



Konkurrenceretlig Nyhedsoversigt nr. 87 / dækkende 14. november 2023 – 13. december 2023

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- European Competition Law Review
- European Competition Journal

- Journal of Competition Law and Economics
- Journal of Antitrust Enforcement
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- 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 Axcel's erhvervelse af A/S Brødrene Eegholm Sønderborg, Automatic Syd A/S og Tic Elkas A/S.**

Ved transaktionen overtager Axcel VII K/S, via AX VII INV1 Holding ApS, 100 pct. af ejerandelene i henholdsvis NY EEGHOLM HOLDING A/S og Tango Nyt Holdingselskab ApS og opnår dermed enekontrol over disse.

[Læs mere](#)

Dato: 05.12.2023

#### **Godkendelse på baggrund af forenklet sagsbehandling af Ahlsell Danmarks ApS' erhvervelse af enekontrol over KJV A/S.**

Ved transaktionen erhverver Ahlsell 100 pct. af aktierne i KJV, og CVC Capital Partners SICAV-FIS S.A. ("CVC") opnår dermed via Ahlsell indirekte enekontrol over KJV.

[Læs mere](#)

Dato: 01.12.2023

#### **Godkendelse på baggrund af en forenklet sagsbehandling af ALSO IH GmbH's erhvervelse af enekontrol over Commaxx AS, herunder dets helejede datterselskaber Commaxx Danmark A/S og Commaxx AB.**

Transaktionen indebærer, at ALSO erhverver samtlige aktier i Commaxx, herunder dets helejede datterselskaber Commaxx Danmark A/S og Commaxx AB. ALSO erhverver herved enekontrol over Commaxx AS.

[Læs mere](#)

Dato: 30.11.2023

#### **Godkendelse på baggrund af en forenklet sagsbehandling af Aramco InvestCo, L.P. og EIG Management Company, LLC's erhvervelse af fælles kontrol med MidOcean Energy, LLC.**

Transaktionen medfører, at Aramco og EIG erhverver fælles kontrol over MidOcean.

[Læs mere](#)

Dato: 28.11.2023

#### **Godkendelse på baggrund af en forenklet sagsbehandling af BDOs erhvervelse af størstedelen af Deloitte's afdeling i Esbjerg.**

Med transaktionen overtager BDO aktiviteterne i Deloitte's afdeling i Esbjerg fra Deloitte.

[Læs mere](#)

Dato: 24.11.2023

#### **Godkendelse på baggrund af en forenklet sagsbehandling af oprettelsen af det selvstændigt fungerende joint venture "&money".**

Konkurrence- og Forbrugerstyrelsen modtog den 3. november 2023 en forenklet anmeldelse af Spar Nord Bank A/S, Nykredit Bank A/S, Aktieselskabet Arbejdernes Landsbank og Trifork Labs ApS' etablering af &money ApS som selvstændigt fungerende joint venture, jf. konkurrencelovens § 12 b, stk. 1.

&money ApS er leverandør af softwareprodukter (herunder appen Young Money), som dels stilles til rådighed for banker, der på licensvilkår køber en brugsret til produkterne og stiller dem til rådighed for deres bankkunder, dels til andre typer virksomheder i bl.a. den finansielle sektor.

[Læs mere](#)

Dato: 20.11.2023



## Nyt fra Konkurrencerådet

### Vurdering af Lidl som egnet køber af lokationer fra REMA 1000.

Konkurrencerådet har godkendt Lidl som egnet køber af tre tidligere Aldi-butikker i Bjerringbro, Hadsund og Væggerløse.

Konkurrencerådet skal godkende køberen, fordi Rema 1000 har forpligtet sig over for rådet til at sælge dem. Det gjorde Rema 1000 i august 2023 som led i konkurrencemyndighedernes godkendelse af, at Rema 1000 kunne overtage 114 butikker, 7 butiksprojekter, 3 distributionscentre, medarbejdere og inventar fra Aldi Danmark.

[Læs mere](#)

Dato: 29.11.2023

### Salling Group A/S' erhvervelse af dele af Aldi Danmark ApS.

Konkurrencerådet godkendt, at Salling Group overtager 13 Aldi-butikker og 8 af Aldis butiksprojekter.

Konkurrencemyndighederne har haft betænkeligheder ved, om Salling Groups køb af butikkerne ville hæmme konkurrencen væsentligt i nogle lokalområder. Godkendelsen er derfor sket med tilsagn, hvor Salling Group har forpligtet sig til at frasælge en butik i Rødbyhavn og fremleje en butik i Stubbekøbing til en eller flere konkurrenter.

Salling Group har allerede indgået aftaler om salg og fremleje af de to butikker, så Konkurrencerådet har samtidig godkendt, at Lidl er egnet som køber af butikken i Rødbyhavn, mens Dagrofra er egnet til at fremleje butikken i Stubbekøbing de kommende seks år.

[Læs mere](#)

Dato: 29.11.2023

## Nyt fra Konkurrenceankenævnet

Intet nyt.

## Nyt fra domstolene

### Civilretlige afgørelser

Intet nyt.

### Afgørelser om bøder

#### Codeex A/S og moderselskab - bødefritagelse - kundedeling.

Konkurrence- og Forbrugerstyrelsen har givet bødefritagelse (leniency) til Codeex A/S og dets moderselskab for at have overtrådt konkurrenceloven ved at have indgået i et kartel.

Codeex A/S henvendte sig i november 2020 til Konkurrence- og Forbrugerstyrelsen med en ansøgning om sanktionslempelse i forbindelse med en aftale om ulovlig kundedeling med konkurrenten Barcode People ApS. Konkurrence- og Forbrugerstyrelsen har vurderet, at Codeex A/S og dets moderselskab opfylder betingelserne for at kunne få leniency. Blandt andet var Codex og moderselskabet først til at henvende sig til myndighederne med oplysninger om den ulovlige aftale, og de har samarbejdet oprigtigt, fuldt ud, permanent og hurtigt med myndighederne under hele sagen.

Konkurrence- og Forbrugerstyrelsens meddelelse om leniency betyder, at Codeex A/S og dets moderselskab undgår en sanktion for at have deltaget i kartellet.

Konkurrencerådet traf i oktober 2022 afgørelse om den ulovlige kundedelingsaftale mellem Codeex A/S og Barcode People ApS, og sagen er nu endeligt afsluttet.

[Læs mere](#)

Dato: 16.11.2023

## Lovforslag i høring

Intet nyt.



## Ny lovgivning

Intet nyt.

## Nyt fra Ankestyrelsen

**Ankestyrelsens brev til Gentofte Kommune: Tilsynsudtalelse om kommunens mulighed for at stille et areal vederlagsfrit til rådighed for sejsportsklubben KDY og afgørelse efter lånebekendtgørelsen.**

Ankestyrelsen vurderer, at Gentofte Kommune ikke med hjemmel i kommunalfuldmagtsreglerne kan stille en kommunal grund på Skovshoved Havn vederlagsfrit til rådighed for KDY og yde et anlægstilskud på 3,7 mio. kr. med henblik på opførelse af et sejsportshus. 29. september 2023

Ankestyrelsen kan derfor ikke give samtykke efter lånebekendtgørelsens § 13, stk. 1, til, at Gentofte Kommune yder KDY støtte i form af vederlagsfri brug af kommunens grund på Skovshoved Havn i 35 år.

[Læs mere](#)

Dato: 29.09.2023

## Andet

Intet nyt.

