Konkurrenceretlig Nyhedsoversigt nr. 91 / dækkende 18. april 2024 – 15. maj 2024

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- Competition Law & Policy Debate
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- Journal of Regulatory Economics
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1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Godkendelse på baggrund af en forenklet sagsbehandling af I/S Vestforbrændings erhvervelse af enekontrol over Farum Fjernvarme A.M.B.A.
Transaktionen indebærer, at Vestforbrænding erhverver 100 pct. af aktiverne i Farum Fjernvarme. Vestforbrænding erhverver dermed enekontrol over Farum Fjernvarme.
Læs mere
Dato: 23/04/2024

Nyt fra Konkurrencerådet

Kingspan Insulation ApS' erhvervelse af enekontrol over TreeTops Holding ApS.
Konkurrencerådet har godkendt, at Kingspan overtager TreeTops Holding ApS. Godkendelsen sker, efter at Kingspan har afgivet bindende tilsagn om at frasælge TreeTops' forretning med træbetonplader til lofter. Kingspan ejer i forvejen Troldtekt, som har en stor markedsandel inden for salg af loftplader af træbeton. Konkurrencerådet har haft konkurrencemæssige betænkeligheder ved, om fusionen uden tilsagnet ville medføre prisstigninger og begrænse udvalget af produkter på netop dette marked.

I forbindelse med godkendelsen af fusionen har Konkurrencerådet godkendt Depo Holding som køber af den frasolgte forretning. Depo Holding drives af en tidligere medejer af TreeTops. De aktiviteter, som Depo Holding overtager, omfatter blandt andet leverandør- og kundeaftaler og retten til at bruge brandet FibroTech til træbetonplader til lofter i ti år.

Kingspan er et datterselskab af Kingspan Group, som har verdensomspændende aktiviteter inden for produkter til byggebranchen. Kingspan Group producerer primært isolerede paneler, isoleringsplader, loftsplader (herunder af træbeton), lys- og luftløsninger, vand- og energiteknologi, data- og gulvteknologi samt tag- og vandtætningsløsninger.

TreeTops er et dansk selskab, som sælger træbetonplader til lofter, træpaneler til vægbeklædning, profiler til nedsænkede lofter, komposit hegnspaneler og komposit terrassebrædder. TreeTops markedsfører sine produkter under brandnavnene FibroTech og Kirkedal.
Læs mere
Dato: 24/04/2024

Nyt fra Konkurrenceankenævnet

Kendelse af 19. april 2024 - [Virksomhed X] mod Konkurrence- og Forbrugerstyrelsen (aktindsigt).
På baggrund af to henvendelser i henholdsvis november 2022 og januar 2023 besluttede Konkurrence- og Forbrugerstyrelsen i april 2023 at gennemføre kontrolundersøgelser i branchen for energiproduktion, herunder hos bl.a. enkeltmandsvirksomheden [Virksomhed X].

Kontrolundersøgelsen hos [Virksomhed X] blev gennemført den 26. april 2023. Virksomheden søgte under kontrolundersøgelsen om aktindsigt i kontrolundersøgelsessagen. Den 2. og 3. maj 2023 traf styrelsen delafgørelser om [Virksomhed X's] ret til aktindsigt i kontrolundersøgelsessagen.

I slutningen af juni 2023 blev styrelsen opmærksom på, at en senere henvendelse ikke var blevet journaliseret på kontrolundersøgelsessagen. Umiddelbart herefter blev henvendelsen journaliseret som akt nr. 17 i kontrolundersøgelsessagen, og styrelsen iværksatte den 22. juni 2023 en høring af kilden til henvendelsen. Konkurrence- og Forbrugerstyrelsen oplyste den 13. juli 2023 [Virksomhed X] om, at henvendelsen ikke var blevet journaliseret på kontrolundersøgelsessagen.

Den 11. august 2023 traf styrelsen afgørelse om delvis aktindsigt i akt nr. 17.

[Virksomhed X] klagede den 6. september 2023 til Konkurrenceankenævnet over Konkurrence- og Forbrugerstyrelsens afgørelse af 11. august 2023 om delvis aktindsigt i akt nr. 17. Den 7. september 2023 fastholdt Konkurrence- og Forbrugerstyrelsen afgørelsen om delvis aktindsigt i akt nr. 17.

I pådømmelsen har deltaget fire nævnsmedlemmer, jf. bekendtgørelse om Konkurrenceankenævnet (bekendtgørelse nr. 496 af 17. marts 2021) § 2, stk. 4.

Konkurrenceankenævnet har stadfæstet Konkurrence- og Forbrugerstyrelsens afgørelse af 11. august 2023.
Læs mere
Dato: 19/04/2024

Kendelse af 19. april 2024 - [Virksomhed Y] mod Konkurrence- og Forbrugerstyrelsen (aktindsigt).
På baggrund af to henvendelser i henholdsvis november 2022 og januar 2023 besluttede Konkurrence- og Forbrugerstyrelsen i april 2023 at gennemføre kontrolundersøgelser i branchen for energiproduktion, herunder hos bl.a. [Virksomhed Y].

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Konkurrenceankenævnet har stadfæstet Konkurrence- og Forbrugerstyrelsens afgørelse af 11. august 2023.
Læs mere
Dato: 19/04/2024

Nyt fra domstolene

Civilretlige afgørelser

Intet nyt.

Straffesager

Clear Channel bødevedtagelse - seks millioner kroner – priskoordinering.
Clear Channel Danmark har erkendt at have overtrådt konkurrenceloven og har accepteret at betale en bøde på seks millioner kroner. Det er National enhed for Særlig Kriminalitet (NSK), som har stået for sagens strafferetlige forløb, efter Konkurrencerådet anmeldte virksomheden til politiet.

I december 2018 afgjorde Konkurrencerådet, at Clear Channel Danmark og en konkurrent havde overtrådt konkurrenceloven ved at indgå ulovlige aftaler og samordne deres praksis om fælles rabatsatser for salg af reklameplads i outdoor-medier. De to medieudbydere sælger eksempelvis reklameplads på såkaldte billboards og reklamestandere ved busstoppesteder, butikscentre, tog og lufthavne.

Sagen vedrører to perioder. I den første periode fra 5. september 2008 til 31. december 2010 havde Clear Channel Danmark indgået skriftlige aftaler med en konkurrent om fælles rabatsatser for medieprovision, sikkerhedsstillelse, informationsgodtgørelse og kontantrabat. I den anden periode fra 1. januar 2011 til 21. april 2015 fortsatte de to virksomheder med at anvende de tidligere aftalte rabatsatser, uden at der efter 2010 var bevis for en skriftlig aftale.

Ved fastsættelsen af bødens størrelse er der lagt vægt på overtrædelsens grovhed (herunder, at der som minimum er tale om en alvorlig overtrædelse af konkurrenceloven) overtrædelsens varighed og virksomhedens globale koncernomsætning. Det har været en formildende omstændighed, at Clear Channel Danmark igennem hele sagens forløb har erkendt overtrædelsen i den første periode og nu tillige erkender overtrædelsen i den anden periode. Konkurrenceankenævnet stadfæstede i 2019 Konkurrencerådets afgørelse, hvorefter sagen blev anket til Sø- og Handelsretten. Sø- og Handelsretten afgjorde, at de to konkurrenter kun havde overtrådt konkurrencereglerne i perioden, hvor der forelå skriftlige aftaler. Herefter ankede Konkurrencerådet Sø- og Handelsrettens dom over virksomhederne til Østre Landsret, som dømte i overensstemmelse med Konkurrencerådets og Konkurrenceankenævnets oprindelige afgørelser.

Den strafferetlige del af sagen mod Clear Channel Danmarks konkurrent verserer fortsat.
Læs mere
Dato: 16/04/2024

Lovforslag i høring

Intet nyt.

Ny lovgivning

Intet nyt.

Nyt fra Ankestyrelsen

Intet nyt.

Andet

Intet nyt.

2 | EUROPÆISK OG INTERNATIONAL RET

Nyt fra Kommissionen

Antitrust & Cartels

Commission seeks feedback on commitments offered by Vifor over possible anticompetitive disparagement of iron medicine.
The European Commission invites comments on commitments offered by Vifor to address competition concerns over the alleged disparagement of its closest - and potentially only – competing treatment in Europe for intravenous iron treatment, Pharmacosmos' Monofer.

