



Konkurrenceretlig Nyhedsoversigt nr. 85 / dækkende 22. september 2023 – 13. oktober 2023

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- Andet internationalt nyt

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- Nye publikationer fra Erhvervsministeriet
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- European Competition Law Review
- European Competition Journal

- Journal of Competition Law and Economics
- Journal of Antitrust Enforcement
- Competition Policy Brief
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- 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
- European Competition and Regulatory Law Review
- Communications Law
- Computer and Telecommunications Law Review
- Global Competition Litigation Review
- Andre udenlandske artikler

### 5. Nyt fra konkurrencegruppen



## 1 | DANSK RET

### Nyt fra Konkurrence- og Forbrugerstyrelsen

#### **Godkendelse på baggrund af en forenklet sagsbehandling af ITM8's erhvervelse af enekontrol over JDM.**

Ved transaktionen erhverver ITM8 100 pct. af aktierne i JDM, hvorved ITM8, der er kontrolleret af Axcel VI fonden, erhverver enekontrol over JDM, jf. konkurrenceloven § 12 a, stk. 1, nr. 2.

ITM8-koncernen er en dansk udbyder af IT-konsulentytelser på timebasis og IT-outsourcing. ITM8-koncernen har aktiviteter vedrørende Cloud services/IT infrastruktur, digital transformation, applikationservices og cyber sikkerhed. Som led i udbud af IT-outsourcing udbyder ITM8-koncernen tillige hardware og software. ITM8-koncernen udbyder sine ydelser gennem selskaberne Sotea A/S, Sotea AB, Cenvation ApS, Progressive A/S, Mentor IT A/S, IT Relation A/S, Copenhagen Software A/S, Miracle 42 A/S, Improsec A/S og AddPro AB samt disse virksomheders datterselskaber.

Axcel VI er en af flere Axcel-fonde, der er private equity-fonde med fokus på investeringer i mellemstore virksomheder i de nordiske lande. Axcelfondene har kontrollerende ejerandele i samlet 21 porteføljeselskaber. Udover ITM8 er syv af Axcel's 21 porteføljeselskaber aktive inden for IT-området, herunder BullWall, Init, NTI Group, emagine, SuperOffice, Loopia og Progrits. Heraf er det kun selskabet emagine, der tilbyder ydelser vedrørende IT-services.

JDM er en dansk it-virksomhed med kontorer i København, Aarhus og Odense. JDM er Microsoft Gold Partner og leverer services, som komplementerer Microsoft 365 og Dynamics 365. JDM udbyder udvikling, drift, konsulentassistance og vedligeholdelse af både mindre, mellemstore og større kunders it-løsninger, ligesom JDM også tilbyder abonnementer og videresælger hardware og software.

[Læs mere](#)

Dato: 6.10.2023

#### **Godkendelse af NCG Retail A/S' erhvervelse af enekontrol over Skorstensgaard Holding ApS.**

Transaktionen indebærer, at NCG Retail A/S, der er et datterselskab under Nic. Christiansen Gruppen A/S, erhverver 61 pct. af kapitalandelene i Skorstensgaard Holding ApS.

Nic. Christiansen Gruppen importerer, distribuerer, sælger, servicerer og udbyder leasing og finansiering af biler i Danmark, Norge, Sverige, Finland og Baltikum. Nic. Christiansen Gruppen importerer og distribuerer biler af mærkerne Hyundai, BYD, Jaguar og Land Rover samt dertilhørende reservedele i Danmark. NCG er en del af Nic. Christiansen Gruppen og indeholder koncernens detail-aktiviteter, som er organiseret i tre forhandlerkæder som datterselskaber til NCG: Terminalen A/S, Bayern AutoGroup A/S og British MotorGroup A/S.

Skorstensgaard fungerer som det øverste driftsselskab for datterselskabet Skorstensgaard Danmark A/S, der er 100 pct. ejet af Skorstensgaard. Skorstensgaards aktiviteter inden for reparation og vedligeholdelse af biler er organiseret gennem en række datterselskaber under Skorstensgaard Danmark A/S.

[Læs mere](#)

Dato: 4.10.2023

#### **Godkendelse af Primo Tours A/S' erhvervelse af enekontrol over Bravo Tours 1998 A/S.**

Transaktionen indebærer, at Primo Tours erhverver samtlige aktier i Bravo Tours gennem en aktieoverdragelsesaftale. Primo Tours erhverver herved enekontrol over Bravo Tours og virksomhedens rettigheder og forpligtelser.

Primo Tours indgår i en dansk rejsebureaukoncern med en række underliggende datterselskaber og brands (samlet, "Primo Tours-koncernen") herunder, Århus Charter, SunCharter, Dansk, Slopetrotter, Nortlander, USA Tours, Unique Travel og DANexplore. Desuden har Primo Tours et samarbejde med Amisol Travel A/S om at sælge rejser til Egypten. Primo Tours-koncernens hovedaktivitet består i at sælge ferierejser som pakkerejser. Foruden salg af pakkerejser sælger Primo Tours også i et begrænset omfang hotelværelser og flybilletter separat. Primo Tours sælger primært rejser til danske kunder samt i et begrænset omfang til udenlandske turister og udelukkende med afgang fra danske lufthavne.



Primo Tours-koncernen har endvidere blandt andet aktiviteter vedrørende charterflyvirksomhed og drift af skisportshoteller i Øststrig. Derudover er søsterselskabet Tourpaq A/S aktiv med levering af IT-software.

Bravo Tours er et dansk rejsebureau, som sælger ferierejser som pakkerejser. Bravo Tours sælger pakkerejserne gennem Bravo Tours, Top Tours ApS og Vision Travel ApS. Derudover sælger Bravo Tours også i et begrænset omfang flybilletter separat igennem selskabet BT Air Brokers ApS. Bravo Tours sælger primært rejser til danske kunder samt i et begrænset omfang til udenlandske turister og udelukkende med afgang fra danske lufthavne.

[Læs mere](#)

Dato: 27.9.2023

### **Godkendelse på baggrund af en forenklet sagsbehandling af Sweco Danmark A/S' erhvervelse af OJ Rådgivende Ingeniører A/S.**

Transaktionen indebærer, at Sweco erhverver 100 pct. af aktierne i OJ. Sweco erhverver dermed enekontrol med OJ og OJ's datterselskab, OJ Brandrådgivning A/S ("OJB").

