



Konkurrenceretlig Nyhedsoversigt nr. 88 / dækkende 13. december 2023 – 22. januar 2024

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1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Godkendelse på baggrund af en forenklet sagsbehandling af Capidea Kapital IV K/S' erhvervelse af Digital Group Holding ApS og datterselskabet Digital Group A/S.

Transaktionen indebærer, at Capidea Kapital IV K/S erhverver enekontrol med Digital Group Holding ApS og indirekte med Digital Group Holding ApS' 100 pct. ejede danske datterselskab Digital Group A/S.

[Læs mere](#)

Dato: 19.01.2024

Godkendelse på baggrund af en forenklet sagsbehandling af Dagrofas overtagelse af syv detailbutikker fra Rema 1000.

Transaktionen indebærer, at fem af de dagligvarebutikker, som REMA 1000 tidligere har erhvervet fra ALDI Danmark ApS, videreoverdrages til Dagrofa fra REMA 1000. Derudover har Dagrofa og REMA 1000 indgået aftale om, at to af REMA 1000's eksisterende lejemål også skal overdrages til Dagrofa som led i transaktionen. Samlet vil de syv butikker, der er omfattet af transaktionen, betegnes "Target". Butikkerne er placeret i Esbjerg (2), Grenå, Helsingør, Risskov, Lind og Tønder.

[Læs mere](#)

Dato: 12.01.2024

Godkendelse af Reitan Convenience Denmark A/S' overtagelse af 57 servicestationer fra DCC Energi Mobility A/S.

Transaktionen medfører alene, at 57 servicestationer overdrages fra DCC til Uno-X. DCC forlader således ikke markedet, hvorfor antallet af aktører er uændret som følge af fusionen.

[Læs mere](#)

Dato: 21.12.2023

Godkendelse på baggrund af en forenklet sagsbehandling af NCG Retail A/S' erhvervelse af enekontrol over ERA BILER A/S.

Transaktionen indebærer, at NCG Retail A/S (herefter "NCG"), der er et datterselskab under Nic. Christiansen Gruppen A/S (herefter "Nic. Christiansen Gruppen"), erhverver enekontrol over ERA BILER A/S (herefter "ERA BILER"). NCG erhverver enekontrol over ERA BILER ved køb af aktiverne i ERA BILER. ERA BILER er før fusionen 100 pct. ejet af Johannessen Holding ApS.

[Læs mere](#)

Dato: 21.12.2023

Godkendelse på baggrund af en forenklet sagsbehandling af CapHold inv 3 ApS' erhvervelse af enekontrol med Glud Gludsen Group, herunder Right People Group og Right People Group International.

Ved transaktionen erhverver CapHold 100 pct. af kapitalandelene i Glud Gludsen Group ApS. CapHold erhverver herved enekontrol med Glud Gludsen Group ApS.

[Læs mere](#)

Dato: 21.12.2023

Godkendelse på baggrund af en forenklet sagsbehandling af Aramco Overseas Company B.V.'s erhvervelse af Esmax Distribución SpA.

Transaktionen medfører, at AOC overtager 100 pct. af aktiekapitalen i Esmax. AOC erhverver herved enekontrol over Esmax.

[Læs mere](#)

Dato: 15.12.2023



Godkendelse på baggrund af en forenklet sagsbehandling af Lidl's erhvervelse af 11 butiksejendomme fra REMA 1000.

Transaktionen indebærer, at Lidl erhverver enekontrol over 11 butiksejendomme fra REMA 1000 Danmark A/S inklusive tilknyttede medarbejdere.

[Læs mere](#)

Dato: 08.12.2023

Nyt fra Konkurrencerådet

Intet nyt.

Nyt fra Konkurrenceankenævnet

Kendelse af 14. december 2023 – [Virksomhed X] mod Konkurrence- og Forbrugerstyrelsen (offentliggørelse af kendelse KL-1-2022).

Med henvisning til ordlyden af konkurrencelovens § 13, stk. 2, nr. 5, jf. stk. 4, og forarbejderne her- til er der efter Konkurrenceankenævnets opfattelse ikke holdepunkter for, at det forhold, at der ikke foreligger en endelig afgørelse i den underliggende konkurrencesag, skal udsætte offentliggørelsen af Konkurrenceankenævnets kendelse vedrørende aktindsigt.

Konkurrenceankenævnet finder herefter, at Konkurrence- og Forbrugerstyrelsen i overensstemmelse med sin praksis kunne offentliggøre Konkurrenceankenævnets kendelse af 30. november 2022 umiddelbart efter, at kendelsen var afsagt, og spørgsmål om fortrolighed var afklaret.

[Læs mere](#)

Dato: 14.12.2023

Nyt fra domstolene

Civilretlige afgørelser

Intet nyt.

Afgørelser om bøder

Intet nyt.

Lovforslag i høring

Intet nyt.

Ny lovgivning

Lov nr. 1765 af 28.12.2023 om håndhævelse af Europa-Parlamentets og Rådets forordning om et indre marked for digitale tjenester.

Loven skal supplere forordningen om digitale tjenester for at sikre et effektivt tilsyn med og håndhævelse af forordningen i Danmark.

Formålet med forordningen er at skabe et velfungerende indre marked for digitale tjenester, hvor fundamentale rettigheder, herunder ytringsfriheden, beskyttes. Forordningen indeholder bl.a. regler om anmeldelser, tydelighed om onlinemarkedsføring, udformning af tjenesternes vilkår og om beskyttelse af mindreårige online.

For at sikre et passende tilsyn med og håndhævelse af forordningen skal medlemsstaterne senest den 17. februar 2024 udpege en eller flere kompetente myndigheder, som skal føre tilsyn med forordningens overholdelse. Forordningen forpligter endvidere medlemsstaterne til at fastsætte regler om sanktioner for overtrædelse af forordningen.

Med loven udpeges Konkurrence- og Forbrugerstyrelsen som kompetent myndighed og koordinator for digitale tjenester.



Loven indeholder derudover supplerende bestemmelser om kompetente myndigheders undersøgelses- og håndhævelsesbeføjelser og om modtagne klager m.v.

[Læs mere](#)

Dato: 14.12.2023

Nyt fra Ankestyrelsen

Intet nyt.

Andet

Konkurrence- og Forbrugerstyrelsen: Mål- og resultatplan 2024.

Mål- og resultatplanen indgås mellem [styrelse] og departementet. Mål- og resultatplanen træder i kraft den 1. januar og gælder for hele 2024. Mål- og resultatplanen er en del af ministeriets rullende kontraktstyring. De årlige bevillinger afhænger af årets finanslov.

[Læs mere](#)

Dato: 18.12.2023



2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust & Cartels

Commission seeks feedback on commitments offered by Apple over practices related to Apple Pay.

Apple Pay is Apple's own mobile wallet solution used to allow iPhone users to pay with their mobile devices. Apple's iPhones run exclusively on Apple's operating system ('iOS'), with which they form a 'closed ecosystem'. Apple controls every aspect of this ecosystem, including mobile wallet developers' access to it.

The Commission preliminarily found that Apple enjoys significant market power in the market for smart mobile devices and a dominant position on mobile wallet markets on iOS. Apple Pay is the only mobile wallet solution that may access the necessary hardware and software ('NFC input') on iOS to enable mobile payments in physical stores. Apple does not make it available to third-party mobile wallet app developers.

On 2 May 2022, the Commission informed Apple of its preliminary view that such exclusionary conduct may restrict competition in the market for mobile wallets on iOS devices, in breach of Article 102 of the Treaty on the Functioning of the European Union ('TFEU').

[Læs mere](#)

Dato: 19.01.2024

Commission accepts commitments by Renfe opening up competition in online rail ticketing in Spain.

Renfe, the Spanish state-owned rail incumbent operator, competes with companies providing online ticketing services to customers through apps or websites. These third-party ticketing platforms need to have access to Renfe's full content and real-time data displayed on Renfe's own digital channels to tailor their offers to the customers' needs and compete effectively with Renfe's online distribution channels.

In April 2023, the Commission opened a formal investigation over concerns that Renfe may have abused its dominant position in the Spanish passenger rail transport market by refusing to provide rival ticketing platforms with: (i) full content concerning its range of tickets, discounts and features; and (ii) real-time data (pre-journey, on-journey or post-journey) related to its passenger rail transport services.

The Commission preliminarily found that Renfe's refusal to provide its full content and real-time data may have prevented rival platforms from competing with Renfe's own direct digital channels to the detriment of consumers. Such behaviour may breach EU competition rules, which prohibit the abuse of a dominant position (Article 102 of the Treaty on the Functioning of the European Union ('TFEU')).