Following the opening of a formal investigation in June 2022, the Commission preliminarily found that Vifor is dominant in several national markets for the provision of intravenous iron medicines, namely in Austria, Finland, Germany, Ireland, Portugal, Romania, Spain, Sweden and The Netherlands.

The Commission is concerned that Vifor may have restricted competition in the market for intravenous iron treatment by illegally disparaging Monofer, an iron deficiency treatment by its closest competitor in Europe, Pharmacosmos.

The Commission has indications that for many years, Vifor may have disseminated potentially misleading information regarding Monofer's safety, primarily targeting healthcare professionals, which may have unduly hindered Monofer's uptake in the European Economic Area ('EEA'). Vifor's conduct appears to be aimed at hindering competition against its own blockbuster high-dose intravenous iron treatment medicine, Ferinject.

The Commission's preliminary view is that Vifor's conduct may restrict competition in the market for intravenous iron treatment and amount to an abuse of dominant position, in breach of Article 102 of the Treaty on the Functioning of the European Union.
Læs mere
Dato: 19/04/2024

Mergers

Commission sends Statement of Objections over proposed acquisition of Air Europa by IAG.
The European Commission has informed International Consolidated Airlines Group, S.A. ('IAG') of the Commission's preliminary view that IAG's proposed acquisition of sole control of Air Europa Holding, S.L. ('Air Europa') may restrict competition in the market for passenger air transport services, in particular for routes within, to and from Spain. The Commission is concerned that customers may face increased prices and/or decreased quality of services after the transaction.
Læs mere
Dato: 26/04/2024

State Aid

Commission adopts limited prolongation of State aid crisis tools to further support agriculture and fisheries sectors.
The European Commission has adopted an amendment to the State aid Temporary Crisis and Transition Framework (TCTF) to prolong by six months certain provisions of the Framework aimed to address persisting market disturbances specifically in the agriculture and fisheries sectors.

On 11 April 2024, the Commission consulted Member States on the persistence of a serious disturbance of the economy affecting in particular the primary agricultural, fisheries and aquaculture sectors. The Commission has also taken note of the European Council's conclusions of 17 and 18 April 2024 on the importance of a resilient and sustainable agricultural sector for food security and the EU's strategic autonomy, and its encouragement to pursue the work on a possible extension of the TCTF.

Against this background, the Commission has decided to adopt a limited prolongation of section 2.1 of the TCTF for the primary agricultural sector, as well as the fisheries and aquaculture sectors. This decision to delay the phase-out of the TCTF allows Member States to provide limited amounts of aid to companies active in these sectors for further six months, until 31 December 2024. It will give Member States more time to implement support measures, if needed.

The prolongation does not include an increase of the ceilings set out for the limited amounts of aid. Member States will therefore continue to be able to provide companies affected by the crisis or by the subsequent sanctions and countersanctions, including by Russia, up to €280,000 for the agricultural sector and up to €335,000 for the fisheries and aquaculture sectors.
Læs mere
Dato: 02/05/2024

Commission approves State aid to support construction of nuclear power plant in Czechia.
The European Commission has approved, under EU State aid rules, a Czech support measure for the construction and operation of a new nuclear power plant in Dukovany in Czechia.
Læs mere
Dato: 30/04/2024

Commission approves €95.3 million Romanian restructuring State aid for airline TAROM.
The European Commission has approved, under EU State aid rules, Romania's plans to grant the Romanian state-owned flag carrier TAROM restructuring aid for up to €95.3 million (RON 473.69 million). The measure will enable the company to restore its long-term viability while minimising competition distortions.
Læs mere
Dato: 29/04/2024

Commission approves €300 million French State aid measure to support Nuward in researching and developing small modular nuclear reactors.
The European Commission has approved, under EU State aid rules, a €300 million French measure to support Electricité de France's (EDF) subsidiary Nuward in researching and developing small modular nuclear reactors ('SMRs'). The measure will contribute to the achievement of the strategic objectives of the European industrial strategy and the European Green Deal.
Læs mere
Dato: 26/04/2024

Andet

Commission launches Whistleblower Tools for Digital Services Act and Digital Markets Act.
The European Commission has launched two whistleblower tools for the Digital Services Act (DSA) and Digital Markets Act (DMA). The tools will make it possible for individuals to provide, without fear of reprisals, information allowing to identify and uncover harmful practices of Very Large Online Platforms (VLOPs) or Search Engines (VLOSEs) designated under the DSA, or any violations of the obligations of gatekeepers under the DMA.
Læs mere
Dato: 30/04/2024

Commission designates Apple's iPadOS under the Digital Markets Act.
The European Commission has today designated Apple with respect to iPadOS, its operating system for tablets, as a gatekeeper under the DMA.

On 5 September 2023, the Commission designated Apple as a gatekeeper for its operating system iOS, its browser Safari and its App Store.

On the same day, the Commission opened a market investigation to assess whether Apple's iPadOS, despite not meeting the quantitative thresholds laid down in the DMA, constitutes an important gateway for business users to reach end users and therefore should be designated as a gatekeeper.

On the basis of the findings of the investigation, the Commission concluded that iPadOS constitutes an important gateway for business users to reach end users, and that Apple enjoys an entrenched and durable position with respect to iPadOS.

Apple has now six months to ensure full compliance with the DMA obligations as applied to iPadOS.
Læs mere
Dato: 29/04/2024

Nyt fra EU-domstolen

Domme

C-605/21 – Heureka Group (Comparateurs de prix en ligne).
Nøgleord: Præjudiciel forelæggelse – artikel 102 TEUF – effektivitetsprincippet – søgsmål i henhold til national ret angående erstatning for overtrædelser af konkurrenceretlige bestemmelser – direktiv 2014/104/EU – for sen gennemførelse af direktivet – tidsmæssig anvendelse – artikel 10 – forældelsesfrist – nærmere regler om begyndelsestidspunktet – overtrædelsens ophør – kendskab til de oplysninger, der er nødvendige for at anlægge erstatningssøgsmål – offentliggørelse i Den Europæiske Unions Tidende af resuméet af Europa-Kommissionens afgørelse, hvorved overtrædelsen af konkurrencereglerne fastslås – bindende virkning af en kommissionsafgørelse, der endnu ikke er endelig – suspension eller afbrydelse af forældelsesfristen, så længe Kommissionens undersøgelse varer ved, eller indtil den dato, hvor Kommissionens afgørelse bliver endelig.

Sagen:
Anmodningen om præjudiciel afgørelse vedrører fortolkningen af artikel 102 TEUF, artikel 10, artikel 21, stk. 1, og artikel 22 i Europa-Parlamentets og Rådets direktiv 2014/104/EU af 26. november 2014 om visse regler for søgsmål i henhold til national ret angående erstatning for overtrædelser af bestemmelser i medlemsstaternes og Den Europæiske Unions konkurrenceret (EUT 2014, L 349, s. 1) samt af effektivitetsprincippet.

Anmodningen er blevet indgivet i forbindelse med en tvist mellem på den ene side Heureka Group a.s. (herefter »Heureka«), som er et tjekkisk selskab, der er aktivt på markedet for prissammenligningstjenester, og på den anden side Google LLC vedrørende erstatning for den skade, der angiveligt er lidt som følge af en overtrædelse af artikel 102 TEUF begået af Google og dets moderselskab, Alphabet Inc., og som Europa-Kommissionen har fastslået i en afgørelse, der endnu ikke er endelig.

Dom:
Artikel 10 i Europa-Parlamentets og Rådets direktiv 2014/104/EU af 26. november 2014 om visse regler for søgsmål i henhold til national ret angående erstatning for overtrædelser af bestemmelser i medlemsstaternes og Den Europæiske Unions konkurrenceret samt artikel 102 TEUF og effektivitetsprincippet skal fortolkes således, at de er til hinder for en national lovgivning som fortolket af de kompetente nationale domstole, der fastsætter en forældelsesfrist på tre år, der finder anvendelse på erstatningssøgsmål for vedvarende overtrædelser af EU-konkurrenceretten, som

- uafhængigt og særskilt for hver delskade, der følger af en sådan overtrædelse, begynder at løbe fra det tidspunkt, hvor den skadelidte person fik kendskab til eller med rimelighed kan anses for at have fået kendskab til den omstændighed, at vedkommende har lidt en sådan delskade, og til identiteten af den person, der er forpligtet til at erstatte skaden, uden at skadelidte har fået kendskab til den omstændighed, at den pågældende adfærd udgør en overtrædelse af konkurrencereglerne, og uden at denne overtrædelse er ophørt, og
- hverken kan suspenderes eller afbrydes under Europa-Kommissionens undersøgelse af en sådan overtrædelse.

