Konkurrenceretlig Nyhedsoversigt nr. 89 / dækkende 23. januar 2024 – 10. marts 2024

Indhold

1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Godkendelse på baggrund af forenklet sagsbehandling af Sanistål A/S' erhvervelse af enekontrol over Bacher Work Wear A/S.
Ved transaktionen erhverver Sanistål 100 pct. af aktierne i Bacher Work Wear, og CVC Capital Partners SICAV-FIS S.A. ("CVC") opnår dermed via Ahlsell Danmark ApS ("Ahlsell") og Sanistål indirekte enekontrol over Bacher Work Wear.
Læs mere
Dato: 04/03/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Mentha Fund VII Denmark HoldCo K/S erhvervelse af Holmris B8 A/S.
Ved transaktionen erhverver Mentha Fund VII aktiemajoriteten i Holmris B8, hvorved Mentha Fund VII erhverver enekontrol over Holmris B8.
Læs mere
Dato: 27/02/2024

Godkendelse på baggrund af en forenklet sagsbehandling af United Petfood Producers N.V's erhvervelse af enekontrol over Vital Petfood Group A/S.
Ved transaktionen erhverver United Petfood Producers 100 pct. af aktierne i Vital Petfood, hvorved United Petfood Producers erhverver enekontrol over Vital Petfood.
Læs mere
Dato: 23/02/2024

NRGi Elhandel A/S' erhvervelse af Scanenergi A/S.
Transaktionen indebærer, at NRGi Elhandel, der ultimativt ejes af NRGi a.m.b.a., overtager hele aktiekapitalen i Scanenergi fra Scanenergi Holding A/S. Med transaktionen erhverver NRGi Elhandel dermed enekontrol over Scanenergi.
Læs mere
Dato: 22/02/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Aeven A/S' erhvervelse af Sentia Denmark Holding ApS.
Ved transaktionen erhverver fonde rådgivet af Agilitas Private Equity LLP's ("Agilitas"),via Aeven, 100% af aktierne i Sentia. Efter transaktionen vil Agilitas have enekontrol over Sentia.
Læs mere
Dato: 21/02/2024

Godkendelse på baggrund af en forenklet sagsbehandling af HL Display AB's erhvervelse af enekontrol over PR TRADING-FLEKOTA A/S.
Transaktionen medfører, at HL Display erhverver 100 pct. at aktiekapitalen i PR TRADING-FLEKOTA. HL Display erhverver dermed enekontrol over PR TRADING-FLEKOTA.
Læs mere
Dato: 19/02/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Wilhelmsen Ship Management Holding AS og MPC Maritime Holding GmbHs erhvervelse af fælleskontrol over ZEABORN Ship Management GmbH & Cie. KG.
Transaktionen medfører, at WSM og MPC Maritime erhverver fælleskontrol over ZEABORN.
Læs mere
Dato: 07/02/2024

Godkendelse på baggrund af en forenklet sagsbehandling af NTG Nordic Transport Group A/S' erhvervelse af 75 pct. af aktierne i RTC Transport A/S.
Ved transaktionen erhverver NTG 75 pct. af aktierne i RTC, og NTG opnår dermed enekontrol over RTC.
Læs mere
Dato: 07/02/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Unit IT Holding A/S' erhvervelse af enekontrol over ApS KBUS 18 nr. 623.
Transaktionen medfører, at Unit IT erhverver enekontrol over KBUS.
Læs mere
Dato: 06/02/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Whiteaway A/S' erhvervelse af enekontrol over Bolind A/S.
Transaktionen indebærer, at Whiteaway overtager 100 pct. af aktierne i Bolind. Whiteaway erhverver dermed enekontrol over Bolind.
Læs mere
Dato: 05/02/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Saudi Aramcos erhvervelse af fælleskontrol over Gas & Oil Pakistan Ltd.
Saudi Aramco er et kapitalselskab etableret i Kongeriget Saudi-Arabien. Saudi Aramco er primært engageret i prospektering, udforskning, boring og udvinding af kulbrinte substanser samt behandling, fremstilling, raffi-nering og markedsføring af disse substanser.

G&O opererer udelukkende i Pakistan inden for indkøb, opbevaring, salg og markedsføring af olieprodukter (herunder diesel og benzin) og via sit netværk af over 1.100 detailforretninger.

Khalid Riaz er pakistansk statsborger og kontrollerer også andre virksomheder, der har aktiviteter i Pakistan og Nepal.
Læs mere
Dato: 31/01/2024

Godkendelse på baggrund af en forenklet sagsbehandling af etableringen af et joint venture, DLBR P/S.
Transaktionen udgør etableringen af et joint venture, DLBR P/S, hvortil Ø90 og InterCount med dertilhørende produkter, herunder Dashboard, eOverblik og Business Rate, overdrages. Ø90 og InterCount med dertilhørende produkter er før transaktionen ejet af Landbrug & Fødevarer f.m.b.a. og udbydes af SEGES Innovation P/S. DLBR P/S skal fremover fungere som et selvstændigt fungerende joint venture. DLBR P/S overtager samtidig anparter i Grøn Marketing ApS, der har til formål at være bærer af et sikkerhedscertifikat vedrørende momsopgørelser fra Ø90, fra Landbrug & Fødevarer.
Læs mere
Dato: 22/01/2024

Godkendelse på baggrund af en forenklet sagsbehandling af Blue Equity III K/S' erhvervelse af Klima-Energi A/S.
Transaktionen indebærer, at Blue Equity III K/S erhverver fælleskontrol over Klima-Energi A/S sammen med M 5 Holding A/S. Der er indgået en aktieoverdragelsesaftale og en ejeraftale, hvor Blue Equity Finans XVII ApS, der ultimativt kontrolleres af Blue Equity III K/S, overtager 100 pct. af aktierne i Klima-Energi A/S fra M 5 Holding A/S. Efter transaktionens gennemførelse vil M 5 Holding A/S generhverve halvdelen af Klima-Energi A/S.
Læs mere
Dato: 19/01/2024

Nyt fra Konkurrencerådet

Norlys' erhvervelse af Telia Company AB's danske aktiviteter.
Konkurrencerådet har godkendt Norlys' køb af Telia Company AB's danske aktiviteter. Godkendelsen sker, efter at Norlys har afgivet bindende tilsagn, der fjerner Konkurrencerådets konkurrencemæssige betænkeligheder.

Tilsagnet forpligter Norlys til at give konkurrenter inden for salg af bredbånd adgang til sit fibernet i Danmark på rimelige og ikke-diskriminerende vilkår. I forbindelse med to tidligere fusioner har Norlys afgivet tilsvarende tilsagn, men Norlys er nu forpligtet til at åbne hele sit fibernet, inklusive fibernet, der etableres fremover.

Konkurrencemyndighederne har især haft betænkeligheder ved, at Norlys får tilføjet mobiltelefoni til sin produktportefølje efter overtagelsen af Telias danske aktiviteter. Konkurrence- og Forbrugerstyrelsens undersøgelser har vist, at muligheden for også at sælge mobiltelefoni kan gøre det mere attraktivt for Norlys at udnytte sin stærke position på fiberinfrastruktur til at begrænse konkurrencen inden for salg af bredbånd. I tillæg hertil kan Norlys koble salget af mobiltelefoni med bredbånd, hvilket potentielt vil gøre det sværere for konkurrenter at konkurrere inden for mobiltelefoni. Disse betænkeligheder er fjernet med tilsagnet fra Norlys.

I forbindelse med Konkurrence- og Forbrugerstyrelsens behandling af fusionen, har konkurrenter til Norlys blandt andet givet udtryk for, at konkurrencen på bredbåndsmarkedet generelt kunne være bedre. Fusionskontrollen kan dog alene anvendes til at løse konkurrencemæssige problemer som direkte følger af fusionen.

Norlys ejer blandt andet fiberinfrastruktur i store dele af Jylland og har derigennem aktiviteter inden for engrossalg af fastnet bredbåndsløsninger. Norlys har desuden aktiviteter inden for blandt andet detailsalg af bredbånds- og tv-løsninger og elforsyning.

Telia Company AB's danske aktiviteter omfatter engros- og detailsalg af mobiltelefoni samt detailsalg af fastnet bredbånds- og tv-løsninger.
Læs mere
Dato: 28/02/2024

Nyt fra Konkurrenceankenævnet

Intet nyt.

Nyt fra domstolene

Civilretlige afgørelser

Intet nyt.

Straffesager

Strafbortfald i "Vejstribesagen".
Landsretten har den 2. februar 2024 fundet to selskaber og tre tilknyttede personer skyldige i overtrædelse af konkurrencelovens § 23, stk. 3, ved i 2014 at have indgået to kartelaftaler om koordinering af bud i forbindelse med to udbud fra Vejdirektoratet om kørebaneafmærkning, men har ladet straffen bortfalde.

Landsretten har fundet, at de tiltalte befandt sig i en undskyldelig vildfarelse om, at aftalerne ikke udgjorde en overtrædelse af konkurrencelovens § 6, stk. 1. Herefter og ud fra en samlet vurdering af sagens omstændigheder har landsretten ladet straffen bortfalde. Landsretten har herved tillige lagt vægt på den lange sagsbehandlingstid.
Læs mere
Dato: 02/02/2024

Lovforslag i høring

Intet nyt.

Ny lovgivning

L 121 Forslag til lov om ændring af konkurrenceloven.
Formålet med lovforslaget er at skabe mere effektiv konkurrence ved at styrke konkurrencemyndighedens håndhævelsesmuligheder.

Med henblik på at sikre mere effektiv konkurrence og en mere effektiv fusionskontrol foreslås det at indføre hjemmel til, at Konkurrence- og Forbrugerstyrelsen kan kræve visse fusioner, som er under de fastsatte omsætningstærskler, anmeldt med henblik på, at Konkurrence- og Forbrugerstyrelsen kan vurdere, om en fusion vil hæmme den effektive konkurrence betydeligt, navnlig som følge af skabelsen eller styrkelsen af en dominerende stilling. For at mindske virksomhedernes transaktionsusikkerhed som følge af forslaget er der i forslaget en tidsmæssig grænse, således at konkurrencemyndigheden som det helt klare udgangspunkt ikke kan kræve en fusion anmeldt senere end tre måneder efter, at en fusionsaftale er indgået.

Det foreslås endvidere at indføre mulighed for, at Konkurrence- og Forbrugerstyrelsen kan indlede en markedsefterforskning af adfærd eller strukturer i en eller flere erhvervssektorer for at afgøre, om der er forhold, der tydeligt svækker den effektive konkurrence med skadevirkninger for forbrugere eller andre virksomheder. Hvis

Konkurrence- og Forbrugerstyrelsen vurderer, at der foreligger forhold, som tydeligt svækker konkurrencen, kan Konkurrence- og Forbrugerstyrelsen for at fremme effektive konkurrenceforhold afslutte markedsefterforskningen med at udstede adfærdsmæssige påbud. Et påbud kan kun udstedes, når konkurrencemyndigheden kan dokumentere, at svækkelsen af konkurrencen er tydelig og har så væsentlige skadevirkninger, at det kan begrunde udstedelsen af et adfærdsmæssigt påbud til en eller flere virksomheder. Der gives med lovforslaget ikke mulighed for at udstede påbud til virksomheder om at ændre adfærd, hvis en sådan adfærd er en direkte eller nødvendig følge af offentlig regulering.

Overtrædelser af konkurrenceloven kan have væsentlige samfundsskadelige virkninger. Det er derfor vigtigt, at sanktioner for overtrædelser af loven er følelige økonomisk og har præventiv virkning. Med henblik på at sikre, at bøder for overtrædelse af konkurrencereglerne i højere grad afspejler den økonomiske skadevirkning af sådanne overtrædelser, foreslås det at ændre principperne for beregning af bøder til virksomheder m.v. samt til fysiske personer. De ændrede beregningsprincipper vil også give større sikkerhed for, at bøder virker ensartede for små og store virksomheder. Det vil fortsat henhøre under domstolene at fastlægge bødeniveauerne.
Læs mere
Dato: 28/02/2024

Nyt fra Ankestyrelsen

Tilsynsudtalelse om Thisted Kommunes drift af Sydthy Kurbad.
Ankestyrelsen vurderer, at Thisted Kommune handler i strid med kommunalfuldmagtsreglerne ved at drive Sydthy Kurbad med kurbadets samlede aktiviteter samt tilhørende café.
Læs mere
Dato: 10/01/2024

Andet

Intet nyt.