[Læs mere](#)

Dato: 17.01.2024

Mergers

Intet nyt.

State Aid

Commission approves €1.46 billion Czech State aid schemes to support prevention of spread of poultry and pig diseases.

The European Commission has approved, under EU State aid rules, two Czech schemes with a total budget of around €1.46 billion (CZK 35 billion) to support farmers in preventing the spread of certain poultry and pig diseases. The measures will contribute to the achievement of the EU's strategic objectives relating to the Common Agricultural Policy.

[Læs mere](#)

Dato: 17.01.2024

**Commission approves €126 million Romanian State aid scheme to support ports facing increased trade flows due to Russia's war against Ukraine.**

The European Commission has approved, under EU State aid rules, a €126 million Romanian scheme to support investments in ports facing increased trade flows after Russia's war against Ukraine. The measure facilitates flow trades in and from Ukraine in line with the objectives of the EU's Solidarity Lanes action plan.

[Læs mere](#)

Dato: 11.01.2024

The Commission has approved a €2.9 billion French State aid scheme for supporting investment in green industries to foster the transition towards a net-zero economy.

The European Commission has approved a €2.9 billion French scheme for supporting investment in green industries (tax credit for investment in green industries) 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 crucial for accelerating the green transition and reducing fossil fuel dependencies.

[Læs mere](#)

Dato: 08.01.2024

Commission approves €902 million German State aid measure to support Northvolt in the construction of an electric vehicle battery production plant to foster the transition to a net-zero economy.

The European Commission has approved a €902 million German measure to support Northvolt in the construction of a plant for the production of batteries for electric vehicles to foster the transition towards a net-zero economy, in line with the Green Deal Industrial Plan. The aid 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: 08.01.2024

Commission approves €1.3 billion French State aid scheme to support non-fossil technologies to ensure electricity supply matches demand.

The European Commission has approved, under EU State aid rules, a €1.3 billion French scheme to support the development of non-fossil flexibility technologies to ensure that the electricity supply matches demand during times of peak consumption. The measure contributes to the security of electricity supply and the decarbonisation of the economy, in line with the EU's strategic objectives relating to the European Green Deal.

[Læs mere](#)

Dato: 21.12.2023

Commission approves €17.7 billion Italian State aid scheme to support development of centralised electricity storage system.

The European Commission has approved, under EU State aid rules a €17.7 billion Italian scheme to support the construction and operation of a centralised electricity storage system. The measure contributes to the achievement of the objectives of the European Green Deal and 'Fit for 55' package, by enabling the integration of renewable energy sources in the Italian electricity system.

[Læs mere](#)

Dato: 21.12.2023

Commission approves €2.6 billion German State aid measure to support Stahl-Holding-Saar decarbonise its steel production through hydrogen use.

The European Commission has approved, under EU State aid rules, a €2.6 billion German measure to support SHS Stahl-Holding-Saar GmbH & Co KGaA ('SHS') in partly decarbonising its steel production processes in Saarland. The measure will contribute to the achievement of the EU Hydrogen Strategy, the European Green Deal and the Green Deal Industrial Plan, while helping to end dependence on Russian fossil fuels and fast forward the green transition, in line with the REPowerEU Plan.

[Læs mere](#)

Dato: 19.12.2023

**Commission approves €1 billion Slovak 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 billion Slovak 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: 14.12.2023

Andet**Commission launches calls for contributions on competition in virtual worlds and generative AI.**

The European Commission has launched today two calls for contributions on competition in virtual worlds and generative artificial intelligence ('AI') and sent requests for information to several large digital players.

All interested stakeholders are invited to share their experience and provide feedback on the level of competition in the context of virtual worlds and generative AI, and their insights on how competition law can help ensure that these new markets remain competitive. The European Commission will carefully review all input received through the calls for contributions. Following that review, the Commission may organise a workshop in the second quarter of 2024 to bring together all different perspectives emerging from the contributions and continue this reflection.

In addition, the European Commission is looking into some of the agreements that have been concluded between large digital market players and generative AI developers and providers. The European Commission is investigating the impact of these partnerships on market dynamics.

Finally, the European Commission is checking whether Microsoft's investment in OpenAI might be reviewable under the EU Merger Regulation.

[Læs mere](#)

Dato: 09.01.2024

Nyt fra EU-domstolen**Domme****C-128/21 - Lietuvos notarų rūmai m.fl.**

Nøgleord: Præjudiciel forelæggelse – konkurrence – artikel 101 TEUF – begreberne »virksomhed« og »vedtagelser inden for sammenslutninger af virksomheder« – beslutninger truffet af notarkammeret i en medlemsstat, der fastsætter metoderne til beregning af vederlag – konkurrencebegrænsende formål – forbud – manglende begrundelse – bøde – påbud til virksomhedssammenslutningen og dens medlemmer – overtrædelsens gerningsmand.

Anmodningen om præjudiciel afgørelse vedrører fortolkningen af artikel 101, stk. 1, TEUF. Anmodningen er blevet indgivet i forbindelse med en tvist mellem på den ene side Lietuvos notarų rūmai (det litauiske notarkammer, herefter »notarkammeret«) og M.S., S.Š., D.V., V.P., J.P., D.L.-B., D.P. og R.O.I., som er fysiske personer, der udøver erhvervet som notar i Litauen, og på den anden side Lietuvos Respublikos konkurencijos taryba (Republikken Litauens konkurrenceråd, herefter »konkurrencerådet«) vedrørende sidstnævntes afgørelse om at pålægge notarkammeret og disse notarer bøder for overtrædelse af den litauiske og EU-retlige konkurrenceret.

Dom:

1. Artikel 101 TEUF skal fortolkes således, at notarer, der er etableret i en medlemsstat, skal anses for at være »virksomheder« som omhandlet i denne bestemmelse, når de i visse situationer udøver virksomhed, der består i godkendelse af transaktioner vedrørende pantsætning, påføring af fuldbyrdelsespåtegninger, udfærdigelse af notarialdokumenter, udarbejdelse af udkast til transaktioner, rådgivning, ydelse af tekniske tjenester og bekræftelse af aftaler om ombytning, for så vidt som denne virksomhed ikke er knyttet til udøvelsen af offentlig myndighed.
2. Artikel 101, stk. 1, TEUF skal fortolkes således, at regler om ensartethed i den måde, hvorpå en medlemsstats notarer beregner de vederlag, der faktureres for udførelsen af visse af deres opgaver, og som er vedtaget af en faglig organisation såsom notarkammeret i denne medlemsstat, udgør vedtagelser inden for en sammenslutning af virksomheder som omhandlet i denne bestemmelse.



3. Artikel 101, stk. 1, TEUF skal fortolkes således, at vedtagelser inden for en sammenslutning af virksomheder, som ensretter den måde, hvorpå notarer beregner de vederlag, der faktureres for udførelsen af visse af deres opgaver, udgør konkurrencebegrænsninger, der er forbudt i henhold til denne artikel.
4. Artikel 101 TEUF skal fortolkes således, at den er til hinder for, at en national konkurrencemyndighed pålægger virksomheder, der er medlemmer af det ledende organ for en sammenslutning af virksomheder, individuelle bøder for en overtrædelse begået af denne sammenslutning, når disse førstnævnte virksomheder ikke er medskyldige i denne overtrædelse.

[Læs mere](#)

Dato: 18.01.2024

C-457/21 P - Kommissionen mod Amazon.com m.fl.

Nøgleord: Appel – statsstøtte – artikel 107, stk. 1, TEUF – forudgående skatteafgørelse fra en medlemsstat – støtte, der er erklæret uforenelig med det indre marked – begrebet »fordel« – fastlæggelse af referencerammen – »normal« beskatning i henhold til national ret – armslængdeprincippet – Domstolens efterprøvelse af Rettens fortolkning og anvendelse af national ret.

Den 4. oktober 2017 vedtog Kommissionen den omtvistede afgørelse. Denne afgørelses artikel 1 har til dels følgende ordlyd: "[Den omhandlede forudgående skatteafgørelse][.] i henhold til hvilken Luxembourg godkendte en [metode til fastsættelse af afregningspriser] [...], som gav [LuxOpCo] mulighed for at fastsætte sin skyldige selskabsskat [...] i Luxembourg fra 2006 til 2014, på den ene side, og den efterfølgende godtagelse af den årlige selskabsskatteangivelse baseret derpå, på den anden side, udgør ulovlig støtte [...]"