OJ er aktiv inden for teknisk rådgivning i relation til byggeri og anlæg, herunder ingeniørydelser og tilknyttede ydelser energi og indeklima, VVS og ventilationsinstallationer, el, anlægsarbejde mv. OJB yder brandrådgivning.

Sweco er en rådgivende ingeniørvirksomhed, som er en del af Sweco-koncernen, der har hovedsæde i Sverige. Sweco tilbyder rådgivende ingeniørydelser inden for byggeri, vandværker, energi- og industrisektoren, infrastruktur og byudvikling, herunder tilknyttede ydelser såsom arkitektudvalgte og brandrådgivning.

[Læs mere](#)

Dato: 27.9.2023

### **Godkendelse på baggrund af en forenklet sagsbehandling af Impact Co A/S' erhvervelse af FC Midtjylland A/S og Systems Clinical Exclusive ApS.**

Transaktionen indebærer, at Impact erhverver Matthew Benhams aktier i FC Midtjylland og SCE. Impact erhverver ved transaktionen enekontrol over FC Midtjylland og SCE.

Impact er et holding- og investeringsselskab, der alene ejer kapitalandele i FC Midtjylland og SCE. Impact indgår i HEARTLAND-koncernen. HEARTLAND er et holding- og investeringsselskab, der repræsenterer Holch Povlsen-familiens interesser og deres familievirksomhed BESTSELLER. HEARTLAND har investeret i forskellige områder og brancher som blandt andet mode, detailhandel og teknologi, bæredygtighed og forretningsinnovation, vedvarende energi, naturbeskyttelse og ejendomme. HEARTLAND er blandt andet en del af ejerkredsen i større virksomheder som Zalando, ASOS, About You, Klarna, WhiteAway, &Tradition, Normal og Nømlig.com.

FC Midtjylland er en dansk fodboldklub – med dertilhørende kommercielle aktiviteter. FC Midtjylland har et professionelt fodboldhold, der spiller i Superligaen, og et fodboldakademi, hvis formål er at udvikle fremtidigt professionelle fodboldspillere.

[Læs mere](#)

Dato: 22.9.2023

## **Nyt fra Konkurrencerådet**

Intet nyt.

## **Nyt fra Konkurrenceankenævnet**

Intet nyt.

## **Nyt fra domstolene**

### **Civilretlige afgørelser**

#### **Dom fra Sø- og Handelsretten: Ønskebørn A/S mod Konkurrence- og Forbrugerstyrelsen (spørgsmål om "out of scope") - under anke.**

Sø- og Handelsretten har den 4. september 2023 frifundet Konkurrence- og Forbrugerstyrelsen i en sag, hvor ØnskeBørn A/S havde stævnet styrelsen.



Ifølge ØnskeBørn A/S havde Konkurrence- og Forbrugerstyrelsen ikke ret til at anvende materiale fra en kontrolundersøgelse i forbindelse med en sag om priskoordinering, fordi baggrunden for kontrolundersøgelsen var en række henvendelser om mulige bindende videresalgspriser i branchen for baby- og børneprodukter. ØnskeBørn A/S gjorde således gældende, at styrelsens anvendelse af materialet var såkaldt "out of scope" i forhold til grundlaget for kontrolundersøgelsen.

Med Sø- og Handelsrettens dom er det slået fast, at Konkurrence- og Forbrugerstyrelsens anvendelse af materialet ikke var "out of scope". ØnskeBørn har anket dommen.

[Læs mere](#)

Dato: 4.9.2023

### Afgørelser om bøder

Intet nyt.

## Lovforslag i høring

Intet nyt.

## Ny lovgivning

### Lovprogram for folketingsåret 2023-2024:

#### **Ændring af konkurrenceloven (Krav om anmeldelse af visse fusioner under omsætningstærsklerne og indførelse af mulighed for markedsefterforskning samt bødeudmåling m.v.) (Jan II).**

Lovforslaget har til formål at give yderligere værktøjer til konkurrencemyndigheden, som skal modvirke forhold, der hæmmer den effektive konkurrence, og at indføre ændrede principper for beregning af bøder. Med lovforslaget får konkurrencemyndigheden mulighed for at indlede en markedsefterforskning af strukturer eller adfærd, som svækker konkurrencen, og eventuelt udstede adfærdsmæssige påbud. Endvidere giver lovforslaget konkurrencemyndigheden mulighed for at påbyde virksomheder at anmelde en fusion, hvis der er risiko for, at den hæmmer den effektive konkurrence betydeligt. Endelig ændres med lovforslaget principperne for beregning af bøder til virksomheder m.v.

[Læs mere](#)

Dato: 3.10.2023

## Nyt fra Ankestyrelsen

Intet nyt.

## Andet

Intet nyt.

## 2 | EUROPÆISK OG INTERNATIONAL RET

### Nyt fra Kommissionen

#### Antitrust & Cartels

#### **Commission decides not to extend antitrust block exemption for liner shipping consortia.**

The European Commission has decided not to extend the EU legal framework which exempts liner shipping consortia from EU antitrust rules (Consortia Block Exemption Regulation or 'CBER'). The Commission has concluded that the CBER no longer promotes competition in the shipping sector and therefore it will let it expire on 25 April 2024.

This decision follows a review process launched in August 2022, aimed at gathering evidence on the functioning of the CBER since 2020, in view of its expiry on 25 April 2024. The CBER allows shipping lines, under certain conditions, to enter into cooperation agreements to provide joint cargo transport services, also known as 'consortia'.



[Læs mere](#)

Dato: 10.10.2023

**Commission re-imposes €376.36 million fine on Intel for anticompetitive practices in the market for computer chips.**

The European Commission has re-imposed a fine of around €376.36 million on Intel for a previously established abuse of dominant position in the market for computer chips called x86 central processing units ('CPUs'). Intel engaged in a series of anticompetitive practices aimed at excluding competitors from the relevant market in breach of EU antitrust rules.

The Commission is adopting a new decision imposing a fine on Intel only for Intel's naked restrictions. These restrictions took place between November 2002 and December 2006 and consisted in payments made by Intel to three computer manufacturers (i.e., HP, Acer and Lenovo) to halt or delay the launch of specific products containing competitors' x86 CPUs and to limit the sales channels available to these products.

[Læs mere](#)

Dato: 22.9.2023

**Commission fines defence company €1.2 million in cartel settlement.**

The European Commission has fined defence company Diehl €1.2 million for participating in a cartel concerning the sale of military hand grenades together with its rival RUAG. Both companies admitted their involvement in the cartel and agreed to settle the case. RUAG was not fined as it revealed the cartel to the Commission under the leniency programme.