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust & Cartels

Commission fines Apple over €1.8 billion over abusive App store rules for music streaming providers.
The European Commission has fined Apple over €1.8 billion for abusing its dominant position on the market for the distribution of music streaming apps to iPhone and iPad users ('iOS users') through its App Store. In particular, the Commission found that Apple applied restrictions on app developers preventing them from informing iOS users about alternative and cheaper music subscription services available outside of the app ('anti-steering provisions'). This is illegal under EU antitrust rules.
Læs mere
Dato: 04/03/2024

Commission sends Statement of Objections to PPC over predatory pricing in the Greek wholesale electricity market.
The European Commission has informed the Greek electricity provider Public Power Corporation ('PPC') of its preliminary view that it has breached EU antitrust rules by selling electricity in the Greek wholesale market below cost, thereby excluding its main rivals. PPC is the largest supplier of retail and wholesale electricity in Greece, in which the Greek State holds an important minority stake. Between 2013 to 2019, PPC controlled all lignite and hydro capacity as well as some of the natural gas and renewable power generation plants. It was also active in the supply of energy to retail and business consumers.

The Commission's preliminary view is that PPC held a dominant position in the interconnected Greek wholesale electricity market, which during the period concerned comprised Greek mainland as well as the Ionian and a few Aegean islands. The Commission has preliminary concerns that, between 2013 and 2019, PPC abused its dominant position on the Greek wholesale electricity market by supplying the electricity generated by its thermal plants (i.e., lignite and gas) at prices below their variable costs (meaning those costs that increase with the volume of electricity generated by PPC).
Læs mere
Dato: 07/02/2024

Commission welcomes continued airline competition on the routes from Amsterdam to the US.
The European Commission welcomes the positive developments at Amsterdam airport enabling new entrant JetBlue Airways Corporation **('JetBlue')** to continue operating at the airport over the IATA Summer 2024 Season.

The Commission has actively and closely monitored the evolution of the market conditions at Amsterdam airport. Specifically, this concerned the degree of congestion of the airport and the operations of the Blue Skies joint venture ('JV') between Air France-KLM Group, Delta and Virgin Atlantic, to identify any risk of serious and irreparable damage to competition for transatlantic traffic, in particular on the Amsterdam-New York route. The Commission stood ready to intervene with interim measures in case JetBlue did not secure appropriate access to Amsterdam airport for the IATA Summer 2024 Season.

Between 2010 and 2015, the Commission investigated three JVs related to transatlantic passenger services:
(i) Oneworld Atlantic Joint Business (American Airlines, British Airways, Finnair and Iberia), (ii) Star A++ (Air Canada, United Airlines and Lufthansa), and (iii) the TAJV between Skyteam members Air France-KLM Group, Alitalia and Delta. In 2020, the Blue Skies JV between Air France-KLM Group, Delta and Virgin Atlantic replaced the TAJV and the former JV between Delta and Virgin Atlantic.

The JVs bring together EU and US airlines, which agree to combine their resources and share revenues on transatlantic routes linking their hub airports, as well as routes that connect those hubs to certain 'behind and beyond' destinations in Europe and the US.

As a result of its investigations, the Commission found that, on certain hub-to-hub transatlantic routes such as Amsterdam-New York, the entry of a new competitor or the expansion of an existing competitor was necessary to remedy the distortive effects of the joint ventures.

In late IATA Summer 2023 Season, US carrier JetBlue started offering daily direct passenger transport services on the Amsterdam-New York and Amsterdam-Boston routes. JetBlue's entry revived competition to the benefit of consumers between the three airlines offering direct transatlantic services at Amsterdam airport, namely: two Blue Skies members (KLM and Delta) and United Airlines.

However, due to the tight capacity constraints at Amsterdam airport, JetBlue had not been able to obtain all of the slots it had requested during the initial phases of the slot allocation procedure for the IATA Summer 2024 Season. There was therefore a risk that JetBlue would have had to discontinue its operations on those routes as of 30 March 2024.

JetBlue has improved its slot portfolio at Amsterdam airport during the later phases of the slot allocation procedure and has eventually obtained all the slots it needs to continue operating at Amsterdam airport throughout the IATA Summer 2024 Season. As a result, consumers will not be deprived of choice at a time of strong demand for transatlantic services.
Læs mere
Dato: 05/02/2024

Commission carries out unannounced antitrust inspections in the tyres sector.
The European Commission is carrying out unannounced inspections at the premises of companies active in the tyres industry in several Member States. The Commission has concerns that the inspected companies 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).

The products concerned by the inspections are new replacement tyres for passenger cars, vans, trucks and busses sold in the European Economic Area. The Commission is concerned that price coordination took place amongst the inspected companies, including via public communications.
Læs mere
Dato: 30/01/2024

Commission report finds active competition enforcement continues to contribute to affordable and innovative medicines.
The European Commission has published a report providing an overview of the enforcement of EU antitrust and merger rules by the Commission and the national competition authorities ('NCAs') in the pharmaceutical sector between 2018 and 2022. Today's report shows that active enforcement of antitrust and merger rules continues to play an important role in delivering European patients' access to a wider choice of affordable and innovative medicines. In particular, it helped to achieve this goal during the challenging period of the coronavirus pandemic.

The Commission drafted the report covering medicines and certain medical products in cooperation with the NCAs of the 27 EU Member States, with which the Commission works in the European Competition Network ('ECN'). It follows a previous report covering the years 2009-2017 that was published in January 2019. The authorities will continue their enforcement efforts in the pharmaceutical sector as a matter of high priority in view of its economic relevance and its impact on peoples' well-being and lives.
Læs mere
Dato: 26/01/2024

Commission sends Statement of Objections to six companies in farmed Atlantic salmon cartel case.
The European Commission has informed Norwegian salmon producers Cermaq, Grieg Seafood, Bremnes, Lerøy, Mowi and SalMar of its preliminary view that they breached EU antitrust rules by colluding to distort competition in the market for spot sales of Norwegian farmed Atlantic salmon in the EU.

The Commission has concerns that, between 2011 and 2019, the six salmon producers, exchanged commercially sensitive information, relating to sales prices, available volumes, sales volumes, production volumes and production capacities, as well as other price-setting factors. The suspected aim of this alleged conduct was to reduce normal uncertainty in the market for spot sales of Norwegian farmed Atlantic salmon into the EU.

The alleged anticompetitive conduct only concerns sales on the spot market into the EU, as opposed to sales based on long-term contracts. Spot sales are those for which prices, volumes and other sales conditions are agreed per sale, based on the market conditions on the day of the sale.
Læs mere
Dato: 25/01/2024

Mergers

Commission clears acquisition of Bolloré Logistics by CMA CGM, subject to conditions.
The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Bolloré Logistics SE ('Bolloré Logistics') by CMA CGM S.A. ('CMA CGM'). The approval is conditional upon full compliance with the commitments offered by the parties.

CMA CGM and Bolloré Logistics are both international transport and logistics companies. CMA CGM provides container liner shipping and port terminal services while Bolloré Logistics offers freight forwarding and contract logistics services. To address the Commission's competition concerns, the parties offered to divest:

- All of Bolloré Logistics' activities in Guadeloupe, Martinique, Saint Martin, and French Guiana; and
- A number of assets in metropolitan France linked to these activities.

Læs mere
Dato: 23/02/2024

Commission approves joint venture between Orange and MásMóvil in Spain, subject to conditions.
The European Commission has approved, under the EU Merger Regulation, the proposed creation of a joint venture by Orange and MásMóvil. The approval is conditional upon full compliance with a commitments package offered by Orange and MásMóvil.

Orange is a full mobile network operator while MásMóvil is a hybrid mobile network operator. MásMóvil relies on its own mobile network, which does not cover the entire Spanish territory, and on a national roaming agreement with Orange to provide retail mobile services. There are two other mobile network operators active in Spain (Telefónica and Vodafone). There are also several mobile virtual network operators ('MVNOs') which use the mobile network operators' infrastructure to offer retail mobile services to consumers. Digi is the largest MVNO in Spain.

To address the Commission's competition concerns, Orange and MásMóvil committed to:

- Divest spectrum held by MásMóvil to Digi across three frequency spectrum bands, two medium frequency bands (1,800 MHz and 2,100 MHz) and one high frequency band (3.5 GHz). The mobile spectrum to be divested will enable Digi to build its own mobile network and to exert a strong competitive constraint on the joint venture; and
- Enter an optional national roaming agreement, which Digi can decide to use or not. The possibility to use the JV's network will complement Digi's own network, which Digi will start rolling out with the use of the divested spectrum. This option is critical given that, like MásMóvil's network today, Digi's future mobile network would likely not cover the entirety of Spain. As the national roaming agreement is optional, Digi will be free to remain with its current wholesale provider (Telefónica) or choose another mobile network operator in Spain (i.e., the joint venture or Vodafone).

Læs mere
Dato: 20/02/2024

Commission approves the acquisition of Asiana by Korean Air, subject to conditions.
The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Asiana Airlines Inc. ('Asiana') by Korean Air Lines Co., Ltd ('Korean Air'). The approval is conditional upon full compliance with the remedies offered by Korean Air.

Korean Air is South Korea's largest airline offering international air passenger and cargo services. Asiana, the second largest airline in South Korea, provides similar services. Both airlines have a significant presence in the European Economic Area ('EEA').

To address the Commission's competition concerns, Korean Air offered the following remedies:

- Cargo commitments: Korean Air will divest Asiana's global cargo freighter business. The divestment includes freighter aircraft, slots, traffic rights, flight crew, and other employees, as well as customer cargo contracts, among others. Korean Air can only implement the acquisition of Asiana following the Commission's approval of a suitable buyer for the cargo divestment. Among other requirements, the buyer must be able and have the incentives to operate the divested business in a viable manner and to compete effectively with the merged company.
- Passenger commitments: Korean Air will make available to rival airline T'Way the necessary assets to enable it to start flight operations on the four overlap routes. The assets include slots and traffic rights as well as access to the required aircraft. T'Way is a South Korean airline with a hub in Seoul from where it operates a network of routes in East Asia and beyond. Korean Air has committed not to complete the merger until T'Way has started operating on the four overlap routes.

Læs mere
Dato: 13/02/2024

Commission opens in-depth investigation into proposed acquisition of Air Europa by IAG.
The European Commission has opened an in-depth investigation to assess, under the EU Merger Regulation, the proposed acquisition of sole control of Air Europa Holding, S.L. ('Air Europa') by International Consolidated Airlines Group, S.A. ('IAG'). The Commission has preliminary concerns that the transaction may reduce competition in the market for passenger air transport services on several domestic, short-haul and long-haul routes in and out of Spain.

IAG and Air Europa operate an extensive network of domestic routes in Spain, short-haul routes within the European Economic Area ('EEA') as well as long-haul routes, in particular to and from Latin America.
Læs mere

Dato: 24/01/2024

Commission opens in-depth investigation into proposed acquisition of stake in ITA Airways by Lufthansa.
The European Commission has opened an in-depth investigation to assess, under the EU Merger Regulation, the proposed acquisition of joint control of ITA Airways ('ITA') by Deutsche Lufthansa AG ('Lufthansa"') and the Italian Ministry of Economy and Finance ('MEF'). The Commission has preliminary concerns that the transaction may reduce competition in the market for passenger air transport services on several short-haul and long-haul routes in and out of Italy.