Dom:

1. Appellen forkastes.
2. Europa-Kommissionen bærer sine egne omkostninger og betaler de af Storhertugdømmet Luxembourg samt de af Amazon.com Inc. og Amazon EU Sàrl afholdte omkostninger.
3. Irland bærer sine egne omkostninger.

[Læs mere](#)

Dato: 14.12.2023

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

Nøgleord: Appel – statsstøtte – Spaniens vedtagelse af et miljømæssigt incitament for kulfyrede kraftværker – afgørelse om indledning af den formelle undersøgelsesprocedure – annullationssøgsmål.

EDP España SA (sag C-693/21) og Naturgy Energy Group SA (sag C-698/21) har ved deres appeller nedlagt påstand om ophævelse af Den Europæiske Unions Rets dom af 8. september 2021, Naturgy Energy Group mod Kommissionen (T-328/18, EU:T:2021:548), hvorved denne frifandt Kommissionen i det af Naturgy Energy Group, tidligere Gas Natural SDG SA, anlagte annullationssøgsmål til prøvelse af Kommissionens afgørelse C(2017) 7733 final af 27. november 2017 om statsstøtte SA.47912 (2017/NN) – Vedtagelse af et miljømæssigt incitament for kulfyrede kraftværker.

Dom:

1. Den Europæiske Unions Rets dom af 8. september 2021, Naturgy Energy Group mod Kommissionen (T-328/18, EU:T:2021:548), ophæves.
2. Kommissionens afgørelse C(2017) 7733 final af 27. november 2017 om statsstøtte SA.47912 (2017/NN) – Vedtagelse af et miljømæssigt incitament for kulfyrede kraftværker, annulleres.
3. Europa-Kommissionen bærer sine egne omkostninger og betaler de af Naturgy Energy Group SA afholdte omkostninger i forbindelse med både sagen i første instans i sag T-328/18 og i appellen i sagerne C-693/21 P og C-698/21 P og de af EDP España SA afholdte omkostninger i forbindelse med sin appel i sag C-693/21 P.
4. Generaciones Eléctricas Andalucía SLU bærer sine egne omkostninger.
5. Endesa Generación SAU bærer sine egne omkostninger.

[Læs mere](#)

Dato: 14.12.2023

C-297/22 P - United Parcel Service mod Kommissionen.

Nøgleord: Appel – erstatningssøgsmål – fusioner og virksomhedsovertagelser – afgørelse fra Europa-Kommissionen, hvorved fusionen erklæres uforenelig med det indre marked og EØS-aftalen – annullation af afgørelsen på grund af en procedurefejl – Den Europæiske Unions ansvar uden for kontrakt – årsagsforbindelse.



United Parcel Service Inc. har med appelskriftet nedlagt påstand om ophævelse af Den Europæiske Unions Rets dom af 23. februar 2022, United Parcel Service mod Kommissionen (T-834/17, EU:T:2022:84), hvorved Retten frifandt Kommissionen i et søgsmål anlagt af UPS i henhold til artikel 268 TEUF med påstand om erstatning for den skade, som selskabet er påført som følge af, at Kommissionens afgørelse C(2013) 431 af 30. januar 2013 om en fusions uforenelighed med det indre marked og EØS-aftalen (sag COMP/M.6570 – UPS/TNT Express) var ulovlig.

Dom:

1. Appellen forkastes.
2. United Parcel Service Inc. betaler sagsomkostningerne.

[Læs mere](#)

Dato: 21.12.2023

C-421/22 - DOBELES AUTOBUSU PARKS m.fl.

Nøgleord: Præjudiciel forelæggelse – transport – offentlig personbefordring med jernbane og ad vej – forordning (EF) nr. 1370/2007 – artikel 1, stk. 1 – artikel 2a, stk. 2 – artikel 3, stk. 1 – artikel 4, stk. 1 – artikel 6, stk. 1 – kontrakt om offentlig personbefordring med bus – procedure for tildeling af en offentlig tjenesteydelseskontrakt – åben, gennemsigtig og ikke-diskriminerende udbudsprocedure – udbudsbetingelser – størrelsen af den kompensation, der ydes af den kompetente nationale myndighed – indeksering, der er begrænset tidsmæssigt og for specifikke omkostningskategorier – risikofordeling.

Anmodningen er blevet indgivet i forbindelse med en tvist mellem på den ene side »DOBELES AUTOBUSU PARKS« SIA, »CATA« AS, »VTU VALMIERA« SIA, »JELGAVAS AUTOBUSU PARKS« SIA og »Jēkabpils autobusu parks« SIA, som er lettiske selskaber, der driver virksomhed på transportområdet, og på den anden side Iepirkumu uzraudzības birojs (tilsynsmyndigheden for offentlige udbud, Letland) og »Autotransporta direkcija« VSIA vedrørende metoden til beregning af størrelsen af den kompensation, der skal betales for udførelse af offentlig personbefordring med bus på nettet af regionale ruter.

Dom:

1. Europa-Parlamentets og Rådets forordning (EF) nr. 1370/2007 af 23. oktober 2007 om offentlig personbefordring med jernbane og ad vej og om ophævelse af Rådets forordning (EØF) nr. 1191/69 og (EØF) nr. 1107/70, som ændret ved Europa-Parlamentets og Rådets forordning (EU) 2016/2338 af 14. december 2016, skal fortolkes således, at den ikke er til hinder for en kompensationsordning, der inden for rammerne af en offentlig tjenesteydelseskontrakt og efter en åben, gennemsigtig og ikke-diskriminerende udbudsprocedure ikke pålægger de kompetente nationale myndigheder at tildele en leverandør af personbefordring, der er underlagt en forpligtelse til offentlig tjeneste, en fuldstændig kompensation, som ved hjælp af en periodisk indeksering dækker enhver stigning i omkostningerne ved forvaltning og drift af denne tjeneste, som ligger uden for dennes kontrol.

[Læs mere](#)

Dato: 21.12.2023

C-440/22 P - Wizz Air Hungary mod Kommissionen.

Nøgleord: Appel – statsstøtte – luftbefordring – Rumænien – redningsstøtte til TAROM – rammebestemmelser for statsstøtte til redning og omstrukturering af kriseramte ikke-finansielle virksomheder – Europa-Kommissionens afgørelse om ikke at gøre indsigelser med den begrundelse, at foranstaltningerne udgør støtte, der er forenelig med det indre marked.

Med appellen har Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.) nedlagt påstand om ophævelse af Den Europæiske Unions Rets dom af 4. maj 2022, Wizz Air Hungary mod Kommissionen (TAROM; redningsstøtte) (T-718/20, EU:T:2022:276), hvorved Retten frifandt Kommissionen i søgsmålet anlagt med påstand om annullation af Kommissionens afgørelse C(2020) 1160 final af 24. februar 2020 om statsstøtte SA.56244 (2020/N) – Rumænien – Redningsstøtte til TAROM (EUT 2020, C 310, s. 3).

Dom:

1. Appellen forkastes.
2. Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.) bærer sine egne omkostninger og betaler de af Europa-Kommissionen afholdte omkostninger.

[Læs mere](#)

Dato: 11.01.2024



Forslag til afgørelse

C-48/22 P - Google og Alphabet mod Kommissionen (Google Shopping).

Nøgleord: Konkurrence – misbrug af dominerende stilling – generel søgning – specialiseret søgning af varer – afgørelse, hvorved der fastslås en overtrædelse af artikel 102 TEUF og af EØS-aftalens artikel 54 – misbrug gennem løftestangseffekt – konkurrence på ydelser – forskellig behandling gennem favorisering af egen tjeneste – fortrin til visning af resultater fra egen specialiseret søgetjeneste – potentielle udelukkelsesvirkninger – kontrafaktisk analyse – hypotetisk konkurrent, der er mindst lige så effektiv.

Denne appel er iværksat af Google LLC og Alphabet Inc. til prøvelse af Rettens dom af 10. november 2021, Google og Alphabet mod Kommissionen (Google Shopping). I denne dom frifandt Retten i det væsentlige Kommissionen i et søgsmål anlagt af appellanterne til prøvelse af Europa-Kommissionens afgørelse af 27. juni 2017, Google Search (Shopping). I denne afgørelse fastslog Kommissionen, at Google misbrugte sin dominerende stilling på forskellige nationale markeder for generelle internetsøgetjenester og for specielle søgetjenester for varer som omhandlet i artikel 102 TEUF. Misbruget bestod ifølge Kommissionen navnlig i, at Google ved visningen af søgeresultaterne på sin generelle resultatside behandlede konkurrerende sammenligningstjenester for varer mindre gunstigt end sin egen sammenligningstjeneste. I stævningen havde appellanterne nedlagt påstand om annullation af den omtvistede afgørelse, subsidiært om nedsættelse af den bøde, som de blev pålagt i denne afgørelse.

