Konkurrenceretlig Nyhedsoversigt nr. 110 / dækkende 4. marts. 2026 – 9. april 2026

Indhold

1. **Dansk ret**
    - Nyt fra Konkurrence- og Forbrugerstyrelsen
    - Nyt fra Konkurrencerådet
    - Nyt fra Konkurrenceankenævnet
    - Nye afgørelser fra domstolene
    - Lovforslag i høring
    - Ny lovgivning
    - Nyt fra Ankestyrelsen
    - Andet

2. **Europæisk og international ret**
    - Nyt fra Kommissionen
    - Kommisionsafgørelser
    - Nyt fra EU-domstolene
    - Andet internationalt nyt

3. **Litteratur (DK)**
    - Artikler fra Ugeskrift for Retsvæsen
    - Nye publikationer fra Erhvervsministeriet
    - Artikler fra Juristen
    - Artikler fra Erhvervsjuridisk Tidsskrift
    - Artikler fra Revision & Regnskabsvæsen
    - Artikler fra EU-ret og Menneskeret
    - Konkurrenceretlige emner
    - Anden dansk/nordisk litteratur

4. **Litteratur (UK)**
    - European Competition Law Review
    - European Competition Journal
    - Journal of Competition Law and Economics
    - Journal of Antitrust Enforcement
    - Journal of European Competition Law and Practice
    - World Competition
    - Antitrust Law Journal
    - The Antitrust Bulletin (US Journal)
    - Competition Law & Policy Debate
    - Competition Law Scholars Forum
    - Journal of Regulatory Economics
    - International Review of Law and Economics
    - Competition Law Journal
    - European Competition and Regulatory Law Review
    - Communications Law
    - Computer and Telecommunications Law Review
    - Global Competition Litigation Review
    - Market and Competition Law Review
    - Andre udenlandske artikler

5. **Nyt fra konkurrencegruppen**

1 | DANSK RET

Nyt fra Konkurrence- og Forbrugerstyrelsen

Infra Groups erhvervelse af MSE Entreprise er godkendt
Konkurrence- og Forbrugerstyrelsen har godkendt fusionen efter en forenklet sagsbehandling.
Læs mere
Dato: 05/03/2026

Dades A/S´ erhvervelse enekontrol over Dades' ejendomsportefølje er godkendt
Konkurrence- og Forbrugerstyrelsen har godkendt fusionen efter en forenklet sagsbehandling.
Læs mere
Dato: 06/03/2026

Blue Equity III K/S' erhvervelse af enekontrol over TRECO A/S er godkendt
Konkurrence- og Forbrugerstyrelsen har godkendt fusionen efter en forenklet sagsbehandling.
Læs mere
Dato: 10/03/2026

Brøndby Kommune og AKF Sampensions etablering af et joint venture er godkendt
Konkurrence- og Forbrugerstyrelsen har godkendt fusionen efter en forenklet sagsbehandling.
Læs mere
Dato: 11/03/2026

Gebr. Heinemanns erhvervelse af Scandlines' travel retail-forretning er godkendt
Konkurrence- og Forbrugerstyrelsen har godkendt fusionen efter en forenklet sagsbehandling.
Læs mere
Dato: 17/03/2026

Lemvigh-Müllers overtagelse af dele af Brødrene Kier er godkendt
Konkurrence- og Forbrugerstyrelsen godkendt fusionen efter en forenklet sagsbehandling.
Læs mere
Dato: 25/03/2026

Infra Groups erhvervelse af Zøllner er godkendt
Konkurrence- og Forbrugerstyrelsen har godkendt fusionen efter en forenklet sagsbehandling.
Læs mere
Dato: 25/03/2026

Ahlsell Danmarks erhvervelse af enekontrol over SJEB er godkendt
Konkurrence- og Forbrugerstyrelsen godkendt fusionen efter en forenklet sagsbehandling.
Læs mere
Dato: 09/04/2026

Nyt fra Konkurrencerådet

Intet nyt.

Nyt fra Konkurrenceankenævnet

Intet nyt.

Nyt fra domstolene

Civilretlige afgørelser
Intet nyt.

Straffesager
Intet nyt.

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
Intet nyt.

Mergers
Intet nyt.

State Aid

Commission approves €200 million Spanish State aid for manufacturing capacity in the EV value chain
The European Commission has approved a €200 million Spanish State aid scheme to support strategic investments that add manufacturing capacity for the electric vehicle (EV) value chain, in line with the objectives of the Clean Industrial Deal. This measure will contribute to the transition towards a net-zero economy. The scheme was approved under the Clean Industrial Deal State Aid Framework (CISAF) adopted by the Commission on 25 June 2025.
Læs mere
Dato: 05/03/2026

Commission approves €150 million Romanian State aid scheme for electricity storage
The European Commission has approved a €150 million (RON 764 million) Romanian scheme to support electricity storage, in line with the objectives of the Clean Industrial Deal. This measure will contribute to the transition towards a net-zero economy. The scheme was approved under the Clean Industrial Deal State Aid Framework (CISAF) adopted by the Commission on 25 June 2025.
Læs mere
Dato: 06/03/2026

Commission approves €260 million Belgian State aid for carbon capture and storage project
The European Commission has approved, under EU State aid rules, a €260 million Belgian measure in favour of Air Liquide Large Industry NV ('Air Liquide') and BASF Antwerpen NV ('BASF') for a carbon capture and storage ('CCS') project, Kairos@C. The measure will contribute to Belgium's climate targets by decarbonising the industry through an integrated cross-border CCS value chain, in line with the objectives of the Clean Industrial Deal.

Læs mere
Dato: 11/03/2026

Commission adopts new State aid rules to boost the use of more sustainable ways of transport
The European Commission adopted today the State aid Land and Multimodal Transport Guidelines (LMT Guidelines) and the State aid Transport Block Exemption Regulation (TBER). These instruments support more sustainable transport modes for both passengers and freight and update the EU State aid framework for land and multimodal transport. They will enter into force on 30 March 2026. The TBER will be in place until 31 December 2034. There is no end date for the LMT Guidelines.The new rules replace the 2008 Guidelines on State aid for railway undertakings. The LMT Guidelines and the TBER establish a coherent State aid framework covering a broad range of sustainable transport modes and aid measures, while maintaining safeguards to prevent undue distortions of competition.
Læs mere
Dato: 16/03/2026

Commission approves €5 billion Danish State aid scheme to support offshore wind energy
The European Commission has approved a €5 billion (DKK 37.6 billion) Danish scheme to support offshore wind energy in line with the objectives of the Clean Industrial Deal. This measure will contribute to the transition towards a net-zero economy and reaching the 2030 renewable energy target set at EU level. The scheme was approved under the Clean Industrial Deal State Aid Framework (CISAF) adopted by the Commission on 25 June 2025.
Læs mere
Dato: 23/03/2026

Commission approves French State aid scheme for production of renewable and low-carbon hydrogen
The European Commission has approved, under EU State aid rules, a French scheme to support the production of renewable and low-carbon hydrogen in line with the objectives of the EU Hydrogen Strategy and the Clean Industrial Deal. The scheme will also contribute to the objectives of the REPowerEU Plan to reduce dependence on Russian fossil fuels and accelerate the clean transition.
Læs mere
Dato: 23/03/2026

Commission approves €500 million Luxembourgish cleantech manufacturing capacity State aid scheme
The European Commission has approved a €500 million Luxembourgish scheme to support strategic investments that add clean technology (cleantech) manufacturing capacity, in line with the objectives of the Clean Industrial Deal. This measure will contribute to the transition towards a net-zero economy. The scheme was approved under the Clean Industrial Deal State Aid Framework (CISAF) adopted by the Commission on 25 June 2025.
Læs mere
Dato: 27/03/2026

Commission approves €144 million French State aid to support HyforSeeds in the production of hydrogen
The European Commission has approved, under EU State aid rules, a €144 million French measure to support HyforSeeds to produce renewable and low-carbon hydrogen for the fertiliser sector. The measure will contribute to achieving the targets of the EU Hydrogen Strategy and the Renewable Energy Directive for the use of hydrogen in industry.
Læs mere
Dato: 27/03/2026

Commission approves €6 billion Italian State aid scheme for renewable hydrogen
The European Commission has approved, under EU State aid rules, a €6 billion Italian scheme to support the production of renewable hydrogen for the transport and industrial sectors. The scheme will contribute to the development of renewable hydrogen production capacity in line with the objectives of the EU Hydrogen Strategy and the Clean Industrial Deal.
Læs mere
Dato: 30/03/2026

Commission opens formal State aid assessment of French support to new nuclear programme
The European Commission has opened an in-depth investigation to assess whether public support that France plans to grant for the construction and operation of six new nuclear reactors is in line with EU State aid rules.
Læs mere
Dato: 31/03/2026

Andet

Gatekeepers publish updated reports on DMA compliance
The gatekeepers designated on 6 September 2023, Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft, have submitted reports on their updated compliance measures under the Digital Markets Act (DMA), outlining the changes they have implemented and measures they have taken during the past year. The gatekeepers also submitted to the Commission updated independently audited reports on consumer profiling techniques.
Læs mere
Dato: 09/03/2026