## 2 | EUROPÆISK OG INTERNATIONAL RET

### Nyt fra Kommissionen

#### Antitrust & Cartels

**Commission fines ethanol producer Lantmännen €47.7 million over ethanol benchmarks cartel.**

The Commission has fined Lantmännen ek för and its subsidiary Lantmännen Biorefineries AB (formerly named Lantmännen Agroetanol AB) (together 'Lantmännen') around €47.7 million for participating in a cartel concerning the wholesale price formation mechanism for ethanol in Europe. This decision follows the adoption of a settlement decision against Abengoa in 2021 and the closure of proceedings against Alcogroup in 2023.

The port of Rotterdam and the Amsterdam-Rotterdam-Antwerp barge market were the most important trading locations for ethanol in the European Economic Area ('EEA') at the time of the infringement. S&P Global Platts ('Platts'), a company that provides price assessments for different commodity markets, used a price assessment process called 'Market on Close' ('MOC') to establish its ethanol benchmarks, which were widely used as reference prices in the industry. The key period for Platts' price assessment process was the time between 16:00 and 16:30 London time (called 'the MOC Window').

Lantmännen is the largest ethanol producer in the Nordic region and referenced most of its ethanol sales contracts to the monthly average of Platts' ethanol benchmarks during the infringement period. Therefore, the level of Platts' ethanol benchmarks could directly influence the revenues that Lantmännen received from its ethanol sales during that period.

The Commission's investigation revealed that Lantmännen, together with two other companies:

- Coordinated its trading conduct on a regular basis before, during and after the MOC Window.
- Agreed to limit the supply of physical ethanol in the Rotterdam area that could end up in the MOC Window.
- Exchanged commercially sensitive information in order to implement the coordinated behaviour.

[Læs mere](#)

Dato: 07.12.2023

**Commission adopts antitrust Guidelines for sustainability agreements in agriculture.**

The European Commission has adopted Guidelines on how to design sustainability agreements in the field of agriculture ('Guidelines') using a novel exclusion from EU competition rules introduced by the recently reformed Common Agricultural Policy ('CAP').

Article 101 of the Treaty on the Functioning of the European Union ('TFEU') generally prohibits agreements between companies that restrict competition, such as those between competitors that lead to higher prices or lower quantities. However, Article 210a of Regulation 1308/2013 establishing a common organisation of the markets in agricultural products ('CMO Regulation') excludes certain restrictive agreements in the agricultural sector from that prohibition, when those agreements are indispensable to achieve sustainability standards going beyond the mandatory EU or national rules.

The new Guidelines aim at clarifying how operators active in the agri-food sector can design joint sustainability initiatives in line with Article 210a.

[Læs mere](#)

Dato: 07.12.2023

**Commission sends Statement of Objections to six companies and one trade association in automotive starter battery cartel case.**

The European Commission has informed automotive starter batteries manufacturers Banner, Clarios (former JC Autobatterie), Exide, FET (and its predecessor Elettra), and Rombat as well as trade association Eurobat and its service provider Kellen of its preliminary view that they have breached EU antitrust rules by colluding to increase the prices of automotive starter batteries sold to car producers in the European Economic Area ('EEA').

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The Commission is also concerned that Eurobat and its service provider Kellen were aware of the alleged conduct and actively contributed to it by assisting the battery manufacturers in creating and running the Eurobat premium system.

[Læs mere](#)

Dato: 30.11.2023

**Commission fines Rabobank €26.6 million over Euro-denominated bonds trading cartel.**

The European Commission has fined Rabobank €26.6 million for participating in a cartel concerning the trading of certain Euro-denominated bonds, together with Deutsche Bank. Deutsche Bank was not fined as it revealed the cartel to the Commission under the leniency programme.

The products concerned by the cartel are Euro-denominated SSA bonds (Supra-Sovereign, Foreign Sovereign, Sub-Sovereign/Agency bonds) and Government Guaranteed bonds traded in the European Economic Area ('EEA').

The Commission investigation revealed that between 2006 and 2016 the two banks, through some of their traders, exchanged commercially sensitive information and coordinated their trading and pricing strategies.

[Læs mere](#)

Dato: 22.11.2023

**Commission carries out unannounced inspections in the online food delivery sector.**

The European Commission is carrying out unannounced inspections at the premises of companies active in the online ordering and delivery of food, groceries and other consumer goods in two Member States.

The Commission has concerns that the companies concerned may have violated EU antitrust rules that prohibit cartels and restrictive business practices (Article 101 of the Treaty on the Functioning of the European Union).

[Læs mere](#)

Dato: 21.11.2023



## Mergers

### **Commission clears Novozymes and Chr. Hansen merger, subject to conditions.**

The European Commission has approved, under the EU Merger Regulation, the proposed merger between Novozymes A/S ('Novozymes') and Christian Hansen A/S ('Chr. Hansen'). The approval is conditional upon full compliance with the commitments offered by the parties.

The Commission's investigation showed that the merger, as initially notified, would have reduced competition in the market for the manufacture of one specific enzyme, lactase, using genetic modification technology. In particular, the Commission found that Chr Hansen had a project to start manufacturing this product and would very likely grow into an effective competitor within a short timeframe. The Commission also found that post-merger there would not be sufficient potential competitors to exert sufficient competitive pressure on the merged entity.

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

- Chr. Hansen's project to enter the market for the manufacture of lactase;
- Chr. Hansen's lactase distribution business; and
- Novozymes' lactase production facility.

[Læs mere](#)

Dato: 12.12.2023

### **Commission sends Amazon Statement of Objections over proposed acquisition of iRobot.**

The European Commission has informed Amazon of its preliminary view that its proposed acquisition of iRobot may restrict competition in the market for robot vacuum cleaners ('RVCs').

Amazon provides an online marketplace (the Amazon Stores), which allows retailers to advertise and sell products (including RVCs) to customers. Amazon is active as a retailer of various products (including RVCs) on its online marketplace. iRobot manufactures RVCs and sells them also through Amazon's online marketplace.

As a result of an in-depth investigation, the Commission is concerned that Amazon may restrict competition in the European Economic Area ('EEA')-wide and/or national markets for RVCs, by hampering rival RVC suppliers' ability to effectively compete.

[Læs mere](#)

Dato: 27.11.2023

### **Commission sends Adobe Statement of Objections over proposed acquisition of Figma.**

The European Commission has informed Adobe of its preliminary view that its proposed acquisition of Figma may reduce competition in the global markets for the supply of interactive product design software and of other creative design software.

Adobe is a global software company offering, among others, creative design software tools (e.g., Illustrator and Photoshop) and an interactive product design tool (Adobe XD). Figma is a provider of a web-based collaborative tool for interactive product design (Figma Design) as well as a whiteboarding tool.

As a result of this in-depth investigation, the Commission reached the preliminary conclusion that the transaction may significantly reduce competition in the global markets for the:

- Supply of interactive product design tools where Figma is the clear market leader and Adobe one of its largest competitors.
- Supply of vector editing tools and supply of raster editing tools, by eliminating Figma as a potential competitor, thereby strengthening Adobe's dominance in these markets.

[Læs mere](#)

Dato: 17.11.2023

## State Aid

### **Commission adopts new general rules for small amounts of State aid and for services of general economic interest.**

The European Commission has adopted two regulations amending the general rules for small amounts of aid (de minimis Regulation) and for small amounts of aid for Services of General Economic interest, such as public transport and healthcare (SGEI de minimis Regulation). The revised regulations, which exempt small aid amounts from EU State aid





control since they are deemed to have no impact on competition and trade in the Single Market, will enter into force on 1 January 2024 and will apply until 31 December 2030.