Lufthansa and ITA operate an extensive network of domestic routes, short-haul routes within the European Economic Area ('EEA') as well as long-haul routes between the EEA and the rest of the world. Lufthansa also has a joint venture with United Airlines and Air Canada, through which they coordinate on price, capacity and scheduling and share revenues on transatlantic routes.
Læs mere
Dato: 23/01/2024

State Aid

Commission approves €1.1 billion Italian 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 Italian 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: 08/03/2024

Commission approves €3 billion Romanian State aid scheme to support onshore wind and solar photovoltaic installations to foster the transition to a net-zero economy.
The European Commission has approved a €3 billion (RON 15.22 billion) Romanian scheme to support installations producing electricity from onshore wind and solar photovoltaic 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: 06/03/2024

Commission approves €350 million Portuguese State aid scheme to support investments in equipment necessary to foster the transition to a net-zero economy.
The European Commission has approved a €350 million Portuguese 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: 01/03/2024

Commission opens in-depth State aid investigation into French compensation to maritime transport companies.
The European Commission has opened an in-depth investigation to assess whether the public service compensation granted to Corsica Linea and La Méridionale for the provision of maritime transport services to Corsica between 2023 and 2030 is in line with EU State aid rules.
Læs mere
Dato: 23/02/2024

Commission approves €1.3 billion German State aid measure funded under Recovery and Resilience Facility to support ArcelorMittal decarbonise its steel production.
The European Commission has approved, under EU State aid rules, a €1.3 billion German measure made available in part through the Recovery and Resilience Facility ('RRF') to support ArcelorMittal Bremen and ArcelorMittal

Eisenhüttenstadt ('ArcelorMittal') in decarbonising part of their steel production processes. The measure will contribute to the achievement of the EU Hydrogen Strategy, the European Green Deal and the Green Deal Industrial Plan targets, while helping to end dependence on Russian fossil fuels and fast forward the green transition, in line with the REPowerEU Plan.
Læs mere
Dato: 23/02/2024

Commission orders recovery of €33.84 million in incompatible State aid from Blue Air.
The European Commission has concluded that Blue Air's restructuring plan was not capable of restoring the airline's long-term viability and it is therefore incompatible with EU State aid rules. Romania must now recover from Blue Air illegal State aid amounting to approximately €33.84 million (RON 163.8 million).
Læs mere
Dato: 16/02/2024

Commission approves €720 million French State aid scheme to support forestry sector.
The European Commission has approved, under EU State aid rules, a €720 million French scheme to support the forestry sector. The measure will contribute to the achievement of the objectives of the EU's Common Agricultural Policy by strengthening forest environmental protection.
Læs mere
Dato: 16.02/2024

Commission approves up to €6.9 billion of State aid by seven Member States for the third Important Project of Common European Interest in the hydrogen value chain.
The Commission has approved, under EU State aid rules, a third Important Project of Common European Interest ('IPCEI') to support hydrogen infrastructure. This IPCEI is expected to boost the supply of renewable hydrogen, thereby reducing dependency on natural gas and helping to achieve the objectives of the European Green Deal and the REPowerEU Plan. The project, called "IPCEI Hy2Infra", was jointly prepared and notified by seven Member States: France, Germany, Italy, the Netherlands, Poland, Portugal, and Slovakia.
Læs mere
Dato: 15/02/2024

Commission closes State aid investigation into Danish and Swedish public financing of Øresund fixed rail-road link.
The European Commission has concluded that the State guarantee model granted by Denmark and Sweden for the construction of the Øresund fixed rail-road link does not constitute new aid within the meaning of EU State aid rules. The Commission has also found that part of the tax support implemented by Denmark constitutes new aid that is disproportionate and therefore not compatible with the Treaty. Denmark must now recover the incompatible aid, including interest.
Læs mere
Dato: 13/02/2024

Commission approves €300 million Polish State aid scheme to alleviate social costs of closing coal- and lignite-fired power plants and lignite mines.
The European Commission has approved, under EU State Aid rules, a €300 million Polish scheme to support workers affected by the closure of coal- and lignite-fired power plants and lignite mines.
Læs mere
Dato: 05/02/2024

Commission opens State aid in-depth investigation into Corsair amended restructuring plan.
The European Commission has opened an in-depth investigation to determine whether France's contemplated amendments to Corsair's restructuring plan are in line with EU state aid rules. It does not prejudge the outcome of the investigation and whether such amendments are in line with EU state aid rules. The restructuring plan of the French airline was initially approved by the Commission in December 2020, consisting of two measures in favour of Corsair: (i) restructuring aid worth €106.7 million, given according to the Guidelines on State aid for rescuing and restructuring, and (ii) compensatory aid worth €30.2 million for damage suffered due to emergency measures put in place by governments in the context of the coronavirus outbreak for the period from 17 March 2020 to 30 June 2020.
Læs mere
Dato: 05/02/2024

Commission opens in-depth State aid investigation into Swedish tax exemption schemes for non-food biogas and bio-propane.
The European Commission has opened an in-depth investigation to assess whether two Swedish tax exemption schemes for non-food-based biogas and bio-propane used for heating or as motor fuel are in line with EU State aid rules. The in-depth investigation follows the General Court's annulment of two previous Commission decisions approving the tax exemptions.
Læs mere
Dato: 30/01/2024

Commission approves €550 million Italian State aid scheme to support investments for the use of hydrogen in industrial processes to foster the transition to a net-zero economy.
The European Commission has approved a €550 million Italian scheme to support investments for the use of hydrogen in industrial processes 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: 30/01/2024

Commission approves €1 billion German State aid schemes to improve animal welfare in livestock breeding.
The European Commission has approved, under EU State aid rules, two German schemes with a total budget of around €1 billion to improve animal welfare standards in breeding of livestock, in particular pigs. The measures will contribute to the achievement of the EU's strategic objectives relating to the European Green Deal, the Common Agricultural Policy and the Farm to Fork Strategy.
Læs mere
Dato: 30/01/2024

Andet

Designated gatekeepers must now comply with all obligations under the Digital Markets Act.
Apple, Alphabet, Meta, Amazon, Microsoft and ByteDance, the six gatekeepers designated by the Commission in September 2023, have to fully comply with all obligations in the Digital Markets Act (DMA).

The DMA aims to make digital markets in the EU more contestable and fairer. It establishes new rules for 10 defined core platform services, such as search engines, online marketplaces, app stores, online advertising and messaging, and gives new rights to European businesses and end-users.

Gatekeepers started testing measures to comply with the DMA ahead of the deadline, triggering feedback from third parties. As of today, gatekeepers are required to prove their effective compliance with the DMA and outline the measures undertaken in compliance reports. The public version of these reports is accessible on the Commission's dedicated DMA webpage. Today, the designated gatekeepers also have to submit to the Commission an independently audited description of any techniques used for profiling consumers, along with a non-confidential version of the report.
Læs mere
Dato: 07/03/2024

Booking, ByteDance and X notify their potential gatekeeper status to the Commission under the Digital Markets Act.
The European Commission has received notifications from Booking, ByteDance and X, about their services potentially meeting the Digital Markets Act (DMA) thresholds, which could make them subject to the new EU rules on gatekeeper platforms.

Companies may become subject to the DMA if they operate a so-called core platform service, such as, among others, search engines, app stores, messenger services, and also meet the following criteria: have 45 million monthly active end users and 10 000 yearly business users, have a significant impact on the market and have a stable market position. The Commission now has 45 working days to decide whether to designate the companies as gatekeepers. The Commission will also assess any argument put forward by the submitting companies to rebut the presumption that they should be designated as gatekeepers. If designated, gatekeepers will have six months to comply with the requirements in the DMA.
Læs mere
Dato: 01/03/2024

Commission closes market investigations on Microsoft's and Apple's services under the Digital Markets Act.
The Commission has adopted decisions closing four market investigations that were launched on 5 September 2023 under the Digital Markets Act (DMA), finding that Apple and Microsoft should not be designated as gatekeepers for the following core platform services: Apple's messaging service iMessage, Microsoft's online search engine Bing, web browser Edge and online advertising service Microsoft Advertising.

The decisions conclude the Commission's investigations opened following the notification by Apple and Microsoft in July 2023 of the core platform services that met the quantitative thresholds. Among these notified services were also the four services concerned by today's decisions. Together with the notifications, Apple and Microsoft also submitted so-called 'rebuttal' arguments, explaining why despite meeting the quantitative thresholds, these four core platform services should not, in their view, qualify as gateways.

In its decision of 5 September 2023, the Commission considered that the rebuttal requests made by Apple and Microsoft deserved an in-depth analysis. Following a thorough assessment of all arguments, taking into account input by relevant stakeholders, and after hearing the Digital Markets Advisory Committee, the Commission found that iMessage, Bing, Edge and Microsoft Advertising do not qualify as gatekeeper services.
Læs mere
Dato: 13/02/2024

Commission recommendation (EU) 2024/539 of 6 February 2024 on the regulatory promotion of gigabit connectivity.
In recent years, many electronic communications markets have seen strong competition. This has made it possible to further reduce the extent of ex ante intervention, as reflected in Commission Recommendation (EU) 2020/2245 (6). This Recommendation complements other sources of guidance on Directive (EU) 2018/1972 and aims to promote the internal market for electronic communications networks and services. It aims to achieve this through consistent regulatory approaches that favour investment in VHCNs while maintaining and ensuring effective competition. Consistency between the regulatory approaches taken by the national regulatory authorities (NRAs) of the various Member States is of fundamental importance to both avoid distortions in the internal market and create legal certainty for all undertakings, in particular those investing in network deployment. It is therefore appropriate to provide guidance to NRAs aimed at: (i) preventing any inappropriate divergence in regulatory approaches; (ii) encouraging regulation focused on bottlenecks; and (iii) the attenuation or complete lifting of regulatory obligations when justified by market developments. These three aims should be achieved while allowing NRAs to take due account of national circumstances when designing appropriate remedies in those circumstances where such regulation is still necessary.
Læs mere
Dato: 19/02/2024

Commission publishes guide to help EU producers with anti-dumping complaints.
The updated guide on 'How to make an anti-dumping complaint' will help EU producers harmed by dumped imports to prepare a complaint for the initiation of an anti-dumping investigation to restore a level-playing field in the EU market.
Læs mere
Dato: 07/02/2024

Update on Competition Enforcement in the Pharmaceutical Sector (2018-2022).
This Report provides an overview of how the Commission and the national competition authorities of the EU Member States ('European competition authorities') have enforced EU antitrust and merger rules concerning medicines and certain other medical products in the period 2018-2022. It also reports on how EU competition law served to protect undertakings and consumers during the challenging period of the Covid-19 crisis. It is a follow-up to the previously published Report covering the years 2009-2017.
Læs mere
Dato: 30/01/2024

Public financing of news media in the EU.
This study provides an analysis of the current landscape of public news media financing within EU Member States. The study maps public funding and financing measures supporting news media, provides an analysis of financing trends and identifies needs in the current information ecosystem. At an aggregate level, public allocations dedicated to public service media have increased only modestly in recent years. However, there are substantial variations in allocations (absolute and per capita) across countries. Some Member States have recently increased funding, others have cut back. As regards funding models, a key development is the shift in models from the traditional licence fee to funding via the

general state budget. For private media, the study shows a highly diverse landscape of priorities, approaches, and funding scales across EU Member States. Altogether, support mechanisms are focusing mainly on newspapers and periodicals. Discussions about subsidy options for news media have been revived in many countries. In some Member States, private news media have enjoyed increased public support in recent years. The study identifies a number of areas for attention, including the need for evidence-based financing practices and reviews of schemes, considerations as regards support for regional and local media, and transparency in the allocation of funds, in particular for state advertising. Against this backdrop, the study explores a series of case studies of national financing practices showcasing, among other, how Member States support media plurality, innovation, arm's length in public allocations, fairness, and transparency.
Læs mere
Dato: 2024

Proposal for a new regulation on the screening of foreign investments.
This legislative proposal builds on the experience gained by the Commission and Member States with reviewing over 1,200 FDI transactions notified by Member States over the previous three years under the existing FDI Screening Regulation. It also builds on an extensive evaluation of the functioning of the current regulation and a recent report of the European Court of Auditors.

The legislative proposal aims to address existing shortcomings and improves the efficiency of the system by:
1. Ensuring that all Member States have a screening mechanism in place, with better harmonised national rules.
2. Identifying minimum sectoral scope where all Member States must screen foreign investments.
3. Extending EU screening to investments by EU investors that are ultimately controlled by individuals or businesses from a non-EU country.