The product concerned by the cartel is military hand grenades. The Commission investigation revealed that the two manufacturers split national markets across the European Economic Area ('EEA') between themselves during almost 14 years. Following this allocation, only the designated manufacturer was entitled to sell military hand grenades in its allocated territory unless the other party gave its consent.

Both companies cooperated with the Commission under the leniency programme (2006 Leniency Notice):

1. RUAG received full immunity for revealing the cartel, thereby avoiding a fine of ca. € 2.5 million.
2. Diehl benefited from a 50% reduction of the fine for its cooperation with the Commission's investigation. The reduction reflects the timing of its cooperation and the extent to which the evidence it provided helped the Commission prove the existence of the cartel in which it was involved.

In addition, under the Commission's 2008 Settlement Notice, the Commission applied a reduction of 10% to the fines imposed on the companies in view of their acknowledgment of their participation in the infringement and of their liability in this respect.

[Læs mere](#)

Dato: 21.9.2023

**Commission carries out unannounced inspections in the medical devices sector.**

The European Commission is carrying out unannounced inspections at the premises of a company active in medical devices for cardiovascular applications.

The Commission has concerns that the inspected company may have violated EU antitrust rules that prohibit abuses of a dominant market position (Article 102 of the Treaty on the Functioning of the European Union).

[Læs mere](#)

Dato: 19.9.2023

## Mergers

**Commission orders Illumina to unwind its completed acquisition of GRAIL.**

On 6 September 2022, the Commission prohibited the acquisition of GRAIL by Illumina over concerns that the merger would have stifled innovation and reduced choice in the emerging market for blood-based early cancer detection tests. Illumina and GRAIL unlawfully completed the merger during the Commission's in-depth investigation, in breach of EU merger control rules. In July 2023, the Commission fined both companies for implementing their proposed merger before approval by the Commission.



The Commission has adopted restorative measures requiring Illumina to divest GRAIL and restore the situation prevailing before the completion of the acquisition.

The Commission thus orders the following measures: (i) divestment measures requiring Illumina to unwind the transaction with GRAIL; and (ii) transitional measures that Illumina and GRAIL need to comply with until Illumina has dissolved the transaction.

Specifically, the divestment measures must be implemented in line with the following principles:

- First, the dissolution of the transaction must restore GRAIL's independence from Illumina to the same level enjoyed by GRAIL prior to the acquisition. Restoring GRAIL's independence will remove the harm to competition resulting from Illumina's ability and incentive to delay or disadvantage GRAIL's rivals.
- Second, GRAIL must be as viable and competitive after the divestment as it was before Illumina's acquisition. This will ensure that the innovation race between GRAIL and its rivals can continue in conditions similar to those in place before the transaction.
- Finally, the divestment must be executable within strict deadlines and with sufficient certainty, so that the pre-transaction situation can be restored in a timely manner.

As regards the transitional measures:

- They will ensure that Illumina and GRAIL remain separate until the transaction is unwound in order to prevent further integration of GRAIL into Illumina's business and subsequently irreparable harm to competition.
- They also oblige Illumina to maintain GRAIL's viability by continuing to fund GRAIL's cash needs on an ongoing basis to allow it to further develop and launch its early cancer detection test Galleri.
- They will replace the interim measures adopted by the Commission on 28 October 2022 and that are currently in force.

[Læs mere](#)

Dato: 12.10.2023

### **Commission prohibits proposed acquisition of eTraveli by Booking.**

The European Commission has prohibited, under the EU Merger Regulation, the proposed acquisition of Flugo Group Holdings AB ('eTraveli') by Booking Holdings ('Booking'). The acquisition would have allowed Booking to strengthen its dominant position on the market for hotel online travel agencies ('OTAs') in the European Economic Area ('EEA'). Booking did not offer remedies that were sufficient to address these concerns.

The Commission found that the transaction would have strengthened Booking's dominant position in the hotel OTA market, leading to higher costs for hotels and, possibly, for consumers. More specifically, the Commission found that:

1. Booking is the dominant hotel OTA in the EEA, which has been consistently growing over the past ten years to reach a market share above 60%. There is only one sizeable competitor in the market, which is however much smaller and mainly focused on the US market. Rival OTAs are not able to exert sufficient competitive price pressure on Booking, which is thus free to charge higher commissions to hotels than some of its main competitors. Moreover, Booking benefits from network effects as it has developed a significant scale in its hotel offering that, in turn, attracts an ever larger number of consumers.
2. The transaction would have allowed Booking to acquire a main customer acquisition channel. After accommodation, flight OTA services are the second largest OTA market and the closest complement to Booking's core hotel OTA business. Flight OTA services are an important customer acquisition channel for hotel OTAs as they generate a significant amount of traffic and are often the first step in the planning of a trip. On the flight OTA market, eTraveli is a best-in-class OTA and the number two player in the EEA. Booking could have leveraged eTraveli's capabilities to become the main flight OTA in Europe.
3. The transaction would have allowed Booking to expand its travel services ecosystem, which revolves around its hotel OTA business. A flight OTA product is a crucial growth avenue in this ecosystem as it would generate significant additional traffic to Booking's platform. This is because, among the different travel OTA services, flights have the highest chance to lead to the cross-selling of accommodation. These would have allowed Booking to benefit from existing customer inertia because a significant share of these additional consumers would have stayed on Booking's platforms. Therefore, the transaction would have made it more difficult for competitors to contest Booking's position in the hotel OTA market.
4. By increasing traffic to and sales by Booking's platforms, the transaction would have reinforced network effects and increased barriers to entry and expansion, making it harder for competing OTAs to develop a customer base capable of supporting a hotel OTA business. OTAs currently on a path to become full-fledged competitors may not be able to do so if the transaction goes ahead.



5. The strengthening of Booking's dominant position would have further increased its bargaining position towards hotels and diverted demand from cheaper sales channels to Booking. This could have resulted in higher cost for hotels and, possibly, consumers.

[Læs mere](#)

Dato: 25.9.2023

#### State Aid

##### **Commission approves €400 million Bulgarian State aid measure to support Bulgargaz EAD in the context of Russia's war against Ukraine.**

The European Commission has approved an around €400 million (BGN 800 million) Bulgarian measure to support the public supplier of natural gas in Bulgaria, Bulgargaz EAD, in the context of Russia's war against Ukraine. The measure 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, as amended on 20 July 2022. Such Temporary Crisis Framework was amended again on 28 October 2022, and replaced by the 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.

