Konkurrenceretlig Nyhedsoversigt nr. 83 / dækkende 18. juli 2023 - 20. august 2023

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   - European Competition Law Review
   - European Competition Journal
   - Journal of Competition Law and Economics
   - Journal of Antitrust Enforcement
   - Competition Policy Brief
   - Competition Merger Brief
   - Journal of European Competition Law and Practice
   - World Competition
   - Antitrust Law Journal
   - The Antitrust Bulletin (US Journal)
   - Competition Law & Policy Debate
   - Competition Law Scholars Forum
   - Journal of Regulatory Economics
   - International Review of Law and Economics
   - Competition Law Journal
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5. **Nyt fra konkurrencegruppen**

1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Konkurrence- og Forbrugerstyrelsen modtog den 11. august 2023 en forenklet anmeldelse af Gjensidige Forsikring ASA's ("Gjensidige") erhvervelse af PenSam Forsikring A/S ("PenSam Forsikring").
Ved transaktionen erhverver Gjensidige 100 pct. af aktierne i PenSam Forsikring. Gjensidige erhverver herved enekontrol over PenSam Forsikring.
Læs mere
Dato: 16.08.2023

Konkurrence- og Forbrugerstyrelsen modtog den 10. august 2023 en forenklet anmeldelse af en fusion mellem Mutares SE & Co. KGaA (herefter "Mutares") og Efacec Power Solutions, SGPS S.A. (herefter "Efacec").
Fusionen indebærer, at Mutares erhverver enekontrol over Efacec, jf. konkurrencelovens § 12 a, stk. 1, nr. 2. Kontrollen erhverves ved Mutares' køb af samtlige aktier i Efacec.
Læs mere
Dato: 15.08.2023

Konkurrence- og Forbrugerstyrelsen modtog den 10. august 2023 en forenklet anmeldelse af InstallatørGruppen ApS' ("InstallatørGruppen") erhvervelse af enekontrol over Ib Andersen VVS A/S ("Ib Andersen VVS").
Ved transaktionens gennemførsel erhverver InstallatørGruppen 100 pct. af kapitalandelene i og dermed enekontrol over Ib Andersen VVS, jf. konkurrencelovens § 12 a, stk. 1, nr. 2.
Læs mere
Dato: 11.08.2023

Konkurrence- og Forbrugerstyrelsen modtog den 10. august 2023 en forenklet anmeldelse af en fusion mellem Via Biler A/S ("Via Biler") og Mogens Frederiksen Automobiler A/S ("Mogens Frederiksen").
Via Biler vil med transaktionen erhverve 100 pct. af aktierne i Mogens Frederiksen og dermed opnå enekontrol over virksomheden.
Læs mere
Dato: 11.08.2023

Konkurrence- og Forbrugerstyrelsen modtog den 10. august 2023 en forenklet anmeldelse af en fusion mellem Via Biler A/S ("Via Biler") og Bilcentret – A. Nielsen A/S ("A. Nielsen").
Via Biler vil med transaktionen erhverve 100 pct. af aktierne i A. Nielsen og dermed opnå enekontrol over virksomheden.
Læs mere
Dato: 11.08.2023

Konkurrence- og Forbrugerstyrelsen modtog den 9. august 2023 en forenklet anmeldelse af Mobilhouse Holding A/S' erhvervelse af enekontrol over Dalsgaard Byg A/S og Dalsgaard Pavilloner A/S.
Transaktionen består i, at Mobilehouse Holding A/S erhverver 100 pct. af aktierne i Dalsgaard Byg A/S og Dalsgaard Pavilloner A/S og derved opnår enekontrol.
Læs mere
Dato: 11.08.2023

Damco USA Inc og A.P. Møller-Mærsk A/S, der er koncernforbundne, har overtrådt reglerne om fusionskontrol, da Damco fusionerede med Pilot Air Freight Holdings LLC i maj 2022. Det har Konkurrence- og Forbrugerstyrelsen afgjort efter at have fået en henvendelse fra Damco. Fusionen skulle have været anmeldt til og godkendt af konkurrencemyndighederne i Danmark.
Damco USA Inc (Damco) overtog i maj 2022 selskabet Pilot Air Freight Holdings LLC (Pilot). Forinden havde de amerikanske konkurrencemyndigheder godkendt fusionen. Damco har en koncernomsætning i Danmark på over 3,8 milliarder kroner, og Pilot har en årlig omsætning på verdensplan på mindst 3,8 milliarder kroner. Dermed har fusionen en størrelse, så den også skulle have været anmeldt til og godkendt af de danske konkurrencemyndigheder.

Damco kontaktede i juni 2022 Konkurrence- og Forbrugerstyrelsen, fordi man var blevet opmærksom på, at fusionen havde været anmeldelsespligtig. Efterfølgende blev fusionen lovmæssigt anmeldt og godkendt uden indgreb.
Damco er koncernforbundet med A.P. Møller-Mærsk, og beslutningen om at købe Pilot var en strategisk beslutning, som blev truffet af A.P. Møller-Mærsk.

Konkurrence- og Forbrugerstyrelsen har på den baggrund afgjort, at A.P. Møller-Mærsk og Damco har overtrådt konkurrencelovens regler om fusionskontrol. Styrelsen vil indbringe sagen for domstolene med henblik på pålæggelse af en bøde.

Damco leverer logistiktjenester globalt inden for luftfragt samt fragt på land. Selskabet er en del af A.P. Møller-Mærsk A/S.
Læs mere
Dato: 02.08.2023

Konkurrence- og Forbrugerstyrelsen modtog den 6. juli 2023 en anmeldelse af fusionen mellem Hessel Trucks A/S og EvoBus Danmark A/S.
Transaktionen indebærer, at Hessel Trucks A/S erhverver samtlige aktier i EvoBus Danmark A/S gennem en aktieoverdragelsesaftale. Hessel Trucks A/S erhverver herved enekontrol over EvoBus Danmark A/S og deres rettigheder og forpligtelser. Efter fusionen vil EvoBus Danmark A/S således være 100 pct. ejet og kontrolleret af Hessel Trucks A/S.
Læs mere
Dato: 24.08.2023

Nyt fra Konkurrencerådet

Intet nyt.

Nyt fra Konkurrenceankenævnet

Intet nyt.

Nyt fra domstolene

Civilretlige afgørelser

Intet nyt.

Afgørelser om bøder

Intet nyt.

Lovforslag i høring

Intet nyt.

Ny lovgivning

Intet nyt.

Nyt fra Ankestyrelsen

Intet nyt.

Andet

Intet nyt.

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust

Commission sends Statement of Objections to Pierre Cardin and its licensee Ahlers over distribution and licensing practices for clothing.
The European Commission has informed Pierre Cardin and its licensee Ahlers of its preliminary view that the companies may have breached EU antitrust rules by restricting cross-border sales of Pierre Cardin-licensed clothing, as well as sales of such products to specific customers.

Pierre Cardin is a French fashion house, which licenses its trademark for the manufacture and distribution of its clothing. German clothing manufacturer Ahlers is the largest licensee of such clothing in the European Economic Area ('EEA').

The Commission has concerns that, for more than a decade, Pierre Cardin and Ahlers entered into anticompetitive agreements and coordinated to restrict the ability of other Pierre Cardin licensees and their customers to sell Pierre Cardin-licensed clothing, both offline and online: (a) into Ahlers' EEA licensed territories; and/or (b) to low-price retailers (such as discounters) offering lower prices to consumers in such territories.
Læs mere
Dato: 31.07.2023

Commission opens investigation into possible anticompetitive practices by Microsoft regarding Teams.
The European Commission has opened a formal investigation to assess whether Microsoft may have breached EU competition rules by tying or bundling its communication and collaboration product Teams to its popular suites for businesses Office 365 and Microsoft 365.

The coronavirus outbreak accelerated a shift to remote working as well as businesses' transition to the cloud and the adoption of cloud-based software for communication and collaboration. The transition to the cloud has enabled the emergence of new market players and business models offering customers the ability to use multiple types of software from different providers, without the need to maintain an in-house data centre. Cloud-based software, including the products under investigation, are typically distributed on a subscription basis.

Microsoft includes Teams in its well-entrenched cloud-based productivity suites for business customers Office 365 and Microsoft 365. The Commission is concerned that Microsoft may be abusing and defending its market position in productivity software by restricting competition in the European Economic Area ('EEA') for communication and collaboration products.

In particular, the Commission is concerned that Microsoft may grant Teams a distribution advantage by not giving customers the choice on whether or not to include access to that product when they subscribe to their productivity suites and may have limited the interoperability between its productivity suites and competing offerings.
Læs mere
Dato: 27.07.2023

Cartels

Intet nyt.

Mergers

Commission opens in-depth investigation into the proposed acquisition of Figma by Adobe.
The European Commission has opened an in-depth investigation to assess, under the EU Merger Regulation, the proposed acquisition of Figma by Adobe. The Commission is concerned that the transaction may reduce competition in the global markets for the supply of interactive product design software and for digital asset creation tools.
Læs mere
Dato: 07.08.2023

Commission opens formal investigation for possible breach of notification requirement, standstill obligation and clearance conditions and obligations in Vivendi/Lagardère transaction.
The European Commission has decided to open a formal investigation to determine whether, when acquiring Lagardère, Vivendi breached the notification requirement and "standstill obligation" set out in the EU Merger Regulation, as well as the conditions and obligations attached to the Commission's decision to clear the Vivendi/Lagardère transaction.
Læs mere
Dato: 25.07.2023

State Aid

Commission approves €6.5 billion German scheme to address carbon leakage risk for energy-intensive companies resulting from national fuel emission trading system.
The European Commission has approved, under EU State aid rules, a €6.5 billion German scheme to partially compensate energy-intensive companies to address the risk of carbon leakage from higher fuel prices resulting from the German fuel emission trading system ('German fuel ETS').
Læs mere
Dato: 10.08.2023

Commission approves €26.7 million Spanish measure to support the upgrade of Cobre Las Cruces' refinery.
The European Commission has approved, under EU State aid rules, a €26.7 million Spanish measure to support Cobre Las Cruces S.A. ('CLC') in upgrading its refinery in Gerena, Sevilla. The measure will contribute to the EU's strategic objectives relating to the European Green Deal and to regional development.
Læs mere
Dato: 09.08.2023