The current de minimis Regulation exempts small amounts of aid since they are deemed to have no impact on competition and trade in the Single Market. The amendments adopted today include the following main changes:

- The increase in the ceiling per company from €200,000 (applicable since 2008) to €300,000 over three years, in order to cater for inflation.
- The introduction of an obligation for Member States to register de minimis aid in a central register set at national or EU level as of 1 January 2026, thereby reducing the reporting obligations for companies.
- The introduction of safe harbours for financial intermediaries to further facilitate aid in the form of loans and guarantees, no longer requiring a complete pass on of the advantages from the financial intermediaries to the end beneficiaries.

[Læs mere](#)

Dato: 13.12.2023

#### **Commission approves €2.6 billion State aid to RWE for early closure of lignite-fired power plants in Germany.**

The European Commission has found a €2.6 billion German support measure in favour of RWE Power AG ('RWE') to be in line with EU State aid rules. The aid will compensate RWE for the early phase-out of its lignite-fired power plants in the Rhenish mining area.

[Læs mere](#)

Dato: 11.12.2023

#### **Commission approves €4.12 billion French State aid measure to support the rollout of offshore wind energy to foster the transition to a net-zero economy.**

The European Commission has approved a €4.12 billion French scheme to support the rollout of renewable offshore wind energy 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 and amended on 20 November 2023, to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies.

[Læs mere](#)

Dato: 07.12.2023

#### **Commission clears French compensation for La Poste's universal service obligation.**

The European Commission has approved, under EU State aid rules, France's plans to compensate La Poste for its universal postal service obligation over the period 2021-2025. In 2010 La Poste was entrusted with the provision of the universal postal service obligation for the period 2011-2025 but was not compensated for it. In November 2023, following prior exchanges, France informed the Commission of its plans to compensate La Poste approximately €2.6 billion for the period 2021-2025.

[Læs mere](#)

Dato: 07.12.2023

#### **Commission approves up to €1.2 billion of State aid by seven Member States for an Important Project of Common European Interest in cloud and edge computing technologies.**

The Commission has approved, under EU State aid rules, an Important Project of Common European Interest ('IPCEI') to support research, development and first industrial deployment of advanced cloud and edge computing technologies across multiple providers in Europe. The project, called IPCEI Next Generation Cloud Infrastructure and Services (IPCEI CIS), was jointly notified by seven Member States: France, Germany, Hungary, Italy, the Netherlands, Poland, and Spain.

[Læs mere](#)

Dato: 05.12.2023

#### **Commission approves €500 million French State aid scheme to support investments in agriculture.**

The European Commission has approved, under EU State aid rules, a €500 million French scheme to support investments in holding companies active in agricultural primary production. The measure will contribute to the achievement of the objectives of the Common Agricultural Policy by fostering the development of a smart, competitive, resilient and diversified agricultural sector that ensures food security, while supporting and enhancing environmental protection and promoting climate action.

[Læs mere](#)



Dato: 30.11.2023

**Commission approves €833 million Danish and Swedish State aid measure to recapitalise SAS.**

The European Commission has approved a recapitalisation of SAS amounting to approximately €833 million (SEK 9.5 billion) granted in October 2020. The measure is approved under the State aid COVID Temporary Framework. That recapitalisation measure was part of a larger recapitalisation package, which also involved a significant participation of private investors, including the conversion of outstanding privately-held debt instruments into equity.

[Læs mere](#)

Dato: 29.11.2023

**Commission approves re-introduction of market conform asset protection scheme for banks in Greece.**

The European Commission has approved the re-introduction of a Greek scheme (known as 'Hercules') aimed at supporting the reduction of non-performing loans of Greek banks, as it does not involve State aid.

[Læs mere](#)

Dato: 28.11.2023

**Commission approves €1.1 billion Spanish State aid scheme to support investments in equipment necessary to foster the transition to a net-zero economy.**

The European Commission has approved a €1.1 billion Spanish scheme to support investments for the production of equipment necessary 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 and amended on 20 November 2023, to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies.

[Læs mere](#)

Dato: 28.11.2023

**Commission finds assets transfers within Ferrovie dello Stato Group and part of Trenitalia compensation for certain public rail freight transport services in line with State aid rules.**

The European Commission has concluded that the transfers of certain railway assets between companies of the Italian rail incumbent Ferrovie dello Stato Group ('FS Group') do not constitute State aid within the meaning of EU rules. The Commission has also found Italy's compensation to Trenitalia for the provision of rail freight transport services in line with EU State aid rules, except for compensation for certain routes, which constitutes incompatible aid. Italy must now recover the incompatible aid, including interest.

[Læs mere](#)

Dato: 24.11.2023

**Commission approves amendment to State aid measures supporting resolution of Polish Getin Noble Bank.**

The European Commission has approved, under EU State aid rules, an amendment to the support measures granted by Poland in the context of the resolution of the Polish Getin Noble Bank S.A.

[Læs mere](#)

Dato: 24.11.2023

**Commission approves €5.7 billion Italian State aid scheme under the Recovery and Resilience Facility to support renewable energy communities and self-consumers.**

The European Commission has approved, under EU State aid rules, a €5.7 billion Italian scheme made available in part through the Recovery and Resilience Facility ('RRF') to support the production and self-consumption of renewable electricity. The scheme contributes to the EU's strategic objectives relating to the European Green Deal.

[Læs mere](#)

Dato: 22.11.2023

**Commission adjusts phase-out of certain crisis tools of the State aid Temporary Crisis and Transition Framework.**

The European Commission has adopted an amendment to the State aid Temporary Crisis and Transition Framework to prolong by six months a limited number of sections of the Framework aimed at providing a crisis response following Russia's aggression against Ukraine and the unprecedented increase in energy prices.

[Læs mere](#)

Dato: 20.11.2023





### **Commission approves €3 billion Austrian State aid scheme to support companies facing increased energy costs in the context of Russia's war against Ukraine.**

The European Commission has approved an approximately €3 billion Austrian scheme to support companies facing increased energy costs in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerate the green transition and reduce fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.

[Læs mere](#)

Dato: 17.11.2023

#### **Andet**

Intet nyt.

## **Nyt fra EU-domstolen**

### **Domme**

#### **[T-167/21](#) - European Gaming and Betting Association mod Kommissionen.**

Nøgleord: Statsstøtte – statslig foranstaltning, hvorved licenser til hasardspil indrømmet af Nederlandene forlænges – afgørelse, hvorved det fastslås, at der ikke foreligger statsstøtte – ingen indledning af den formelle undersøgelsesprocedure – alvorlige vanskeligheder – de interesserede parter proceduremæssige rettigheder.

Klagen vedrørte for det første en generel politik besluttet af Nederlandenes statssekretær for sikkerheds- og justitsspørgsmål den 7. oktober 2014 vedrørende forlængelsen indtil den 1. januar 2017 af licenser udstedt til væddemål om sportsbegivenheder og hestevæddeløb, samt lotterier og kasinoer med licens og for det andet beslutninger truffet af Nederlandse Kansspelautoriteit (den nederlandske spilmyndighed, Nederlandene) den 25. november 2014 i henhold til denne regel om fornyelse af seks licenser, der var ved at udløbe, for velgørende lotterier, væddemål om sportsbegivenheder, lotterier med øjeblikkelig trækning og væddemål om hestevæddeløb.

I klagen anførte sagsøgeren i det væsentlige, at de nederlandske myndigheder i medfør af den omtvistede foranstaltning havde indrømmet statsstøtte til de udbydere, der var indehavere af disse licenser. Sagsøgeren gjorde gældende, at nævnte støtte var blevet indrømmet i form af en forlængelse af de eksisterende licenser på eksklusivt grundlag, uden at myndighederne havde anmodet om betaling af et vederlag til markedsprisen, og uden at de havde indledt et gennemsigtigt og ikke-diskriminerende udbud om tildeling af licenser.

