Notes the Spanish National Competition and Markets Commission ruling in Wedding Planner / Zankyou Ventures, clearing phase one of a merger in the online wedding planning services market, subject to commitments such as not to include exclusivity clauses in contracts with commercial users in Spain.

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

Notes the Turkish Competition Board ruling in Makronet Bilgi Teknolojileri Sanayi ve Ticaret Anonim Sirketi / Softline International Technologies LLC, unconditionally approving a merger in the digital technology sector. Details key features of the investigation into horizontal or vertical overlaps.

United Kingdom: competition - legislative proposal (Legislative Comment). Forfatter: Jordan Bernstein.

Notes proposals in the Digital Markets, Competition and Consumers Bill 2022-23, including those concerning attribution of strategic market status (SMS), the rules governing SMS conduct requirements, pro-competitive interventions, merger control, and appeals against Digital Markets Unit decisions.

Artikler fra European Competition Journal

Intet nyt.

Artikler fra Journal of Competition Law and Economics

Intet nyt.

Artikler fra Journal of Antitrust Enforcement

Intet nyt.

Artikler fra Competition Policy Brief

Intet nyt.

Artikler fra Competition Merger Brief

Intet nyt.

Artikler fra Journal of European Competition Law and Practice

Volume 14, Issue 4, June 2023

Outsmarting Pac-Man with Artificial Intelligence, or Why AI-Driven Cartel Screening Is Not a Silver Bullet.

Forfatter: Jerome De Cooman.

Key Points:

- AI-driven cartel screening seems to be the perfect candidate to modernise EU competition law proceedings.
- However, AI-driven cartel screening raises a data, an algorithmic, and a human challenge.
- Useful insights may be gleaned from the Proposal for an AI Act to solve these drawbacks, i.e., data governance (art. 10), transparency (art. 14), and human oversight (art. 14).
- Developers and users of AI-driven cartel screening should voluntarily endorse the AI Act to avoid any challenges of European Commission's decisions based on violation of the duty to state reasons.

Assessing the World's Largest Gaming Acquisition under EU Competition Law. Forfatter: Fabian Ziermann.

Key Points:

- Microsoft's Activision Blizzard acquisition will soon be decided on by the European Commission.
- This article discusses the Commission's decisional practice relating to market definition in gaming markets.
- It demonstrates that the approach to defining gaming markets ought to be overhauled by pursuing a genre delineation.



- Based on this delineation, input foreclosure and harm to innovation for game genres, ecosystems, and metaverse development are assessed.

SEP-Licensing in the Value Chain—Does Art. 102 TFEU Require Licence-to-all? Forfatter: Lukas von Brasch.

Key Points:

- In its 2021 judgment in Sharp v. Daimler, the Regional court München I came to the finding that there is no obligation of an SEP holder under Art. 102 TFEU to licence its SEP to component manufacturers as long as component manufacturers are provided access to the standard, for instance through so-called have-made rights. According to the Regional court München I, such an obligation does also not follow from the ETSI-FRAND commitment.
- In contrast to the reasoning of the Regional court München I, this paper argues that such an obligation can be derived from the principles established in the 2015 landmark case Huawei v. ZTE of the European Court of Justice (CJEU).
- This paper further contains an analysis of the 2023 EC proposal for an SEP regulation. It finds that despite the high number of SEP cases with value-chain implications, the EC SEP Regulation proposal contains little substance on value-chain licensing. However, the author argues that the FRAND determination procedure in practice might cause significant improvements for OEMs and component manufacturers alike.

The Liability of Corporate Groups for Violation of EU Competition Law. Forfatter: Marco Pasqua.

Key Points:

- EU competition law under Arts. 101–102 TFEU is applicable to ‘undertakings’, an autonomous notion of EU law to be interpreted in functional terms.
- In case of anti-competitive practices, doubts may arise as to which is the legal entity liable within a corporate group.
- In the public enforcement, the single economic unit’s doctrine is applied, imposing fines on the parent company for the anti-competitive practices of a subsidiary in cases decisive influence over the subsidiary’s commercial policy is exercised.
- In the private enforcement, it is up to EU law to provide an interpretative solution to this issue, which ends up confirming the jointly and severally liability of all the single economic unit’s companies.

Analysing Exclusive Dealing in Two-Sided Markets: Marketplaces for Video Games. Forfatter: Philip Hanspach.

Key points:

- Exclusive dealing (ED) is controversial among regulators and may sometimes require economic analysis.
- Epic’s entry into online video game distribution shows that ED is an important part of an entrant’s strategy in a two-sided marketplace.
- Using a simple model and structural estimation, I use sparse data sources to estimate trade-offs for consumer welfare. I estimate that market entry by Epic Games Store was unprofitable but that it has increased consumer welfare.
- When network effects are particularly high, we should expect more aggressive entry strategies (through subsidies and ED) but also lower consumer welfare from market fragmentation.