Commission and EDPB publish contributions to the consultation on the draft joint guidelines on the interplay between DMA and GDPR
Today, the Commission and the European Data Protection Board (EDPB) published the individual contributions received in response to the public consultation on the draft joint guidelines on the interplay between the Digital Markets Act (DMA) and the General Data Protection Regulation (GDPR), launched by the Commission and the EDPB. The Commission and the EDPB welcome the high level of participation, with over 100 contributions submitted by a broad range of parties, including small and medium-sized enterprises (SMEs), trade and business associations, gatekeepers, civil society and consumer organisations, academics, think tanks, law firms, and individual citizens. The contributions show the respondents' broad support for the initiative and the cross-regulatory dialogue, which is widely seen as necessary to ensure coherence between the enforcement of the DMA and the protection of fundamental rights under the GDPR.
Læs mere
Dato: 12/03/2026

Sixth meeting of the Digital Markets Act High-Level Group
Today, the High-Level Group on the Digital Markets Act (High-Level Group) successfully concluded its sixth Plenary meeting in Brussels, with a focus on advancing cooperation in EU digital regulations. The High-Level Group invited Professors Vicky Robertson, Orla Lynskey, and Belle Beems, who shared their expertise and insights on the future of digital regulation and the coordination between regulatory authorities.
Læs mere
Dato: 20/03/2026

Nyt fra EU-domstolen

Domme

C-870/24 – **Outletico**
Nøgleord:

» Præjudiciel forelæggelse – statsstøtte – forordning (EU) nr. 651/2014 – former for støtte, som kan anses for forenelige med det indre marked – undtagelse fastsat for støtte til små og mellemstore virksomheder – artikel 1 i bilag I – begrebet »virksomhed« – artikel 3, stk. 3, i bilag I – begrebet »tilknyttede virksomheder« – fysisk person, der ejer flertallet af de stemmerettigheder, der er knyttet til en virksomheds aktier – udøvelse af økonomisk aktivitet – faktisk udøvelse af kontrol gennem direkte eller indirekte indgriben i virksomhedens drift «

Tvist:

Anmodningen om præjudiciel afgørelse vedrører fortolkningen af artikel 1 og artikel 3, stk. 3, i bilag I til Kommissionens forordning (EU) nr. 651/2014 af 17. juni 2014 om visse kategorier af støttes forenelighed med det indre marked i henhold til [artikel 107 TEUF og 108 TEUF] (EUT 108, L 2014, s. 187), som ændret ved Kommissionens forordning (EU) 2020/972 af 2. juli 2020 (EUT 2020, L 215, s. 3) (herefter »forordning nr. 651/2014«). Denne anmodning er blevet indgivet i forbindelse med en tvist mellem SIA »OUTLETICO« (herefter »Outletico«), der er et lettisk selskab, og Valsts ieņēmumu dienests (den nationale skattemyndighed, Letland) (herefter »skatte- og afgiftsmyndigheden«) vedrørende en afgørelse, hvorved sidstnævnte pålagde Outletico at tilbagebetale den støtte, som selskabet ulovligt havde modtaget i forbindelse med sundhedskrisen i forbindelse med covid-19-pandemien.

Dom:

Artikel 1 og artikel 3, stk. 3, tredje afsnit, i bilag I til Kommissionens forordning (EU) nr. 651/2014 af 17. juni 2014 om visse kategorier af støttes forenelighed med det indre marked i henhold til [artikel 107 TEUF og 108 TEUF] skal fortolkes således, at en fysisk person, der ejer en kontrollerende andel, som giver vedkommende flertallet af de stemmerettigheder, der er tillagt deltagerne i de selskaber, der udøver en økonomisk aktivitet, ikke alene af denne grund kan anses for selv at udøve en økonomisk aktivitet og dermed for at være en »virksomhed« som omhandlet i dette bilags artikel 1, gennem hvilken der mellem disse selskaber indirekte består forbindelser, der kan kvalificere dem som »tilknyttede virksomheder« som omhandlet i nævnte bilags artikel 3, stk. 3, tredje afsnit en sådan fysisk person kun kan kvalificeres som en »virksomhed« med henblik herpå, hvis vedkommende rent faktisk udøver den kontrol, som denne kapitalandel giver personen ved direkte eller indirekte indblanding i driften af de omhandlede selskaber, således at den pågældende er involveret i den økonomiske aktivitet, som selskaberne udøver den blotte besiddelse af kontrollerende kapitalandele og de vedtægtsbestemte rettigheder, der følger heraf for enhver selskabsdeltager i henhold til national ret, ikke i sig selv er tilstrækkelig til at godtgøre, at der faktisk udøves en sådan kontrol.
Læs mere
Dato: 19/03/2026

C-58/25 - **Fremoluc og Association de Promotion des Droits Humains og des Minorités mod Vlaamse Regering**
Nøgleord:

» Præjudiciel forelæggelse – statsstøtte – begrebet »støtteordning« – yderligere gennemførelsesforanstaltninger – national lovgivning, der fastsætter vedtagelse af støtteordninger, som skal gøre det muligt at købe fast ejendom – gennemførelse af denne lovgivning ved kommunale bekendtgørelser «

Tvist:

Anmodningen om præjudiciel afgørelse vedrører fortolkningen af artikel 107, stk. 1, TEUF og artikel 108, stk. 3, TEUF samt princippet om beskyttelse af den berettigede forventning og retssikkerhedsprincippet. Anmodningen er blevet indgivet i forbindelse med en tvist mellem på den ene side Fremoluc NV og Association de Promotion des Droits Humains et des Minorités ASBL og på den anden side Vlaamse Regering (den flamske regering, Belgien) vedrørende bestemmelser i Vlaams Gewest (regionen Flandern, Belgien), der gør det muligt for visse kommuner at anvende særlige betingelser for overdragelse af grunde eller boliger, og som fastsætter en finansiel støtte fra disse kommuner til fordel for køberne.

Dom:

Artikel 107, stk. 1, TEUF og artikel 108, stk. 3, TEUF, sammenholdt med artikel 1, litra c)-e), og artikel 2, stk. 1, i Rådets forordning (EU) 2015/1589 af 13. juli 2015 om fastlæggelse af regler for anvendelsen af artikel 108 [TEUF], skal fortolkes således, aten national lovgivning, der tillader kommuner, hvor prisen på fast ejendom er særlig høj, at indføre en ordning, hvorefter der til sælgerne af visse grunde eller visse boliger udbetales en del af købsprisen for de pågældende grunde til fordel for en køber, der opfylder krav vedrørende dennes sociale situation og tilknytning til den pågældende kommune, ikke skal anses for at indføre en statsstøtteordning, der skal anmeldes til Europa-Kommissionen, når denne lovgivning dels overlader det til hver kommune at vælge, om den vil indføre en sådan ordning, dels giver den en skønsmargen ved fastlæggelsen af betingelserne for projekternes støtteberettigelse og den del af prisen på de pågældende grunde, der dækkes i henhold til denne ordning.
Læs mere
Dato: 26/03/2026

Forslag til afgørelse

C-60/25 - **Livronsa**
Nøgleord:

» Præjudiciel forelæggelse – konkurrence – karteller – artikel 101, stk. 2, TEUF – forordning (EF) nr. 1/2003 – artikel 16, stk. 1 – sektoren for rentederivater i euro – Europa-Kommissionens afgørelses bindende virkning for en national domstol – tvist mellem en låntager og den långivende bank vedrørende gyldigheden af en rentesats indekseret til Euribor «

Tvist:

Dette forslag til afgørelse vedrører en anmodning om præjudiciel afgørelse om fortolkningen af artikel 101, stk. 2, TEUF og artikel 16, stk. 1, i forordning (EF) nr. 1/2003 (2). Anmodningen er fremsat af Corte d'appello di Cagliari

(appeldomstolen i Cagliari, Italien) i forbindelse med en tvist mellem en låntager, SR, og den bank, der har ydet ham et realkreditlån, FT. Tvisten vedrører gyldigheden af en klausul, som fastsætter den rente, der skal betales for dette lån, med henvisning til Euro Interbank Offered Rate (Euribor) benchmarken.
Anmodningen er baseret på Kommissionens afgørelse af 4. december 2013 (3) og af 7. december 2016 (4), hvori denne institution fastslog, at visse banker, der var involveret i det panel, som havde ansvaret for fastsættelsen af Euribor, havde deltaget i et kartel mellem september 2005 og maj 2008 (5). Kommissionen konkluderede nærmere bestemt, at disse banker havde overtrådt artikel 101, stk. 1, TEUF og EØS-aftalens artikel 53 ved at have deltaget i samlet og vedvarende overtrædelse, som bestod i aftaler og/eller samordnet praksis, der havde til formål at fordreje de normale prissætningskomponenter for rentederivater i euro (herefter »eurorentederivater«) (6). Retten (7), der traf afgørelse i første instans, og Domstolen, der traf afgørelse i appelsagen (8), tiltrådte indholdsmæssigt Kommissionens konklusioner og navnlig karakteriseringen af overtrædelsen som havende et konkurrencebegrænsende formål (9).
Den forelæggende ret ønsker med sin anmodning oplyst, hvilken betydning afgørelserne om eurorentederivater, og Domstolens dom herom, har på gyldigheden af en klausul, som henviser til Euribor i en aftale om et realkreditlån, der er indgået mellem en person og en bank, som ikke deltog i den af Kommissionen fastslåede overtrædelse. Den forelæggende ret ønsker nærmere bestemt for det første oplyst, hvorvidt artikel 101, stk. 2, TEUF, som fastsætter, at de aftaler eller vedtagelser, der er forbudt i medfør af artikel 101, stk. 1, TEUF, ingen retsvirkning har, bør medføre, at den pågældende klausul er ugyldig, selv når den omhandlede låneaftale er indgået uden for markedet for eurorentederivater. For det andet ønsker den forelæggende ret oplyst, hvorvidt og i hvilket omfang den manipulation af Euribor, som Kommissionen fastslog, har bevisværdi i forbindelse med nationale retssager i overensstemmelse med artikel 16, stk. 1, i forordning (EF) nr. 1/2003.