Desuden er artikel 10 i direktiv 2014/104 ligeledes til hinder for en sådan lovgivning, for så vidt som den ikke foreskriver, at forældelsesfristen suspenderes indtil et år efter den dato, hvor den afgørelse, der fastslår denne overtrædelse, er blevet endelig.
Læs mere
Dato: 18/04/2024

T-28/22 – Ryanair mod Kommissionen (Condor ; aide à la restructuration).
Nøgleord: Statsstøtte – det tyske marked for lufttransport – omstruktureringsstøtte ydet af Tyskland til fordel for et luftfartsselskab – ændring af vilkårene for de lån, som Tyskland har ydet, og delvis gældsafskrivning – afgørelse om ikke at gøre indsigelse – annullationssøgsmål – søgsmålskompetence – formaliteten – sikring af proceduremæssige rettigheder – alvorlige vanskeligheder – artikel 107, stk. 3, litra c), TEUF – punkt 67 i rammebestemmelserne for statsstøtte til redning og omstrukturering af kriseramte ikke-finansielle virksomheder – byrdefordeling.

Sagen:
Med søgsmål anlagt i henhold til artikel 263 TEUF har sagsøgeren nedlagt påstand om annullation af Kommissionens afgørelse C(2021) 5729 final af 26. juli 2021 om statsstøtte SA.63203 (2021/N) – Tyskland – omstruktureringsstøtte til Condor.

Kommissionen godkendte ved den anfægtede afgørelse på grundlag af artikel 107, stk. 3, litra c), TEUF og rammebestemmelserne en støtteforanstaltning, der havde til formål at støtte omstruktureringen og videreførelsen af Condors aktiviteter, og som bestod af to led. Den første del består dels af ændringen af betingelserne for covid-19-lånene fra 2020, dels af en delvis afskrivning af et beløb på 90 mio. EUR af den gæld, der fulgte af disse lån. Den anden del består i afskrivning af en gæld på 20,2 mio. EUR, svarende til de renter, som Condor skulle tilbagebetale som følge af den ændrede afgørelse om covid-19-støtten af 2020.

Dom:
1. Kommissionens afgørelse C(2021) 5729 final af 26. juli 2021 om statsstøtte SA. 63203 (2021/N) – Tyskland – omstruktureringsstøtte til Condor annulleres.
2. Europa-Kommissionen bærer sine egne omkostninger og betaler de af Ryanair DAC afholdte omkostninger.
3. Forbundsrepublikken Tyskland og Condor Flugdienst GmbH bærer hver deres egne omkostninger.

Læs mere
Dato: 08/05/2024

Forslag til afgørelse

C-650/22 – FIFA.
Nøgleord: Præjudiciel forelæggelse – arbejdskraftens frie bevægelighed – aftaleforbud – FIFA's reglement om spilleres status og transfer – opsigelse før tid af en aftale mellem en klub og en spiller – regler, hvorefter en anden klub, der ansætter den pågældende spiller, straffes – forbud mod at udstede det certifikat, der kræves for, at den pågældende spiller kan skifte til den anden klub.

Sagen:
Denne anmodning om præjudiciel afgørelse fra Cour d'appel de Mons (appeldomstolen i Mons, Belgien), som vedrører fortolkningen af artikel 45 TEUF og 101 TEUF, er blevet indgivet i forbindelse med en sag mellem BZ, som er en fodboldspiller, og Fédération internationale de football association (det internationale fodboldforbund (herefter »FIFA«), om det tab, som fodboldspilleren angiveligt har lidt som følge af visse af FIFA's regler om det kontraktmæssige forhold mellem spillere og klubber.

De omhandlede regler vedrører erstatning, sportslige sanktioner og udstedelse af et obligatorisk internationalt transfercertifikat i en situation, hvor der angiveligt foreligger en kontraktopsigelse uden gyldig grund.

I dette forslag til afgørelse vil jeg undersøge, om artikel 45 TEUF og 101 TEUF eller artikel 15 i Den Europæiske Unions charter om grundlæggende rettigheder (herefter »chartret«) er til hinder for de omtvistede regler.

Forslag til afgørelse fra Generaladvokat M. Szpunar:

1. Artikel 101 TEUF skal fortolkes således, at denne bestemmelse er til hinder for regler, der er vedtaget af et forbund med ansvar for at organisere fodboldturneringer på verdensplan, og som anvendes af både dette forbund og de nationale fodboldforbund, der er medlemmer heraf, idet disse regler bestemmer, at en spiller og en klub, der ønsker at ansætte den pågældende, hæfter solidarisk for den erstatning, som den klub, hvis kontrakt med spilleren er blevet brudt uden gyldig grund, har krav på, og at det forbund, som spillerens tidligere klub henhører under, har ret til at undlade at udstede det internationale transfercertifikat, som er nødvendigt for, at en ny klub kan ansætte den pågældende spiller, såfremt der foreligger en tvist mellem den tidligere klub og spilleren, hvis det fastslås dels, at disse vedtagelser inden for sammenslutninger af virksomheder kan påvirke handelen mellem medlemsstater, dels at de enten har til formål eller til følge at begrænse konkurrencen mellem professionelle fodboldklubber, medmindre det i sidstnævnte tilfælde ved overbevisende argumenter og beviser godtgøres, at de på én gang er begrundet i, at der forfølges et eller flere legitime mål, og er strengt nødvendige i dette øjemed.
2. Artikel 45 TEUF skal fortolkes således, at denne bestemmelse er til hinder for anvendelsen af regler, der er vedtaget af et forbund med ansvar for at organisere fodboldturneringer på verdensplan, og som anvendes af både dette forbund og de nationale fodboldforbund, der er medlemmer heraf,
    a. idet disse regler bestemmer, at en spiller og en klub, der ønsker at ansætte den pågældende, hæfter solidarisk for den erstatning, som den klub, hvis kontrakt med spilleren er blevet brudt uden gyldig grund, har krav på, medmindre det kan godtgøres, at det reelt er muligt inden for en rimelig tidsfrist at undlade at anvende dette princip, såfremt det kan fastslås, at den nye klub ikke var indblandet i den ubegrundede opsigelse før tid af spillerens kontrakt
    b. idet disse regler bestemmer, at det forbund, som spillerens tidligere klub henhører under, har ret til at undlade at udstede det internationale transfercertifikat, som er nødvendigt for, at en ny klub kan ansætte den pågældende spiller, såfremt der foreligger en tvist mellem den tidligere klub og spilleren, medmindre det kan bevises, at der kan træffes effektive, reelle og hurtige foreløbige foranstaltninger i en situation, hvor der blot foreligger en påstand om, at spilleren ikke har overholdt betingelserne i sin kontrakt, og at klubben var tvunget til at bringe kontrakten til ophør på grund af spillerens angivelige manglende overholdelse af sine kontraktlige forpligtelser.

Læs mere
Dato: 30/04/2024

C-447/22 P – Slovenien mod Flašker og Kommissionen.
Nøgleord: Appel – statsstøtte – artikel 107 TEUF og 108 TEUF – støtteforanstaltninger iværksat af Republikken Slovenien inden tiltrædelsen af Den Europæiske Union – indledende undersøgelsesfase – Europa-Kommissionens afgørelse, hvorved det fastslås, at der ikke foreligger statsstøtte – ingen indledning af den formelle undersøgelsesprocedure – begrebet "alvorlige vanskeligheder" med hensyn til, om der foreligger statsstøtte, eller om den er forenelig med det indre marked – rækkevidden af Kommissionens pligt til at udvise omhu og undersøgelsespligt – bevisbyrde, som påhviler den part, der gør gældende, at der foreligger "alvorlige vanskeligheder".