Læs mere
Dato: 25/01/2024

The Market Economy Operator Test for Risk Finance Measures: Practical guidance for Member States.
The Commission has historically acknowledged the importance to the economies of Member States of the risk finance market and the need to improve access to risk finance for start-ups, small and medium-sized enterprises (SMEs), small middle-capitalisation firms (mid-caps) and innovative mid-caps. In that vein, the Commission has defined, through a set of guidelines, the criteria for the assessment of compatibility of State aid in the field of risk finance.
Læs mere
Dato: 26/01/2024

Nyt fra EU-domstolen

Domme

C-558/22 – Fallimento Esperia og GSE
Nøgleord: Præjudiciel forelæggelse – national støtteordning, hvorefter nationale producenter af elektricitet fra vedvarende energikilder tildeles omsættelige grønne certifikater – import af elektricitet fra vedvarende energikilder i en anden medlemsstat – forpligtelse til at købe grønne certifikater – sanktion – fritagelse – direktiv 2001/77/EF – direktiv 2009/28/EF – støtteordning – oprindelsesgarantier – frie varebevægelser – artikel 18 TEUF, 28 TEUF, 30 TEUF, 34 TEUF og 110 TEUF – statsstøtte – artikel 107 TEUF og 108 TEUF – statsmidler – selektiv fordel.

Ved afgørelse af 28. juni 2016 pålagde tilsynsmyndigheden dette selskab en økonomisk sanktion på 2.803.500 EUR for at have tilsidesat sin forpligtelse til at købe 17.753 grønne certifikater for elektricitet, som selskabet havde importeret til Italien i 2010. Esperia anfægtede denne sanktion ved Tribunale amministrativo regionale per la Lombardia (den regionale forvaltningsdomstol for Lombardiet, Italien). Efter sagens anlæg blev dette selskab erklæret konkurs, og det har siden været benævnt Fallimento Esperia. Kuratoren for Fallimento Esperia fastholdt imidlertid søgsmålet ved denne ret.

Ved dom af 8. august 2018 gav den nævnte ret Fallimento Esperia delvist medhold i sit søgsmål, idet den fandt, at den sanktion, som selskabet var blevet pålagt, var urimeligt høj. Tilsynsmyndigheden og Fallimento Esperia har iværksat appel til prøvelse af denne dom ved Consiglio di Stato (øverste domstol i forvaltningsretlige sager, Italien), som er den forelæggende ret. Sagen ved sidstnævnte ret blev udsat, efter at denne den 3. september 2019 havde indgivet en anmodning om præjudiciel afgørelse til Domstolen i sagen Axpo Trading, som ligeledes var indbragt for den forelæggende ret. Denne anmodning blev registreret ved Domstolens Justitskontor under sagsnr. C-705/19. Efter at generaladvokat Campos Sánchez-Bordona den 3. december 2020 havde fremsat forslag til afgørelse Axpo Trading (C-

705/19, EU:C:2020:989), frafaldt Axpo Trading sagen for den forelæggende ret, og denne sag blev slettet af registret ved kendelse af 9. september 2021, Axpo Trading (C-705/19, EU:C:2021:755). Sagen for den forelæggende ret i hovedsagen blev herefter genoptaget.

Dom:

1. Artikel 28 TEUF, 30 TEUF og 110 TEUF skal fortolkes således, at de ikke er til hinder for en national foranstaltning, der for det første forpligter importører af elektricitet fra en anden medlemsstat, som ikke godtgør, at denne elektricitet er produceret fra vedvarende energikilder ved at fremlægge oprindelsesgarantier, til at købe enten certifikater, der attesterer en oprindelse i vedvarende energikilder, eller elektricitet produceret fra vedvarende energikilder fra nationale producenter i forhold til den mængde elektricitet, de importerer, og for det andet indebærer, at der pålægges en sanktion i tilfælde af manglende overholdelse af denne forpligtelse, hvorimod nationale producenter af elektricitet produceret fra vedvarende energikilder ikke er underlagt en sådan købsforpligtelse.
2. Artikel 34 TEUF samt Europa-Parlamentets og Rådets direktiv 2001/77/EF af 27. september 2001 om fremme af elektricitet produceret fra vedvarende energikilder inden for det indre marked for elektricitet og Europa-Parlamentets og Rådets direktiv 2009/28/EF af 23. april 2009 om fremme af anvendelsen af energi fra vedvarende energikilder og om ændring og senere ophævelse af direktiv 2001/77/EF og 2003/30/EF skal fortolkes således, at de ikke er til hinder for denne nationale foranstaltning, hvis det påvises, at foranstaltningen ikke går ud over, hvad der er nødvendigt for at nå målsætningen om en forøgelse af produktionen af elektricitet produceret fra vedvarende energikilder.
3. Artikel 107 TEUF og 108 TEUF skal fortolkes således, at de ikke er til hinder for den nævnte nationale foranstaltning, forudsat at forskelsbehandlingen af nationale producenter af elektricitet produceret fra vedvarende energikilder og importører af elektricitet, der ikke fremlægger en oprindelsesgaranti, er begrundet i karakteren og opbygningen af det referencesystem, som foranstaltningen indgår i.

Læs mere
Dato: 07/03/2024

C-438/22 – Em akaunt BG
Nøgleord: Præjudiciel forelæggelse – konkurrence – karteller – artikel 101 TEUF – en advokatorganisations fastsættelse af mindstebeløb for salærer – vedtagelse inden for en sammenslutning af virksomheder – forbud mod, at en ret træffer afgørelse om godtgørelse af et salær, der er lavere end disse mindstebeløb – konkurrencebegrænsning – begrundelser – legitime mål – kvaliteten af de ydelser, der leveres af advokater – gennemførelse af dom af 23. november 2017, CHEZ Elektro Bulgaria og FrontEx International (C-427/16 og C-428/16, EU:C:2017:890) – muligheden for at påberåbe sig Wouters-dommen i tilfælde af et konkurrencebegrænsende formål.

EM akaunt BG anlagde sag ved Sofijski rajonen sad (kredsdomstolen i Sofia, Bulgarien) med påstand om erstatning fra sit forsikringsselskab, Zastrachovatelno aktsionerno druzjestvo Armeets, på 16.112,32 bulgarske leva (BGN) (ca. 8.241 EUR) i henhold til en forsikring af ejendom efter tyveri af et køretøj samt en erstatning for forsinkelse til den lovbestemte rente på 1.978,24 BGN (ca. 1 012 EUR). Dette krav om erstatning omfattede godtgørelse af salær til sagsøgeren i hovedsagens advokat, beregnet i overensstemmelse med en forudgående aftale mellem sagsøgeren i hovedsagen og dennes advokat. Dette salær beløb sig til 1.070 BGN (ca. 547 EUR). Sagsøgte i hovedsagen gjorde gældende, at det således krævede salær var for højt, og nedlagde påstand om, at det nedsattes. Ved dom af 16. februar 2022 traf den forelæggende ret afgørelse i sagen og gav delvist medhold i erstatningspåstanden. Hvad angår sagsomkostningerne fandt retten, at det krævede salær var for højt, og nedsatte det til 943 BGN (ca. 482 EUR). Den forelæggende ret henviste i sin begrundelse for nedsættelsen af advokatsalæret til GPK's artikel 78, stk. 5, som giver den ret, for hvilken en sag er indbragt, mulighed for at nedsætte størrelsen af det advokatsalær, der skal betales, hvis det, henset til sagens faktiske juridiske og faktiske kompleksitet, forekommer for højt. Denne bestemmelse giver imidlertid ikke retten mulighed for at fastsætte et beløb, der er lavere end det i ZAdv's artikel 36 fastsatte minimumsbeløb.

Denne ret fandt ligeledes, at det fulgte af dom af 23. november 2017, CHEZ Elektro Bulgaria og FrontEx International (C-427/16 og C-428/16, EU:C:2017:890), at reglen i GPK's artikel 78, stk. 5, sammenholdt med ZAdv's artikel 36, ikke var i strid med artikel 101, stk. 1, TEUF, sammenholdt med artikel 4, stk. 3, TEU, for så vidt som den var nødvendig for gennemførelsen af et legitimt mål. Den nævnte ret har gjort gældende, at det legitime mål, der forfølges med denne regel, er at sikre leveringen af juridiske tjenesteydelser af høj kvalitet til borgerne. Den forelæggende ret er af den opfattelse, at indførelsen af et mindstesalær kan forfølge dette mål og være forholdsmæssig, eftersom den sikrer en tilstrækkelig indtægt for advokaten til at føre en værdig tilværelse, levere ydelser af god kvalitet og forbedre sig. Den forelæggende ret har konstateret, at bruttosalæret, op til hvilket vederlaget ikke er urimeligt højt som omhandlet i den nationale lovgivning om mindstesalærer, beløber sig til 42 BGN (ca. 21 EUR) i timen.

Dom:

1. Artikel 101, stk. 1, TEUF, sammenholdt med artikel 4, stk. 3, TEU, skal fortolkes således, at en national ret i det tilfælde, hvor den konstaterer, at en bekendtgørelse om fastsættelse af mindstebeløb for advokatsalær, som er gjort obligatorisk ved en national lovgivning, er i strid med nævnte artikel 101, stk. 1, TEUF, er forpligtet til at afslå at anvende denne nationale lovgivning i forhold til den part, som er blevet pålagt at betale sagsomkostningerne, herunder når denne part ikke har indgået nogen aftale om advokatbistand og advokatsalær.
2. Artikel 101, stk. 1, TEUF, sammenholdt med artikel 4, stk. 3, TEU, skal fortolkes således, at en national lovgivning, som dels ikke gør det muligt for en advokat og dennes klient at aftale et vederlag, der er lavere end det minimumsbeløb, der er fastsat i en bekendtgørelse vedtaget af en advokatorganisation, såsom Vissjija advokatski savet (det øverste advokatråd), dels ikke tillader retten at pålægge godtgørelse af salær, der er mindre end dette minimumsbeløb, skal anses for at have et konkurrencebegrænsende »formål« som omhandlet i denne bestemmelse. Når der foreligger en sådan begrænsning, kan de legitime mål, der angiveligt forfølges med den nævnte nationale lovgivning, ikke påberåbes med henblik på at unddrage den omhandlede adfærd fra det i artikel 101, stk. 1, TEUF fastsatte forbud mod konkurrencebegrænsende aftaler og praksis.
3. Artikel 101, stk. 2, TEUF, sammenholdt med artikel 4, stk. 3, TEU, skal fortolkes således, at såfremt en national ret konstaterer, at en bekendtgørelse om fastsættelse af mindstebeløb for advokatsalærer, som er gjort obligatorisk ved en national lovgivning, er i strid med det forbud, der er fastsat i artikel 101, stk. 1, TEUF, er den forpligtet til at nægte at anvende denne nationale lovgivning, herunder når det mindstebeløb, der er fastsat i denne bekendtgørelse, afspejler de reelle priser på markedet for advokatydelser.

Læs mere
Dato: 25/01/2024

C-251/22 P – Scania m.fl. mod Kommissionen.
Nøgleord: Appel – konkurrence – karteller – markedet for lastbiler – afgørelse, som fastslår en overtrædelse af artikel 101 TEUF og artikel 53 i aftalen om Det Europæiske Økonomiske Samarbejdsområde (EØS) – aftaler og samordnet praksis vedrørende salgspriserne på lastbiler, tidsrammen for indførelsen af de teknologier for emissionskontrol, der er pålagt ved standarderne Euro 3 til Euro 6, og overvæltning af omkostningerne til denne teknologi på kunderne – samlet og vedvarende overtrædelse – overtrædelsens geografiske udstrækning – »hybrid« procedure, der har ført til vedtagelse af en forligsafgørelse og dernæst en afgørelse efter en almindelig procedure – artikel 41 i Den Europæiske Unions charter om grundlæggende rettigheder – ret til god forvaltning – Europa-Kommissionens upartiskhed – den geografiske rækkevidde af den samordnede praksis – relevante forhold – kvalificering af en helhed af adfærd som »samlet og vedvarende overtrædelse« – forordning (EF) nr. 1/2003 – artikel 25 – Kommissionens beføjelse til at pålægge en bøde – forældelse.