Forslag til afgørelse:

1. Appellen forkastes.
2. Google LLC og Alphabet Inc. bærer hver deres egne omkostninger og betaler de med appelsagen forbundne omkostninger samt de omkostninger, der er afholdt af Europa-Kommissionen, Den Europæiske Forbrugerorganisation (BEUC), Infederation Ltd, Verband Deutscher Zeitschriftenverleger eV, BDZV – Bundesverband Digitalpublisher und Zeitungsverleger eV, Visual Meta GmbH, Twenga og Kelkoo.
3. EFTA-Tilsynsmyndigheden og Computer & Communications Industry Association bærer hver deres egne omkostninger.

[Læs mere](#)

Dato: 11.01.2024

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

Konkurrensverket: Konkurrencen på den nordiska elmarknaden.

På uppdrag av Konkurrensverket har docent Thomas Tangerås analyserat hur viktiga förändringar på elmarknaden de senaste åren har påverkat företags möjligheter och incitament att utöva marknadsstyrka på elmarknaden.

[Læs mere](#)

Dato: 19.12.2023

Merger Guidelines - U.S. Department of Justice and the Federal Trade Commission.

These Merger Guidelines identify the procedures and enforcement practices the Department of Justice and the Federal Trade Commission (the "Agencies") most often use to investigate whether mergers violate the antitrust laws. The Agencies enforce the federal antitrust laws, specifically Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2; Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45; and Sections 3, 7, and 8 of the Clayton Act, 15 U.S.C. §§ 14, 18, 19. Congress has charged the Agencies with administering these statutes as part of a national policy to promote open and fair competition, including by preventing mergers and acquisitions that would violate these laws. "Federal antitrust law is a central safeguard for the Nation's free market structures" that ensures "the preservation of economic freedom and our free-enterprise system." It rests on the premise that "[t]he unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions."

[Læs mere](#)



Dato: 18.12.2023

Trends in Digital Markets - A CMA Horizon Scanning Report.

This report marks the first publication from the Technology Horizon Scanning Function and, as such, is markedly different from other CMA publications. Our aim is to draw on available evidence to discuss and present possible future developments and potential implications for competition and consumers. By its nature, our exploration of potential future developments is neither fully comprehensive, nor foolproof. Nor should the emerging thinking in this report be taken as any form of CMA position, policy, or conclusion but rather as an exploration of what may be important in these markets in the coming years. We may revisit these trends in future work and new evidence might emerge. Equally, others conducting their own analyses may arrive at different possible implications for the same trends or could choose to prioritise different ones.

[Læs mere](#)

Dato: 14.12.2023

Financial Reporting Council: FRC publishes annual review of competition in the audit market.

While the report shows a small increase in market share for challenger audit firms, the audit market remains highly concentrated. The Big Four accounting firms continue to dominate, earning 98% of FTSE 350 audit fees in 2022, resulting in limited choices for businesses and ongoing concerns about resilience.

[Læs mere](#)

Dato: 14.12.2023



3 | LITTERATUR (DK)

Artikler fra UfR

Intet nyt.

Nye publikationer fra Erhvervsministeriet

Regeringen lancerer målrettet støtteordning til grøn industri.

Danske virksomheder leverer en række af de løsninger og teknologier, der er nødvendige for at komme i mål med den grønne omstilling.

Men Danmarks grønne styrkeposition trues af statsstøtte i andre lande. Både USA, Kina og lande i EU bruger statsstøtte til at tiltrække investeringer i fremtidens grønne produktion. Senest har EU midlertidigt frem mod udgangen af 2025 åbnet for statsstøtte til produktion af grønne teknologier.

Derfor vil regeringen forsvare og forstærke de grønne styrkepositioner ved at afsætte 1 mia. kr. i 2024 til en midlertidig, målrettet og grøn investeringsordning. I 2024 ser man på behovet i 2025 og finansiering heraf. Ordningen er målrettet der, hvor Danmark er mest udfordret, hvilket betyder produktion af vindteknologi og elektrolyseteknologi til Power-to-X.

Den grønne investeringsordning målrettes etablering af produktionsfaciliteter inden for vindmøller og elektrolysatorer (teknologi til Power-to-X) samt produktion af komponenter hertil, fx naceller, vinger e.l.

Ordningen er et vigtigt led i den grønne, danske industripolitik, hvor det er afgørende for regeringen, at der arbejdes aktivt for at understøtte grønne produktionsarbejdspladser på tværs af hele landet. Det forventes, at ordningen åbner for ansøgninger i løbet af januar 2024.

[Læs mere](#)

Dato: 21.12.2023

Artikler fra Juristen

Intet nyt.

Artikler fra Erhvervsjuridisk Tidsskrift

Intet nyt.

Artikler fra Revision og Regnskabsvæsen

Intet nyt.

Artikler fra EU- og Menneskeret

Årgang 30 (2023): Nummer 4 (Dec 2023)

EU-konkurrenceret i 2023 – praksis, domme og lovgivning (januar til oktober). Forfattere: Martin André Dittmer, Kristian Helge Straton-Andersen og Jakob Fuglsang Kjær.

Artiklen gennemgår den væsentligste udvikling i EU-konkurrenceretten fra 1. januar til 31. oktober 2023, herunder Kommissionens praksis, de væsentligste domme og lovgivning inden for forbuddet mod konkurrencebegrænsende aftaler i artikel 101, forbuddet mod misbrug af dominerende stilling i artikel 102 og fusionskontrolområdet. Endvidere gennemgås de væsentligste domme på det processuelle område.

Konkurrenceretlige emner

Intet nyt.



Anden dansk og nordisk litteratur

Intet nyt.



4 | LITTERATUR (UK)

Artikler fra European Competition Law Review

Volume 45, Issue 2, 2024

Updating the world's antitrust statutes - what is to be done, if anything? Forfatter: Sir Jonathan Faull.

Reproduces a modified version of a presentation given at the 50th Annual Fordham Conference on International Antitrust Law and Policy, considering how antitrust legislation might be updated to reflect policy changes without necessarily amending their texts, highlighting the role of the courts.

The first subsidy control challenge in the Competition Appeal Tribunal. Forfatter: Aidan Robertson KC.

Notes the first challenge in the Competition Appeal Tribunal under the Subsidy Control Act 2022 s.70 involving council charges for waste collection. Reviews the facts of the case, and the practice points of wider significance, including those relating to costs, privilege and the duty of candour.

Mediating competition claims: thoughts on an underutilised option. Forfatter: Stephen Kon.

Examines whether mediation might be used more widely in competition law actions before the Competition Appeal Tribunal. Reviews the challenges of private competition law litigation, the advantages of mediation, the types of claim most suitable for its use, and potential options to encourage its use.

A missed opportunity to fill the enforcement coordination gap in cross-border proceedings? The Volkswagen ruling of the Court of Justice of the European Union regarding unfair commercial practices. Forfatter: Professor Francesco Rizzuto.

Discusses Volkswagen Group Italia SpA v Autorità Garante della Concorrenza e del Mercato (C-27/22) (ECJ) on whether, for the purposes of ne bis in idem, fines for unfair commercial practices classed as administrative penalties under national law could be deemed of a criminal nature under EU law.

Rethinking competition law for digital markets: a comparative institutional analysis. Forfatter: Leonardo Peixoto Barbosa.

Discusses how competition law should respond to the challenges of digital technology, and outlines traditional, regulatory and mutual governance mechanisms that could be part of a revised regime, particularly a co-regulatory framework. Assesses their potential benefits and drawbacks.

Belgium: anti-competitive practices - infringement (Case Comment). Forfatter: Quentin Declève.

Notes the Belgian Competition Authority ruling in CERP SA, fining a pharmaceutical wholesaler EUR 778,777 for participation in a hybrid cartel in the pharmaceutical distribution sector. Details the cartel practices involved, the settlement with other participants, and the calculation of the fine.

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

Notes the Canadian Commissioner of Competition's consent agreement with Global Fuels Inc to address competition concerns raised by its proposed acquisition of Greenergy's retail fuel business. Details the terms of the agreement, including those concerning assignment of motor fuel supply contracts.

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

Notes the Czech Competition Office ruling in BEKO SPOLKA AKCYJNA, imposing a fine of around EUR 558,000 on a company for obstructing a dawn raid in the course of an investigation into alleged resale price maintenance in the distribution of consumer electronics products.