[Læs mere](#)

Dato: 10.10.2023

##### **Commission approves €100 million Italian scheme to support the production of electrolyzers to foster the transition to a net-zero economy.**

The European Commission has approved a €100 million Italian scheme to support the production of electrolyzers to foster the transition to a net-zero economy, in line with the Green Deal Industrial Plan. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.

[Læs mere](#)

Dato: 9.10.2023

##### **Commission approves €2.5 billion Czech scheme to support the decarbonisation and energy efficiency of industrial processes to foster the transition to a net-zero economy.**

The European Commission has approved a €2.5 billion (60 billion CZK) Czech scheme to help manufacturing companies to decarbonise their production processes and improve their energy efficiency to foster the transition to a net-zero economy, in line with the Green Deal Industrial Plan. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in industrial sectors which are key to accelerate the green transition and reduce fossil 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](#)

##### **Commission approves €1.2 billion Polish scheme to support energy-intensive companies in the context of Russia's war against Ukraine.**

The European Commission has approved a €1.2 billion (PLN 5.5 billion) Polish scheme to support energy-intensive companies facing increased energy costs in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.

[Læs mere](#)

Dato: 6.10.2023

**Commission approves €300 million French scheme to support investments in the use of solid recovered fuels to foster the transition to a net-zero economy.**

The European Commission has approved a €300 million French scheme to support companies investing in the use of solid recovered fuels 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: 6.10.2023

**Commission approves €910 million Italian scheme under the Recovery and Resilience Facility to support agro-industrial development.**

The European Commission has approved, under EU State aid rules, a €910 million Italian scheme made available in part through the Recovery and Resilience Facility ('RRF') to support agro-industrial development. The measure contributes to the achievement of the objectives of the Common Agricultural Policy by fostering a smart, competitive, resilient and diversified agricultural sector.

[Læs mere](#)

Dato: 4.10.2023

**Commission approves €193 million Lithuanian scheme to support offshore wind farms to foster the transition to a net-zero economy.**

The European Commission has approved a €193 million Lithuanian scheme to support offshore wind farms 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: 4.10.2023

**Commission adopts amendment to rules on small amounts of aid to the fishery and aquaculture sector.**

The European Commission has adopted today an amendment of the so-called 'de minimis' regulation for the fishery and aquaculture sector ('Fishery de minimis Regulation'). The revised regulation, which exempts small aid amounts from State aid control since they are deemed to have no impact on competition and trade in the Single Market, will enter into force 20 days after its publication in the Official Journal.

The amendment to the Fishery de minimis Regulation adopted today includes the following changes:

- The increase in the de minimis aid ceiling per company over three years, from €30,000 to €40,000, subject to the establishment of a central national register.
- Only the primary production of fishery and aquaculture products will remain covered by the Fishery de minimis Regulation, whereas the processing and marketing of such products will be covered by the General de minimis Regulation.
- The recalculation of the so-called 'national caps', i.e., the maximum cumulative amounts of de minimis aid that can be allocated per Member State. The national caps were updated based on more recent data relating to the primary production of fishery and aquaculture products only.
- Certain operations excluded from the scope of the Fishery de minimis Regulation will exceptionally be allowed for the EU's outermost regions, to facilitate the modernisation of small vessels and address, among other things, safety concerns in these regions. This is one example of the targeted measures for the outermost regions under Article 349 of the Treaty on the Functioning of the EU.
- The extension of the validity of the revised Fishery de minimis Regulation until 31 December 2029.

[Læs mere](#)

Dato: 4.10.2023



**Commission approves modifications to Belgian capacity mechanism.**

The European Commission has approved, under EU State aid rules, modifications to the Belgian capacity mechanism to safeguard security of electricity supply. The modifications will make the capacity mechanism more cost-efficient in its daily operation. It will also be more environmentally-friendly, with stricter carbon dioxide (CO<sub>2</sub>) emission limits to better align with the European Green Deal, and will contribute to ending dependence on Russian fossil fuels, under the REPowerEU Plan.

[Læs mere](#)

Dato: 29.9.2023

**Andet****DMA – Study on Mobile Ecosystems (Technical and Security Issues) – 2023-012.**

The aim of the study is to support the supervision and enforcement of the DMA vis-à-vis the gatekeepers. This is one of the points and issues that is expected to be raised by the designated gatekeepers, in particular ones that are running a closed mobile ecosystem.

[Læs mere](#)

Dato: 15.9.2023

**Nyt fra EU-domstolen****Domme****[T-12/15](#) - Banco Santander og Santusa mod Kommissionen.**

Statsstøtte – støtteordning gennemført af Spanien – fradrag af selskabsskat, der giver virksomheder, som har skattemæssigt hjemsted i Spanien, mulighed for at afskrive goodwill, der følger af indirekte erhvervelse af kapitalandele i udenlandske virksomheder, ved direkte erhvervelse af kapitalandele i udenlandske holdingselskaber – afgørelse, der erklærer støtteordningen ulovlig og uforenelig med det indre marked og anordner tilbagesøgning af den udbetalte støtte – beslutning 2011/5/EF – afgørelse 2011/282/EU – anvendelsesområde – tilbagekaldelse af en retsakt – retssikkerhed – berettiget forventning.

[Læs mere](#)

Dato: 27.9.2023

**[C-320/21 P](#) - Ryanair mod Kommissionen.**

Appel – statsstøtte – artikel 107, stk. 2, litra b), TEUF – det svenske marked for lufttransport – støtte, som Sverige har indrømmet et luftfartsselskab i forbindelse med covid-19-pandemien – midlertidige rammebestemmelser for statslige foranstaltninger – offentlig garanti for en revolverende kreditfacilitet – Kommissionens afgørelse om ikke at gøre indsigelse – støtte, hvis formål er at afhjælpe skader, som en enkelt skadelidt har lidt – proportionalitetsprincippet og princippet om forbud mod forskelsbehandling – etableringsfrihed og fri udveksling af tjenesteydelser.

[Læs mere](#)

Dato: 28.9.2023

**[C-321/21 P](#) - Ryanair mod Kommissionen.**

Appel – statsstøtte – artikel 107, stk. 2, litra b), TEUF – det danske marked for lufttransport – støtte, som Kongeriget Danmark har indrømmet et luftfartsselskab i forbindelse med covid-19-pandemien – midlertidige rammebestemmelser for statslige foranstaltninger – offentlig garanti for en revolverende kreditfacilitet – Kommissionens afgørelse om ikke at gøre indsigelse – støtte, hvis formål er at afhjælpe skader, som en enkelt skadelidt har lidt – proportionalitetsprincippet og princippet om forbud mod forskelsbehandling – etableringsfrihed og fri udveksling af tjenesteydelser.