Forslag til afgørelse:

På grundlag af ovenstående bedømmelse foreslår jeg, at Domstolen besvarer det af Corte d'appello di Cagliari (appeldomstolen i Cagliari, Italien) forelagte præjudicielle spørgsmål således: »Artikel 101, stk. 2, TEUF og artikel 16, stk. 1, i Rådets forordning (EF) nr. 1/2003 af 16. december 2002 om gennemførelse af konkurrencereglerne i artikel [101 TEUF] og [artikel 102 TEUF] (EFT 2003, L 1, s. 1) skal fortolkes således, at Europa-Kommissionens konstatering i en afgørelse, hvori det fastslås, at der er sket en overtrædelse af artikel 101, stk. 1, TEUF, af, at et rentebenchmark er blevet manipuleret, ikke medfører, at en klausul i en låneaftale, der henviser til dette benchmark, er ugyldig, når denne klausul ikke er en del af den restriktive aftale, der er omhandlet i Kommissionens afgørelse, og ikke som sådan er blevet konstateret at være i strid med artikel 101, stk. 1, TEUF. Selv om artikel 16 i forordning nr. 1/2003 ikke formelt finder anvendelse, kan en national domstol dog ikke se bort fra konstateringen af manipulation i Kommissionens afgørelse i forbindelse med retssager, som vedrører gyldigheden af en klausul i henhold til national ret, med forbehold af de konkrete vilkår, der er fastsat i denne afgørelse.«
Læs mere
Dato: 12/03/2026

C-117/25 - **Canal Sea Services m.fl.**
Nøgleord:

(Reference for a preliminary ruling – Regulation (EU) 2017/352 – Compulsory pilotage services for seagoing and seagoing-inland waterway vessels – National legislation limiting the provision of compulsory maritime pilotage services to public entities only – Exclusion of private economic operators previously authorised to provide such services – Concept of 'State aid')

Tvist:

This reference for a preliminary ruling from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), forms part of an already well-developed line of case-law, which has led the Court to rule, on numerous occasions, on the compatibility with EU law of national rules governing the operation of port infrastructure or activities carried out there. (2) In the present case, the Court is asked to give a ruling on the conditions under which the pilotage service, consisting of guiding vessels when arriving in and leaving a port, has been entrusted exclusively to port authorities. Those conditions give rise to a number of questions relating in particular to the relationship between primary EU law and Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (3) and, more generally, whether that service is economic in nature or a public power.

Forslag til afgørelse:

Having regard to all the foregoing considerations, I propose that the Court should answer the question referred for a preliminary ruling by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) as follows: Article 107(1) TFEU must be interpreted as meaning that a public entity which has been granted, by a Member State, an exclusive right to provide pilotage services in the port falling within its jurisdiction must be regarded as being engaged in an economic activity and, therefore, as an undertaking. In order to determine whether State aid exists, it is for the referring court to verify that the other conditions necessary for that purpose are satisfied, in particular that relating to distortion of competition. In that context, that court will have to satisfy itself that the condition that a monopoly must have been established in a manner consistent with EU law is satisfied. It will be for that court to examine, in particular, the grant of exclusive rights by the decree at issue in the main proceedings in the light of the freedom to provide services and the freedom of establishment, and to satisfy itself that it does not create an unjustified restriction.
Læs mere
Dato: 26/03/2026

Kendelse
Intet nyt.

Andet nyt fra EU-domstolen
Intet nyt.

Andet internationalt nyt

3 | LITTERATUR (DK)

Artikler fra UfR

Intet nyt.

Nye publikationer fra Erhvervsministeriet

Intet nyt.

Artikler fra Juristen

Intet nyt.

Artikler fra Erhvervsjuridisk Tidsskrift

ET.2026.6: Bæredygtighedsaftaler efter TEUF artikel 101, stk. 3. Af advokatfuldmægtig, Frederik Bjarno Pedersen, advokatfirmaet Poul Schmith
Artiklen analyserer, hvordan bæredygtighedsaftaler vurderes efter undtagelsesbestemmelsen i TEUF art. 101, stk. 3 i lyset af Kommissionens horisontale retningslinjer fra 2023.
Artiklen fremhæver, at Kommissionen i vid udstrækning fastholder den generelle EU-konkurrenceretlige tilgang ved vurderingen af betingelserne i TEUF art. 101, stk. 3. Det konkluderes dog, at fortolkningen af anden betingelse i de horisontale retningslinjer, adskiller sig fra den eksisterende konkurrenceretlige praksis. Det er navnlig betingelsen om forbrugerfordele. Retningslinjerne åbner her for, at det ikke kun er direkte økonomiske gevinster, men også indirekte og kollektive fordele, herunder forbedret miljø og klima, som kan indgå i vurderingen. Kommissionen åbner i de horisontale retningslinjer, efter artiklens opfattelse, muligheden for, at kollektive fordele i form af bæredygtighedsfordele kan være tilstrækkelige til at opfylde anden betingelse.
Læs mere
Dato: 13/03/2026

Artikler fra Revision og Regnskabsvæsen

Intet nyt.

Artikler fra EU-ret og Menneskeret

Intet nyt.

Anden dansk og nordisk litteratur

Europarättslig tidskrift nr 1 2026

The Nissan Iberia Judgment: New Developments on the Limitation of Antitrust Damages Claims
Forfattere: Malen Elorza Unanue, María Muñoz Freijanes, Marina Novo Cenarruzabeitia
Læs mere

4 | LITTERATUR (UK)

Artikler fra European Competition Law Review

Volume 47, issue 4, 2026:

Digital and sustainable: competition, cooperation, and the revised horizontal block exemption regulations and horizontal guidelines (Editorial)
Anton Dinev
Abstract: Introduces a special issue of European Competition Law Review containing articles on aspects of the revised horizontal block exemption regime under Regulation 2023/1066 and Regulation 2023/1067, together with the rewritten horizontal guidelines. Summarises specific points they raise.

Innovation, competition, and horizontal agreements under EU law
Morten Nissen
Abstract: Examines, with reference to Regulation 2023/1066 and the accompanying horizontal guidelines, EU law's approach to research and development (R&D) agreements. Discusses the need for compliance with EU competition law, and the Regulation's approach to issues including block exemption.

From oligopolies to algorithms: the future of information exchange between competitors in EU competition law
Jonathan Ford
Abstract: Discusses the future of exchanges of information under EU competition law. Reviews traditional enforcement policy, the changes introduced in response to artificial intelligence, and how the 2023 guidelines on horizontal co-operation agreements approach issues such as data sharing and algorithms.

Horizontal guidelines and network sharing agreements
Dr Björn Herbers
Abstract: Discusses the approach of the Commission's 2023 guidelines on horizontal co-operation agreements towards network sharing agreements (NSAs) by mobile telecommunications operators, including the minimum conditions which companies must fulfil to reduce their risk of infringing competition law.

The new horizontal sustainability agreements chapter: signalling over changing
Liesbet Van Acker
Abstract: Considers the impact of the chapter on sustainability agreements (SAs) in the Commission's 2023 guidelines on horizontal co-operation. Reviews the legislative framework for horizontal SAs before the guidelines, key aspects of the relevant chapter and possible exemptions when SAs breach TFEU art.101.
The new HBERs and horizontal guidelines viewed from the perspective of the United States, Switzerland, and Turkey
Pim Jansen
Abstract: Compares the approach of Regulation 2023/1066 (Horizontal Block Exemption Regulation) and Commission guidelines on horizontal co-operation agreements with the policies of Switzerland, Turkey and the United States, highlighting key differences and similarities, and the implications for co-operation.

Canada: anti-competitive practices - judgment - private enforcement action (Case Comment)
Kaeleigh Kuzma

Abstract: Notes the Canadian Competition Tribunal decision in Martin v Alphabet Inc, giving guidance on the public interest test for leave to bring competition law claims in the context of a claim for relief from conduct including alleged abuse of dominance by a search engine. Highlights evidential issues.