Artikler fra World Competition

Intet nyt.

Artikler fra Antitrust Law Journal

Intet nyt.

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

Volume 22, Issue 1, 2023

2022 in review: a look at key developments in opt-out collective redress in the UK. Forfattere: Lucy Rigby, Sofie Edwards Anna Stellardi og Hannah McEwen.

2022 was a record year for opt-out collective redress in the UK. The highest number of new collective proceedings claims were filed to date, and a record six claims were granted certification. While some actions were certified by the Competition Appeal Tribunal without challenge from the defendants, other proceedings were appealed to the Court of Appeal. All of this scrutiny saw both the judiciary – and the parties before it – test the boundaries of the certification stage; ultimately providing important guidance for the young regime. This article tracks the key developments in 2022 and analyses their impact on the collective proceedings regime under section 47B of the Competition Act 1998, before looking ahead to potential trends in 2023 and beyond.

Merger review of creeping private equity consolidation: a new use for Article 22 EUMR and beyond? Forfattere: Vassilena Karadakova, Kyriakos Fountoukakos og André Pretorius.

Historically, private equity (PE) firms' investment strategies have not attracted significant antitrust scrutiny, largely because they have generally involved the acquisition of relatively small players and/or non-controlling minority stakes, or not focused on multiple acquisitions in the same industry. In the EU, such transactions were, even if they satisfied the jurisdictional turnover thresholds under the EU Merger Regulation (EUMR), often reviewed by the European Commission (Commission) under the simplified procedure. However, against the backdrop of an ever more aggressive approach to competition enforcement around the world, this is unlikely to remain the case for long.

Over the last year or so, competition authorities have turned their attention to 'roll-up' strategies pursuant to which PE firms acquire a significant share of a sector through a series of small transactions which would not require review on an individual basis. Following calls for more thorough scrutiny of such strategies by the U.S. Department of Justice and Federal Trade Commission (FTC) in summer 2022, there have recently been suggestions that such transactions could be candidates for review by the Commission under Article 22 of the EUMR. Other competition authorities are also weighing in: the Competition and Markets Authority (CMA) has taken particular interest in creeping consolidation in the veterinary services sector (and has even required a number of completed transactions to be unwound), while the chair of the Australian Competition and Consumer Commission (ACCC) has expressed concern about acquisitions by PE firms of minority shareholdings in competing companies. This does not necessarily mean that PE investors are being singled out – but rather that their deal making should come under the same level of scrutiny as other acquirers.

This article focuses on the mechanisms through which PE 'roll-up' strategies might be subject to merger review in the EU and the UK and the implications for PE firms and those advising them. The upshot is that, as in many other areas, PE investment strategies which focus on a particular sector will need to factor in the risk of merger review at an early stage



of the deal planning process. A careful balancing act will need to be undertaken between the commercial upside associated with a particular investment opportunity and the potential delays, costs and negative outcomes that may result from antitrust scrutiny.

Self-preferencing in the EU: a legal and policy analysis of the Google Shopping case and the Digital Markets Act. Forfatter: Carlo F. Petrucci.

This article discusses the EU General Court's Google Shopping judgment (Case T-612/17), which deals with online self-preferencing. Self-preferencing is a novel abuse of dominant position (Article 102 TFEU), which consists of the prominent display and positioning of the dominant undertaking's own service (comparison shopping service in this case), and demotion of the competitors' services, on webpages generated by the dominant undertaking's general search services. The key-principles in the legal reasoning of the General Court's ruling were the prohibition of discrimination and coterminous concepts such as 'equal opportunities to compete' and 'competition on the merits'. The differential treatment between Google's own service and those of its competitors derived from Google's subjection of its adjustment algorithms only to its competitors and not to its own service. While an approach based on non-discrimination is contentious, on the other hand Google's conduct was neither efficient nor did it benefit consumers. The article also examines the EU Digital Markets Act's prohibition of self-preferencing and its relationship with the Google Shopping ruling.

Group proceedings in Scotland: competition between the Court of Session and the Competition Appeal Tribunal? Forfattere: Jamie Dunne, Charles Livingstone, Craig Watt og Lauren Smith.

This article reviews the impact of the recent Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, which introduced a new procedure for bringing collective proceedings in Scotland, on future competition litigation in Scotland.

Disentangling completed transactions in the UK: experiences and challenges. Forfattere: Alex Knight, Carolina Ricciardi, Matteo Alchini og Steven Pantling.