Commission approves €1.5 billion French measure to support ProLogium in researching and developing innovative batteries for electric vehicles.
The European Commission has approved, under EU State aid rules, a €1.5 billion French measure to support ProLogium Technologies ('ProLogium') in researching and developing a new generation of batteries for electric vehicles. The measure will contribute to the achievement of the strategic objectives of the European Green Deal and the EU battery strategy.
Læs mere
Dato: 03.08.2023

Commission approves €2.36 billion Hungarian scheme for accelerated investments in strategic sectors to foster the transition to a net-zero economy.
The European Commission has approved a €2.36 billion (approximately HUF 880 billion) Hungarian scheme for accelerated investments in strategic sectors to foster the transition towards 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: 28.07.2023

Commission approves €246 million Dutch scheme to support renewable hydrogen production.
The European Commission has approved, under EU State aid rules, a €246 million Dutch scheme to support the production of renewable hydrogen. The measure aims to contribute to the development of renewable hydrogen in line

with the objectives of the EU Hydrogen Strategy and the European Green Deal. The scheme will also contribute to the objectives of the REPowerEU Plan to end dependence on Russian fossil fuels and fast forward the green transition.
Læs mere
Dato: 28.07.2023

Commission approves €28.8 million Austrian measure to support the modernisation of Sandoz's penicillin production in Tyrol.
The European Commission has approved, under EU State aid rules, a €28.8 million Austrian measure to support the modernisation of Sandoz GmbH ('Sandoz') penicillin production site in Tyrol. The measure will help to maintain in the EU the last fully integrated production of amoxicillin, the most used penicillin type, contributing to the security of supply of essential and live-saving medicines. The measure will contribute to strengthening the continuity and security of supply of medicines in line with the Pharmaceutical Strategy for Europe.
Læs mere
Dato: 27.07.2023

Commission approves €40 million German support for on-shore LNG terminal in Brunsbüttel.
The European Commission has approved, under EU State aid rules, a €40 million German support measure for the construction and operation of a new land-based liquefied natural gas ('LNG') terminal in Brunsbüttel. The measure will contribute to the security and diversification of energy supplies in Germany and help end dependence on Russian fossil fuels in line with the REPowerEU Plan.
Læs mere
Dato: 27.07.2023

Commission approves €5 billion Czech scheme to support energy producers in the context of Russia's war against Ukraine.
The European Commission has approved a €5 billion (CZK 125 billion) Czech scheme to support large energy producers in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis Framework adopted by the Commission on 23 March 2022, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU'), recognising that the EU economy is experiencing a serious disturbance. Such Temporary Crisis Framework was amended on 20 July 2022 and on 28 October 2022, and replaced by the Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023.
Læs mere
Dato: 26.07.2023

Commission approves German €550 million direct grant and conditional payment mechanism of up to €1.45 billion to support ThyssenKrupp Steel Europe in decarbonising its steel production and accelerating renewable hydrogen uptake.
The European Commission has approved, under EU State aid rules, two German measures to support ThyssenKrupp Steel Europe ('tkSE') in decarbonising its steel production processes and accelerating its uptake of renewable hydrogen. The measures will contribute to the achievement of the EU Hydrogen Strategy, the European Green Deal and the Green Deal Industrial Plan, while helping to end dependence on Russian fossil fuels and fast forward the green transition, in line with the REPowerEU Plan.
Læs mere
Dato: 20.07.2023

Commission approves €850 million French measure to support ArcelorMittal decarbonise its steel production.
The European Commission has approved, under EU State aid rules, a €850 million French measure to support ArcelorMittal France ('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.
Læs mere
Dato: 20.07.2023

Commission approves €89.5 million Italian measure under Recovery and Resilience Facility to support 3Sun's solar panel plant expansion.
The European Commission has approved, under EU State aid rules, a €89.5 million Italian measure made available through the Recovery and Resilience Facility ('RRF') to support the expansion of 3Sun's solar panel plant in Catania,

Sicily. The measure will contribute to the EU's strategic objectives relating to the European Green Deal and to reinforce the EU strategic autonomy.
Læs mere
Dato: 20.07.2023

Commission approves €3 billion German scheme to support private investments in strategic goods to foster the transition to a net-zero economy.
The European Commission has approved a €3 billion German scheme to support private investments in specific strategic goods needed to foster the transition towards 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: 19.07.2023

Andet

Intet nyt.

Nyt fra EU-domstolen

Domme

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 forhandlernes 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: 28.07.2023

Forslag til afgørelse

Intet nyt.

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

Guidance on Horizontal Agreements.
This guidance explains how the Competition and Markets Authority (CMA) applies the Chapter I prohibition in the Competition Act 1998 to horizontal agreements, meaning agreements between actual or potential competitors.

The guidance describes the application of the Competition Act 1998 (Specialisation Agreements Block Exemption) Order 2022 and the Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022. It also provides guidance on the application of the Chapter I prohibition in the Competition Act 1998 to other common types of horizontal agreements which are not covered by these two block exemptions.
Læs mere
Dato: 16.08.2023

Competition Commission South Africa: Online intermediation platforms market inquiry summary of final report findings and remedial actions.
The Competition Commission formally initiated the Online Intermediation Platforms Market Inquiry ("Inquiry" or "OIPMI") on 19 May 2021 in terms of section 43B(1)(a) of the Competition Act 89 of 1998 (as amended) ("the Act"). An Inquiry was initiated because the Commission has reason to believe that there are market features of online intermediation platforms that may impede, distort or restrict competition; and in order to achieve the purposes of the Act including the participation of small and medium enterprises ("SMEs") and historically disadvantaged persons ("HDPs") in these markets. Those intermediation platforms include eCommerce, online travel agencies, food delivery, app stores and property/automotive classifieds, along with the role of Google Search in shaping B2C platform competition. The choice of this area for the online inquiry was that these platforms affect real business activity across a wide range of the economy.

The Inquiry has continued to engage on the remedial actions required to address any identified harm which are both reasonable and practical, but also comprehensive solutions. The report provides the Inquiry's final findings on features that adversely affect competition in these markets and includes the decision on the set of remedial actions that platforms, and some other businesses, are required to implement to remedy the adverse effects. This summary sets out the primary findings and remedial actions in each of the platform categories and Google Search.
Læs mere
Dato: Juli 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 9 (vol.44) 2023

Pay-for-delay is (almost) dead: long live the - not so novel - abuse of patent procedure and disparagement. Forfatter: Mark Jephcott.
Reviews EU case law on disparagement and abuse of patent procedure in the pharmaceutical sector, highlighting the relevant legal framework, the apparent ending of the focus on pay for delay infringements, and the principles likely to shape the Commission's future policy in the area.

Too big to fail and antitrust law. Forfatter: Dr Lukas Rengier.
Examines, from an EU and German perspective, the competition law impact of economically motivated government bail-outs of major companies ("too big to fail"). Discusses the scope of such guarantees, their competitive advantages in merger control, and whether unbundling offers a potential solution.

Effective enforcement of the European Commission's decisions under antitrust law - a survey-based analysis. Forfatter: Dr Helene Hayden.
Examines, with reference to a European Central Bank survey, Commission decisions on enforcement of fines and pecuniary obligations under TFEU art.299. Reviews the enforcement requirements, how Member States interpret and implement relevant EU law, and gaps in the regulatory protection.

Highlights and remaining issues of the amendment to China's anti-monopoly law. Forfatter: Xiaoye Wang.
Reviews key features of China's Anti-Monopoly Law 2022, including its clarification of competition policy's fundamental status, its measures to combat monopolies in the digital economy, its strengthened penalties, and its safe harbour provisions. Identifies three remaining problems to be addressed.

Austria: anti-competitive practices - infringement (Case Comment). Forfatter: Melanie Gassler-Tischlinger.
Notes the Austrian Federal Competition Authority's settlement of proceedings against Sudzucker AG, imposing a fine of EUR 4.2 million for sharing the market for distribution of industrial sugar. Reviews the German and Austrian sugar cartel litigation, raising the issue of double jeopardy.

Belgium: competition - foreign direct investment. Forfatter: Peter Wytinck.
Notes Belgium's July 2023 introduction of a screening mechanism for foreign direct investments, based on Regulation 2019/452, together with accompanying draft guidelines. Discusses the mechanism's scope, its potential retrospective application and the role of the Interfederal Screening Commission.

Bulgaria: anti-competitive practices - infringement (Case Comment). Forfatter: Anton Dinev.
Notes the ruling of the Bulgarian Commission for Protection of Competition in Lukoil Bulgaria EOOD, imposing a fine of over EUR 33 million on a Russian-owned wholesale distributor of motor fuel for anti-competitive practices involving an abusive market squeeze. Highlights dissenting comments.

Canada: anti-competitive practices - restrictive business practices. Forfatter: Kaeleigh Kuzma.
Notes the Canadian Competition Bureau's May 2023 publication of "Enforcement Guidelines on Wage-Fixing and No Poaching Agreements", detailing its likely approach to enforcing relevant criminal provisions of the Competition Act s.45. Highlights the scope of the offences.

Croatia: anti-competitive practices – investigation. Forfatter: Melita Carević.
Notes the Croatian Competition Agency's launch of several investigations into anti-competitive practices, including an alleged price fixing cartel by the Chamber of Architects, and alleged discriminatory pricing in the wholesale market for cookies and chocolate.

Czech Republic: mergers - merger control - decision (Case Comment). Forfatter: Tomáš Fiala.
Notes the Czech Competition Office decision in Ceska posta sp / Prvni novinova spolecnost as, prohibiting an acquisition which would result in a dominant position in the national printed item delivery market. Highlights the rarity of such blocking decisions and the potential for appeal.

Denmark: anti-competitive practices - judgment (Case Comment). Forfatter: Jens Munk Plum.
Notes the Danish Eastern High Court ruling in AFA JCDecaux A/S v Danish Competition Council on whether advertising agencies pursued restrictive practices involving price control agreements, and giving guidance on whether infringement by parallel conduct continued after termination of the agreements.

Estonia: anti-competitive practices - decision (Case Comment). Forfatter: Triinu Järviste.
Notes the Estonian Competition Authority ruling in Tallinn Airport AS on whether a significant increase in airport fees by the country's largest international airport was justified, or constituted excessive pricing and abuse of a dominant position.