Ved den omtvistede afgørelse fastslog Kommissionen i denne afgørelses artikel 1, at appellanterne havde overtrådt artikel 101 TEUF og artikel 53 i aftalen om Det Europæiske Økonomiske Samarbejdsområde af 2. maj 1992 ved fra den 17. januar 1997 til den 18. januar 2011 sammen med retlige enheder i virksomhederne at have deltaget i hemmelige aftaler om priser, forhøjelse af bruttopriserne på mellemtunge og tunge lastbiler i Det Europæiske Økonomiske Samarbejdsområde (EØS) samt tidsrammen for overvæltningen af omkostningerne til indførelsen af teknologi for emissionskontrol til mellemtunge og tunge lastbiler, der er pålagt ved standarderne Euro 3 til Euro 6. Ved denne afgørelses artikel 2 pålagde Kommissionen Scania AB og Scania CV AB en bøde på 880.523.000 EUR til solidarisk hæftelse, hvoraf Scania DE blev pålagt solidarisk hæftelse for betalingen af 440.003.282 EUR.

Dom:

1. Appellen forkastes.
2. Scania AB, Scania CV AB og Scania Deutschland GmbH bærer hver deres egne omkostninger og betaler de af Europa-Kommissionen afholdte omkostninger.

Læs mere
Dato: 01/02/2024

C-701/21 P – Mytilinaios mod DEI og Kommissionen.
Nøgleord: Appel – statsstøtte – artikel 107 TEUF – begrebet »støtte« – fordel – kriteriet om den private investor – voldgiftskendelse, der fastsætter reducerede el-tariffer – spørgsmålet, om en voldgiftskendelse kan tilregnes staten – forordning (EU) 2015/1589 – artikel 4, stk. 2 – afgørelse, hvorved det fastslås, at foranstaltningen ikke udgør støtte.

Dom:

1. Den Europæiske Unions Rets dom af 22. september 2021, DEI mod Kommissionen (T-639/14 RENV, T-352/15 og T-740/17, EU:T:2021:604), ophæves.

2. Sagerne T-639/14 RENV, T-352/15 og T-740/17 hjemvises til Den Europæiske Unions Ret med henblik på, at denne træffer afgørelse om de anbringender og argumenter, der er blevet gjort gældende for den, og som Den Europæiske Unions Domstol ikke har truffet afgørelse om.
3. Afgørelsen om sagsomkostningerne udsættes.

Læs mere
Dato: 22/02/2024

T-146/22 – Ryanair mod Kommissionen (KLM II ; COVID-19).
Nøgleord: Statsstøtte – støtte indrømmet af Nederlandene til fordel for KLM i forbindelse med covid-19-pandemien – statsgaranti for et banklån og efterstillet lån fra staten – afgørelse, hvorved støtten erklæres forenelig med det indre marked – annullationssøgsmål – søgsmålskompetence – væsentlig påvirkning af sagsøgerens stilling på markedet – formaliteten – fastlæggelse af støttemodtageren, når der er tale om en koncern.

Ved afgørelse af 13. juli 2020 C(2020) 4871 final om statsstøtte SA.57116 (2020/N) – Nederlandene – Covid-19: Statsgaranti og statslån til fordel for KLM fandt Kommissionen, at den omhandlede foranstaltning dels udgjorde statsstøtte som omhandlet i artikel 107, stk. 1, TEUF, dels var forenelig med det indre marked i henhold til artikel 107, stk. 3, litra b), TEUF. Det fremgår af denne afgørelse, at KLM var den eneste støttemodtager, og at andre selskaber i koncernen Air France-KLM ikke var omfattet heraf. Den 5. april 2021 vedtog Kommissionen afgørelse C(2021) 2488 om statsstøtte SA.59913 – Frankrig – Covid-19 – Rekapitalisering af [Air France] og holdingselskabet Air France-KLM (herefter »afgørelsen om Air France-KLM og Air France«), hvori den konkluderede, at en individuel støtte, som Den Franske Republik havde ydet i form af rekapitalisering af Air France og holdingselskabet Air France-KLM, som udgjorde 4 mia. EUR, var forenelig med det indre marked i henhold til artikel 107, stk. 3, litra b), TEUF og de midlertidige rammebestemmelser. Denne støtte omfatter dels Den Franske Republiks deltagelse i en kapitalforhøjelse på maksimalt 1 mia. EUR, dels et aktionærlån på 3 mia. EUR, der indgik i konverteringen af den foranstaltning, som var omhandlet i Air France-afgørelsen, til et hybridt instrument, som var sidestillet med deltagelse i egenkapitalen. Det fremgår af afgørelsen om Air France-KLM og Air France, at modtagerne af disse foranstaltninger var Air France og selskabets datterselskaber samt holdingselskabet Air France-KLM, men ikke omfattede KLM og dennes datterselskaber.

Ved dom af 19 maj 2021, Ryanair mod Kommissionen (KLM; Covid-19) (T-643/20, EU:T:2021:286), annullerede Retten Kommissionens afgørelse C(2020) 4871 final af 13. juli 2020 med den begrundelse, at afgørelsen var behæftet med en begrundelsesmangel hvad angår fastlæggelsen af modtageren af den omhandlede foranstaltning. Retten besluttede endvidere, at retsvirkningerne af annullationen af den nævnte afgørelse skulle suspenderes, indtil Kommissionen vedtog en ny afgørelse i medfør af artikel 108 TEUF. Den 16. juli 2021 vedtog Kommissionen den anfægtede afgørelse, hvori den fandt, at den omhandlede foranstaltning udgjorde statsstøtte som omhandlet i artikel 107, stk. 1, TEUF, men var forenelig med det indre marked i henhold til artikel 107, stk. 3, litra b), TEUF, og at KLM og dennes datterselskaber var de eneste støttemodtagere, og at støtten ikke omfattede de øvrige selskaber i Air France-KLM-koncernen.

Dom:
1. Kommissionens afgørelse C(2021) 5437 final af 16. juli 2021 om statsstøtte SA.57116 (2020/N) – Nederlandene – Covid-19: statsgaranti og statslån til fordel for KLM annulleres.
2. Europa-Kommissionen bærer sine egne omkostninger og betaler de af Ryanair DAC afholdte omkostninger.
3. Den Franske Republik, Kongeriget Nederlandene, Air France-KLM, Société Air France og Koninklijke Luchtvaart Maatschappij NV bærer hver deres egne omkostninger.

Læs mere
Dato: 07/02/2024

T-390/20 – Scandlines Danmark og Scandlines Deutschland mod Kommissionen.
Nøgleord: Statsstøtte – offentlig finansiering af den faste jernbane- og vejforbindelse over Femern Bælt – støtte ydet af Danmark til Femern – afgørelse, hvorved støtten erklæres forenelig med det indre marked – individuel støtte – vigtigt projekt af europæisk interesse – støttens nødvendighed – proportionalitet – afvejning af støttens gunstige virkninger og dens negative indvirkning på samhandelsvilkårene og på opretholdelsen af en ufordrejet konkurrence – meddelelse vedrørende kriterier for analysen af, hvorvidt statsstøtte til fremme af gennemførelsen af vigtige projekter af fælleseuropæisk interesse er forenelig med det indre marked.

I løbet af 2014 og 2015 modtog Kommissionen fem klager, hvoraf den første klage blev indgivet den 5. juni 2014, og i hvilken det blev foreholdt Kongeriget Danmark at have tildelt Femern og Femern Landanlæg statsstøtte, der var ulovlig og uforenelig med det indre marked. I denne periode sendte Kommissionens tjenestegrene en række anmodninger om oplysninger til de danske myndigheder, som besvarede dem og ved flere lejligheder fremlagde yderligere oplysninger.

Ved skrivelse af 22. december 2014 anmeldte de danske myndigheder i overensstemmelse med artikel 108, stk. 3, TEUF finansieringsmodellen for den faste forbindelse over Femern Bælt til Kommissionen.

Den 23. juli 2015 vedtog Kommissionen afgørelse C(2015) 5023 final om statsstøtte SA.39078 (2014/N) (Danmark) om finansiering af projektet vedrørende den faste forbindelse over Femern Bælt (EUT 2015, C 325, s. 5, herefter »anlægsafgørelsen«), hvorved den besluttede ikke at gøre indsigelse mod de af de danske myndigheder anmeldte foranstaltninger. I denne afgørelse konkluderede Kommissionen bl.a., at foranstaltningerne, der blev ydet Femern til projektering, anlæg og drift af den faste forbindelse – såfremt de skulle udgøre statsstøtte efter traktatens artikel 107, stk. 1 – ville være forenelige med det indre marked i henhold til artikel 107, stk. 3, litra b), TEUF. Nærmere bestemt fandt Kommissionen, at støtteforanstaltningerne til fordel for Femern var forenelig med artikel 107, stk. 3, litra b), TEUF og med Kommissionens meddelelse af 20. juni 2014 om kriterier for analysen af, hvorvidt statsstøtte til fremme af gennemførelsen af vigtige projekter af fælleseuropæisk interesse er forenelig med det indre marked (EUT 2014, C 188, s. 4, herefter »meddelelsen om vigtige projekter af fælleseuropæisk interesse«) samt med Kommissionens meddelelse om anvendelse af artikel [107 TEUF] og [108 TEUF] på statsstøtte i form af garantier.

Ved domme af 13. december 2018, Scandlines Danmark og Scandlines Deutschland mod Kommissionen (T-630/15, ikke trykt i Sml., EU:T:2018:942) og Stena Line Scandinavia mod Kommissionen (T-631/15, ikke trykt i Sml., EU:T:2018:944), annullerede Retten delvist anlægsafgørelsen. Hvad angår den offentlige finansiering indrømmet Femern til projektering, anlæg og drift af den faste forbindelse gav Retten sagsøgerne medhold, idet den fandt, at Kommissionen havde tilsidesat sin forpligtelse i henhold til artikel 108, stk. 3, TEUF til at indlede den formelle undersøgelsesprocedure på grund af tilstedeværelsen af alvorlige vanskeligheder.

Hvad navnlig angår støttens nødvendighed fastslog Retten, at selv om det principielt ikke kunne udelukkes, at støtte var nødvendig for gennemførelsen af et projekt af et sådant omfang, var Kommissionens undersøgelse af nødvendigheden i anlægsafgørelsen i det mindste utilstrækkelig og upræcis, hvilket dels viste, at der forelå alvorlige vanskeligheder, som forpligtede Kommissionen til at indlede den formelle undersøgelsesprocedure, dels ikke gjorde det muligt at undersøge, om Kommissionen havde anlagt et åbenbart urigtigt skøn.

Hvad angår forholdsmæssigheden af støtten til Femern med hensyn til den undersøgelse, som Kommissionen foretog i anlægsafgørelsen, fastslog Retten bl.a., at beregningen af perioden for tilbagebetaling af støtten og de støtteberettigede omkostninger i det mindste var utilstrækkelig og upræcis eller endog selvmodsigende, således at de alvorlige vanskeligheder, som Kommissionen stødte på, burde have foranlediget den til at indlede den formelle undersøgelsesprocedure. Retten fastslog ligeledes, at Kommissionen havde begået en retlig fejl og anlagt et åbenbart urigtigt skøn, for så vidt som betingelserne for udbetaling af garantierne i modsætning til, hvad der er fastsat i garantimeddelelsens punkt 5.3, ikke var fastlagt på tidspunktet for den oprindelige ydelse af disse garantier.

Dom:

1. Europa-Kommissionen frifindes.
2. Scandlines Danmark ApS og Scandlines Deutschland GmbH bærer hver deres egne omkostninger og betaler de af Kommissionen afholdte omkostninger.
3. Kongeriget Danmark, European Community Shipowners' Associations (ECSA), Danish Ferry Association, Naturschutzbund Deutschland eV (NABU), Verband Deutscher Reeder eV, Aktionsbündnis gegen eine feste Fehmarnbeltquerung eV, Föreningen Svensk Sjöfart (FSS), Rederi AB Nordö-Link og Trelleborg Hamn AB bærer hver deres egne omkostninger.