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

Notes the Danish Competition Council ruling in ECIT Account A/S, which found a consulting firm acted as a cartel facilitator for market sharing agreements. Details its use of the criteria set out in AC-Treuhand AG v European Commission (C-194/14 P) (ECJ) to establish the firm's joint responsibility.

Finland: anti-competitive activities - infringement (Case Comment). Forfatter: Maarit Taurula.

Notes the Finnish Market Court ruling of 22 November 2023, imposing penalty payments totalling EUR 1.53 million on six companies including Jalon Liikenne Oy, Linjaliikenne Nyholm Oy and Savonlinja Oy for unlawful joint bidding when tendering for regional public bus services.

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

Notes the French Competition Authority ruling in RTE / E-Pango, in which the Authority found it lacked competence to determine whether the French electricity operator's refusal to renew an electricity supplier's classification as a "balance responsible entity" was an abuse of dominance.

Germany: anti-competitive practices - enforcement (Case Comment). Forfatter: Oliver Haas.

Notes the Higher Regional Court of Schleswig ruling in Oberlandesgericht (Schleswig) (16 U 97/22), diverging from standard practice by indicating its willingness to estimate retail customers' private damages in a drugstore cartel action without relying on reports from economic experts.

Ireland: anti-competitive practices – investigation. Forfatter: Dr Vincent J G Power.

Notes the outcome of a long-running investigation by the Irish Competition and Consumer Protection Commission into alleged anti-competitive practices by private bus operators, including a November 2023 ruling by the Central Criminal Court that five persons are to face criminal prosecution.

Portugal: anti-competitive practices - judgment (Case Comment). Forfatter: Ricardo Filipe Costa.

Notes the Lisbon Court of Appeals ruling in Portuguese Competition Authority v Super Bock, upholding the imposition of a EUR 24 million fine imposed on a beverages distributor for vertical price fixing and cartel activities. Highlights the impending consumer class action against Super Bock.

Portugal: anti-competitive practices – investigation. Forfatter: Ricardo Filipe Costa.

Notes the August 2023 statement of objections issued by the Portuguese Competition Authority against the Associação Portuguesa de Empresas de Gestao e Administracao de Condominios for alleged price fixing in the condominium services sector. Details the progress of the investigation.

Portugal: anti-competitive practices – enforcement. Forfatter: Cláudia Coutinho da Costa.

Notes the September 2023 closure of the Portuguese Competition Authority's public consultation on new draft guidelines on infringement procedures, to ensure compliance with Directive 2019/1. Details key innovations, including those concerning co-operation between national competition authorities.

Portugal: anti-competitive practices - judgment (Case Comment). Forfatter: Cláudia Coutinho da Costa.

Notes the Lisbon Court of Appeals ruling in Portuguese Competition Authority v EDP Producao, upholding a finding that a company in the energy sector teleregulation services market abused its dominant position, but reducing by EUR 8 million the original fine of EUR 48 million imposed on the company.

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

Notes the Romanian Competition Council ruling in Carrefour Group / Romania Hypermarche SA, approving a merger in the retail hypermarket and supermarket sector. Details key features of the competition concerns examined during the investigation.

Slovenia: anti-competitive practices - investigation (Case Comment). Forfatter: Eva Škufca.

Notes the Slovenian Competition Protection Agency ruling in PLASTKOM predelava industrijskih surovin doo, finding that a company abused its dominant position in the market for waste processing of grave candles by excessive pricing. Highlights the proposed commitments given by the company.

South Africa: mergers - merger control. Forfatter: Justin Balkin.

Reviews the Namibian Competition Commission's imposition of local ownership remedies as a condition for approving certain mergers, and whether the country's legislative framework allows such a step. Details the dangers the policy poses for foreign investment, and suggests an alternative approach.

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

Notes the Spanish National Competition and Markets Commission ruling in OPINIONES FALSAS PLATAFORMAS, shelving complaints against online platforms including Amazon and TripAdvisor for alleged anti-competitive practices involving the distortion of competition by the publication of false reviews.

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

Notes the Swedish Competition Authority ruling in Carlsberg Sverige AB / Spendrups Bryggeriaktiebolag, accepting commitments from two breweries, with penalties for non-compliance, following an investigation into alleged exclusivity agreements. Details key features of the commitments concerned.

Sweden: competition - unfair trading practices (Case Comment). Forfatter: Stefan Perván Lindeborg.

Notes the 26 October 2023 ruling of the Swedish Competition Authority, imposing its first fine under the Unfair Trading Practices Act 2021, which implements provisions of Directive 2019/633, for late payments. Details the factors considered when calculating the SEK 5 million fine.

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

Notes the Turkish Competition Board ruling in Clariant AG / Wilmar International Ltd / Quaternary Ammonium Compounds, unconditionally approving a full-function joint venture in the chemical products market. Details the main competition concerns addressed during the investigation.

United Kingdom: competition – report. Forfatter: Jordan Bernstein.

Notes the Competition and Markets Authority's September 2023 report on artificial intelligence foundation models (FMs) and their potential impact on competition, highlighting its main in-market and out-of-market concerns, and the principles it will adopt to guide the FM market's development.

Artikler fra European Competition Journal

Intet nyt.

Artikler fra Journal of Competition Law and Economics

Volume 19, Issue 4, December 2023

Industrial Policies, Competition, and Efficiency: The Need for State Aid Control. Forfattere: Joanna Piechucka, Lluís Saurí-Romero & Ben Smulders.

This paper contributes to the current debate on industrial policies, by discussing the potential scope and design principles of efficiency-enhancing industrial policies and providing a framework of assessment based on the European experience with State aid control. It argues four main points. First, there is scope for efficiency-enhancing industrial policies that address well-defined market failures. Second, the design of any industrial policy must achieve its objective in the most efficient way possible, in particular avoiding unnecessary distortions to competition. Third, European Union (EU) State aid control rules, as part of competition policy, reflect the economic principles of efficiency-enhancing industrial policies and provide a blueprint that could be applied more broadly to improve the design of industrial policies. Fourth, the pressure from industrial policies of non-EU governments comes with risks of global subsidy races that would produce a suboptimal outcome for all. Some limiting principles must therefore be found. We then illustrate how State aid control can contribute to a more efficient design of climate and industrial policies, contributing to a more efficient green transition, preserving competitive markets, and fostering industrial competitiveness.

Investment and Patent Licensing in the Value Chain. Forfattere: Gerard Llobet & Damien Neven.

At which stage in the production chain should patent licensing take place? In this paper we show that under realistic circumstances a patent holder would be better off by licensing downstream. This occurs when the licensing revenue can depend on the downstream value of the product either directly or through the use of ad-valorem royalties. Downstream licensing is also preferred by the patent holder when, instead, we assume that the downstream licensee is less informed about the validity of the patent. In most cases, downstream licensing increases allocative efficiency. However, it might reduce the manufacturer's incentives to invest and, thereby, decrease welfare. We characterize the circumstances under which a conflict arises between the stage at which patent holders prefer to license their technology and the stage at which it is optimal from a social standpoint that licensing takes place.

Legal Design in Sustainable Antitrust. Forfattere: Roman Inderst & Stefan Thomas.

We lay out a roadmap for how the legislator could create a framework of 'sustainability corridors' that would allow relying on the ancillary restraints/Wouters doctrine to make antitrust law more accommodating of sustainability considerations. Our analysis goes beyond the general feasibility of such corridors. It discusses different use-cases for such exemptions and methods for assessing the necessity of competitive restraints to achieve a legislatively defined sustainability goal. We show how this avoids the pitfalls of a multigoals approach, under which it would be left to antitrust authorities and courts to reconcile sustainability and competition objectives independent of a legislative specification, whereas out-of-



market benefits (externalities) that would escape even a broad consumer welfare approach can still be accounted for. Our proposal sets out specific requirements for such sustainability corridors that ensure that the ensuing antitrust assessment is governed by a strict and quantifiable indispensability test. Specifically, we discuss three such instances: specific sustainability obligations placed on individual firms, which may however require collective actions; specific mandates that are targeted at the respective industry rather than individual firms; and policy objectives that are not targeted at individual firms or industries but provide a metric for the measurement of sustainability benefits (for example, by way of conducting an abatement cost analysis).

Product Hopping and Innovation Incentives. Forfattere: Jorge Lemus & Olgu Ozkul.