France: anti-competitive practices - decision (Case Comment). Forfatter: Emmanuel Reille.
Notes the French Competition Authority ruling in Meta, issuing interim measures against an online advertiser for alleged abuse of dominance involving denial of partnership access to a third party ad verification services provider. Details the transparent access procedure ordered by the Authority.

Germany - competition - section 19a of the Act Against Restraints of Competition (Case Comment). Forfatter: Oliver Haas.
Notes the German Federal Cartel Office ruling in Apple Inc, adding Apple to the large digital operators subject to the provisions of the Act Against Restraints of Competition s.19a which aims to control extended abuse of a dominant position. Details the approach to the "paramount significance" test.

Latvia: anti-competitive practices - infringement (Case Comment). Forfatter: Ivo Maskalāns.
Notes the Latvian Competition Authority ruling of 1 June 2023, imposing fines totalling over EUR 4.4 million on three road construction companies for participation in a bid rigging cartel. Details the settlement reached with the Authority by two of the companies.

Poland: anti-competitive practices - legislation (Legislative Comment). Forfatter: Prof. Agata Jurkowska-Gomułka.
Notes Poland's implementation of a revised vertical block exemption regulation, which took effect on 1 June 2023, and corresponds to the provisions of Regulation 2022/720. Details how it differs from the previous regime, including its approach to dual distribution, and the scope of its exemptions.

Portugal: mergers - merger control (Case Comment). Forfatter: Rodrigo Pacheco Bettencourt.
Notes a Portuguese Supreme Court of Justice ruling, confirming the annulment of the Portuguese Competition Authority decision in MidSid / 3D Assets, a non-opposition decision on a merger in the wholesale and retail tobacco product market, on the basis that the PCA's appeal was inadmissible.

Portugal: anti-competitive practices - investigation. Forfatter: Rodrigo Pacheco Bettencourt.
Notes a May 2023 statement of objections issued by the Portuguese Competition Authority, accusing Dietmed, a supplier of supplements and health foods, of restrictive business practices involving allegedly hindering the company's distributors from setting resale prices independently.

Portugal: anti-competitive practices - judgment (Case Comment). Forfatter: Rodrigo Pacheco Bettencourt.
Notes the Portuguese Constitutional Court ruling in MEO (Altice Group) v Portuguese Competition Authority, finding electronic evidence obtained in a dawn raid on a telecommunications operator suspected of cartel activities was inadmissible, as it was obtained without prior judicial authorisation.

Slovenia: competition and mergers - draft legislation (Legislative Comment). Forfatter: Eva Škufca.
Notes Slovenian proposals to amend the Slovenian Competition Protection Act by incorporating provisions of EU law including Regulation 2022/1925 (Digital Markets Act), and revising the merger control and antitrust procedures. Highlights the deadline for commenting on the proposals.

South Africa: anti-competitive practices - decision of Competition Tribunal (Case Comment). Forfatter: Ryan Goodman.
Notes a South African Competition Tribunal ruling giving guidance on the extraterritorial application of provisions of South Africa's Competition Act 1998 in respect of foreign banks whose conduct has an effect within the jurisdiction. Details the connecting factors to be considered in such cases.

Spain: mergers - merger control (Case Comment). Forfatter: Pedro Callol.
Notes the Spanish National Competition and Markets Commission ruling in KKR INCEPTION BIDCO SLU / IVI-RMA GLOBAL SL, clearing, subject to commitments, a merger in the healthcare sector for assisted reproduction treatments. Details the relevant commitments, including the divestitures involved.

Spain: anti-competitive practices – investigation. Forfatter: Pedro Callol.
Notes the Spanish National Competition and Markets Commission's closure of its investigation of the skin care laboratory Isdin SA for alleged anti-competitive practices involving resale price maintenance. Details the commitments offered by the company to address competition concerns.

Sweden: anti-competitive practices - judgment (Case Comment). Forfatter: Stefan Perván Lindeborg.
Notes a Swedish Patent and Market Court decision of 5 June 2023 on whether a municipality's setting of rent for its student accommodation constituted predatory pricing, considering that its costs exceeded its profits in four out of six years and the availability of a public interest defence.

Turkiye: mergers - merger control (Case Comment). Forfatter: Dr Gönenç Gürkaynak, Esq.
Notes the Turkish Competition Board ruling in Micro Focus International Plc / Open Text UK Holding Ltd, unconditionally approving a merger in the software technology sector. Details key features of the investigation, including the Board's assessment of potential horizontal market overlaps.

United Kingdom: mergers - merger control. Forfatter: Farhan Shahid.
Notes Microsoft's May 2023 launch of an appeal against a Competition and Markets Authority decision to reject its commitments and block its proposed acquisition of Activision Blizzard in the video gaming sector. Details the EU and US positions.

Artikler fra European Competition Journal

Volume 19, Issue 3, September 2023

The impact of state aid on economic growth: fresh evidence from a panel of 27 EU countries. Forfattere: Poulou, Nikoletta; Polemis, Michael L. og Oikonomou, Aikaterina.
In this study, we examine how State aid policy in the European Union (EU) affects the level of economic growth. By applying several panel data econometric techniques, to a sample of 27 EU countries over the period 2007–2019, we investigate how state support and government interventions affect the level of economic growth in the EU member states. Based on the empirical findings, we document a positive impact of state aid programmes on fostering economic growth leaving significant room for the implementation of a new pan-European industrial policy. Lastly, we provide policy implications to government officials and policymakers on the effectiveness of the State Aid Modernization programme and the future of State aid control in the aftermath of the pandemic crisis.

Addressing data access problems in the emerging digital agriculture sector: potential of the refusal to deal case law to complement ex-ante regulation. Forfatter: Atik, Can.
Tailored data-driven "Digital Agriculture" solutions bring about many benefits. However, there are also challenges related to complicated data access needs in the farm-to-fork chain. Farm-specific data are mostly locked in by the first-mover companies. This prevents farmers from switching to a better or cheaper alternative. This also hinders agricultural data-driven innovation due to unanswered access seekers. Moreover, already powerful players build exclusive data exchange clusters that further exclude small rivals and other access seekers. Also, upstream input producers have exclusive control over their products' performance data, which generates critical advantages for their downstream data-driven services. These conditions endanger the digital agriculture sector and bring about the risk of reflection of the oligopolistic upstream players in this new sector. This paper explores the adequacy of EU competition law enforcement to address the ag-data access-related concerns – hoping to contribute to the sectoral literature that is currently dominated by regulation-centred discussions.

The future of anticompetitive self-preferencing: analysis of hypernudging by voice assistants under article 102 TFEU. Forfatter: Morozovaite, Viktorija.
With the nascent rise of the voice intelligence industry, consumer engagement is evolving. The expected shift from navigating digital environments by a "click" of a mouse or a "touch" of a screen to "voice commands" has set digital platforms for a race to become leaders in voice-based services. The Commission's inquiry into the consumer IoT sector revealed that the development of the market for general-purpose voice assistants is spearheaded by a handful of big technology companies, highlighting the concerns over the contestability and growing concentration in these markets. This contribution posits that voice assistants are uniquely positioned to engage in dynamically personalized steering – hypernudging – of consumers toward market outcomes. It examines hypernudging by voice assistants through the lens of abuse of dominance prohibition enshrined in article 102 TFEU, showcasing that advanced user influencing, such as hypernudging, could become a vehicle for engaging in a more subtle anticompetitive self-preferencing.

The centralised sale of football media rights in Europe. Forfattere: Heller, C.-Philipp; Sudaric, Slobodan og Winkler, Anne-Christin.
We analyse the competitive effects of the centralised sale of football media rights in Europe, focusing on the "Big Five" countries (England, France, Germany, Italy, Spain). Contrary to the findings of European competition authorities, we consider that there are arguments in favour of the relevant market for domestic media rights being club- or even match-specific. This raises the question of what competition is restricted by the centralised sale if the rights on offer have limited or no substitutability. We conclude that the centralised sale of media rights is unlikely to be anticompetitive and may have procompetitive effects if the media rights of different clubs are complementary instead of substitutable. In addition, there may be efficiency gains from the bundling of media rights. Under a club or match-specific market definition, a no-single-buyer rule likely reduces the benefits from the centralised sale and may harm consumers.

Causation and counterfactual analysis in abuse of dominance cases – lessons from the General Court's Qualcomm ruling. Forfatter: Deutscher, Elias.
Counterfactual analysis, which compares the competitive situation prevailing with and without the allegedly abusive behaviour, is nowadays regarded the lynchpin of an effects-based approach to the analysis of dominant firm conduct under Article 102 TFEU. This article draws on the recent Qualcomm ruling by the General Court of the European Union to critically reflect on the use and requirement of counterfactual analysis in abuse of dominance cases. It argues that Qualcomm offers two lessons on the role of the counterfactual analysis in modern competition law. First, it shows that counterfactual analysis is vulnerable to under-inclusiveness and type II errors when it ignores the problem of concurrent

causes of foreclosure effects, disregards standard economic analysis of exclusivity rebates, and remains oblivious to dynamic competition. Second, Qualcomm sheds light on the intricate relationship between the counterfactual analysis and the requisite standard of harm for finding anticompetitive effects under Article 102 TFEU. In limiting the relevant counterfactual scenarios to a very narrow set of actual or nearby likely worlds, Qualcomm is but the last indication of a much more profound transformation of Article 102 TFEU: the transition from a capability to a balance of probabilities or beyond reasonable doubt standard of harm.

Economic analysis of proposed regulations of cloud services in Europe. Forfattere: Gans, Joshua; Hervé, Mikaël og Masri, Muath.
Cloud computing services ("cloud services") have attracted the scrutiny of antitrust authorities around the world. Relying in part on data from AWS, we assess the economic impact of measures within the European Commission's proposed Data Act (with parallels in France, the UK and elsewhere): namely, requiring cloud services providers to phase out data transfer-out fees, offer functionally equivalent services and publish open interfaces to facilitate switching and multi-clouding. The paper comes to three main conclusions. First, there is no clear evidence of market failure in cloud services. Second, a ban on data transfer-out fees will likely lead to unintended consequences, mainly price increases due to excessive levels of data transfer-out when customers do not internalize the costly nature of data transfers. We show how this could materialize using AWS data. Third, requirements to standardize cloud services carry a serious risk of dampening cloud services providers' incentives to innovate.