Læs mere
Dato: 28/02/2024

T-364/20 – Danmark mod Kommissionen.
Nøgleord: Statsstøtte – offentlig finansiering af den faste jernbane- og vejforbindelse over Femern Bælt – støtte indrømmet af Danmark til Femern – afgørelse, hvorved støtten erklæres forenelig med det indre marked – annullationssøgsmål – spørgsmålet, om en bestemmelse kan udskilles – formaliteten – begrebet »virksomhed« – begrebet »økonomisk virksomhed« – aktiviteter med anlæg og drift af en fast jernbane- og vejforbindelse – påvirkning af samhandelen mellem medlemsstaterne og fordrejning af konkurrencevilkårene.

Dom:

1. Europa-Kommissionen frifindes.
2. Kongeriget Danmark bærer sine egne omkostninger og betaler Kommissionens omkostninger.
3. Kongeriget Belgien, Forbundsrepublikken Tyskland og Storhertugdømmet Luxembourg bærer hver deres egne omkostninger.

Læs mere
Dato: 28/02/2024

Forslag til afgørelse

C-70/23 P – Westfälische Drahtindustrie m.fl. mod Kommissionen.
Nøgleord: Appel – konkurrence – karteller – marked for forspændingsstål – sag COMP/38344 – afgørelse om overtrædelse af artikel 101 TEUF og EØS-aftalens artikel 53 – dom om delvis annullation af afgørelsen og om fastsættelse af en bøde på et beløb, som er identisk med beløbet for den oprindeligt pålagte bøde – Kommissionens afgørelse vedrørende det udestående bødebeløb – forfaldsdato for en bøde, hvis beløb blev fastsat af Unionens retsinstanser som led i disses fulde prøvelsesret.

I overensstemmelse med Domstolens anmodning er dette forslag til afgørelse begrænset til en analyse af det første anbringende, der i det væsentlige drejer sig om spørgsmålet om, hvorvidt den omstændighed, at Retten i et tilfælde som det foreliggende, hvor Retten først annullerede en afgørelse truffet af Kommissionen, for så vidt som den fastsatte størrelsen af den pålagte bøde, og dernæst under udøvelsen af sin fulde prøvelsesret fastsatte denne bøde til det samme beløb, udøvede denne kompetence, giver anledning til en bøde, der skal karakteriseres som ny og retligt adskilt fra den bøde, der blev pålagt ved Kommissionens afgørelse, således at den forfaldt til betaling, da Retten afsagde den dom, hvorved bødens størrelse blev fastsat. Den foreliggende sag giver dermed Domstolen anledning til for det første at afklare den retlige karakter af udøvelsen af Unionens retsinstansers fulde prøvelsesret i henhold til artikel 31 i forordning (EF) nr. 1/2003 og for det andet at præcisere retsvirkningerne af en annullation eller ændring af en bøde, der er blevet pålagt af Kommissionen i henhold til denne forordnings artikel 23, stk. 2, når Unionens retsinstanser udøver en sådan ret, navnlig med henblik på fastlæggelse af, hvornår denne bøde forfalder til betaling, og dermed indirekte, hvornår der begynder at påløbe morarenter.

Generaladvokat A. Rantos' forslag til afgørelse: På baggrund af ovenstående betragtninger, og for så vidt som dette forslag til afgørelse alene vedrører det første anbringende, foreslår jeg Domstolen, at den forkaster dette anbringende som ugrundet.
Læs mere
Dato: 01/02/2024

C-40/23 P - Kommissionen mod Nederlandene.
Nøgleord: Appel – statsstøtte – artikel 107 TEUF og 108 TEUF – forordning (EU) 2015/1589 – artikel 4, stk. 3 – erklæring om, hvorvidt en foranstaltning, der ikke er kvalificeret som statsstøtte, er forenelig med det indre marked – retssikkerhedsprincippet.

Den 27. marts 2019 anmeldte de nederlandske myndigheder et udkast til Europa-Kommissionen om lov om forbud mod anvendelse af kul til fremstilling af elektricitet i overensstemmelse med direktiv (EU) 2015/1535. Lovforslaget, som ikke blev anmeldt til Kommissionen i overensstemmelse med artikel 108, stk. 3, TEUF, havde til formål at reducere emissionerne af kuldioxid (CO_2). Lovforslaget gav mulighed for at tildele kompensation for den skade, som påføres et kulkraftværk, der i forhold til andre kraftværker er uforholdsmæssigt påvirket af forbuddet mod anvendelse af kul til fremstillingen af elektricitet.

Efter anmeldelsen af udkastet til loven i medfør af direktiv 2015/1535 indledte Kommissionen på eget initiativ undersøgelsen af oplysningerne vedrørende en formodet støtte. Kommissionen anmodede de nederlandske myndigheder om bestemte oplysninger, hvortil de gentagne gange svarede, at erstatningen fastsat i loven ikke udgjorde statsstøtte som omhandlet i artikel 107, stk. 1, TEUF. Loven blev vedtaget den 11. december 2019 og trådte i kraft den 20. december samme år. På dette tidspunkt fandtes der fem kulkraftværker i Nederlandene.

Eftersom Hemweg 8-værket på grund af sine karakteristika (7) ikke kunne drage fordel af den overgangsperiode på fem til ti år, som de fire øvrige værker var omfattet af, og således var nødt til at lukke ved udgangen af 2019, modtog dets indehaver (Vattenfall) en erstatning på 52,5 mio. EUR fra den nederlandske minister for økonomiske anliggender og klima. Den 12. maj 2020 vedtog Kommissionen sin afgørelse, hvorved den fastslog, at foranstaltningen vedrørende erstatning til Vattenfall for lukningen af Hemweg 8 var forenelig med det indre marked i medfør af artikel 107, stk. 3, litra c), TEUF.

Med hensyn til den mulige forekomst af statsstøtte konkluderede Kommissionen i afgørelsens punkt 48, at »henset til oplysningerne leveret af de nederlandske myndigheder [kunne] det ikke konkluderes med tilstrækkelig sikkerhed, at der

[...] [bestod] en ret til erstatning på et beløb på 52,5 mio. EUR«. Kommissionen udledte heraf, at det ikke kunne udelukkes, at den undersøgte foranstaltning »tildeler den pågældende virksomhed statsstøtte«. Kommissionen fastslog i afgørelsens punkt 49, at det under alle omstændigheder »ikke var [hensigtsmæssigt] at drage en endelig konklusion om, hvorvidt foranstaltningen [indebar] en fordel for operatøren og derfor udgjorde statsstøtte i henhold til artikel 107, stk. 1, i TEUF, da den, selv hvis der var tale om statsstøtte, fandt, at foranstaltningen [var] forenelig med det indre marked.«

Generaladvokat M. Campos Sánchez-Bordonas forslag til afgørelse: På baggrund af det ovenstående foreslår jeg Domstolen:

1. at tage appellen til følge
2. at ophæve Rettens dom af 16. november 2022, Kongeriget Nederlandene mod Kommissionen (T-469/20, EU:T:2022:713)
3. at gøre brug af den beføjelse, der tillægges ved artikel 61 i statutten for Den Europæiske Unions Domstol til at træffe endelig afgørelse i sagen, idet Europa-Kommissionen frifindes i det af Kongeriget Nederlandene anlagte annullationssøgsmål
4. at tilpligte Kongeriget Nederlandene at betale sagens omkostninger.

Læs mere
Dato: 22/02/2024

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

Investigation into suspected anti-competitive conduct by housebuilders.
On 26 February 2024, the CMA launched an investigation under Chapter I of the Competition Act 1998 into suspected breaches of competition law by 8 housebuilders, relating to concerns that they may have exchanged competitively sensitive information.
Læs mere
Dato: 26/02/2024

CMA to scrutinise infant formula market through a market study.
The Competition and Markets Authority (CMA) has today launched a market study into the supply of infant formula in the UK, after publishing its initial findings and committing to look at the sector in further detail in November last year.

By launching a market study, the CMA will now be able to use its compulsory information gathering powers, rather than rely on firms providing information voluntarily. Any recommendations to government resulting from the work will now also have a formal status.

The CMA intends to conduct the market study as swiftly as possible and with the intent of publishing a final report in September 2024. As outlined in the invitation to comment, the CMA's infant formula market study will gather additional evidence on:

- consumer behaviour, the drivers of choice, and the information and advice available to consumers to support their decisions
- the role of the regulatory framework and its enforcement in influencing market outcomes
- the supply-side features of the market (such as barriers to entry and expansion)

Following this, it will consider whether there are problems in the market and, if so, what actions could or should be taken to address these. This could include making recommendations to government – for example, on the regulations governing how infant formula is marketed, or on the information provided to parents to help them choose an infant formula brand.
Læs mere
Dato: 20/02/2024

Report on 2023 stocktaking of BigTech direct financial services provision in the EU – Joint-ESA Report.
In view of the need identified in the CfA response to foster the monitoring of the direct financial services activities of BigTech groups, the EFIF identified as a priority for 2023 the need for an updated stocktake building on the ESAs' previous work.

In particular, consistent with the CfA response, regular EU-wide monitoring is needed to improve supervisory and regulatory visibility over BigTech direct financial services provision in the EU (i.e., situations in which BigTechs have subsidiary companies carrying out regulated financial services in the EU), including any intra-group dependencies. This is to be distinguished from BigTech's indirect, albeit important, role in the EU financial sector as technology providers (e.g., cloud, platform, and artificial intelligence (AI)/ machine learning (ML) applications) which are not explored in this report.
Læs mere
Dato: 01/02/2024

CCPC concludes examination of complaints relating to An Post's provision of in-store Leap Card services.
The Competition and Consumer Protection Commission (CCPC) has concluded an engagement with An Post, the state-owned provider of postal services in Ireland, in relation to the sale and top-up of Leap Cards in retail outlets. Leap Cards are pre-paid travel cards which allow passengers to pay fees on public transport services.

The CCPC conducted an assessment and, based on the information available to it, has found that it is unlikely that there has been a competition law breach in this instance. However, the CCPC engaged with An Post regarding the terms and conditions applied with regards to the payment of a deposit by the retailers to An Post for the use of terminals provided. The CCPC enquired whether An Post's terms and conditions regarding the availability of a deposit waiver are applied in a transparent and consistent manner.

An Post subsequently agreed to the following CCPC recommendations:

1. An Post will review and revise their PostPoint application and terms and conditions documentation to make it clear that retailers may apply for a deposit waiver and explain the criteria considered by An Post in relation to same.
2. An Post will complete this review and ensure resources are available for any potential follow-up requests from retailers for deposit waivers by 15 January 2024.
3. An Post's deposit waiver process will allow for retailers to request a deposit waiver after the payment of a deposit. An Post will process any such request in the same manner as an initial deposit waiver request. Waivers granted will be reviewed on a periodic basis.
4. Retailers may request a second terminal and this request will be assessed based on a business case submitted with the request, which will be primarily linked to the demonstration of high numbers of transactions at one premises necessitating a second terminal. This may be subject to the availability of resources at the time of application.
5. In the event that a retailer's application is rejected (either for a deposit waiver or additional terminal), An Post will communicate the reasons why to the applicant with reference to An Post's assessment criteria.

On the basis of the information available to it, and bearing in mind that An Post has accepted the CCPC's recommendations, the CCPC has completed its assessment and has decided that it will not open an investigation at this time. The CCPC now considers these complaints to be closed.
Læs mere
Dato: 31/01/2024

Daglegvarerapport: Ulik lokal konkurranse.
Det er stor forskjell i daglegvarekjedene sine strategiar for butikketablering. Det viser ei kartlegging Konkurransetilsynet har gjort av den lokale konkurransen i daglegvaremarknaden. Graden av lokal konkurranse er berre noko av det som blir omtalt i tilsynet si ferske daglegvarerapport for 2023.