We study innovation incentives under “product hopping,” whereby an incumbent patents a minor modification of a pioneer drug (for example, a new delivery method) and promotes the modified version to shift demand from the original drug. We develop a model in which an incumbent races against an entrant to discover a drastic innovation. We show that product hopping can decrease the total research and development (R&D) investment for drastic innovation. Moreover, an incumbent only chooses to engage in product hopping when drastic innovation is sufficiently difficult. Although product hopping may boost ex-ante R&D for pioneer drugs, it comes at the expense of decreasing R&D for subsequent drastic innovations and consumer surplus through socially wasteful marketing expenses. Our results contribute to the policy debate on product hopping, welfare, and antitrust.

Competitor Coupons: A Remedy for Residual Collusion. Forfatter: Joseph E Harrington.

There are well-documented episodes of prices remaining at supracompetitive levels even after a cartel was shut down by the competition authority. As long as market conditions remain reasonably stable, collusive prices may still be incentive compatible so the collusive equilibrium could continue after firms are no longer engaging in illicit communications. This situation poses a challenging dilemma: consumer harm persists because of past unlawful conduct but there is no apparent recourse. This paper offers a remedy in the form of coupons. As part of the penalty imposed by the competition authority, each cartel member is required to distribute coupons to its past purchasers. Contrary to their usual form, these coupons can only be used to buy from a firm’s competitors. I show how this temporary intervention can help destabilize collusion and restore competition.

Artikler fra Journal of Antitrust Enforcement

Intet nyt.

Artikler fra Journal of European Competition Law and Practice

Volume 14, Issue 8, December 2023

The Coming of Age of the Coming of Age of EU Competition Law. Forfatter: Pablo Ibáñez Colomo.

The early 2000s were a period of radical transformation in EU competition law. It was—or so it seemed at the time—the coming of age of the discipline in Europe. The adoption of Regulation 1/2003 marked the end of the formative period. A ‘competition culture’ was consolidated after almost four decades of enforcement under Regulation 17. The time was therefore ripe for the European Commission to adopt a new role in the system. The nascent institutional framework gave the authority greater leeway to decide which cases to investigate. It also increased its powers to ensure that Articles 101 and 102 TFEU would be effectively and uniformly applied across the Union. Instead of a one-stop-shop, the European Commission became a *primus inter pares* overseeing enforcement at the national level and focusing on the most challenging cases and the most harmful infringements.

Who Should Mind or Mend the Gap between Articles 101 and 102 TFEU? National Experiments and Twenty Years of Article 3 Regulation (EC) 1/2003. Forfatter: Florian Wagner-von Papp.

Key Points:

- Even after 20 years, there is an on-going debate about the scope of the convergence rule in the first sentence of Article 3(2) Regulation 1/2003 and the unilateral-conduct exception in the second sentence.
- Contrary to some commentators, the convergence rule does not apply to cases in the penumbra of collusion in the absence of an agreement, a decision of an association of undertakings, and a concerted practice, so that Member States are free to adopt and apply rules such as those on invitations to collude, unilateral information disclosure, and new competition tools (NCT); conversely, where a restriction of competition results from an agreement (etc), the convergence rule applies even in economic dependency or NCT cases.



- Contrary to some indications from the Commission, an expansion of the convergence rule in the reform of Regulation 1/2003 to encompass unilateral conduct would be undesirable, because there is a growing gap between Articles 101 and 102 TFEU and it is desirable that Member States address some of these gap cases; given the dynamics of the developments, experimentation on the national level and a competition of competition laws is preferable to premature harmonization and standardization.

Two Paths of Enforcement, Procedural Autonomy and the Risk of Fragmentation. Forfattere: Anke Prompers, Ellen Römken & Aron Bouman.

Key Points:

- This article explores how public and private enforcement have developed since the entry into force of Regulation 1/2003.
- We conclude that the public and private enforcement paths converge, in spite of the observed differences.
- Additional harmonisation of national procedural rules would not necessarily lead to a more coherent approach.
- The EU courts have an important role to play in ensuring effectiveness of the competition rules.

The Elephant in the Room Turns Twenty: The Effect on Trade and the Enforcement of the EU Competition Law by the National Competition Authorities. Forfatter: Alexandr Svetlicinii.

Key Points:

- Persistent divergences in EU competition law enforcement amongst national competition authorities are partly due to inconsistent interpretations of the 'effect on trade' criterion.
- Narrow interpretations of the 'effect on trade' lead to the 're-nationalisation' of the competition law enforcement in the EU as various emerging practices are being addressed under national competition rules.
- Regulation 1/2003 contains several 'notification gaps' that do not allow effective monitoring of the 'effect on trade' assessments carried out by the national competition authorities.
- Failure to address the problem with consistent interpretation of the 'effect on trade' will undermine the objective of a more effective enforcement of EU competition rules declared in the ECN+ Directive.

Abolishing Formal Complaints? Balancing Technical Expertise and Efficiency with Democratic Accountability in the European Commission's Decision-Making. Forfattere: Or Brook, Katalin J Cseres & Ben Van Rompuy.

Key Points:

- In this paper, we argue that the European Commission should reconsider its recent proposal to abolish the mechanism of formal complaints.
- The rules and constitutional principles underlying the participation of formal complainants in EU antitrust procedures were developed by the case law of the EU Courts, and served as a blueprint for other areas of EU administrative law enforcement.
- The Commission's proposal can be justified on procedural efficiency grounds; however, it raises serious concerns about the legitimacy, transparency, and accountability of the Commission's administrative decision-making.
- We propose three alternative ways to optimise the current complaint handling system.

Necessary, Important, But Seldom Used: The Unfulfilled Potential of the European Commission's Interim Measures. Forfatter: Charlotte Emin.

Key Points:

- Whilst the importance of the interim measures provided for by Article 8 of Regulation 1/2003 has been increasingly recognised in recent years, the European Commission has only adopted interim measures under Regulation 1/2003 once.
- Several factors can explain the Commission's reluctance to adopt interim measures, bound to increase the burden of investigation, delay the final decision, and expose it to judicial review.
- In the context of the Commission's current evaluation of Regulation 1/2003 and Regulation 773/2004, the purpose of this article is to examine what substantive, policy, procedural and organisational changes could be considered in order for the interim measures of Article 8 of Regulation 1/2003 to reach their potential.

Are Interim Measures under Regulation 1/2003 Excluded in New or Complex Cases? Forfatter: Carla Farinhas.

Key Points:

- Pursuant to a widespread understanding, interim measures under Article 8 of Regulation 1/2003 are excluded in cases involving new or complex matters of law or fact.
- This proposition confines in practice interim measures to the domain of quasi-indisputable infringements, thereby depriving the tool of a meaningful role in a legal field with the intricacies of competition law.



- Such an unduly restrictive view is based on two main misconceptions: (i) establishing a 'prima facie finding of infringement' does not necessarily presuppose clear-cut scenarios; (ii) the considerations of the President of the General Court in *IMS Health* are intertwined with the specific features of the case and should not be extrapolated to all other situations.
- The current evaluation of Regulation 1/2003 offers a timely opportunity to clarify the full potential of the procedural framework, so that the EU system of undistorted competition can be effectively safeguarded.

Reviving Interim Measures in EU Antitrust Proceedings. Forfatter: Brian Cullen.

Key Points:

- Interim measures can prevent irreparable harm to competition pending the resolution of EU antitrust proceedings, but are underused due to perceived substantive, procedural, and administrative drawbacks, and require reform.
- The legal standard to adopt interim measures is stringent, but constitutes an important safeguard fit for an '*inherently exceptional tool*' and should not be lowered.
- The procedural requirements are heavy, compromise the need for speed required to adopt effective interim measures, and require streamlining through regulatory reform in the form of tighter deadlines and an *inaudita altera parte* proceeding in cases of extreme urgency.
- Procedural reform should be accompanied by administrative impetus from the European Commission in the form of guidance (for its officials and companies alike), and prioritising of interim measures cases.

Antitrust Remedies: From Caution to Creativity. Forfattere: Friso Bostoen & David van Wamel.

Key Points:

- The Commission's cautious approach to antitrust remedies, which tends to take the form of cease-and-desist orders, needs to be rethought in order for remedies to achieve their aims, especially in digital markets.
- The legal framework, which centres around the requirements of proportionality, effectiveness and a remedial link, leaves room for creativity in remedy design. It allows not only for injunctive remedies but also for preventative and restorative remedies.
- Practical difficulties, including information asymmetries, resource considerations, platform market intricacies, and the complexity of intervening in product designs and business models, pose a greater challenge to remedy design.
- A more iterative remedy process revolving around flexible remedies, adopted through a more open procedure, which can be tested and redesigned along the way, can help tackle current difficulties.