The UK has a voluntary, non-suspensory merger control regime, such that mergers, acquisitions and other transactions can be, and routinely are, completed before they are investigated by the CMA. However, the CMA can, and often does, investigate mergers, acquisitions and other transactions that have not been notified to it. It has powers to prevent further integration between the merging parties' businesses, and to require existing integration to be unwound, pending the conclusion of its investigation. Where the CMA identifies competition concerns, whether at Phase 1 or Phase 2, the fact that a merger, acquisition or other transaction has been completed can give rise to difficulties in identifying, implementing and ensuring the effectiveness of a remedy. This article discusses the CMA's powers to impose interim measures and its approach to remedies in completed transactions. It also discusses the lessons that the CMA has learned from implementing remedies in merger investigations into completed transactions.

MFNs: the latest turn in the policy debate – key lessons from the CAT's judgment on CompareTheMarket's use of wide MFNs in home insurance. Forfattere: Helen Ralston-Smith og Tamrat Shone.

For the last ten years, most-favoured-nation clauses (MFNs), also known as price parity clauses, have remained a hotly debated topic in competition policy. The direction of travel has generally been one-way, culminating with the UK and EU vertical block exemption regimes designating wide MFNs as 'hardcore' or excluded restrictions respectively. However, the UK Competition Appeal Tribunal's judgment in BGL (Holdings) Limited v. Competition and Markets Authority injects nuance into the debate. The CAT found that, not only had the Competition and Markets Authority not proved its case on anti-competitive effects, but that it was unlikely that, in this case, wide MFNs had any effect on the key market outcomes of retail prices (i.e. insurance premiums), commissions paid by insurers to CompareTheMarket or increased barriers to entry.

The CAT's judgment and the economic evidence presented throughout the case provide valuable insights into how the competitive effects of wide MFNs should be assessed, why harmful effects may not arise and the role that econometric evidence can play. As explained in this article, at most, MFNs (whether wide or narrow) only directly restrict intra-brand competition and, if coverage and adherence to the MFNs are limited, competitive effects (whether pro-competitive or anti-competitive) may not arise. In this case, there was an opportunity to test empirically for any competitive effects, as CompareTheMarket removed its wide MFNs shortly after the CMA's investigation opened (and no other price comparison website had them in place). As described by the CAT, 'such a "before and after" consideration at least prima facie lends itself to econometric analysis', which can provide a robust comparison to the situation that prevailed when wide MFNs were applied. In contrast, the CAT raised concerns with the qualitative evidence relied on by the CMA and its absence of any quantitative analysis of the competitive effects, if any, of the wide MFNs.



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Issue 5 (vol.29) 2023

A pro-innovation approach: UK Government publishes White Paper on the future of governance and regulation of artificial intelligence. Forfatter: James Clark.

Summarises the White Paper on the regulation of artificial intelligence (AI) issued on 29 March 2023, proposing not AI-specific regulation but a statutory duty for the sectoral regulators to have regard to core principles, and compares EU proposals.

Human rights, social media networks, and right to privacy: an examination. Forfatter: Nehaluddin Ahmad.

Discusses how to protect personal data and human rights to privacy and autonomy against surveillance by social media networks and governments using spyware.

The legal system and electronic evidence: an early discussion, the case of Julie Amero and need for educating the legal profession: Part 1. Forfatter: Stephen Mason.

This, the first part of a two-part article, discusses the EU project for admissibility of electronic evidence in criminal proceedings.

Copyright infringement and breach of confidence for misuse of software created during course of employment (Case Comment). Forfatter: Helen Armstrong.

Comments on PQ Systems Europe Ltd v Aughton (Patents Ct) on an employer's proceedings against a software developer who resigned and then developed certain software, in breach of copyright and confidentiality.

Protecting DPOs from dismissal whilst ensuring their independence (Case Comment). Forfatter: Rohan Massey.

Comments on X-FAB Dresden GmbH & Co KG v FC (C-453/21) (ECJ) on the dismissal of a data protection officer for conflict of interest, when he continued to act as chair of the works council.

Global COVID-19 technology contact tracing, rights to privacy and cybercrime perpetration. Forfatter: Ebi Robert.

Discusses the development of contact tracing software during the COVID-19 pandemic, and compares the safeguards for individuals' privacy introduced in various countries.

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 4 (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.

Legal Design & Environmental, Social and Governance (ESG): how legal design enables and materialises the ESG agenda. Forfatter: Anthony Charles de Novaes da Silva.

Discusses the concepts of legal design and environmental social governance, explaining what they mean and how they are connected, and referring to the UN's Sustainable Development Goals.

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