Artikler fra Journal of Competition Law and Economics

Intet nyt.

Artikler fra Journal of Antitrust Enforcement

Volume 11, Issue 2, July 2023

Digital markets and 'trends towards concentration'. Forfatter: Jonathan S Kanter.
The rise of dominant digital platforms presents a generational challenge to competition enforcers and, potentially more broadly, to the health and dynamism of our economy. In the past, many monopolists exerted control primarily over their own core products and services. Today's digital giants, however, can to a greater degree use their gatekeeper positions to pick winners and losers in adjacent markets, discourage switching to rival services, and punish entrepreneurs that come too close to the platform's domain. Moreover, digital platforms are becoming more common throughout the economy in industries beyond consumer technology, such as healthcare, energy and finance, underscoring the need for a coherent approach attuned to market realities. Platforms, however often defy simple horizontal competition and vertical distribution relationships. As a result, in addition to the antitrust concerns evident in traditional industries, competitive threats to digital platforms may also present in particular ways. The competition will often emerge in the form of disruptions that reduce dependence on the platform or undermine the network effects or moats that protect the platform's dominant position. For that reason, platforms' anticompetitive attempts to retain their position often target competitive threats, not just direct competitors.

Section 5 in action: reinvigorating the FTC Act and the rule of law. Forfatter: Lina M Khan.
The Federal Trade Commission Act of 1914 didn't just create a new agency. It created new law for that agency to enforce. The heart of that law is Section 5, which provides that 'unfair methods of competition in or affecting commerce' are 'hereby declared unlawful'. In passing this law, Congress also tasked the FTC with identifying the range of methods of competition that qualify as unfair, since lawmakers recognized they could not specify them all prospectively.

What about the Supreme Court? The lurking threat to US antitrust reform. Forfatter: Jonathan B Baker.
The current leadership of the US antitrust enforcement agencies, the White House, and many commentators recognize that the US antitrust laws need to be strengthened. While it is too early to grade Biden administration enforcers on the results of their reform efforts, it is evident that those efforts include litigation. Enforcers have used enforcement actions, administrative litigation at the FTC, amicus briefs in private litigation, and guidelines to attack new competitive problems and to encourage the courts to strengthen antitrust rules. But litigation takes time, and an unsympathetic Supreme Court potentially lies in wait at the end of the road of every federal case.

During past periods of dramatic changes in judicial interpretation of the antitrust laws, antitrust reformers in the executive branch—those seeking to strengthen the laws during the 1940s and those seeking to weaken them during the 1980s—

had a receptive Supreme Court. In contrast, today's Supreme Court may stand in the way of the change advocated by more interventionist reformers in the enforcement agencies.

Looking backwards to move forwards: The role of history in current US antitrust enforcement? Forfattere: Rachel Brandenburger og Jill Ottenberg.
The Biden Administration's far-reaching Executive Order on Promoting Competition in the American Economy issued on 9 July 2021 sets the stage for a progressive 'whole-of-government' approach to increasing competition in the USA. The Order emphasized the 'bold action' previous Presidents had taken in response to 'similar threats from growing corporate power' as precedent for the Executive Order's mission—specifically, President Teddy Roosevelt Administration's break up of 'the trusts controlling the economy …. giving the little guy a fighting chance' and President Franklin D Roosevelt Administration's actions to 'supercharge[] antitrust enforcement … help[ing] unleash decades of sustained, inclusive economic growth'.

Since July 2021, the US Department of Justice's Antitrust Division (DOJ) and the Federal Trade Commission (FTC) have implemented an expansive antitrust enforcement agenda rooted in the Biden Administration's view that, over the past 40 years, there has been a 'significant retrenchment' in antitrust enforcement in the USA. According to the leadership, this retrenchment makes it imperative for the antitrust agencies, moving forward, to 'no longer be so cautious to avoid overenforcement' and to move towards an effort to 'enforce the antitrust laws to ensure maximal efficacy'.

The New Brandeisians are here. Forfattere: Terry Calvani og Thomas Ensign.
Those who follow US antitrust policy from afar often give more importance than is due to asserted changes in policy that have accompanied transitions in Presidential Administrations when one party supplants another. The debate on monopolization between former Assistant Attorneys General Thomas Barnett and Christine Varney is a good example. Many barbs were hurled; the previous guidance was disparaged, a 'better agenda' announced. A big change? No not really. Those who plough the fields of American competition law enforcement appreciate that most promised changes between Administrations have been rhetorical. And that was to be expected since both groups sang from the common hymnal of the consumer welfare standard. This bipartisan perspective had been captured succinctly by Tim Muris, who upon being appointed Chairman of the Federal Trade Commission (FTC) in 2001 after eight years of a Democratic Administration remarked, '[c]ontinuity will be the norm, with changes at the margins'.

No longer. The confirmation of Lina Kahn and her subsequent appointment as Chair at the FTC in June 2021 signalled the arrival of significant change. Chair Kahn had no intention to sing from the same old hymnal. Although her article *Amazon's Antitrust Paradox* is a case study of Amazon, it provides insight regarding Kahn's views on antitrust generally and merits reading. It also reflects, albeit to a more limited extent, the policies of her counterpart Assistant Attorney General Jonathan Kanter.

Antitrust and regulatory alternatives: how the past points the way to the future. Forfatter: Harry First.
Over 2 days in January of 1876 lawyers representing the managers of a grain warehouse in Chicago argued in the US Supreme Court that the Illinois statute under which their clients were convicted violated the US Constitution. The statute required grain warehouse operators to get a license to operate and to charge no more for storing and handling grain than the maximum amount the statute specified. The managers did not have a license and they charged over the statutory maximum.

The case was *Munn v Illinois*, and it took more than a year after the oral argument before the Supreme Court handed down its opinion. The Court upheld the statute, deciding that it was within the police powers of the state, and not contrary to either the due process or equal protection clauses of the 14th amendment of the US Constitution.

The critical question for the Court was whether the defendants' private business was 'affected with a public interest' or 'devoted to a public use'. To determine that it was, the Court first described the grain business, drawing on the factual description set out in the 'elaborate brief' of Munn's lawyers.

The battle for reform of US antitrust law. Forfatter: Eleanor Fox.
The Biden administration has sought to make a big difference in US antitrust law. At the outset, it assessed the current state of antitrust as weak and laggard, not fit for the 21st century, and out of step with the world. It seeks to change the course of the law as well as the conversation. How well is it doing? How likely is it to succeed? Redrawing the coalitions as the Reformers versus the Neoliberals, it concludes on a note of hope for the Reformers.

The problem surfaced politically—with the politicians and 'the people'—before it became a common subject of conversation in the expert antitrust community. It surfaced before Joe Biden was elected President of the USA and on

both sides of the political aisle. People were concerned with the high price of goods and services and the increasing concentration of markets; they believed that markets were working for the elites and not for them, and that antitrust law was a collaborator. Antitrust became a plank of the Democratic Party in the presidential election of 2020, championed by Bernie Sanders, Elizabeth Warren, and Amy Klobuchar. Famously, President Joe Biden issued an Executive Order declaring that the US economy had a big competition deficit and that we needed a whole-of-government approach to instill competition into all segments of the economy. He appointed a team of like-minded advocates—Tim Wu to head competition policy at the White House, Lina Khan to chair the Federal Trade Commission, and Jonathan Kanter to head the Antitrust Division of the Department of Justice.

Reflections on the revolution in antitrust. Forfatter: Daniel Francis
Is there really, as the title of this symposium suggests, an 'Antitrust and Anti-Monopoly Realignment?' Can we call it a revolution? What exactly has changed and what does it mean for the future?

In this short essay, I will confine myself to three short reflections on antitrust's ongoing 'revolutionary moment' (or revival, upheaval, or whatever other term you might prefer). I will take the core of the revolutionary enterprise, very generally—and with all the caution that befits someone writing about a current movement of which he is not a member—to be a deep challenge to the modern, broadly welfarist, foundations of antitrust law and policy in the USA, and to its central methodologies. I will call this target 'welfarist antitrust'.

I will make three mild claims. First, and perhaps most importantly, I will argue that the current moment in antitrust's history has generated at least one outcome that *every* participant in the antitrust conversation should welcome: the re-opening and re-examination of antitrust's big-picture questions. A broader, more diverse, and more inclusive conversation is long overdue.

On the virtue and value of 'little' monopolization cases. Forfatter: Andrew I Gavil.
Government enforcement of section 2 of the Sherman Act is often associated with the 'big' case. That label would surely fit some of the formative cases in the history of section 2, such as *Standard Oil*, *Alcoa*, *Du Pont*, and *United Shoe Machinery*, and the later prosecutions of IBM, AT&T, and Microsoft. Today's examples include major enforcement actions that have been brought by federal antitrust agencies and varying groups of states against Google and Facebook (Meta), with others rumoured against Amazon and Apple.

Big cases, however, have limitations. They can be complex, challenging on the merits, and require potentially enormous commitments of time and resources by government agencies, defendants, and third parties who are often ensnared by the discovery process. These drawbacks do not mean such cases are undesirable. They might be justified because the conduct of such 'big' monopolists can have substantial consequences for the economy and thus warrant an attendant commitment of government capital. Such cases may also produce durable legal principles as has been true for cases like *Alcoa*, *du Pont*, and *Microsoft*. The case for the 'big case' is impact: precisely because the targets are viewed as substantial, the economic impact of enforcement against large and leading firms can be impactful.

Global competition law turbulence: some consequences for US antitrust. Forfatter: David J Gerber.
'All competition laws will have to be like US antitrust law. It is the model we will all have to follow'. Such comments have been common in competition law (a.k.a. antitrust law) circles around the world for decades. The substantive elements of the US antitrust law model—in particular, the reliance on economics as the source and measure of competition law norms and a focus on consumer welfare as the sole goal of competition law—have been widely viewed as a model by students, scholars, practitioners, and administrators in many competition law regimes. The model's influence on foreign developments is well enough known, but its role as the centre of a system of relationships among competition laws around the world is less often noticed. This system is, however, likely to be an important factor in the 'realignment' of US antitrust law that is the theme of the current symposium.