Towards Market Investigation Tools in Competition Law: The Case of the Netherlands. Forfatter: Jasper van den Boom, Inge Graef, Giorgio Monti, Cédric Argenton & Eric van Damme.

Key Points:

- The Netherlands Authority for Consumers and Markets (ACM) faces several challenges in effectively enforcing the abuse of dominance prohibition, including its uncertain scope, resource constraints, and the high standard of proof set by the Dutch courts.
- These challenges call for a reflection on how to ensure effective competition enforcement in the Netherlands in the future.
- While a market investigation tool does not solve all the current challenges of enforcement against abuses of dominance, its introduction would enable the ACM to establish an additional, more proactive form of oversight and to target structural market problems not stemming from provable violations of competition rules.
- Because several Member States are likely to consider adopting a market investigation tool, EU action within or beyond the scope of Regulation 1/2003 may be warranted to ensure coordination and a consistent application of competition law within the EU.

The As-Efficient Competitor Test and Principle. What Role in the Proposed Guidelines? Forfatter: Damien J Neven.

Key Points:

- The amendment of the guidance paper, which removes the soft safe harbor for a conduct that does not foreclose as efficient competitors, has led to greater consistency with Court judgments.
- The assessment of the implementation of the test by the General Court fails to recognize the margin of error that is inherent in the implementation of the test.
- The as efficient competitor principle and the inference that can be drawn from the test should be contingent on the theory of harm being investigated.



- Relying solely on the as efficient competitor principle would lead to under enforcement, in particular regarding competition softening.

The Role of the AEC Principle and Tests in a Dynamic and Workable Effects-Based Approach to Abuse of Dominance. Forfattere: Adriano Barbera, Nicolás Fajardo Acosta & Timo Klein.

Key Points:

- The as-efficient-competitor (AEC) principle is a workable effects-based framework that recognises the importance of 'appropriability' in dynamic competition.
- AEC tests are nothing more than mathematical abstractions of the principle, but they can come with practical limitations depending on the conduct and circumstances.
- A strict application of the principle ignores the importance of not-(yet-)AECs and 'contestability' in dynamic competition.
- However, finding a workable alternative remains elusive, and the principle—with or without adjustments, and with all its caveats and nuances—remains a useful economic framework to conceptualise exclusionary abuse and the boundaries of enforcement.

Legal Scalpel or Regulatory Swiss Army Knife? The New Article 102, What Market Investigations Can Tell Us about the Difference between Law and Regulation, and What That Means for Article 102's Ultimate Purpose. Forfattere: Christian Ahlborn, Will Leslie & Marvin Berkel.

Key Points:

- Article 102 is increasingly an instrument for more intrusive market regulation as the Commission and Courts articulate a wider conception of its role than in the past.
- Market investigation powers have meanwhile become a new zeitgeist as regulators seek quasi-regulatory powers for closing perceived 'gaps' in competition law enforcement.
- This article explains how Article 102 and market investigations should be regulatory complements notwithstanding Article 102's expanding role.
- We then address how such differing roles can help understand what Article 102's ultimate boundaries could, or possibly should, be.

The (Second) Modernisation of Article 102 TFEU: Reconciling Effective Enforcement, Legal Certainty and Meaningful Judicial Review. Forfatter: Pablo Ibáñez Colomo.

Key Points:

- This paper takes stock of the case law of the past decade and discusses how Article 102 TFEU can be interpreted and applied in a manner that is consistent with effective enforcement, legal certainty and meaningful judicial review.
- The Court of Justice has consistently expressed a preference for consistency and continuity, whereas the European Commission has signalled that it values flexibility and effectiveness.
- Four key principles, which could ensure that the three abovementioned interests can be reconciled, are identified.
- It is submitted, in particular, that substantive standards should be (i) administrable, (ii) built around structured legal tests, and (iii) capable of being disproved.

Artikler fra World Competition

Intet nyt.

Artikler fra Antitrust Law Journal

Volume 85, Issue 2

Symposium editor's essay: Building a better U.S. competition policy corridor. Forfatter: Kovacic, William E.

The article examines critical issues in the U.S. competition law system, emphasizing the importance of institutional arrangements. It highlights five key implementation challenges, including enforcement multiplicity, the relationship of antitrust agencies to the political process, governance structures, policymaking powers, and the motivations for competition agency policy choices.

**Playing nicely with others: How and why antitrust enforcers should work together. Forfatter: Bartholomew, Christine P.**

The article focuses on examining the intricacies and challenges within the U.S. antitrust enforcement system, particularly emphasizing the intentional overlap among federal and state agencies alongside private actors. It delves into instances where conflicts and operational flaws have emerged, leading to potential underenforcement. It aims to highlight the importance of coordination, propose best practices for aligning efforts among different enforcers.

Organizational form and enforcement innovation. Forfattere: Froeb, Luke M. Kobayashi, Bruce H. & Yun, John M.

The article discusses the pivotal role of economists in driving innovation within U.S. antitrust agencies. It argues that agency economists, with their academic training and involvement in decision-making, contribute to the development of new methodologies. It focuses on the organizational structure of antitrust agencies, examining factors that impact the production of innovative economic tools.

Future-proofing plural antitrust enforcement models: Lessons from the United States and the European Union. Forfatter: Graef, Inge.

The article focuses on the plural antitrust enforcement models in the U.S. and the European Union. It examines the institutional models of antitrust enforcement in both jurisdictions, emphasizing the plurality in their approaches. It delves into the decentralized nature of antitrust enforcement in the European Union, highlighting the roles of the European Commission and national competition authorities.

Genius or chaos: the "big tech" antitrust cases as a window into the complex procedural aspects of U.S. antitrust law. Forfattere: Hay, George & Turgeon, Thomas.

The article examines the procedural intricacies of U.S. antitrust law using the high-profile cases against Google and Facebook as examples. It includes federal and state enforcer roles, civil procedure concepts, joint investigations, state involvement effectiveness, and a reassessment of the dual federal agency oversight. It leverages these cases to provide insights into the complexities of U.S. antitrust law procedures for legal professionals and policymakers.

Three options for reforming part 3 administrative litigation at the Federal Trade Commission. Forfatter: Klovers, Keith.

The article explores potential reforms at the FTC (Federal Trade Commission), considering the procedural aspects of the Commission's administrative litigation process. It focuses on addressing criticisms of procedural unfairness and enhancing due process. It discusses three reform options, including a narrow procedural reform package, a broad procedural reform package, and a narrow structural reform package.

The political economy of the decline of antitrust enforcement in the United States. Forfattere: Lancieri, Filippo Posner, Eric A. & Zingales, Luigi.

The article examines the factors contributing to the decline of antitrust enforcement in the U.S. It challenges the conventional narrative that attributes this decline solely to the influence of the Chicago School's economic theories. It further explores whether special interests and political factors played a role in shaping antitrust policies.

Not a simple story of big business capture: An essay on the political economy of antitrust. Forfatter: Baker, Jonathan B.

The article challenges the prevailing theory that U.S. antitrust institutions have been exclusively captured by big business. It argues against a simplistic narrative by highlighting historical periods when antitrust policies were both favorable and unfavorable to big business. It introduces an alternative perspective, suggesting a "political settlement" among interest groups that shapes antitrust policy toward inclusive economic growth.

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

Volume 76, December 2023

Competing with Leviathan: Law and government ownership in China's public-private partnership market.

Forfatter: James Si Zeng.

Despite years of economic reform, government-owned enterprises (GOEs) continue to be prevalent in certain sectors of China's economy. Drawing on empirical evidence from China's public-private partnership (PPP) market, this article empirically tests whether the theory of the ownership of enterprise can explain the distribution of GOEs in China. It first conducts an empirical study on the disclosed judgments of Chinese courts to show that the enforcement of PPP contracts remains relatively weak in China, which gives rise to the concern of government opportunism. It then presents empirical evidence that the level of government ownership in each project correlates with the chances of government opportunism, which can be measured by project duration, project sector, and renegotiation terms in the contract. These findings show that the level of government ownership is affected by two competing forces—ownership costs and transaction costs. While GOEs incur relatively high ownership costs, they generally incur lower transaction costs because they can curb government opportunism and thus can outcompete private firms in some projects.

Artikler fra Competition Law Journal

Volume 22, Issue 3, December 2023

The UK and EU competition rules for research and development agreements: falling out of lockstep. Forfatter: Richard Jenkinson.