Dom:

1. Kommissionens afgørelse C(2020) 8965 final af 18. december 2020 om sag SA.44830 (2016/FC) – Nederlandene – Forlængelse af spillelicenser i Nederlandene annulleres.
2. Europa-Kommissionen bærer sine egne omkostninger og betaler de af European Gaming and Betting Association afholdte omkostninger.
3. Kongeriget Nederlandene bærer sine egne omkostninger.

[Læs mere](#)

Dato: 15.11.2023

#### **[C-209/21 P](#) - Ryanair mod Kommissionen.**

Nøgleord: Appel – statsstøtte – artikel 107, stk. 3, litra b), TEUF – det svenske marked for lufttransport – støtteordning anmeldt af Kongeriget Sverige – lånegarantier med henblik på at støtte luftfartsselskaberne i forbindelse med covid-19-pandemien – midlertidige rammebestemmelser for statslige foranstaltninger – Europa-Kommissionens afgørelse om ikke at gøre indsigelser – støtte, der har til formål at afhjælpe en alvorlig forstyrrelse i økonomien – proportionalitetsprincippet og princippet om forbud mod forskelsbehandling – fri udveksling af tjenesteydelser.

Dom:

1. Appellen forkastes.
2. Ryanair DAC bærer sine egne omkostninger og betaler de af Europa-Kommissionen afholdte omkostninger.
3. Den Franske Republik og Kongeriget Sverige bærer hver deres egne omkostninger.

[Læs mere](#)

Dato: 23.11.2023

**C-210/21 P - Ryanair mod Kommissionen.**

Nøgleord: Appel – statsstøtte – artikel 107, stk. 2, litra b), TEUF – det franske marked for lufttransport – støtteordning anmeldt af Den Franske Republik – betalingsmoratorium for luftfartsafgifter med henblik på at støtte luftfartsselskaberne i forbindelse med covid-19-pandemien – midlertidige rammebestemmelser for statslige foranstaltninger – Europa-Kommissionens afgørelse om ikke at gøre indsigelser – støtte, hvis formål er at afhjælpe skader, der er forårsaget af en usædvanlig begivenhed – proportionalitetsprincippet og princippet om forbud mod forskelsbehandling – fri udveksling af tjenesteydelser.

Dom:

1. Appellen forkastes.
2. Ryanair DAC bærer sine egne omkostninger og betaler de af Europa-Kommissionen afholdte omkostninger.
3. Den Franske Republik bærer sine egne omkostninger.

[Læs mere](#)

Dato: 23.11.2023

**C-451/21 P - Luxembourg mod Kommissionen.**

Nøgleord: Appel – statsstøtte – artikel 107, stk. 1, TEUF – forhåndstilsagn på skatteområdet fra en medlemsstat – støtte, der er erklæret uforenelig med det indre marked – forpligtelse til at tilbagesøge denne støtte – begrebet »fordel« – fastlæggelse af referencerammen – »normal« beskatning i henhold til national ret – Domstolens efterprøvelse af Den Europæiske Unions Rets fortolkning og anvendelse af national ret – direkte beskatning – indskrænkende fortolkning – Europa-Kommissionens beføjelser – begrundelsespligt – retlig kvalificering af de faktiske omstændigheder – begrebet »misbrug af rettigheder« – skatteforvaltningen i den pågældende medlemsstats ex ante-vurdering – retssikkerhedsprincippet.

Dom:

1. Sagerne C-451/21 P og C-454/21 P forenes med henblik på dommen.
2. Den Europæiske Unions Rets dom af 12. maj 2021, Luxembourg m.fl. mod Kommissionen (T-516/18 og T-525/18, EU:T:2021:251) ophæves.
3. Kommissionens afgørelse (EU) 2019/421 af 20. juni 2018 om statsstøtte SA.44888 (2016/C) (ex 2016/NN) iværksat af Luxembourg til fordel for Engie annulleres.
4. Europa-Kommissionen betaler omkostningerne i forbindelse med appellerne i sagerne C-451/21 P og C-454/21 P.
5. Kommissionen betaler omkostningerne i forbindelse med sagen i første instans.

[Læs mere](#)

Dato: 05.12.2023

**C-758/21 P - Ryanair og Airport Marketing Services.**

Nøgleord: Appel – statsstøtte – foranstaltninger iværksat af Republikken Østrig til fordel for Klagenfurt lufthavn, Ryanair og andre luftfartsselskaber, der benytter lufthavnen – afgørelse, hvorved støtteforanstaltningerne erklæres delvist uforenelige med det indre marked – artikel 85, stk. 3, i procesreglementet for Den Europæiske Unions Ret – beviser fremlagt for Retten efter afslutningen af den skriftlige forhandling – antagelse til realitetsbehandling – forordning (EU) 2015/1589 – artikel 17, stk. 1 og 2 – Europa-Kommissionens beføjelser på området for tilbagesøgning af støtte – forældelsesfrist – graden af præcision i de foranstaltninger, der afbryder denne frist – begrundelsespligt – urigtig gengivelse af beviserne – relevante oplysninger med henblik på at fastsætte størrelsen af den støtte, der skal tilbagesøges.

Dom:

1. Appellen forkastes.
2. Ryanair DAC og Airport Marketing Services Ltd betaler sagsomkostningerne.

[Læs mere](#)

Dato: 23.11.2023

**C-700/22 - RegioJet og STUDENT AGENCY.**

Nøgleord: Præjudiciel forelæggelse – forordning (EU) 2015/1589 – eksisterende og ny støtte – støtte, der er ydet under tilsidesættelse af de proceduremæssige regler i artikel 108, stk. 3, TEUF – udløb af den forældelsesfrist, der er fastsat i artikel 17 i forordning (EU) 2015/1589 – den nationale rets forpligtelse til at anordne tilbagesøgning af støtten.



Det præjudicielle spørgsmål: Med spørgsmålet ønsker den forelæggende ret nærmere bestemt oplyst, om artikel 108, stk. 3, TEUF skal fortolkes således, at de nationale retsinstanser kan anordne tilbagebetaling af statsstøtte, som er ydet i strid med den forpligtelse til forudgående anmeldelse, som er fastsat i denne bestemmelse, selv om den forældelsesfrist, der er fastsat i artikel 17, stk. 1, i forordning 2015/1589, er udløbet i forhold til denne støtte, således at støtten skal anses for eksisterende støtte i henhold til denne forordnings artikel 1, litra b), nr. iv), og artikel 17, stk. 3.

Dom:

Artikel 108, stk. 3, i traktaten om Den Europæiske Unions funktionsmåde skal fortolkes således, at de nationale retsinstanser kan anordne tilbagebetaling af statsstøtte, som er ydet i strid med den forpligtelse til forudgående anmeldelse, som er fastsat i denne bestemmelse, selv om den forældelsesfrist, der er fastsat i artikel 17, stk. 1, i Rådets forordning (EU) 2015/1589 af 13. juli 2015 om fastlæggelse af regler for anvendelsen af artikel 108 TEUF, er udløbet i forhold til denne støtte, således at støtten skal anses for eksisterende støtte i henhold til denne forordnings artikel 1, litra b), nr. iv), og artikel 17, stk. 3.

[Læs mere](#)

Dato: 07.12.2023

### Forslag til afgørelse

Intet nyt.

### Kendelse

Intet nyt.

### Andet nyt fra EU-domstolen

Intet nyt.

## Andet internationalt nyt

Intet nyt.