Czech Republic: competition - infringement (Case Comment)
Tomáš Fiala
Abstract: Notes the Czech Competition Office decision in Pivovary Staropramen, fining a brewery CZK 6 million, following its co-operation and a settlement procedure, for requiring suppliers of raw materials to accept late payments, contrary to the Significant Market Power Act 2009.

Denmark: anti-competitive practices - judgment (Case Comment)
Jens Munk Plum
Abstract: Notes the Danish Competition Appeals Tribunal decision in Boligtextilbranchens Indkobsservice AMBA on whether a joint purchasing agreement which included a clause allocating exclusive marketing areas involved a by-object restriction, considering the required analytical framework.

European Union: anti-competitive practices - judgment (Case Comment)
Prof. Bruce Wardhaugh
Abstract: Notes Lukoil Bulgaria EOOD v Komisia za zashtita na konkurentsiata (C-245/24) (ECJ) on whether refusal of access to petroleum industry infrastructure, acquired during privatisation, by two related companies was an abuse of dominance. Considers the single economic entity concept and the Bronner test.

Finland: procurement - judgment (Case Comment)
Suzanne Simon-Bellamy
Abstract: Notes a Finnish Supreme Administrative Court decision of 30 December 2025, fining six bus companies a total of around EUR 1.5 million for joint tendering for public transport contracts when, objectively considered, they could have submitted independent tenders. Highlights the case's importance.

France: merger control - decision (Case Comment)
Emmanuel Reille
Abstract: Notes the French Competition Authority decision in Parfait Group / Geant Casino La Bateliere Hypermarket, fining an undertaking EUR 7.6 million for breaches of merger remedies including late compliance with a divestiture commitment and failure to co-operate with the monitoring trustee.

Greece: merger control - decision (Case Comment)
Christianna Mara
Abstract: Notes the Hellenic Competition Commission decision in Piraeus Bank SA / MIG Holdings SA on whether the acquisition of a minority shareholding, before an approved concentration, constituted gun-jumping. Considers the relevance of motive over decisiveness of votes at general meetings.

Ireland: anti-competitive practices - judgment (Case Comment)
Dr Vincent J G Power SC
Abstract: Notes the conviction of five individuals for bid-rigging in relation to school transport service procurements, in breach of the Irish Competition Act 2002 ss.4 and 6.

Ireland: competition - policy
Dr Vincent J G Power SC
Abstract: Notes the summary of competition policy developments given by Ireland's Competition and Consumer Protection Commission at a hearing before the Irish Parliament's Joint Committee on Enterprise, Tourism and Employment, including those concerning competition in the supermarket sector.

Malta: mergers - merger control
Adriana Brincat Scicluna
Abstract: Notes proposals by the Maltese Competition and Consumer Affairs Authority for reforming its merger control regime, including the introduction of a higher turnover threshold for notifications, a revised call-in mechanism, new tiered filing fees and strengthened penalties and investigatory powers.

Netherlands: competition - policy
Jotte Mulder

Abstract: Notes the Dutch Competition Authority's publication of its enforcement agenda for 2026, prioritising energy systems, digital markets and sustainability. Highlights its anticipated completion of inquiries into low-speed internet offerings, digital learning tools and algorithmic pricing in aviation.

Netherlands: consumer protection - judgment (Case Comment)
Jotte Mulder
Abstract: Notes the Rotterdam District Court decision in Epic Games, affirming a decision and related fine of EUR 1.125 million and binding instruction, on whether design of the Fortnite Item Shop exposed children to practices capable of influencing economic behaviour in breach of consumer protection rules.

Netherlands: competition - market investigation
Jotte Mulder
Abstract: Notes the publication by the Netherlands Authority for Consumers and Markets of its draft report on veterinary services for pets, highlighting the issues addressed, potential concerns such as limited consumer protection against overtreatment and price increases, and the report's key recommendations.

Portugal: anti-competitive practices - investigation
Cláudia Coutinho da Costa
Abstract: Notes the Portuguese Competition Authority's ongoing investigation into practices by the Portuguese Padel Federation, regulating the rules for events and the training of coaches, whilst providing training itself. Details the proposed commitments under consideration, following public consultation.

Romania: anti-competitive practices - infringement (Case Comment)
Cristina de Jonge
Abstract: Notes the Romanian Competition Council decision, pending publication, in Oyl Co Holding AG SRL / Autoprima Serv SRL / Saga Infrastructura SRL, fining three road maintenance companies approximately EUR 1.66 million for bid-rigging in public procurements, including a reduction for co-operation.

South Africa: mergers - merger control - COMESA
Sandya Booluck
Abstract: Notes the publication by the Common Market for Eastern and Southern Africa (COMESA) of the Competition and Consumer Protection Regulations 2025, and highlights their key reforms to the COMESA merger control regime, together with relevant clarifications in the accompanying Practice Note.

Spain: anti-competitive practices - infringement (Case Comment)
Pedro Callol
Abstract: Notes the Spanish National Competition and Markets Commission decision in Eolica de Alfoz, fining a wind power company almost EUR 1 million and banning its participation in public sector tendering for abusing its dominant position as controller of access to the regional energy transport network.

Turkiye: merger control - decision (Case Comment)
Av. Dr. Gönenç Gürkaynak, Esq.
Abstract: Notes the Turkish Competition Board decision in Modern Times Group MTG AB / Snowprint Studios AB, imposing a fine of TL 241,053 for gun-jumping in the acquisition of a gaming software company, considering the turnover threshold for technology undertakings.

United Kingdom: competition - reform proposal
Antonia Halliwell
Abstract: Notes the Department for Business and Trade's January 2026 consultation paper on proposed reforms to UK competition law, including abolition of the Competition and Markets Authority's independent panel system for merger investigations, and measures to improve proportionality and predictability.

USA: mergers - merger control - procedures
Anthony P. Badaracco
Abstract: Notes the US Federal Trade Commission's January 2026 announcement of its annual adjustments to the pre-merger reporting thresholds, together with increases to filing fees under the Hart-Scott-Rodino Antitrust Improvements Act 1976. Details the revised thresholds, and the dates from which they apply.

Volume 47, issue 3, 2026:

Editorial: issue 3 (Editorial)
James Harvey
Abstract: Introduces articles and topics covered by this issue of European Competition Law Review, and reflects on specific points they raise.

The Nissan Iberia ruling of the Court of Justice of the European Union: legal certainty on the altar of a legal fiction
Professor Francesco Rizzuto
Abstract: Examines the wider implications of CA v Nissan Iberia SA (C-21/24) (ECJ), giving guidance on the start of the limitation period for the purposes of commencing follow-on damages claims before national courts for competition law infringements, and when a national competition authority ruling is final.

Retail and real state: a deadly combination?
J. Nicolás Otegui Nieto
Abstract: Examines, using a fictional scenario based on real events in Spain, whether holding a commercial real estate asset at a loss, when its use or acquisition would be useful to competitors, may constitute a leveraging abuse of dominance, or whether an accompanying plan to impede market access is needed.

The geopolitics of EU competition law
Marina Fernández Gordon
Abstract: Considers, with reference to cases such as Decision in COMP/M.9660-Google/Fitbit (EC) and Decision in COMP/M.9987-Nvidia/Arm (EC), the extent to which EU competition law enforcement in the digital technology sector in respect of the dominant US BigTech giants is linked to its geopolitical goals.

Evans v Barclays Bank on opt-out collective proceedings: is the Supreme Court right about the risks to defendants?
Beverley Robertson
Abstract: Considers the extent to which concerns expressed in Evans v Barclays Bank Plc (SC), that opt-out collective proceedings may place an undue burden on defendants, may be justified. Discusses the plausibility of mechanisms by which claimants might leverage weak claims to oppress defendants.

Case note on Italian Council of State judgment no.8398 of 29 October 2025 (Google Italia v Enel X Italia): the day of reckoning (Case Comment)
Eleonora Caravà
Abstract: Comments on the Italian Council of State judgment in Google Italia v Enel X Italia on whether Google abused its dominant position by refusing to facilitate interoperability of a rival electric vehicle charging app with its in-car-integrated mobile operating system, bringing the case to a close.

Competition Law and Policy in the Western Balkans ((European Union and its Neighbours in a Globalized World, 22, Band 22) (Publication Review)
Jasminka Pecotić Kaufman

Internet Empire: The Hidden Digital War (Publication Review)
Sean F. Ennis

European Union: anti-competitive practices - judgment (Case Comment)
Prof. Bruce Wardhaugh
Abstract: Notes FL und KM Baugesellschaft (C-2/23) (ECJ) on whether national legislation permitting disclosure to public prosecutors investigating cartel offences of the leniency settlement and details of related discussions in competition authority cartel proceedings was consistent with EU law.

Finland: anti-competitive practices - investigation
Suzanne Simon-Bellamy
Abstract: Notes the warning issued by the Finnish Competition and Consumer Authority to the Finnish Association of Physiotherapists (FAP) following an investigation into alleged unlawful price recommendations, instructing it to perform a competition law self-assessment. Details the FAP's resulting actions.