Konkurransetilsynet si daglegvarerapport skildrar konkurransesituasjonen i den norske daglegvaremarknaden. Det siste året har vore prega av prisauke på matvarer, og tilsynet bruker mykje tid på å kartlegge ulike marknadsforhold og kva dei har å seie for konkurransen.
Læs mere
Dato: 31/01/2024

CMA research report on competition and market power in UK labour market.
New Microeconomics Unit research explores trends in the UK job market including the market power of employers, the impact on wages, the use of restrictive clauses, and recent developments such as hybrid working.
Læs mere
Dato: 25/01/2024

3 | LITTERATUR (DK)

Artikler fra UfR

Intet nyt.

Nye publikationer fra Erhvervsministeriet

Intet nyt.

Artikler fra Juristen

Intet nyt.

Artikler fra Erhvervsjuridisk Tidsskrift

Intet nyt.

Artikler fra Revision og Regnskabsvæsen

Intet nyt.

Artikler fra EU- og Menneskeret

Intet nyt.

Anden dansk og nordisk litteratur

Intet nyt.

4 | LITTERATUR (UK)

Artikler fra European Competition Law Review

Volume 45, issue 3, 2024

The ring of Gyges in EU state aid law: strategic sequencing of state-run interdependent infrastructural and commercial projects to avoid state aid classification. Forfatter: Jakub Kociubiński.
Discusses a potential EU competition law blind spot allowing states to strategically sequence project stages in order to escape state aid controls. Details examples of such conduct, the problems it creates, including distortion of the market economy investor test, and potential solutions.

The significance of advance information copies of European Union merger clearance decisions. Forfatter: Michael Mayr.
Discusses the legal significance of the European Commission supplying advance information copies of its merger control decisions under Regulation 139/2004, highlighting its relevance for notifying the parties of such decisions, and for disapplication of the standstill obligation.

Spain: the new foreign direct investment regulation: a welcome improvement - though gaps remain. Forfatter: Pedro Callol.
Examines key features of Spain's revised legal framework regulating foreign direct investment, including the definitions of "foreign investor" and "sensitive industries", the transactions covered by the screening regime, those excluded, and the scope for judicial review of decisions.

Application of the safe harbour rule to the Chinese legal system. Forfatter: Chenying Zhang.
Examines the implementation of the safe harbour rule into Chinese anti-monopoly legislation. Reviews the institutional origins of the rule, key features of its introduction in China, including the lessons drawn from the EU and US, its current limitations, and how its operation might be improved.

EU's Google AdTech investigation - some preliminary thoughts. Forfatter: Christian Bergqvist, Ph.D.
Reflects on the Commission's ongoing Google AdTech investigation, including the background to the case, the potential conflicts of interest involved in buying and selling online display advertisements, whether a breakup of Google may be required, and the uncertainties over Google's defence.

Abuse of Platform Power - Dr. Friso Bostoen (Publication Review). Forfatter: Christian Bergqvist, Ph.D.
The book is timely, as the matter forms the core tenant of epic cases such as Google Shopping and Google Android and pending investigations regarding Amazon, Facebook, and Apple. The book is relevant, as this begs the question of how much we can rely on art.102 Treaty on the Functioning of the European Union (TFEU) in the context of digital markets. Dr. Bostoen's analysis extends 364 pages over three parts (and 14 Chapters), covering both European (mostly European Union (EU)) and United States (US) practice blended with economic theory.

Austria: anti-competitive practices – investigation. Forfatter: Melanie Gassler-Tischlinger.
Notes an application filed by Austria's Federal Competition Authority for the Cartel Court to impose a fine totalling EUR 1.1 million on Konrad Beyer & Co Spezialbau GmbH and Mandbauer Bau GmbH for alleged anti-competitive practices in the construction industry, including a price fixing cartel.

Austria: competition - unfair trading practices. Forfatter: Georg Huber.
Notes the 16 applications filed by Austria's Federal Competition Authority with the Cartel Court, seeking the imposition of appropriate fines on the supermarket chain MPreis for alleged unfair trading practices associated with the sale of agricultural and food products.

Canada: anti-competitive practices - investigation (Case Comment). Forfatter: Kaeleigh Kuzma.
Notes the Canadian Commissioner of Competition's consent agreement in TicketNetwork Inc, imposing a penalty of CAD 825,000 on a US-based online ticket exchange which lacks a physical presence in Canada, and addressing concerns over advertising methods involving restrictive business practices.

Canada: competition - legislation (Legislative Comment). Forfatter: Kaeleigh Kuzma.
Notes 2023 amendments to Canada's Competition Act, including the creation of a market study power on public interest grounds, revisions to the current abuse of dominance regime, and expansion of the existing competitor collaboration provisions. Details the commencement dates of the reforms.

Denmark: anti-competitive practices - judgment (Case Comment). Forfatter: Jens Munk Plum.
Notes the Danish Maritime and Commercial High Court ruling in Onskeborn v Danish Competition Council on whether evidence obtained during a dawn raid to investigate vertical agreements could be used in a competition infringement finding concerning horizontal agreements on price co-ordination.

Denmark: anti-competitive practices - judgment (Case Comment). Forfatter: Jens Munk Plum.
Notes a Danish Competition Appeal Tribunal ruling on whether an agreement between members of the Boligtextilbranchens Indkobsservice AMBA purchasing service chain in the home textiles industry, preventing members from advertising in one another's territory, was an anti-competitive practice.

Estonia: anti-competitive practices - investigation (Case Comment). Forfatter: Triinu Järviste,
Notes the Estonian Competition Authority ruling in Unifiedpost AS / AS Eesti Post on whether the dominant undertaking in the Estonian postal sector unfairly distorted prices in the procurement procedures for e-invoice and paper invoice services.

European Union: anti-competitive practices - judgment (Case Comment). Forfatter: Bruce Wardhaugh.
Notes EDP v Autoridade da Concorrencia (C-331/21) (ECJ) on whether a cross-discount scheme providing price reductions in Portugal's low voltage electricity supply market involved anti-competitive practices, including ancillary restraints and non-competition covenants.

European Union: anti-competitive practices - judgment (Case Comment). Forfatter: Pedro Callol.
Notes European Superleague Co SL v Union of European Football Associations (UEFA) (C-333/21) (ECJ) on issues including whether a refusal by the governing bodies of international football to allow the formation of a proposed European Super League of major clubs amounted to anti-competitive practices.

Finland: competition – legislation. Forfatter: Maarit Taurula.
Notes additional powers conferred on the Finnish Competition and Consumer Authority following implementation of Regulation 2022/2560 (Foreign Subsidies Regulation), including the ability to receive information from other national competition authorities despite confidentiality provisions.

Finland: mergers - merger control (Case Comment). Forfatter: Maarit Taurula.
Notes the Finnish Competition and Consumer Authority ruling in Valio Oy / Heinon Tukku Oy proposing a fine of EUR 900,000 be imposed by the Market Court on a dairy and food company for breaching a data confidentiality condition attached to its merger with a food service wholesaler.

France: anti-competitive practices – investigation. Forfatter: Emmanuel Reille.
Notes the statement of objections issued by the French Competition Authority to companies in the technology consulting, engineering and IT services sectors, relating to alleged anti-competitive practices in the employment market, involving "no-poaching" agreements.

France: anti-competitive practices - infringement (Case Comment). Forfatter: Emmanuel Reille.
Highlights the French Competition Authority ruling in Mariage Freres Group, imposing a EUR 4 million fine on a premium tea manufacturer for anti-competitive practices involving distribution agreements which imposed an online sales ban on their distributors. Notes the duration of the conduct.

Poland: anti-competitive practices – investigation. Forfatter: Prof. Agata Jurkowska-Gomułka.
Notes the November 2023 closure of preliminary proceedings by the Polish Office for Competition and Consumer Protection investigating an alleged anti-competitive purchasing agreement by an association of radio stations, and its finding that no competition law investigation was required.

Portugal: anti-competitive practices – investigation. Forfatter: Rita Prates.
Notes the Portuguese Competition Authority's ongoing investigation into allegations of price fixing by companies in the audiovisual services sector. Details key features of the alleged conduct, its potentially anti-competitive effects, and the Authority's publication of a statement of objections.

Portugal: competition - legislation (Legislative Comment). Forfatter: Rita Prates.
Notes the passage of Portuguese legislation implementing the provisions of Directive 2020/1828 into national law and establishing a special national representative action scheme for the defence of consumers' collective interests. Details key features of the scheme, its scope and potential impact.

Portugal: mergers - judgment (Case Comment). Forfatter: Rita Prates.
Notes the ruling of the Portuguese Competition, Regulation and Supervision Court in Santa Casa da Misericordia de Lisboa, reducing the EUR 2.5 million fine imposed by the Portuguese Competition Authority on a hospital management company for gun-jumping in a merger transaction to EUR 160,000.

Romania: anti-competitive practices – investigation. Forfatter: Cristina de Jonge.
Notes the dawn raids conducted by the Romanian Competition Council on companies in the ENEL Group, as part of its ongoing investigation into alleged abuses of a dominant position in the electricity distribution sector. Details the background to the investigation, and its wider context.

South Africa: anti-competitive practices - restrictive business practices. Forfatter: Wade Graaff.
Notes the rise in applications for interim relief in respect of alleged anti-competitive practices under South Africa's Competition Act 1998 s.49C, pending completion of investigations by the South African Competition Commission, the key factors when considering applications, and relevant case law.

Sweden: foreign direct investment - legislation (Legislative Comment). Forfatter: Stefan Perván Lindeborg.
Notes the passage of Sweden's Foreign Direct Investment Screening Act 2023 and summarises its key features, including the range of activities deemed worthy of protection, and the type of investments that may be harmful to national security. Considers the Act's potential impact on investors.

Sweden: mergers - merger control (Case Comment). Forfatter: Stefan Perván Lindeborg.
Notes the Swedish Competition Authority ruling in REMONDIS Maintenance & Services International GmbH / Delete Group Oyj, unconditionally clearing a merger in the industrial cleaning services sector following a Phase 2 investigation. Details the assessment of the potential effects of the transaction.

Artikler fra European Competition Journal

Intet nyt.

Artikler fra Journal of Competition Law and Economics

Intet nyt.

Artikler fra Journal of Antitrust Enforcement

Volume 12, issue 1, March 2024

Spamming the regulator: exploring a new lobbying strategy in EU competition procedures. Forfattere: Marlene Jugl and others.
Regulation plays a central role in modern governance; yet, we have limited knowledge of how subjects of regulation—particularly, private actors—act in the face of potentially adverse regulatory decisions. Here, we document and examine a novel lobbying strategy in the context of competition regulation, a strategy that exploits the regulator's finite administrative capacities. Companies with merger cases under scrutiny by the European Commission's Directorate General for Competition appear to be employing a strategy of 'spamming the regulator,' through the strategic and cumulative submission of economic expert assessments. Procedural pressures may result in an undeservedly favourable assessment of the merger. Based on quantitative and qualitative analyses of an original dataset of all complex merger cases in the European Union 2005–2020, we present evidence of this new strategy and a possible learning process among private actors. We suggest remedies to ensure regulatory effectiveness in the face of this novel strategy.

The antitrust victims of monopsony. Forfattere: Brianna L Alderman and Roger D Blair.
The exercise of unlawful monopsony power by buyer cartels depresses both the price paid and the quantity purchased. Consequently, producer surplus and social welfare decline from competitive levels. There are six classes of antitrust victims, but only one has standing to sue for antitrust damages in the United States. The other five are neglected. We identify the neglected victims in this article. We also suggest some ways to expand the protection offered by section 4 of the Clayton Act.