## 3 | LITTERATUR (DK)

### Artikler fra UfR

#### U.2023B.364/6: Bogomtale: Konkurrenceretten af Christian Bergqvist.

1. udgave af denne lærebog udkom i 2019 (anmeldt af Jens Fejø i U.2020B.100/2). Bogen er nu opdateret, bl.a. i lyset af de ændringer, der er sket i håndhævelsessystemet, og med vedtagelsen af nye EU-retningslinjer, siden 1.-udgaven. Dens systematik er bibeholdt og omfanget vokset med hele 130 sider.

[Læs mere](#)

Dato: 07.12.2023

#### U.2023B.343: Konkurrence- og Forbrugerstyrelsens vejledning om frivillige kæders priser – Gældende ret?

Af Kristian Helge Straton-Andersen, ekstern lektor ved Københavns Universitet og advokat.

Artiklen behandler Konkurrence- og Forbrugerstyrelsens nye vejledning til frivillige kæder om prisudmeldinger. Styrelsen anser nu sådanne udmeldinger for aftaler, der har til formål at begrænse konkurrencen. Det gælder ikke kun bindende videresalgspriser og minimumspriser, men også vejledende priser og maksimumspriser. Artiklen konkluderer, at vejledningen i de sidstnævnte tilfælde ikke udtrykker gældende ret.

[Læs mere](#)

Dato: 07.12.2023

## Nye publikationer fra Erhvervsministeriet

Intet nyt.



## Artikler fra Juristen

Årgang 2023: Nummer 4

### Teknologirettens 3. generation. Forfatter: Henrik Udsen.

EU er i gang med at vedtage og gennemføre en omfattende række teknologiretsakter, der i de kommende år vil påvirke mange retsområder og give grundlag for etableringen af nye. Artiklen giver en oversigt over de mest centrale af disse retsakter, deres indplacering i de eksisterende retsområder og hvilke nye retsområder, den nye generation af teknologiregulering kan give anledning til. Herefter drøftes, hvordan jurister, der arbejder med teknologiregulering, kan afgrænses deres fremtidige arbejdsområder i erkendelse af, at det ikke er muligt at overskue og have tilstrækkelig dyb indsigt i alle disse nye og meget komplekse regelsæt, der for de flestes vedkommende ikke afløser andre regler men blot tilføjer yderligere. Artiklen rundes af med mere generelle overvejelser om, hvilke typer af opgaver den nye generation af teknologiregulering stiller teknologiretten og dens udøvere – herunder retsvidenskaben – over for i de kommende år.

Artiklen behandler bl.a. Digital Markets Act (forordningen om digitale markeder).

## 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

Europarättslig tidskrift nr 4 2023

- **The Choice of Legal Basis in EU Competition Law: Shifting the Competence in the Digital Era.** Forfatter: Annegret Engel.
- **Förväntade förändringar inom konkurrenstillsynen – en kommentar.** Forfatter: Lucas Cyrén.

## 4 | LITTERATUR (UK)

## Artikler fra European Competition Law Review

Volume 45, Issue 1, 2024

### **Analysis of Georgian merger regulations and decisions of National Competition Agency of Georgia.** Forfatter: W. Solomon Menabdishvili.

Examines the operation of Georgia's merger control regime, and the extent to which it accords with EU law. Reviews its rules on issues including acceptable concentrations, notification obligations and dominant position, its application in case law, and whether the current approach is effective.



**The Egyptian competition enforcement policy: the dual distribution arrangements. Forfatter: Dr. iur. Mahmoud A. Momtaz.**

Assesses the Egyptian Competition Authority's enforcement policy in respect of anti-competitive dual distribution arrangements. Compares its approach with those of the EU and US, and considers whether Egypt should adopt an alternative policy based on the arrangements' horizontal aspects.

**Sector-specific essential facilities doctrine: a tool for remedying distortions of innovation competition for future markets. Forfatter: Velizar K. Kirilov.**

Proposes a sector-specific EU essential facilities doctrine to assess input foreclosures that may restrict market-creating innovations, which is aimed at mitigating excessive risks for innovation arising from competition law interventions. Details key features of the two-stage legal test involved.

**Navigating no-poaching clauses - a critical comparative analysis of Indian competition law and global approaches. Forfatter: Mayank Gandhi.**

Compares Indian competition law's approach to non-poaching clauses with that of other jurisdictions. Examines the main elements of the EU and US policies, the Indian competition authority's position on non-solicitation agreements in combination cases, and possible reforms to improve India's regime.

**Case note on European Court of Justice judgment of 19 January 2023 Unilever (C-680/20) EU:C:2023:33 (Case Comment). Forfatter: Prof. Dr. Christian Kersting.**

Comments on Unilever Italia Mkt Operations Srl v Autorita Garante della Concorrenza e del Mercato (C-680/20) (ECJ) and its approach to whether the unity of conduct between a producer and distributor in a distribution network could be deemed a single economic unit when assessing abuse of dominance.

**Austria: anti-competitive practices - restrictive business practices (Case Comment). Forfatter: Georg Huber.**

Notes an Austrian Kartellgericht decision to impose fines of over EUR 27 million on Swietelsky AG and its subsidiary companies C Peters Baugesellschaft mbH and Kontinentale Baugesellschaft mbH for participation in a price fixing and market sharing cartel in the construction industry.

**Austria: competition governance - new Federal Competition Authority director. Forfatter: Georg Huber.**

Highlights Austria's appointment of Natalie Harsdorf-Borsch as the new Director General of the Austrian Federal Competition Authority. Notes her previous role as its interim director.

**Finland: foreign subsidies regulation - legislation (Legislative Comment). Forfatter: Maarit Taurula.**

Notes Finland's proposals to revise its regulatory regime governing foreign subsidies, to prevent distortions of competition. Summarises the main reforms, including allowing on-site inspections by the Finnish Competition and Consumer Authority, and increasing its information exchange powers.

**Finland: mergers - merger control (Case Comment). Forfatter: Maarit Taurula.**

Highlights the Finnish Competition and Consumer Authority ruling in Caverion Oyj / Triton Fund V, conditionally approving a merger between two companies in the building automation projects and maintenance services sectors, subject to divestiture commitments.

**Finland: procurement - judgment (Case Comment). Forfatter: Maarit Taurula.**

Notes the Finnish Market Court ruling in Avam Security Oy v City of Helsinki, annulling the award of a public sector contract for security services on grounds including a lack of clarity in the tender requirements, which was unlikely to produce comparable tenders.

**Finland: competition – report. Forfatter: Maarit Taurula.**

Notes the Finnish Competition and Consumer Authority's September 2023 publication of a research report on how competition in the rail freight transport market might be increased. Details the proposed policy actions, including establishing a public rolling stock company.

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

Notes the French Competition Authority ruling in French National Confederation of Tobacconists, fining the organisation EUR 750,000 for anti-competitive practices involving organising a boycott in the gambling game distribution sector. Details the range of conduct involved.

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

Notes the French Competition Authority ruling in Mediapro Sport France SARL / Group Canal Plus, rejecting a complaint of abuse of dominance in the pay-tv distribution market for lack of priority, citing the courts' dismissal of a claim based on the same complaint and the complainant's liquidation.

**France: anti-competitive practices – enforcement. Forfatter: Emmanuel Reille.**

Notes the French Competition Authority's October 2023 establishment of a specific whistleblower protection framework in accordance with Directive 2019/1937. Details key features of its operation, including the range of anti-competitive conduct concerned, and the reporting mechanisms available.

**South Africa: competition – study. Forfatter: Aziza Mdee.**

Notes a South African Competition Commission study into barriers to market entry facing women entrepreneurs, including limited access to start-up finance. Details its recommendations for reform, and the impact of related competition cases promoting historically disadvantaged persons.