Until 2023, the UK and EEA had applied the same rules to govern collaboration and competition in the area of research and development. Post-Brexit, they have now gone their separate ways with each creating their own legislation in the form of so-called 'block exemptions', which permit certain restrictions of competition and proscribe others. This article considers the two block exemptions side by side, alongside the statutory guidance which has been drafted by the authorities in each jurisdiction. While both block exemptions are broadly similar, such that the parties can consider their requirements side-by-side when planning their collaboration, the different legislative styles of the UK and EU mean that this cannot readily be done by reading the legislation. This article addresses this issue and also flags the points of difference between the two new regimes which would-be parties to research and development-based collaborations must consider. In particular, this article considers in detail the UK legislation's new closer scrutiny of so-called 'competition in innovation'.

The risks of a form-based approach to exclusionary abuses of dominance – an economic perspective William Ward & Joe Minichiello.

The European Commission has initiated the process of changing how exclusionary abuses of dominance are evaluated, moving towards a more 'form-based' approach compared to the current 'effects-based' approach. This article explains that, if not implemented correctly, its planned approach risks worsening consumer outcomes. This article outlines the Commission's existing approach to taking enforcement action against exclusionary abuses, and the two actions taken by the Commission to develop this approach. Then, it explores three cases where the false positives that arise from a form-based approach, rather than an effects-based approach, risk worsening outcomes for consumers. It suggests that, while an effects-based approach has its limitations, the Commission should ensure that it does not err too far into adopting a completely form-based approach as it develops updated rules on exclusionary abuses.

If the Competition and Markets Authority were an emoji: merger clearance lessons from Meta/Giphy. Forfattere: Stephen Dnes & Joseph Day.

Merger clearance law relating to large technology companies is increasingly debated. This article considers some of the pertinent analysis from the recent decision of the Competition and Markets Authority to require Meta, which owns Facebook, to divest Giphy despite no such challenge arising in the United States. This engages issues of comity, of jurisdiction and of economic evidence, which are analysed and evaluated in the context of prior UK merger review cases.

**The assessment and communication of the benefits of competition interventions by the Competition and Markets Authority. Forfattere: Tom Farmer, Paul Kellaway & Mary Reilly.**

The Competition and Markets Authority has a target of delivering, through its activities, direct financial benefits to consumers of at least ten times its relevant costs, measured over a rolling three-year period. This article assesses how these benefits are evaluated and communicated.

Economists on trial: how to make expert duties, meetings, and hot tubs work. Forfatter: Gunnar Niels.

There is extensive debate about the use of economic experts in competition litigation, both in the UK and in jurisdictions across Europe. There are several ingredients of good practice that have been developed over time, including the requirement for experts to talk to each other and share their data, and then produce a statement of points of agreement and disagreement to narrow the issues between them. Another ingredient is to give the experts their day in court, through cross-examination or hot tubs. Invented in the Southern Hemisphere, expert hot tubs are increasingly used in competition law cases in Europe. They allow the evidence from economic experts (party-appointed and/or court-appointed) to be heard concurrently in court. These hot tubs come in different shapes and sizes which this article explores.

Artikler fra European Competition and Regulatory Law Review

Volume 7 (2023), Issue 4

Editorial. Forfatter: Ben Van Rompuy.

Regulating Digital Gatekeepers – the Digital Markets Act. Forfatter: Fatma Ceren Morbel.

As digitalisation has increased and data has become more powerful, more comprehensive digital regulation has become necessary, including by national competition authorities and the European Commission. The Digital Markets Act (the DMA) is a good example of this area of regulation.¹ In November 2022, the DMA came into force, introducing new regulations for core platform services which functioned as 'gatekeepers' in the digital market. By enacting the DMA, these platforms are prevented from treating businesses and consumers unfairly. The purpose of this paper is to provide a general overview of the DMA and its relationship to antitrust enforcement.

Prohibition of Abuse of Enterprises With a Dominant Position in the Market According to the Competition Law in Albania and Kosovo. Forfattere: Egzone Osmanaj & Njomëza Zejnullahu.

The contemporary legal framework in various jurisdictions includes provisions aimed at preventing the abuse of market-dominant enterprises, with the overarching goal of addressing monopolistic practices. This research centres on the examination of competition law in the contexts of Albania and Kosovo, specifically within the realm of addressing abusive behaviour by dominant market players. This article looks at the existing legal framework pertaining to the abuse of dominant market positions in Albania and Kosovo, and how closely it aligns with European legislation in this domain. Additionally, it considers the efficacy of the provisions prohibiting abusive conduct by dominant enterprises. Examining these two distinct legal systems is crucial, because both are currently in the early stages of alignment with EU legislation. Through analysing the legislative frameworks and the decisions rendered by the Competition Authorities in the countries under scrutiny, several key findings emerge: Firstly, the competition legislation in the examined states, particularly in Albania, bears a striking resemblance to the European Union's legal framework. Secondly, it is evident that Albania has devoted more research and attention to the issue of abuse of dominant positions than Kosovo. Specifically, the Albanian Competition Authority has conducted comprehensive investigations across various sectors of the economy, leading to the imposition of fines on dominant enterprises found to engage in abusive practices.

Austria - Ne Bis In Idem Principle – the Austrian Sugar Cartel Case. Forfattere: Heinrich Kühnert & Mirko Marjanovic.

Belgium - Concerted Practice in the Cigarette Market: Hub, Spokes and Smokes? Forfattere: Jeroen Dewispelaere & Rasmus Van Heddeghem.

Czech Republic - Czech Competition Law Extensively Amended. Forfatter: Michael Petr.

Italy - Parental Control Applications: Providers and Manufacturers' Obligations. Forfattere: Andrea Mezzetti & Andrea Tassoni.

Norway - The Norwegian Supreme Court Overturns the Prohibition of an Acquisition Below the Merger Thresholds in a Digital Market. Forfatter: Haakon Rønn Stensæth.



Spain - Exclusion of Bidders in Cases of Competition Infringements Pursuant to Spanish Legal Framework. Forfattere: Jerónimo Maillo González-Orus & Ignacio Fornaris Valls.

United Kingdom - The CMA's Initial Report on AI Foundation Models. Forfatter: Kiran Desai.

Lithuanian Railways: The Court of Justice Narrows Down the Scope of Application of the Doctrine of Essential Facilities. Forfatter: Michele Giannino.

Annotation on the Judgment of the Court (Third Chamber) of 12 January 2023 in Case C-42/21 P Lietuvos geležinkeliai AB v Commission.

In Lithuanian Railways, the Court of Justice of the EU (the CJEU) considered the question of whether the doctrine of essential facilities applied to a dominant undertaking that had destroyed its own infrastructure that was also used by competitors. Both the European Commission (EC)² and the General Court (the GC)³ had previously answered that question in the negative. Adjudicating an appeal filed against the judgment of the GC, the CJEU embraced this strict position and narrowed down the application of the doctrine to 'access refusal' conducts. On its side, the CJEU clarified that the doctrine of essential facilities did not apply when assessing whether 'infrastructure destruction' conduct done by a dominant undertaking amounts to a violation of Article 102 TFEU.

C-705/20 Allowing Foreign Tax Credit against Recovery from an Aid Recipient Does Not Infringe the Commission Decision. Forfatter: Shafi U Khan Niazi.

Annotation on the Judgment of the Court of Justice (Second Chamber) of 15 September 2022 in Case C-705/20 Fossil (Gibraltar) Ltd v Commissioner of Income Taxation.

The preliminary ruling of the Court of Justice in Case C-705/20 addressed the question of whether and how to adjust foreign tax payments of an aid recipient company against the amount of recoverable aid following Commission Decision 2019/700 of 19 December 2018. The Court of Justice ruled that the Commission decision does not prohibit the national authorities from applying domestic tax law to offset tax paid by the aid recipient abroad against taxes for which it is liable in Gibraltar.

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

Internetretten, 4. udgave. Forfattere: Jan Trzaskowski (red.), Christian Bergqvist, Søren Sandfeld Jakobsen, Susanne Karstoft, Hanne Kirk, Lene Wachter Lentz, Thomas Riis & Marie Jull Sørensen.

Lektor Christian Bergqvist har bidraget til bogen Jan Trzaskowski (red.) Internetretten, 4 udgave. Ex Tuto, med et kapitel om konkurrenceret, inklusive EU's nye Digital Market Act. Internetretten er en samlet fremstilling af de væsentligste retsområder, som er relevante for aktiviteter på internettet, herunder elektronisk handel. Bogen henvender sig til både jurister og praktikere, som ønsker en generel og grundig indføring i internetrettens mange emner. Bogen er blevet til i samarbejde mellem de juridiske miljøer på Copenhagen Business School, Københavns Universitet, Aalborg Universitet og Aarhus Universitet.

[Læs mere](#)

Dato: 30.01.2024