Sagen:
Denne sag udspringer af en klage, som i løbet af 2016 blev indgivet til Kommissionen af Petra Flašker (herefter »PF«), der driver et privat apotek, hvorved hun gjorde gældende, at der var ydet statsstøtte til fordel for en konkurrent, Lekarna Ljubljana, navnlig i form af tildeling af forvaltede aktiver, såsom forretningslokaler, på vilkår, der ikke var i overensstemmelse med markedsvilkårene. Ved den omtvistede afgørelse afsluttede Kommissionen undersøgelsen af denne klage uden at indlede den indgående undersøgelsesprocedure, der er fastsat i artikel 108, stk. 2, TEUF. Kommissionen anførte i det væsentlige, at den ved afslutningen af den foreløbige undersøgelse, der er fastsat i artikel 108, stk. 3, TEUF, var nået til det resultat, at de omhandlede foranstaltninger ikke udgjorde statsstøtte, idet den præciserede, at selv hvis tildelingen af forvaltede aktiver kunne udgøre en sådan støtte, var der i givet fald tale om »eksisterende støtte«. I det annullationssøgsmål, der blev anlagt ved Retten, tog Retten i den appellerede dom PF's anbringende om, at Kommissionen ikke lovligt kunne vedtage den omtvistede afgørelse uden at have indledt den undersøgelsesprocedure, der er fastsat i artikel 108, stk. 2, TEUF, til følge og annullerede den omtvistede afgørelse, for så vidt som den vedrørte de af Lekarna Ljubljana forvaltede aktiver.

I appelsagen har Republikken Slovenien, støttet af Kommissionen, inden for rammerne af sine første to anbringender gjort gældende, at den appellerede dom er behæftet med en retlig fejl for så vidt angår fortolkningen og anvendelsen af artikel 108, stk. 2 og 3, TEUF, artikel 4, stk. 2 og 3, i forordning (EU) 2015/1589 samt af begrebet »alvorlige vanskeligheder«, der medfører forpligtelsen til at indlede den formelle undersøgelsesprocedure. Som Domstolen har anmodet om, vil dette forslag til afgørelse fokusere på en analyse af de første to appelanbringender.

Denne sag følger i forlængelse af en lang række andre sager, der har givet anledning til en fast praksis ved Unionens retsinstanser og i kølvandet på en række andre sager, der mundede ud i nyere domme vedrørende manglende indledning af den formelle undersøgelsesprocedure. Sagen giver derfor Domstolen lejlighed til yderligere at præcisere dels begrebet »alvorlige vanskeligheder«, der, såfremt de foreligger ved afslutningen af den foreløbige undersøgelse, udløser en forpligtelse for Kommissionen til at indlede den formelle procedure, dels bevisbyrden og rækkevidden af den pligt til at udvise omhu og den undersøgelsespligt, der påhviler denne institution, når den står over for en situation med usikkerhed.

Forslag til afgørelse fra Generaladvokat A. Rantos:
På baggrund af ovenstående betragtninger, og for så vidt som dette forslag til afgørelse alene vedrører de første to appelanbringender, foreslår jeg Domstolen, at den forkaster disse anbringender som ugrundede.
Læs mere
Dato: 18/04/2024

Kendelse

Intet nyt.

Andet nyt fra EU-domstolen

Intet nyt.

Andet internationalt nyt

Few signs of greedflation, but generally high profitability in groceries.
The Norwegian Competition Authority's survey of profitability in the groceries market shows few indications that players in the grocery supply chain exploited the covid pandemic or the war in Ukraine to increase prices. However, the Authority finds that profitability is generally higher than one would expect in a market with strong competition.
Læs mere
Dato: 08/05/2024

The Latvian Competition Authority has prepared guidelines for submitting joint offers in procurement and a self-assessment tool for market participants (in Latvian).
Konkurences padome (KP) ir izstrādājusi vadlīnijas tirgus dalībniekiem, kuri aktīvi piedalās iepirkumu procedūrās, īpaši, apvienojoties pilnsabiedrībā un vienojoties par kopīgu piedāvājumu iesniegšanu iepirkumos. Vadlīniju mērķis ir izglītot tirgus dalībniekus par apstākļiem, kas ir jāņem vērā, izvērtējot kopīga piedāvājuma iesniegšanu iepirkumā un kādi ir nosacījumi, lai kopīga piedāvājuma iesniegšana iepirkumā nepārkāptu Konkurences likumu.
Læs mere

Dato: 14/05/2024

3 | LITTERATUR (DK)

Artikler fra UfR

Bogomtale: EU-konkurrenceretten – regulering af stat og marked.
U 2024B.78/1: Pernille Wegener Jessen, Bent Ole Gram Mortensen, Michael Steinicke & Karsten Engsig Sørensen EU-konkurrenceretten – regulering af stat og marked. Djøf Forlag, 2024, 5. udg., 780 sider, hæftet. Pris: 1.100 kr. E-bog: 1.100 kr.

Hermed foreligger 5. udgave af den bog, som forfatterne tidligere har udsendt under titlen »Regulering af konkurrence i EU«, senest med 4. udgave i 2016. Som tidligere beskriver bogen dels de traditionelle områder af konkurrenceretten (forbuddet mod konkurrencebegrænsende aftaler, misbrug af dominerende stilling, håndhævelsesreglerne og reglerne om fusionskontrol), dels en række andre konkurrenceretlige områder, som i dag spiller en afgørende rolle for virksomheders og offentlige myndigheders adfærd på markedet (herunder reglerne om statsstøtte, liberaliserede sektorer og om offentlige indkøb). Forfatterne er professorer ved de juridiske institutter ved henholdsvis Aarhus Universitet og Syddansk Universitet. Fremstillingen er nu opdateret frem til 1. marts 2023, bl.a. med omtale af en række nye retningslinjer og retsakter og over 100 nye domme og afgørelser. Omfanget er omtrent som tidligere.
Læs mere
Dato: 25/04/2024

Bogomtale: Internetretten.
U 2024B.77/7: Jan Trzaskowski (red.), Christian Bergqvist, Søren Sandfeld Jakobsen, Susanne Karstoft, Hanne Kirk, Lene Wacher Lentz, Thomas Riis & Marie Jull Sørensen Internetretten. Ex Tuto Publishing, 2024, 4. udg., 880 sider (fraregnet indholdsfortegnelse og forord), hardback. Pris: 895 kr. inkl. moms.

Ligesom dens tidligere udgaver samler denne håndbog en række af de væsentligste områder af betydning for internetanvendelsen. Siden 3.-udgaven fra 2017 er bogen blevet grundlæggende revideret og omstruktureret, ligesom kredsen af bidragydere delvis er en anden, hvorved flere af kapitlerne er helt omskrevet. Bogens 16 kapitler fremtræder nu, efter et indledningskapitel skrevet af bogens redaktør, professor Jan Trzaskowski, i følgende fire dele: Del I: Grundrettigheder (med kapitler om »Ytringsfrihed og privatlivsbeskyttelse« og »Personoplysninger«), Del II: Markedet (med kapitler om »Markedsføring«, »Ophavsret«, »Forretningskendetegn«, »Domænenavne«, »Konkurrenceret« og »Digitale platforme«), Del III: Salg og betaling (med kapitler om »Aftaler og fjernsalg«, »Køb af digitale ydelser« og »Internetbetalinger«) og Del IV: Sikkerhed, ansvar og retshåndhævelse (med kapitler om »Informationssikkerhed«, »Cybercrime og politiets efterforskning«, »Mellemmandsansvaret« og »International retshåndhævelse«). Den nye udgave er 64 sider længere end den forrige.
Læs mere
Dato: 25/04/2024

Bogomtale: Introduction to EU Internet Law.
U 2024B.76/2: Jan Trzaskowski, Andrej Savin, Patrik Lindskoug & Björn Lundqvist Introduction to EU Internet Law. Ex Tuto Publishing, 2023, 3rd edition, 534 sider, hardback. Pris: 495 kr. inkl. moms.

Forrige udgave af denne lærebogsfremstilling udkom i 2018. Bogen er nu ført ajour med omtale af de mange nye regler, der er gennemført af EU-lovgiveren siden da. Kapitelinddelingen er nogenlunde som tidligere, idet der dog er indført et nyt kapitel 2 om »Platform regulation«. Opdateringen har medført en forøgelse af omfanget på over 100 sider.
Læs mere
Dato: 25/04/2024

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 5, 2024

Do four-to-three mobile mergers harm consumers? A review of post-merger effects and concentration studies. Forfatter: Jorge Padilla.
Presents a study of whether four-to-three mobile mergers in the EU and UK since 2010 have benefitted consumers. Reviews key features of the seven mergers concerned, their impact on prices, network quality, value for money, and whether previous mergers affected average revenue per gigabyte consumed.