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

Notes the Turkish Competition Board ruling in Itochu International Inc / Tokyo Century (USA) Inc / Hitachi Construction Machinery Americas Inc unconditionally approving a full-function joint venture to provide sectoral financing services. Details the competition concerns examined by the Board.

**Volume 44, Issue 12, 2023****The European Commission's new guidelines on sustainability agreements - legal analysis and interplay with national regimes. Forfatter: David Little.**

Reviews key features of the chapter in the Commission's revised July 2023 Horizontal Guidelines on sustainability agreements, including their practical application in light of concerns raised by businesses, and their interaction with national competition regimes in several Member States.

**The implications of the Meta Ireland Platforms ruling for the powers of national competition authorities and national regulatory and supervisory authorities. Forfatter: Francesco Rizzuto.**

Discusses Meta Platforms Inc v Bundeskartellamt (ECJ) on whether national competition authorities (NCA) investigating abuse of dominance by online platforms can rule on data protection infringements under Regulation 2016/679, and the implications for NCA relations with other national regulators.

**Re-appraising media pluralism as a public interest phenomenon: a role for EU merger control and related ex ante instruments in addressing "fake news"? Forfatter: Craig Pouncey.**

Reviews the obstacles to combating "fake news" on digital platforms, and suggests how EU merger control tools and their concept of media plurality under Regulation 139/2004 art.21 might be used to introduce a layer of public interest scrutiny into regulating disinformation on such platforms.

**The internet of things: antitrust and justice. Forfatter: Robert Walters.**

Reviews the challenges which the growth of artificial intelligence and the internet of things pose for competition law and wider issues of justice. Discusses the rule of law's operation in such a context, how digitalisation changes social behaviour, the key dangers and potential future strategies.

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

Notes the Czech Competition Office decision in AK signal Brno / SIGNALBAU / STARMON, imposing a fine of approximately EUR 704,000, following a settlement procedure, on each participant in a bid-rigging cartel involved in a railway crossing safety-related procurement.

**Estonia: anti-competitive practices - restrictive business practices. Forfatter: Triinu Järviste.**

Highlights the challenges facing Estonian efforts to implement the provisions of Directive 2019/1 into national law, particularly those involving the enforcement of fines imposed for anti-competitive practices. Notes the preparation of further draft legislation to address the problems.

**EU: mergers - merger control (Case Comment). Forfatter: Prof. Bruce Wardhaugh.**

Notes European Commission v CK Telecoms UK Investments (C-376/20 P) (ECJ) on the standard of proof of significant impediment to effective competition, the ECJ's margin of discretion on review, the test for assessment of non-co-ordinated effects and assessing the closeness of competition.



**Finland: anti-competitive practices – investigation. Forfatter: Maarit Taurula.**

Notes the Finnish Competition and Consumer Authority's launch of an investigation of companies operating in the wholesale market for wild berries, following concerns over alleged anti-competitive practices. Notes the launch of a parallel investigation by the Swedish Competition Authority.

**Finland: procurement – investigation. Forfatter: Maarit Taurula.**

Notes the Finnish Competition and Consumer Authority decision in Wellbeing Services County of Southwest Finland / Revire Perinta Oy that a procurement for debt collection services was wrongly treated as an in-house procurement exempt from competitive tendering, and recommending early termination.

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

Highlights a 7 September 2023 ruling of the French Competition Authority, imposing fines of around EUR 31 million on six companies in the nuclear services sector for anti-competitive activities including bid-rigging and information exchanges. Notes the application of the leniency procedure.

**Greece: competition – enforcement. Forfatter: Christianna Mara.**

Notes the aims of the Hellenic Competition Commission's comprehensive mapping study of the Greek petroleum products sector, its main findings, and key phases of the resulting regulatory intervention process.

**Ireland: competition governance – governance. Forfatter: Dr Vincent J.G. Power.**

Highlights the September 2023 appointment of Brian McHugh as the new chair of the Irish Competition and Consumer Protection Commission (CCPC). Notes his previous posts, and his comments on the priorities of the CCPC in the coming months.

**Poland: anti-competitive practices - judgment (Case Comment). Forfatter: Prof. Agata Jurkowska-Gomułka.**

Notes a 15 June 2023 ruling of the Poznan Court of Appeal, clarifying the point at which the limitation period begins for the purposes of a private enforcement action for damages caused by anti-competitive behaviour in the chemical products market. Details key features of the judgment.

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

Notes the Romanian Competition Council ruling in Albalact SA / Covalact SA / Dorna Lactate SA, imposing fines of around EUR 2.9 million on three companies in the dairy market for their failure to provide certain information during dawn raids to investigate allegations of price fixing.

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

Notes the Romanian Competition Council ruling in Res Terranet Holding SRL / Greenvolt Power Wind Poland sp zoo / Eolenerg Project SRL approving a merger in the renewable energy sector. Details key features of the investigation, and the basis for issuing a non-opposition decision.

**Slovenia: competition - annual review. Forfatter: Eva Škufca.**

Highlights the Slovenian Competition Protection Agency's publication of the annual review of its activities for 2022, including its rulings on merger control, unfair trade practices and antitrust activity. Notes its predictions for 2023.

**South Africa: competition market inquiry – investigation. Forfatter: Derushka Chetty.**

Notes the South African Competition Commission's July 2023 final report and ruling in the Online Intermediation Platforms Market Inquiry, and its main findings in areas including online travel agencies, food delivery and property classifieds. Summarises its recommendations for remedial action.

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

Notes the Spanish National Competition and Markets Commission ruling in Apple Group / Amazon Group, fining the two online platforms around EUR 143 million and EUR 50 million respectively for anti-competitive activities including restrictive business practices and limiting reseller opportunities.

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

Notes the Spanish National Competition and Markets Commission ruling in Bureau Van Dijk Publicaciones Electronicas / Informa D&B, fining two business information database services for customer sharing agreements and participation in a price fixing cartel. Details key features of the conduct.

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

Notes the Spanish National Competition and Markets Commission ruling in Wonderbox / Smartbox, clearing a merger between two companies in the "multi experience" voucher market. Details the competition concerns examined by the Commission, and the commitments given by Wonderbox.

**Sweden: anti-competitive practices - investigation (Case Comment). Forfatter: Stefan Perván Lindeborg.**

Notes the Swedish Competition Authority ruling in Finnair Oyj, accepting voluntary commitments from an airline following an investigation into its alleged restrictions on online travel agencies' advertising of discounted flight tickets. Details the commitments accepted subject to a penalty payment.

**Sweden: competition - judgment (Case Comment). Forfatter: Stefan Perván Lindeborg.**

Notes the Swedish Supreme Court ruling in Systembolaget AB v Winefinder ApS on whether a seller based in another Member State was entitled to market alcoholic beverages to Swedish consumers on the basis that such sales fell within the private import exemption under the Swedish Alcohol Act 2010.

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

Notes the Turkish Competition Board ruling in Akcez Enerji Yatirimlari Sanayi ve Ticaret AS / Torunlar Enerji Sanayi ve Ticaret AS / Baskent Dogalgaz Dagitim Gayrimenkul Yatirim Ortakligi AS, unconditionally approving the acquisition of joint control of a company in the electricity sector.

**UK: anti-competitive practices - restrictive business practices. Forfatter: Jordan Bernstein.**

Notes the Competition and Markets Authority's August 2023 publication of revised guidance on the application of the Competition Act 1998 Ch.1 to horizontal agreements. Details the background to the publication, how it differs from the EU's approach, and the impending guidance on sustainability.