Most discussion of realignment issues in the US look almost exclusively at domestic factors, but this view misses much of its importance. My objectives here are: (i) to highlight key characteristics of the model-centred global system and (ii) to identify its potential impact on the realignment of US antitrust law.

The consumer welfare standard and avoiding the dangers of polarized debate in the USA. Forfattere: Hugh M Hollman og Nicholas P Putz.
The Biden Administration is seeking to redefine US antitrust policy that it views as largely responsible for historical underenforcement of antitrust laws in the USA. To achieve this, President Biden appointed progressive reformers to leadership positions and lawmakers are proposing amendments to the antitrust laws. These reforms could be described as a battle for the very soul of antitrust though such policy shifts in antitrust enforcement are not unprecedented.

Arguably a victor of a previous antitrust policy battle was the Chicago School with its core underlying assumption that markets self-correct. Allied to that view was its emphasis on economic theory and analytical methods that rely heavily on economic analysis, especially the consumer welfare standard (CWS).

A complete overhaul of US antitrust enforcement policy has yet to take place, but the current leadership of the US antitrust agencies have not held back in their criticism of the Chicago School with what they describe as its 'focus on "consumer welfare"' that is 'warping America's antimonopoly regime' and 'largely blinded enforcers to many of the harms caused by undue market power, including on workers, suppliers, innovators and independent entrepreneurs'. While the Chicago School's influence was profound, focusing solely on the Chicago School does ignore the influence of other scholarship, including the modern Harvard School, and other influential scholars. This current 'obsession' with the Chicago School without a broader discussion of the nuanced views of many other scholars is polarizing the debate, including over the use of the CWS.

Resetting Section 2. Forfatter: Herbert Hovenkamp.
Large firms are receiving closer antitrust scrutiny today than at any time in recent history, although digital platforms are bearing the brunt. Some of these firms are dominant, with large market shares in the products they sell, but often they are not. Is this new scrutiny insufficient, excessive, or misdirected? This essay briefly considers whether and how Section 2 of the Sherman Act should be reset to address these new concerns. It argues, first, that much of the recent attention is misdirected because it has not identified the monopoly problem correctly. Secondly, US antitrust law could benefit from an 'abuse of dominance' standard somewhat like that imposed in the European Union. Thirdly, it argues that the fundamental concern of Section 2 law remains unilateral conduct that threatens reduced market output and increased prices. Finally, it urges caution in pursuing structural relief as a non-merger remedy.

Cartel issues in plain sight. Forfattere: William E Kovacic, Robert C Marshall og Michael J Meurer.
In some product markets suppliers interact with one another only as sellers of one product. In other product markets suppliers are linked beyond one particular product market. Collusion is likely to be more profitable, more stable, and more frequent when a set of collusion-minded firms are linked in various ways. Links can be forged by multi-product, multi-national firms in competition across product markets and geographic markets. Links can be forged by the acquisition, assertion, and licensing of patents. Links can be forged by professional firms that advise cartel members. And links can be forged with contracts that connect prices in one small aspect of a market to prices that impact much larger aspects of that market or even related markets. Even though these links can be in plain sight of cartel enforcers, they get insufficient attention. In this article, we explore market linkage and multi-market cartels and suggest reforms to enforcement practices that account for linkage.

The major questions doctrine, FTC rulemaking, and rulemaking on non-compete clauses. Forfatter: Marina Lao.
After relying almost exclusively on case-by-case adjudications to prohibit 'unfair methods of competition' (UMC), the US Federal Trade Commission (FTC) signalled in late 2021 its intention to commence competition-related rulemaking initiatives. In early 2023, it proposed a rule that would ban virtually all non-compete clauses imposed by employers on their workers as UMC violations under section 5 of the FTC Act. The Commission based its notice-and-comment rulemaking authority on section 6(g) of the Act, which empowers the agency to 'make rules and regulations for the purpose of carrying out the provisions of [the FTC Act]'. Whether that provision authorizes the FTC to promulgate *substantive*, as opposed to merely procedural, rules has been the subject of debate for some time, and the debate has only intensified after the US Supreme Court decided *West Virginia v EPA* in 2022.

In *West Virginia*, the Supreme Court explicitly invoked the Major Questions Doctrine (MQD) to strike down the Environmental Protection Agency's (EPA's) assertion of authority to implement a certain regulatory environmental policy. Six justices said that any agency action relating to a 'major question' required 'clear Congressional authorization', and further concluded that the underlying statutory issue presented a major question for which the EPA must, but failed to, show sufficiently clear statutory authority in support of its regulatory effort.

Maybe we have all been wrong about antitrust law. Forfatter: A Douglas Melamed.
There is a broad push for antitrust reform in the USA. Critics have proposed legislation that would overrule what they regard as mistaken or unwise judicial decisions and an array of new laws that would impose broad restrictions on the large digital platforms. Critics have complained that the law is too defendant-friendly and is focused too much on economic welfare and not enough on other values like fairness and equality that are said to have motivated antitrust legislation in the first place. So far, however, the progressive leaders of the US antitrust agencies have not persuaded courts to overturn criticized legal doctrine or to adopt important new principles, and the proposed legislation has not gotten close to enactment.

More conservative commenters think US antitrust law is working well and does not need substantial reform. Among other things, these commenters adhere to the view that false positives are more costly than false negatives; and they continue to welcome rules like those governing predatory pricing, refusals to deal, and two-sided platforms that make it almost impossible for plaintiffs to win. Today, at least, conservative arguments find a generally hospitable audience in a conservative judiciary.

Common sense returns to antitrust. Forfatter: Stacy Mitchell.
It is an extraordinary time in antitrust. The future of American democracy is in doubt. Many people have gravitated to a strongman politics, their anger fuelled by a sense of despair and powerlessness. Unimaginable wealth has accumulated in a few hands, while average life expectancy has fallen. Communities find themselves at the mercy of distant corporate interests, their local businesses and sense of self-determination long since gone. Democratic institutions are seen by many as illegitimate, and no wonder: The actions of government more often reflect the priorities of corporate executives than the needs and desires of citizens.

Democracies are sustained by checks and balances that limit the accumulation of power. Anti-monopoly laws are thus essential to democracy's basic design: they block concentrations of economic power that can be every bit as tyrannical as a king. And so, in the mid-2010s, as the USA struggled with extreme inequality, a teetering democracy, and the rise of tech giants that possessed Godlike powers of surveillance and control, many people naturally turned their attention to antitrust. How was it that our laws to check concentrated power seemed to be doing nothing of the sort?

Build, borrow, buy: the case for merger efficiencies. Forfattere: Maureen K Ohlhausen og Taylor M Owings.
Business growth, whether scaling up existing operations or adding new capabilities to better serve consumers through product improvements or integrated offerings, requires companies to add new assets and labour. The consummate question for business managers is *how* to add these capabilities: In the words of Laurence Capon and Will Mitchell's seminal business book, should the company 'build, borrow, or buy'?

Increasingly, the 'neo-Brandeisians' at the helm of the US antitrust agencies are taking the position that if borrowing or building are feasible possibilities to achieve a stated goal, then buying—that is, adding capabilities through M&A—is illegal. But this approach ignores, or at least downplays, that mergers are often a legitimate, and sometimes highly efficacious, way of achieving procompetitive benefits. The growing trend of merger scepticism seems to be based, at least in part, on the belief that there is no good empirical evidence of merger efficiencies. This article serves to push back against that belief and offers a productive framework for how to credit efficiencies both in policy debates and in individual cases. We challenge merger sceptics to consider two important areas of research that identify real-world evidence of the procompetitive benefits to markets from mergers.

Policy realignment and competition in attention markets. Forfatter: Barak Orbach.
Over the past decade, a rapid shift in public attitudes towards large corporations has propelled antitrust law from obscurity to a favourite tool among progressive and conservative populists. Several factors account for this rise in antitrust's political salience, one of which is the remarkable success of a new wave of anti-bigness advocates in attention markets. These advocates have branded themselves as 21st-century trustbusters, promoting their anti-bigness agenda as an 'anti-monopoly movement'. They have adeptly converted their gains in attention markets into political influence and control over antitrust institutions. Their achievements have sparked both optimism and concerns that we might be witnessing an anti-monopoly realignment, with anti-bigness ideologies on the verge of reshaping antitrust policies. This essay explores the plausibility of an anti-monopoly realignment transforming antitrust law and policy.

At the core of the anti-bigness movement lies the belief that failed antitrust policies have contributed to, or exacerbated, a wide range of social, economic, and political problems, resulting in 'excessive market concentration [that] threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers', denying the public the 'benefits of an open economy', and 'widening racial, income, and wealth inequality'. Building on this premise, anti-bigness crusaders contend that their anti-monopoly agenda will restore competition in the American economy and reverse the trends.

Methodological and normative elements of the new antitrust. Forfatter: Sanjukta Paul.
Given the premise of this issue, I will dispense with any table-setting regarding the current moment in US antitrust debate and discussion, which spans the academic, regulatory, and policy spheres. Instead, this essay focuses on articulating the central methodological and normative elements of a particular strand of this debate: the one which advocates basic changes to the existing settlement in the direction of deconcentrating economic power.

The methodological or analytic elements of the new approach in antitrust thinking have received less sustained attention—certainly in broader public discussion, but even in academic debate—than the normative elements. The latter are also fairly straightforward, even if there is some variation across contributors. I therefore give more attention to the shared analytic or methodological approach here, identifying two essential elements in particular.

The first key element is the recognition that economic coordination is endemic in the economy and more generally, is inevitable. As a result, organizing and choosing among mechanisms of economic coordination is a central aspect of the legal design of markets and the economy, including but not limited to the working of antitrust law. This recognition then leads into critical and constructive work in various specific doctrinal and policy areas—from the legal treatment of horizontal coordination to the labor-antitrust intersection to vertical restraints to corporate mergers and the theory of the firm—given that many areas of antitrust law and streams of antitrust thinking insufficiently integrate the ubiquity of economic coordination.