Canada's Commissioner of Competition awarded a further two years term despite Rogers/Shaw merger debacle. Forfatter: Gavin Murphy.
Discusses reactions to the reappointment of Matthew Boswell as Canada's Commissioner of Competition for two years, highlighting his involvement in unsuccessful litigation concerning the cable network merger between Rogers Communications Inc and Shaw Communications Inc, and the resulting costs award.

New merger filing thresholds in Saudi Arabia. Forfatter: Rob van der Laan.
Discusses the November 2023 revisions to Saudi Arabia's merger notification thresholds, including the amended criteria concerning global turnover. Reviews the factors behind the changes, the private sector benefits, and whether the higher thresholds pose risks to the economy.

Valve v Commission (Case T-172/21) - the territorial and probabilistic character of intellectual property rights in competition enforcement. Forfatter: Quentin B. Schäfer.
Comments on Valve Corp v European Commission (T-172/21) (GC) on the relationship between intellectual property (IP) and competition law in a geo-blocking context. Considers the interaction between IP rights' territorial nature and the internal market, and issues raised by their probabilistic nature.

Research Handbook on Global Merger Control (Publication Review). Forfatter: Ioannis Kokkoris (ed.).

Australia: anti-competitive practices - infringement (Case Comment). Forfatter: Dr Sven Gallasch.
Notes the Australian Competition and Consumer Commission ruling in Techtronic Industries Australia Pty Ltd, imposing a fine of AUD 15 million on a power tool supplier for anti-competitive conduct involving resale price maintenance through the use of restrictive distribution agreements.

Austria: anti-competitive practices - judgment (Case Comment). Forfatter: Melanie Gassler-Tischlinger.
Notes the Austrian Cartel Court ruling of 10 November 2023, imposing a fine of EUR 1.36 million on Hitthaller + Trixi Baugesellschaft mbH and its parent PHB GmbH for involvement in a bid rigging and market sharing cartel in the construction sector. Details factors considered when setting the fine.

Bulgaria: anti-competitive practices - judgment (Case Comment). Forfatter: Anton Dinev.
Notes the Sofia Administrative Court ruling in Re Sofiyska Voda, annulling a ruling by the Bulgarian Commission for the Protection of Competition that a regulated water utility did not exploit its dominant position with regard to the imposition of differentiated waste water treatment fees.

Czech Republic: anti-competitive practices - infringement (Case Comment). Forfatter: Tomáš Fiala.
Notes the Czech Competition Office ruling in ELECTROLUX sro, imposing a record fine of approximately EUR 5 million on a domestic appliances supplier for anti-competitive conduct involving resale price maintenance agreements. Details the fine reduction due to the settlement procedure involved.

Denmark: anti-competitive practices - judgment (Case Comment). Forfatter: Jens Munk Plum.
Notes a Danish Eastern High Court ruling on whether a consortium agreement on a joint bid for tenders by two companies in the road marking sector constituted illegal cartel activity, whether the defendants' misinterpretation of the tender rules was excusable, and grounds for imposing no penalty.

France: anti-competitive practices - infringement (Case Comment). Forfatter: Emmanuel Reille.
Notes the French Competition Authority ruling of 29 December 2023 imposing fines of around EUR 20 million on several firms in the canning sector for an exclusionary collective strategy aimed at preventing manufacturers from competing on the presence or absence of Bisphenol A in their containers.

Ireland: anti-competitive practices – investigation. Forfatter: Dr Vincent J G Power SC.
Notes the Irish Competition and Consumer Protection Commission's review of complaints of alleged abuse of dominance by the postal services provider An Post, involving the provision of in-store Leap Card services, its main recommendations, and its grounds for declining to open an investigation.

Ireland: anti-competitive practices – complaint. Forfatter: Dr Vincent J G Power SC.
Details the commitments secured by the Irish Competition and Consumer Protection Commission from Ireland's technological universities concerning their procurement practices for supplying student graduation gowns, following allegations of anti-competitive practices or abuse of dominance.

Malta: mergers - merger control. Forfatter: Adriana Brincat Scicluna.
Notes the Maltese Competition and Consumer Affairs Authority's launch of an in-depth second phase investigation of acquisitions by Lidl Immobiliare Malta Ltd in the grocery retail sector. Details the main concerns and the options open to the Authority.

Poland: anti-competitive practices - preliminary proceedings. Forfatter: Prof. Agata Jurkowska-Gomułka.
Notes the ending of preliminary proceedings by Poland's national competition authorities into whether fixed fees charged by the Polish National Football Association to bookmaker companies were an abuse of dominance, following the introduction of a revised model for calculating such fees.

Romania: mergers - merger control (Case Comment). Forfatter: Cristina de Jonge.
Notes the Romanian Competition Council ruling in African Industries Group / Padova Agricultura SRL / Contara SRL, approving a merger in the agricultural products sector, following a finding that it would not significantly impede effective competition.

Romania: mergers - merger control (Case Comment). Forfatter: Cristina de Jonge.
Notes the Romanian Competition Council ruling in Keesing Media Group BV / Infopress Group SA / IPG Technic SRL, approving a merger in the publishing sector, following a finding that it would not significantly impede effective competition.

South Africa: competition - market inquiry. Forfatter: Aidan Scallan.
Notes criticisms made of the South African Competition Commission following its recommendations to the Online Intermediation Platforms Market Inquiry that its own remedial and enforcement powers be strengthened. Reviews the background to the proposals, the proposed reforms, and their implications.

Spain: anti-competitive practices - infringement (Case Comment). Forfatter: Pedro Callol.
Notes the Spanish National Competition and Markets Commission ruling in Comercial Hernando Moreno Cohemo SLU / Star Defence Logistics and Engineering SL / Grupo de Ingenieria / Casli SA, fining companies in the military equipment sector for bid rigging in defence tender procedures from 2016 to 2021.

Spain: mergers - merger control (Case Comment). Forfatter: Pedro Callol.
Notes the ruling of the Spanish National Competition and Markets Commission in Reganosa / Enagas Transporte, unconditionally approving the joint control of a regasification plant in Galicia, formerly under the sole control of Enagas. Details the competition concerns addressed by the investigation.

Turkiye: mergers - merger control (Case Comment). Forfatter: Dr. Gönenç Gürkaynak, Esq.
Notes the Turkish Competition Board ruling in MA MedAlliance SA / Hellman & Friedman LLC / Bayou Holdings Parent LP, unconditionally approving a merger in the medical devices sector. Details the competition concerns investigated, including horizontal or vertical overlaps, and conglomerate effects.

USA: mergers - merger control. Forfatter: Anthony P. Badaracco.
Notes the US Federal Trade Commission's announcement of its modified 2024 thresholds for pre-merger reporting duties under the Hart-Scott-Rodino Antitrust Improvements Act 1976, together with an increase in filing fees. Details the revised requirements, their commencement dates, and the exemptions.

Artikler fra European Competition Journal

Intet nyt.

Artikler fra Journal of Competition Law and Economics

Intet nyt.

Artikler fra Journal of Antitrust Enforcement

Intet nyt.

Artikler fra Journal of European Competition Law and Practice

Volume 15, issue 1, January 2024.

Competition Law in Latin America in Times of Uncertainty. Forfatter: Julián Peña.
Competition law enforcement in Latin America has been constantly evolving, especially since the 1990s. Although the evolution has been very uneven (especially considering the wide variety of diverse political, economic, social, and geographic differences among the various jurisdictions), the current overall scenario is drastically different from the one existing a few decades ago. However, besides the intrinsic cultural challenges (social, economic, political, legal, and institutional) that will always be present, there are new challenges that are playing a role in the development of competition law enforcement in the region.

Novel Merger Control Practices Expanded the Commission's Jurisdiction to Review Concentrations beyond EUMR Thresholds. Forfatter: Riccardo Fadiga.
Key Points:

- Recent practice of the Commission and Court of Justice resulted in the indirect expansion of the Commission's jurisdiction to review concentrations beyond EUMR thresholds.
- This may misalign with stakeholder preferences and prior national practice and alter incentives for market operators.
- European institutions should consider these concerns to ensure cohesion with stakeholders and national institutions and balanced incentives for market participants.