[Læs mere](#)

Dato: 28.9.2023

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

Appel – statsstøtte – artikel 107, stk. 1, TEUF – begrebet »støtte« – betingelsen om en selektiv fordel – skattemæssig behandling af offentlige kasinooperatører i Tyskland – afgift på fortjeneste – delvis fradrag af beløb, der er betalt i henhold til denne afgift, i beskatningsgrundlaget for indkomstkatten eller for selskabsskatten og erhvervsskatten – Europa-Kommissionens afgørelse – afvisning af en klage efter den foreløbige undersøgelse med den begrundelse, at dette fradrag ikke udgør statsstøtte – særskilt konstatering af, at der ikke foreligger en økonomisk fordel, og at der ikke er selektivitet – søgsmål for Den Europæiske Unions Ret, der er begrænset til konstateringen af manglende selektivitet – uvirksomt søgsmål – Kommissionens identificering af referencesystemet eller den normale skatteordning – fortolkning af den gældende nationale skattelovgivning med henblik herpå – kvalificering af afgiften på fortjeneste som »en særlig



skat«, der er fradragsberettiget som »udgifter i forbindelse med erhvervsmæssige transaktioner« – princippet ne ultra petita.

[Læs mere](#)

Dato: 21.9.2023

#### **C-11/22 - Est Wind Power.**

Præjudiciel forelæggelse – støtte ydet af medlemsstaterne – støtte til vedvarende energi – opførelse af en vindmøllepark – Kommissionens meddelelse med overskriften »Retningslinjer for statsstøtte til miljøbeskyttelse og energi 2014-2020« – punkt 19, nr. 44, og fodnote 66 – begreberne »projektets påbegyndelse«, »arbejdet på investeringsprojektet«, »andre forpligtelser, som gør investeringen irreversibel« og »nødvendig national tilladelse til at gennemføre projektet« – type og intensitet af den undersøgelse, der skal foretages af den kompetente nationale myndighed.

[Læs mere](#)

Dato: 12.10.2023

#### **C-510/22 - Romaqua Group.**

Præjudiciel forelæggelse – artikel 102 TEUF og artikel 106 TEUF – offentlige virksomheder – frihed til at oprette og drive egen virksomhed – etableringsfrihed – virksomhed, der ejes fuldt ud af en medlemsstat, og som har fordel af eksklusive koncessioner til udnyttelse af naturligt mineralvand efter tildeling uden afholdelse af en udbudsprocedure – national lovgivning, der tillader ubegrænset forlængelse af koncessionen.

Artikel 106, stk. 1, TEUF, sammenholdt med artikel 102 TEUF, skal fortolkes således, at denne bestemmelse er til hinder for en national lovgivning, der giver indehaveren af en eksklusiv rettighed til at udnytte en kilde til mineralvand muligheden for, uden konkurrence, at få forlænget sine udvindingsret i successive perioder på fem år, når denne lovgivning fører til, at denne indehaver ved den blotte udøvelse af de privilegerede rettigheder, som er indrømmet den pågældende, misbruger sin dominerende stilling på en væsentlig del af det indre marked, eller når disse rettigheder kan skabe en situation, hvor den nævnte indehaver er foranlediget til at gøre sig skyldig i et sådant misbrug, hvilket det tilkommer den forelæggende ret at vurdere på grundlag af de faktiske og retlige omstændigheder, som den råder over.

[Læs mere](#)

Dato: 21.9.2023

#### **Forslag til afgørelse**

#### **C-605/21 - Heureka Group (Comparateurs de prix en ligne).**

Præjudiciel forelæggelse – søgsmål i henhold til national ret angående erstatning for overtrædelser af bestemmelser i konkurrenceretten – mulighed for at støtte sig på en afgørelse fra Kommissionen, som ikke er endelig – direktiv 2014/104/EU – anvendelsesområde ratione temporis – overtrædelser er begyndt inden direktivets ikrafttrædelse – forældelsesfrist – den nationale lovgivnings forenelighed med artikel 102 TEUF og princippet om EU-rettens effektivitet.

Forslag til afgørelse fra generaladvokat J. Kokott:

1. Med henblik på at fastlægge den tidsmæssige anvendelse af artikel 10 i Europa-Parlamentets og Rådets direktiv 2014/104 af 26. november 2014 om visse regler for søgsmål i henhold til national ret angående erstatning for overtrædelser af bestemmelser i medlemsstaternes og Den Europæiske Unions konkurrenceret skal det undersøges, om den i hovedsagen omhandlede situation var opstået før udløbet af fristen for gennemførelse af samme direktiv, eller om den fortsat har virkninger efter udløbet af denne frist. Med henblik herpå skal det efterprøves, om den forældelsesfrist, der finder anvendelse på den i hovedsagen omhandlede situation, var udløbet på den dato, hvor gennemførelsesfristen for direktiv 2014/104 udløb, hvilket indebærer, at det tidspunkt, hvor denne forældelsesfrist begyndte at løbe, skal fastlægges. I perioden før udløbet af fristen for gennemførelse af direktiv 2014/104 fastlægges forældelsesfristens begyndelsestidspunkt i overensstemmelse med national ret.
2. Artikel 102 TEUF, sammenholdt med effektivitetsprincippet, er til hinder for en national lovgivning, der tillader, at forældelsesfristen for retten til erstatning for en skade, der er forårsaget af en vedvarende konkurrencebegrænsende adfærd, begynder at løbe, før denne adfærd ophører.
3. I henhold til artikel 102 TEUF, sammenholdt med effektivitetsprincippet, må de forældelsesfrister, der finder anvendelse på erstatningssøgsmål vedrørende overtrædelser af bestemmelser i medlemsstaternes ret og i EU-konkurrenceretten, ikke begynde at løbe, før skadelidte har fået kendskab til eller med rimelighed kan anses for at have fået kendskab til de oplysninger, der er nødvendige for at anlægge erstatningssøgsmålet, herunder forekomsten af en overtrædelse af konkurrenceretten. Når et sådant søgsmål følger efter en afgørelse fra en konkurrencemyndighed, kan dette kendskab, i mangel af andre angivelser, med rimelighed anses for være



opnået – med forbehold af den nationale rets efterprøvelse – efter den officielle offentliggørelse af resuméet af denne afgørelse. Såfremt der ikke foreligger en sådan afgørelse, kan det kun fastslås, at der var kendskab til overtrædelsen, hvis der foreligger en række præcise og samstemmende indicier, på grundlag af hvilke det kan antages, at en påpasselig part ikke med rimelighed kunne være uvidende om, at de faktiske omstændigheder, som den pågældende havde kendskab eller kunne have kendskab til, udgjorde en overtrædelse af konkurrenceretten.