Enforcement of US antitrust law in labour markets. Forfatter: Eric A Posner.
In recent years, the US government has begun to focus antitrust enforcement efforts on labour markets. In 2022, for example, the Department of Justice (DOJ) blocked Penguin Random House's acquisition of Simon & Schuster based on the theory that the merger would reduce compensation for authors. In the same year, the DOJ settled a lawsuit with three poultry processing plants that allegedly exchanged information on compensation of plant workers for the purpose of collaborating on pay decisions. The DOJ has also brought several criminal complaints against firms and individuals for fixing wages and agreeing not to poach one another's employees, and it has intervened in numerous private cases to express its views on the application of antitrust to labour markets. The Federal Trade Commission (FTC) has also gotten involved. In 2020, the FTC submitted a filing before a state commission criticizing a hospital merger that it predicted would lower the wages of nurses. In 2023, the agency forced several companies to drop covenants not to compete that it had imposed on their employees. And in the same year, the FTC proposed a rule banning covenants not to compete. The two agencies are also reportedly planning to include a section on labour markets in their updated merger guidelines. Private antitrust litigation against employers is also flourishing.

Still (at least) one decade behind: US competition policy in the healthcare industry. Forfatter: Barak D Richman.
Antitrust policy in the healthcare sector is perennially 10 years behind the industry. But at the start of the Biden Administration, there was hope for a change. After nearly 40 years of what has been called a complete antitrust policy failure, the Biden Administration's promise to pursue aggressive competition policies—and ultimately enhance the competitiveness—in American healthcare markets was met with near desperate relief.

The promise began with campaign promises and culminated in the Executive Order on Promoting Competition in the American Economy. The Executive Order included a particularly spectacular 'whole government policy' that section on health care that recognized that pro-competitive policies originate not just in the Department of Justice (DOJ) and Federal Trade Commission (FTC) but also through the many agencies in the Department of Health and Human Services (HHS).

Unfortunately, it is not clear that we have much to show 2 years in. Most antitrust enforcement actions in the healthcare sector have focused on preventing mergers between hospitals and hospital systems. To be sure, halting these mergers saved consumers and patients from the typically severe costs of hospital market power, including extortive prices and declines in quality. But costly and anticompetitive consolidation has persisted—and in many respects, accelerated—throughout the healthcare sector, and the antitrust agencies have shown little appetite to counter these harmful trends. Instead, they pursue an antitrust policy that would have been effective a couple of decades ago but one that no longer addresses the market's current challenges.

Agency objectives, organizational change, and optimizing enforcement. Forfattere: D Daniel Sokol og Abraham L Wickelgren.
Institutional structure helps shape the nature of accountability. Literature in economics, political science, finance, and management all utilize principal–agent models. The basic of this approach is that there might be misalignment in incentives between a principal and the agent or agents that operate on their behalf that create a need to motivate agents. This is true both in the private sector and public sector.

The principal–agent model helps to better frame the issues of antitrust enforcement, particularly focusing on the informational advantage of the agent (or staff) relative to the principal and how that necessitates much more deference, both because of the *ex post* efficiency of relying on the views of those with better information and because of the *ex ante* incentives to generate that information that will be gone if their views are ignored. The more important that underlying information is, the more deference is optimal for even greater values of any preference divergence between

principal and agent. In the antitrust setting, this information is especially important both because inquiries are very fact intensive (general principles tell you very little on their own) and because the principal's authority often relies on convincing courts, which cannot be done without the information generated by the agents.

Democracy and law in the new American antitrust. Forfatter: Zephyr Teachout.
There is an inverse relationship between those who argue that judges, guided by economists, are well suited to the task of determining the ultimate social value of an individual merger or business practice, and those who believe that antitrust law plays a central role in the protection of human freedom and democracy.

The more one is concerned with private sector threats to freedom, the more one treats antitrust as a public enterprise and seeks simple, administrable, publicly legible rules, with less discretion for judges, and a limited role for case-specific economic analysis. Conversely, if one is relatively unconcerned with democratic threats from the private sphere (or takes as a prior that only campaign finance law can address such threats), the more one understands antitrust as a microeconomic technical enterprise and seeks a single standard that is methodologically legible to economists, with a significant role for case-specific economic analysis.

The Biden administration's extraordinary re-invigoration of American antitrust in the name of democracy, workers, and macro-economic vitality should be understood in these terms.

The good, the bad, and the ugly of US antitrust. Forfatter: Maurice E Stucke.
This article examines the bad and ugly as the US federal agencies seek to rejuvenate competition. The bad is legislative hiatus to update the antitrust laws for the digital economy. The ugly is when courts push their own economic beliefs, without regard for the congressional intent and aims of the antitrust laws. Regardless of who wins, the rule of law (and those most dependent on the antitrust law) suffer. To correct America's market power problem, the article proposes restoring the constitutional balance, where the courts adjudicate, the legislature legislates, and enforcers enforce.

Lasting change in competition law and policy. Forfatter: Spencer Weber Waller.
This is a time of passionate debate on the fundamental goals of competition law. Should there be a single overarching goal for all competition law and policy? Should that goal be framed in purely economic terms? Should antitrust focus on protecting the competitive process, preventing unfair market conduct, or the abuse of superior bargaining position? Should antitrust promote and protect democracy, address social and racial injustice, or address climate change and sustainability? How should multiple goals be administered, weighed, and traded off in enforcement priorities and litigation? There is a progressive turn in the USA at the moment. But regardless of the nature and direction of the desired change, there is the equally important issue of how to achieve lasting change that survives the inevitable change in enforcement personnel and political leaders over time. In this essay, I focus on how to achieve that lasting change regardless of the goals and direction of change that any particular jurisdiction seeks to adopt. Most of the specific examples come from current developments in the USA, but are illustrative of the process of lasting change in competition. Enforcement agencies are key players in this process, but are constrained by the constitutions, treaties, legislation, and court decisions of their jurisdictions. Any campaign for change therefore depends on the wise use of the full substantive and procedural powers assigned to them by the political branches of the government. Successfully achieving substantial change rarely happens by accident, and most often requires a combination of such factors as: (i) creatively using the full statutory powers assigned to the agencies, (ii) striving for a unified whole-of-government approach to competition policy and (iii) deeply engaging the general public.

The President's role in antitrust policy. Forfatter: Tim Wu.
One of the major institutional developments in antitrust enforcement and competition policy over the first term of the Biden Administration has been a return to an active policy-setting role by the Presidency. This short piece describes those changes, puts them in a historical context, and defends the concept of significant Presidential involvement in antitrust policy.

Three premises anchor the conclusions in this article. First, in a democracy, elected officials should have the power and the duty to oversee and manage the economy. Secondly, questions of economic structure and competition form a major part of economic performance. Thirdly, the President, while not the only elected official, is the only official in the United States elected by a national constituency. If one accepts these three premises, then it follows that the Presidency's engagement in antitrust law and competition policy is not only permissible but appropriate and important.

The antitrust law rather obviously touches on many areas of acute public concern. The nation's economic structure forms a major part of the conditions that citizens live under. Whether it is the competitiveness of individual industries, the breadth of oligopoly or monopoly pricing, the power of employers, or the openness of the economy to entrepreneurship

and new entrants—all of these are matters that directly affect the lives of millions. It is, therefore, unsurprising that popularly elected Presidents have historically played an open and explicit role in the setting of antitrust enforcement policy.

Artikler fra Competition Policy Brief

Intet nyt.

Artikler fra Competition Merger Brief

Intet nyt.

Artikler fra Journal of European Competition Law and Practice

Intet nyt.

Artikler fra World Competition

Intet nyt.

Artikler fra Antitrust Law Journal

Intet nyt.

Artikler fra Antitrust Bulletin

Volume 68, Issue 3, September 2023

Wall Street's Practice of Compelling Confidentiality of Private Underwriting Fees: An Antitrust Violation? Forfatter: Willcox, Thomas C.
A small oligopoly of commercial and investment banks dominates the arranging and underwriting of loans and bonds for publicly traded companies. The oligopoly's dominance apparently compels nondisclosure of preliminary agreements that outline the proposed issuance terms of the loans or bonds. Also, the banks do not disclose the arranging and underwriting fees to anyone outside the oligopoly and prohibit disclosure to anyone by their customers, which non-disclosure violates the securities laws. This makes it impossible for customers to compare such fees and more difficult for non-oligopoly banks to offer competing bids. This article concludes the Antitrust Division, and Securities & Exchange Commission should investigate these practices.

Two Challenges for Neo-Brandeisian Antitrust. Forfatter: Lindeboom, Justin.
Several scholars and policy-makers have proposed a "Neo-Brandeisian" reform of U.S. antitrust law, aimed at reviving "republican" antitrust. Republicanism conceives of domination as inherently detrimental to freedom. Republican antitrust considers antitrust law as an "institution of antipower," aimed at dispersing economic power. This paper sets out two key challenges to the Neo-Brandeisian reform agenda and argues for legal formalism to address them. First, republicanism would alter the normative justification, but not necessarily the content of antitrust law. Neoclassical antitrust law does not broadly reflect a Schumpeterian endorsement of dominance. Rather, its epistemological priors and methodology entail skepticism about the mere presence of economic power. Thus, mainstream antitrust law and policy remain unfazed by the Neo-Brandeisian claim that antitrust should target domination instead of consumer welfare. Second, Neo-Brandeisian reform proposals are inherently polycentric. How Neo-Brandeisians aim to balance distinct values including the competitive process, the harm of concentrated power, and the protection of democracy and egalitarianism has remained unclear. This paper argues that both challenges demand for a formalistic approach to Neo-Brandeisian antitrust. Compared to a case-by-case approach, adopting general rules through legislative or administrative decision-making may

legitimately overturn current precedent, incorporate alternate methods of measuring power and competitive harm, and pursue a variety of republican goals. Neo-Brandeisian formalism would essentially reinvigorate the Harvard school's insight that multiple purposes—including both efficiency and republican liberty—can be attained by formalistic rules.

An Empirical Assessment of the European Commission's Cartel Prosecutions, 2010–2019. Forfatter: Veljanovski, Cento.
This is a quantitative analysis of the European Commission's cartel decisions in the 2010–2019 decade. It assesses the way the Commission's 2006 guidelines on fines were applied in practice and the operation of the leniency and settlement procedures. It also provides an overview of the types of cartels prosecuted, how they were detected, and how long the Commission took to investigate a cartel. It looks at rends in the Commission's enforcement activity and assesses some frequently made claims such as whether recidivism is rife; whether the Commission's leniency program is excessively generous and disproportionately benefits larger, more culpable firms; how much the settlements procedure reduces the length of the Commission's investigations; and why the Commission takes so long to conclude its investigations.