## 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

Volume 46, Issue 4, 2023

**EU Antitrust Fines and Managerial Liability – A Legal and Economic Analysis. Forfatter: Wouter P.J. Wils.**

Should companies that have been fined for EU antitrust infringements be allowed to recover such fines from their (former) directors or employees? On the basis of an analysis of the EU Treaty provisions, legislation and case law on antitrust fines, as well as of the economic nature of antitrust infringements and the economic rationale of fines on undertakings/companies, this paper argues that it would appear contrary to EU law to allow undertakings/companies that have been fined by the European Commission or by a national competition authority(NCA) for infringements of Articles



101 and/or 102 TFEU to recover such fines from the companies' (former) directors or employees, as such recovery would significantly impair the full effectiveness of those fines.

**Form and Substance in EU Competition Law. Forfatter: Pablo Ibáñez Colomo.**

Discussions around formalism have made a comeback in the competition law community. This paper seeks to clarify, first, what term means – and does not mean. It is, in essence, an approach to the identification and the evaluation of the lawfulness of practices that relies on their formal features – and their formal features alone. Formalism should not be conflated with, inter alia, the 'by object' treatment of conduct and with the use of legal categories (which are a necessity). Second, the paper shows that the Court has consistently placed substance above form in its case law – as cases like Super Bock and Slovak Telekom show. On the other hand, competition authorities appear to favour formalism. The tension between the Court's and authorities' favoured approaches might be a source of legal uncertainty and might result in the fragmentation of the legal system along several dimensions.

**The DMA's Ithaca: Contestable and Fair Markets. Forfatter: Alba Ribera Martínez.**

The Digital Markets Act (DMA) obligations will start to apply to the designated gatekeepers starting in March 2024. Its main objectives are set out in Article 1(1) as those of ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of both business and end-users. However, the definition and the interpretation the Commission will provide for both objectives are far from clear. In turn, this makes future-proofing the DMA a more difficult task for gatekeepers, regulators and third parties, insofar as its obligations are construed upon one of the two stated goals depending on the provision or on both of them more generally.

The paper addresses this problem by narrowing the gap between those concepts in their relationship with their underlying economic theorems. Later on, it observes the manifestations of contestability and fairness throughout the text and the regulation's legislative process accounting for their four distinct expressions: objectives, indicators, and the legal bases for triggering the supplementary and precautionary measures of the instrument.

**One Size Fits All? Competition Rules for Digital Markets Outside Europe. Forfattere: Richard Murgatroyd, Simon Lee og Theon Van Dijk.**

Stricter competition regulation in digital markets is a growing trend in the Global North, with the Digital Markets Act in Europe being the poster child of a more interventionist approach. In this article we do not focus on the debate surrounding these European efforts (which has meritorious arguments on both sides in our view), but instead examine similar developments elsewhere in the world, namely in South Africa, India, China, and Brazil. With reference to recent enforcement activities in these countries (such as industry investigations, greater scrutiny of mergers and of individual firm conduct, and in some cases ex ante regulations targeted at specific categories of firms), we provide our views on the potential adverse consequences of seeking to replicate the European approach in instances where digital markets may be less mature. In particular, while it is generally understood that heavy-handed regulation can stifle innovation and chill competition, we argue that such risks are more acute in countries outside of Europe (and North America), which thus warrants more cautious regulation methods. This is especially the case where the policy objectives deviate from the traditional one of protecting competition rather than competitors, since such an approach runs the risk of promoting short term gains at the expense of long-term benefits, which may ultimately harm the very stakeholders that such regulation is designed to advantage.

## Artikler fra Antitrust Law Journal

Intet nyt.

## Artikler fra Antitrust Bulletin

Volume 68, Issue 4, December 2023

**Welfare Economics and Antitrust Policy: A Selective Summary. Forfatter: Markovits, Richard S.**

This Article summarizes the most salient components of my study WELFARE ECONOMICS AND ANTITRUST POLICY. It (1) distinguishes moral-rights (justice) analysis from moral-good analysis, (2) defines and examines the relevant extensions of the liberal conception of justice, (3) defines various egalitarian conceptions of the moral good and argues that libertarianism is not morally defensible and would not in any event have many of the extensions some claim it has, (4) defines various categories of antitrust-policy-coverable conduct (including natural and contrived oligopolistic conduct of various sorts and predatory conduct of various sorts), (5) defines the components of the gap between a product's price and marginal cost that need to be distinguished respectively in individualized-pricing and across-the-board-pricing situations, (6) defines "investment competition" and identifies the determinants of its intensity, (7) explains why markets



cannot be defined non-arbitrarily, (8) defines "the impact of a choice on economic efficiency" and lists various categories of economic inefficiency that can be generated, (9) delineates the protocol for predicting the economic efficiency of a choice that is ex ante economically efficient (which considers the impact of choices on many categories of economic inefficiency that conventional analyses ignore, takes economically efficient account of the fact that the individual exemplars of Pareto imperfections that would cause economic inefficiency in an otherwise-Pareto-perfect economy can counteract as well as compound each other's misallocative tendencies, and considers how to take appropriate account of the fact that both analysis and its financing are allocative-costly), (10) examines the policy-relevance of a choice's impact on economic efficiency, and (11) executes some preliminary antitrust-policy analyses.

**Confessions of a Nonbeliever: Comments on the Search for Antitrust's Normative Foundations. Forfatter: Harrison, Jeffrey L.**

Richard Markovits' *Welfare Economics and Antitrust Policy* is, without a doubt, the most expansive and thoughtful effort to assess antitrust policy from the point of view of welfare economics. Unfortunately, I cannot comment in a meaningful way on the specifics of his analysis because after teaching antitrust for 30 years, I have become a nonbeliever. I do not believe any interpretation of today's general antitrust policies, or the economics on which they are based, can be reconciled with any known version of "welfare." The principal reason for this state of affairs is that antitrust scholars and courts cling to goals that are misguided and theories that have not evolved despite an avalanche of information now available that strongly suggests, if not proves, that there is little connection between standard antitrust goals and welfare. Thus, with great reluctance, I question whether the analysis found in Richard's *Welfare Economics and Antitrust Policy* is worth the effort or ultimately gets us anywhere. My inkling is that Richard realizes this too.

**A Comment on Markovits's *Welfare Economics and Antitrust*. Forfatter: Hylton, Keith N.**

I criticize two features of the new book by Richard Markovits. One is the notion that ethics or moral judgments should be part of our analysis of antitrust. The other is the notion that market definition is incoherent.

**Two Comments on the Definition of Contrived Oligopolistic Conduct. Forfatter: Wiseman, Thomas.**

Prof. Markovits provides a verbal definition of anticompetitive contrived oligopolistic conduct that is mathematical in its precision. I highlight two questions arising from that definition. The first question involves an ambiguity about how firms' beliefs about each others' potential reactions to their moves affect how firms evaluate the profitability of those moves. The second question regards whether and in what circumstance strategic ignorance—a firm's decision to avoid relevant information in order to influence the behavior of its rival—should be considered anticompetitive. The increasing use of artificial intelligence pricing algorithms highlights the practical importance of both questions.

**In *Fairness We (Should Not) Trust: The Duplicity of the EU Competition Policy Mantra in Digital Markets*. Forfatter: Colangelo, Giuseppe.**

Fairness is not foreign to competition law and fairness considerations are not new to it. However, the endemic uncertainty on its notion has traditionally made fairness unsuitable to act as a stand-alone applicable legal standard. Indeed, antitrust enforcers have usually been reluctant to engage with the unfairness of terms and conditions. Nonetheless, against the perceived undue corporate power and market concentration in the digital economy, fairness has recently gained center stage in the policy debate, especially in Europe where recent regulatory interventions have been declared to be aimed at promoting fairness in digital markets. Against this background, the article attempts to demonstrate that the vagueness and ambiguity associated with its meaning may make fairness particularly attractive to policy makers and that, accordingly, the revival of fairness risks being simply functional to grant them more discretion and room for intervention.