Finland: anti-competitive practices - judgment (Case Comment)

Suzanne Simon-Bellamy
Abstract: Notes the Finnish Supreme Administrative Court ruling in Posti Group Oyj v Finnish Competition and Consumer Authority, dismissing a postal firm's claims that the authority exceeded its investigative powers when requesting information during an investigation of alleged abuse of a dominant position.

Finland: anti-competitive practices - report
Suzanne Simon-Bellamy
Abstract: Notes a Finnish Government report finding that no clear need exists for imposing personal sanctions in cartel cases, and recommending instead a strengthening of the decision-making powers of the Finnish Competition and Consumer Authority to allow it to impose penalty payments directly.

Germany: anti-competitive practices - judgment (Case Comment)
Sebastian Plötz
Abstract: Notes the Dusseldorf Higher Regional Court ruling in Oberlandesgericht (Dusseldorf) (Lufthansa) (VI- Kart 7/22) on whether a decision finding abuse of dominance by an airline should be annulled for apparent bias, based on a procedural error in providing the airline with access to the file.

Hong Kong: anti-competitive practices - investigation
Sandra Marco Colino
Abstract: Notes an agreement by the Keeta food delivery platform to voluntarily amend its partnership agreements with restaurants to address Hong Kong Competition Commission concerns over exclusive dealing arrangements, given that the platform had a substantial degree of market power.

Netherlands: anti-competitive practices - market investigation
Jotte Mulder
Abstract: Highlights the Dutch Competition Authority's participation in the European Commission's market investigations under Regulation 2022/1925 into alleged anti-competitive conduct in the cloud services market, including whether the cloud divisions of Amazon and Microsoft are core platform services.

Netherlands: competition and mergers - reform discussions
Jotte Mulder
Abstract: Notes the Dutch Cabinet's November 2025 response to proposals to expand the enforcement powers of the Dutch Competition Authority, including its limited support for powers to call in mergers falling below the notification thresholds, and its call for EU adoption of a B2B geoblocking regulation.

Netherlands: mergers - merger control - decision (Case Comment)
Jotte Mulder
Abstract: Notes the Dutch Competition Authority decision KPN / Open Tower, amending behavioural remedies imposed in connection with a conditional clearance of the acquisition of an antenna site provider by strengthening internal information barriers, following a complaint by a competing antenna site provider.

Portugal: competition - consultation
Guilherme Oliveira e Costa
Abstract: Notes the Portuguese Competition Authority's response to a consultation on best practices on the use of artificial intelligence in the media sector, including its concerns over potential abuses of dominance and the risk of algorithmic self-preferencing. Details its proposed regulatory responses.

South Africa: anti-competitive practices - decision (Case Comment)
Aidan Scallan
Abstract: Comments on the South African Competition Tribunal decision in Automatic Sprinkler Inspection Bureau on alleged hub-and-spoke cartel practices, considering conditions for treatment as potential competitors, including economic viability of market entry, and the need for proof of horizontal consensus.

Spain: mergers - merger control - decision (Case Comment)
Pedro Callol
Abstract: Notes the Spanish National Competition and Markets Commission decision in Curium Pharma Holding Spain / Institut de Radiofarmacia Aplicada de Barcelona, prohibiting an acquisition based on effects on the positron emission tomography radiopharmaceutical supply and regional production markets.

Spain: anti-competitive practices - infringement (Case Comment)
Pedro Callol
Abstract: Notes the Spanish National Markets and Competition Commission decision in ICON EUROPE SL, fining a haircare product supplier EUR 1,197,907 for implementing a price control strategy, involving retail and wholesale resale price maintenance and e-commerce controls, to prevent intra-brand competition.

Turkiye: mergers - merger control - decision (Case Comment)
Av. Dr. Gönenç Gürkaynak, Esq.
Abstract: Notes the Turkish Competition Board decision in Color Block Jam, approving an acquisition resulting in sole control of a mobile game in light of the merging parties' low market share. Highlights the dissenting opinion's criticism of the reasoning, considering the nature of the digital games market.

Artikler fra European Competition Journal

Intet nyt.

Artikler fra Journal of Competition Law and Economics

Volume 22, issue 1, 2026

Alternative Remedies for Breach of Competition Law: A Case for Restitution for Wrongs
Matthew Tweddell and Konstantinos Pantelidis
Any harm caused by an undertaking's anticompetitive conduct may be recovered as damages. The conventional method used to determine the amount of damages recoverable is to, so far as possible, measure the claimant's loss. An alternative method of calculating damages recognised in English law—though has not yet been awarded for breach of competition law—is to measure the defendant's gain. The legal basis for bringing a claim for restitution or disgorgement for breach of competition law is unclear, with conflicting remarks subsisting at the appellate court level. In this article we make the case that, notwithstanding the lack of legal clarity in this area of law, a restitutionary or disgorgement-based remedy is available as a matter of law for breaches of competition law. We suggest that these kinds of remedies align with the aims of private enforcement of competition law and will likely play an important role in vindicating the rights of those that suffer competition harm in the future.

The Relevant Market in European Private International Law—The Connecting Factor in Art. 6(1) and (3)(a) Rome II Regulation of Antitrust and Unfair Competition Law with Special Consideration of Competition Economics
Christian Karschau
What is the relevant market in private international law? Determining the applicable law in antitrust and unfair competition law is one of the first questions in international damages claims. From a European perspective, the *lex fori* in private enforcement actions is Art. 6 Rome II Regulation. Here, the connecting factor is the relevant market. There is extensive literature on the market definition in antitrust law. However, there is a long-standing debate on how to approach the relevant market in antitrust and unfair competition law in the context of private international law. The purpose of this paper is to define the relevant market in private international law. It examines whether the market definition from antitrust law can be used to determine the applicable law. Also, it will examine whether the connecting factors in international antitrust and unfair competition law correspond (Art. 6(3)(a) and Art. 6(1) Rome II Regulation). Finally, several approaches to restrict the effects doctrine and the impact principle in antitrust and unfair competition law are discussed. The discussion follows the method of legal interpretation enriched with economic arguments, which have been largely ignored in previous debates.

Detecting Resale Price Maintenance with Unsupervised Machine Learning
Valentin Forster and others
Computational antitrust, the data-driven investigation of potential antitrust violations, has found more and more applications in recent years, including through the use of machine learning. However, the availability of labelled data to train algorithms proves to be an obstacle. In this paper, we explore the use of unsupervised machine learning to detect resale price maintenance (RPM) in price data. We develop assumptions that RPM prices exhibit increased similarity, a right-skewed distribution including a cut-off point, and fewer price changes over time compared with non-RPM prices. Based on these assumptions, we extract features based on simple statistical coefficients and perform clustering to detect products with price characteristics consistent with RPM. Subsequently, this can serve as a sufficient basis to conduct more in-depth antitrust investigations. We test our approach on five real-world product datasets scraped from a price comparison website. We show that our screen successfully clusters products with price patterns indicative of RPM.

When Mergers Get the Green Light: Price Effects of Competition Authority-Approved Mergers in Finland
Riku Buri and Miika Heinonen
Using a difference-in-differences approach, we estimate the price effects of five mergers approved by the Finnish Competition and Consumer Authority following an in-depth review. Our findings indicate substantial heterogeneity in post-merger price outcomes: in two cases, prices increased; in two cases, no statistically significant price changes were observed; and in one case, prices declined. Industries that experienced market entry following the merger did not exhibit price increases. We also conduct several merger-specific analyses that allow us to link the estimated price effects to the pricing strategies of the merging parties and to merger-specific efficiencies.

A Critique of Recent Remedies for Third-Party Pricing Algorithms and Why the Solution Is Not Restrictions On Data Sharing
Joseph E Harrington, Jr.
A growing antitrust challenge is competitors using a pricing algorithm supplied by the same data analytics company. Although there can be procompetitive efficiencies in outsourcing pricing, the risk of anticompetitive harm in having a common agent influence competitors' prices is severe. To deal with this challenge, a remedy has recently been proposed in the United States at the federal level and is being adopted at the local level. This remedy prohibits a third party's use of nonpublic competitor data. If firms A and B both subscribe to the same third party, that third party is prohibited from using the nonpublic data of firm B in the pricing algorithm that recommends prices to firm A. The contribution of this paper is to critically examine this remedy. First, it is explained the remedy creates inefficiencies that need to be recognized. Second, and more importantly, it is shown the remedy may not prevent the harm it is intended to prevent. More specifically, a workaround is developed whereby a third party can result in firms charging supracompetitive prices while not using nonpublic competitor data. The problem is that the remedy focuses on shared data when the source of harm is shared objective.

Consumer Privacy and Anticompetitive Exclusion
Edward M Iacobucci
As privacy law ascends in importance, the appropriate interface between antitrust and privacy law requires greater attention. This article considers one aspect of that interface. In particular, relying on a recent U.S. Ninth Circuit case involving hiQ and LinkedIn as a motivating example, this article demonstrates that the privacy choices of a user of a platform are analogous in antitrust-relevant ways to exclusive contracts. Users may opt for privacy settings that exclude competition by barring access to a key input, data, to potential rivals to that platform. A collective action problem implies that such choices may be individually rational even if harmful to competition and therefore to users as a group. Externalities between those choosing privacy and those benefiting from competition may also lead to anticompetitive exclusion. The article explains the exclusionary properties of privacy choices and reviews their legal implications, including a call for competition law adjudicators to treat privacy defences to anticompetitive behaviour with scepticism.