Article 3 of Regulation 1/2003: a historical and empirical account of an unworkable compromise. Forfattere: Or Brook and Magali Eben.
Combining historical, conceptual, and empirical approaches, this article studies one of the most fundamental, yet underexplored, questions surrounding Regulation 1/2003: What limits European Union (EU) competition law places on the adoption and application of national competition and other laws? The relationship between EU competition and national laws was supposedly settled with the adoption of Regulation 1/2003. There are two exceptions to the rule in Article 3(1), under which national competition authorities and courts must apply EU competition law when applying their national competition laws, with primacy for EU provisions: Article 3(2) leaves room for 'stricter' national competition rules on unilateral conduct, and Article 3(3) for national rules pursuing a 'predominantly different objective'. The solution offered by Article 3 is not workable. Through a historical study of the political discussions preceding Article 3's adoption, a conceptual analysis of potential interpretations, and a systematic content analysis of French and German practice, this article reveals the lack of a dividing line between the notions of national competition laws and other laws. It calls for reform of Article 3 to ensure that conduct that should be governed by EU law is not assessed under national rules and standards that differ from one Member State to another.

EU antitrust in support of the Green Deal. Why better is not good enough. Forfatter: Edith Loozen.
The European Union (EU) Commission proposes to 'green up' its enforcement of Article 101(3) TFEU to allow producers to collectively overcome so-called first mover disadvantages that would result from inefficient market regulation. The Commission's reboot focuses on the last three exemption conditions. First, the consumer benefit condition is customized to use collective consumer benefits to determine whether consumers receive a 'fair share' of the benefits established under the efficiency condition. Here, the Commission bypasses the Dutch proposition to also take account of non-consumer benefits when investigating whether consumers are compensated for anticompetitive harm. Second, the indispensability condition is tasked to filter out greenwashing. Third, the residual competition condition is trusted to allow private collective action insofar it does not eliminate competition on price and/or innovation. Discussing both EU and Dutch proposals, this article finds that greening up Article 101(3) brings competition policy outside the limiting principles that define objective and effective competition enforcement in terms of voluntary exchange.

Supranational or cooperative? Rethinking the African Continental Free Trade Area Agreement Competition Protocol institutional design. Forfatter: Vellah Kedogo Kigwiru.
African countries are currently negotiating the African Continental Free Trade Area (AfCFTA) Competition Protocol (CP) to regulate competition in the created continental market. However, the most daunting task for the negotiators and African countries is which institutional design to adopt at the continental level, pitying against a supranational or cooperative institutional model. Drawing from a dearth of literature on institutional designs, I propose two factors that African countries should consider when deciding on the most appropriate institutional design for the AfCFTA CP. First are the benefits and costs of each institution design building on the experiences of existing regional competition regimes. Second is the institutional context in which the AfCFTA Continental Competition Regime (CCR) will be established, which constitutes African countries' attitudes towards supranational institutions, preference heterogeneity, and power distributions. The findings of this article show that African countries should establish a less ambitious institution design that will attract business and political acceptance.

Gatekeeper's potential privilege—the need to limit DMA centralization. Forfattere: Jörg Hoffmann and others.
The Digital Markets Act (DMA) aims at promoting contestable and fair markets for core platform services by setting out obligations for designated gatekeepers. As the DMA does not clearly define these objectives, it comes into conflict with national legislation with overlapping objectives. This may include unfair competition laws and sector-specific regulation. Article 1(5) DMA addresses this conflict by stipulating that Member States may not impose further obligations on gatekeepers for the purpose of ensuring contestable and fair markets. The effect this has is that national provisions vis-à-vis gatekeepers may not be applicable anymore, and competences are centralized on the European level more broadly than potentially envisaged by the European legislature. This centralization of competences runs the risk of inadvertently privileging gatekeepers by blocking national laws that are, however, still applicable to small and medium-sized enterprises (SMEs) and other firms competing with gatekeepers. This article suggests solutions to mitigate such a risk.

Competition enforcement versus regulation as market-opening tools: an application to banking and payment systems. Forfatter: Jens-Uwe Franck.
This article analyses three routes for the formation of market-opening rules: competition enforcement, legislative rulemaking, and market investigation. Using examples and case studies related to facilitating market access in banking and payment systems, we illustrate essential features and limitations of the different modes of rulemaking. The interrelation between them is explored, emphasizing the merits of having them available in parallel.

Artikler fra Journal of European Competition Law and Practice

Intet nyt.

Artikler fra World Competition

Volume 47, issue 1, 2024

Editorial: Interview with Ms Cani Fernández, Chairwoman of the Spanish Comisión Nacional de los Mercados y la Competencia (CNMC). Forfatter: José Rivas.

EU Merger Control after the Grand Chamber's judgment in Commission V. CK Telecoms Investments. Forfatter: Giorgio Monti.
The Grand Chamber set aside the judgment of the General Court in CK Telecoms having found eight errors in law. This paper dissects the judgment of the Grand Chamber to illustrate and explain the differences between the two judgments as well as the significance of these differences. The Grand Chamber clarifies the standard of proof and confirms that the

analysis of unilateral effects in oligopoly markets requires a holistic analysis of a number of factors none of which is decisive. While it ratifies the analytical stance of the Commission this does not necessarily indicate that the Commission will prevail as the appeal is heard again at the General Court. Furthermore, the judgment as well as the new techniques used by the Commission suggest that a review of the Horizontal Merger Guidelines is much needed More generally, the clash between the two courts reveals a fundamental difference between judges in the two courts about the role of EU competition law.

Exclusion of Bidders in Spain: Analysing Challenges Posed by National Competition Law. Forfatter: Ignacio Fornaris Valls.
This paper examines the Spanish Competition Authority's (CNMC) most ground-breaking implementation of the bidder exclusion for competition infringement since March 2019. Through an analysis of key case-law and regulations, we explore the CNMC's traditional approach to debarment decisions and its subsequent reconsideration following influential judgments from the High Court of Justice of Catalonia. This study sheds light on the evolving landscape of the bidder exclusion, and provides valuable insights into its legal nature, application procedure, and potential effects on fostering fair and transparent competition in Spain.

The Great Saga of Collective Redress in EU Competition Law: All Cry and No Wool? Forfatter: Ana Vlahek.
The paper presents the evolution of attempts at regulating antitrust collective redress in Europe, and the omission of listing competition law infringements in the annex to Directive 2020/1828 on consumer collective actions and thus from its scope of application. It attempts to understand why the non-availability of antitrust collective actions is the result of the long-lasting drafting processes on the EU level that typically covered competition law, taking into account that the collective redress mechanism is the only real option for consumer private enforcement of antitrust. It calls for the European Commission, the European legislator and the Member States to finally regulate collective actions in the field of competition law as otherwise access to justice for victims of antitrust breaches is not guaranteed.

Assignment and Bundling of Antitrust Claims as an Alternative to Collective Consumer Compensatory Redress in Croatia. Forfatter: Vlatka Butorac Malnar.
Over the last decade, there has been a proliferation of mass antitrust damages cases before national courts of Member States. The procedural landscape varies very much, however, a number of MS have some form of compensatory and/or injunctive collective tool for consumers and other categories of victims from antitrust violations. Croatia has no such system in place, so the purpose of this article is to analyse the potential and limits of assignment and bundling of claims as an alternative to a full-fledged collective compensatory redress mechanism. The paper identifies advantages and possible disadvantages and limitations of this tool. The author argues, that while the general rules of contract law offer wide discretion and possibilities to organize a 'collective' action for damages though mass assignment, it falls short of consumer protection measures.

Public Compensation for Private Harm: Fair Funds for Consumer Competition Law Redress. Forfatter: Lena Hornkohl.
This paper discusses the use of the concept of Fair Funds for consumer competition law enforcement from an EU perspective. With such Fair Funds, the US Securities and Exchange Commission distributes collected fines and disgorged profits to compensate victims of securities law violations. The paper explains the use of Fair Funds in US law, highlights similarities, and adapts the concept for use in European competition law enforcement. It places an emphasis on the usefulness of such a concept against the role of consumers, but the conclusions can equally be drawn for small and medium enterprises' private enforcement or private enforcement of competition law in general. It shows the advantages and disadvantages of including a system of Fair Funds. The paper argues that Fair Funds can serve as an alternative form of compensation, particularly for large groups of individual victims harmed in a small amount, such as consumers, with that overcome the lack of a harmonized collective redress system on EU level, and improve the coordination between public and private enforcement.

Quantification of Harm in EU Consumer Antitrust Actions for Damages. Forfatter: Mariya Serafimova.
This paper analyses the development of private actions for damages as a significant pillar of private enforcement of EU competition law and discusses the quantification and estimation of harm. Since the adoption of the EU Directive 2014/104/EU on Antitrust Damages Actions, private enforcement in Europe has undergone crucial clarifications in the case law of EU courts, yet the critical issue of quantifying damages in private actions has only recently been addressed by the Court of Justice of the European Union (CJEU). This paper takes a closer look at the recent ruling in the Tráficos Manuel Ferrer case (C-312/21) and assesses the implications of that case law for private enforcement proceedings. Concerning the allocation of procedural costs, this judgment has established that injured parties may be required to bear a cost risk, even if they are partially successful. This finding needs further reflection in the context of consumer claims for damages, as it is susceptible to add an additional cost burden on plaintiffs. The second intricate finding concerns the

relation between the ability of national courts to estimate damages and the exhaustion of evidence disclosure. Taking the example of Spain, the paper advocates for the specific inclusion of the principle of proportionality when determining harm in private actions for damages and especially in cases involving consumers or smaller harmed parties.

The Issue of Consumer Compensation Before Antitrust Authorities: Commitments, Cooperation and Competence: The Hungarian Experience. Forfattere: Zoltán Marosi og Barnabás Gergely.
The compensation of consumers for damages stemming from a breach of EU competition law rules has been in the forefront of discussions in the last years. A recent important aspect of the debate is whether a mixing of public and private enforcement efforts could enhance the effectiveness of consumer compensation. In Hungary, consumer compensation for breach of another field of EU law (unfair commercial practices) has been championed by a public authority, the Hungarian Competition Authority, which has achieved significant results to the direct benefit of consumers in this respect. This paper reviews the authority's recent practices, key decisions and main achievements in this area (including some earlier cases concerning antitrust) and then provides a detailed assessment of the corresponding advantages and disadvantages. The authors argue that some key achievements in Hungary in this respect are very well suited for further use in the development of consumer compensation in the field of antitrust law on both an EU and national level.

Case Law: Consumer Antitrust Private Enforcement in Europe: Symposium Introduction. Forfatter: Spencer Weber Waller

Artikler fra Antitrust Law Journal

Intet nyt.

Artikler fra Antitrust Bulletin

Intet nyt.

Artikler fra Competition Law and Policy Debate

Intet nyt.

Artikler fra Competition Law Scholars Forum

Intet nyt.

Artikler fra Journal of Regulatory Economics

Intet nyt.

Artikler fra International Review of Law and Economics

Intet nyt.

Artikler fra Competition Law Journal

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

Volume 30, issue 2, 2024

Testing the boundaries of legal liability in the usage of artificial intelligence: a domestic and international approach; and debate on "personhood" for AI and robots by EU et al. Forfatter: Tochukwu Onyiuke, SAN.
Discusses issues of legal liability raised by the increasing abilities of artificial intelligence, EU controversy about the potential recognition of legal personality, and comparing the laws of the UK and Nigeria on product liability and vicarious liability.

Artikler fra Global Competition Litigation Review

Intet nyt.

Andre udenlandske artikler

Intet nyt.

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EU's Google AdTech investigation - some preliminary thoughts. Forfatter: Christian Bergqvist, Ph.D. E.C.L.R. 2024, 45(3), 124-127.
Reflects on the Commission's ongoing Google AdTech investigation, including the background to the case, the potential conflicts of interest involved in buying and selling online display advertisements, whether a breakup of Google may be required, and the uncertainties over Google's defence.

Abuse of Platform Power - Dr. Friso Bostoen (Publication Review). Forfatter: Christian Bergqvist, Ph.D. E.C.L.R. 2024, 45(3), 128-129.
The book is timely, as the matter forms the core tenant of epic cases such as Google Shopping and Google Android and pending investigations regarding Amazon, Facebook, and Apple. The book is relevant, as this begs the question of how much we can rely on art.102 Treaty on the Functioning of the European Union (TFEU) in the context of digital markets. Dr. Bostoen's analysis extends 364 pages over three parts (and 14 Chapters), covering both European (mostly European Union (EU)) and United States (US) practice blended with economic theory.