4. Artikel 102 TEUF, sammenholdt med effektivitetsprincippet, er ikke til hinder for forældelsesregler for erstatningssøgsmål vedrørende overtrædelser af konkurrenceretten, som ikke automatisk suspenderer eller afbryder forældelsesfristen for varigheden af konkurrencemyndighedens sagsbehandling eller domstolsprøvelsen af den pågældende myndigheds afgørelse. Artikel 102 TEUF, sammenholdt med effektivitetsprincippet, kræver imidlertid, at de nationale forældelsesregler giver den skadelidte mulighed for at basere sit søgsmål på en konkurrencemyndigheds afgørelse vedrørende den pågældende overtrædelse af de EU-retlige konkurrenceregler.

[Læs mere](#)

Dato: 21.9.2023

#### **[C-298/22 - Banco BPN mod BIC Português m.fl.](#)**

Præjudiciel forelæggelse – konkurrence – karteller – artikel 101 TEUF – aftaler mellem virksomheder – konkurrencebegrænsende formål – informationsudveksling mellem kreditinstitutter – oplysninger om forretningsbetingelser og produktionstal.

Forslag til afgørelse fra generaladvokat A. Rantos:

1. Artikel 101 TEUF skal fortolkes således, at den ikke er til hinder for, at en udveksling af oplysninger mellem konkurrenter vedrørende forretningsbetingelserne for operationer (herunder nuværende og fremtidige kreditspænd og risikovariabler) samt produktionstal på området for udbud af lån til finansiering af fast ejendom, lån til virksomheder og forbrugslån inden for banksektoren, kvalificeres som havende et konkurrencebegrænsende formål, når en sådan praksis kunstigt har øget gennemsigtigheden og reduceret usikkerheden om markedets funktion.
2. Artikel 101 TEUF er ikke til hinder for en sådan kvalificering, når der ikke er konstateret eller kan identificeres nogen effektivitetsgevinst eller tvetydig eller positiv virkning for konkurrencen som følge af denne udveksling af oplysninger.

[Læs mere](#)

Dato: 5.10.2023

#### **Kendelse**

Intet nyt.

#### **Andet nyt fra EU-domstolen**

Intet nyt.

## **Andet internationalt nyt**

### **Competition and Markets Authority: Green agreements guidance - how competition law applies to environmental sustainability agreements.**

Environmental sustainability agreements are agreements between competing businesses that involve co-operation to achieve green outcomes, such as tackling climate change.

For example, businesses may decide to combine expertise to make their products more energy efficient. Or they might want to use packaging material that meets certain standards to reduce waste.

The CMA has prepared the Green Agreements Guidance to help businesses assess how the competition rules apply to environmental sustainability agreements.

[Læs mere](#)

Dato: 12.10.2023

**Consultation: Proposal to make a market investigation reference into the supply of public cloud infrastructure services in the UK.**

Ofcom is proposing to make a market investigation reference into the supply of public cloud infrastructure services in the UK. This consultation includes the case for making a reference and the proposed scope. We are seeking stakeholder views on our proposal.

**OECD: Pro-Competitive Policies for a Sustainable Economy - Discussion Paper.**

This policy debate aims at responding to the political and societal needs to better align our economies with global carbon-emission targets, whilst preserving and even promoting growth, employment and living standards and ensuring the benefits of open and transparent global markets. This discussion is intrinsically linked to the OECD strategic priorities of a sustainable transition and future-oriented green recovery as well as that of open markets and rules-based international trade.

[Læs mere](#)

Dato: 23.1.2023

**Japan Goes After Tech Giants Over News Distribution.**

Japan's Fair Trade Commission issued a rebuke this Thursday against Google and Yahoo Japan Corp, accusing the tech titans of potentially breaking antitrust laws by promoting news on their platforms without adequately compensating content providers.

The report, released Thursday, identified six possible violations in total; four of them related to news outlets refusing to renegotiate contracts with providers after readership unexpectedly dropped due to display method changes on platforms. The other two involved complaints of Google blacklisting rivals in its search results.

When contacted by the commission, Google issued a statement explaining it would look closer at the allegations, with the intention of explaining their internal protocols for news distribution. A Government spokesperson from the Fair Trade Commission in Japan responded by stating that punitive action would be taken against the companies if any violations were discovered.

[Læs mere](#)

Dato: 21.9.2023

## 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

Volume 44, issue 11, 2023:

**Merger control in Ireland after Uniphar/NaviCorp merger: improved procedures, better outcomes? Forfatter: Paul K. Gorecki.**

Discusses whether procedures followed by the Irish Competition and Consumer Protection Commission in Uniphar / NaviCorp to assess a merger's competitive effects needlessly limited the parties' options for finding timely remedies. Suggests potential reforms to improve transparency and accountability.

**State of play in sports and competition law: AG Rantos' pass to the court in ISU and ESL and the challenges to scoring right. Forfatter: Julian Nowag.**

Reviews, with reference to Opinions of AG Rantos in cases such as International Skating Union v European Commission (T-93/18) (GC), the interaction between sports and competition law. Identifies five challenges facing the ECJ when ruling on the cases, including the role of the European sports model.

**Avoiding gun jumping when structuring options. Forfatter: Dr Lukas Solek.**

Examines, with reference to case law, the factors to consider when structuring options that can result in full or partial implementation of mergers under EU law, including examples of when an option is structured to become part of a single concentration, and options that lead to no implementation.

**The revision of EU competition law under the EU strategic autonomy. Forfatter: Dr Andreas Geiger.**

Reviews the shifting focus of EU competition law in response to US and Chinese policies, and its efforts to ensure the EU remains capable of acting independently in areas of strategic importance. Details the four pillars of its strategic autonomy framework, including to tackle economic distortions.