Artikler fra Journal of Antitrust Enforcement

Volume 14, issue 1, 2026

Implications of the 2024 Market Definition Notice
Magali Eben and Viktoria H S E Robertson
Market definition provides competition law with a basic unit of analysis that has a strong guiding force on the substantive competitive assessment carried out in due course. Particularly when it comes to innovative[1] and digital markets,[2] this legal concept[3] has been in search of a more suitable approach to delineating the relevant antitrust market for quite some time.[4] In Europe, the European Commission's 1997 Market Definition Notice[5] was recently overhauled to address the challenges of the 21st century, resulting in the revised 2024 Market Definition Notice.[6]
This Special Issue brings together a number of papers that explore the implications of the European Commission's 2024 Market Definition Notice, from both a legal and an economic point of view. A great many of these papers were discussed at a Workshop held in Vienna on 20 November 2024, which was co-organized by the University of Glasgow, CREATe, the Vienna University of Economics and Business (WU Vienna) and The Competition Law Hub.[7]

Drawing boundaries of modern markets—the main achievements and novelties of the Commission's revised Market Definition Notice
Terézia Ovečka
The European Commission's revised Market Definition Notice adopted in February 2024 is a significant development in the Commission's competition toolbox. The revised Notice builds on its predecessor and uses the extensive experience of DG Competition gained and refined while assessing the boundaries of markets in thousands of merger and antitrust

cases over the last 25 years. It is a comprehensive, practical, and modern compilation of market definition guidance. Moreover, it includes new guidance on topics that were not (sufficiently) covered in the 1997 Market Definition Notice, such as approaches for defining markets with high levels of innovation and R&D activity, digital markets, markets with significant differentiation and in cases with discrimination of customers or customer groups, as well as non-price parameters of competition. The revised Market Definition Notice brings the Commission's market definition guidance up to date with modern business realities and allows stakeholders to better understand how the Commission approaches definitions of traditional as well as more nascent, new markets—thus contributing to increased legal certainty and predictability for stakeholders.

The European Commission's understanding of the term 'ecosystem': lessons for future enforcement under the revised *Notice on the Definition of the Relevant Market*
Antoni Napieralski and Joanna Mazur
The article examines how the term 'ecosystem' has been used in the Commission's antitrust, merger, and Digital Markets Act decisions. We analyse 313 uses of the term 'ecosystem' and identify two approaches to defining ecosystems that are present in the Commission's decisions: technological, which focuses on a core service or product, and organizational, which focuses on the company. Next, we identify the characteristics of ecosystems that are emphasized by the Commission, the most frequently cited being the lock-in effect, the enumeration of entities involved in the creation of the ecosystem, the benefits of ecosystems, and switching costs. Next, the variety of the identified meanings and characteristics of the term 'ecosystem' is reconciled with the Commission's revised *Notice on the definition of the relevant market*. We propose guiding principles on how the Commission's experience with the use of the 'ecosystem' category could be more systematically incorporated into European Union competition law by introducing the category of access markets: markets that serve as gateways to the ecosystem and allow the orchestrators to exercise their technological power by unilaterally deciding who may offer products within the ecosystem and under what conditions.

***Microsoft/Activision Blizzard* and *Booking/eTraveli*: an ecosystem market definition in five takeaways**
Emanuela Lecchi
In 2023, the EU prohibited *Booking/eTraveli* whilst the UK sought to prohibit *Microsoft/Activision Blizzard*. In both cases, the other authority allowed the merger. The decisions reveal the existence of two issues: a Disconnect Inconsistency in the prohibitions (between (platform-based) market definition and (ecosystem-level) assessment) and a Static/Dynamic Divide (prohibitions grounded in forward-looking ecosystem concerns and clearances grounded in traditional, static indicators). In light of these observations, a workable market definition is proposed: an ecosystem market is a multi-product, multi-actor system, orchestrated by a central firm, which competes as a unit against other such systems. This definition aligns market boundaries with the merger assessment and provides the authorities with a coherent frame for analysing competition both *within* and *between* ecosystems. The analysis leads to five takeaways: (i) the two cases reveal analytical and methodological inconsistencies in the practice of the competition authorities; (ii) the proposed definition can guide the authorities towards legally sound, forward-looking merger control; (iii) qualitative and quantitative tools exist to operationalize ecosystem definition and assessment; (iv) market definition remains legally and practically indispensable for consistency and legal robustness of merger control; and (v) when ecosystems compete, the merger question becomes inherently structural, requiring a focus on market definition.

The dynamics of market boundaries and the role of systemic market power
Annika Stöhr and Oliver Budzinski
Identifying the boundaries of a market is a critical component of most antitrust and competition policy areas. While there are established practices for market definition and delineation, dynamic processes of competition and the novel phenomenon of (digital) ecosystems provide new challenges: market boundaries become (i) inherently dynamic and subject to evolutionary change and (ii) subject to the deliberate design of powerful companies. Consequently, the prediction of post-event effects—for example, competitive effects resulting from a merger or an instance of abuse of market power—may fail if it relies on a static or stationary market definition. If market boundaries change inherently through dynamic market competition, identifying these boundaries and their evolution becomes an integral part of a dynamic approach to competition policy rather than mere preparatory work. Furthermore, if companies wield systemic market power within ecosystems (eg cross-market power) and thus have the power to shape market boundaries and deliberately alter (previous) market delineations, the identification of market boundaries cannot be regarded independently of the exploitation of market power. Both dynamics of market boundaries necessitate a different approach to market definition than the one outlined in the Commission's 2024 Market Definition Notice.

The new market definition notice misses the key to addressing transforming product markets
Anouk van der Veer
The European Commission's renewal of the Market Definition Notice raised expectations of a more dynamic approach to market definition to better account for the complexities of modern competition. In that regard, the new Notice adopted in

early 2024 misses the mark. The essence of dynamic competition theory is that competition during product market transformations is also between firms without a product overlap, but in the development of the next-generation product: the future product market. To that end, dynamic competition theory seeks to bring competitive constraints from outside the traditional product market into market definition. Regrettably, the new Notice imposes restrictive guidance on competitive constraints, supply substitution, and potential competition. As a result, the Notice exposes a fundamental disconnect between the primary objective of market definition—identifying competitors that exert competitive constraints on the firms involved—and the essence of dynamic competition. The key to an accurately defined transforming product market is to reflect who competes for the future products.

Intellectual property rights and market definitions under scrutiny—is the commission's new Notice innovative enough?
Hedvig Schmidt
This article analyses the 2024 Commission Notice on the Relevant Market Definition and recent case law to review the European Commission's approach to identifying the relevant market when intellectual property (IP) rights and innovation are present. The analysis is undertaken with reference to the 2014 Transfer Technology Block Exemption Regulation, the new R&D Block Exemption Regulation, the 2017 US IP Licensing Guidelines, and the new 2023 US Merger Guidelines. It identifies that the Commission has not ensured alignment between its regulations and guidelines, instead playing hopscotch with legal certainty. In terms of the broader contribution, this article reflects on the development of the interface between competition law and IP rights and the central part innovation now plays in European Union competition law enforcement. It marks a positive move away from Schumpeterian theories of innovation needing monopoly power towards Arrow's idea that competition can be a key influencer of innovation. This shift in attitude comes alongside the recent regime change in US antitrust enforcement and the Commission's own adoption of the Digtial Markets Act and Digital Service Act to regulate the digital economy. However, for IP rights, the *ex-ante* approach and reliance on 'innovation spaces' in defining the relevant market risks overstepping the competition law's role as second-tier regulator of IP rights.

Market definition under the EC Market Definition Notice: substitutability versus homogeneous conditions of competition
Lirio Barros and others
Market definition traditionally relies on the principle of substitution and the hypothetical monopolist test (HMT) framework, which defines the relevant market as the narrowest market worth monopolizing, given the absence of sufficiently strong competitive constraints from demand substitution and, potentially, supply substitution outside that market. However, the revised EC Market Definition Notice puts much greater emphasis on homogeneous conditions of competition (HCC) as a different and simpler framework, to be used when suppliers (i) negotiate with individual customers or (ii) discriminate between customer groups on the basis of observable criteria, including in particular location. We discuss how the HCC framework may lead to a relevant market that is narrower than under the HMT framework, because it does not directly consider the competitive constraints imposed by demand and supply substitution beyond the candidate market. We then present how this may change the economic interpretation of the defined market and increase the effort required in any subsequent competitive assessment to identify the actual competitive constraints exerted on firms.

Relevant labour market: missing in the new Market Definition Notice
Jan Broulík
The European Commission has been signalling an ambition to start more vigorously enforcing European Union competition law against business actions concerning labour. Such enforcement may be necessary because empirical research shows that competition among European employers is often limited. However, the Commission's new Market Definition Notice entirely ignores the markets for labour, where such competition takes place, even though their definition may be necessary for enforcement. Against this backdrop, the present article examines how to define the relevant labour market. It discusses the occupation and geographic dimensions of the market, the role of the hypothetical monopsonist framework, and the relationship of the market to downstream product markets, and it considers which evidence can be used to define the market. The discussion reveals that the relevant labour market consists of jobs for which the respective workers qualify and are also willing to consider. This so-called matching nature of labour markets is a major reason why they tend to be quite narrow. The article calls on the Commission to provide authoritative guidance to market actors and enforcers on how to define relevant labour markets.