Louis D. Brandeis and the New Brandeis Movement: Parallels and Differences. Forfatter: Wörsdörfer, Manuel.
The recent antitrust discourse in the U.S. is dominated by references to Brandeis and the New Brandeis movement. While it is laudable that many researchers acknowledge Brandeis' work and recognize its business-ethical importance, it is also a missed opportunity to refer to him en passant and not investigate his philosophy in more depth. The following sections attempt to fill this gap in the academic literature by critically evaluating—and comparing—Brandeis' social philosophy with the one of the New Brandeis movement. The research questions of this paper are twofold: First, it analyzes the parallels and differences between Brandeis and neo-Brandeisianism. Second, it addresses the question of which references to his work are valid and legitimate and which ones are not. The paper shows that Brandeis' work encompasses much more than just competition policy; reducing him to antitrust issues (only) does not do him justice as it ignores significant parts of his social philosophy. The paper also shows that Brandeis was skeptical of big business and big government. In contrast, the new Brandeis movement focuses solely on antibigness in the economy while ignoring Brandeis' demand(s) in the political sector.

Innovation Competition and Innovation Effects in Horizontal Mergers: Theory and Practice in the United States and European Commission. Forfattere: de Oliveira Lyra, Marcos Puccioni og Pires-Alves, Camila Cabral.
This article discusses the assessment of potential negative effects on innovation in horizontal mergers within the United States and the European Commission Merger Control. It explores the theoretical background and practice. First, the article draws principles from the literature review on propositions to assess innovation competition cases. Second, it presents official documents and literature on the case law to study the jurisdictions' experiences. In addition, selected case studies are analyzed, establishing connections to the theoretical principles and practice. The case studies include (1) Takeda/Shire (EC-2018), (2) AbbVie/Allergan (EC-2020), and (3) Sabre/Farelogix (DoJ-2019). The article concludes that there have been improvements, particularly in the assessment of overlaps in firms' capabilities.

Do EU and U.K. Antitrust "Bite"?: A Hard Look at "Soft" Enforcement and Negotiated Penalty Settlements. Forfatter: Brook, Or.
EU and U.K. antitrust are contingent upon rigorous enforcement and the imposition of sanctions. Hard enforcement is key; antitrust loses its effect when it does not "bite." Soft instruments (non-adversarial, informal) and negotiated penalty settlements may be used, but authorities are expected to exercise self-restraint. This article reveals that despite the prevalence of hard-enforcement rhetoric, the vast majority of actions taken by the European Commission (1958–2021) and German, Dutch, and U.K. antitrust authorities (2004–2021) were not fully adversarial. The hard-enforcement actions, moreover, were confined to limited practices and sectors. Despite the prominence of non-fully adversarial instruments in Europe, and in striking contrast to the United States, only limited attention was devoted to their existence and implications. Urging to take a hard look at soft enforcement and negotiated penalty settlements, the article systematically records the enforcement instruments and their particularities, questions their effectiveness, and calls to align enforcement theory to practice.

Epic Battles in Two-Sided Markets. Forfattere: Alderman, Brianna L. Og Blair, Roger D.
Epic Games, the developer of the enormously popular Fortnite, sued Apple for allegedly violating §1 and §2 of the Sherman Act. The central issue was Apple's requirement that iPhone-compatible apps be purchased in its App Store. Because Apple collects a 30 percent ad valorem tax on each transaction, Epic Games offered an alternative payment option to iPhone owners through the Fortnite app so that consumers could avoid Apple's 30% fee. When Apple expelled Epic Games from its App Store, Epic sued. In this article, we examine the flawed analysis of the District Court, which can be traced to a fundamental misunderstanding of economic principles.

Geographic Market Definition in Commercial Health Insurer Matters: A Unified Approach for Merger Review, Monopolization Claims, and Monopsonization Claims. Forfattere: Haas-Wilson, Deborah; Zetenyi, Kristof og Gorin, Brian.
We provide a methodology for geographic market definition when the product(s) being purchased or sold has an intrinsic geographic component, such as (1) the sale of commercial health plans and (2) the purchase of health care providers' services by commercial health plans. In these situations, we show that a straightforward application of the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission (hereafter, Guidelines) that uses the customer or supplier location to define the geographic market is not sufficient and can result in markets that are unintuitively small. This is often addressed by applying an assumption about aggregating based on similar competitive conditions. The practice of relying on the assumption of similar competitive conditions across counties, metropolitan statistical areas, or other geographic areas, without a methodology to support this assumption, could lead to market definitions that are too narrow or too broad and could influence the assessments of the extent of market concentration and the presence or absence of market power. We outline a framework that is consistent with the Guidelines and does not require a reliance on the assumption of aggregation based on similar competitive conditions. JEL Classification L12, L40, K21, D42, I11.

Artikler fra Competition Law and Policy Debate

Intet nyt.

Artikler fra Competition Law Scholars Forum

Volume 15, Issue 1

Editorial - Traditional and Emerging Competition Rules: Learning to Co-Exist. Forfatter: Oles Andriychuk.

Algorithmic Tacit Collusion: a regulatory approach. Forfatter: Valeria Caforio.
In light of the ongoing debate on algorithmic collusion, this paper intends to answer the following question: should algorithmic tacit collusion be prohibited under EU competition law? By algorithmic tacit collusion, we mean the capability of algorithmic pricing agents to unilaterally engage into tacitly collusive strategies without human intervention (we also call it 'machine-to-machine cooperation' or 'algorithmic interdependent pricing'). Essentially, this practice raises the very same issues as the well-known oligopoly problem. Therefore, to make it prohibited one could envisage the traditional proposed solution of disentangling the categories of article 101 TFEU from the notions of an 'act of reciprocal communication between firms' or 'meeting of minds'. The paper sets out to discuss this option and its implications. It argues that, from a competition law standpoint, although algorithmic tacit collusion remains undesirable, the notions of agreement and concerted practices should not be changed to encompass it. Rather, it embraces a regulatory perspective referred to as 'algorithms by design' which relies on introducing a legal obligation for firms to program algorithms in such a way as to prevent them from setting oligopolistic prices. In particular, while exploring this regulatory proposal, the paper discusses the peculiar case of algorithms that, though designed not to violate antitrust law, end up charging collusive prices. In this regard, the paper develops a second proposal: it introduces the idea of 'outcome visibility' to nail firms to their responsibility. This concept implies the idea that even if firms are not aware that their pricing algorithms are implementing a collusive strategy, they cannot ignore their visible market outcome.

An 'AI whistle-blower' to monitor algorithmic infringements? Forfatter: Isabella Lorenzoni.
In the digital era, technology is taking over some important business decisions. Algorithms are in fact in charge to define price strategies, collect consumers' data, suggest products and services and target advertisements. Despite the countless benefits that technology brings into our society, risks should also be addressed. Algorithmic discrimination and algorithmic collusion are among the insidious practices that can harm consumers' welfare and competition. In order to keep pace with the evolution of technology and tackle the new challenges brought by a digitalised economy, competition authorities have started to build their own Artificial Intelligence (AI) arsenal for the purpose of enforcing competition law. Nevertheless, it might take time before regulators will fully benefit from AI. Therefore, other solutions for preventing and detecting anticompetitive behaviours of companies and their algorithms should be explored. At the internal level, companies that are already equipped with their AI systems are in the best position to use them also within the framework of their compliance programs. For example, in the financial sector, RegTech solutions have been implemented by companies to help them to internally detect illegal behaviours and some of these solutions could also be applied for competition compliance. In particular, the increasing importance of whistle-blowers enhanced with the power of technology, have led to speculate on the feasibility of an "AI whistle-blower" for regulatory compliance in the financial

industry. In the field of competition, an AI whistle-blowing tool, able to detect algorithmic infringements could be implemented as part of companies' compliance programs and therefore as a private enforcement tool. Concerns related to privacy, data protection and the black box nature of AI should nevertheless be carefully considered.

The Added Value of the DMA's Enforcement Framework. Forfattere: Belle Beems, Johan van de Gronden, og Catalin Rusu.
On 18 July 2022 the Council gave its final approval on the Digital Markets Act (hereafter: DMA). The DMA imposes a series of obligations and prohibitions on so-called gatekeepers in order to keep markets where gatekeepers are present contestable and fair to the benefit of business and end users. Formally speaking, the DMA is not part of the framework of 'traditional' competition law. Yet, the DMA shows some remarkable similarities with competition law. The objectives of both frameworks for example overlap – at least partially. On top of this, the substantive and enforcement provisions of the DMA clearly draw inspiration from competition law. This begs the question how the different frameworks relate to each other and what the added value of the DMA exactly entails. On top of this, the ultimate success of the DMA will largely depend on the effective enforcement of the substantive provisions. Therefore, we aim to assess to what extent the DMA's enforcement provisions are drafted in an effective fashion. In order to make this analysis, this paper addresses the conceptual relationship between the DMA and competition law, the enforcement tools and sanctioning mechanisms of the DMA and their competition law counterparts, and the lessons that can be learned from past enforcement experience.

Reconsidering Conglomerates – How are digital conglomerates different from those in the past? Theory and implications. Forfatter: Juliane Mendelsohn.
Digital bigness or the economic power held by Big Tech has become a central concern of antitrust. Many of these undertakings are conglomerates. Since little literature exists on this topic to date, this paper looks at these past theories, in particular Corwin Edwards' 'Conglomerate Bigness as Power', to establish commonalities and differences between past and present conglomerates. While conglomerates in the past were considered mere portfolio firms and were soon deemed ill-conceived toothless tigers, this paper argues that today's Big Tech conglomerates cannot be viewed in the same light and warrant considerable attention from competition law enforcers. It shows that that key differences in the underlying strategy, such as the creation of large ecosystems, as well as their sources of power, such as data-driven network effects and innovation, could mean that the fate of the digital conglomerate is very different from that of the past. This paper suggests placing a greater focus on conglomerate effects of mergers in the digital sphere. Understanding the nature, manifestations and potential harms of this power will, in turn, help in (further) developing novel theories of harm.