**Quo vadis - Australian merger reform and the choice between mandatory pre-notification and ex post administrative powers. Forfatter: Sven Gallasch.**

Discusses Australian competition law's projected adoption of a compulsory and suspensory merger regime. Reviews key features of the current system, the concerns over voluntary and informal clearance procedures, the benefits and drawbacks of compulsory notification, and the potential alternatives.

**Never call the Chinese competition law enforcement agency "antitrust watchdog". Forfatter: Qiang Yu.**

Details the cultural factors that make it inappropriate to describe China's competition law enforcement agency as an "antitrust watchdog", the term's different symbolism in Chinese culture, and Chinese court cases resulting from calling a person a watchdog. Suggests alternative methods of reference.

**Mergers as an abuse of dominance: insights from the Towercast judgment (Case Comment). Forfatter: Justine Hækens.**

Examines Towercast SASU v Autorite de la concurrence (C-449/21) (ECJ) and its approach to whether, notwithstanding Regulation 139/2004, mergers not subject to ex ante control were capable of being subsequently reviewed under TFEU art.102 as potential abuses of dominance.



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

Notes the Bulgarian Commission for Protection of Competition decision in Lukoil Bulgaria EOOD / Lukoil Neftochim Bulgaria AD, imposing a record fine of approximately EUR 97,568,087 for abuse of dominance by restricting access to oil product transport and logistics infrastructure.

**Canada: mergers - merger control (Case Comment). Forfatter: Kaeleigh Kuzma.**

Highlights the Canadian Commissioner of Competition's consent agreement in Shell Canada Ltd / Sobeys Capital Inc, addressing competition concerns associated with Shell's proposed acquisition of 56 retail fuel stations and noting relevant divestitures.

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

Notes the Czech Competition Office ruling in TESCO MA sro, imposing a fine of around EUR 2.7 million on a kitchen utensils supplier for anti-competitive practices, including resale price maintenance agreements. Details the infringement's duration, and the factors considered when setting the fine.

**Denmark: mergers - merger control. Forfatter: Jens Munk Plum.**

Notes the abandonment of a Danish merger between NDI Group and Euromaster Danmark in the motor vehicle tyre market, despite the deadline for the transaction entering Phase 2 of the investigation having expired, and which would usually result in the acquisition being automatically approved.

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

Notes the European Commission's agreement to requests from the Finnish Competition and Consumer Authority and the Danish competition authority that it examine a proposed energy sector merger between Nasdaq and European Energy Exchange AG, despite it not meeting the notification thresholds.

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

Notes the decision of the Finnish consumables wholesaler Optigroup FSF AB to withdraw from its proposed acquisition of Pamark Business Oy, and highlights the progress of the transaction's ongoing investigation by the Finnish Competition and Consumer Authority.

**France: competition - sector inquiry. Forfatter: Emmanuel Reille.**

Notes the French Competition Authority's June 2023 publication of an opinion on competition in the French cloud computing sector, and details its key findings, including the dominance of three "hyperscalers", the potential competition risks, and future evolutions that may need monitoring.

**Netherlands: anti-competitive practices - judgment (Case Comment). Forfatter: Jotte Mulder.**

Notes a 19 July 2023 ruling of the Rotterdam District Court, upholding a Dutch Competition Authority decision to fine four cigarette manufacturers for cartel activities. Details key elements of the anti-competitive conduct involved, including indirect exchanges of pricing information.

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

Notes the Dutch Competition Authority ruling in AEB / AVR prohibiting a proposed merger in the waste processing sector on the ground that it would create a dominant position in both the household waste and slightly contaminated hazardous waste sectors, allowing higher prices to be charged.

**Poland: competition - unfair practices. Forfatter: Prof. Agata Jurkowska-Gomułka.**

Notes the Polish Office for Competition and Consumer Protection's work in investigating unfair trading practices in the country's agricultural and food products sectors in 2022 and 2023, following updates to the regulatory regime in 2021. Details cases involving unfair uses of contractual advantage.

**Romania: anti-competitive practices - infringement (Case Comment). Forfatter: Cristina de Jonge.**

Notes the Romanian Competition Council ruling in Dataware Consulting SRL / Kontron Services Romania SRL / Tema Energy SRL, imposing fines of around EUR 4.1 million on three construction companies for bid-rigging during the tender for an electronic service provision centre.

**South Africa: mergers - merger control. Forfatter: Aidan Scallan.**

Reviews the South African Competition Commission's evolving approach to the Competition Act 1998 s.12A(3)(e), which requires an assessment of how a merger will affect the public interest of historically disadvantaged persons, and whether a positive effect on ownership is needed for merger approval.

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

Notes the Spanish High Court ruling in Istobal v National Competition and Markets Commission, quashing a finding that a manufacturer of car-wash equipment adopted anti-competitive practices and abused its dominant position, on the grounds that the required standard of proof had not been established.

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

Notes the Madrid Court of First Instance ruling in NH Hoteles v EGEDA, a damages claim for abuse of a dominant position regarding the collective management of intellectual property rights, and clarifying the applicable legal regime and the starting point for the relevant limitation period.

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

Notes a 30 January 2023 ruling of the Madrid Provincial Court, reinstating interim measures ensuring that no anti-competitive actions by UEFA or FIFA could occur that would threaten the creation of the football Super League project.

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

Notes the Turkish Competition Board ruling in Novartis AG / Sandoz AG, unconditionally approving a pharmacology sector merger after finding it would not significantly impede competition. Details its investigation of potential overlaps between the parties' activities in relevant product markets.

**US: mergers - reform proposal. Forfatter: Anthony P. Badaracco.**

Highlights the March 2023 publication by the US Federal Trade Commission and Department of Justice of a draft update of the Merger Guidelines. Notes its 13 guiding principles, key measures to strengthen antitrust enforcement, and the September 18 2023 deadline for commenting on the proposals.

## Artikler fra European Competition Journal

Intet nyt.

## Artikler fra Journal of Competition Law and Economics

Intet nyt.

## Artikler fra Journal of Antitrust Enforcement

Intet nyt.

## Artikler fra Competition Policy Brief

Intet nyt.

## Artikler fra Competition Merger Brief

Intet nyt.

## Artikler fra Journal of European Competition Law and Practice

Intet nyt.

## Artikler fra World Competition

Intet nyt.



## Artikler fra Antitrust Law Journal

Intet nyt.

## Artikler fra Antitrust Bulletin

Intet nyt.

## Artikler fra Competition Law and Policy Debate

Intet nyt.

## Artikler fra Competition Law Scholars Forum

Intet nyt.

## Artikler fra Journal of Regulatory Economics

Intet nyt.