**Current Legal and Economic Problems of Privacy Protection, Data Sharing, and Market-Opening in the Digital Economy. Forfatter: Schäfer, Hans-Bernd.**

This paper is dedicated to my esteemed colleague Richard S. Markovits. It deals with ownership of data and with alternative methods to regulate Internet platform providers. It rejects the view that the subjects of information should have ownership rights over their personal data, which extend beyond what is necessary for privacy protection. Also, data controllers should not have an exclusive ownership right but share anonymized data with competitors. Even though the wealth of data harvested and stored by Internet firms are only weakly protected by trade-secret law, this together with effective encryption technologies develops into an exploitative de facto property over information, if effective market opening rules do not exist. The paper shows that the rule of abuse of dominant position of traditional competition law could not sufficiently check unfair trade practices of platform providers. Its adjudication is information intensive and leads to overly lengthy and costly proceedings. The Digital Markets Act of the European Union drew a radical conclusion from these experiences and regulates the biggest Internet firms with simple per se rules, which are relatively easy to administer but less flexible. Still, the Digital Markets Act should be welcomed as an important step forward.

**Some Comments on the Other Contributions to This Antitrust-Policy-Focused Issue. Forfatter: Markovits, Richard S.**

This response to the other Articles in this issue acknowledges the importance of some of the obstacles to sound antitrust-policy analysis that others find insurmountable but contends that they can and must be overcome, explains why I think some critiques of my approach are ill-specified and indefensible, clarifies some oligopolistic-conduct-related concepts my study uses about which one contributor poses questions, restates in my terminology the arguments of two contributions that delineate and evaluate particular E.U. antitrust policies and comments on some of the normative claims these two articles consider, and expresses my appreciation of the positive book review that two scholars have supplied.

**Book Review: Welfare Economics and Antitrust Policy. Forfattere: Petit, Nicolas og Schrepel, Thibault.**

**Artikler fra Competition Law and Policy Debate**

Intet nyt.

**Artikler fra Competition Law Scholars Forum**

Volume 15, Issue 2

**Editorial: Exploring New Horizons in the Sustainability and Competition Law Debate. Forfatter: Julian Nowag.**

**The Complex Relationship between Competition Law and Initiatives for Halting Deforestation in the Amazon. Forfattere: Juan David Gutiérrez og Sebastián Solarte-Caicedo.**

This article examines whether and how national competition law facilitates (or impedes) initiatives that aim at dealing with deforestation in the Amazon. The article follows a case-study design, with in-depth analysis of the cases of five South American countries: Bolivia, Brazil, Colombia, Ecuador, and Peru. We investigated whether competition law has had and/or could have incidence (positive or negative) on public and/or private initiatives that aimed at tackling deforestation in the Amazon. We report that we did not find significant competition enforcement and non-enforcement activities that explicitly and meaningfully promoted this type of environmental initiatives in Bolivia, Brazil, Colombia, Ecuador, and Peru. In contrast, based on the current laws and recent case law, we conclude that there is a high risk that antitrust gets in the way of initiatives that aim at dealing with deforestation in the Amazon, particularly in Brazil. The research attempts to contribute to the field of competition law and sustainability. The main article's contributions are three-fold. First, we contribute to research on how competition law can negatively affect certain environmental initiatives: those that aim at tackling deforestation. Second, while most of the scholarship focuses on the legislation and case law from North America and Europe, this paper contributes to the literature by exploring jurisdictions from the Global South. Third, this study contributes to research on the relationship between competition law and informal markets and highlights the limits and risks of using competition law as a public policy instrument in so-called 'developmental' contexts.

**The Output/Sustainability Paradox – a pro-enforcement perspective on sustainability in EU competition law. Forfatter: Johannes Persch.**

In the debate on greening competition law, this article takes a pro-enforcement or preventative integration perspective; i.e., it suggests a stricter application of competition law by, on the one hand, extending the scope of competition law prohibitions to prevent unsustainable business actions and, on the other hand, by limiting the scope of exemptions where this would result in unsustainable outcomes. This pro-enforcement perspective is based on recognizing that there can be a conflict between the goals of increased output on the one hand and sustainability on the other hand. More competition often means more production and more consumption of resources and emission of CO<sub>2</sub>. Some of what competition law embraces as goals from a sustainability lens is not part of the solution but part of the problem. Here lies the paradox between competition law and sustainability: that competition law is called on to be a driver of sustainability, but its goals seem to run against it because it promotes growth and increase of output. This calls for new approaches to reconcile competition law and sustainability with each other: can competition law be used to incentivize or even require companies to behave more sustainable, even if this does mean, in some cases, that we must sacrifice some output-increases? This paper discusses, if and how competition law can actively contribute to a more sustainable economy in which competition does not lead to more but to less consumption of resources in the context of Art. 101 TFEU, Art. 102 TFEU and EU merger control. It submits that while competition can hurt the environment, anti-competitive agreements, mergers, or practices should not.



## Artikler fra Journal of Regulatory Economics

Intet nyt.

## Artikler fra International Review of Law and Economics

Intet nyt.

## Artikler fra Competition Law Journal

Intet nyt.

## Artikler fra European Competition and Regulatory Law Review

Intet nyt.

## Artikler fra Communications Law

Intet nyt.

## Artikler fra Computer and Telecommunications Law Review

Intet nyt.

## Artikler fra Global Competition Litigation Review

Volume 16, Issue 4, 2023

### **An analysis of the CAT case-law on private damages actions following the Supreme Court in Merricks. Forfatter: Professor Barry Rodger.**

Reviews recent Competition Appeal Tribunal (CAT) cases on private enforcement actions for damages, especially collective proceedings orders applications.

### **Algorithmic antitrust liability in China: a game changer or window dressing? Forfatter: Dr Qingxiu Bu.**

Reports on a new Chinese law and regulations against online platforms' abuse of algorithmic pricing to prejudice consumer rights.

### **Admissibility of foreign infringement decisions in UK antitrust damages actions. Forfatter: Alexandra Hackney.**

Considers to what extent foreign decisions, including Commission Decisions, will be admissible in English competition private enforcement proceedings after Brexit.

### **Articles of note on private competition litigation in 2023. Forfatter: Alexander Burdett.**

Presents a bibliography of significant journal articles on the private enforcement of competition law.

### **Action for damages in Greenland: recent highlights. Forfatter: Jens Munk Plum.**

Reports on Greenland judgments on a public authority's action for damages when contractors bidding for a public contract to build at an airport infringed competition rules, and damages for refusal to supply in the telecommunications sector.

### **Federal Court of Canada orders stay in favour of arbitration of antitrust claims (Case Comment). Forfatter: Gordon Blanke.**

Comments on the Canadian Federal Court order in *Difederico v Amazon.com* to stay the court action for price fixing in favour of the arbitration agreement under Amazon's standard conditions of use, and examines the arbitrability of competition law claims.

## Andre udenlandske artikler

Intet nyt.





## 5 | NYT FRA KONKURRENCEGRUPPEN

### **U.2023B.364/6: Bogomtale: Konkurrenceretten af Christian Bergqvist.**

1. udgave af denne lærebog udkom i 2019 (anmeldt af Jens Fejø i U.2020B.100/2). Bogen er nu opdateret, bl.a. i lyset af de ændringer, der er sket i håndhævelsessystemet, og med vedtagelsen af nye EU-retningslinjer, siden 1.-udgaven. Dens systematik er bibeholdt og omfanget vokset med hele 130 sider.

[Læs mere](#)

Dato: 07.12.2023