Book Review - Alexandr Svetlicinii, Chinese State Owned Enterprises and EU Merger Control. Forfatter: Oles Andriychuk.

Artikler fra Journal of Regulatory Economics

Volume 63, Issue 3, June 2023.

Compliance costs and productivity: an approach from working hours. Forfatter: Masayuki Morikawa.
This study proposes a new approach of measuring compliance costs of rules and regulations by focusing on labor input, and estimates the compliance costs in Japan based on a survey of workers. According to the results, the working hours required to comply with rules and regulations account for more than 20% of total labor input. By industry, this cost is higher in the finance and insurance industry followed by the health and welfare industry, and by firm size, it is higher in large firms. If these costs were halved, overall economic productivity would increase by about 8%.

Impact of renewable and non-renewable electricity generation on economic growth in India: an application of linear and nonlinear models. Forfattere. Mohd Arshad Ansari, Pushp Kumar og Muhammed Ashiq Villanthenkodath.
The development of renewable energy sources for electricity generation is necessary for sustainable development in India. Thus, the present study examines the effects of renewable and non-renewable electricity generation on economic growth in India during 1991–2019. In this regard, the robust time series econometric tools like autoregressive distributed lag (ARDL) and non-linear autoregressive distributed lag (NARDL) models are applied to the formulated economic growth function in the presence of both renewable and non-renewable electricity generation as key determinants. Moreover, the outcome of ARDL and NARDL models confirms the long-run relationship between the sample variables. Further, the long-run result shows that economic growth is positively affected by renewable and non-renewable electricity generation, according to the ARDL model. At the same time, the finding from NARDL indicates that a negative change in non-renewable electricity generation leads to an increase in economic growth in India.

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

Volume 7, Issue 2, 2023

Vertical Distribution Agreements: What Should Be Considered a Restriction by Object? Forfatter: Christian Bergqvist.
While consensus positions continue to emerge regarding what to accept as restrictions by object in horizontal arrangements, little consideration has been given to verticals – presumably because enforcers lost interest several decades ago. But the winds might be changing, and the fact remains that case law has identified a group of vertical restrictions as detrimental to the free market as horizontal hardcore arrangements. In this article, an attempt to capture what to accept as vertical object restrictions will be made, providing guidance for enforcers' renewed interest in the matter.

Regulating Connectivity of Multimodal Digital Mobility Services. Forfattere: Christian Koenig og Carlos Deniz Cesarano.
Multimodal Digital Mobility Services (MDMS) increase the attractiveness of the public mobility sector and thereby contribute to sustainable, demand-oriented and climate-friendly passenger transport. However, MDMS are currently deployed in a fragmented manner, lacking a proper legal and market framework to develop more successfully and to provide a full range of offers across the EU. The mobility sector is characterised by market power asymmetries and vertical integration, which are obstacles to the deployment of MDMS. These obstacles must be overcome by a clear European legal framework providing adequate regulatory instruments in order to create a level playing field that enables effective competition in the distribution markets. When shaping this legal framework within the MDMS-Initiative of the European Commission, existing legislation from other regulated sectors can be considered as legislative references.

Germany - The Role of German Authorities and Courts in the Implementation of the Digital Markets Act. Forfatter: Carsten Koenig.
Finding the appropriate role for Member State authorities and courts was one of the main challenges in negotiating the Digital Markets Act (DMA). To avoid inconsistent application, it was generally felt that the European Commission needed to be in the driver's seat. At the same time, it was clear that even the Commission would eventually become overburdened and that it was simply a matter of common sense to use the resources of the Member states as well. The DMA, as finally adopted, therefore provides for various ways in which national authorities and courts can assist in the enforcement of the new rules without jeopardizing the Commission's leading role. This report examines how such cooperation could be organized in Germany.

Hungary - Competition Law Developments in Hungary from Mid-2022 to Mid-2023. Forfatter: Martin Milán Csirszki.
Competition law in Hungary between June 2022 and June 2023 was abundant in developments. Both legislation and enforcement provided impetus for meaningful debates. Regarding this period of time, this country report aims to present the most important decisions both from the Hungarian Competition Authority and the Curia. Furthermore, I also touch upon a worthwhile decision of the Hungarian Constitutional Court and analyze some significant legislative developments.

Portugal - Unlocking the Path to Evidence in EC Law Private Enforcement. Forfattere: Ana Rita Calmeiro Barroca og Nuno Pires Salpico.
In the orbit of European Union law, Portugal has emerged as a hot topic jurisdiction for mass claims, particularly in the context of European competition law private enforcement actions. As the demand for effective remedies and access to justice intensifies, the Portuguese legal landscape has witnessed the utilization of the national regime of actio popularis to address these collective actions.

Intel Renvoi: The General Court Sets a Course to Steer the EU Through Troubled Waters. Forfatter: Martin Toskov.
Case T-286/09 RENV Intel Corporation v Commission, Judgment of the General Court (Fourth Chamber, Extended Composition) of 26 January 2022. Just over a year ago, the General Court (GC) handed down its second judgment of the Intel saga. The judgment largely follows the Court of Justice of the European Union's (CJEU) findings from 2017.1 The case centres around the conditional rebates Intel used in its dealings with trading partners. Specifically, the place of the as-efficient-competitor (AEC) test in non-price-based abuses of dominance under Article 102(c) TFEU2 and the role of effects-based analyses in fidelity rebates. The new, more effects-based approach adopted by the GC is both welcome and necessary. It ensures that EU competition law encourages, rather than dampens, entrepreneurship and is thus a tool fit to guide the EU through the current economic difficulties.

Except for the Fine, the General Court Endorses Commission's Decision in Altice. Forfatter: Nora Memeti.
Case T-425/18 Altice Europe NV v European Commission, Judgment of the General Court (Sixth Chamber) of 22 September 2021. The European Union Merger Regulation (EUMR) states that the acquirer must notify the acquisition to the European Commission (EC) and must not implement the concentration prior to its clearing. Altice was found to have infringed both Article 4(1) EUMR, an infringement often referred to as Gun Jumping, and Article 7(1) EUMR, known as standstill obligation. Based on the findings, the EC fined Altice an unprecedented fine of €124.5 million for both infringements, each €62.25 million. This is the highest fine imposed for such infringements ever. Altice appealed to the General Court (GC). The appeal focused on the finding and the legality of the EC's decision to issue fines for violations of EUMR. The GC largely dismissed the applicant's annulment action except in relation to the amount of the monetary fines. Based on its unlimited powers related to fines, the GC reduced the fine by 10%.

C-680/20 Unilever: Exclusionary Conduct of Distributors May Be Imputed to Producer. Forfatter: Octave Schyns.
Case C-680/20 Unilever Italia Mkt. Operations Srl v Autorità Garante della Concorrenza e del Mercato, Judgment of the Court (Fifth Chamber) of 19 January 2023. In the Unilever case1 the CJEU finds that in specific circumstances the conduct of distributors forming part of a distribution network can be attributed under Article 102 TFEU to a producer at the head of this network. It is not necessary that these distributors are part of the dominant undertaking or that 'hierarchical links' exist between those distributors and the dominant undertaking. In addition, if in the course of administrative proceedings an undertaking submits evidence that its conduct is unable to produce anti-competitive effects, the competition authority is required to examine this evidence.

Artikler fra Communications Law

Intet nyt.

Artikler fra Computer and Telecommunications Law Review

Volume 29, Issue 6, 2023

The Japanese legal implications of ChatGPT and generative AI. Forfatter: Masahiro Hashimoto.
Discusses Japanese law on the patentability of inventions made by or with help from artificial intelligence (AI), use of copyright works to train AI, disclosure of trade secrets, data protection, and best practices for companies which use AI tools.

The effect of Brexit on intellectual property rights (including software, database rights, design rights and enforcement). Forfatter: Dai Davis.
Examines how Brexit affects exhaustion of rights in copyright software, database right, design rights, and conflict of laws.

UK Government commits to the establishment of the UK-US data bridge. Forfatter: Christopher Foo.
Considers the agreement in principle between the UK and US for the transfer of personal data from UK to US organisations without safeguards or derogations, on the basis that US data protection is adequate.

Coinbase trade mark tussle continues as EU General Court tells EUIPO to rethink bad faith (Case Comment). Forfatter: Paul Harris.
Comments on Coinbase Inc v European Union Intellectual Property Office (EUIPO) (T-366/21) (GC) on alleged bad faith registration in the EU of the mark COINBASE for dissimilar goods and services.

Artificial intelligence: rewards and risks as a tool for empowering financial inclusion. Forfatter: Mirshad Ahani.
Considers how artificial intelligence (AI) offers the possibility of access to affordable financial services for unbanked individuals, but will raise new issues of data protection and competition regulation.

The legal system and electronic evidence: an early discussion, the case of Julie Amero and need for educating the legal profession: Part 2. Forfatter: Stephen Mason.
This, the second part of a multi-part article, discusses the US judgment in Connecticut v Amero on electronic evidence in criminal proceedings, commenting on the failure of the judge and lawyers involved to understand this type of evidence. (See C.T.L.R. 2023, 29(5), 78-80).

EC computing, telecommunications and related measures. Forfattere: Hannah Schofield, Quentin Archer, Mary Foord-Weston og James Sharp.
Summarises the status of EC legislative measures on electronic communications, Directive 2002/22 (Telecoms Framework Directive), the Competitiveness and Innovation Framework Programme, electronic commerce, electronic signatures, network security, cybercrime, cybersecurity, technological development, telecommunications, broadcasting, satellite, intellectual property rights, data protection, and taxation.

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

Artikler fra Global Competition Litigation Review

Intet nyt.

Andre udenlandske artikler

Intet nyt.

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Vertical Distribution Agreements: What Should Be Considered a Restriction by Object? Forfatter: Christian Bergqvist.
While consensus positions continue to emerge regarding what to accept as restrictions by object in horizontal arrangements, little consideration has been given to verticals – presumably because enforcers lost interest several decades ago. But the winds might be changing, and the fact remains that case law has identified a group of vertical restrictions as detrimental to the free market as horizontal hardcore arrangements. In this article, an attempt to capture what to accept as vertical object restrictions will be made, providing guidance for enforcers' renewed interest in the matter.
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Dato: 03.07.2023