A Case for Missing Minutes: Access to File and Rights of Defence under Judicial Review. Forfatter: Konstantinos Pantelidis.
Key Points:

- In a series of cases, the CJEU held that any meeting in which the European Commission collected information regarding the subject matter of an investigation will be considered an interview for the purposes of Article 19(1) Regulation 1/2003 and thus will fall under an obligation to record its content.
- The absence of full recordings creates a 'missing minutes' procedural error which if not remedied may lead to a breach in the rights of defence and annulment of the Commission's final decision.

- This development requires of the Commission to change its administrative practice and develop a 'culture for recording'.

Another Missed Opportunity? Case C-252/21 Meta Platforms v Bundeskartellamt and the Relationship between EU Competition Law and National Laws. Forfattere: Or Brook og Magali Eben.
In the Meta preliminary ruling, the Court of Justice missed the opportunity to clarify the relationship between EU competition law and national (competition and other) laws, as codified in Article 3 of Regulation 1/2003.

Commission Discretion on Fines, Recidivism, and Appeals of Settlement Decisions: Case T-590/20 Clariant and Clariant International v Commission. Forfattere: Elvira Aliende Rodriguez, Mark Steenson og Suzanne Norman.
In a rare challenge to a settlement fine, the General Court of the EU confirmed the scope of the Commission's discretion in determining an appropriate fine but dismissed the Commission's request to revoke the settling party's discount for settlement cooperation as a result of exercising its right to appeal the fine calculation.

Oversight of Sustainability Agreements in the Netherlands: New Policy Rule Issued by the ACM. Forfattere: Helen Gornall, Agnieszka Bartlomiejczyk og Shubhanyu Singh Aujla.
Key points:

- The Dutch ACM recently replaced its pioneering draft sustainability guidelines with a new Policy Rule.
- Although the ACM notes in this publication that it will assess sustainability agreements in line with the EC's recently revised Horizontal Guidelines, it deviates from the latter's restrictive approach by choosing not to enforce against (i) agreements ensuring compliance with binding European or Dutch sustainability rules, and (ii) environmental-damage agreements.
- The ACM has already applied its new Policy rule by positively assessing a proposed collaboration between waste collectors that aims to ensure compliance with a binding sustainability rule.
- However, a Dutch policy decision not to pursue certain sustainability collaborations does not provide legal certainty in circumstances where EU competition rules can be applied.

On Whose Door to Knock? Information Requests of the Turkish Competition Authority Extending to Foreign Parent Companies. Forfattere: Zeynep Şengören Özcan og Aslı Ak.
Key Points:

- During its preliminary inquiry in the banking sector, the Turkish Competition Authority ('TCA') requested from several Turkish group companies information which was possessed by their parent companies abroad.
- Administrative fines imposed on Turkish entities that failed to respond triggered discussions on the applicability of the single economic entity concept in requests for information ('RFI's) sent during preliminary inquiries (also referred to as 'preliminary investigations') and procedural rules to be followed when dealing with notifications concerning a group company residing abroad.
- The TCA justified its decision to pose questions to group companies in Turkey concerning information held by their parents abroad by referring to EU rules and decisions, leading to considerations concerning whether the EU procedural rules for RFIs could be directly adopted, while national law governs specific notification procedures.

Abuse of Dominance and Sustainability. Forfattere: Roman Inderst og Stefan Thomas.
Key Points:

- There is an increased inclination in antitrust scholarship to employ competition law for sanctioning violations of environmental law, thereby promoting sustainability as a societal objective.
- Assertions to consider infringements of environmental laws as an abuse of dominance in antitrust terms are deeply flawed, in our view.
- First, unless consumers attribute positive value to the adherence to the relevant norms, the environmental infringement does not cause a reduction in consumer rent, neither by way of foreclosure nor of exploitation.
- Second and more crucially, there is no general rationale for assuming a causal link between both infringements by which it could be argued that it is due to the dominant position that consumers are being deprived of the non-economic benefit of a better environment.

Survey – EU Merger Control Developments. Forfattere: Nicholas Levy, Anita Magraner Oliver og Conor Opdebeeck-Wilson.
Key Points:

- Following its March 2021 Guidance, the Commission accepted three referrals of transactions that were not reportable under national merger rules: *Illumina/GRAIL*, *Qualcomm/Autotalks*, and *EEX/NASDAQ Power*.

- In *CK Telecoms*, the Court of Justice rejected the General Court's holding that, in assessing transactions in concentrated markets and do not raise dominance concerns, the Commission may only challenge mergers of '*particularly close*' competitors.
- The Commission continued to subject pharmaceutical and digital sector transactions to close scrutiny, prohibiting two transactions that did not involve horizontal overlaps: *Illumina/GRAIL* and *Booking/eTraveli*.
- The Commission adopted a Merger Simplification Package streamlining the notification and assessment of straightforward transactions.

Artikler fra World Competition

Volume 47, issue 47, June 2024

The DMA Procedure: Areas to Improve. Forfatter: Konstantinos Pantelidis.
The introduction of the Digital Markets Act (the 'DMA') marked the beginning of a new regulatory framework for limiting the impact of strong platforms in digital markets. With the aim of ensuring fairness and contestability in digital markets, the new Regulation provided for a detailed administrative process, in the form of market investigations, for determining which of the digital platforms act as gatekeepers in their respective markets, whether the designated gatekeepers comply with their obligations, and to what extent new obligations must be introduced to account for new developments.

This article discusses some preliminary issues related to the European Commission's administrative procedure for enforcing the new regulation. Upon summarizing the key elements of the DMA procedure, it focuses on four issues: the relationship between the DMA and competition law and problems regarding their parallel application; the obligation for recording interviews conducted for the purposes of gathering information regarding the subject matter of a market investigation; access to file limitations; and the absence of provisions regarding private enforcement and the possibility for third parties to claim damages.

Regulating Algorithmic Bias as a Key Element of Digital Market Regulation. Forfatter: Gergely Csurgai-Horváth.
This paper addresses the rules applicable to algorithmic bias taking the form of self-favouring by hybrid digital platforms in the EU. In this paper, it is argued that the recently introduced prohibition of self-favouring by digital platforms should not apply across the board in the same manner. It may be necessary to consider the nature of the underlying products or services, the business models, and the monetization strategies of digital platforms. Differences in these aspects may alter their ability and incentives to engage in self-favouring potentially leading to foreclosing rivals and harming consumers. This suggests that the approach put forward by section 19a of the German Competition Act (GWB) may be better from an error-cost perspective than that of the Digital Markets Act (DMA). Section 19a of the GWB grants more discretion to enforcers and allows for a broader justification of the impugned conduct. In the context of the DMA, some sort of balancing exercise seems to be possible only if the European Commission makes extensive use of the possibility to further specify the prohibition of self-favouring contained in Article 6(5) of the DMA in light of the principles of effectiveness and proportionality. Finally, the paper touches upon the potential disproportionate burden, legal fragmentation, and legal uncertainty across the EU resulting from the interplay between EU competition law, the DMA, and national laws tackling similar self-favouring practices.

Sub-threshold Transactions under EU Merger Control – an Analysis of the Relevant EU Guidance and a Comparison With Certain Other 'Call-in' Systems. Forfatter: Alan McCarthy.
The EU Merger Regulation (EUMR) provides the European Commission with exclusive jurisdiction to assess mergers, acquisitions and full-function joint ventures with an EU dimension on the basis of turnover-based thresholds. The EUMR also contains corrective mechanisms allowing the Commission, under certain circumstances, to review smaller transactions. Until recently, these corrective measures have not been frequently applied but the picture is changing. The Commission believes that market developments (particularly in digital and pharma markets) are resulting in more acquisitions of companies that play or may play a significant competitive role in the EU despite generating little or no turnover. Similar considerations may apply to companies with valuable assets, intellectual property rights, data or infrastructure. This article analyses the development in the Commission's guidance instruments which look to give merging parties a sense of the circumstances in which smaller deals may be referred by Member States to the Commission for EUMR assessment (mindful though that these developments may yet be checked by the EU's highest court). Legislation has also been evolving at the Member State level (e.g., recently in Ireland) to allow national competition authorities to review sub-threshold deals. This article also provides a comparison of the EU system with certain other non-EU 'callin' systems and which reflects that merging parties have an increasingly complex merger control picture to navigate in 2024 and beyond before they can safely implement deals (such as in digital and pharma deals).