A practical guide to market definition for multi-sided platforms: how can we build on the principles in the 2024 Market Definition Notice?
Helen Ralston-Smith and Gunnar Niels
The European Commission's revised Market Definition Notice, published in 2024, extends the original 1997 Notice in a number of ways, including by explaining how markets may be defined in the presence of multi-sided platforms. This

article builds on the principles in the Notice to provide a practical guide to market definition for multi-sided platforms. We consider the latest European Union and UK case law, including the Commission's *Appstore* and *eTraveli/Booking* decisions and the UK Competition Appeal Tribunal's judgment in *BGL/Comparethemarket*, and discuss the merits of the various approaches. In particular, we consider when it is appropriate to define one market or multiple ones, how the SSNIP test can be applied to incorporate network effects across the sides, and how this test can be adjusted if there is a zero price on one side, including through the use of an SSNDQ.

Artikler fra Journal of European Competition Law and Practice

Intet nyt.

Artikler fra World Competition

Volume 49, issue 1, 2026

How Android Auto Reshapes the Law of Refusal to Deal (and What It Means in Practice) (p. 1)
Pablo Ibáñez Colomo
The judgment of the Court of Justice (ECJ) in Android Auto has reshaped the law of refusal to deal. In particular, it has significantly reduced the scope of application of the Magill and Bronner doctrines, which are, in the aftermath of the ruling, only relevant where a dominant undertaking operates a fully closed system. This article identifies the ways in which Android Auto has transformed the case law and expands the reach of intervention under Article 102 TFEU. It also identifies the distributional and institutional consequences of the substantive choices made by the ECJ at a time when private enforcement is on the rise across the EU.

The Issues and Challenges of Competition Policy in Direct Financial Markets (p. 27)
Constance Monnier-Schlumberger, Michael Troege
This article offers an analysis of the specific challenges that direct financial markets, such as money markets, markets for derivatives, currencies and bonds, pose to competition policy. These markets often fall outside the scope of tools developed in the context of traditional competition analysis, particularly those derived from theories based on the Structure-Conduct-Performance (SCP) paradigm. Drawing on a comprehensive review of the theoretical and empirical literature, we examine several fundamental issues related to competition policy in direct financial markets. First, we explore the question of market power and concentration in this sector from the theory point of view. Second, we discuss specific types of anticompetitive behaviour, such as collusion on benchmark prices, the potentially anti-competitive effects of information-sharing mechanisms and the growing role of algorithms and artificial intelligence (AI). We highlight the need to adapt the analytical frameworks and tools of competition policy in order to ensure effective competition, as well as legal certainty for financial market participants, both of which are essential to the proper functioning of these markets in a rapidly evolving environment.

Revisiting Behavioural Merger Remedies in Dynamic Markets (p. 45)
Patrice Bougette, Oliver Budzinski, Frédéric Marty
Digital platforms, ecosystems, and Research&Development-intensive industries challenge conventional, one-shot merger control. In fast-evolving markets, competitive constraints and innovation trajectories can shift after clearance, while behavioral commitments – often imposed for long durations – are exposed to obsolescence, moral hazard during implementation, and adverse selection rooted in imperfect information at notification. We propose a conceptual model of adaptive merger control that introduces structured ex post flexibility through a review clause attached to conditional clearance. The clause can be activated within a predefined window when observable triggers indicate that the original package has become ineffective or disproportionate. We outline governance options for initiation by authorities, merging parties, or affected stakeholders; information tools for dynamic counterfactuals; and a continuum of remedy designs distinguishing fixed commitments, adaptable behavioral remedies, and regulation-like constraints. The framework highlights two symmetric enforcement errors – excessive restraint and excessive precaution – and shows how adaptive design can mitigate both while preserving legal certainty via transparent procedures and bounded discretion. We discuss implementation challenges, including monitoring capacity, strategic gaming, and the potential transition from behavioral to structural measures. The article provides a framework for remedy design in dynamic markets and for the assessment of merger chains in digital and innovation markets.

The US Taxpayer Harm Test: An Emerging Basis for Extraterritorial Antitrust Enforcement in the Shadow of Law (p. 77)
Marek Martyniszyn

This article examines the emergence, development and implications of the taxpayer harm test as a novel jurisdictional basis in United States antitrust enforcement. Developed entirely through agency practice, without legislative or judicial grounding, it extends the extraterritorial reach of US law to anticompetitive conduct abroad where foreign transactions are substantially funded by the US government. Unlike the effects doctrine, which grounds jurisdiction in competitive harm within the forum market, the taxpayer harm test relies on fiscal injury to the US treasury, and by extension its taxpayers. The article traces the origins of the test in agency guidelines and early cases, including US military procurement abroad, its recognition in the 1995 and 2017 Guidelines, and its application in recent enforcement actions. It shows how the test has been used to support expansive assertions while avoiding judicial scrutiny at home. The article highlights the absence of legislative mandate or judicial endorsement, and assesses the test's compatibility with established principles of jurisdiction under international law. It argues that while the test advances US enforcement goals and strengthens deterrence, it stretches extraterritoriality beyond recognized limits. By analysing this unexplored doctrine, the article contributes to wider debates on unilateral innovation in competition law and the governance of cross-border economic activity.

Unravelling the Presumption of Innocence in EU Competition Enforcement: Fact, Law, and Discretion (p. 95)
Jaime Eduardo Castillo Botero
Among the rights undertakings enjoy when sanctioned due to antitrust violations in the EU is the right to be presumed innocent. Although it may seem a concept easy to apply, the presumption of innocence imposes on the authorities a rule on evidence assessment. In this sense, the subjectivity of the evaluation of evidence entails that the application of concepts as the burden and standard of proof becomes dependent on the personal beliefs of the judge. Furthermore, as competition law is inherently technical, it is difficult to ascertain what a reasonable doubt is. To an expert something may be evident, but to the layman, even spurious evidence may generate doubts. Against this background, the aim of this paper is threefold. First, it will provide an overview of the requirements of the presumption of innocence regarding evidence assessment and fact-finding and its implications for the burden and standard of proof. Second, since fact and law in competition enforcement are inextricably linked, it will argued that the presumption of innocence affects the substantive competition rules in the European competition order. Finally, this paper aims to provide an analysis of the compatibility discretion in complex economic assessments with the presumption of innocence.

Tacita Potentia: Collective Dominance in India: An Emerging Threat or a Doctrinal Mirage? (p. 127)
Sudhanwa Sandeep Joshi
In contemporary times, rapid globalization and increasing digitization have fundamentally reshaped market structures, leading to higher concentration levels and the emergence of oligopolistic markets across key industries. As competition increasingly falters not due to explicit collusion but due to information-aided and algorithmic conscious parallelism, traditional antitrust frameworks – designed primarily to punish conspiracies through overt agreements – find themselves inadequate to address these modern threats to competitive integrity. This enforcement vacuum has prompted antitrust jurisdictions to reconsider how competition law should evolve in response.
The European Union (EU), recognizing the limitations of conventional positions, developed the concept of collective dominance to capture anti-competitive outcomes in oligopolistic settings without requiring proof of express concert. While the jurisprudence, beginning with the Italian Flat Glass case and clarified in Compagnie Maritime Belge (CMB) and perfected in Airtours, firmly established collective dominance within EU law, its practical enforcement has remained lacklustre. Conversely, the United States has categorically rejected the doctrine, upholding freedom of businesses and reiterating strict requirement of concert under the Sherman Act, thereby sacrificing its ability to regulate tacitly coordinated conduct in concentrated markets.
India now faces a critical conundrum. Although its Competition Act is structurally modern, the persistent refusal to recognize collective dominance creates a significant enforcement gap in an economy where digital transparency and algorithmic facilitation of parallel conduct are becoming prevalent. As India aspires toward becoming the world's third largest economy, it must confront a pivotal question: where should it draw the line between preserving the freedom of trade and preventing the abuse of unbridled market power? This paper examines the global evolution of collective dominance and argues for a calibrated doctrinal and policy response in the Indian competition framework to address emerging structural threats.

Artikler fra Antitrust Law Journal

Volume 87, issue 2, 2026

HUB POWER AND HUB(USES): POWER DYNAMICS IN PLATFORM ECOSYSTEMS
Agranat, Raz; Gal, Michal S.

Apple's involvement in coordinated hub power exercises, such as leveraging publishers to counter Amazon's market dominance, illustrates how hub power dynamics can resemble vertical integration strategies that reshape platform competition and governance.

CONDUCT THAT INCREASES MARKET POWER WITHOUT LESSENING COMPETITION: A CHALLENGE FOR ANTITRUST LAW
Baker, Jonathan B.
Antitrust law's treatment of conduct that increases market power without lessening competition remains unsettled, with courts divided between focusing solely on lessened competition as the mechanism for liability and considering increased market power itself, influenced largely by error cost considerations and policy judgments.