## Artikler fra International Review of Law and Economics

Intet nyt.

## Artikler fra Competition Law Journal

Volume 22, issue 2, 2023:

### **A first review of the early application of the Umbrella Proceedings Practice Direction. Forfattere: Kim Dietzel og Naomi Reid.**

On 6 June 2022 the Competition Appeal Tribunal published a Practice Direction enabling the President to make 'Umbrella Proceedings Orders' which would enable issues that are common across multiple separate proceedings to be dealt with at the same hearing. The purpose behind the Practice Direction is to avoid inconsistency across different proceedings. This article considers the approach that has been taken by the Tribunal under the Practice Direction so far in proceedings relating to: (i) multilateral interchange fees and (ii) the roll-on, roll-off shipping cartel.

### **The UK's new competition regime for digital markets: to remedy a gap in the CMA's toolkit. Forfattere: Stephen Whitfield, Ingrid Hodgskiss og Aimee Westley.**

The Government has introduced a new Digital Markets, Competition and Consumers Bill to Parliament, which will as currently drafted have a significant impact on how competition law is enforced in the digital space. This article considers how recent CMA activity has shaped the rationale for the new legislation, and how the CMA's caseload has highlighted a desire for key reforms to the UK competition law regime.

### **In defence of judicial review: the established UK appeal standard is the best approach for a dynamic digital economy. Forfattere: Tom Smith og David Gallagher.**

The Digital Markets, Competition and Consumers Bill seeks to create a new regulatory framework for firms with 'strategic market status' (SMS). The Digital Markets Unit (DMU), which will be part of the Competition and Markets Authority (CMA), will have the power to designate tech firms such as Google and Apple as having SMS for certain activities. It will be able to impose wide-ranging conduct requirements on those firms and will also have the power to make pro-competitive interventions. These are powerful tools. The DMU will be able to make significant changes to the SMS firms' business models with the objective of opening up their ecosystems and levelling the playing field for challenger firms. This article considers the standard of review that should apply in determining challenges to decisions of the DMU under this regime. In particular, we consider arguments that have been made against the use of the proposed 'judicial review' standard and in favour of an 'on the merits' appeal. As part of our analysis we consider consistency with analogous CMA regimes, forward looking assessments and the need for speed, expert opinions and consistency across different jurisdictions.





**Merging for a sustainable future: integrating sustainability-driven efficiency claims into the merger control assessment. Forfattere: Gönenç Gürkaynak, Zeynep Ayata Aydoğan, Ersagun Berkay Kiltan og Beyza Nur Adigüzel.**

In the assessment of efficiencies, the European Commission narrowly interprets the conditions set out in the Horizontal Merger Guidelines which must be satisfied for each efficiency claim. Considering certain features of sustainability-driven efficiency claims, if the Commission maintains its current approach in analysing these claims, it may disproportionately limit the success of such claims. To avoid any impediment to the pursuit of sustainable goals through mergers, the Commission's approach to the relevant conditions should change. There are some alternative models and means of assessment of efficiency claims that can be used to strike the right balance between promoting competition and sustainability.

**Strategic implications of changes in UK merger remedy policy. Forfattere: Joel Bamford og Carlo Sushant Chari.**

2022 saw significant changes to policy on merger remedies in the UK. This article examines what they mean for merger clearance strategy along four vectors of change: (i) clarification of the Competition and Markets Authority's remedial powers and procedural constraints following recent judgments of the Competition Appeal Tribunal; (ii) the CMA's increased focus on intangible assets when designing remedies; (iii) a revolution in Phase 2 remedies procedure via the first use of a mechanism to concede a substantial lessening of competition to the CMA; and (iv) a substantive evolution in Phase 1 undertakings with the acceptance of creative remedies despite the high threshold for undertakings in lieu of reference to Phase 2 being accepted by the CMA.

**Reflections on the intersection between economic and legal measures of pass-on in the context of competition litigation. Forfattere: Kimela Shah, Erika Pini, Joseph Bell og Raphael Gastal.**

The right to compensatory damages and the principle of effectiveness are important legal principles shaping the private enforcement of competition law across the UK and EU. However, the issue of pass-on of loss gives rise to potential tensions in the application of these principles. Where the effect of an infringement is passed on and dissipates broadly across the downstream economy, courts are left with a choice between over-compensating a direct claimant (who has passed on all or some of an overcharge) or waiting for a nebulous group of downstream claims (by final consumers) that may not materialize. Pass-on also creates problems of consistency between claims at different levels of the same value chain in which different information may be available, different methods of calculating loss may be applied, and different answers reached. This article provides some economic reflections on these challenges. It concludes that there is no single economic framework or methodology available that avoids these tensions, and procedural innovations that allow multiple levels of the value chain to be considered in a single process are likely to be needed if the principles of compensation and effectiveness are going to continue to be applied.

## Artikler fra European Competition and Regulatory Law Review

Intet nyt.

## Artikler fra Communications Law

Intet nyt.

## Artikler fra Computer and Telecommunications Law Review

Intet nyt.

## Artikler fra Global Competition Litigation Review

Intet nyt.

## Andre udenlandske artikler

Intet nyt.



## 5 | NYT FRA KONKURRENCEGRUPPEN

### **Konference v/CME: Hvad udgør (ikke) et kartel? Tidspunkt: 29. nov. 2023, kl. 12.00-16.0**

Karteller kan være yderst skadelige for konkurrencen og anses, med rette, som de groveste overtrædelser af konkurrencereglerne. Siden 2013 har deltagelse heri kunnet straffes med fængsel, men afgrænsningen af kartelbegrebet er kun indirekte defineret. Konkurrenceloven rummer tilmed to karteldefinitioner, idet begrebet både defineres i konkurrencelovens §§ 5 b, nr. 6 og 23, stk. 4, 3. pkt., hvoraf alene det sidste kan straffes med fængsel. Praksis har tilmed tilføjet et tredje kartelbegreb, idet Konkurrenceankenævnet i sager har henvist til at der forelå et "ikke klassisk kartel". Konferencen vil behandle en række horisontale aftaler, der muligvis udgør et kartel, og eventuelt af en sådan beskaffenhed at fængselsstraf kunne være relevant.

Konferencen vil ikke søge at definere det strafferetlige kartelbegreb, men i stedet behandle en række horisontale aftaler, der måske (måske ikke) er omfattet heraf.

Fuldt program og tilmeldingsformular kan tilgås via dette [link](#).