‘(Not So) Elementary, My Dear Watson’: A Competition Law & Economics Analysis of Sherlocking. Forfatter: Giuseppe Colangelo.
Sherlocking refers to an online platform’s use of non-public third-party business data to improve its own business decisions, for instance by mimicking successful products and services of edge providers. Such a strategy emerges as a form of self-preferencing and, together with other hypotheses on preferential access to data, it has been targeted by some policy makers and competition authorities because of the competitive risks originating from the dual role played by hybrid platforms. The paper investigates the competitive implications of sherlocking, maintaining that an outright ban is unjustified. Firstly, the paper shows that, by aiming to ensure platform neutrality, such a prohibition would cover two scenarios (i.e., the use of non-public third-party business data to calibrate business decisions in general, rather than to adopt a pure copycat strategy) that should be analysed separately. Indeed, in these scenarios sherlocking may affect different forms of competition (inter-platform v. intra-platform competition). Secondly, the paper argues that, in both cases, the anticompetitive effects of the practice are questionable and that the ban is fundamentally driven by the bias towards hybrid and vertical integrated players.

Common Ownership in Brazil After Steel Sector Privatization. Forfattere: Vinícius Klein og Gabriela Pepeleascov Gomes.

Artikler fra Antitrust Law Journal

Volume 85, issue 3, 2024

A comparative view of transparency in antitrust enforcement. Forfattere: Ferris, Jamillia; Rissmiller, Meghan; Onken, Laura C og King, Kara.
The article focuses on the importance of transparency in antitrust enforcement, highlighting its role in promoting predictability in outcomes and increasing compliance. It includes perspectives on transparency in competition enforcement globally, with a focus on the U.S., and explores opportunities for enhancing transparency in antitrust enforcement practices.

Evaluating 20 years of regulation 1/2003: are eu antitrust procedures "fit for the digital age"? Forfatter: Kadar, Massimiliano.
The article evaluates the effectiveness of Regulation 1/2003 in the context of EU (European Union) antitrust enforcement, particularly in light of the digital age. It discusses the main content and innovations introduced by Regulation 1/2003 compared to its predecessor, Regulation 17, and examines previous Commission reports assessing its functioning. It explores the evolving enforcement landscape, focusing on the challenges posed by digitization.

Due process in competition law enforcement: Minimum standards on accessible and protected information. Forfattere: Pachnou, Despina og Real de Asúa, Eduardo Mangada.
The article underscores the importance of due process in competition law enforcement, advocating for fairness, legitimacy, and adherence to legal standards. It discusses how competition law borrows procedural frameworks from other legal domains, tailoring them to its specific needs across different jurisdictions. It argues that fair procedures enhance the quality of enforcement decisions and promote voluntary compliance with the law.

Fixing "litigating the fix". Forfattere: Salop, Steven C. og Sturiale, Jennifer E.
The article explores the phenomenon of "litigating the fix" (LTF) in merger cases, where merging firms seek judicial approval of remedy proposals rejected by antitrust agencies. It outlines recent trends in LTF cases and discusses various outcomes, including deal abandonment, failed LTF attempts, and successful LTF with or without additional relief. The agencies mixed track record in LTF trials is also highlighted.

Pitch imperfect: Antitrust division policy changes regarding pre-indictment "pitch" meetings. Forfattere: Snyder, Brent og Syrmos, Alexia.
The article discusses changes in the U.S. Department of Justice Antitrust Division's policy regarding pre-indictment "pitch" meetings, where parties recommended for criminal prosecution present their position to prosecutors. It explores the historic availability of these meetings and recent policy shifts, highlighting the benefits of such meetings in enhancing transparency, credibility, and the strength of cases.

Algorithms, AI, and mergers. Forfattere: Gal, Michal S. og Rubinfeld, Daniel L.
The article examines the impact of algorithms, particularly those driven by artificial intelligence (AI), on merger control. It acknowledges the benefits algorithms bring to decision-making processes in various industries but highlights concerns

about their potential to facilitate anticompetitive behavior, especially in merger contexts. It argues that while algorithms offer benefits like cost savings and precision, they can also exacerbate market power and anticompetitive conduct.

An antitrust exemption for workers: And why worker bargaining power benefits consumers, too. Forfattere: Melamed, A. Douglas og Salop Steven C.
The article proposes an antitrust exemption to facilitate the formation of voluntary worker associations for collective bargaining, aiming to address the prevalent issue of employer monopsony power in labor markets. It argues that enhancing worker bargaining power could lead to increased wages, improved employment conditions, and greater market efficiency.

"Aiming at dollars, not men": Recovering the congressional intent behind the labor exemption to antitrust law. Authors: Bedoya, Alvaro M. og Tuttle, Bryce.
The article focuses on the historical context and legislative intent behind the labor exemption to antitrust law. It explores how antitrust laws have been used against worker-organizing efforts despite the existence of a labor exemption, arguing that such actions contradict Congress's original intent to protect labor rights. It highlight the paradoxical use of antitrust enforcement to suppress labor activism and advocate for a reevaluation of antitrust enforcement in support of workers' rights.

Unfair methods of competition under section 5 of the ftc act: What is the intelligible principle? Forfatter: Werden, Gregory J.
The article focuses on examining the origin, legislative history, and jurisprudence surrounding the FTC (Federal Trade Commission) Act, particularly its prohibition on "unfair methods of competition" (UMC). It delves into the historical context leading to the enactment of the FTC Act, analyzes the legislative intent behind the UMC prohibition, and evaluates how courts have interpreted and applied this provision over time. It critiques the FTC's policy statement on the UMC prohibition.

Artikler fra Antitrust Bulletin

Volume 69, issue 1, March 2024

How Long Is Too Long? Disentangling the Disposition of Antitrust Cases in the U.S. Federal Courts. Forfatter: Polemis, Michael L.
The contribution of this study is to disclose the main determinants of the duration of the U.S. antitrust federal court decisions, an issue that has been nearly overlooked by most related studies. As an indirect measure for the time needed to dispose cases, this study uses the duration of the case from the filing of the complaint to the date of the opinion. Using this metric, we employ parametric and nonparametric panel data techniques on a sample of 613 appellate court proceedings on U.S. antitrust cases during the period 1995–2018. The empirical research reveals spatial heterogeneity in terms of case duration among the circuits of the appellate U.S. courts. The econometric analysis supports that the duration of appellate antitrust court decisions depends on administrative-related factors including the way the case was filed in the circuit, the jurisdiction in the case, the " pro se " representation of the undertakings, and the nature of the final judgment. Lastly, based on the flexible semi-parametric analysis, we argue that the impact of these parameters on case duration is linear, regardless of the specification of the parametric part of the model.

How to Exploit Market Power: Horizontal Ownership Concentration and Network Access Pricing. Forfatter: Majumdar, Sumit K.
This article reports an evaluation of the impact of horizontal ownership concentration on communications sector access pricing outcomes. Detailed historical data of postacquisition impacts on firms' access revenue outcomes have enabled analysis for the entire local exchange sector of the United States telecommunications industry. The findings are (1) the sector's horizontal ownership concentration process has caused key access-providing firms' average access revenue ratios to be over 16 percent higher; (2) access revenue enhancements, through using market power, by entities belonging to larger groupings, have resulted in aggregate annual fiscal windfalls of between $5 and $6 billion; (3) these windfalls have accounted for between 4.5 and 5 percent of provider firms' total revenues; (4) on average, each entity evaluated has received approximately between $120 and $150 million in incremental annual revenues via potential overcharge of access rates; and (5) United States telecommunications customers have incurred a between 6 and 7 percent overcharge on monthly bills, over several years, because network access charges have been higher, in part due to horizontal ownership concentration. Access charges are regulated, and horizontal ownership concentration-enhancing deals were allowed only after stringent institutional assessments. The resultant market power exploitation has led to the significant exploitation of United States telecommunications customers. Creation of substantial potential, and across-the-board, inflationary pressures and harm to consumers has been immense. Classic topics, such as access regulation and

merger control, remain contemporary, demanding detailed attention, if digital technology is to be ubiquitous in humanity's service. Concomitantly, key contemporary corporate governance concerns, relating to the emergence of horizontal ownership concentration patterns, also become apposite since the associated outcomes have innate major welfare impacts.