ECONOMIC EXPERTS IN ANTITRUST LITIGATION: EMPIRICAL EVIDENCE FROM THE COURTS, 1890–2018
Ciliberto, Federico; Elzinga, Kenneth G; Sokol, D Daniel
Economic experts have become increasingly integral to antitrust litigation over time, with courts relying heavily on their testimony to analyze complex economic issues, though the market for such experts remains diverse and competitive without domination by a few individuals.

FROM PROTECTING COMPETITORS TO PROTECTING COMPETITION: THE PAST, PRESENT, AND FUTURE OF THE ROBINSON-PATMAN ACT
Holyoak, Melissa; Mufarrige, Christopher G
The Robinson Patman Act requires proof of harm to competition, not merely price differences, and its aggressive enforcement based on the Morton Salt inference has historically harmed consumers and competition by protecting competitors rather than competition itself.

OUT OF MARKET, OUT OF MIND
Kaplow, Louis.
Antitrust law should explicitly recognize and incorporate out of market benefits because ignoring them undermines the core economic value of resource flows and innovation essential to a well functioning market economy and leads to detrimental legal and economic consequences.

CONFRONTING CONSUMMATED MERGERS: AN INQUIRY INTO POLICY AND PRACTICE
Kwoka, John; Valletti, Tommaso
Ex post actions against consummated mergers in the U.S. are relatively infrequent and often ineffective at restoring competition, highlighting the need for more stringent and accurate ex ante merger control policies to prevent anticompetitive outcomes.

Artikler fra Antitrust Bulletin

Volume 71, issue 1, 2026

Situating the Dynamic Competition Approach
Nicolas Petit, Thibault Schrepel, and Bowman Heiden
The dynamic competition approach defines an improvement path for antitrust law. Interested in competitive realities more than political activities, the growing body of scholarship studying dynamic competition (i.e., competition through technology) wants to make antitrust diagnosis and analysis more accurate without sacrificing administrability. At a high level, the dynamic competition approach appears to some as a twenty-first-century equivalent of the Chicago school of antitrust. This article shows that the analogy is only partially correct. Unlike the Chicago school of antitrust law, the dynamic competition approach is innovation oriented, empirical, enforcement friendly, and interdisciplinary. To illustrate this distinction more concretely, the article reviews past cases through the lens of the dynamic competition approach. It concludes that the dynamic competition approach is the natural evolution for all systems of antitrust law that reassess doctrine in light of the progression of economic and technical understanding of competition.

Monopsony and Mixed Martial Arts: An Antitrust Analysis
Roger D. Blair, and Olivia Liu
In *Cung Le v. Zuffa*, a class of mixed martial arts fighters accused the major promoter of unlawful monopsonization of the MMA fighter labor market. Since the case settled before trial, we have not heard from the jury whether Zuffa was, in fact, a monopsonist. Similarly, Zuffa’s business conduct has not been found to be competitively unreasonable. The plaintiff’s damage methodology went unchallenged, and the settlement terms have gone unexamined. In this article, we explore some of these issues.

The U.S. Department of Justice and Federal Trade Commission 2023 Merger Guidelines: An Account and a Few Positive and Many Negative Assessments
Richard S. Markovits
This Article summarizes and criticizes the DOJ/FTC's 2023 Merger (M&A) Guidelines. Part I argues that the Agencies' claim that the Guidelines are not binding, violates the antitrust laws' addressees' constitutional right to fair notice . Part II discusses the Agencies' failure to articulate their understanding of the (M&A)-related tests of illegality the Clayton and Sherman Acts respectively, promulgate. Part III argues that the Agencies' account of the U.S. antitrust law's goals are ill-formulated and includes some goals of questionable desirability. Part IV explains why "market definitions" are inherently comprehensively arbitrary and why market-oriented approaches to analyzing the legality of (M&A)s are therefore inaccurate and their use by the Agencies is unconstitutional and avoidable. Part V delineates the various ways in which (M&A)s can affect the intensity of price-competition, analyzes the determinants of these possible impacts, and points out that the Guidelines mis-state the relevance of many such determinants and totally ignore many other such determinants. Part VI analyzes the various ways in which (M&A)s can affect the intensity of investment-competition, analyzes the determinants of the magnitudes of each of these possible impacts, points out that the Guidelines provide little information about the approaches the Agencies will take to these issues, and argues that the Agencies do not understand the determinants of the effectiveness of potential competition and may subscribe to the erroneous limit-pricing theory. Part VII delineates the correct way to analyze whether an (M or A) violates the Sherman Act and points out that the Guidelines provide almost no information about the way in which the DOJ will approach this issue. Part VIII criticizes various positions that the Guidelines take on the antitrust illegality of vertical (M&A)s.

Against Per Se Illegality of Tying and Bundling in Digital Markets: Perspectives from the EU and India
Aditya Sushant Jain
The rapid global diffusion of digital technologies has prompted jurisdictions to abandon traditional effects-based competition enforcement in favor of rigid ex ante regulatory regimes. The European Union's Digital Markets Act (DMA), often viewed as a "model law," exemplifies this shift by imposing per se prohibitions on a catalogue of practices deemed inherently anti-competitive. Among these, the categorical condemnation of tying and bundling is particularly striking. Unlike other DMA-listed practices, tying has a long, contested history in industrial economics, where it is associated with both foreclosure risks and significant efficiency gains.This paper argues that the transplantation of per se prohibitions on tying into ex ante frameworks neglects economic nuance and misrepresents technological reality. Through a comparative analysis of EU jurisprudence, existing Indian competition law, and the proposed Indian Digital Competition Bill, the paper demonstrates that earlier effects-based approaches were better equipped to distinguish exclusionary tying from welfare-enhancing "technological integrations." It further contends that digital markets do not eliminate classical efficiencies; rather, they intensify them through deep product integrations. Using a brief case study of an AI product, the paper illustrates how rigid rules misclassify innovation as anti-competitive and shows how minor exemptions in draft laws often produce legal uncertainty. Ultimately, the paper contends that the per se illegality of tying reflects political choices over sound economics. It suggests that emerging economies, particularly India, should modernize their effects-based jurisprudence instead of adopting blanket bans.

Expectation-Based Fairness in Agricultural Markets: Implications for Antitrust Policy
Harvey S. James, Jr., Mary K. Hendrickson, and Christine M. Sanders
Claims of unfairness often arise when individuals' expectations are violated. Evaluating such claims requires understanding the nature and basis of those expectations. This paper examines farmers' fairness perceptions through two case studies: policy changes to water access rights and the use of dicamba in agricultural areas. We illustrate how expectations are rooted in identifiable bases, propose methods for uncovering those bases, and assess their presence in farmers' statements. Our findings demonstrate the feasibility of identifying expectation bases, enabling more objective assessments of unfairness claims. This approach offers an alternative to normative fairness frameworks and has implications for antitrust and competition policy. In markets where concentration and power asymmetries are prevalent, fairness perceptions influence participation, trust, and regulatory legitimacy. Understanding expectation-based fairness claims can help policy-makers evaluate harms not captured by traditional metrics and design more responsive competition and contract policies.

Double Marginalization with Cournot Oligopolies
Timothy J. Tardiff
The elimination of double marginalization has been an important consideration in recent updates to the U.S. Horizontal and Vertical Merger Guidelines, in particular, and the evaluation of whether vertical mergers are pro- or anticompetitive, in general. This article extends frameworks for analyzing the effects of eliminating double marginalization on prices from situations with upstream and downstream monopolies to encompass Cournot oligopolies both upstream and downstream.

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

Intet nyt.

Artikler fra Global Competition Litigation Review

Intet nyt.

Artikler fra Market and Competition Law Review

Intet nyt.

Andre udenlandske artikler

Intet nyt.

5 | NYT FRA KONKURRENCEGRUPPEN

Reserver datoen: 27. maj kl. 13:00–16:00
Margin squeeze: The Frankenstein Monster of Article 102

Den 27. maj inviterer Copenhagen Competition Law Lab til et event, hvor vi sætter fokus på misbrugsformen margin squeeze og de nye sager, der synes at være under opsejling – både generelt og i telesektoren.

I 2025 fandt Konkurrencerådet eksempelvis, at Coloplast Danmark havde misbrugt sin dominerende stilling i strid med konkurrencelovens § 11 gennem margin squeeze på markedet for stomihjælpemidler og tilhørende serviceydelser til kommuner. Samtidig rapporterede Børsen den 15. april, at teleselskabet Fastspeed netop har anlagt sag mod TDC ved Sø- og Handelsretten – ligeledes om margin squeeze.

Margin squeeze anses ofte for at være en af de mest komplekse misbrugsformer på grund af de mange metodiske valg, der indgår i vurderingen. Den er derfor blevet omtalt som "The Frankenstein Monster of Article 102".

Læs mere og tilmeld dig her:
https://event.it/cbslaw/5y1t9e

Eventen afholdes på engelsk og streames via Zoom, så du kan deltage både fysisk og online.