A Prospective Competitive Effects Analysis of the AT&T/Time Warner Merger. Authors: Zimmerman, Paul R.; Chang, George og Ulrick, Shawn W.
The vertical merger of AT&T and Time Warner combined one of the largest multiple video program distributors (MVPDs) in the United States with one of the largest providers of pay-TV programming. This study evaluates the potential competitive effects of the transaction by considering changes in the equity valuations of the respective upstream and downstream competitors to the merging parties when news of their proposed merger became public. Consistent with the government's central theory of harm, it appears that financial markets expected the proposed transaction to result in Time Warner increasing its carriage fees to AT&T's and DirecTV's MVPD rivals. Market reactions to the announcement of AT&T's commitment to enter into binding arbitration when negotiating future carriage fees for Tuner content provide further support for this inference. The results are difficult to rationalize in terms of the various efficiencies and synergies that AT&T claimed it would realize from the merger.

Artikler fra Competition Law and Policy Debate

Intet nyt.

Artikler fra Competition Law Scholars Forum

Intet nyt.

Artikler fra Journal of Regulatory Economics

Volume 65, issue 1-3, June 2024

Changing prices after the reform of local public services: remunicipalization versus privatization. Forfattere: Daniel Albalate, Germà Bel, Francisco González-Gómez, José C. Hernández-Gutiérrez og Andrés J. Picazo-Tadeo.
Privatization and remunicipalization have been used as alternative options to reform the delivery of local public services; in both cases, mainly because of disappointment with the service performance, although ideological preferences might also play a role. The drivers and effects of water privatization have been widely studied, whereas little empirical evidence is available for remunicipalization, particularly regarding its effects. Using a sample of Spanish municipalities, this paper assesses the change in the price of urban water following remunicipalization as compared to privatization. The main finding is that remunicipalization leads to smaller increases in price; this outcome is, however, due to a few atypical municipalities with abnormally low prices before the policy reform. Once these influential observations are controlled for, whether the reform consists of remunicipalization or privatization makes no difference regarding price changes. It is also found that remunicipalization is much more likely in cities governed by extreme left-wing parties.

A simple way to integrate distributed storage into a wholesale electricity market. Forfattere: Alberto J. Lamadrid, Hao Lu og Timothy D. Mount.
Current plans to decarbonize the electric supply system imply that the generation from wind and solar sources will grow substantially. This growth will increase the uncertainty of system operations due to the inherent variability of these renewable sources, and as a result, more reserve capacity will be required to provide the ramping (flexibility) needed for reliable operations. This paper assumes that all of the increased uncertainty comes from wind farms on the grid, and it shows how distributed storage managed locally by aggregators can provide the ramping needed without introducing a separate market for flexibility. This can be accomplished when the aggregators minimize the expected daily cost of the energy purchased from the grid for their customers by submitting optimal bids into the wholesale market with high and low price thresholds for discharging and charging the storage. This model is illustrated using a stochastic multi-period security constrained optimal power flow together with realistic data for a reduction of the network in the Northeast Power Coordinating Council region of the United States. The results show that the bidding strategy for distributed storage provides ramping to the grid just as effectively as storage managed by a system operator.

The impact of energy transition on distribution network costs and effectiveness of yardstick competition: an empirical analysis for the Netherlands. Forfattere: Floris van Montfoort, Peter T. Dijkstra og Machiel Mulder.
We assess the impact of regional differences related to energy transition on average costs and allowed revenues for a panel of Dutch electricity distribution system operators (DSOs) subject to yardstick competition. Yardstick competition entails that the allowed revenues of DSOs are based on the average costs of the entire industry, which requires that these DSOs are comparable. This comparability requirement is challenged by the penetration of distributed generation and other distributed energy resources, which may cause regional differences among DSOs. Estimating an average-cost function for the entire population of Dutch DSOs for the period 2012–2020, we find that the installed capacity of solar PV, installed capacity of on-shore wind and number of public electric-vehicle charging points have a significant effect on unit costs of DSOs. If yardstick competition does not take these effects into account, the allowed revenues for some DSOs (having above-average shares of energy-transition variables) are too low, whereas allowed revenues for other DSOs (having below-average shares of energy-transition variables) are too high. We find that taking the impact into account can change the price caps of individual DSOs with a percentage up to around 20%.

The Bayesian approach to monopoly regulation after 40 years. Forfatter: Ismail Saglam.
This paper surveys the monopoly regulation literature with the Bayesian approach. The literature builds on Baron and Myerson’s seminal 1982 paper, entitled “Regulating a Monopolist with Unknown Costs.” After presenting their contributions to the regulation literature, the paper discusses the main criticisms of their model, relating to either informational or commitment assumptions about the Bayesian regulator. The paper also briefly reviews some non-Bayesian incentive schemes, price-cap regulation, and several extensions and applications of Baron and Myerson’s regulatory model to highlight the evolution and scope of the new economics of regulation after 40 years.

The heterogenous effects of a higher volume of regulation: evidence from more than 200k Spanish norms. Forfattere: Juan S. Mora-Sanguinetti, Javier Quintana, Isabel Soler og Rok Spruk.
We analyze the aggregate economic impacts, as well as the heterogeneous effects on the different types of enterprises, of the increasing volume of regulation observed in Spain between 1995 and 2000. Our novel database classifies more than 200,000 regulations adopted at the region level for 13 industries (sectors) of the Spanish economy. Exploiting this database, we are able to estimate the exposure to regulation of enterprises located in different Spanish regions. We find that an increase in the volume of regulations has an impact on economic activity, reducing employment. Entry of new firms in sectors-regions exposed to higher regulation is also lower. These effects are heterogeneous across firms, with negative effects concentrated in smaller and more recently established firms. This evidence emphasizes the importance of both the aggregate and distributional impact of the changing (increasing) volumes of regulation.

Artikler fra International Review of Law and Economics

Intet nyt.

Artikler fra Competition Law Journal

Intet nyt.

Artikler fra European Competition and Regulatory Law Review

Intet nyt.

Artikler fra Communications Law

Intet nyt.

Artikler fra Computer and Telecommunications Law Review

Intet nyt.

Artikler fra Global Competition Litigation Review

Intet nyt.

Andre udenlandske artikler

Intet nyt.

5 | NYT FRA KONKURRENCEGRUPPEN

Finding the Ghost in the Shell - EU and US Antitrust Enforcement of AI Collusion (arrangement).
Den 27. juni kl. 13-16 (in-person og online) sætter vi fokus på risikoen for algoritmiske priskarteller, hvor AI koordinerer priser. I både EU og USA er de første konkurrencesager, hvor AI har koordineret priser, dukket op, og dette er formentlig blot toppen af isbjerget i takt med, at AI bliver stedse bedre.
Fuldt program og tilmeldingsformular kan tilgås her.

Bogomtale: Internetretten.
U 2024B.77/7: Jan Trzaskowski (red.), Christian Bergqvist, Søren Sandfeld Jakobsen, Susanne Karstoft, Hanne Kirk, Lene Wacher Lentz, Thomas Riis & Marie Jull Sørensen Internetretten. Ex Tuto Publishing, 2024, 4. udg., 880 sider (fraregnet indholdsfortegnelse og forord), hardback. Pris: 895 kr. inkl. moms.

Ligesom dens tidligere udgaver samler denne håndbog en række af de væsentligste områder af betydning for internetanvendelsen. Siden 3.-udgaven fra 2017 er bogen blevet grundlæggende revideret og omstruktureret, ligesom kredsen af bidragydere delvis er en anden, hvorved flere af kapitlerne er helt omskrevet. Bogens 16 kapitler fremtræder nu, efter et indledningskapitel skrevet af bogens redaktør, professor Jan Trzaskowski, i følgende fire dele: Del I: Grundrettigheder (med kapitler om »Ytringsfrihed og privatlivsbeskyttelse« og »Personoplysninger«), Del II: Markedet (med kapitler om »Markedsføring«, »Ophavsret«, »Forretningskendetegn«, »Domænenavne«, »Konkurrenceret« og »Digitale platforme«), Del III: Salg og betaling (med kapitler om »Aftaler og fjernsalg«, »Køb af digitale ydelser« og »Internetbetalinger«) og Del IV: Sikkerhed, ansvar og retshåndhævelse (med kapitler om »Informationssikkerhed«, »Cybercrime og politiets efterforskning«, »Mellemmandsansvaret« og »International retshåndhævelse«). Den nye udgave er 64 sider længere end den forrige.
Læs mere
Dato: 25/04/2024